

Senate Bill 921

Sponsored by Senator AVAKIAN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Deletes references to double majority voter participation requirement for tax measures. Deletes legal challenges to tax measures approved by less than double majority of voters.

Takes effect on passage of amendment to Oregon Constitution proposed by Senate Joint Resolution 35 (2007).

A BILL FOR AN ACT

1
2 Relating to elections on tax measures; amending ORS 190.083, 198.815, 221.050, 222.050, 250.031,
3 258.006, 258.016, 258.046, 258.075, 258.290, 267.530, 280.060, 280.070, 310.140 and 341.085; repealing
4 ORS 250.036 and 310.190; and prescribing an effective date.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 190.083 is amended to read:

7 190.083. (1) Before a county enters into an intergovernmental agreement creating an intergov-
8 ernmental entity to operate, maintain, repair and modernize transportation facilities, the county
9 shall obtain approval of the terms and conditions of the agreement from the governing bodies of a
10 majority of the cities within the county.

11 (2) Subject to the provisions of this section, an intergovernmental entity created to operate,
12 maintain, repair and modernize transportation facilities may issue general obligation bonds and as-
13 sess, levy and collect taxes in support of the purposes of the entity.

14 (3)(a) To carry out the purposes of an intergovernmental agreement under this section, and when
15 authorized at an election described in paragraph (b) of this subsection, an intergovernmental entity
16 created to operate, maintain, repair and modernize transportation facilities may borrow moneys and
17 sell and dispose of general obligation bonds. Approval requires an affirmative vote of a majority of
18 the electors within the intergovernmental entity voting in the election.

19 (b) If the bonds are not subject to the limitations under section 11 or 11b, Article XI of the
20 Oregon Constitution:

21 (A) The proposition submitted to the electors shall provide that the intergovernmental entity
22 shall assess, levy and collect taxes each year on the assessed value of all taxable property within
23 the intergovernmental entity for the purposes of paying the principal and interest on the general
24 obligation bonds; **and**

25 *[(B) The election must comply with the voter participation requirements of section 11 (8), Article*
26 *XI of the Oregon Constitution; and]*

27 *[(C)]* (B) Outstanding bonds may never exceed in the aggregate two percent of the real market
28 value of all taxable property within the entity.

29 (4) The governing body of an intergovernmental entity created to operate, maintain, repair and
30 modernize transportation facilities shall issue the bonds from time to time as authorized by the

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 electors of the entity. The governing body shall issue the bonds according to the applicable pro-
2 visions of ORS chapters 287 and 288.

3 (5) The electors of an intergovernmental entity created to operate, maintain, repair and mod-
4 ernize transportation facilities may establish a permanent rate limit for ad valorem property taxes
5 for the entity pursuant to section 11 (3)(c), Article XI of the Oregon Constitution.

6 (6) An intergovernmental entity created to operate, maintain, repair and modernize transporta-
7 tion facilities may exercise the powers necessary to carry out the purposes of the intergovernmental
8 agreement, including but not limited to the authority to enter into agreements and to expend tax
9 proceeds and other revenues the entity receives.

10 (7) An intergovernmental entity created to operate, maintain, repair and modernize transporta-
11 tion facilities is not a district as defined in ORS 198.010 and is not subject to the provisions of ORS
12 chapter 451.

13 (8) An intergovernmental entity described in this section is subject to ORS 294.305 to 294.565
14 for each fiscal year or budget period in which the entity proposes to impose or imposes ad valorem
15 property taxes.

16 **SECTION 2.** ORS 198.815 is amended to read:

17 198.815. (1) If the required number of written requests for an election are filed with the county
18 board on or before the date of the final hearing or if the petition for formation includes a permanent
19 rate limit for operating taxes for the proposed district, the board shall provide by order for the
20 holding of an election to submit to the electors the question of forming the district. The board shall
21 cause notice of the election to be published by two insertions. If requests for an election are filed
22 by less than the required number of persons and no permanent rate limit for operating taxes is in-
23 cluded in the petition, the county board shall dismiss the requests and enter an order creating the
24 district.

25 (2) The order calling an election shall fix the date of the election on the next available election
26 date in ORS 255.345 for which the filing deadline can be met. However, when the proposal for for-
27 mation includes a permanent rate limit for operating taxes for the proposed district, the election
28 shall be held on the date of the next primary election or general election for which the filing
29 deadline can be met. The order shall also state that at such election members of the district board
30 will be voted for. Candidates to be voted for as members of the first board of a district shall be
31 nominated as provided by ORS chapter 255 and the principal Act of a district.

32 (3) The order calling the election shall require the county official in charge of elections to in-
33 clude with the ballot for the election a map or other description of the boundaries of the proposed
34 district using streets and other generally recognized features and a statement of the permanent rate,
35 if any, proposed for the district in the petition for formation under ORS 198.750 (1)(g). Such state-
36 ment shall comply with the requirements of ORS 250.035. The map or other description and state-
37 ment required by this subsection shall be supplied by the county board.

38 (4)[(a)] When the proposal for formation includes a permanent rate limit for operating taxes for
39 the proposed district, the ballot title shall clearly indicate that a single question is being proposed
40 which is:

41 [(A)] (a) Whether the proposed district shall be formed; and

42 [(B)] (b) Whether the permanent rate limit specified in the ballot title shall be adopted as the
43 maximum rate of operating taxes for that district.

44 [(b) *The ballot title for the election shall be in compliance with ORS 250.036.*]

45 [(5) *When the proposal for formation includes a permanent rate limit for the proposed district, the*

1 *district shall be authorized to impose operating taxes not in excess of the permanent rate limit if the*
 2 *proposal is approved by a majority of the votes cast and:]*

3 *[(a) At least 50 percent of registered electors eligible to vote in the election cast a ballot; or]*

4 *[(b) The election is a general election in an even-numbered year.]*

5 [(6)] (5) If a proposed county service district is subject to dissolution unless a determination of
 6 public need for continued existence is made, the ballot title shall include the fiscal year in which
 7 dissolution will occur and statement that the district will dissolve unless the board of directors de-
 8 termines that there is a public need for continued existence.

9 **SECTION 3.** ORS 221.050 is amended to read:

10 221.050. (1) The county court shall submit the proposition for incorporation determined as pro-
 11 vided in ORS 221.040 to the electors registered in the area proposed to be incorporated. At the same
 12 election, five city council members for the proposed city shall be elected.

13 (2) ORS chapters 246 to 260 govern the conduct of an election under this section, including the
 14 nomination and election of the first city council, except as follows:

15 (a) A nominating or primary election for the purpose of nominating candidates for the city
 16 council shall not be held.

17 (b) Notwithstanding ORS 249.037, a nominating petition or declaration of candidacy must be filed
 18 with the county clerk not sooner than the 100th day and not later than the 70th day before the date
 19 of the election.

20 (c) At the time of filing a declaration of candidacy, a candidate for the first city council shall
 21 pay to the officer with whom the declaration is filed a fee of \$25.

22 (d) A nominating petition shall contain at least 25 signatures of electors in the area proposed
 23 to be incorporated or a number of signatures of electors equal to at least 10 percent of the number
 24 of electors in the area proposed to be incorporated as of the date the election is ordered under ORS
 25 221.040, whichever is less.

26 [(3) *The proposed ballot title for an election under this section shall be in compliance with ORS*
 27 *250.036.*]

28 [(4)] (3) Not later than the 30th day after an election called under ORS 221.040 the county court
 29 calling the election shall proclaim whether the results of the election favor incorporation. The
 30 county court also shall proclaim which candidates for city council are elected, if the results of the
 31 election favor incorporation. The results of the election favor incorporation if a majority of the
 32 votes cast on the proposition favors incorporation and:

33 (a) At least 50 percent of registered electors eligible to vote in the election cast a ballot; or

34 (b) The election is a general election in an even-numbered year.

35 [(5)] (4) If the results of the election favor incorporation:

36 (a) The area described in the notice of election is incorporated as a city from the date of the
 37 election;

38 (b) The proposed rate limit for operating taxes submitted to and approved by the electors at the
 39 election shall be the permanent rate limit for operating taxes for the new city; and

40 (c) The five council members elected under subsection (2) of this section shall take office not
 41 later than the 10th day next following the proclamation on the proposition and council election.

42 **SECTION 4.** ORS 222.050 is amended to read:

43 222.050. (1) This section applies if a consolidation or merger proposes to consolidate or merge
 44 two or more cities and at least one of the cities has not previously imposed ad valorem property
 45 taxes.

1 (2) The question of the consolidation or merger that is submitted to the electors of the city that
 2 has not previously imposed ad valorem property taxes may also propose a permanent rate limit on
 3 operating taxes as described in section 11 (3)(c), Article XI of the Oregon Constitution.

4 (3) The permanent rate limit proposed under subsection (2) of this section shall be taken into
 5 account in determining the permanent rate limit for the city following consolidation or merger as
 6 provided in section 11 (3)(d), Article XI of the Oregon Constitution.

7 (4) The question of the consolidation or merger that is submitted to the electors of the city that
 8 has not previously approved operating taxes shall be considered approved by such electors if a ma-
 9 jority of the votes cast are in favor of the consolidation or merger. *[and:]*

10 *[(a) At least 50 percent of registered voters eligible to vote in the election cast a ballot; or]*

11 *[(b) The election is a general election in an even-numbered year.]*

12 *[(5) ORS 250.036 applies to a ballot title for an election described in this section.]*

13 *[(6) Notwithstanding that a majority of all electors voting on the question of consolidation or*
 14 *merger approve the consolidation or merger, the consolidation or merger shall not be considered ap-*
 15 *proved if the voting participation requirements in subsection (4) of this section have not been met in the*
 16 *city to which this section applies.]*

17 *[(7)]* (5) If the city to which **subsection (4)** of this section applies approves the consolidation
 18 or merger but the consolidation or merger is not approved by the other electors voting on the
 19 question or for some other reason does not occur, no permanent rate limit for operating taxes shall
 20 be established for the city as a result of the election.

21 **SECTION 5.** ORS 250.031 is amended to read:

22 250.031. The Secretary of State shall adopt administrative rules for the conduct of elections
 23 under section 11, Article XI of the Oregon Constitution, that include but are not limited to pro-
 24 visions that[:]

25 *[(1)]* set forth *[the]* requirements *[for an election to which section 11 (8), Article XI of the Oregon*
 26 *Constitution, is applicable]* that are consistent with the voter registration requirements of ORS
 27 chapter 247 and with the federal National Voter Registration Act of 1993 (P.L. 103-31)[:]

28 *[(2) Provide directions to election officers for calculating whether the required number of registered*
 29 *voters eligible to vote voted in the election; and]*

30 *[(3) Interpret the words “cast a ballot” in section 11 (8), Article XI of the Oregon Constitution, as*
 31 *meaning that a ballot was lawfully cast, whether or not the vote of that ballot may lawfully be counted*
 32 *for reasons other than the eligibility of the voter to vote].*

33 **SECTION 6.** ORS 258.006 is amended to read:

34 258.006. As used in this chapter:

35 (1) “Candidate” means a candidate for nomination or election to any elective office.

36 (2) “Contestant” means any person who files a petition of contest under ORS 258.036.

37 (3) “Contestee” means:

38 (a) In a contest of the nomination of a person for an office or the election of a person to an
 39 office, all candidates for the nomination or office, other than a candidate who is a contestant.

40 (b) In a contest of the approval or rejection of a measure proposed by initiative petition, the
 41 chief petitioner of the petition, unless the chief petitioner is a contestant, and any other person in-
 42 volved in the cause of the contest.

43 (c) If the cause of the contest is ORS 258.016 (6) *[or (7)]*, the county clerk.

44 (4) “County clerk” means the county clerk or the county official in charge of elections.

45 (5) “Elector” means an individual qualified to vote under section 2, Article II, Oregon Consti-

1 tution.

2 (6) "Full recount" means a recount of all the precincts in which votes were cast for the nomi-
 3 nation or office for which a candidate received a vote or on any measure that appeared on the
 4 ballot.

5 (7) "Measure" includes any of the following submitted to the people for their approval or re-
 6 jection at an election:

- 7 (a) A proposed law.
- 8 (b) An Act or part of an Act of the Legislative Assembly.
- 9 (c) A revision of or amendment to the Oregon Constitution.
- 10 (d) Local, special or municipal legislation.
- 11 (e) A proposition or question.

12 (8) "Partial recount" means a recount conducted in a number of precincts equal to the greater
 13 of:

- 14 (a) Five percent of the precincts in which votes were cast for the nomination or office for which
 15 a candidate received a vote or on any measure that appeared on the ballot; or
- 16 (b) Three specified precincts in which votes were cast for the nomination or office for which a
 17 candidate received a vote or on any measure that appeared on the ballot.

18 **SECTION 7.** ORS 258.016 is amended to read:

19 258.016. The nomination or election of any person or the decision on any measure may be con-
 20 tested by any elector entitled to vote for the person or measure, by any person who was a candidate
 21 at the election for the same nomination or office, by the Secretary of State if the contest involves
 22 a state measure or a candidate for whom the Secretary of State is the filing officer, or by the county
 23 clerk who conducted the election only for the following causes:

- 24 (1) Deliberate and material violation of any provision of the election laws in connection with the
 25 nomination, election, approval or rejection.
- 26 (2) Ineligibility of the person elected to the office to hold the office at the time of the election.
- 27 (3) Illegal votes.
- 28 (4) Mistake or fraud in the canvass of votes.
- 29 (5) Fraud in the count of votes.
- 30 (6) Nondeliberate and material error in the distribution of the official ballots by a local elections
 31 official, as that term is defined in ORS 246.012, or a county clerk.

32 *[(7) A challenge to the determination of the number of electors who were eligible to participate in
 33 an election on a measure conducted under section 11 (8), Article XI of the Oregon Constitution.]*

34 **SECTION 8.** ORS 258.046 is amended to read:

35 258.046. *[(1)]* The prevailing party in the contest proceeding shall recover costs, disbursements
 36 and reasonable attorney fees at trial and on appeal against the losing party. However, if the cause
 37 of the contest is a mistake in the canvass of votes and the contestant prevails, the cost of any re-
 38 canvass of votes shall be paid by:

- 39 *[(a)]* (1) The county for a contest of a state or county nomination, office or measure;
- 40 *[(b)]* (2) The city for a contest of a city nomination, office or measure; or
- 41 *[(c)]* (3) Any other political subdivision or public corporation for a contest of such a subdivision
 42 or corporation nomination, office or measure.

43 *[(2) In a contest under ORS 258.016 (7), costs, disbursements and attorney fees shall not be as-
 44 sessed against the county clerk unless the court makes a specific finding of fault against the county
 45 clerk.]*

1 **SECTION 9.** ORS 258.075 is amended to read:

2 258.075. (1) *[Except as provided in subsection (4) of this section,]* After the contest hearing, the
3 circuit court shall render a judgment affirming or setting aside the approval or rejection of the
4 measure.

5 (2) If the judgment sets aside the approval or rejection of a measure, the circuit court shall di-
6 rect the measure to be resubmitted at a special election held on one of the dates specified in this
7 subsection, as set by the court. In setting the election date, the court shall provide sufficient time
8 for adequate notice to be given. The special election may be held on any of the following dates:

9 (a) The second Tuesday in March;

10 (b) The third Tuesday in May;

11 (c) The third Tuesday in September; or

12 (d) The first Tuesday after the first Monday in November.

13 (3) The county of the county clerk or the local elections official who committed the error in the
14 distribution of the official ballots shall bear the cost of the special election.

15 *[(4) In a contest under ORS 258.016 (7), the court shall determine whether the challenge to the*
16 *determination of the number of electors who were eligible on election day to participate in the election*
17 *on a measure conducted under section 11 (8), Article XI of the Oregon Constitution, is valid. In making*
18 *the determination, the court shall rely on the provisions of ORS chapter 247 and shall receive testimony*
19 *from the county clerk regarding the clerk's administration of ORS chapter 247. If, after a contest*
20 *hearing, the court determines that the challenge to the determination of the number of electors who were*
21 *eligible to participate is valid and that the change in the number of electors eligible to participate is*
22 *sufficient to change the outcome of the election on the measure, the court shall order the county clerk*
23 *to make a new determination of the number of eligible electors and to certify the results of the election*
24 *based on the new determination.]*

25 **SECTION 10.** ORS 258.290 is amended to read:

26 258.290. (1) If the official canvass of votes of an election reveals that the difference in the
27 number of votes cast for or against any measure is not more than one-fifth of one percent of the
28 total votes cast for and against the measure, the Secretary of State, in the case of a measure for
29 which the Secretary of State is the filing officer, and the county clerk who conducted the election
30 in the case of any other measure shall order a full recount of all votes cast for the measure.

31 (2) The cost of a full recount conducted under this section shall be paid by the state, county,
32 city or special district for which the measure was proposed.

33 *[(3) This section does not apply if the election on the measure is an election at which at least 50*
34 *percent of registered voters eligible to vote in the election must cast a ballot under section 11, Article*
35 *XI, Oregon Constitution, and less than 50 percent of registered voters eligible to vote in the election*
36 *cast ballots.]*

37 **SECTION 11.** ORS 267.530 is amended to read:

38 267.530. If a district is to impose operating taxes, a permanent rate limit on operating taxes
39 within the meaning of section 11 (3), Article XI of the Oregon Constitution, shall be established for
40 a district at the same election at which the district is established. If the petition or resolution for
41 initiating proceedings to establish the district contains a proposed permanent rate limit, the county
42 governing body that calls the election shall confer about the rate limit with the governing bodies
43 of all counties and cities having territory in the proposed district and shall then determine the rate
44 limit to be proposed for the district. The proposition submitted to the electors of the district for the
45 purpose of establishing the district shall propose the rate limit specified by the county governing

1 body. The rate limit so proposed shall be the permanent rate limit for operating taxes for the district
 2 within the meaning of section 11 (3), Article XI of the Oregon Constitution, if the district is estab-
 3 lished in an election that is in compliance with [section 11 (8), Article XI of] the Oregon Constitution.

4 **SECTION 12.** ORS 280.060 is amended to read:

5 280.060. (1) Upon approval of a majority of the electors of a subdivision [*in a manner that qual-*
 6 *ifies under section 11 (8), Article XI of the Oregon Constitution*], a subdivision may levy local option
 7 taxes outside the limitation imposed by section 11 (3), Article XI, Oregon Constitution, over the pe-
 8 riod of time that is authorized by the electors. The amount levied each year shall be:

9 (a) Uniform, or substantially so, throughout the period during which the taxes are levied; or

10 (b) Computed annually at the same dollar rate per thousand dollars assessed value in the sub-
 11 division, such rate to be declared in and made a part of the ballot measure to be submitted to the
 12 electorate.

13 (2) Notwithstanding subsection (1) of this section, a subdivision may certify for extension on the
 14 assessment and tax roll under ORS 310.060 a lesser amount of local option tax or a lesser rate of
 15 local option tax if the subdivision decides to collect less than the entire local option tax authorized
 16 by electors. The subdivision shall certify the lesser amount or rate in the written notice required
 17 to be made under ORS 310.060.

18 (3)(a) The period of time authorized by the electors shall not exceed five years or, if the local
 19 option tax is for capital projects, the lesser of:

20 (A) The expected useful life of the capital projects to be financed by the tax; or

21 (B) Ten years.

22 (b) A local option tax for capital projects does not exceed the expected useful life of the capital
 23 projects financed by the tax if the estimated weighted average life of the tax does not exceed the
 24 estimated dollar weighted average of the capital assets comprising the capital projects that are to
 25 be financed by the tax. The estimated dollar weighted average life of capital projects shall be cal-
 26 culated under rules of the Department of Revenue that ensure that a local option tax for capital
 27 projects is levied for no more than 10 years and no more than the useful life of the component of
 28 the capital projects financed by the tax that has the longest useful life.

29 (4)(a) All local option taxes authorized by ORS 280.040 to 280.145 that are for capital projects
 30 and that have a term of more than five years shall be submitted to electors separately from local
 31 option taxes with a term of five years or less.

32 (b) For purposes of this subsection, "capital project" means the acquisition of land upon which
 33 to construct an improvement, the acquisition of a building, the acquisition or construction of im-
 34 provements, the acquisition of an addition to a building which increases the square footage of the
 35 building, the construction of a building, the construction of an addition to an existing building which
 36 increases the square footage of the building or the acquisition of and installation of machinery and
 37 equipment which will become an integral part of a building or an addition to a building, the pur-
 38 chase of furnishings, equipment or other tangible property with an expected useful life of more than
 39 one year or a combination of those items.

40 (5) If a ballot measure authorizing a local option tax states that the taxing district may issue
 41 bonds that are payable from that tax, voter approval of the tax shall constitute voter approval of
 42 the bonds, except that the approval shall not entitle the taxing district to collect a greater amount
 43 of tax than the taxing district would have been entitled to collect if the ballot measure only au-
 44 thorized local option taxes and did not authorize bonds. If the local option tax is approved by voters
 45 [*in a manner that qualifies under section 11 (8), Article XI of the Oregon Constitution*], then the taxing

1 body may issue the bonds in a principal amount that, together with the estimated interest to be paid
 2 on the bonds while the bonds are outstanding, does not exceed the revenues estimated to be received
 3 from the local option tax levy. A taxing district may pledge the revenues received from the local
 4 option tax and the taxing district's full faith and credit to pay bonds authorized under this sub-
 5 section.

6 **SECTION 13.** ORS 280.070 is amended to read:

7 280.070. (1) An election within a county for the purpose of approving a tax levy or tax rate un-
 8 der ORS 280.060 shall be called by the county court or board of county commissioners and shall be
 9 held on a date specified in ORS 203.085.

10 (2) An election within a city for the purpose of approving a tax levy or tax rate under ORS
 11 280.060 or under section 11 (3)(c), Article XI of the Oregon Constitution, shall be called by the
 12 governing body of the city and held on a date specified in ORS 221.230.

13 (3) An election within a political subdivision other than a county or city for the purpose of ap-
 14 proving a tax levy or tax rate under ORS 280.060 or under section 11 (3)(c), Article XI of the Oregon
 15 Constitution, shall be called by the governing body of the subdivision and held on a date specified
 16 in ORS 255.345.

17 (4)(a) The ballot title for a measure authorizing the imposition of local option taxes shall contain
 18 the following additional statement:

19
 20
 21 This measure may cause property taxes to increase more than three percent.
 22
 23

24 (b) The statements required by this subsection shall not be considered for purposes of the word
 25 count limitations under ORS 250.035.

26 (c) The statements required by this subsection shall be placed after the question on the ballot
 27 title.

28 (5) As part of the question, the ballot title for a measure authorizing the imposition of local
 29 option taxes shall state:

30 (a) The length in years of the period during which the proposed local option tax will be imposed.

31 (b) The first fiscal year in which the proposed local option tax will be imposed.

32 (6) As part of the question, the ballot title for a measure authorizing the establishment of a
 33 permanent rate limitation shall contain the following information:

34 (a) The tax rate per \$1,000 of assessed value of the proposed permanent rate limitation.

35 (b) The first fiscal year in which the proposed permanent rate limitation will be imposed.

36 *[(7) The ballot title for a measure authorizing the imposition of local option taxes or a permanent*
 37 *rate limitation shall be in compliance with ORS 250.036.]*

38 **SECTION 14.** ORS 310.140 is amended to read:

39 310.140. The Legislative Assembly finds that section 11b, Article XI of the Oregon Constitution,
 40 was drafted by citizens and placed before the voters of the State of Oregon by initiative petition.
 41 Section 11b, Article XI of the Oregon Constitution, uses terms that do not have established legal
 42 meanings and require definition by the Legislative Assembly. Section 11b, Article XI of the Oregon
 43 Constitution, was amended by section 11 (11), Article XI of the Oregon Constitution. This section is
 44 intended to interpret the terms of section 11b, Article XI of the Oregon Constitution, as originally
 45 adopted and as amended by section 11 (11), Article XI of the Oregon Constitution, consistent with

1 the intent of the people in adopting these provisions, so that the provisions of section 11b, Article
2 XI of the Oregon Constitution, may be given effect uniformly throughout the State of Oregon, with
3 minimal confusion and misunderstanding by citizens and affected units of government. As used in the
4 revenue and tax laws of this state, and for purposes of section 11b, Article XI of the Oregon Con-
5 stitution:

6 (1) "Actual cost" means all direct or indirect costs incurred by a government unit in order to
7 deliver goods or services or to undertake a capital construction project. The "actual cost" of pro-
8 viding goods or services to a property or property owner includes the average cost or an allocated
9 portion of the total amount of the actual cost of making a good or service available to the property
10 or property owner, whether stated as a minimum, fixed or variable amount. "Actual cost" includes,
11 but is not limited to, the costs of labor, materials, supplies, equipment rental, property acquisition,
12 permits, engineering, financing, reasonable program delinquencies, return on investment, required
13 fees, insurance, administration, accounting, depreciation, amortization, operation, maintenance, re-
14 pair or replacement and debt service, including debt service payments or payments into reserve ac-
15 counts for debt service and payment of amounts necessary to meet debt service coverage
16 requirements.

17 (2) "Assessment for local improvement" means any tax, fee, charge or assessment that does not
18 exceed the actual cost incurred by a unit of government for design, construction and financing of
19 a local improvement.

20 (3) "Bonded indebtedness" means any formally executed written agreement representing a
21 promise by a unit of government to pay to another a specified sum of money, at a specified date or
22 dates at least one year in the future.

23 (4) "Capital construction":

24 (a) For bonded indebtedness issued prior to December 5, 1996, and for the proceeds of any
25 bonded indebtedness approved by electors prior to December 5, 1996, that were spent or
26 contractually obligated to be spent prior to June 20, 1997, means the construction, modification,
27 replacement, repair, remodeling or renovation of a structure, or addition to a structure, that is ex-
28 pected to have a useful life of more than one year, and includes, but is not limited to:

29 (A) Acquisition of land, or a legal interest in land, in conjunction with the capital construction
30 of a structure.

31 (B) Acquisition, installation of machinery or equipment, furnishings or materials that will be-
32 come an integral part of a structure.

33 (C) Activities related to the capital construction, including planning, design, authorizing, issuing,
34 carrying or repaying interim or permanent financing, research, land use and environmental impact
35 studies, acquisition of permits or licenses or other services connected with the construction.

36 (D) Acquisition of existing structures, or legal interests in structures, in conjunction with the
37 capital construction.

38 (b) For bonded indebtedness issued on or after December 5, 1996, except for the proceeds of any
39 bonded indebtedness approved by electors prior to December 5, 1996, that were spent or
40 contractually obligated to be spent before June 20, 1997, has the meaning given that term in para-
41 graph (a) of this subsection, except that "capital construction":

42 (A) Includes public safety and law enforcement vehicles with a projected useful life of five years
43 or more; and

44 (B) Does not include:

45 (i) Maintenance and repairs, the need for which could be reasonably anticipated;

1 (ii) Supplies and equipment that are not intrinsic to the structure; or

2 (iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, con-
3 struction, remodeling or renovation of a structure, or the repair of a structure that is required be-
4 cause of damage or destruction of the structure.

5 (5) "Capital improvements":

6 (a) For bonded indebtedness issued prior to December 5, 1996, and for the proceeds of any
7 bonded indebtedness approved by electors before December 5, 1996, that were spent or contractually
8 obligated to be spent before June 20, 1997, means land, structures, facilities, as that term is defined
9 in ORS 288.805, machinery, equipment or furnishings having a useful life longer than one year.

10 (b) For bonded indebtedness issued on or after December 5, 1996, except for the proceeds of any
11 bonded indebtedness approved by electors prior to December 5, 1996, that were spent or
12 contractually obligated to be spent before June 20, 1997, has the meaning given that term in para-
13 graph (a) of this subsection, except that "capital improvements":

14 (A) Includes public safety and law enforcement vehicles with a projected useful life of five years
15 or more; and

16 (B) Does not include:

17 (i) Maintenance and repairs, the need for which could be reasonably anticipated;

18 (ii) Supplies and equipment that are not intrinsic to the structure; or

19 (iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, con-
20 struction, remodeling or renovation of a structure, or the repair of a structure that is required be-
21 cause of damage or destruction of the structure.

22 (6) "Direct consequence of ownership" means that the obligation of the owner of property to pay
23 a tax arises solely because that person is the owner of the property, and the obligation to pay the
24 tax arises as an immediate and necessary result of that ownership without respect to any other in-
25 tervening transaction, condition or event.

26 (7)(a) "Exempt bonded indebtedness" means:

27 (A) Bonded indebtedness authorized by a specific provision of the Oregon Constitution;

28 (B) Bonded indebtedness incurred or to be incurred for capital construction or capital improve-
29 ments that was issued as a general obligation of the issuing governmental unit on or before No-
30 vember 6, 1990;

31 (C) Bonded indebtedness incurred or to be incurred for capital construction or capital improve-
32 ments that was issued as a general obligation of the issuing governmental unit after November 6,
33 1990, with the approval of the electors of the issuing governmental unit; or

34 (D) Bonded indebtedness incurred or to be incurred for capital construction or capital improve-
35 ments, if the issuance of the bonds is approved by voters on or after December 5, 1996, in an election
36 that is in compliance with [*the voter participation requirements of section 11 (8), Article XI of*] the
37 Oregon Constitution.

38 (b) "Exempt bonded indebtedness" includes bonded indebtedness issued to refund or refinance
39 any bonded indebtedness described in paragraph (a) of this subsection.

40 (8)(a) "Incurred charge" means a charge imposed by a unit of government on property or upon
41 a property owner that does not exceed the actual cost of providing goods or services and that can
42 be controlled or avoided by the property owner because:

43 (A) The charge is based on the quantity of the goods or services used, and the owner has direct
44 control over the quantity;

45 (B) The goods or services are provided only on the specific request of the property owner; or

1 (C) The goods or services are provided by the government unit only after the individual property
2 owner has failed to meet routine obligations of ownership of the affected property, and such action
3 is deemed necessary by an appropriate government unit to enforce regulations pertaining to health
4 or safety.

5 (b) For purposes of this subsection, an owner of property may control or avoid an incurred
6 charge if the owner is capable of taking action to affect the amount of a charge that is or will be
7 imposed or to avoid imposition of a charge even if the owner must incur expense in so doing.

8 (c) For purposes of paragraph (a)(A) of this subsection, an owner of property has direct control
9 over the quantity of goods or services if the owner of property has the ability, whether or not that
10 ability is exercised, to determine the quantity of goods or services provided or to be provided.

11 (9)(a) "Local improvement" means a capital construction project, or part thereof, undertaken by
12 a local government, pursuant to ORS 223.387 to 223.399, or pursuant to a local ordinance or resol-
13 ution prescribing the procedure to be followed in making local assessments for benefits from a local
14 improvement upon the lots that have been benefited by all or a part of the improvement:

15 (A) That provides a special benefit only to specific properties or rectifies a problem caused by
16 specific properties;

17 (B) The costs of which are assessed against those properties in a single assessment upon the
18 completion of the project; and

19 (C) For which the property owner may elect to make payment of the assessment plus appropriate
20 interest over a period of at least 10 years.

21 (b) For purposes of paragraph (a) of this subsection, the status of a capital construction project
22 as a local improvement is not affected by the accrual of a general benefit to property other than the
23 property receiving the special benefit.

24 (10) "Maintenance and repairs, the need for which could be reasonably anticipated":

25 (a) Means activities, the type of which may be deducted as an expense under the provisions of
26 the federal Internal Revenue Code, as amended and in effect on December 31, 2004, that keep the
27 property in ordinarily efficient operating condition and that do not add materially to the value of
28 the property nor appreciably prolong the life of the property;

29 (b) Does not include maintenance and repair of property that is required by damage, destruction
30 or defect in design, or that was otherwise not reasonably expected at the time the property was
31 constructed or acquired, or the addition of material that is in the nature of the replacement of
32 property and that arrests the deterioration or appreciably prolongs the useful life of the property;
33 and

34 (c) Does not include street and highway construction, overlay and reconstruction.

35 (11) "Projected useful life" means the useful life, as reasonably estimated by the unit of gov-
36 ernment undertaking the capital construction or capital improvement project, beginning with the
37 date the property was acquired, constructed or reconstructed and based on the property's condition
38 at the time the property was acquired, constructed or reconstructed.

39 (12) "Routine obligations of ownership" means a standard of operation, maintenance, use or care
40 of property established by law, or if established by custom or common law, a standard that is rea-
41 sonable for the type of property affected.

42 (13) "Single assessment" means the complete assessment process, including preassessment, as-
43 sessment or reassessment, for any local improvement authorized by ORS 223.387 to 223.399, or a
44 local ordinance or resolution that provides the procedure to be followed in making local assessments
45 for benefits from a local improvement upon lots that have been benefited by all or part of the im-

1 improvement.

2 (14) "Special benefit only to specific properties" shall have the same meaning as "special and
3 peculiar benefit" as that term is used in ORS 223.389.

4 (15) "Specific request" means:

5 (a) An affirmative act by a property owner to seek or obtain delivery of goods or services;

6 (b) An affirmative act by a property owner, the legal consequence of which is to cause the de-
7 livery of goods or services to the property owner; or

8 (c) Failure of an owner of property to change a request for goods or services made by a prior
9 owner of the property.

10 (16) "Structure" means any temporary or permanent building or improvement to real property
11 of any kind that is constructed on or attached to real property, whether above, on or beneath the
12 surface.

13 (17) "Supplies and equipment intrinsic to a structure" means the supplies and equipment that
14 are necessary to permit a structure to perform the functions for which the structure was con-
15 structed, or that will, upon installation, constitute fixtures considered to be part of the real property
16 that is comprised, in whole or part, of the structure and land supporting the structure.

17 (18) "Tax on property" means any tax, fee, charge or assessment imposed by any government
18 unit upon property or upon a property owner as a direct consequence of ownership of that property,
19 but does not include incurred charges or assessments for local improvements. As used in this sub-
20 section, "property" means real or tangible personal property, and intangible property that is part
21 of a unit of real or tangible personal property to the extent that such intangible property is subject
22 to a tax on property.

23 **SECTION 15.** ORS 341.085 is amended to read:

24 341.085. (1) An election for the purpose of presenting the question of formation of a district and
25 establishing a permanent rate limit for operating taxes and the boundaries of the zones, if the zones
26 were recommended by the State Board of Education, shall be held to submit the question to the
27 electors registered in the proposed district designated in the recommendation of the state board. The
28 election shall be held not sooner than the 90th day after the effective date of the appropriation re-
29 quired by ORS 341.102. The election date shall be uniform throughout the proposed district, and
30 shall be set by the state board on a date specified in ORS 255.345. However, if the question of es-
31 tablishing a permanent rate limit for operating taxes is to be submitted, the election must be held
32 on the same date as the next primary election or the next general election, as determined by the
33 state board.

34 (2) ORS chapter 255 and ORS 250.035 [*and 250.036*] govern the notice and conduct of an election
35 under this section. The state board shall be the district elections authority for an election conducted
36 under this section. Notwithstanding ORS 255.305, the state board shall pay the expenses incurred
37 for the election.

38 (3) An elector registered in a precinct or in the portion of a precinct which is located within
39 the boundaries of the proposed district may vote on any matter arising at the election under sub-
40 section (1) of this section.

41 **SECTION 16.** ORS 250.036 and 310.190 are repealed.

42 **SECTION 17.** This 2007 Act does not become effective unless the amendment to the
43 Oregon Constitution proposed by Senate Joint Resolution 35 (2007) is approved by the people
44 at a special election held throughout this state on May 20, 2008. This 2007 Act becomes ef-
45 fective on the effective date of that constitutional amendment.

