

Chapter 261 — People's Utility Districts

2005 EDITION

TITLE 24

PUBLIC ORGANIZATIONS FOR COMMUNITY SERVICE

- Chapter 261. People's Utility Districts
262. Joint Operating Agencies for Electric Power
263. Convention Facilities
264. Domestic Water Supply Districts
265. Cemetery Maintenance Districts
266. Park and Recreation Districts
267. Mass Transit Districts; Transportation Districts
268. Metropolitan Service Districts

Chapter 261 — People's Utility Districts

2005 EDITION

GENERAL PROVISIONS

- 261.005 Short title
- 261.007 Policy
- 261.010 Definitions
- 261.025 Statutory provisions cumulative
- 261.030 Chapter not to interfere with existing utilities of electric cooperatives or cities;
joint operating agencies allowed
- 261.035 Charter provisions of cities not affected; city not prohibited from acquiring
plant
- 261.045 Procedure in absence of specific provision
- 261.050 Taxation of district property
- 261.055 Special elections called by board
- 261.060 Election procedure
- 261.065 Application of initiative, referendum and recall laws

FORMATION; BOUNDARY CHANGES

- 261.105 Powers of district; formation; annexation; consolidation
- 261.110 Areas includable in district; description of district in petition for election
- 261.113 Petition or resolution for formation to propose special levy for certain purposes
- 261.115 Contents of electors' petition; certification
- 261.118 Withdrawal from petition prohibited
- 261.121 Basis of computing percentage of petition signatures
- 261.131 Period for county clerk to certify petition
- 261.141 Formation, annexation or consolidation by resolution; contents of resolution
- 261.147 Resolution to remove territory not served by district; hearing; notice; election on question of removal; effect of removal
- 261.151 Hearing by Director of State Department of Energy on district formation; notice; report by director
- 261.161 Hearing by county governing body; notice; determination of boundaries
- 261.171 County governing body to call election; notice; dates
- 261.180 Effect of annexation or consolidation on title to property and indebtedness
- 261.190 Qualifications; election of first board of directors; tenure
- 261.200 Proclamation of district formation or boundary change; special levy; property owner petition
- 261.210 Payment of election expenses; security deposit
- 261.215 When district formed; designation; district as corporation
- 261.220 Mandamus to compel performance of its duties by county governing body
- 261.225 State agencies and private utilities to provide new district certain information

POWER FACILITIES

- 261.235 Definitions for ORS 261.235 to 261.255
- 261.240 Policy; construction
- 261.245 Authority of district to acquire interest in power facilities
- 261.246 *District as member of electric cooperative or limited liability company***
- 261.250 District liability; application of moneys; use of power of eminent domain prohibited
- 261.253 Electric utility restriction on entering contract imposing unconditional or unlimited financial obligation on utility
- 261.255 Use of district money or property; revenue bonds

POWERS

- 261.305 General powers of district
- 261.310 Irrigation, drainage, other districts given power of utility district in certain cases
- 261.315 Acquisition of distribution facilities outside district
- 261.325 Acquisition of water rights
- 261.327 Acquisition of distribution facilities of private utility; compensation for energy efficiency measures
- 261.330 District water right appropriation exclusive if not excessive
- 261.335 Districts subject to public contracting and purchasing requirements
- 261.345 Employment of labor; pay and conditions; agreements; rights of previous employees of private utility
- 261.348 Transactions for production, supply or delivery of electricity; financial products contracts
- 261.350 Agreements for use of excess district facilities
- 261.355 Revenue bonds; elector approval required; exception for certain purposes; engineer certificate required; election dates

- 261.360 Authority to issue general obligation bonds
- 261.365 Bond requirements
- 261.371 Advertisement and sale of bonds
- 261.375 Election to authorize district bond issue
- 261.380 Refunding district indebtedness
- 261.385 Levy and collection of taxes for certain purposes
- 261.390 Property taxable; time and manner of tax levy and collection

BOARD OF DIRECTORS

- 261.405 Board of directors; election; qualifications
- 261.410 Nomination and election of directors of established districts
- 261.415 Vacancy in office of director
- 261.420 Terms of office of directors
- 261.425 Officers of board
- 261.430 Board meetings
- 261.445 Appointment and removal of district manager; qualifications; salary; acting manager; powers and duties
- 261.460 Legislative function of board
- 261.465 Board supervision and regulation of district utilities; fixing rates
- 261.470 Accounting system adopted by board; annual reports; annual audit

COURT PROCEEDING TO TEST CERTAIN DISTRICT PROCEEDINGS

- 261.605 Testing validity of certain commission and board proceedings
- 261.610 Nature of proceeding; notice; appearance to contest; court determinations
- 261.615 Appeal to Court of Appeals

- 261.620 Guidance for court determination
- 261.625 Costs of proceeding
- 261.630 Institution of proceeding by elector; directors as parties; notice
- 261.635 Procedure exclusive

DISSOLUTION

- 261.705 Authority to dissolve district; vote authorizing dissolution
- 261.710 Call of election; effect of favorable vote
- 261.715 Directors as trustees
- 261.720 Inventory and sale of district property
- 261.725 Disposal of sale proceeds
- 261.730 Disposal of district books and records; termination of corporate existence

CONSTRUCTION

- 261.900 Construction

GENERAL PROVISIONS

261.005 Short title. This chapter shall be known as the People's Utility District Law.

261.007 Policy. The purpose of this chapter is to implement the intent and purpose of section 12, Article XI, of the Oregon Constitution including authorization for the establishment of people's utility districts to develop the water and energy resources of this state for the benefit of the people of this state and to supply public utility service, including water, water power and electric energy for all uses and users. [1979 c.588 §2]

261.010 Definitions. As used in this chapter, unless otherwise required by the context:

(1) "Affected territory" means that territory proposed to be formed into, annexed to or consolidated with a district.

(2) "Board of directors," "directors" or "board" means the governing body of a people's utility district, elected and functioning under the provisions of this chapter.

(3) "County governing body" means either the county court or board of county commissioners and, if the affected territory is composed of portions of two or more counties, the governing body of that county having the greatest portion of the assessed value of all taxable property within the affected territory, as shown by the most recent assessment roll of the counties.

(4) "Electors' petition" means a petition addressed to the county governing body and filed with the county clerk, containing the signatures of electors registered in the affected territory, equal to not less than three percent of the total number of votes cast for all candidates for Governor within the affected territory at the most recent election at which a candidate for Governor was elected to a full term, setting forth and particularly describing the boundaries of the parcel of territory, separate parcels of territory, city and district, or any of them, referred to therein, and requesting the county governing body to call an election to be held within the boundaries of the parcel of territory, separate parcels of territory, city and district, or any of them, for the formation of a district, the annexation of a parcel of territory or a city to a district, or the consolidation of two or more districts.

(5) "Electric cooperative" means a cooperative corporation owning and operating an electric distribution system.

(6) "Initial utility system" means a complete operating utility system, including energy efficiency measures and installations within the district or proposed district, capable of supplying the consumers required to be served by the district at the time of acquisition or construction with all of their existing water or electrical energy needs.

(7) "Parcel of territory" means a portion of unincorporated territory, or an area in a city comprised of less than the entire city.

(8) "People's utility district" or "district" means an incorporated people's utility district, created under the provisions of this chapter.

(9) ***"Renewable energy certificate" shall have the meaning given to such term in ORS ____.***

(10) ***"Renewable energy facility" shall have the meaning given to such term in ORS ____.***

(11) "Replacement value of unreimbursed investment" means original cost new less depreciation of capitalized energy efficiency measures and installations in the premises of customers of an investor owned utility.

(1[0]2) "Separate parcel of territory" means unincorporated territory that is not contiguous to other territory that is a part of a district or that is described in a petition filed with the county clerk in pursuance of the provisions of this chapter, but when a proposed district includes territory in more than one county, the contiguous territory in each such county shall be considered as a separate parcel of territory. When a proposed district includes any area in a city comprised of less than the entire city, that area shall be considered as a separate parcel of territory.

(1[1]3) "Utility" means a plant, works or other property used for development, generation, storage, distribution or transmission of electric energy ***or renewable energy certificates*** produced from resources including, but not limited to, hydroelectric, pump storage, wave, tidal, wind, solid waste, wood, straw or other fiber, coal or other thermal generation, geothermal, ~~or~~ ***or any other resources that qualifies for a renewable energy facility***, or development or transmission of water for domestic or municipal purposes, waterpower or electric energy, but transmission of water shall not include water for irrigation or reclamation purposes, except as secondary to and when used in conjunction with a hydroelectric plant. [Amended by 1961 c.224 §10; 1979 c.558 §4; 1981 c.804 §76; 1983 c.83 §32; 1989 c.174 §3; 1991 c.358 §1; 2003 c.802 §65; 2005 c.22 §189]

261.015 [Renumbered 261.121]

261.020 [Repealed by 1973 c.796 §79]

261.025 Statutory provisions cumulative. The provisions of this chapter are additional and cumulative to the provisions of any other law now or hereafter existing for the holding of elections in districts.

261.030 Chapter not to interfere with existing utilities of electric cooperatives or cities; joint operating agencies allowed. Nothing contained in this chapter authorizes or empowers the board of directors of any people's utility district to interfere with or exercise any control over any existing utility owned and operated by any electric cooperative or city in the district unless by consent of the governing body of the electric cooperative or of the city council or the governing body of the plant owned by a city, when the control of the plant is vested in a governing body other than the city council or governing body of the city. However a district may participate fully with electric cooperatives and utilities owned by cities *in common facilities under ORS 261.235 to 261.250 and* in the formation and operation of joint operating agencies ~~for electric power~~ under ORS chapter 262. [Amended by 1979 c.558 §5; 2003 c.802 §66]

261.035 Charter provisions of cities not affected; city not prohibited from acquiring plant. Nothing in this chapter modifies in any manner any charter provisions of any city, or prohibits any city from acquiring and operating its own plant. [Amended by 2003 c.802 §67]

261.040 [Amended by 1979 c.558 §6; renumbered 261.118]

261.045 Procedure in absence of specific provision. Where the procedure for formation of a district, annexation of territory to a district, consolidation of two or more districts, issuance of bonds and levying and collection of taxes, holding of elections or any other matter in connection with organization or operation of utility districts is not specifically provided for, any suitable method and proceeding, or either, may be adopted which may appear most conformable to the spirit of this chapter and the provisions of section 12, Article XI, Oregon Constitution.

261.050 Taxation of district property. (1) All property, real and personal, owned, used, operated or controlled by any people's utility district, in or for the production, transmission, distribution or furnishing of electric power or energy or electric service for or to the public, shall be assessed and taxed in the same manner and for the same purposes, and the district and the directors and officers thereof shall be subject to the same requirements, as are provided by law in respect to assessment and taxation of similar property owned, used, operated or controlled by private corporations or individuals for the purpose of furnishing electric power or energy or electric service to the public.

(2) *When a people's utility district owns property jointly with a tax-exempt governmental or municipal entity, only that portion of the property, or that proportion*

of the property rights, directly owned, used, operated or controlled by the people's utility district shall be assessed and taxed pursuant to subsection (1) of this section.

261.055 Special elections called by board. When any people's utility district desires to hold an election for the purpose of submitting to the electors of the district any question that may lawfully be submitted to them, the board may, at any regular or special meeting called in accordance with its rules or the statutes governing the same, adopt a resolution calling a special election to be held on a date specified in ORS 255.345, and may in the same resolution designate and describe in general terms the question which is to be submitted at the special election. [Formerly 261.505]

261.060 Election procedure. Except as otherwise specifically provided in this chapter, every district election shall be conducted in accordance with ORS 255.005 to 255.035, 255.055, 255.075 to 255.095, 255.215 to 255.288 and 255.295 to 255.345. [1975 c.598 §3 and 1975 c.647 §16; 1989 c.503 §29; 1995 c.607 §70]

261.065 Application of initiative, referendum and recall laws. The laws of this state regarding initiative, referendum and recall shall apply to people's utility districts. [1979 c.558 §3]

FORMATION; BOUNDARY CHANGES

261.105 Powers of district; formation; annexation; consolidation. (1) People's utility districts may be created as provided in this chapter. A people's utility district may exercise all powers conferred by this chapter.

(2) When a majority of all votes cast, at an election within the boundaries of any proposed district to determine whether or not the district is to be formed, favors formation, the district shall be created.

(3) In any election to annex a city or separate parcel of territory to an existing district, or to consolidate two or more existing districts, an affirmative vote of a majority of the votes cast from each city or separate parcel of territory or district voting to annex or consolidate, shall be required to authorize the annexation or consolidation.

(4) Annexation to an existing district shall be subject to the provisions of ORS 198.720 (2). [Amended by 1979 c.558 §7; 2003 c.802 §68]

261.110 Areas includable in district; description of district in petition for election. (1) People's utility districts may consist of territory, contiguous or otherwise, within one or more counties, and may consist of one or more cities, or a portion of a city, with or without unincorporated territory.

(2) Petitions asking that an election be held to determine whether or not a district shall be created shall set forth and particularly describe the boundaries of the proposed people's utility district, and shall state that in the event the people within any one or more cities or separate parcels of territory within the proposed district vote against its formation, then that portion of the district which voted in favor of organization of a people's utility district may be organized into the district.

(3) The name of a city is a sufficient description of its boundaries.

(4) When any city or separate parcel of territory voting at a formation election casts a majority vote against formation of the district, the city or separate parcel of territory shall not be included in any district formed as a result of the election.

(5) A city that owns or operates a publicly owned utility for development or distribution of electric energy or the territory served by the city within or without the boundaries of the city at the time of a proposed formation of a people's utility district may not be included in any election for the formation of the district unless the inclusion is agreed to at an election by the electors of the city.

(6) No entire township, except when needed for location of plant or impounding purposes, or both, shall be included in formation of any district, unless the township contains not less than 10 electors. No portion of any township in excess of six sections shall be included, unless the portion contains a proportionate number of electors.

(7) No territory that is part of another people's utility district shall be included in the formation of any district, except under the conditions provided in ORS 198.720 (2), nor shall the proposed district include any territory which at the time of the proposed district's formation is being served by an electric cooperative. [Amended by 1979 c.558 §8; 1981 c.758 §1; 2003 c.802 §69]

261.113 Petition or resolution for formation to propose special levy for certain purposes. Electors' petitions and resolutions for formation of a district shall include a proposal for the authorization of the district to impose a special levy of a certain amount to finance an engineer's report on revenue bonds for the acquisition or construction of the initial utility system, including the replacement value of the unreimbursed investment of an investor owned utility in energy efficiency measures and installations within the proposed district, the election under ORS 261.355 (10) and costs associated with them. [1979 c.558 §12; 1991 c.358 §2; 1991 c.572 §4]

261.115 Contents of electors' petition; certification. (1) All electors' petitions shall contain a statement as to whether or not the petitioners are desirous of forming a utility district, or to annex territory to an existing utility district, or to consolidate two or more existing utility districts, the description of the territory sought to be included therein and the name by which the utility district is to be known. The statement shall be printed on a separate page or pages.

(2) There shall be a signature sheet with sufficient space for 20 signatures, and opposite the name of each signer, a space for the residence address of the signers of the petition and the number of their voting precinct. The person circulating the petition shall certify on each signature sheet that every person who signed the petition did so in the circulator's presence and that the circulator believes that each signer stated that signer's correct residence address and is an elector.

(3) An electors' petition shall designate three or more persons as chief petitioners and shall set forth their names and mailing addresses. [Amended by 1979 c.558 §9; 1983 c.567 §20; 1999 c.318 §31]

261.118 Withdrawal from petition prohibited. After a petition has been filed with the county clerk, no person may withdraw that person's name from it. [Formerly 261.040]

261.120 [Amended by 1975 c.647 §17; repealed by 1979 c.558 §30]

261.121 Basis of computing percentage of petition signatures. When the boundaries described in any petition include a part of a precinct, the vote of the entire precinct shall be used as a basis in computing the percentage of signatures required on electors' petitions. [Formerly 261.015]

261.125 [Repealed by 1979 c.558 §30]

261.130 [Repealed by 1979 c.558 §30]

261.131 Period for county clerk to certify petition. Within 10 days after receipt of an electors' petition the county clerk shall certify the sufficiency of signatures to the county governing body. [1979 c.558 §10]

261.135 [Repealed by 1979 c.558 §30]

261.140 [Repealed by 1979 c.558 §30]

261.141 Formation, annexation or consolidation by resolution; contents of resolution. (1) In addition to the initiation of a people's utility district formation, annexation or consolidation by electors' petition:

(a) Formation of a district may be initiated by resolution of the governing body of each county in which territory of the proposed district is situated or, if a city proposes to create a district, by resolution of the city governing body;

(b) Annexation to an existing district may be initiated by resolution of the board of directors of that district; and

(c) Consolidation of two or more districts may be initiated by resolution of the board of each of the districts proposed to be consolidated.

(2) Resolutions authorized under this section shall describe the boundaries of the affected territory and, if for formation or consolidation of a district or districts, the name by which the proposed district is to be known. [1979 c.558 §11; 2003 c.802 §70]

261.145 [Repealed by 1979 c.558 §30]

261.147 Resolution to remove territory not served by district; hearing; notice; election on question of removal; effect of removal. (1) When any parcels of territory within an existing district are not being served by the district, the board of directors of the district may fix a place and time for a public hearing to consider the removal of such parcels from the district.

(2) Notice stating the time and place of the hearing shall be published in accordance with ORS 261.161 (1). The hearing may be adjourned from time to time, but shall not exceed four weeks in length. Public testimony shall be taken at the hearing.

(3) Upon conclusion of the public hearing the board may by resolution remove such parcels, or any of them, from the district. The resolution shall become effective 30 days after passage, unless written requests for an election are filed as provided by subsection

(4) of this section.

(4) If written requests for an election are filed with the board within 30 days after passage of the resolution by not less than 15 percent of the electors or 100 electors registered in the parcels to be removed, whichever is the lesser number, an election on the question of removal of the parcels described in the resolution shall be held on the next scheduled general or special election date.

(5) The electors eligible to vote in the election described in subsection (4) of this section shall be those electors who reside on the parcels described in the resolution.

(6) From the date of removal, liability of the territory removed from the district for assessments and taxes levied after the date of removal by the district and for bonded and other indebtedness shall be in accordance with ORS 198.880 and 198.882. [1987 c.824 §3]

261.150 [Repealed by 1979 c.558 §30]

261.151 Hearing by Director of State Department of Energy on district formation; notice; report by director. Upon certification of a petition for formation or adoption of a resolution by the county governing body for district formation, the county clerk shall submit a copy of the resolution or petition, without signatures attached, to the Director of the State Department of Energy. Not less than 30 days after receipt of the petition or resolution copy, the director shall hold a hearing within the proposed district for the purpose of receiving public testimony on the proposed district formation. Notice of the hearing, stating the time and place of the hearing, together with the electors' petition, when applicable, without the signatures attached, shall be published at least two times prior to the date of the meeting. The first publication shall not be more than 25 days nor less than 15 days preceding the hearing and the last publication shall not be more than 14 days nor less than eight days preceding the hearing. Within 60 days after receipt of the petition or resolution copy, the director, with the advice and assistance of the Public Utility Commission of Oregon, shall prepare and publish a concise report showing the availability and cost of power resources, potential tax consequences and any other information considered by the director to be relevant to the proposed formation of the district. A copy of the report shall be mailed, upon publication, by the director to the county governing body. [1979 c.558 §12a; 2003 c.186 §10]

261.155 [Repealed by 1979 c.558 §30]

261.160 [Repealed by 1979 c.558 §30]

261.161 Hearing by county governing body; notice; determination of boundaries. (1) After certification of a petition, or passage of the resolution when the formation, annexation or consolidation proposal is by resolution of the county governing body, the county governing body shall, within 10 days, fix a date for a hearing on the boundaries described in the electors' petition or resolution of the county governing body for inclusion in the proposed or established district. The hearing shall be held by the county governing body not less than 60 days nor more than 90 days after certification of the petition or passage of the resolution. Notice of the hearing, stating the time and place of the meeting,

together with the electors' petition, when applicable, without the signatures attached, shall be published at least two times prior to the date of the meeting. The first publication shall not be more than 25 days nor less than 15 days preceding the hearing and the last publication shall not be more than 14 days nor less than eight days preceding the hearing. Notice of the hearing, and all other publications required by this chapter, shall be published in at least one newspaper of general circulation in the proposed or established district. The hearing may be adjourned from time to time, but shall not exceed four weeks in total length. Public testimony shall be taken at the hearing.

(2) Based upon the record of the hearing prescribed in subsection (1) of this section on the proposed boundaries and, if district formation is proposed, the report of the Director of the State Department of Energy under ORS 261.151, the county governing body within 10 days of the last date of hearing shall determine the boundaries of the proposed or established district.

(3) No lands shall be included in the boundaries fixed by the governing body lying outside the boundaries described in the electors' petition unless the owners of that land request inclusion in writing before the hearing under subsection (1) of this section is completed.

(4) An electors' petition shall not be denied by a county governing body because of any deficiency in the description of the boundaries of the proposed district, but the county governing body shall correct those deficiencies. [1979 c.558 §13]

261.165 [Repealed by 1979 c.558 §30]

261.170 [Repealed by 1979 c.558 §30]

261.171 County governing body to call election; notice; dates. (1) Upon its own resolution, the county governing body may, and upon receipt of an electors' petition or resolution of the governing body of a people's utility district or city that the county governing body finds to be in compliance with this chapter shall, at the earliest practical date submit the question of district formation, annexation or consolidation and, if for formation, the question of a special levy, to the electors within the affected territory at a special election. The special election may be held on the same date as a primary election or general election.

(2) The notice of the election shall state the purpose of the election, describe in general terms the boundaries of the affected territory and in all other respects comply with the general laws of this state governing the time and manner of holding elections.

(3) The county governing body shall call no more than one election for formation of a district comprising substantially the same area within the same calendar year. [1979 c.558 §14; 1995 c.712 §96; 2003 c.14 §122; 2003 c.802 §71]

261.175 [Repealed by 1979 c.558 §30]

261.180 Effect of annexation or consolidation on title to property and indebtedness. (1) If a parcel of territory or a city is annexed to an existing people's utility district, or two or more districts are consolidated, such annexation or consolidation shall not affect or impair the title to any property owned or held by the district or districts, or

any property owned or held by the annexed city, or in trust therefor, or any debts, demands, liabilities or obligations existing in favor of or against either the district or city so annexed.

(2) The acceptance of any indebtedness at the election to determine the question of annexation shall not include any indebtedness except such as has been incurred or assumed on account of development or purchase of a utility, including the replacement value of the unreimbursed investment of an investor owned utility in energy efficiency measures and installations within the annexed area. [Amended by 1991 c.358 §3; 2003 c.802 §72]

261.185 [Amended by 1973 c.796 §10; repealed by 1975 c.647 §53]

261.190 Qualifications; election of first board of directors; tenure. (1) At all elections where the creation of a district is authorized, five directors shall be elected to manage and transact the business of the district.

(2) Candidates for the office of director must be electors of this state, must have resided in the proposed district continuously for not less than two years next preceding the date of the election, and must continue to reside in the district during their term of office.

(3) All electors of the proposed district shall have the right to vote for five candidates at the election.

(4) The five candidates receiving the highest number of votes in the area approved by the electors and declared by the county governing body to be a district shall be elected to serve until the first Monday in January after the first regular general election which occurs not less than one year following the election to create the district, and until their successors are elected and qualified. [Amended by 1973 c.796 §11; 1975 c.598 §4; 1979 c.558 §16; 2003 c.14 §123]

261.195 [Amended by 1973 c.796 §12; repealed by 1975 c.647 §53]

261.200 Proclamation of district formation or boundary change; special levy; property owner petition. (1) If a majority of votes cast at the election favors formation of the people's utility district and authorization of the district to impose a special levy for the purposes stated in the petition for formation, or annexation of a parcel of territory or a city to an existing district, or consolidation of two or more districts, as the case may be, and in conformity with provisions of ORS 261.105 and 261.110, the county governing body shall issue a proclamation accordingly and file a certified copy with the county clerk of each county where the district or any portion thereof is located. The proclamation for formation of a district shall be in substantially the following form:

Whereas at an election duly and regularly held on the ___ day of _____, 2___, within _____ County (or _____ Counties), State of Oregon, and within the boundaries of a proposed district as herein described, there was submitted to the electors thereof the question whether or not a people's utility district should be incorporated as the (here

insert name of district) and to give authority to impose a special levy of \$_____ under and pursuant to the provisions of ORS chapter 261; and

Whereas at the election so held ___ votes were cast in favor of incorporation, and ___ votes were cast against incorporation; and

Whereas the incorporation of the (here insert name of district) received the affirmative vote of the majority of the votes cast at the election;

Now, therefore, the undersigned hereby does proclaim and declare that all of that part of the State of Oregon, described as (here insert description) has been duly and legally incorporated as the _____ People's Utility District under and pursuant to the Constitution and laws of the State of Oregon, and the district has the authority to collect the sum of \$_____ by special levy against the taxable property within the district.

Chairperson of the County Governing Body.

By _____

(2) The proclamation for annexing a parcel of territory or a city to an existing district or the consolidation of two or more existing districts, or both, shall be adaptations of the above proclamation.

(3) The proclamation of formation, with the notice of boundary change under ORS 308.225, shall be filed by the district with the county assessor of each county in which any portion of the district is situated, who shall thereupon enter the special levy.

(4) Expenditure of the moneys received from the special levy for the purposes stated in the petition for district formation may be made by the district without prior adoption of a budget under ORS 294.305 to 294.520.

(5) Following proclamation of formation of a district, any person whose property has been improperly included within a district, contrary to the provisions of ORS 261.110 (5) or (7), may petition a county governing body to revise the district boundaries to exclude the property. After notice to the district, and a hearing on the petition, the county governing body shall revise the district boundaries to exclude such property as it finds should not have been included within the district under the standards set forth in ORS 261.110 (5) or (7). Upon such findings and boundary revisions a district shall be permitted to refund related taxes paid that are based upon assessments made after January 1, 1978. Boundary revisions shall comply with ORS 308.225. The remedy provided in this subsection shall be available only to persons owning property in districts which were formed after January 1, 1978. [Amended by 1973 c.796 §13; 1979 c.558 §17; 1981 c.758 §2; 2003 c.14 §124; 2003 c.802 §73]

261.205 [Repealed by 1975 c.647 §53]

261.210 Payment of election expenses; security deposit. (1) Except as provided in subsection (2) of this section, all expenses in any county of any election held under this chapter for formation of a district and election of a board of directors shall be paid from the general fund of the county in the same manner that other claims against the county are paid.

(2) When formation of a district is initiated by electors' petition, the county court may

require a bond, a cash deposit or other security deposit from the chief petitioners as provided in ORS 198.775.

(3) When preparing the county budget for the fiscal year following an election described in subsection (1) of this section, the county court shall include an item in the budget to reimburse the general fund for the disbursement for the election, unless the costs of the election are paid from a bond, a cash deposit or other security deposit under subsection (2) of this section. This item shall be assessed to and paid by the assessable property of the territory in which the election is held in the same manner that other taxes are assessed and paid. [Amended by 1983 c.567 §21]

261.215 When district formed; designation; district as corporation. From the date of the proclamation relative to formation of a people's utility district the territory shall be a separate district to be known as the district named and specified in the proclamation. The inhabitants thereof shall be a corporation by the name and style of the utility district specified in the proclamation, and as such shall have perpetual succession, and by such name shall exercise and carry out the corporate powers and objects conferred and declared by this chapter. [Amended by 2003 c.802 §74]

261.220 Mandamus to compel performance of its duties by county governing body. If the county governing body refuses to call an election, or hold a hearing, as provided in this chapter, or refuses to declare the results of any election or issue the required proclamation, any elector may apply within 10 days after the refusal to the circuit court for the county in which the proposed district, or its greater portion, is located for a writ of mandamus to compel the county governing body to perform its duty. [Amended by 1975 c.647 §19; 1979 c.558 §18]

261.225 State agencies and private utilities to provide new district certain information. (1) The State Department of Energy, the Public Utility Commission of Oregon and any privately owned utility serving the affected territory shall cooperate in providing information and data as requested by a people's utility district for construction or acquisition of the initial utility system.

(2) As requested, the State Department of Energy and the Public Utility Commission of Oregon shall provide copies of records on file pertinent to the operation of a utility system.

(3) As requested, the privately owned utility serving the affected territory shall provide data and records regarding the affected territory including:

- (a) Peak load and monthly variations of load required to serve the territory;
- (b) Load requirements of various classifications of users;
- (c) Gross revenue;
- (d) Distribution costs, including operation, maintenance and debt retirement;
- (e) Inventory of assets by type and value;
- (f) List of customers with customer addresses;
- (g) Amount of money loaned to each customer for conservation activity; and
- (h) Replacement value of an investor owned utility's unreimbursed investment in energy efficiency measures and installations within the territory. [1979 c.558 §15; 1991 c.358 §4]

POWER FACILITIES

261.235 Definitions for ORS 261.235 to 261.255. As used in ORS 261.235 to 261.255, unless the context requires otherwise:

(1) "City" means a city organized under the law of California, Idaho, Montana, Nevada, Oregon or Washington and owning and operating an electric light and power system.

(2) "Common facilities" means any *utility*, works and facilities necessary or incidental to the generation, transmission, distribution or marketing of electric power and related goods and commodities.

(3) "District" means a people's utility district organized under this chapter or a similar public utility district organized under the law of California, Idaho, Montana, Nevada or Washington.

(4) "Electric cooperative" means a cooperative corporation organized under the law of California, Idaho, Montana, Nevada, Oregon or Washington and owning and operating an electric distribution system. [1967 c.603 §8; 1979 c.151 §3; 1999 c.865 §38]

261.240 Policy; construction. (1) The Legislative Assembly finds and declares it to be in the public interest and for a public purpose that districts, cities, electric cooperatives, and electric utility companies participate as authorized in ORS 261.235 to 261.255 jointly and with other persons to:

(a) Achieve economies of scale in the generation of electricity;

(b) Meet the future power needs of this state and its inhabitants; and

(c) Participate in transactions useful for the development of an efficient system for the transmission and distribution or marketing of electric power and related goods and commodities.

(2) ORS 261.235 to 261.255 shall be construed liberally to effectuate the purposes set out in subsection (1) of this section. [1967 c.603 §9; 1999 c.865 §39]

261.245 Authority of district to acquire interest in power facilities. In addition to the powers otherwise conferred on districts of this state, such a district owning and operating an electric light and power system may plan, finance, construct, acquire, operate, own and maintain an undivided interest in common facilities within or without the state jointly with one or more other districts, with one or more cities, with one or more electric cooperatives, or with one or more other persons or with any combination of such districts, cities, electric cooperatives or persons, and may make such plans and enter into contracts and agreements as are necessary or appropriate for such joint planning, financing, construction, acquisition, operation, ownership or maintenance. [1967 c.603 §10; 1979 c.151 §4; 1999 c.865 §40]

261.246 District as member of electric cooperative or limited liability company. *In addition to the powers otherwise conferred on districts of this state, such a district owning and operating an electric light and power system may become a member of an electric cooperative or a limited liability company to plan, finance, construct, acquire, operate, own and maintain any utility within or without the state.*

261.250 District liability; application of moneys; use of power of eminent domain prohibited. (1) In carrying out the powers granted in ORS 261.245 *and* 261.246, a district of this state shall be liable only for its own acts with regard to the planning, financing, construction, acquisition, operation, ownership or maintenance of common facilities. No moneys or other contributions supplied by a district of this state for the planning, financing, construction, acquisition, operation or maintenance of common facilities shall be credited or applied otherwise to the account of any other participant in the common facilities.

(2) A district shall not exercise its power of eminent domain to acquire a then existing thermal power plant or any part thereof. [1967 c.603 §11]

261.253 Electric utility restriction on entering contract imposing unconditional or unlimited financial obligation on utility. (1) No public contract entered into by a noninvestor-owned electric utility shall contain a clause or condition that imposes an unconditional and unlimited financial obligation on the electric utility that is party to the contract unless the terms and conditions of the contract are subject to approval and are approved by the electors of the people's utility district or city that owns the electric utility.

(2) Nothing in subsection (1) of this section is intended to affect provisions of law requiring approval of electors for any particular type of public contract that are in effect on October 15, 1983, or that are later enacted.

(3) Nothing in subsection (1) of this section is intended to conflict with ORS 279C.650 to 279C.670.

(4) As used in this section:

(a) "Public contract" includes a contract, note, general obligation bond or revenue bond by which the people's utility district or city or any subdivision of any of them is obligated to pay for or finance the acquisition of goods, services, materials, real property or any interest therein, improvement, betterments or additions from any funds, including receipts from rates or charges assessed to or collected from its customers.

(b) "Unconditional and unlimited financial obligation" means a public contract, *other than a public contract for the acquisition, development or construction of a renewable energy facility or a public contract for the purchase or sale of energy, capacity or renewable energy certificates generated by a renewable energy facility*, containing a provision that the people's utility district or city that is party to the contract is obligated to make payments required by the contract whether or not the project to be undertaken thereunder is undertaken, completed, operable or operating notwithstanding the suspension, interruption, interference, reduction or curtailment of the output or product of the project.

[1983 c.811 §1; 2003 c.794 §221; 2003 c.802 §75]

Note: 261.253 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 261 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

261.255 Use of district money or property; revenue bonds. Any district of this

state participating in common facilities under ORS 261.235 to 261.255 may furnish money and provide property, both real and personal, and to the extent and in the manner provided by ORS 261.355 issue and sell revenue bonds pledging revenues of its electric system and its interest or share of the revenues derived from the common facilities and any additions or betterments thereto, in order to pay its respective share of the cost of the planning, financing, acquisition and construction thereof. All moneys paid or property supplied by any such district for the purpose of carrying out the powers conferred by ORS 261.235 to 261.255 are declared to be for a public purpose. [1967 c.603 §12; 1999 c.865 §41]

POWERS

261.305 General powers of district. People's utility districts shall have power:

(1) To have perpetual succession.

(2) To adopt a seal and alter it at pleasure.

(3) To sue and be sued, to plead and be impleaded.

(4) To acquire and hold, including by lease-purchase agreement, real and other property necessary or incident to the business of the districts, within or without, or partly within or partly without, the district, and to sell or dispose of that property; to acquire, develop and otherwise provide for a supply of water for domestic and municipal purposes, waterpower and electric energy, or electric energy generated from any utility, and to distribute, sell and otherwise dispose of water, waterpower and electric energy, within or without the territory of such districts; ***to acquire, own and sell renewable energy certificates, whether or not such renewable energy certificates are bundled with the purchase of energy or capacity from a renewable energy facility.***

(5) To exercise the power of eminent domain for the purpose of acquiring any property, within or without the district, necessary for the carrying out of the provisions of this chapter.

(6) To borrow money and incur indebtedness; to issue, sell and assume evidences of indebtedness; to refund and retire any indebtedness that may exist against or be assumed by the district or that may exist against the revenues of the district and to pledge any part of its revenues; ***and to obtain letters of credit or similar financial instruments from banks or other financial institutions.*** Except as provided in ORS 261.355 and 261.380, no revenue or general obligation bonds shall be issued or sold without the approval of the electors. The board of directors may borrow from banks or other financial institutions, ~~on~~ ***notes payable within 12 months,*** such sums as the board of directors deems necessary or advisable; however, the amounts so borrowed, together with the principal amounts of other like borrowings then outstanding and unpaid, shall not exceed the amount that the board of directors estimates as the district's net income (determined in accordance with the system of accounts maintained by the board pursuant to ORS 261.470) for the 12 full calendar months following the date of the proposed borrowing, adjusted by adding to the net income an amount equal to the estimated charges to depreciation for the 12-month period. No indebtedness shall be incurred or assumed except on account of the development, purchase and operation of a utility ***or to purchase electric energy, capacity or renewable energy certificates generated from any utility.***

(7) To enter into rental or lease-purchase agreements to rent, lease or acquire real or

personal property, or both, required for district purposes. Except when approved by a majority of the electors of the district voting on the question *or when an agreement is to rent, lease or acquire real or personal property associated with a renewable energy facility*, a people's utility district shall not enter into rental or leasing agreements when the annual aggregate amount of payment for any and all property directly related to a single transaction exceeds 10 percent of the revenues of the district in the preceding fiscal year.

(8) To levy and collect, or cause to be levied and collected, subject to constitutional limitations, taxes for the purpose of carrying on the operations and paying the obligations of the district as provided in this chapter.

(9) To make contracts, to employ labor and professional staff, to set wages in conformance with ORS 261.345, to set salaries and provide compensation for services rendered by employees and by directors, to provide for life insurance, hospitalization, disability, health and welfare and retirement plans for employees, and to do all things necessary and convenient for full exercise of the powers herein granted. The provision for life insurance, hospitalization, disability, health and welfare and retirement plans for employees shall be in addition to any other authority of people's utility districts to participate in those plans and shall not repeal or modify any statutes except those that may be in conflict with the provision for life insurance, hospitalization, disability, health and welfare and retirement plans.

(10) To enter into contracts with *any person, public or private corporation*, the United States Government, ~~with~~ the State of Oregon, or with any other state, municipality or utility district, and with any department of any of these, for carrying out any provisions of this chapter.

(11) To enter into agreements with the State of Oregon or with any local governmental unit, utility, special district or private or public corporation for the purpose of promoting economic growth and the expansion or addition of business and industry within the territory of the people's utility district. Before spending district funds under such an agreement, the board of directors shall enter on the written records of the district a brief statement that clearly indicates the purpose and amount of any proposed expenditure under the agreement.

(12) To fix, maintain and collect rates and charges for any water, waterpower, electric energy or other commodity or service furnished, developed or sold by the district.

(13) To construct works across or along any street or public highway, or over any lands which are property of this state, or any subdivision thereof, and to have the same rights and privileges appertaining thereto as have been or may be granted to cities within the state, and to construct its works across and along any stream of water or watercourse. Any works across or along any state highway shall be constructed only with the permission of the Department of Transportation. Any works across or along any county highway shall be constructed only with the permission of the appropriate county court. Any works across or along any city street shall be constructed only with the permission of the city governing body and upon compliance with applicable city regulations and payment of any fees called for under applicable franchise agreements, intergovernmental agreements under ORS chapter 190 or contracts providing for payment of such fees. The district shall restore any such street or highway to its former state as near as may be, and shall not use the same in a manner unnecessarily to impair its usefulness.

(14) To elect a board of five directors to manage its affairs.

(15) To enter into franchise agreements with cities and pay fees under negotiated franchise agreements, intergovernmental agreements under ORS chapter 190 and contracts providing for the payment of such fees.

(16) To take any other actions necessary or convenient for the proper exercise of the powers granted to a district by this chapter and by section 12, Article XI of the Oregon Constitution. [Amended by 1953 c.627 §2; 1957 c.334 §1; 1979 c.558 §19; 1985 c.474 §1; 1987 c.245 §4; 1993 c.97 §1; 1995 c.333 §15; 2003 c.802 §76]

261.310 Irrigation, drainage, other districts given power of utility district in certain cases. (1) Any existing irrigation, drainage or other district in good standing and duly organized under the laws of this state shall be eligible to qualify and do any and all things necessary or incident to the purchase, generation and distribution of electric power under the terms of this chapter without the necessity of reorganizing and complying with the organization procedure prescribed in this chapter, if the qualification is approved by a majority of the persons qualified to vote at a district election who vote on that question.

(2) Drainage districts qualifying under the provisions of this chapter may elect additional directors to make a board of five directors. [Amended by 1979 c.558 §20; 1983 c.83 §33; 2003 c.802 §77]

261.315 Acquisition of distribution facilities outside district. (1) Except as to distribution facilities located in unincorporated territory at or near the boundaries of the people's utility district and forming an interconnected part of the distribution system within the district, as determined by the county governing body after a public hearing, no facilities then being used for the distribution of electric energy outside the boundaries of the district shall be acquired by it until the acquisition thereof is approved by a majority of the electors registered in the territory in which the facilities are located, voting on that question at an election duly called for that purpose as provided in this section. If a part of the facilities is located within a city, the election shall be conducted so that the electors of the city may vote separately and have their votes counted separately, and the part within any city may not be acquired unless a majority of the electors of the city voting on the question approves.

(2) When a district desires to acquire facilities outside its boundaries for distribution of electric energy, the board of directors shall pass a resolution declaring that purpose, specifying the facilities that it desires to acquire and describing the boundaries of the territory served by the facilities so as to include all those receiving service or can be reasonably served through the facilities.

(3) A certified copy of the resolution shall be filed with the county governing body. Within 90 days thereafter, the county governing body shall designate the boundaries of the territory served by the facilities, and certify the boundaries to the counties in which they are located. The county governing body shall at the same time notify each of the counties of the call of an election for the purpose of authorizing acquisition of the facilities. This certification and notification shall be given to the county clerks of the respective counties. The notice shall state the time of the election and contain a ballot title stated in clear and concise language.

(4) The provisions of ORS 261.200 shall be complied with insofar as applicable.

Ballots cast by electors of cities shall be separately kept and counted for each city. [Amended by 1973 c.796 §13a; 1979 c.558 §21; 1983 c.83 §34; 2003 c.802 §78]

261.320 [Repealed by 1971 c.741 §38]

261.325 Acquisition of water rights. Any utility district created under this chapter may acquire in its own name the right to use the unappropriated waters of this state in accordance with the laws of this state. [Amended by 1955 c.707 §34; 1979 c.54 §1; 1979 c.558 §22]

261.327 Acquisition of distribution facilities of private utility; compensation for energy efficiency measures. When a district acquires from an investor owned utility, by eminent domain or otherwise, facilities for the distribution of energy within an affected territory, the district shall compensate the owner of the facilities, in addition to any other amounts otherwise due, an amount equal to the replacement value of the investor owned utility's unreimbursed investment in energy efficiency measures and installations within the affected territory. [1991 c.358 §7]

261.330 District water right appropriation exclusive if not excessive. Any filing made by any people's utility district upon the unappropriated waters of this state for use in the future development of a hydroelectric plant by the district shall be reserved to the district and shall not be subject to appropriation by any other person, city or corporation, unless it is judicially determined that such filing exceeds the reasonable present and future requirements of the district, in which event the surplus or excess may be by judgment of a court of competent jurisdiction released and discharged from such filing. Proceedings in court for the determination of whether or not the filing by any utility district exceeds its reasonable present and future requirements may be instituted by the State of Oregon, by the Water Resources Commission in the name of and for the State of Oregon, or by any other applicant for the right to the use of the waters involved. [Amended by 1955 c.707 §35; 2003 c.576 §407; 2003 c.802 §79]

261.335 Districts subject to public contracting and purchasing requirements. People's utility districts are subject to the public contracting and purchasing requirements of ORS 279.835 to 279.855, 279C.005, 279C.100 to 279C.125 and 279C.300 to 279C.470 and ORS chapters 279A and 279B, except ORS 279A.140 and 279A.250 to 279A.290. *This provision shall not apply to public contracts for the acquisition, development or construction of a renewable energy facility or any public contract for the procurement or sale of energy, capacity or renewable energy certificates generated by a renewable energy facility.* [Amended by 1957 c.334 §2; 1961 c.409 §1; 1985 c.474 §5; 2003 c.794 §222]

261.340 [Repealed by 1979 c.558 §30]

261.345 Employment of labor; pay and conditions; agreements; rights of previous employees of private utility. (1) All labor employed by a district, directly or indirectly, shall be employed under and in pursuance of the provisions of ORS 279B.235,

279C.540, 279C.545, 653.268 and 653.269.

(2) The minimum scale of wages to be paid by a people's utility district or by any contractor or subcontractor for such district shall be not less than the prevailing wage for the character of work in the same trade in the largest city having a population of 5,000 or more in the district, or if there is none, the nearest to the district.

(3) The board of directors of any utility district may negotiate, sign and maintain collective bargaining agreements concerning employment, rates of pay and working conditions with the representatives of its employees. Notice in writing of any intended change in rates of pay, or working conditions, or both, shall be given in accordance with the provisions of the agreements. The provisions of ORS 243.650 to 243.782 shall govern the negotiation of a collective bargaining agreement and any changes to an existing agreement. The mutual rights and obligations of the board and the employees or their representatives shall be those provided under ORS 243.650 to 243.782.

(4) Whenever any district acquires any utility which at the time of acquisition is in private ownership:

(a) The district shall, within financial and organizational limitations, offer employment to all employees of the private utility whose work primarily served the affected territory.

(b) Where the employees of the private utility are, at the time of acquisition, covered by any collective bargaining contract, plan for individual annuity contracts, retirement income policies, group annuity contract or group insurance for the benefit of employees, the district shall maintain any benefits or privileges that employees of the acquired utility would receive or be entitled to had the acquisition not occurred by:

(A) Assuming for one year all of the rights, obligations and liabilities of the acquired private utility in regard to that collective bargaining contract or plan for the employees covered thereby at the time of acquisition; or

(B) Substituting a similar plan or contract under an agreement with a majority of the affected employees.

(c) The district may pay all or part of the premiums or other payments required under paragraph (b) of this subsection out of the revenue derived from the operation of its properties.

(d) The district shall recognize the collective bargaining agent of the employees if the district retains a majority of the employees of the private utility working in the affected territory. [Amended by 1979 c.558 §23; 1985 c.474 §2; 2003 c.794 §223]

261.348 Transactions for production, supply or delivery of electricity; financial products contracts. (1) Notwithstanding any other law, people's utility districts and municipal electric utilities may enter into transactions with other persons or entities for the production, supply or delivery of electricity on an economic, dependable and cost-effective basis, including financial products contracts and other service contracts that reduce the risk of economic losses in the transactions. This section does not authorize any transaction that:

~~(1)~~ (a) Constitutes the investment of surplus funds for the purpose of receiving interest or other earnings from the investment; or

~~(2)~~ (b) Is intended or useful for any purpose other than the production, supply or delivery of electricity on a cost-effective basis. [1999 c.683 §1]

(2) Nothing in subsection (1) of this section shall prevent a people's utility district or a municipal electric utility from entering into any transaction for the acquisition, development or construction of a renewable energy facility or any transaction for the purchase or sale of energy, capacity or renewable energy certificates generated by a renewable energy facility.

Note: 261.348 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 261 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

261.350 Agreements for use of excess district facilities. Whenever any of the facilities, works or utilities of the district, or any part thereof, are not used or employed to its fullest capacity for the benefits or requirements of the district or its inhabitants, the district may enter into agreements, upon terms and conditions satisfactory to the board, for renting, leasing or otherwise using the available portion or parts of such facilities, works or utilities. In connection with any such agreement, renting or leasing, the district may undertake or perform any services incidental thereto. [Amended by 1981 c.758 §3]

261.355 Revenue bonds; elector approval required; exception for certain purposes; engineer certificate required; election dates. (1) For the purpose of carrying into effect the powers granted in this chapter, any district may issue and sell revenue bonds, when authorized by a majority of its electors voting at any primary election, general election or special election.

(2) All revenue bonds issued and sold under this chapter shall be so conditioned as to be paid solely from that portion of the revenues derived ~~from~~ **by** the district **by from** the sale of water, waterpower and electric energy, or any of them, or any other service, commodity or facility which may be produced, used or furnished in connection therewith, remaining after paying from those revenues all expenses of operation and maintenance, including taxes.

(3) Notwithstanding subsection (1) of this section and subject to subsection (4) of this section, any district may, by a duly adopted resolution of its board, issue and sell revenue bonds for the purpose of *financing* betterments and extensions ~~within the existing boundaries~~ of the district, *including renewable energy facilities, and the purchase of energy, capacity or renewable energy certificates generated by a renewable energy facility*, but the amount of revenue bonds so issued shall be limited to the reasonable value of the betterments and extensions *or the energy, capacity or renewable energy certificates*, plus an amount not to exceed 10 percent thereof for administrative purposes. Revenue bonds shall not be issued and sold for the purpose of acquiring an initial utility system or acquiring property or facilities owned by another entity that provides electric utility service *unless*:

(a) The acquisition is a voluntary transaction between the people's utility district and the other entity that provides electric utility service; or

(b) Upon ~~without~~ first obtaining the affirmative vote of the electors within the district.

(4) Not later than the 30th day prior to a board meeting at which adoption of a resolution under subsection (3) of this section will be considered, the district shall:

(a) Provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place of the meeting and of the intent of the board to consider and possibly adopt the resolution; and

(b) Mail to its customers notice of the time and place of the meeting and of the intent of the board to consider and possibly adopt the resolution.

(5) Any authorizing resolution adopted for the purposes of subsection (3) of this section shall provide that electors residing within the district may file a petition with the district asking to have the question of whether to issue such bonds referred to a vote.

(6) If within 60 days after adoption of a resolution under subsection (3) of this section the district receives petitions containing valid signatures of not fewer than five percent of the electors of the district, the question of issuing the bonds shall be placed on the ballot at the next date on which a district election may be held under ORS 255.345 (1).

(7) When petitions containing the number of signatures required under subsection (6) of this section are filed with the district within 60 days after adoption of a resolution under subsection (3) of this section, revenue bonds shall not be sold until the resolution is approved by a majority of the electors of the district voting on the resolution.

(8) Any district issuing revenue bonds may pledge that part of the revenue which the district may derive from its operations as security for payment of principal and interest thereon remaining after payment from such revenues of all expenses of operation and maintenance, including taxes, and consistent with the other provisions of this chapter.

(9) Prior to any district board taking formal action to issue and sell any revenue bonds, the board shall have on file with the secretary of the district a certificate executed by a qualified engineer that the net annual revenues of the district, including the property to be acquired or constructed with the proceeds of the bonds, shall be sufficient to pay the maximum amount that will be due in any one fiscal year for both principal of and interest on both the bonds then proposed to be issued and all bonds of the district then outstanding.

(10) The district shall order an election for the authorization of revenue bonds to finance the acquisition or construction of an initial utility system, including the replacement value of the unreimbursed investment of an investor owned utility in energy efficiency measures and installations within the proposed district, as early as practicable under ORS 255.345 after filing the certificate required under subsection (9) of this section. An election under this subsection shall be held no more than twice in any one calendar year for any district. In even-numbered years no election shall be held on any other date than the date of the primary election or general election. [Amended by 1959 c.548 §1; 1979 c.558 §24; 1987 c.267 §71; 1991 c.358 §5; 1991 c.572 §§1,2; 1995 c.79 §91; 1995 c.712 §97; 2003 c.14 §125]

261.360 Authority to issue general obligation bonds. (1) When authorized by a majority of its electors voting at any primary election or general election or at a special election, at which special election not less than 25 percent of the electors of the district voted on the question, any district may issue and sell general obligation bonds so conditioned that the district shall therein and thereby unconditionally undertake, promise and agree to pay the same in whole or in part from revenue or from taxes or both.

(2) The general obligation bonds of the district outstanding at any time shall not

exceed two and one-half percent (0.025) of the real market value of all taxable property within the limits of the district.

(3) General obligation bonds may be made payable primarily from and secured by a lien on and pledge of the revenues derived by the district from its operations remaining after paying from such revenues all expenses of operation and maintenance, and secondarily from taxes. [Amended by 1959 c.548 §2; 1967 c.293 §24; 1983 c.83 §35; 1987 c.267 §72; 1991 c.459 §356; 1993 c.18 §45; 1995 c.712 §98; 2003 c.14 §126]

261.365 Bond requirements. (1) All revenue bonds issued under ORS 261.355 shall contain a clause that they are payable solely from revenues derived by the district from its operations, remaining after paying from said revenues all expenses of operation and maintenance, including taxes.

(2) Such bonds may be issued from time to time, shall be of such denominations, and shall run for a period not exceeding 40 years, all as the board of directors may determine.

(3) Every issue of bonds shall be in serial form, with definite maturities, and shall mature in annual or semiannual installments. The first installment of principal shall fall due and be payable not later than five years, and the last installment not later than 40 years, after the date of issue. The combined installments of principal and interest due each year during such period shall be in such amounts as the board of directors may determine so as to permit maturity in accordance with anticipated revenues.

(4) All such bonds, at the discretion of the board of directors, shall contain provisions for call and redemption by the district of all or any part of the issue, at the option of the district, on any interest-paying date after the date of issuance, upon payment of the principal and accrued interest to the date of call.

(5) The bonds shall be signed on behalf of the district by its president or chairperson and be countersigned by its secretary. The seal of the district shall be affixed to each bond, but not to the coupon. The coupon, in lieu of being signed, may have printed thereon the facsimile signature of such officers.

(6) The bonds shall be payable at a place therein named, to their bearer or registered holder in the principal amount named therein, at maturity thereof, in lawful money of the United States, at the rate per annum therein named, payable semiannually on such dates as the board of directors may determine, in accordance with the tenor and terms of interest coupons thereto attached. [Amended by 1957 c.334 §3; 1969 c.76 §1; 1971 c.392 §1; 1981 c.94 §13]

261.370 [Repealed by 1975 c.642 §6 (261.371 enacted in lieu of 261.370)]

261.371 Advertisement and sale of bonds. (1) Notwithstanding any other provision of law, revenue bonds issued and sold under this chapter may be sold by any district at public or private sale upon the terms and conditions, at the rates of interest, for the prices and at the discount or premium that the board of directors considers most advantageous to the district, with or without public bidding.

(2) All legally authorized and issued general obligation bonds shall be sold by public bidding, except that general obligation bonds may be sold to a state or to the United States or any agency, corporation or instrumentality of a state or of the United States at private sale in such blocks as the board of directors may determine.

(3) All revenue or general obligation bonds to be sold by public bidding shall be advertised and sold in the manner prescribed in ORS 287.014 to 287.022. [1975 c.642 §7 (enacted in lieu of 261.370); 1979 c.558 §25; 1981 c.584 §1]

261.375 Election to authorize district bond issue. (1) Except as provided in ORS 261.355 (3) and subject to ORS 261.355 (10), before any district issues general obligation or revenue bonds, other than general obligation refunding, revenue refunding or advance refunding bonds, the question of whether the bonds shall be issued shall be submitted to the electors of the district, either at any general, state or county election or at a special election called for that purpose by the board of the district to be held on a date specified in ORS 255.345.

(2) At the election the notice and ballots shall contain a statement of the amount of bonds to be voted on and the purpose for which the bonds are to be used. If a majority of those voting on the question vote "yes," the board of directors is authorized to issue bonds of the character and in the amount designated by the election ballot. [Amended by 1973 c.796 §14; 1975 c.598 §5; 1979 c.558 §26; 1991 c.572 §5]

261.380 Refunding district indebtedness. (1) The power to refund indebtedness approved by the electors of the district is vested in the board of directors and may be exercised by adoption of a resolution providing therefor. It shall not be necessary for the board to submit the question of the proposed refunding to the electors of the district at an election or otherwise, but revenue bonds shall not be refunded into general obligation bonds, nor shall general obligation bonds be refunded into revenue bonds without approval of the electors of the district given at an election duly called and legally held therein.

(2) The issuance and sale of refunding bonds, the maturity dates and other details thereof, the rights of the holders thereof, and the duties of the board with respect thereto, shall be governed by ORS 261.305 and 261.355 to 261.375 in so far as they are applicable. Bonds may be issued and sold to refund bonds issued pursuant to this chapter, including bonds outstanding on April 10, 1951, and to refund bonds issued for refunding purposes under authority of this chapter.

261.385 Levy and collection of taxes for certain purposes. (1) Subject to the limitations of section 11, Article XI, Oregon Constitution, the board may levy and collect, or cause to be levied and collected, taxes for a period of 10 years for the purpose of paying the obligations of the district prior to acquisition or construction of its system and the receipt of the first revenues therefrom. In any one year, the tax shall not exceed one-twentieth of one percent (0.0005) of the real market value of all taxable property within the district, computed in accordance with ORS 308.207. The accumulated percentages for the 10-year period shall not exceed one-fourth of one percent (0.0025).

(2) No part of such taxes shall be levied and collected for the purpose of paying either principal or interest, or both, on any revenue bonds issued by the district.

(3) In the event of inadequacy of the revenues of the district to pay the costs of operation and maintenance thereof and the principal of and interest on the bonds of the district promptly as the bond principal and interest obligations respectively become due and payable, neither this limitation nor any other limitation in this chapter restricts or

impairs the right of the district to levy ad valorem taxes against all property within the district taxable for its purposes in order to provide funds with which to pay the general obligation bond principal and interest when due.

(4) Any utility district created prior to June 14, 1941, may levy taxes as in this section provided for the same term and under the same conditions as would be applicable to districts organized after that date. [Amended by 1963 c.9 §5; 1991 c.459 §357]

261.390 Property taxable; time and manner of tax levy and collection. All taxes provided for in this chapter shall be levied upon all real and personal property situated within the boundaries of the district and by law taxable for state and county purposes. Such taxes shall be levied and collected at the time and in the manner provided for levy and collection of state and county taxes, and shall be by the county officers collecting them paid to the treasurer of the district.

BOARD OF DIRECTORS

261.405 Board of directors; election; qualifications. (1) The management of a people's utility district shall be vested in a board of five directors.

(2) Upon formation of a district, annexation, consolidation, merger and after each decennial United States Census, the board of directors shall by ordinance divide the district into five subdivisions, as nearly equal in population as possible, and where practicable fix the boundaries in conformance with adjacent precinct boundaries. One director shall be elected from each of the five subdivisions.

(3) Directors shall be electors, shall reside in the subdivision from which they are respectively nominated and elected and shall have resided in the district continuously for two years immediately preceding the date of their election as directors. [Amended by 1977 c.210 §1]

261.410 Nomination and election of directors of established districts. (1) Except as otherwise provided in this chapter, directors shall be nominated and elected by the electors of the subdivision such director represents at time of holding the next general election.

(2) Nominating petitions must be furnished by the district. [Amended by 1973 c.796 §15; 1975 c.598 §6; 1989 c.503 §30; 2003 c.14 §127]

261.415 Vacancy in office of director. (1) The office of director shall be considered vacant:

(a) Upon the failure of the person elected or appointed to the office to qualify for it not later than 30 days after the time the term of office commences;

(b) Upon the occurrence of any event listed in ORS 236.010; or

(c) Upon the incumbent's absence from meetings of the board for 60 days without the consent of the board and upon the declaration by the board of the vacancy.

(2) Vacancies in the office of director occurring between elections shall be filled by the remaining members of the board, but when a vacancy exists for 30 days, or if the office is considered or declared vacant under subsection (1)(a) or (b) of this section, the

Governor may fill the vacancy.

(3) Any person appointed to fill such vacancy by the board or the Governor shall hold office until the next general election and until a successor is elected and qualified.

[Amended by 1959 c.142 §1; 1969 c.669 §4; 1989 c.503 §31; 2003 c.14 §128]

261.420 Terms of office of directors. Of the board of directors elected at the next general election following creation of the district, three shall hold office for four years, and two shall hold office for two years, and until their successors are elected and qualified, the length of the respective terms to be determined by lot. Thereafter, at each general election, a number of directors corresponding to the number whose terms of office expire shall be elected for the term of four years. The terms of directors shall commence on the first Monday in January next following their election. [Amended by 1973 c.796 §16; 1975 c.598 §7; 1989 c.503 §32; 2003 c.14 §129]

261.425 Officers of board. (1) The board shall choose one of its members president, one vice president, and one treasurer. The board shall choose a secretary of the district, who may or may not be a member of the board. In the absence or disability of the president, the vice president shall act as president.

(2) The treasurer shall be custodian of all funds of the district, and pay them out only on order of the board. [Amended by 1967 c.451 §20; 1969 c.345 §3]

261.430 Board meetings. (1) A majority of members of the board of directors shall constitute a quorum for transaction of official business. The decision of a majority of the board shall be deemed to be the act or decision of the board. No vacancy of less than a majority of members of the board shall impair the right of the remaining board members to exercise all powers of the board.

(2) The board of directors shall adopt rules to govern its meetings.

(3) All legislative sessions of the board of directors, whether regular or special, shall be open to the public.

261.435 [Amended by 1953 c.284 §2; 1957 c.334 §4; 1959 c.118 §1; 1967 c.168 §1; repealed by 1979 c.558 §30]

261.440 [Repealed by 1969 c.325 §4]

261.445 Appointment and removal of district manager; qualifications; salary; acting manager; powers and duties. (1) The board, before or at the time the district commences construction or operation of any utility or service, shall appoint a manager, who shall be an experienced executive with administrative ability. The manager shall be appointed for an indefinite time and be removable at the action of the board. Appointments and removals shall be by resolutions adopted by a majority vote. The manager shall receive such salary as the board shall fix by resolution.

(2) In case of absence or temporary disability of the manager, the board shall designate some competent person as acting manager.

(3) The manager shall be chief administrative officer of the people's utility district, shall have control of administrative functions of the district and shall be responsible to

the board for efficient administration of all affairs of the district placed in charge of the manager. The manager may attend meetings of the board and its committees and take part in discussion of any matters pertaining to duties of the department, but shall have no vote. The manager shall:

(a) Carry out orders of the board to see that all laws of this state pertaining to matters within the functions of the department are duly enforced.

(b) Keep the board advised as to the financial condition and needs of the district.

(c) Prepare an annual estimate for the ensuing fiscal year of the probable expenses of the department, and recommend to the board what development work should be undertaken, and any extensions and additions which should be made during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions.

(d) Certify to the board all bills, allowances and payrolls, including claims due contractors of public works.

(e) Recommend to the board salaries of the employees of the office of the manager, and a scale of salaries or wages to be paid for different classes of service required by the district.

(f) Hire and discharge clerks, laborers and other employees under direction of the manager.

(g) Perform such other duties as may be imposed upon the manager by the board.

(4) The manager shall not contribute any money in aid of or in opposition to the election of any candidate for people's utility district director, or advocate or oppose any such election.

261.450 [Repealed by 1969 c.345 §20]

261.455 [Repealed by 1969 c.344 §8]

261.460 Legislative function of board. (1) The board of directors shall constitute the legislative body of the district, and shall determine all questions of policy.

(2) All legislative acts of the board shall be expressed in written resolutions or ordinances. Every ordinance enacted by the board shall be preceded by an enacting clause substantially as follows: "Be It Enacted by the _____ People's Utility District" and shall be voted upon by an "aye" and "nay" vote. All ordinances except emergency ordinances shall require affirmative votes of a majority of the board at a regular meeting or an adjourned regular meeting.

(3) All ordinances except emergency ordinances shall be subject to the referendum and shall become effective 30 days after the date of their passage, unless a later date is fixed in the ordinance itself, in which event they shall take effect at the later date.

(4) Emergency ordinances shall contain the statement that an emergency exists and specify with distinctness the facts and reasons constituting the emergency. The unanimous vote of all members of the board present is necessary to pass any emergency ordinance and no such ordinance shall be passed with less than four directors present.

261.465 Board supervision and regulation of district utilities; fixing rates. (1) The board shall supervise and regulate every utility owned, operated or owned and operated

by the district, including the fixing and adjusting of rates, rentals, charges and classifications, contracts, practices and schedules, for or in connection with any service, product or commodity owned or controlled by the district.

(2) Rates so fixed shall be sufficient to accomplish the following purposes:

(a) For proper operation and maintenance of the property or facilities owned by the district.

(b) To pay all taxes which may be levied upon property owned by the district or which it may be required to pay out of its gross revenues.

(c) For payment of principal and interest of all bonds, warrants or obligations of any character in accordance with terms and provisions thereof respecting time, manner and amount of payment.

(d) For payment of any other indebtedness or obligations which the district may be obligated to pay.

(e) To establish and maintain any special funds which the district has obligated itself to create for the purpose of paying bond issues or other obligations.

261.470 Accounting system adopted by board; annual reports; annual audit. (1)

The board shall adopt the effective uniform system of accounts prescribed by the Federal Energy Regulatory Commission and require that accounting for receipts and disbursements for the district be accomplished in accordance with said system of accounts.

(2) The board shall file with the Director of the State Department of Energy and with the county clerk of each county included within the boundaries of the district an annual report in the form required by the Federal Energy Regulatory Commission.

(3) An annual audit shall be made in the manner provided in ORS 297.405 to 297.555. A copy of such audit shall be filed with each county clerk of the county in which the district or any portion of the boundaries of the district is located, and in the office of the Secretary of State and in the office of the Director of the State Department of Energy, where it shall remain a public record. [Amended by 1953 c.354 §2; 1977 c.774 §16; 1979 c.286 §3; 1985 c.474 §4]

261.505 [Amended by 1973 c.796 §17; 1975 c.647 §21; renumbered 261.055]

261.510 [Amended by 1959 c.72 §1; repealed by 1973 c.796 §79]

261.515 [Repealed by 1973 c.796 §79]

COURT PROCEEDING TO TEST CERTAIN DISTRICT PROCEEDINGS

261.605 Testing validity of certain commission and board proceedings. (1) The board of directors of a people's utility district may by petition commence proceedings in the circuit court of the county in which the district, or the greater portion thereof, is located, for the purpose of having a judicial examination and judgment of the court as to regularity and legality of proceedings in connection with ~~creation of~~ the district, including:

(a) Any action or proceeding of the county governing body proclaiming the creation

of the district, or declaring the result of any general or special election therein.

(b) The proceedings of the board and district providing for and authorizing issue and sale of bonds of the district, whether such bonds or any of them have or have not been sold or disposed of.

(c) Any order of the board levying a tax.

(d) The ~~legality of the~~ authorization of any contract ~~with the United States~~ and the validity of such contract, whether or not it has been executed.

(e) Any decision of the governing body that raises novel or important legal issues that would be efficiently and effectively resolved by a proceeding before the decision becomes effective, when the decision will:

(A) Require a significant expenditure of public funds;

(B) Significantly affect the lives or businesses of a significant number of persons within the boundaries of the governing body; or

(C) Indirectly impose a significant financial burden on the cost of conducting business within the boundaries of the governing body.

(f) The authority of the governing body to enact any ordinance, resolution or regulation.

(g) Any ordinance, resolution or regulation enacted by the governing body, including the constitutionality of the ordinance, resolution or regulation.

(2) All proceedings of the district may be judicially examined and determined in one special proceeding, or any part thereof may be separately examined and determined by the court. [Amended by 1979 c.558 §27]

261.610 Nature of proceeding; notice; appearance to contest; court determinations. (1) The proceedings shall be in the nature of a proceeding in rem, and the practice and procedure therein shall follow the practice and procedure of an action not triable by right to a jury, so far as consistent with the determination sought to be obtained, except as provided in ORS 261.605 to 261.635.

(2) The jurisdiction of the district and of electors therein shall be obtained by publication of notice directed to the district, and to the electors individually. The notice shall be served on all parties in interest by publication thereof for at least once a week for three successive weeks in some newspaper of general circulation published in the county where the proceeding is pending. Jurisdiction shall be complete within 10 days after the full publication of the notice as provided in this section.

(3) Any person interested may at any time before the expiration of such 10 days appear and contest the validity of the proceeding, or of any of the acts or things therein enumerated.

(4) The proceedings shall be speedily tried and judgment rendered declaring the matter so contested to be either valid or invalid.

(5) Any order or judgment in the course of the proceeding may be made and rendered by the judge of the circuit court in vacation. For the purpose of any such order or judgment, the court shall be deemed at all times in session and the act of the judge in making such order or judgment shall be the act of the court. [Amended by 1979 c.284 §126]

261.615 Appeal to Court of Appeals. Either party may appeal to the Court of

Appeals at any time within 30 days after the rendering of the general judgment, which appeal must be heard and determined within three months from the time of taking such appeal. [Amended by 1979 c.562 §9; 2003 c.576 §408]

261.620 Guidance for court determination. The court, in inquiring into the regularity, legality or correctness of any such proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to the special proceedings. It may approve the proceedings in part and disapprove and declare illegal or invalid other or subsequent proceedings in part. It may approve the proceedings in part and disapprove the remainder thereof.

261.625 Costs of proceeding. The costs of the special proceedings may be allowed and apportioned between the parties in the discretion of the court.

261.630 Institution of proceeding by elector; directors as parties; notice. (1) Any elector of the district within 30 days after the entry of any order, or the performance of any act mentioned in ORS 261.605, and for which a contest is provided by that section, may bring a like proceeding in the circuit court of the county where the district, or the greater portion thereof, is located, to determine the validity of any of the acts, orders or things enumerated in ORS 261.605 to 261.615 and concerning which the right of contest is given by those sections.

(2) In such proceedings the board of directors shall be made parties defendant. Service of summons shall be made on the members of the board personally if within the county where the district or any part thereof is situated. As to any directors not within such county, service may be had by publication of summons for a like time and in like manner as provided by ORS 261.610. Service shall be deemed complete within 10 days from the date of personal service within the county and within 10 days from the date of completion of the publication, as the case may be.

(3) Such proceedings shall be tried and determined in the same manner as proceedings brought by the district itself.

261.635 Procedure exclusive. No contest of any proceeding, matter or thing by this chapter provided to be had or done by the board of directors, by the district, by the county governing body or by any elector of the district, shall be had or maintained at any time or in any manner except as provided in ORS 261.605 to 261.630. [Amended by 1979 c.558 §28; 1983 c.85 §36]

DISSOLUTION

261.705 Authority to dissolve district; vote authorizing dissolution. Any people's utility district which has not received voter authorization within five years of its formation election to issue bonds in an amount sufficient to acquire or build a system to provide service within its district may be dissolved whenever a majority vote of the electors of the district voting at an election for such purpose favors the dissolution. [Amended by 1987 c.824 §1]

261.710 Call of election; effect of favorable vote. (1) The dissolution election may be called by the board of directors on their own motion or by a petition filed with the directors of the district, signed by electors of the district equal in number to not less than three percent of the total number of votes cast for all candidates for Governor in the district at the most recent election at which a candidate for Governor was elected to a full term, requesting the directors of the district to submit to the electors of the district the proposition of dissolving the district and settling its affairs.

(2) The petition shall be referred to the county clerk of each county wherein the district or any part thereof is located. The county clerk of each of such counties shall examine the purported signatures on the petition of electors of the county and shall certify as to the regularity and sufficiency thereof. Where the district is located in more than one county, the certificate of the county clerk of each county as to the regularity of the signatures on the petition shall be filed with the Secretary of State, who shall accept the certificates by the county clerks as to the regularity of the signatures, and based thereon, shall certify as to the sufficiency of all signatures on the petition. Whenever a dissolution petition has been certified as sufficient, the certificate of sufficiency with copy of the petition shall be transmitted to the directors of the district, who shall immediately call an election to be held concurrently with a primary election or general election.

(3) If a majority of the electors of the district, voting at the election, votes in favor of dissolution, the directors shall issue their proclamation dissolving the district and shall file the proclamation in the office of the county clerk of the county wherein the district is located.

(4) The district shall thereafter continue to exist solely for the purpose of settling its affairs as provided in ORS 261.715 to 261.730. [Amended by 1973 c.796 §18; 1983 c.83 §37; 1989 c.174 §4; 1995 c.712 §99; 2003 c.14 §130]

261.715 Directors as trustees. Upon dissolution the directors then in office shall be deemed to be, and thereafter be referred to as, the trustees of the district, with power and authority in the name and in behalf of the district to sell, transfer and dispose of any and all property and assets of the district and to do each and every thing necessary and needful or requisite for settlement and liquidation of the affairs of the district as provided in ORS 261.720 to 261.730.

261.720 Inventory and sale of district property. The trustees shall proceed at once to take, or cause to be taken, an inventory of all property of the district, its assets and liabilities, and shall sell the same as a whole or any part thereof upon such terms and conditions as the trustees deem advisable.

261.725 Disposal of sale proceeds. (1) The proceeds derived from the sale shall be used to pay the indebtedness of the district.

(2) If, after payment of all debts of the district, there remain any surplus funds to the credit of the district, such funds shall be turned over to the county treasurer of each county in which the district may be located, to become a part of the general fund of the county in the proportion that the assessed value of the property within the boundaries of the district in such county bears to the total assessed value of all property within the boundaries of the district as determined by the last assessment rolls.

261.730 Disposal of district books and records; termination of corporate existence. After the affairs of the district have been fully settled, all books and records of the district shall be deposited by the trustees in the office of the county clerk of the county wherein the district or its principal part in area thereof is located, and the corporate existence of the district without further action is dissolved and terminated for all purposes.

CONSTRUCTION

261.900 Construction. (1) The rule of strict construction shall have no application to ORS 261.007, 261.010, 261.030, 261.065 to 261.118, 261.131 to 261.171, 261.190, 261.200, 261.220, 261.225, 261.305 to 261.325, 261.345, 261.355, 261.371, 261.375, 261.605, 261.635 and this section; but the same shall be liberally construed, in order to carry out the purposes and objects for which ORS 261.007, 261.010, 261.030, 261.065 to 261.118, 261.131 to 261.171, 261.190, 261.200, 261.220, 261.225, 261.305 to 261.325, 261.345, 261.355, 261.371, 261.375, 261.605, 261.635 and this section are intended.

(2) When ORS 261.007, 261.010, 261.030, 261.065 to 261.118, 261.131 to 261.171, 261.190, 261.200, 261.220, 261.225, 261.305 to 261.325, 261.345, 261.355, 261.371, 261.375, 261.605, 261.635 and this section come in conflict with any provision, limitation or restriction in any other law, ORS 261.007, 261.010, 261.030, 261.065 to 261.118, 261.131 to 261.171, 261.190, 261.200, 261.220, 261.225, 261.305 to 261.325, 261.345, 261.355, 261.371, 261.375, 261.605, 261.635 and this section shall govern and control. [1979 c.558 §29]

Note: 261.900 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 261 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Chapter 262 — JOINT OPERATING AGENCIES FOR ELECTRIC POWER

2005 EDITION

JOINT OPERATING AGENCIES FOR ELECTRIC POWER

PUBLIC ORGANIZATIONS FOR COMMUNITY SERVICE

GENERAL PROVISIONS

- 262.005 Definitions for ORS 262.015 to 262.105
- 262.015 Authority for joint operating agency formation; powers
- 262.025 Procedure for joint operating agency formation
- 262.035 Power of agency to require financial contributions from members restricted; members contracting with agency for services
- 262.045 Procedure for modification of or withdrawal from agency membership
- 262.055 Management of agency; directors; officers; meetings
- 262.065 Duties of agency treasurer; disposition of funds; accounting system; reports; audit; appointment and duties of agency manager
- 262.075 Agency as state political subdivision; eminent domain powers; financial transaction powers

REVENUE OBLIGATIONS

- 262.085 Authority to issue revenue obligations; procedure; rights and duties created by revenue obligations; interest rate; exemption from state taxation; immunity from personal liability in connection with issuance

RATES

- 262.095 Rates for energy furnished by agency

MISCELLANEOUS

- 262.105 Taxation of agency property in same manner as private power corporations
- 262.115 ORS 262.005 to 262.115 and 308.505 to be liberally construed; severability

GENERAL PROVISIONS

262.005 Definitions for ORS 262.015 to 262.105. As used in ORS 262.015 to 262.105, unless the context requires otherwise:

(1) "Electric cooperative" means a cooperative corporation owning and operating an electric distribution system.

(2) "Joint operating agency" means an agency organized by three or more cities or people's utility districts under the laws of this state for the purposes and according to ORS 262.005 to 262.105.

(3) "Privately owned electric utility company" means an electric utility operated for profit and subject to regulation by the Public Utility Commission of Oregon or the equivalent officer or commission of any other state.

(4) "*Renewable energy certificate*" shall have the meaning given such term in ORS

_____.
(45) "Utility properties" means plants, systems and facilities, and any enlargement or extension thereof, used for or incidental to the generation and transmission of electric ~~power and~~ energy, *capacity or renewable energy certificates*, provided, however, that it shall not mean facilities for uranium refining, processing or reprocessing. [1973 c.722 §1; 2005 c.22 §190]

262.010 [Repealed by 1969 c.12 §1]

262.015 Authority for joint operating agency formation; powers. (1) Any three or more cities or people's utility districts or combinations thereof, organized under the laws of this state, may form a joint operating agency to plan, acquire, construct, own, operate and otherwise promote the development of utility properties ~~in this state~~ for the generation, ~~and~~ transmission *and marketing* of electric ~~power and~~ energy, *capacity or renewable energy certificates associated with such utility properties*.

(2) A joint operating agency may participate with other publicly owned utilities, including other joint operating agencies, or with electric cooperatives, or with privately owned electric utility companies, or with any combination thereof, for any purpose set forth in subsection (1) of this section, whether such agencies or utilities are organized or incorporated under the laws of this state or any other jurisdiction. However, no joint operating agency may act alone or as the managing participant to acquire, construct, own or operate utility properties, ~~nor may a joint operating agency own more than 50 percent of any utility property, except combustion turbines~~.

(3) Joint operating agencies, cities, people's utility districts and privately owned utilities, or combinations thereof, may participate in joint ownership of ~~thermal generation and transmission~~ *common* facilities in accordance with ORS 225.450 to 225.490 or 261.235 to 261.255. [1973 c.722 §2]

262.020 [Repealed by 1969 c.12 §1]

262.025 Procedure for joint operating agency formation. A joint operating agency shall be formed and come into existence by order of the Director of the State Department of Energy in accordance with the following procedures:

(1) The legislative body of each city and people's utility district desiring to form and be a member of a joint operating agency shall adopt an ordinance declaring their intention and authorizing formation and membership. The ordinance shall be effective only if submitted to the electors of the city or people's utility district voting on the ordinance at any general election or at a special election called for that purpose. The ordinance shall include:

(a) A statement of the purpose or purposes for which the joint operating agency is to be formed.

(b) A finding by the legislative body that the formation of a joint operating agency is necessary or desirable in order to plan for and provide an adequate supply of electric energy to meet the needs of the customers of publicly owned utilities in Oregon.

(c) A statement of the projected energy loads and resources relied upon by the legislative body to support such finding.

(d) A general description of the means by which the joint operating agency proposes to accomplish its purposes, including a description of any specific utility properties then identified as a proposed activity of the joint operating agency.

(e) A statement of the financial contribution, if any, to be made by the city or district to the joint operating agency at the time of organization as a condition of membership.

(2) Upon such approval of such an ordinance or ordinances, each such city and district shall file with the director an application to form and be a member of a joint operating agency. The application shall:

(a) State the proposed name of the operating agency, the proposed address of its principal business office, and the purpose or purposes for which it is to be formed;

(b) Contain a certified copy of the ordinance of each applicant city and district as approved by the electors; and

(c) State generally how the joint operating agency proposes to accomplish its purposes.

(3) The director shall cause notice of an application to be published forthwith in the bulletin referred to in ORS 183.360. Such notice shall:

(a) Summarize fairly the contents of the application;

(b) Fix a date not less than 20 nor more than 30 days after the date of publication prior to which interested parties may submit in writing any data, views, or arguments with respect to the application; and

(c) Fix a date not less than 30 nor more than 60 days after the date of publication for the entry of an order approving or disapproving an application.

(4) In considering the application, the director shall give full and fair consideration to all data, views and arguments submitted on behalf of the applicants or any other interested person.

(5) On or before the date fixed in subsection (3)(c) of this section, the director shall enter an order establishing the joint operating agency in accordance with the application if the director finds (a) that the statements set forth in the application are substantially correct; (b) that formation of the proposed joint operating agency is necessary or desirable to plan for or provide an adequate supply of electric energy to meet the needs of the customers of publicly owned utilities in Oregon; and (c) that adequate provision has been or can be made for financing the activities of the joint operating agency. The joint operating agency shall be established as of the date of such order.

(6) If the director finds that the application is not in the required form or that additional data is required to support the application, the director shall enter an order so finding. Such an order shall not preclude the applicants from filing a revised application based upon the same approved ordinances.

(7) If the director does not enter an order as authorized under subsection (5) or (6) of this section within 60 days after the date of publication, the application shall be considered approved, and the joint operating agency shall be established as of such 60th day.

(8) A joint operating agency, organized as provided by this section shall have all of the powers and responsibilities contained in ORS 262.005 to 262.105.

(9) Any party who has joined in filing an application in accordance with this section, or who has filed timely objections to such application, and who feels aggrieved by any finding or order of the director shall have the right of judicial review pursuant to ORS 183.480. [1973 c.722 §3; 2003 c.186 §11]

262.030 [Repealed by 1969 c.12 §1]

262.035 Power of agency to require financial contributions from members restricted; members contracting with agency for services. (1) A joint operating agency shall not have the right or power to levy taxes or to assess its members for financial contributions. Each member city and district shall have the power to contribute or advance to the joint operating agency, solely out of surplus funds derived from utility operations, such sums as may be duly authorized by the utility board of the city, if there is one and, if there is no utility board, by the legislative body of the city or the district.

(2) No member of a joint operating agency shall be required to obligate all or any portion of its revenues to a joint operating agency solely because of its membership.

(3) A member may, whenever authorized by its utility board if there is one and, if there is no utility board, by its legislative body, enter into contracts with the joint operating agency to purchase capacity, energy or services and, as a part of such contracts, may agree to pay to the joint operating agency such consideration and to provide such security as it may determine advisable. [1973 c.722 §4]

262.040 [Repealed by 1969 c.12 §1]

262.045 Procedure for modification of or withdrawal from agency membership. (1) After the formation of a joint operating agency, the legislative body of any city or district not a member of the joint operating agency may adopt an ordinance and apply to the joint operating agency for membership. Such an ordinance shall not be effective unless approved by electors of the city or people's utility district as provided by ORS 262.025.

(2) Upon the affirmative vote of a majority of the members of the joint operating agency, as evidenced by resolutions adopted by their respective legislative bodies and filed with the joint operating agency, an application for membership shall be accepted. As a condition of approving such an application, the members of a joint operating agency may require the applicant to make contributions or commitments to place the applicant in substantial parity with the existing members.

(3) A member may not withdraw from a joint operating agency, nor may a joint operating agency be dissolved, while the agency has outstanding revenue obligations for which repayment provision has not been made. When a joint operating agency has no such outstanding revenue obligations:

(a) Any member may withdraw from the joint operating agency, but will thereby forfeit any and all rights and interests which it may have in the agency and the assets thereof unless the remaining members, by resolution of their respective legislative bodies and filed with the joint operating agency, unanimously consent otherwise; however, a member may not withdraw if, following its withdrawal, the joint operating agency would have less than three members. Any withdrawing member shall remain fully liable and responsible for all contractual obligations incurred by it to the joint operating agency during the period of its membership according to the terms of such obligations.

(b) The joint operating agency may be dissolved by the unanimous agreement of the members, as evidenced by resolutions adopted by their respective legislative bodies and filed with the joint operating agency. After provision has been made for the payment of all of the dissolved agency's debts and obligations, the members shall hold its remaining assets as tenants in common. [1973 c.722 §5]

262.055 Management of agency; directors; officers; meetings. (1) A joint operating agency shall be managed and controlled by a board of directors. The city's utility board, if there is one and if there is no such board, the legislative body of each member city and district shall appoint a representative to serve as a director on the board. However, if the joint operating agency has less than four members, each member shall appoint two representatives to serve as directors, each of whom shall cast one-half of the votes to which the member is entitled as provided by subsection (4) of this section. Each member may appoint one or more alternates to serve as a director in the absence or disability of a representative. Each representative and alternate shall serve at the pleasure of the legislative body of the appointing member, but no director shall serve following the withdrawal of the appointing member. Notwithstanding any other provision of law or city charter a member may appoint any of its officers and employees to serve as its representatives and alternates. A joint operating agency may provide reasonable compensation to its directors.

(2) Each director of a joint operating agency shall act as a representative of the appointing member and shall report to and be bound by the policy decisions of the utility board or legislative body thereof, as the case may be.

(3) The board of the joint operating agency shall adopt rules for calling and conducting its meetings and carrying out its business and shall adopt an official seal. All proceedings of the board shall be by motion or resolution, and shall be recorded in the minute book of the board which shall be a public record. A majority of the board shall constitute a quorum for the transaction of business; however, no motion or resolution shall be adopted unless the directors voting are entitled to cast a majority of the votes of all members of the joint operating agency.

(4) At all meetings of the board, each member city and district shall have one vote by virtue of its membership. The board of directors of a joint operating agency shall provide by resolution for voting procedures which shall take into account the relative population of the members, together with their contributions to and energy purchases from the joint

operating agency, and which shall provide that the interests of smaller members will be effectively represented.

(5) The board of directors shall elect a president, vice president and secretary, who shall serve at the pleasure of the board. The officers shall perform the duties delegated to them by the board.

(6) The board of directors shall appoint a treasurer, and may appoint such other officers, agents and employees as it considers appropriate and necessary to accomplish the purposes of the joint operating agency, and may provide for their compensation, and for the duties of such other officers, agents and employees. The board may appoint trustees, paying agents, depositories and similar agents within or without the State of Oregon.

(7) All meetings of the board of directors, except meetings on matters involving the management of employees, and other labor matters, shall be open to the public. [1973 c.722 §6]

262.065 Duties of agency treasurer; disposition of funds; accounting system; reports; audit; appointment and duties of agency manager. (1) Except as permitted in ORS 262.085, the treasurer shall be custodian of all funds of the joint operating agency and shall pay them out only by order of the board, except as provided in subsection (2) of this section.

(2) The board may delegate to the treasurer standing authority to make payments of routine expenses as defined by the board.

(3) Before the treasurer enters upon the treasurer's duties, the treasurer shall give bond or an irrevocable letter of credit to the joint operating agency in an amount which the board finds by resolution will protect the agency against loss, conditioned for the faithful discharge of duties and further conditioned that all funds which the treasurer receives as treasurer will be faithfully kept and accounted for. Any letter of credit shall be issued by an insured institution, as defined in ORS 706.008. The amount of the treasurer's bond may be increased or decreased from time to time as the board may by resolution direct. The surety on any such bond shall be a corporate surety authorized to do business in this state. The premiums on the bond or the fee for issuing the letter of credit of the treasurer shall be paid by the joint operating agency.

(4) All moneys of the joint operating agency shall be deposited by the treasurer in depositories designated by the board of directors, with such security as may be prescribed by the board. The treasurer shall establish a general fund and such special funds as may be created by the board, to which the treasurer shall credit all funds of the joint operating agency as the board by motion or resolution may direct.

(5)(a) The board shall adopt the uniform system of accounts prescribed from time to time by the Federal Energy Regulatory Commission and require that accounting for receipts and disbursements for the joint operating agency be accomplished in accordance with the uniform system of accounts.

(b) The board shall file with the Director of the State Department of Energy an annual report in the form required by the Federal Energy Regulatory Commission.

(c) An annual audit shall be made in the manner provided in ORS 297.405 to 297.555. A copy of such audit shall be filed in the office of the Secretary of State and in the office of the Director of the State Department of Energy.

(6)(a) The board of each joint operating agency may appoint a manager. The manager shall be appointed for such term and receive such salary as the board shall fix by resolution. Appointments and removals of the manager shall be by resolutions adopted by a majority vote.

(b) In case of absence or temporary disability of the manager, the board shall designate an acting manager.

(c) The manager shall be chief administrative officer of the joint operating agency, shall have control of the administrative functions of the joint operating agency and shall be responsible to the board for efficient administration of all affairs of the joint operating agency placed in the manager's charge. The manager may attend meetings of the board and its committees and take part in discussion of any matters pertaining to the manager's duties, but shall have no vote. The manager shall:

(A) Carry out orders of the board and see that all laws of this state pertaining to matters within the functions of the joint operating agency are duly enforced;

(B) Keep the board advised as to the financial condition and needs of the joint operating agency;

(C) Prepare an annual estimate for the ensuing fiscal year of the probable expenses of the joint operating agency, and recommend to the board what development work should be undertaken, and any extensions and additions which should be made during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions;

(D) Certify to the board all bills, allowances and payrolls, including claims due contractors of public works;

(E) Recommend to the board appropriate salaries of the employees of the office, and scale of salaries or wages to be paid for different classes of service required by the joint operating agency;

(F) Hire and discharge clerks, laborers and other employees under the manager's direction; and

(G) Perform such other duties as may be imposed by the board. [1973 c.722 §7; 1977 c.774 §17; 1979 c.286 §4; 1991 c.331 §51; 1997 c.631 §430; 2001 c.104 §80]

262.075 Agency as state political subdivision; eminent domain powers; financial transaction powers. (1) Each joint operating agency shall be a political subdivision of the State of Oregon, and shall be a municipal corporation with the right to sue and be sued in its own name. Except as otherwise provided, a joint operating agency shall have all the powers, rights, privileges and exemptions conferred on people's utility districts.

(2) A joint operating agency shall have the power to acquire, hold, sell and dispose of real and other property, within or without this state, which the board of directors in its discretion finds reasonably necessary or incident to the generation, **and** transmission **and marketing** of electric ~~power and~~ energy, **capacity or renewable energy certificates**. However, such an agency shall not acquire or operate any facilities for the distribution of electric energy.

(3) A joint operating agency shall have the power of eminent domain which it may exercise for the purpose of acquiring property; however, a joint operating agency shall not condemn any properties owned by a publicly or privately owned utility which are being used for the generation or transmission of electric energy or power or are being

developed for such purposes with due diligence, except to acquire a right of way to cross such properties in a manner which will not interfere with the use thereof by the owner.

(4) A joint operating agency shall have the power to enter into contracts, leases and other undertakings considered necessary or proper by its board, including but not limited to contracts for any term relating to the purchase, sale, interchange, assignment, allocation, transfer or wheeling of power with the Government of the United States, or any agency thereof, and with any other municipal corporation or privately owned utility, or any combination thereof, within or without the state, and may purchase, deliver or receive power anywhere.

(5) A joint operating agency shall have the power to borrow money and incur indebtedness, to issue, sell and assume evidences of indebtedness, to refund and retire any indebtedness that may exist against the agency or its revenues, and to pledge any part of its revenues. A joint operating agency may borrow from banks or other financial institutions such sums on such terms as the board considers necessary or advisable. A joint operating agency may also issue, sell and assume bond anticipation notes, refunding bond anticipation notes, or their equivalent, which shall bear such date or dates, mature at such time or times, be in such denominations and in such form, be payable in such medium, at such place or places, and be subject to such terms of redemption, as the board considers necessary or advisable. The issuance and sale of revenue obligations by a joint operating agency shall be governed by ORS 262.085.

(6) The joint operating agency may apply for, accept, receive and expend appropriations, grants, loans, gifts, bequests and devises in carrying out its functions as provided by law. [1973 c.722 §8]

REVENUE OBLIGATIONS

262.085 Authority to issue revenue obligations; procedure; rights and duties created by revenue obligations; interest rate; exemption from state taxation; immunity from personal liability in connection with issuance. (1) To accomplish any of its corporate purposes, a joint operating agency shall have the power to issue revenue obligations payable from the revenues derived by it from its ownership of, or its participation in or contribution to the ownership or development of, any one or more utility properties. The issuance of such revenue obligations shall be governed by the provisions of subsections (2) to (13) of this section.

(2) The board of directors shall issue revenue obligations only by bond resolution. The bond resolution shall specify the corporate purposes for which the proceeds of the revenue obligations shall be expended, declare the cost of carrying out such purposes as nearly as possible, contain such covenants, and provide for the issuance and sale of revenue obligations in such form and amount as the directors determine. In declaring such cost, the directors may include the funds necessary for working capital, reserves, fuel and fuel assemblies, interest during construction and for a reasonable period thereafter, the payment of organizational and planning expenses, the repayment of advances and such other expenses as may be reasonably necessary to carry out the purposes of such resolution. The bond resolution may provide that utility properties subsequently acquired or constructed by the joint operating agency shall be considered betterments or additions to, or extensions of the specified utility property, whether or not physically connected.

(3) The bond resolution may provide for the establishment of one or more special funds, and such funds may be under the control of the board or one or more trustees. The bond resolution may obligate the joint operating agency to deposit and expend the proceeds of the revenue obligations only into and from such fund or funds, and to set aside and pay into such fund or funds any fixed proportion or fixed amount of the revenues derived by it from any or all of its utility properties or other corporate activities, as the board in its discretion considers in the best interest of the agency. The board may issue and sell revenue obligations payable as to interest and principal only out of such fund or funds. In creating any special fund for the payment of revenue obligations, the board shall have due regard to the cost of operation and maintenance of the joint operating agency's utility properties, and to any proportion or amount of the revenues previously pledged as a fund for the payment of revenue obligations, and shall not obligate the agency to set aside into such special fund or funds a greater amount or proportion of the revenues and proceeds than in its judgment will be available over and above such cost of maintenance and operation and the amount or proportion of the revenues previously pledged.

(4) Any revenue obligations and the interest thereon issued against any fund provided for in subsection (3) of this section shall be a valid claim of the holder thereof only as against such special fund and the proportion or amount of the revenues pledged to such fund, but shall constitute a prior charge over all other charges or claims whatsoever, against such fund and the proportion or amount of the revenues pledged to the fund. Each revenue obligation shall state on its face that it is payable from a special fund, naming the fund and the resolution creating it, or shall describe the alternate method for the payment thereof as provided by the resolution authorizing the fund.

(5) Any pledge of revenues or other moneys or obligations made by a joint operating agency shall be valid and binding from the time that the pledge is made and recorded in the minute book of the joint operating agency. Revenues or other moneys or obligations so pledged and later received by a joint operating agency shall immediately be subject to the lien of the pledge without any physical delivery or further act. The lien of the pledge shall be valid and binding against any parties having claims of any kind in tort, contract or otherwise against a joint operating agency, irrespective of whether such parties have notice thereof. Neither the resolution nor other instrument by which a pledge is created need be recorded except in the minute book of the joint operating agency, nor shall the filing of any financing statement under the Uniform Commercial Code be required to perfect such pledge.

(6) The revenue obligations issued under the provisions of subsections (1) to (5) of this section shall bear such date or dates, mature in such amounts at such time or times, be in such denominations, be in such form, either coupon or registered or both, carry such registration privileges, be made transferable, exchangeable and interchangeable, be payable in such medium, at such place or places, and be subject to such terms of redemption as the board of directors shall declare in the bond resolution.

(7) Any resolution authorizing any revenue obligation, and any revenue obligation, may provide for and contain such covenants in favor of the purchaser or holder of such obligation as the board of directors shall determine to be necessary, desirable, or convenient in order to secure and protect the obligation and its purchaser or holder and to enhance the marketability of the obligation. Among other things, such covenants may

define events of default, provide for the appointment of a trustee or receiver in the event of default, and provide that any such trustee or receiver may take possession and control of any portion or all of the business and property of the joint operating agency upon the occasion of any event of default.

(8) Notwithstanding any other provision of law, the revenue obligations issued by a joint operating agency may be sold by the board of directors upon such terms and conditions and at such rate or rates of interest and for such price or prices as it may consider most advantageous to the joint operating agency, with or without public bidding. The board of directors may make contracts for the future sale from time to time of revenue obligations by which the contract purchasers shall be committed to the prices, terms and conditions stated in such contract, and the board of directors may pay such consideration as it deems proper for such commitments.

(9) The board of directors may provide by resolution for the issuance of funding and refunding revenue obligations in order to take up and refund any one or more series, or portion of a series, of outstanding revenue obligations at such time or times at or prior to the maturity thereof as it may determine. Such refunding revenue obligations may be sold or exchanged at par or otherwise as the board of directors determines is in the best interest of the joint operating agency.

(10) The board of directors may provide in any contract for the construction, acquisition or improvement of utility properties that payment shall be made only in outstanding revenue obligations at their par value.

(11) All revenue obligations issued pursuant to this section shall be legal securities which may be used by any bank or trust company for deposit with the State Treasurer or a county treasurer or city treasurer, as security for deposits in lieu of a surety bond under any law relating to deposits of public moneys and shall constitute legal investments for trustees and other fiduciaries other than corporations doing a trust business in this state and for savings and loan associations, banks and insurance companies doing a trust business in the state. All such revenue obligations and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the law of this state.

(12) All revenue obligations issued pursuant to this section, the interest thereon, and investment income therefrom shall be exempt from all taxes levied by the state, its agencies, instrumentalities, and political subdivisions.

(13) Neither the board of directors of the joint operating agency nor any person executing any revenue obligation or other evidence of indebtedness shall be liable personally thereon or shall be subject to personal liability or accountability by reason of the issuance thereof. [1973 c.722 §9]

RATES

262.095 Rates for energy furnished by agency. The board of directors shall establish rates and collect charges for electric power and energy and related services sold, furnished or supplied by the joint operating agency. Such rates and charges shall be fair, nondiscriminatory and at least adequate to provide revenues sufficient for:

(1) Payment of the principal of and interest on those obligations of the joint operating agency for which payment has not otherwise been provided;

(2) All payments which the agency is obligated to set aside in any special fund for the repayment of obligations and to provide reserves therefor;

(3) Payment of taxes as provided by ORS 262.105; and

(4) Payments for the proper administration, operation, maintenance, repair, renewals and replacements of utility properties of the joint operating agency and to provide reserves therefor. [1973 c.722 §10]

MISCELLANEOUS

262.105 Taxation of agency property in same manner as private power corporations. All property, real and personal, owned, used, operated or controlled by a joint operating agency for the transmission, production or furnishing of electric power or energy shall be assessed and taxed in the same manner and for the same purposes as similar property owned, used, operated or controlled by private corporations, other than electric cooperatives, for the purpose of furnishing electric power or energy to the public. The joint operating agency and its directors and officers shall be subject to the same requirements as are provided by law in respect to such assessment and taxation. All taxes so levied shall be payable by the joint operating agency out of its revenues as an expense of its operation. [1973 c.722 §11]

262.110 [Repealed by 1969 c.12 §1]

262.115 ORS 262.005 to 262.115 and 308.505 to be liberally construed; severability. ORS 262.005 to 262.115 and 308.505 shall be liberally construed to effect its purposes. In the event that any portion of ORS 262.005 to 262.115 and 308.505 is declared invalid or otherwise unenforceable by a court of record, the remaining provisions of ORS 262.005 to 262.115 and 308.505 shall nevertheless remain in full force and effect. [1973 c.722 §13]

Chapter 285C — Economic Development III

2005 EDITION

ECONOMIC DEVELOPMENT III

ECONOMIC DEVELOPMENT

ENTERPRISE ZONES

(Short Title)

285C.045 Short title

(Definitions)

285C.050 Definitions for ORS 285C.050 to 285C.250

(Findings)

285C.055 Legislative findings

(Duties of Economic and Community Development Department)

285C.060 Duties of department; rules

(Creation of Enterprise Zone)

285C.065 Application for designation as enterprise zone; consent of governing body;
contents

285C.066 City, county or port consent; rules

285C.067 Consultation with local taxing districts; rules

285C.068 Port cosponsorship of zones

285C.070 Election to permit hotels, motels or destination resorts as eligible business
firms; procedures; election revocation

285C.075 Review of application by department; designation approval; reapplication
upon denial

285C.080 Limitation on number of zones

285C.085 Federal enterprise zones

285C.090 Requirements for area to be designated zone; exception

(Electronic Commerce)

285C.095 Designation for electronic commerce; application; revocation

285C.100 Alternative designation of city for electronic commerce

(Management of Enterprise Zone)

285C.105 Duties of zone sponsor

285C.110 Availability of public property

285C.115 Change of zone boundaries

285C.120 Zone boundary change restrictions when county ceases to be sparsely populated; waiver of distance limitations; rules

(Duties of Property Tax Administrators)

285C.125 Duties of Department of Revenue; rules

285C.130 Duties of county assessor

(Eligible Business Firms)

285C.135 Requirements for eligibility

(Authorization)

285C.140 Application for authorization; contents; filing fee; consultation; approval; appeal; late filing

285C.145 Leasing existing property to authorized firm; failure to timely file for authorization; certain records exempt from disclosure

285C.150 Conditions required by sponsor for authorization; reports

285C.155 Minimum employment and other requirements for authorization

285C.160 Agreement between firm and sponsor for additional period of exemption; requirements

285C.165 Extension of period of authorization; filing fee

(Exemptions)

285C.170 Construction-in-process exemption

285C.175 Enterprise zone exemption; requirements; duration

(Qualified Property)

285C.180 Qualified property generally

285C.185 Minimum cost of qualified property; leased property; hotel, motel or destination resort property; electronic commerce property

285C.190 Requirements for qualifying reconditioned, refurbished, retrofitted or upgraded property

285C.195 Alternative requirements for qualifying reconditioned, refurbished, retrofitted or upgraded property

(Firm and Employment Qualifications)

285C.200 Qualifications of business firm; rules

285C.205 Effect of productivity increases on qualification of certain firms; uses of tax savings

285C.210 Substantial curtailment of business operations

285C.215 First-source hiring agreements; rules

(Exemption Claim and Verification Procedures)

285C.220 Exemption claims; contents; late filing; fees

285C.225 Sponsor's addendum; property schedule; amendments

285C.230 Assessor to grant or deny exemption; assistance of sponsor

285C.235 Authority of county assessor; authority of sponsor

(Disqualification From Exemption)

285C.240 Disqualification; notice and procedures; in lieu payments and additional taxes; penalty; use of moneys

(Termination of Enterprise Zone)

285C.245 Termination; effect of termination on property; procedures

285C.250 Designation of new zone following zone termination

(Sunset Date)

285C.255 Sunset of enterprise zone program

RESERVATION ENTERPRISE ZONES

285C.300 Definitions for ORS 285C.300 to 285C.320

285C.303 Legislative findings

285C.306 Reservation enterprise zones

285C.309 Income tax credit for new business facility in reservation enterprise zone

285C.320 Status of reservation enterprise zone; sponsor

RURAL RENEWABLE ENERGY DEVELOPMENT ZONES

285C.350 Definitions for ORS 285C.350 to 285C.370

285C.353 Designation of rural renewable energy development zones; requirements;
multiple designations; zone sponsor

285C.356 Application for authorization

285C.359 Qualified property

285C.362 Exemption; requirements; duration

285C.365 Application of enterprise zone laws

285C.370 Rules

LONG TERM TAX INCENTIVES FOR RURAL ENTERPRISE ZONES

285C.400 Definitions for ORS 285C.400 to 285C.420

285C.403 Certification of business firm; application; review; appeal

285C.406 Claiming property tax exemption or income tax credit

285C.409 Property tax exemption; requirements; duration

285C.412 Conditions for continued exemption

285C.415 Notice to county assessor

285C.420 Disqualification; exception; additional taxes

BUSINESS DEVELOPMENT INCOME TAX EXEMPTION

285C.500 Definitions for ORS 285C.500 to 285C.506

285C.503 Preliminary certification of facility; application; fee; review; appeal

285C.506 Annual certification of facility; application; fee; review; appeal; duration of certification

ADVANCED TELECOMMUNICATIONS FACILITIES INCOME TAX CREDIT

285C.530 Definitions for ORS 285C.530 and 285C.533; tax credit certification; application; rules; fees

285C.533 Performance standards for advanced telecommunications facilities; rules

STRATEGIC INVESTMENT PROGRAM

(Generally)

285C.600 Definitions for ORS 285C.600 to 285C.626

285C.603 Purpose

285C.606 Determination of projects for tax exemption; limitations; revenue bond financing; first-source hiring agreements

285C.609 Request by county; community services fee agreement; distribution of fee proceeds

285C.612 Eligible project application fees

285C.620 Confidentiality of project information

(Strategic Investment Zones)

285C.623 Strategic investment zones; establishment; fees

285C.626 Business firm application for project within strategic investment zone

Note: 285A.010 contains definitions for ORS chapter 285C.

ENTERPRISE ZONES

(Short Title)

285C.045 Short title. ORS 285C.050 to 285C.250 shall be known and may be cited as the Oregon Enterprise Zone Act. [Formerly 285C.260]

(Definitions)

285C.050 Definitions for ORS 285C.050 to 285C.250. As used in ORS 285C.050 to 285C.250, unless the context requires otherwise:

(1) “Assessment date” and “assessment year” have the meanings given those terms in ORS 308.007.

(2) “Authorized business firm” means an eligible business firm that has been authorized under ORS 285C.140.

(3) “Business firm” means a person operating or conducting one or more trades or businesses, *a people’s utility district or a joint operating agency formed under ORS Chapter 262*, but does not include any *other* governmental agency, municipal corporation or nonprofit corporation.

(4) “County average annual wage” means:

(a) The most recently available average annual covered payroll for the county in which the enterprise zone is located, as determined by the Employment Department; or

(b) If the enterprise zone is located in more than one county, the highest county average annual wage as determined under paragraph (a) of this subsection.

(5) “Electronic commerce” means engaging in commercial or retail transactions predominantly over the Internet or a computer network, utilizing the Internet as a platform for transacting business, or facilitating the use of the Internet by other persons for business transactions, and may be further defined by the Economic and Community Development Department by rule.

(6) “Eligible business firm” means a firm engaged in an activity described under ORS 285C.135 that may file an application for authorization under ORS 285C.140.

(7) “Employee” means a person who works more than 32 hours per week, but does not include a person with a temporary or seasonal job or a person hired solely to construct qualified property.

(8) “Enterprise zone” means one of the 30 areas designated or terminated and redesignated by order of the Governor under ORS 284.160 (1987 Replacement Part) before October 3, 1989, one of the areas designated by the Director of the Economic and Community Development Department under ORS 285C.080, a federal enterprise zone area designated under ORS 285C.085, an area designated under ORS 285C.250 or a reservation enterprise zone designated under ORS 285C.306.

(9) “Federal enterprise zone” means any discrete area wholly or partially within this state that is designated as an empowerment zone, an enterprise community, a renewal community or some similar designation for purposes of improving the economic and community development of the area.

(10) “First-source hiring agreement” means an agreement between an authorized business firm and a publicly funded job training provider whereby the provider refers qualified candidates to the firm for new jobs and job openings in the firm.

(11) “In service” means being used or occupied or fully ready for use or occupancy for commercial purposes consistent with the intended operations of the business firm as described in the application for authorization.

(12) “Modification” means modernization, renovation or remodeling of an existing building, structure or real property machinery or equipment.

(13) “New employees hired by the firm”:

(a) Includes only those employees of an authorized business firm engaged for a majority of their time in eligible operations.

(b) Does not include individuals employed in a job or position that:

(A) Is created and first filled after December 31 of the first tax year in which qualified property of the firm is exempt under ORS 285C.175;

(B) Existed prior to the submission of the relevant application for authorization; or

(C) Is performed primarily at a location outside of the enterprise zone.

(14) “Publicly funded job training provider” includes but is not limited to a community college, a service provider under the federal Workforce Investment Act Title I-B (29 U.S.C. 2801 et seq.), or a similar program.

(15) “Qualified business firm” means a business firm described in ORS 285C.200, the qualified property of which is exempt from property tax under ORS 285C.175.

(16) “Qualified property” means property described under ORS 285C.180.

(17) “Rural enterprise zone” means:

(a) An enterprise zone located in an area of this state in which an urban enterprise zone could not be located; or

(b) A reservation enterprise zone designated under ORS 285C.306.

(18) “Sparsely populated county” means a county with a density of 100 or fewer persons per square mile, based on the most recently available population figure for the county from the Portland State University Center for Population Research and Census.

(19) “Sponsor” means:

(a) The city, county or port, or any combination of cities, counties or ports, that received approval of an enterprise zone under ORS 284.150 and 284.160 (1987 Replacement Part), under ORS 285C.065 and 285C.075, under ORS 285C.085 or under ORS 285C.250;

(b) The tribal government, in the case of a reservation enterprise zone; or

(c) A city, county or port that joined the enterprise zone through a boundary change under ORS 285C.115 (7) or a port that joined the enterprise zone under ORS 285C.068.

(20) “Tax year” has the meaning given that term in ORS 308.007.

(21) “Urban enterprise zone” means an enterprise zone in a metropolitan statistical area, as defined by the most recent federal decennial census, that is located inside a regional or metropolitan urban growth boundary.

(22) “Year” has the meaning given that term in ORS 308.007. [Formerly 285B.650;

2005 c.94 §2; 2005 c.704 §1]

(Findings)

285C.055 Legislative findings. The Legislative Assembly finds and declares that the health, safety and welfare of the people of this state are dependent upon the continued encouragement, development, growth and expansion of employment, business, industry and commerce throughout all regions of the state, but especially in those communities at the center of or outside major metropolitan areas for which geography may act as an economic hindrance. The Legislative Assembly further declares that there are areas in the state that need the particular attention of government to help attract private business investment into these areas and to help resident businesses to reinvest and grow and that many local governments wish to have tax incentives and other assistance available to stimulate sound business investments that support and improve the quality of life. Therefore, it is declared to be the purpose of ORS 285C.050 to 285C.250 to stimulate and protect economic success in such areas of the state by providing tax incentives for employment, business, industry and commerce and by providing adequate levels of complementary assistance to community strategies for such interrelated goals as environmental protection, growth management and efficient infrastructure. [Formerly 285B.665]

(Duties of Economic and Community Development Department)

285C.060 Duties of department; rules. In addition to any other powers granted by law, for the purpose of administering ORS 285C.050 to 285C.250, the Economic and Community Development Department shall:

(1) Adopt any rules the department considers necessary to administer ORS 285C.050 to 285C.250.

(2) Assist a sponsor of an enterprise zone in its efforts to retain, expand, start or recruit eligible business firms.

(3) Assist an eligible business firm doing business within an enterprise zone to obtain the benefits of applicable incentive or inducement programs authorized by Oregon law.

(4) Take action necessary to participate in the federal enterprise zone program pursuant to ORS 285C.085.

(5) Process sponsor requests for boundary amendments under ORS 285C.115.

(6) Take action necessary to terminate or designate zones under ORS 285C.245 or 285C.250.

(7) Assist in implementing first-source hiring agreements by publicly funded job training providers with authorized business firms and in ensuring compliance with business firm eligibility requirements and with provisions addressing the avoidance of job losses outside of enterprise zones. [Formerly 285B.668]

(Creation of Enterprise Zone)

285C.065 Application for designation as enterprise zone; consent of governing body; contents. (1) Any city, county or port may apply to the Director of the Economic

and Community Development Department for designation of an area within that city, county or port as an enterprise zone. A port shall obtain the consent of the governing body of the county prior to applying to the Economic and Community Development Department for designation of an area as an enterprise zone. With the prior consent of the governing body of the city or port, a county may apply to the department on behalf of a city or port for designation of any area within that city or port as an enterprise zone. With the prior consent of the governing body of a city, a port may apply to the department on behalf of a city for designation of any area that is wholly or partially shared territory of both the port and city as an enterprise zone. With the prior consent of the governing body of a port, a city may apply to the department on behalf of a port for designation of any area that is wholly or partially shared territory of both the city and port as an enterprise zone.

(2) One or more cities, counties and ports may apply to the director for designation of an area situated partly within each city and partly in unincorporated territory within the counties or ports as an enterprise zone.

(3) An application for designation of an enterprise zone shall be in the form and contain such information as the department, by rule, may require. However, the application shall:

(a) Be submitted on behalf of one or more local government units as described in subsections (1) and (2) of this section by resolution of the governing body of each applicant;

(b) Contain a description of the area sought to be designated as an enterprise zone;

(c) Contain information sufficient to allow the department to determine if the criteria established in ORS 285C.090 are met;

(d) State that the applicant will give priority to the use in the proposed enterprise zone of any economic development or job training funds received from the federal government; and

(e) Declare that the applicant will comply with ORS 285C.105 and perform any other duties of the sponsor under ORS 285C.050 to 285C.250.

(4) When applying for designation of an enterprise zone within its boundaries under this section, the applicant may include in the application:

(a) Proposals to enhance the level or efficiency of local public services within the proposed enterprise zone including, but not limited to, fire-fighting and police services; and

(b) Proposals for local incentives and local regulatory flexibility to authorized business firms.

(5) In the case of joint applications by more than one local government unit, each city, county or port joining in the application may include proposals for enhanced local public services, local incentives or local regulatory flexibility to be effective within the boundaries of that local government unit.

(6) Proposals under subsection (4) or (5) of this section for enhanced local public services, local incentives or local regulatory flexibility included in the application by a city, county or port for an enterprise zone are binding upon the city, county or port if an enterprise zone is designated wholly or partly within its boundaries. [Formerly 285B.656; 2005 c.704 §4]

285C.066 City, county or port consent; rules. The Economic and Community Development Department may adopt rules related to the consent required from a city, county or port under ORS 285C.065 in order for a city, county or port to apply for enterprise zone designation under ORS 285C.065. [2005 c.704 §5]

Note: 285C.066 and 285C.067 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 285C or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

285C.067 Consultation with local taxing districts; rules. (1) A city, county or port that seeks to apply to the Director of the Economic and Community Development Department for enterprise zone designation under ORS 285C.065 shall consult with all local taxing districts with territory in the proposed zone prior to filing the application.

(2) The Economic and Community Development Department may adopt rules on the consultations required under subsection (1) of this section and procedures related to the consultations. [2005 c.704 §6]

Note: See note under 285C.066.

285C.068 Port cosponsorship of zones. (1) A port located in whole or in part within an existing enterprise zone may submit a request to the Economic and Community Development Department to be a cosponsor of the enterprise zone. The request shall include:

(a) A copy of the resolution of the governing body of the port approving the request for designation as cosponsor of the enterprise zone;

(b) A copy of the resolution of the governing body of each current sponsor of the enterprise zone approving the addition of the port as a cosponsor; and

(c) Other information required by the department.

(2) The department shall review the request for addition of the port as a cosponsor of the enterprise zone. If the request is incomplete or does not satisfy the requirements of this section, the department shall seek additional information as necessary or shall return the request to the port. If the request is returned, the port may submit a revised request at any time. If the request is complete and does satisfy the requirements of this section, the Director of the Economic and Community Development Department shall approve the request.

(3) The addition of a port as a cosponsor of an existing enterprise zone under this section does not change the termination date of the enterprise zone under ORS 285C.245 (2). [2005 c.704 §14]

285C.070 Election to permit hotels, motels or destination resorts as eligible business firms; procedures; election revocation. (1) The governing body of a city or county that is seeking enterprise zone designation under ORS 285C.065 may elect to permit a business firm operating a hotel, motel or destination resort to be an eligible business firm with respect to those operations.

(2) The election must be made at the time the application for zone designation under ORS 285C.065 is made or any time thereafter and before the expiration of six months

following the date the zone is designated.

(3) The election shall be made by a resolution adopted by the city or county governing body. In order for the election to be effective, the resolution must be submitted to the Economic and Community Development Department and acknowledged by the department.

(4)(a) If more than one city or county is to be the sponsor, the resolution making the election may restrict the area in which a hotel, motel or destination resort may be located in order for the firm to be an eligible business firm with respect to those operations.

(b) The resolution making the restriction described in paragraph (a) of this subsection may only restrict the area of the zone in which a hotel, motel or destination resort may be located to that area of the zone that is located:

(A) Within the boundaries of one or more cities in favor of hotel, motel and destination resort exemption, if the county is not in favor of hotel, motel and destination resort exemption;

(B) Within the unincorporated territory of a county in favor of hotel, motel and destination resort exemption, if one or more cities are not in favor of hotel, motel and destination resort exemption; or

(C) Within the shared territory of a city and county in favor of hotel, motel and destination resort exemption and the unincorporated territory of the county, if one or more other cities are not in favor of hotel, motel and destination resort exemption.

(c) If a restriction is made under this subsection, the restriction may be modified at any time within six months of the date the zone is designated, but may not be modified at any time thereafter.

(5) The sponsor may by resolution revoke an election made under this section. If an election is revoked, the sponsor may not make another election under this section. [2003 c.662 §17]

285C.075 Review of application by department; designation approval; reapplication upon denial. (1) The Economic and Community Development Department shall review each application for designation of an enterprise zone, and shall secure any additional information that the department considers necessary for the purpose of determining whether the area described in the application qualifies for designation as an enterprise zone.

(2) The department shall complete review of the application within 60 days of the last date designated for receipt of an application. After review of the applications, the department shall forward those qualified applications to the Director of the Economic and Community Development Department. The director shall determine which applications have the greatest potential for accomplishing the purposes of ORS 285C.050 to 285C.250.

(3) As authorized under ORS 285C.080 or 285C.250, the director may approve the designation of one or more enterprise zones. The determination by the director as to the areas designated enterprise zones shall be final.

(4) If an application for enterprise zone designation is denied, the governing body of the cities, counties or ports submitting the application shall be informed of that fact together with the reasons for the denial. Cities, counties or ports may reapply to the department for designation of an area as an enterprise zone. [Formerly 285B.659; 2005

c.704 §7]

285C.080 Limitation on number of zones. (1) As provided in ORS 285C.065 and 285C.075, the Director of the Economic and Community Development Department may approve the designation of:

- (a) Up to 17 areas as rural enterprise zones; and
- (b) Up to 10 areas as urban or rural enterprise zones.

(2) Areas designated as enterprise zones under this section shall be in addition to the 30 areas designated or redesignated as enterprise zones by order of the Governor under ORS 284.160 (1987 Replacement Part) before October 3, 1989, areas redesignated under ORS 285C.250, areas designated under ORS 285C.085 and areas designated under ORS 285C.306. [Formerly 285B.653; 2005 c.704 §§2,2a]

285C.085 Federal enterprise zones. (1) The Economic and Community Development Department shall be the lead agency for state participation in a federal enterprise zone program. The Director of the Economic and Community Development Department may take action necessary for such participation to the extent allowed by state law.

(2) Any area designated as a federal enterprise zone by an agency of the federal government may be designated as a state enterprise zone by the director at the request of a city, county or port within whose jurisdiction some or all of the federal enterprise zone is located, without regard to any limitation contained in ORS 285C.090.

(3) The boundary of an existing state enterprise zone may be amended by the director at the request of the sponsor to include the entire area of a federal enterprise zone without regard to ORS 285C.115 (2). A change in the boundary of an existing state enterprise zone under this subsection does not change the termination date of the enterprise zone under ORS 285C.245 (2).

(4) A request by a city, county or port under subsection (2) or (3) of this section shall be in such form and include such information as required by the department, but the request must:

- (a) Include a resolution adopted by the governing body of the city, county or port; and
- (b) Provide that all areas within both the federal enterprise zone and the city, county or port are included in a state enterprise zone.

(5) The termination under federal law of a federal enterprise zone does not affect the existence or dimensions of a state enterprise zone, except when, as determined by the director, the termination is for nonperformance or for violations of federal guidelines. [Formerly 285B.677; 2005 c.704 §8]

285C.090 Requirements for area to be designated zone; exception. (1) A proposed enterprise zone must be located in a local area in which:

- (a) Fifty percent or more of the households have incomes below 80 percent of the median income of this state, as defined by the most recent federal decennial census;
- (b) The unemployment rate is at least 2.0 percentage points greater than the comparable unemployment rate for this entire state, as defined by the most recently available data published or officially provided and verified by the United States Government, the Employment Department of this state, the Portland State University

Center for Population Research and Census or special studies conducted under a contract with a regional academic institution; or

(c) The Economic and Community Development Department determines on a case-by-case basis using evidence provided by the cities, counties or ports applying for designation of the proposed enterprise zone that there exists a level of economic hardship at least as severe as that described in paragraph (a) or (b) of this subsection. The evidence shall be based on the most recently available data from official sources and may include, but is not limited to, a contemporary decline of the population in the proposed enterprise zone, the percentage of persons in the proposed enterprise zone below the poverty level relative to the percentage of the entire population of this state below the poverty level or the unemployment rate for the county or counties in which the proposed enterprise zone is located.

(2) An enterprise zone must consist of a total area of not more than 12 square miles in size. The area of the zone shall be calculated by excluding that portion of the zone that lies below the ordinary high water mark of a navigable body of water.

(3) Except as provided in subsection (4) of this section:

(a) An enterprise zone must have 12 miles or less as the greatest distance between any two points within the zone; and

(b) Unconnected areas of an enterprise zone may not be more than five miles apart.

(4) Unconnected areas of a rural enterprise zone may not be more than 15 miles apart when an unconnected area is entirely within a sparsely populated county, and the zone:

(a) Must have 20 miles or less as the greatest distance between any two points within the zone, if only a portion of the zone is contained within a sparsely populated county; or

(b) Must have 25 miles or less as the greatest distance between any two points within the zone, if the zone is entirely contained within a sparsely populated county.

(5) This section does not apply to the designation or redesignation of a reservation enterprise zone. [Formerly 285B.662; 2005 c.94 §4; 2005 c.704 §9]

(Electronic Commerce)

285C.095 Designation for electronic commerce; application; revocation. (1) A sponsor of an existing enterprise zone may seek to have the zone designated for electronic commerce under this section.

(2) The sponsor shall file an application to have the zone designated for electronic commerce with the Economic and Community Development Department. The application shall be in the form and contain the information that the department by rule may require.

(3) The application shall be accompanied by a copy of a resolution, adopted by the governing body of the sponsor, requesting that the zone be designated for electronic commerce.

(4) The department shall review applications for electronic commerce designation and shall approve no more than 10 zones for electronic commerce designation.

(5) The sponsor may by resolution revoke an electronic commerce designation made under this section. If an election is revoked, the sponsor may not subsequently seek reinstatement of electronic commerce designation. [Formerly 285B.672; 2005 c.667 §1]

Note: The amendments to 285C.095 by section 1, chapter 667, Oregon Laws 2005, apply to applications for electronic commerce designation that are filed with the Economic and Community Development Department on or after July 1, 2006. See section 2, chapter 667, Oregon Laws 2005. The text that applies to applications filed before July 1, 2006, is set forth for the user's convenience.

285C.095(1) A sponsor of an existing enterprise zone may seek to have the zone designated for electronic commerce under this section.

(2) The sponsor shall file an application to have the zone designated for electronic commerce with the Economic and Community Development Department. The application shall be in the form and contain the information that the department by rule may require.

(3) The application shall be accompanied by a copy of a resolution, adopted by the governing body of the sponsor, requesting that the zone be designated for electronic commerce.

(4) The department shall review applications for electronic commerce designation and shall approve no more than four zones for electronic commerce designation.

(5) The sponsor may by resolution revoke an electronic commerce designation made under this section. If an election is revoked, the sponsor may not subsequently seek reinstatement of electronic commerce designation.

285C.100 Alternative designation of city for electronic commerce. (1)

Notwithstanding ORS 285C.095, a city shall be designated for electronic commerce if the city:

(a) By resolution of the governing body of the city, declares itself a city designated for electronic commerce;

(b) As of January 1, 2002, has a population of more than 1,500 but less than 2,000;

(c) Is located less than 25 miles from a city with a population of more than 500,000; and

(d) Is located less than 10 miles from a city with a high concentration of high technology firms and with a population that, as of January 1, 2002, does not exceed 85,000.

(2) Only one city may be designated for electronic commerce under this section, and that designation shall be made without consideration of the numeric limitations imposed by ORS 285C.095.

(3)(a) A city does not need to sponsor an enterprise zone to be designated for electronic commerce under this section.

(b) The governing body of a city designated for electronic commerce under this section does not have to comply with the requirements of ORS 285C.090, but the governing body must take all actions that are required of a sponsor of a rural enterprise zone under ORS 285C.050 to 285C.250 with respect to business firms seeking exemption under ORS 285C.175.

(c) A business firm that is engaged in electronic commerce at a location inside a city designated for electronic commerce under this section and that seeks an exemption under ORS 285C.175 must take all actions required of a qualified business firm under ORS 285C.050 to 285C.250, except that the business firm does not need to be located within an enterprise zone.

(d) A business firm described in paragraph (c) of this subsection:

(A) Shall be an eligible business firm, the qualified property of which is exempt from taxation under ORS 285C.175 as if the qualified property were located in an enterprise zone under ORS 285C.095; and

(B) May claim the tax credit under ORS 315.507.

(4) For the purpose of determining the boundaries of a city designated for electronic commerce, "city" includes:

(a) Territory that is annexed into the city, as of the date of the annexation;

(b) Land within the urban growth boundary of the city; and

(c) Territory that is added to the urban growth boundary described in paragraph (b) of this subsection, as of the date the urban growth boundary is extended to such territory.

[Formerly 285B.673; 2005 c.94 §5]

(Management of Enterprise Zone)

285C.105 Duties of zone sponsor. (1) The sponsor of an enterprise zone shall:

(a) Appoint a local zone manager. Upon appointment of the local zone manager, the sponsor shall provide written notice thereof to the Economic and Community Development Department, the county assessor and the Department of Revenue.

(b) Provide enhanced local public services, local incentives and local regulatory flexibility included in the application for designation of the enterprise zone or in the resolution under ORS 285C.115 (7) to authorized or qualified business firms and assist authorized or qualified business firms in using enhanced local public services, local incentives and local regulatory flexibility.

(c) Review and approve or deny applications for authorization under ORS 285C.140.

(d) Assist the county assessor in administering the property tax exemption and in performing other duties assigned to the assessor under ORS 285C.050 to 285C.250.

(e) Maintain, implement and periodically update a plan for marketing the enterprise zone including strategies for retention, expansion, start-up and recruitment of eligible business firms.

(f) Manage the enterprise zone in accordance with ORS 285C.050 to 285C.250.

(g) Identify property available for sale or lease to eligible business firms under ORS 285C.110.

(h) Prepare indices of street addresses, tax lot numbers or other information to facilitate the identification of land inside of an urban enterprise zone.

(i) Provide written notice to the county assessor, the Department of Revenue, the Economic and Community Development Department and any relevant publicly funded job training provider of the conditions and policies adopted or normally sought by the sponsor under ORS 285C.150, 285C.155 or 285C.160 and take the actions necessary to implement and enforce the conditions and policies and any other reasonable requirements imposed pursuant to ORS 285C.155 or 285C.160.

(j) Conduct, or assist in conducting, annual reporting of enterprise zone activity or effort, if requested by the county assessor or the Economic and Community Development Department.

(2) If more than one city, county or port sponsors an enterprise zone, the jurisdictions shall act jointly in performing the duties imposed on a sponsor under ORS 285C.050 to

285C.250. [Formerly 285B.671; 2005 c.704 §10]

285C.110 Availability of public property. Subject to the requirements of the Oregon Constitution or any other applicable law, the State of Oregon and municipal corporations that own any real property within an enterprise zone that is zoned for use by eligible businesses and that is not used or designated for some public purpose shall make that real property available for lease or purchase by authorized business firms. Real property shall be leased or sold under this section only upon the condition that the authorized business firm promptly develop the real property for a use that is consistent with the use described in the application for authorization under ORS 285C.140. [Formerly 285B.674]

285C.115 Change of zone boundaries. (1) The sponsor of an enterprise zone may submit a request to the Economic and Community Development Department to change the boundary of the enterprise zone. A request shall include:

(a) A copy of the resolution of the governing body of the sponsor requesting the change;

(b) If subsection (7) of this section applies, a copy of the resolution described in subsection (7) of this section;

(c) A map clearly indicating the existing boundary and the proposed change thereto;

(d) A legal description of each area to be withdrawn from or added to the existing enterprise zone; and

(e) Other information required by the department.

(2) The amended enterprise zone shall:

(a) Add land zoned for use by eligible business firms that has or will have infrastructure facilities, road access, on-site water, on-site sewage disposal and necessary utility services;

(b) Continue to include any authorized business firms within the enterprise zone;

(c) Add residential areas or nonresidential areas that are adjacent to residential areas only if the level of economic hardship in the areas to be added is at least as severe as the conditions that existed at the time the original enterprise zone was designated or that currently exist in the original enterprise zone;

(d) Retain at least 50 percent of the lands in the original enterprise zone; and

(e) Meet the applicable total area and greatest distance requirements set forth in ORS 285C.090.

(3) If the enterprise zone is a reservation enterprise zone and the land to be added to the zone is not described in ORS 285C.306, the request for a boundary change, and the resulting boundary of the zone, must fully satisfy the provisions of this section.

(4) A request under subsection (1) of this section may include a proposal to:

(a) Remove only the land that is residential or not zoned or available for use by eligible business firms; or

(b) Change the name of the enterprise zone.

(5) The boundary of an urban enterprise zone may not be modified to include land located outside a regional or metropolitan urban growth boundary.

(6) A request to modify the boundary of a rural enterprise zone to include land located outside an urban growth boundary shall satisfy the requirements of subsections

(1) and (2) of this section and shall satisfy any other criteria that the department may adopt by rule.

(7) If an area to be added to an enterprise zone is under the jurisdiction of a city, county or port that is not a sponsor of the enterprise zone, the governing body of that city, county or port shall submit a resolution requesting the change and requesting that the city, county or port become a sponsor, or shall submit a resolution consenting to the change, as provided under ORS 285C.065 (1). The resolution of the joining city, county or port shall be submitted jointly with the resolution adopted by the governing body of the existing sponsor. The joining resolution of the city, county or port may:

(a) Include a binding proposal for enhanced local public services, local incentives or local regulatory flexibility to be effective within the portion of the enterprise zone to be under the jurisdiction of that city, county or port; or

(b) Include a restriction described in ORS 285C.070 (4). A restriction made under this paragraph may be made without regard to the time limitation described in ORS 285C.070 (4)(c) and becomes final on the effective date of the boundary change.

(8) The department shall review the request for a boundary change. If the request is incomplete or does not satisfy the requirements of this section, the department shall seek additional information as necessary or shall return the request to the sponsor. If the request is returned, the sponsor may submit a revised request at any time. If the request is complete and does satisfy the requirements of this section, the Director of the Economic and Community Development Department shall order a change in the boundary of an enterprise zone based on the request of the sponsor and specify the effective date of the boundary change, which may not be earlier than the receipt of a completed request.

(9) A change in the boundary of an enterprise zone under this section does not change the termination date of the enterprise zone under ORS 285C.245 (2). [Formerly 285B.680; 2005 c.94 §6; 2005 c.704 §11]

285C.120 Zone boundary change restrictions when county ceases to be sparsely populated; waiver of distance limitations; rules. (1) If the population density of a county increases to more than 100 persons per square mile, so that the county is no longer a sparsely populated county, any existing rural enterprise zone located wholly or partly within that county that was designated or that had its zone boundary changed shall continue to exist with that zone boundary until terminated. A boundary change under ORS 285C.115 that is subsequent to the date on which the county ceases to be a sparsely populated county may not add an area to the zone that:

(a) Is a separate area farther than five miles from the nearest point on the existing boundary;

(b) Increases the distance between the two points in the zone that are the farthest apart; or

(c) Creates a new line of distance to the farthest opposite point in the zone that is longer than the greatest distance between any two existing points in the zone.

(2) An applicant for designation under ORS 285C.065 or a sponsor requesting a change to a rural enterprise zone under ORS 285C.115 in a sparsely populated county may seek a waiver of the distance limitations imposed on the zone under ORS 285C.090 (4). The Director of the Economic and Community Development Department shall grant all or part of the waiver if:

(a) The proposed designation is to be made or the proposed boundary change satisfies all other requirements for a boundary change under ORS 285C.115; and

(b) The director determines, consistent with rules adopted by the Economic and Community Development Department, that designation of a separate enterprise zone is not a practical option under the particular circumstances, that the overall distances involved can be effectively administered and that the waiver will further the goals and purposes of ORS 285C.050 to 285C.250. [Formerly 285B.683; 2005 c.94 §7]

(Duties of Property Tax Administrators)

285C.125 Duties of Department of Revenue; rules. For the purposes of ORS 285C.050 to 285C.250, the Department of Revenue shall:

(1) Adopt any rules the Department of Revenue considers necessary to implement ORS 285C.125, 285C.130, 285C.140, 285C.145, 285C.165, 285C.175, 285C.180, 285C.185, 285C.190, 285C.220, 285C.225, 285C.230, 285C.235 and 285C.240.

(2) Assist the Economic and Community Development Department, county assessors and the sponsors of enterprise zones in their efforts to authorize or qualify eligible business firms.

(3) Assist an eligible business firm proposing to do business within an enterprise zone or doing business within an enterprise zone to obtain the benefits of applicable tax incentive or inducement programs administered or supervised by the Department of Revenue.

(4) Issue and print forms and worksheets to be used by business firms to make authorization applications or exemption claims. [Formerly 285B.692; 2005 c.94 §8]

285C.130 Duties of county assessor. The assessor of a county within which an enterprise zone is located shall:

(1) Assist the sponsor, the local zone manager appointed by the sponsor and business firms in determining whether property will qualify for a property tax exemption under ORS 285C.175.

(2) Review and approve or deny applications from eligible business firms for authorization under ORS 285C.140.

(3) Process claims for property tax exemptions filed under ORS 285C.220 and exempt the qualified property of authorized business firms from ad valorem property taxation in accordance with ORS 285C.050 to 285C.250.

(4) Take action necessary under ORS 285C.240.

(5) Submit a written report to the Department of Revenue on or before July 1 of each assessment year. The report for each enterprise zone, or portion of a zone that is located in the county, shall include the following information, organized by business firm:

(a) The assessor's estimate of the assessed value of qualified property that was exempt under ORS 285C.175 for the previous tax year and the taxes that would have been imposed on the qualified property, as entered on the assessment and tax roll under ORS 285C.175 (7).

(b) The annual average number of employees of the firm within the enterprise zone during the previous assessment year, as reported on the exemption claim filed under ORS 285C.220.

(c) The annual average compensation for the previous assessment year of new employees hired by the firm within the enterprise zone, if the firm is subject to the annual compensation requirements of ORS 285C.160 (3), as reported on the exemption claim filed under ORS 285C.220.

(d) The assessor's estimate of the assessed value, for the current tax year, of qualified property that was exempt under ORS 285C.175 for the previous tax year and that is not exempt under ORS 285C.175 for the current tax year.

(e) The total investment cost of qualified property first reported on the exemption claim filed under ORS 285C.220 that includes a property schedule submitted by the business firm pursuant to ORS 285C.225 for the current tax year.

(f) The current number of employees of the firm, as reported on the exemption claim filed under ORS 285C.220 and described in paragraph (e) of this subsection.

(g) Any other information the assessor or the Department of Revenue considers appropriate.

(6) Send a copy of a report prepared under subsection (5) of this section to the sponsor of the enterprise zone and to the Economic and Community Development Department. [Formerly 285B.695]

(Eligible Business Firms)

285C.135 Requirements for eligibility. (1) To be an eligible business firm, a business firm must be engaged, or proposing to engage, within the enterprise zone, in the business of providing goods, products or services to businesses or other organizations through activities including, but not limited to, manufacturing, assembly, fabrication, processing, shipping or storage.

(2) A business firm is not an eligible business firm if the firm is:

(a) Engaged within the enterprise zone in the business of providing goods, products or services to the general public for personal or household use.

(b) Significantly engaged in a business activity within the enterprise zone that consists of retail sales or services, child care, housing, retail food service, health care, tourism, entertainment, financial services, professional services, leasing space to others, property management, construction or other similar activities, even if for another business or organization.

(3) If a business firm described in subsection (2) of this section engages in an activity described in subsection (1) of this section, the business firm is an eligible business firm if the activity is performed at a location that is separate from the activity of the firm that is described in subsection (2) of this section. Property at the location at which the firm conducts an activity described in subsection (2) of this section may not be exempt under ORS 285C.175.

(4) Two or more business firms that otherwise meet the requirements of this section may elect to be treated as one eligible business firm if 100 percent of the equity interest in the business firms is owned by the same person or persons, or if one of the business firms owns 100 percent of the equity interest of the other or others.

(5) Notwithstanding subsections (1) to (3) of this section, each of the following business firms is an eligible business firm under subsection (1) of this section:

(a) A business firm engaged in the activity of providing a retail or financial service

within the enterprise zone if:

(A) The activity serves customers by responding to orders or requests received only by telephone, computer, the Internet or similar means of telecommunications; and

(B) Not less than 90 percent of the customers or orders are located and originate in an area from which long distance telephone charges, in the absence of a toll-free number, would apply if the order were placed by telephone.

(b) A business firm that operates a facility within the enterprise zone that serves statewide, regional, national or global operations of the firm through administrative, design, financial, management, marketing or other activities, without regard to the relationship of these activities to any otherwise eligible activities within the enterprise zone.

(c) A business firm that operates a hotel, motel or destination resort in the enterprise zone if the sponsor has elected under ORS 285C.070 to treat a business firm engaged in hotel, motel or destination resort operations in an enterprise zone as an eligible business firm.

(d) A business firm that is engaged in electronic commerce if the enterprise zone has been approved for electronic commerce designation under ORS 285C.095. [Formerly 285B.707]

(Authorization)

285C.140 Application for authorization; contents; filing fee; consultation; approval; appeal; late filing. (1)(a) Any eligible business firm seeking to have property exempt from property taxation under ORS 285C.175 shall, before the commencement of direct site preparation activities or the construction, addition, modification or installation of qualified property in an enterprise zone, and before the hiring of eligible employees, apply for authorization under this section.

(b) The application shall be made on a form prescribed by the Department of Revenue and the Economic and Community Development Department.

(c) The application shall be filed with the sponsor of the zone. A sponsor may require that the application filed with the sponsor be accompanied by a filing fee. If required, the filing fee may not exceed the greater of \$200 or one-tenth of one percent of the value of the investment in qualified property that is proposed in the application for authorization. The filing fee may be required for the filing of applications only after the sponsor adopts a policy, consistent with Economic and Community Development Department rules, authorizing the imposition of the filing fee.

(2) The application shall contain the following information:

(a) A description of the nature of the firm's current and proposed business operations inside the boundary of the enterprise zone;

(b) A description and estimated value of the qualified property to be constructed, added, modified or installed inside the boundary of the enterprise zone;

(c) The number of employees of the firm that are employed within the enterprise zone, averaged over the previous 12 months, and an estimate of the number of employees that will be hired by the firm;

(d) A commitment to meet all requirements of ORS 285C.200 and 285C.215, and to verify compliance with these requirements;

(e) A commitment to satisfy all additional conditions for authorization that are imposed by the enterprise zone sponsor under ORS 285C.150, 285C.155 or 285C.205 or pursuant to an agreement entered into under ORS 285C.160, and to verify compliance with these additional conditions;

(f) A commitment to renew the application, consistent with ORS 285C.165, every two years while the zone exists if the firm has not filed a claim under ORS 285C.220 that is based on the application; and

(g) Any other information considered necessary by the Department of Revenue and the Economic and Community Development Department.

(3) After an application is submitted to a sponsor, the business firm may revise or amend the application. An amendment or revision may not be made on or after January 1 of the first assessment year for which the qualified property associated with the application is exempt under ORS 285C.175.

(4) If an application for authorization appears to be complete and the proposed investment appears to be eligible for authorization, the sponsor and the business firm shall conduct a preauthorization consultation. The county assessor shall be timely notified and have the option to participate in the consultation. The consultation shall:

(a) Identify issues with the potential to affect compliance with relevant exemption requirements, including but not limited to enterprise zone boundary amendments;

(b) Arrange for methods and procedures to establish and verify compliance with applicable requirements; and

(c) Identify the person who is obligated to notify the county assessor if requirements are not being satisfied.

(5) Upon completion of the consultation, the sponsor shall prepare a written summary of the consultation made under subsection (4) of this section, attach the summary to the application and forward the application to the county assessor of each county in which the zone is located for review by the assessor.

(6) Following the preauthorization conference under subsection (4) of this section, the sponsor and the county assessor shall authorize the business firm by approving the application, if the sponsor and county assessor determine that:

(a) The current or proposed operations of the business firm in the enterprise zone result in the firm being eligible under ORS 285C.135; and

(b) The firm has made the commitments and provided the other information required under subsection (2) of this section.

(7) If the business firm seeking authorization is an eligible business firm described in ORS 285C.135 (5)(b), the sponsor must, as a condition to approving the application, make a formal finding that the business firm is an eligible business firm under ORS 285C.135 and that the size of the proposed investment, the employment at the facility of the firm or the nature of the activities undertaken by the firm within the enterprise zone will significantly enhance the local economy, promote the purposes for which the zone was created and increase employment within the zone.

(8) The approval of both the sponsor and the county assessor under this section shall be prima facie evidence that the qualified property of the business firm will receive the property tax exemption under ORS 285C.175. In approving the application, the sponsor and county assessor shall provide proof of approval as directed by the Economic and Community Development Department.

(9) If the sponsor or county assessor fails or refuses to authorize the business firm, the business firm may appeal to the Oregon Tax Court under ORS 305.404 to 305.560. The business firm shall provide copies of the firm's appeal to the sponsor, county assessor, the Department of Revenue and the Economic and Community Development Department.

(10) Authorization under this section does not ensure that property constructed, added, modified or installed by the authorized business firm will receive property tax exemption under ORS 285C.175. The sponsor and the county assessor are not liable in any way if the Department of Revenue or the county assessor later determines that an authorized business firm does not satisfy the requirements for an exemption on qualified property.

(11) Notwithstanding subsection (1) of this section, if an eligible business firm has begun or completed the construction, addition, modification or installation of property that meets the qualifications of ORS 285C.180, and the property has not yet been subject to property tax, then, for purposes of ORS 285C.050 to 285C.250, the firm shall be authorized under this section if the firm files an application that is allowed under subsection (12) of this section and is otherwise authorized under this section.

(12) Late submission of an application under this section is allowed if:

(a) A rule permits late submissions of applications under this section; or

(b) The Department of Revenue waives filing deadline requirements under this section. The department shall issue a letter to the eligible business firm and zone sponsor setting forth the waiver under this paragraph. [Formerly 285B.719]

285C.145 Leasing existing property to authorized firm; failure to timely file for authorization; certain records exempt from disclosure. (1) The Legislative Assembly finds that the standard procedure for authorization in an enterprise zone inappropriately deters development or redevelopment of qualified buildings on speculation for subsequent sale or lease to eligible business firms.

(2) Notwithstanding ORS 285C.140 (1), a new building or structure or an addition to or modification of an existing building or structure may qualify for the exemption allowed under ORS 285C.175 if the qualified property is leased or sold by an unrelated party to one or more authorized business firms after commencement of the construction, addition or modification but prior to use or occupancy of the qualified property.

(3) A business firm may not be considered authorized and is not qualified for the exemption allowed under ORS 285C.175 if the county assessor discovers prior to initially granting the exemption that the application for authorization was not submitted by the business firm in a timely manner in accordance with ORS 285C.140, except as allowed under subsection (2) of this section or ORS 285C.140 (11) and (12).

(4) Records, communications or information submitted to a public body by a business firm for purposes of ORS 285C.050 to 285C.250 that identify a particular qualified property, that reveal investment plans prior to authorization, that include the compensation the firm provides to firm employees, that are described in ORS 192.502 (16) or that are submitted under ORS 285C.225 or 285C.235 are exempt from disclosure under ORS 192.410 to 192.505 and, as appropriate, shall be shared among the county assessor, the zone sponsor, the Department of Revenue and the Economic and Community Development Department. [Formerly 285B.701]

285C.150 Conditions required by sponsor for authorization; reports. (1) The sponsor of an urban enterprise zone may require an eligible business firm seeking authorization under ORS 285C.140 to satisfy other conditions in order for the firm to be authorized.

(2) The conditions that a sponsor may impose under this section must be reasonably related to the public purpose of providing opportunities for groups of persons, as defined by the sponsor, to obtain employment, including but not limited to providing training to these groups of persons.

(3) The sponsor may establish procedures for monitoring and verifying compliance with conditions imposed on the firm under this section and require the firm to agree to the procedures as a condition to authorizing the firm.

(4) Conditions established under this section may be imposed on a firm only if the sponsor has adopted a policy that establishes standards for the imposition of the conditions.

(5) Conditions imposed by a sponsor under this section shall be in addition to, and not in lieu of, conditions and requirements imposed under ORS 285C.050 to 285C.250 or pursuant to an agreement entered into under ORS 285C.160 and do not affect the duties of the Department of Revenue or of the county assessor under ORS 285C.050 to 285C.250.

(6) A sponsor of an urban enterprise zone that imposes conditions for authorization on eligible business firms under this section shall submit a written report every four years to the Legislative Assembly concerning the application and effects of the conditions on business firms within the enterprise zone. [2003 c.662 §32]

285C.155 Minimum employment and other requirements for authorization. For purposes of ORS 285C.200 (2):

(1) The sponsor of an enterprise zone, at the time authorization is sought by a business firm under ORS 285C.140, shall establish a minimum number of employees the firm must maintain in the enterprise zone throughout the exemption period.

(2) The sponsor, at the time authorization is sought by a business firm under ORS 285C.140, may establish other reasonable conditions with which the firm must comply in order for qualified property of the firm to be exempt under ORS 285C.175.

(3) Employment requirements and other conditions established by the sponsor under this section shall be set forth in a resolution adopted by the governing body of the sponsor at the time the sponsor approves the application of the business firm for authorization under ORS 285C.140.

(4) A resolution adopted pursuant to this section may be modified at the request of the business firm at any time prior to the start of the first tax year for which an exemption under ORS 285C.175 is claimed. [2003 c.662 §33]

285C.160 Agreement between firm and sponsor for additional period of exemption; requirements. (1) An eligible business firm seeking authorization under ORS 285C.140 and the sponsor of the enterprise zone in which the firm intends to invest may enter into a written agreement to extend the period during which the qualified property is exempt from taxation under ORS 285C.175 if the firm complies with the

terms of the agreement.

(2) The period for which the qualified property is to continue to be exempt must be set forth in the agreement and may not exceed two additional tax years.

(3) In order for an agreement under this section to extend the period of exemption, the agreement must be executed on or before the date on which the firm is authorized, and:

(a) If the enterprise zone is a rural enterprise zone or an urban enterprise zone located inside a metropolitan statistical area of fewer than 400,000 residents, the agreement must require that the firm meet both of the following:

(A) Annually compensate all new employees hired by the firm at an average rate of not less than 150 percent of the county average annual wage for each assessment year during the tax exemption period, as determined at the time of authorization.

(B) Any additional requirement that the sponsor may reasonably request.

(b) If the enterprise zone is an urban enterprise zone located inside a metropolitan statistical area of 400,000 residents or more, the agreement must require that the firm meet any additional requirement the sponsor may reasonably require.

(4) If a firm enters into an agreement under this section that includes a compensation requirement under subsection (3)(a)(A) of this section and the firm subsequently submits one or more statements of continued intent under ORS 285C.165, notwithstanding the terms of the agreement made under this section, for each statement of continued intent submitted, the county average annual wage under subsection (3)(a)(A) of this section shall be adjusted to a level that is current with the statement. [2003 c.662 §34; 2005 c.94 §9]

285C.165 Extension of period of authorization; filing fee. (1) In the case of an authorized business firm that has not yet claimed the exemption under ORS 285C.175 on qualified property:

(a) After the January 1, but on or before the April 1, that first occurs more than two years after the application for authorization is approved, an authorized business firm shall submit a written statement to both the sponsor and the county assessor attesting to the firm's continued intent to complete the proposed investment and seek the enterprise zone exemption. The statement may include significant changes to the descriptions and estimates of anticipated qualified property or employment. If the firm is subject to a compensation requirement under ORS 285C.160 (3)(a)(A), the statement shall acknowledge that the applicable county average annual wage in the agreement is updated to equal the level that is current with the statement.

(b) Every two years after the submission of a statement described in paragraph (a) of this subsection, the firm shall submit another such statement. The statement must be submitted after January 1, but on or before April 1 of that year.

(2) If the firm fails to submit a statement required under subsection (1) of this section, the authorization of the firm shall be considered inactive. An inactive authorized business firm may claim the exemption under ORS 285C.175 only as provided under subsection (3) of this section.

(3)(a) An inactive authorized business firm may file an exemption claim under ORS 285C.220 only if the claim includes a filing fee equal to the greater of \$200 or one-tenth of one percent of the real market value of the qualified property listed in the property schedule that is filed with the claim.

(b) The filing fee required under this subsection is in addition to and not in lieu of any other required filing fee.

(c) An exemption under ORS 285C.175 may not be granted if the filing fee does not accompany the claim.

(d) The real market value of the property used to determine the filing fee under this subsection may be appealed in the same time and manner as other determinations of value made by the assessor are appealed.

(e) Any filing fee collected under this subsection shall be deposited to the county general fund.

(4) If an inactive authorized business firm is subject to a compensation requirement under ORS 285C.160 (3)(a)(A) and files a claim for exemption under ORS 285C.220 in the manner prescribed in subsection (3) of this section, notwithstanding the terms of the agreement executed under ORS 285C.160, the applicable county average annual wage shall be updated to equal the level that is current with the date of the filing of the claim.

(5) This section applies only until the enterprise zone is terminated. Following zone termination, ORS 285C.245 applies. [2003 c.662 §34a]

(Exemptions)

285C.170 Construction-in-process exemption. (1) Property shall be exempt from ad valorem property taxation under this section if:

(a) The property is located in an enterprise zone;

(b) The property is owned or leased by an authorized business firm or the business firm is contractually obligated to own or lease the property upon the property's being placed in service;

(c) The property is or, upon completion of the construction, addition, modification or installation of the property, will be qualified property;

(d) The authorization of the business firm remains active under ORS 285C.140 or 285C.165;

(e) The property has not been subject to exemption under ORS 307.330 at the location;

(f) The property is not and will not be centrally assessed under ORS 308.505 to 308.665;

(g) The property is not to be operated as all or a part of a hotel, motel or destination resort; and

(h) There is no known reason to conclude that the property or the firm will not satisfy any applicable requirements for the property to be exempt under ORS 285C.175 upon being placed in service.

(2) Property may be exempt under this section for no more than two tax years, which must be consecutive.

(3) In determining whether property is exempt under this section, the county assessor:

(a) Shall adhere to the same procedures as apply under ORS 285C.175 (6) and (7);

and

(b) May require the submission of additional evidence by the authorized business firm or zone sponsor showing that the property qualifies for exemption under this section. If required, the additional evidence must be submitted on or before April 1 of the

assessment year.

(4) The exemption under this section does not depend on the property or the authorized business firm receiving the exemption under ORS 285C.175 or satisfying requirements applicable to the exemption under ORS 285C.175.

(5) A year in which property is exempt under this section shall be considered a year in which the property is exempt under ORS 307.330 for purposes of determining the maximum number of years for which the property may be exempt under this section or ORS 307.330. [2003 c.662 §34b]

285C.175 Enterprise zone exemption; requirements; duration. (1) Property of an authorized business firm is exempt from ad valorem property taxation if:

- (a) The property is qualified property under ORS 285C.180;
- (b) The firm meets the qualifications under ORS 285C.200; and
- (c) The firm has entered into a first-source hiring agreement under ORS 285C.215.

(2)(a) The exemption allowed under this section applies to the first tax year for which, as of January 1 preceding the tax year, the qualified property is in service. The exemption shall continue for the next two succeeding tax years if the property continues to be owned or leased by the business firm and located in the enterprise zone.

(b) The property may be exempt from property taxation under this section for up to two additional tax years consecutively following the tax years described in paragraph (a) of this subsection, if authorized by the written agreement entered into by the firm and the sponsor under ORS 285C.160.

(c) If qualified property of a qualified business firm is sold or leased to an eligible business firm in the enterprise zone during the period the property is exempt under this section, the purchasing or leasing firm is eligible to continue the exemption of the selling or leasing firm for the balance of the exemption period, but only if any effects on employment within the zone that result from the sale or lease do not constitute substantial curtailment under ORS 285C.210.

(3)(a) The exemption allowed under this section shall be 100 percent of the assessed value of the qualified property in each of the tax years for which the exemption is available.

(b) Notwithstanding paragraph (a) of this subsection:

(A) If the qualified property is an addition to or modification of an existing building or structure, the exemption shall be measured by the increase in value, if any, attributable to the addition or modification.

(B) If the qualified property is an item of reconditioned, refurbished, retrofitted or upgraded real property machinery or equipment, the exemption shall be measured by the increase in the value of the item that is attributable to the reconditioning, refurbishment, retrofitting or upgrade.

(4)(a) An exemption may not be granted under this section for qualified property assessed for property tax purposes in the county in which the property is located on or before the effective date of the:

(A) Designation of the zone; or

(B) Approval of a boundary change for the zone if the property is located in an area added to the zone.

(b) An exemption may not be granted for qualified property constructed, added,

modified or installed in the zone or in the process of construction, addition, modification or installation in the zone on or before the effective date of the:

(A) Designation of the zone; or

(B) Approval of a boundary change for the zone if the property is located in an area added to the zone.

(c) An exemption may not be granted for any qualified property that was in service within the zone for more than 12 months by January 1 of the first assessment year for which an exemption claim is made.

(d) An exemption may not be granted for any qualified property unless the property is in use or occupancy before July 1 of the year immediately following the year during which the completion of the construction, addition, modification or installation occurred.

(e) Except as provided in ORS 285C.245, an exemption may not be granted for qualified property constructed, added, modified or installed after termination of an enterprise zone.

(5) Property is not required to have been exempt under ORS 285C.170 in order to be exempt under this section.

(6) The county assessor shall notify the business firm in writing whenever property is denied an exemption under this section. The denial of exemption may be appealed to the Oregon Tax Court under ORS 305.404 to 305.560.

(7) For each tax year that the property is exempt from taxation, the assessor shall:

(a) Enter on the assessment roll, as a notation, the assessed value of the property as if it were not exempt under this section.

(b) Enter on the assessment roll, as a notation, the amount of additional taxes that would be due if the property were not exempt.

(c) Indicate on the assessment roll that the property is exempt and is subject to potential additional taxes as provided in ORS 285C.240, by adding the notation "enterprise zone exemption (potential additional tax)." [Formerly 285B.698]

(Qualified Property)

285C.180 Qualified property generally. (1) The following types of property are qualified for exemption under ORS 285C.175:

(a) A newly constructed building or structure.

(b) A new addition to or modification of an existing building or structure.

(c) Any real property machinery or equipment or personal property, whether new, used or reconditioned, that is installed on property that is owned or leased by an authorized business firm, and:

(A) Newly purchased or leased by the firm, unless the property is described in ORS 285C.175 (4)(a); or

(B) Newly transferred into the enterprise zone from outside the county within which the site of the firm is located and installed.

(d) Any property otherwise described in this section that is owned or leased and operated by a business firm that is engaged in electronic commerce, if the enterprise zone in which the property is located is a zone approved for electronic commerce designation under ORS 285C.095.

(2) Property described in subsection (1) of this section is qualified under this section

only if:

(a) The property meets or exceeds the minimum cost requirements established under ORS 285C.185;

(b) The property satisfies applicable usage, lease or location requirements established under ORS 285C.185;

(c) The property was constructed, added, modified or installed to further the production of income;

(d) The property is owned or leased by an authorized business firm;

(e) The location of the property corresponds to the location as set forth in the application for authorization of the business firm and consists of a single site or multiple sites adjacent to or having comparable proximity to each other, within the boundaries of the enterprise zone;

(f) The property is the same general type of property as described in the application for authorization; and

(g) In the case of an eligible business firm described in ORS 285C.135 (5)(b), the actual investment at the facility of the firm is consistent with the description set forth in the application for authorization.

(3) Notwithstanding subsection (1) of this section, the following property is not qualified for exemption under ORS 285C.175:

(a) Land.

(b) Property that was not in use or occupancy for more than a 180-day period that ends during the preceding assessment year.

(c) On-site developments that, consistent with ORS 307.010, are assessed as land.

(d) Noninventory supplies, including but not limited to lubricants.

(e) Any operator-driven item of machinery or equipment or any vehicle, if the item or vehicle moves by internal motorized power. An item or vehicle described in this paragraph includes but is not limited to an item or vehicle that moves within an enclosed space.

(f) Any device or rolling stock that is pulled, pushed or carried by a vehicle that is suitable as a mode of transportation beyond the enterprise zone boundary.

(4) Subsection (3)(b) of this section does not apply to the first assessment year for which the property is exempt under ORS 285C.175.

(5) For purposes of this section and ORS 285C.175, property includes any portion or incremental unit of property that is newly constructed or installed, or that is a new addition to or modification of an existing building or structure. [Formerly 285B.713]

285C.185 Minimum cost of qualified property; leased property; hotel, motel or destination resort property; electronic commerce property. (1) In order for property to be qualified property under ORS 285C.180, the property must cost:

(a) \$50,000 or more, in the case of:

(A) All real property that is concurrently exempt at the location; or

(B) An item of personal property that is not described in paragraph (b) of this subsection.

(b) \$1,000 or more, in the case of an item of personal property that is used:

(A) Exclusively in the production of tangible goods; or

(B) In electronic commerce in an enterprise zone approved for electronic commerce

designation under ORS 285C.095.

(2) The estimated cost of property set forth in an application for authorization under ORS 285C.140 shall be disregarded for purposes of determining if property is qualified property.

(3) Property that is leased by the authorized business firm may be qualified property under ORS 285C.180 only if the terms of the lease provide:

(a) During the term of the lease, that the authorized business firm is to compensate the owner of the leased property for all property taxes assessed against the leased property or that the firm is to pay these taxes; and

(b) That the term of the lease begins on or before the start of the first tax year for which the property is exempt and ends on or after the last day of the last tax year for which the property is exempt.

(4) In order for property that is owned or leased by an authorized business firm operating a hotel, motel or destination resort to be qualified property under ORS 285C.180, the property must be:

(a) Located and in service in an enterprise zone for which the sponsor has elected under ORS 285C.070 to treat a business firm engaged in hotel, motel or destination resort operations as an eligible business firm;

(b) Located at the same site as the hotel, motel or destination resort or in close proximity to that site; and

(c) Used primarily to serve overnight guests of the hotel, motel or destination resort. Property is used primarily to serve overnight guests if at least 50 percent of any receipts from use of the property are paid by overnight guests.

(5) In order for property owned or leased and operated by a business firm engaged in electronic commerce in a city designated for electronic commerce under ORS 285C.100 to be qualified property, the property otherwise qualified under this section and the applicable electronic commerce operations of the firm must be located in that city.

(6)(a) As used in this section, "item of personal property" includes an integrated system consisting of various components.

(b) Consistent with paragraph (a) of this subsection, the Department of Revenue may by rule further define what constitutes an item of personal property for purposes of this section. [2003 c.662 §37]

285C.190 Requirements for qualifying reconditioned, refurbished, retrofitted or upgraded property. (1) Notwithstanding ORS 285C.180 (1)(c), an item of reconditioned, refurbished, retrofitted or upgraded real property machinery or equipment that is owned or leased by an authorized business firm is qualified property under ORS 285C.180 if:

(a) The real property machinery or equipment is idle:

(A) At the time of application for authorization; and

(B) For a period of at least 18 consecutive months before or after the time of application for authorization but preceding the first assessment year of the exemption;

(b) Prior to the period of idleness, the property was in use within the enterprise zone or elsewhere in the county for at least 12 consecutive months;

(c) The reconditioning, refurbishing, retrofitting or upgrading of the property costs at least \$50,000 and is completed in the year immediately preceding the first assessment

year in which the property is exempt under ORS 285C.175; and

(d) The business firm applies for authorization before reconditioning, refurbishment, retrofitting or upgrading commences.

(2) The reconditioning, refurbishing, retrofitting or upgrading of an item of real property machinery or equipment described in subsection (1) of this section is a modification and the extent of the exemption under ORS 285C.175 shall be determined as provided in ORS 285C.175 (3)(b)(B).

(3) ORS 285C.175 (4)(a) to (c) does not apply to qualified property described in subsection (1) of this section. [Formerly 285B.714]

285C.195 Alternative requirements for qualifying reconditioned, refurbished, retrofitted or upgraded property. Notwithstanding ORS 285C.190, if an authorized business firm files a claim for exemption under ORS 285C.175 prior to April 1, 2004, at the option of the business firm, all of the following apply in lieu of ORS 285C.190:

(1) If the firm completes the reconditioning, refurbishing, retrofitting or upgrading of real property machinery or equipment that is described in ORS 285C.190 (1), the reconditioned, refurbished, retrofitted or upgraded real property machinery or equipment is qualified property under ORS 285B.713 (2001 Edition) and potentially subject to enterprise zone tax exemption for all of the property's value if the following requirements are satisfied:

(a) Prior to the period of idleness, the property was in use within the enterprise zone for at least 12 consecutive months;

(b) The reconditioning, refurbishing, retrofitting or upgrading of the property involved an investment of at least \$3 million; and

(c) As a result of reconditioning, refurbishing, retrofitting or upgrading the property, the value of the property is at least \$25 million more than the assessed value for the tax year prior to the first tax year of the enterprise zone tax exemption.

(2) The reconditioning, refurbishing, retrofitting or upgrading of real property machinery or equipment described in subsection (1) of this section is a modification of property for purposes of ORS 285C.050 to 285C.250.

(3) ORS 285C.175 (4)(a) to (c) does not apply to qualified property described in subsection (1) of this section.

(4) ORS 285C.200 (1)(c) does not apply to a business firm applying for or claiming an enterprise zone tax exemption for qualified property described in subsection (1) of this section if the provisions of ORS 285C.155 for sponsor approval by resolution of the local governing body or bodies are satisfied. [2003 c.662 §38a]

(Firm and Employment Qualifications)

285C.200 Qualifications of business firm; rules. (1) The qualified property of an authorized business firm may be exempt from property taxation under ORS 285C.175 only if the firm meets the following qualifications:

(a) The firm is an eligible business firm engaged in eligible business operations under ORS 285C.135 that are located inside the enterprise zone;

(b) The firm owns or leases qualified property that is located inside the enterprise zone;

(c) The employment of the firm, no later than the date the exemption is claimed under ORS 285C.220 or April 1 following the year in which the investment in qualified property is made, whichever is earlier, is not less than the greater of:

(A) 110 percent of the annual average employment of the firm; or

(B) The annual average employment of the firm plus one employee;

(d) The firm does not diminish employment outside the enterprise zone as described in subsections (4) and (5) of this section;

(e) The firm does not substantially curtail operations within the enterprise zone as described in ORS 285C.210; and

(f) The firm complies in all material respects with local, Oregon and federal laws applicable to the firm's operations inside the enterprise zone since the application for authorization and throughout the period of exemption, as prescribed by rule.

(2) Notwithstanding subsection (1)(c) or (e) of this section, an eligible business firm may meet the qualifications of this section if the firm has satisfied the following requirements:

(a) The firm is authorized subject to ORS 285C.155 and the firm satisfies those requirements; and

(b)(A) The firm completes an investment of \$25 million or more in qualified property; or

(B) The firm fulfills the requirements of ORS 285C.205 and the employment of the firm does not decrease below the annual average employment of the firm.

(3) An authorized business firm that engages in both eligible and ineligible operations in an enterprise zone and is an eligible business firm because of ORS 285C.135 (3) meets the qualifications of this section if:

(a) The eligible operations of the firm under ORS 285C.135 meet the qualifications of this section; and

(b) The employees of the firm work a majority of their time in eligible operations within the enterprise zone.

(4) A business firm does not meet the qualifications of this section if the firm or any other firm under common control closes or permanently curtails operations in another part of the state more than 30 miles from the nearest boundary of the enterprise zone in which the firm seeks a property tax exemption. This subsection applies to the transfer of any of the business firm's operations to an enterprise zone from another part of the state, if the closure or permanent curtailment in the other part of the state diminished employment in the county and more local labor markets after authorization and on or before December 31 of the first tax year for which any qualified property of the firm in that zone would otherwise be exempt under ORS 285C.175.

(5) An authorized business firm that moves any of its employees from a site or sites within 30 miles from the nearest boundary of the enterprise zone after authorization may meet the qualifications under this section if the employment of the firm has been increased within the zone and at the site or sites from which the employees were transferred, no later than April 1 preceding the first tax year for which qualified property of the firm is exempt under ORS 285C.175, to not less than 110 percent of the annual average employment of the firm within the zone and the site or sites from which the employees were transferred, calculated over the 12 months preceding the date of application for authorization.

(6) For purposes of subsection (1)(f) of this section, the Economic and Community Development Department shall adopt rules that define the effect of noncompliance on an eligible business firm's continuing exemption in an enterprise zone and that indicate what is necessary to establish the noncompliance in terms of materiality of the relevant violation, the finality of applicable legal or regulatory proceedings and judgments involving the firm, the failure by the firm to perform or submit to remedial or curative actions and similar factors.

(7) As used in this section:

(a) "Annual average employment of the firm" means the average employment of the firm, calculated over the 12 months preceding the date of application for authorization.

(b) Except as provided in subsection (5) of this section, "employment of the firm" means:

(A) The number of employees working for the firm a majority of their time in eligible operations at locations within the enterprise zone; or

(B) In the case of a firm described in ORS 285C.135 (5)(b), the number of employees working a majority of their time at the facility in the enterprise zone for which authorization was obtained. [Formerly 285B.704]

Note: Sections 2 to 4, chapter 432, Oregon Laws 2003, provide:

Sec. 2. (1) Notwithstanding ORS 285B.704 (1)(c) or (e) or (2) [renumbered 285C.200 (1)(c) or (e) or (2)], an eligible business firm is a qualified business firm if:

(a) The firm completes an investment of \$20 million or more in qualified property on or before December 31 preceding the first assessment year for which exemption under ORS 285B.698 [renumbered 285C.175] is sought;

(b) The zone sponsor approves the extension of property tax benefits to the firm; and

(c) The firm was precertified on or after January 1, 2000, and before January 1, 2001.

(2) The approval of the zone sponsor to extend property tax benefits to the firm shall be documented by resolution of the governing body of the sponsor. The resolution may:

(a) Modify or waive minimum employment requirements specified in a prior resolution adopted by the sponsor under ORS 285B.704 (2); and

(b) Specify application to past, current or future tax years.

(3) A resolution described in subsection (2) of this section must be adopted by the governing body of the zone sponsor on or before June 30, 2004.

(4) An eligible business firm that satisfies the requirements of subsection (1) of this section shall be deemed to satisfy the requirements of ORS 285B.704.

(5) Upon satisfying the requirements of subsection (1) of this section, the qualified property of the business firm shall be exempt from tax for the years specified in the resolution of the zone sponsor and in which the qualified property of the firm meets the requirements for exemption under ORS 285B.698. [2003 c.432 §2; 2003 c.662 §39a]

Sec. 3. (1) A qualified business firm described in section 2 of this 2003 Act that has received the approval of the zone sponsor under section 2 (1)(b) of this 2003 Act may apply in writing to the county assessor for the refund of any property taxes imposed on the qualified property described in section 2 (1)(a) of this 2003 Act for the tax year beginning July 1, 2002, and any related interest or penalties, that have been paid by the firm.

(2) Upon receipt of the application for refund, the county assessor shall determine the

amount to be refunded and shall certify that amount to the county treasurer.

(3) The county treasurer shall refund the amount certified, out of the refund reserve account established under ORS 311.807 or out of the unsegregated tax collections account described in ORS 311.385, to the business firm. Interest may not be paid on the refund.

(4) If property taxes, interest or penalties described in subsection (1) of this section have not been paid, such amounts shall be abated. [2003 c.432 §3]

Sec. 4. Sections 2 and 3 of this 2003 Act are repealed December 31, 2007. [2003 c.432 §4]

285C.205 Effect of productivity increases on qualification of certain firms; uses of tax savings. The requirements of ORS 285C.200 (2)(b)(B) are met if the qualified business firm does all of the following:

(1) The firm demonstrates at least a 10 percent increase in productivity no later than 18 months following January 1 of the first assessment year for which an exemption under ORS 285C.175 is claimed. Unless further specified by the sponsor of the enterprise zone through the resolution adopted under ORS 285C.155:

(a) The increase must be in business operations of the firm that are using qualified property receiving the exemption;

(b) Productivity is measured by dividing physical units or quantity of output by the number of labor hours engaged in the operations that produced the physical units or quantity of output; and

(c) The base level of productivity shall be established over a minimum 12-month period preceding the date on which the qualified property is placed in service.

(2) The firm maintains or exceeds the 10 percent increase in productivity under subsection (1) of this section as an annual average rate for each subsequent assessment year during the remainder of the exemption period.

(3) On or before April 1 of each of the first three assessment years for which an exemption is claimed, the firm deposits into an account established by the sponsor an amount equal to 25 percent of the estimated tax savings arising from the exemption for that year. The sponsor may adopt additional specifications or requirements applicable to this subsection in the resolution the sponsor adopts under ORS 285C.155. Consistent with this subsection and any additional specifications or requirements adopted by the sponsor:

(a) For up to 30 months following the relevant April 1 date for which a deposit is made, the firm may draw from the account amounts equal to any expense incurred for training or retraining employees to promote or facilitate productivity increases under this section, except that the total amount withdrawn from the account for that deposit may not exceed \$3,500 per trained employee;

(b) Any amount attributable to the deposit that remains in the account after the 30-month period in which firm withdrawals may be made under paragraph (a) of this subsection shall be transferred to a special fund for use by local publicly funded job training providers; and

(c) No more than 18 months after the deposit, the estimated tax savings on which the deposit was based shall be reconciled with the actual tax savings arising from the exemption. The reconciliation shall be accomplished by the firm immediately making a further deposit into the account to cover any shortfall or by being reimbursed from the

account for any surplus. A deposit or reimbursement made pursuant to this paragraph does not affect withdrawals or transfers that occur as a result of paragraph (a) or (b) of this subsection. [2003 c.662 §33a]

285C.210 Substantial curtailment of business operations. (1) For purposes of ORS 285C.175, 285C.200 and 285C.240, operations of a business firm are substantially curtailed when:

(a) The number of employees of the firm within the enterprise zone is reduced by more than 85 percent from the highest number of employees of the firm within the enterprise zone;

(b) The number of employees of a firm within the enterprise zone has been reduced by more than 50 percent from the highest number of employees of the firm within the enterprise zone for a period of time that is equal to or more than nine months; or

(c) The annual average number of employees within the enterprise zone during the first assessment year for which the exemption under ORS 285C.175 is granted, or any subsequent year in which an exemption is claimed, is reduced below the greater of:

(A) The annual average number of employees of the business firm within the enterprise zone, averaged over the 12 months preceding the date of the application for authorization, plus one employee; or

(B) 110 percent of the annual average number of employees of the firm within the enterprise zone, averaged over the 12 months preceding the date of the application for authorization.

(2) For the purposes of this section:

(a) The number of employees of a firm within the enterprise zone is the employment of the firm, as defined in ORS 285C.200, on the earlier of the date a claim for exemption is filed under ORS 285C.220 or April 1, of each assessment year for which an exemption under ORS 285C.175 is claimed, and for the year immediately following the last assessment year for which an exemption is claimed.

(b) Except as specified in subsection (1)(c) of this section, the annual average number of employees of the firm is the number of firm employees within the enterprise zone averaged over each assessment year in which an exemption under ORS 285C.175 is allowed, using employment figures for no fewer than four equivalent periods during the year.

(c) For the first assessment year for which an authorized business firm that qualifies under ORS 285C.200 (5) claims an exemption under ORS 285C.175, substantial curtailment under subsection (1)(a) or (c) of this section shall be determined by:

(A) Combining the number of employees of the firm within the enterprise zone and the number of employees at all other sites of the firm within the area described in ORS 285C.200 (5); and

(B) Combining the annual average number of employees of the firm within the enterprise zone with the annual average number of employees at any other site of the firm from which employees were transferred into the enterprise zone. [2003 c.662 §40]

285C.215 First-source hiring agreements; rules. (1) The qualified property of an authorized business firm may be exempt from property tax under ORS 285C.175 only if the firm enters into a first-source hiring agreement for the period of property tax

exemption. The agreement must be executed prior to the assessment date for the first tax year for which qualified property of the firm is exempt under ORS 285C.175 and must expire no sooner than December 31 of the final year of the exemption.

(2)(a) If a firm has not entered into a first-source hiring agreement when qualified property of the firm is first placed in service, as of April 1 preceding the first tax year for which the authorized business firm claims an exemption for qualified property under ORS 285C.175, the sponsor shall inform the county assessor that an agreement under this section has not been executed.

(b) A publicly funded job training provider having knowledge of the date when qualified property of the firm is first placed in service may also inform the county assessor that an agreement under this section has not been executed.

(3) In accordance with rules adopted by the Economic and Community Development Department, the Director of the Economic and Community Development Department may waive the requirements of subsection (1) of this section for an authorized business firm. The rules adopted by the department shall provide for a waiver under this subsection when the director finds that:

(a) The business firm is unable to employ persons referred under the agreement; or

(b) The waiver would further the goals and purposes of applicable state policies.

[Formerly 285B.710]

(Exemption Claim and Verification Procedures)

285C.220 Exemption claims; contents; late filing; fees. (1)(a) After January 1 and on or before April 1 of the assessment year immediately following the year in which qualified property in an enterprise zone is placed in service, and of each assessment year thereafter for which an exemption is sought, an authorized business firm may file a claim for the exemption allowed under ORS 285C.175.

(b) The claim shall be made by completing a form prescribed by the Department of Revenue and by filing the form with the county assessor. The firm shall furnish a copy of the claim to the sponsor.

(c) The firm shall also file a form described in this subsection after the final assessment year of the exemption period.

(2) A claim filed under this section shall contain all of the following:

(a) A statement that:

(A) The business firm satisfies the requirements of ORS 285C.200 as a qualified business firm; and

(B) The business firm has been authorized by the enterprise zone sponsor and the county assessor and has satisfied any commitments made in the firm's application for authorization or made as a condition of authorization. The date the application for authorization was submitted and approved shall be set forth in the statement.

(b) A statement confirming the continued eligibility of the firm under ORS 285C.135 or explaining any change in eligibility.

(c) A schedule setting forth the following employment data:

(A) The number of employees of the firm within the enterprise zone on the date the claim is filed under this section or April 1, whichever is earlier;

(B) The annual average number of employees of the firm within the enterprise zone

during the preceding assessment year; and

(C) The annual average number of employees of the firm within the enterprise zone, averaged over the 12-month period preceding the date of the application for authorization.

(d) The annual average compensation for the previous assessment year of new employees hired by the firm within the enterprise zone, but only if:

(A) The firm is subject to annual compensation requirements under ORS 285C.160; and

(B) The claim is filed for a year that is not the first year for which a claim is filed under this section.

(e) Any attachments required under ORS 285C.225.

(f) For any qualified property listed on a property schedule included in a claim filed for a previous assessment year and that continues to be exempt for the current assessment year:

(A) Confirmation that there has been no change in the ownership, lease, location, disposition, operation, use or occupancy of the property; or

(B) In the case of a change in the ownership, lease, location, disposition, operation, use or occupancy of the property, an explanation of the change.

(g) Any other information required by the Department of Revenue.

(3) The business firm shall be prepared to verify any information set forth in a claim filed under this section. The statement made pursuant to subsection (2)(a) of this section shall be prima facie evidence that the firm is a qualified business firm.

(4) If the assessor determines the property for which exemption is sought satisfies the requirements of ORS 285C.175, the assessor shall grant the exemption for the tax year beginning July 1.

(5) The assessor shall provide copies of each claim for exemption filed under this section as directed by the Department of Revenue.

(6) If a claim for exemption relates to principal or secondary industrial property as defined by ORS 306.126 and is filed with the Department of Revenue within the time required by subsection (1) of this section, the claim shall be deemed timely filed with the assessor. The Department of Revenue shall send a copy of the filed claim to the assessor.

(7)(a) Notwithstanding subsection (1) of this section, a claim may be filed under this section on or before June 1 of the assessment year if:

(A) The claim includes qualified property that, pursuant to ORS 285C.225, is required to be listed on a property schedule included with the claim form because the year for which the claim is being filed is the first year for which the property is exempt under ORS 285C.175; and

(B) The claim is accompanied by a late filing fee equal to the greater of \$200 or one-tenth of one percent of the real market value of the qualified property listed on the property schedule accompanying the claim.

(b) An exemption may not be granted pursuant to a claim filed under this subsection if the claim is not accompanied by the late filing fee.

(8)(a) Notwithstanding subsection (1) of this section, a claim may be filed under this section on or before August 31 of the assessment year if:

(A) The claim does not include qualified property that, pursuant to ORS 285C.225, is required to be listed on a property schedule included with the claim; and

(B) The claim is accompanied by a late filing fee equal to the greater of:

(i) \$200; or

(ii) One-fiftieth of one percent of the real market value of the qualified property of the business firm multiplied by the number of 30-day periods from April 1 of the assessment year until the date the claim is filed. A period of less than 30 days shall constitute a 30-day period for purposes of this subparagraph.

(b) An exemption may not be granted pursuant to a claim filed under this subsection if the claim is not accompanied by the late filing fee.

(9) The value of the property used to determine the late filing fees under this section is appealable in the same manner as other determinations of value by the county assessor are appealable.

(10)(a) Notwithstanding subsection (1) of this section, a claim may be filed under this section on or before April 1 following the assessment year after the year in which the qualified property was placed in service.

(b) If a claim filed under this subsection is approved by the county assessor, the qualified property shall be exempt from property taxation only for those tax years that begin after the date the claim was filed under this subsection and for which the property otherwise qualifies for exemption under ORS 285C.050 to 285C.250.

(11) Any filing fee collected under this section shall be deposited to the county general fund.

(12) A claim may be filed under this section as of the dates prescribed in subsections (7), (8) and (10) of this section, regardless of any grounds for hardship under ORS 307.475. [Formerly 285B.722]

285C.225 Sponsor's addendum; property schedule; amendments. (1) An exemption claim filed under ORS 285C.220 must, when applicable, include a sponsor's addendum setting forth any information required by the sponsor of the enterprise zone pursuant to ORS 285C.140 (5), 285C.150, 285C.155 or 285C.160.

(2) For the first tax year for which qualified property is exempt under ORS 285C.175, the claim filed under ORS 285C.220 must include a property schedule listing the qualified property.

(3)(a) The business firm is required to include the property schedule described in subsection (2) of this section with a claim filed under ORS 285C.220 only once for any item of qualified property. The firm shall include additional property schedules with subsequent claims in order to claim exemption of additional qualified property that is pursuant to the same application for authorization.

(b) The firm may not file an additional property schedule to claim an exemption for additional qualified property for a tax year that is more than two years after the first tax year for which any qualified property of the firm was exempt under ORS 285C.175, except pursuant to another authorization application.

(4) The property schedule shall be set forth on a form prescribed by the Department of Revenue and shall contain:

(a) A list of all qualified property that satisfies all requirements for exemption under ORS 285C.175 for the tax year for which the exemption is being claimed and that has not been exempt under ORS 285C.175 for a previous tax year;

(b) For each item of property described in paragraph (a) of this subsection, the cost of

the property and the date the property was placed in service;

(c) Any information needed to determine compliance with any applicable requirements under ORS 285C.180, 285C.185 or 285C.190;

(d) In the case of qualified property that is leased by the business firm, a signature on the property schedule or other evidence that the enterprise zone exemption is acknowledged by the owner of the leased property; and

(e) Any other information required by the Department of Revenue.

(5) The county assessor may allow the business firm to amend the property schedule to include any other item of qualified property described in subsection (2) of this section that was not listed on the original property schedule included in the claim filed for the assessment year. An amendment to the property schedule may not be made after June 1 of the assessment year. [2003 c.662 §43]

285C.230 Assessor to grant or deny exemption; assistance of sponsor. (1) In granting or denying an exemption under ORS 285C.175, the county assessor may:

(a) Reasonably rely on information set forth in the exemption claim filed under ORS 285C.220; and

(b) Request and be given assistance from the sponsor before making certain determinations, including but not limited to:

(A) Determining if the exemption is being claimed by a qualified business firm under ORS 285C.200;

(B) Determining the extent to which qualified property is used by persons other than the qualified business firm or is used for business activities that may not be conducted in an enterprise zone by an eligible business firm under ORS 285C.135; or

(C) Determining if the use, leasing or location of qualified property satisfies applicable requirements under ORS 285C.180, 285C.185 or 285C.190.

(2) The county assessor is not responsible for determining if the firm has satisfied any requirement established by the sponsor under ORS 285C.140, 285C.150, 285C.155, 285C.160 or 285C.205.

(3) If a business firm fails to timely file an exemption claim under ORS 285C.220:

(a) The assessor or the sponsor may use the authority granted to the assessor under ORS 285C.235; or

(b) The assessor may deny the exemption under ORS 285C.175 for the current tax year or for any future tax year for which the property would otherwise qualify for exemption under ORS 285C.175.

(4) If the sponsor or the assessor has reason to question the accuracy or veracity of any information contained in a claim filed under ORS 285C.220, the sponsor or the assessor may use the authority provided under ORS 285C.235.

(5) If any information submitted by a business firm under ORS 285C.220 indicates that the firm is no longer in compliance with any requirements that apply to the firm or the qualified property of the firm, the information shall be considered notice for purposes of ORS 285C.240.

(6) The county assessor shall make reasonable and timely efforts to notify an authorized business firm that is seeking or receiving an exemption under ORS 285C.175 of the filing requirements under ORS 285C.220, but the county assessor and the Department of Revenue are not under any obligation other than as otherwise provided in

ORS 285C.050 to 285C.250 to seek or receive information about the continued entitlement of property to an exemption under ORS 285C.175.

(7) The sponsor is primarily responsible for assisting a business firm in timely filing claims under ORS 285C.220. If the sponsor, or a local zone manager designated by the sponsor, does not receive a copy of the claim as required under ORS 285C.220 by the time the claim is required to be filed under ORS 285C.220, the sponsor or manager shall immediately contact the assessor for taking action under subsection (3) of this section. [2003 c.662 §44]

285C.235 Authority of county assessor; authority of sponsor. (1) The county assessor is at all times authorized to demand reports by registered or certified mail from owners or lessees of qualified property concerning the use of the qualified property and the employment status of the qualified business firm for purposes of ORS 285C.050 to 285C.250. If, after 60 days' notice in writing by registered or certified mail, the owner or lessee fails to comply with this demand, the assessor may disqualify the property under ORS 285C.240, giving written notice of the disqualification to the Department of Revenue and the owner or lessee of the qualified property.

(2) The assessor is under no obligation to verify compliance by a qualified business firm with requirements imposed on the firm by the sponsor under ORS 285C.150, 285C.155, 285C.160 or 285C.205.

(3) The sponsor of an enterprise zone may initiate procedures in order to verify compliance by qualified business firms with requirements imposed under ORS 285C.050 to 285C.250. The procedures may include written requests to the assessor by the local zone manager or an executive official of the sponsor that the assessor exercise authority under this section for a particular qualified business firm. [2003 c.662 §45]

(Disqualification From Exemption)

285C.240 Disqualification; notice and procedures; in lieu payments and additional taxes; penalty; use of moneys. (1) The county assessor of any county in which an enterprise zone is situated or the sponsor shall be notified in writing by the qualified business firm or by the owner of the qualified property leased by the qualified business firm not later than July 1 following the assessment year for which the exemption is claimed and in which one of the following events occurs:

(a) Property granted exemption from taxation under ORS 285C.175 is sold, exchanged, transported or otherwise disposed of for use outside the enterprise zone or for use by an ineligible business firm;

(b) The qualified business firm closes or so reduces eligible operations that the reduction constitutes a substantial curtailment of operations under ORS 285C.210, unless a substantial curtailment of operations is permitted under ORS 285C.200 (2);

(c) The qualified business firm fails to meet any of the qualifications required under ORS 285C.200;

(d) The qualified business firm fails to meet any condition that the firm is required to satisfy under ORS 285C.150, 285C.155 or 285C.205 or any term of an agreement entered into with the sponsor under ORS 285C.160 with which the firm had agreed to comply;

(e) The qualified business firm uses the property to conduct activities in the enterprise

zone that are not eligible activities; or

(f) Property of the qualified business firm for which exemption under ORS 285C.175 is claimed ceases to be qualified property under ORS 285C.180.

(2) If the sponsor receives written notice under subsection (1) of this section, the sponsor shall immediately send a copy of the notice to the county assessor of the county in which the enterprise zone is situated.

(3)(a) When an assessor receives written notice under subsection (1) or (2) of this section, the assessor shall disqualify the property for the assessment year following the disqualifying event and 100 percent of the additional taxes calculated under ORS 285C.175 shall be assessed against the property for each year for which the property had been granted exemption under ORS 285C.175.

(b) Notwithstanding paragraph (a) of this subsection, if a qualified business firm fails to meet any of the requirements of an agreement entered into by the firm under ORS 285C.160 during the exemption, but meets all other applicable requirements under ORS 285C.050 to 285C.250 during the first three years of the exemption, the qualified property of the firm may not be disqualified during the first three years of exemption for failure to comply with the requirements of the agreement entered into under ORS 285C.160.

(c) The additional taxes assessed under this subsection shall be reduced by the amount, if any, paid by the qualified business firm to the sponsor under subsection (6) of this section for the same property.

(4) If the qualified business firm or owner fails to give the notice on time or at all as required by subsection (1) of this section, upon discovering the property no longer qualifies for the exemption due to a circumstance described in subsection (1) of this section, the assessor shall:

(a) Disqualify the property from exemption;

(b) Compute the amount of taxes described in subsection (3) of this section as though notice had been given, and add to that amount an additional penalty equal to 20 percent of the total amount so computed; and

(c) Add the property to the assessment and tax roll without the exemption as if the notice had been given.

(5) The amount determined to be due under subsections (3) and (4) of this section:

(a) May be paid to the tax collector before completion of the next general property tax roll pursuant to ORS 311.370; and

(b) Shall be added to the tax extended against the property on the next general property tax roll to be collected and distributed in the same manner as the remainder of the property taxes.

(6)(a) Notwithstanding subsections (3) and (5) of this section, if an assessor or sponsor receives notice from a business firm under subsection (1)(b), (c) or (d) of this section and the qualified business firm has not closed its operations, the qualified business firm shall pay the sponsor an amount equal to the property taxes for the qualified property in the assessment year for which the exemption is claimed in lieu of the amounts otherwise due under subsection (3) of this section.

(b) Moneys collected under paragraph (a) of this subsection shall be used by the sponsor to benefit the residents of the enterprise zone and for the development of jobs, skills and training for residents of the enterprise zone and the zone's immediate vicinity.

(c) This subsection applies only to the first notice given by the business firm under subsection (1)(b), (c) or (d) of this section.

(d) If the sponsor does not receive the full amount to be paid by the qualified business firm under paragraph (a) of this subsection, the assessor shall disqualify the property and impose the entire amount of additional taxes as prescribed under subsection (3) of this section.

(7) An assessor may not disqualify property under this section for failure by a qualified business firm or an owner of qualified property leased by the qualified business firm to notify the assessor or the enterprise zone sponsor that the qualified business firm does not meet requirements under ORS 285C.150, 285C.155, 285C.160 or 285C.205, without having received written communication from the sponsor that demonstrates that the qualified business firm does not meet the requirements.

(8) Additional taxes collected under this section shall be deemed to have been imposed in the year to which the additional taxes relate.

(9) If property is disqualified from exemption under this section, the assessor shall notify the qualified business firm, and the owner of any qualified property that is leased by the firm, of the disqualification. The notification shall be made in writing. The assessor shall provide copies of the disqualification to the sponsor, the Department of Revenue and the Economic and Community Development Department. The decision of the assessor to disqualify property under this section may be appealed to the Oregon Tax Court under ORS 305.404 to 305.560. [Formerly 285B.728]

Note: Sections 15 and 16, chapter 704, Oregon Laws 2005, provide:

Sec. 15. (1) Notwithstanding ORS 285C.240 (3) and (5), if a county assessor or sponsor receives notice from a qualified business firm under ORS 285C.240 (1)(b), additional taxes calculated under ORS 285C.175 may not be assessed or collected if:

(a) The closure or reduction in eligible operations is a direct result of fire that has physically destroyed qualified property and that was beyond the control of the firm; and

(b) The destruction occurred on or after July 1, 2005, and before August 1, 2005.

(2) The definitions in ORS 285C.050 apply to this section. [2005 c.704 §15]

Sec. 16. Section 15 of this 2005 Act is repealed January 2, 2008. [2005 c.704 §16]

(Termination of Enterprise Zone)

285C.245 Termination; effect of termination on property; procedures. (1) When the termination of an enterprise zone occurs under this section:

(a) The termination of the enterprise zone does not affect:

(A) The continuation of a qualified business firm's property tax exemption first allowed before the effective date of the termination of the enterprise zone; or

(B) The ability of an authorized business firm to claim exemption under ORS 285C.175 if:

(i) The authorization application of the firm was filed with the sponsor before the effective date of the termination of the zone;

(ii) The firm remains authorized at the time the exemption is claimed;

(iii) The firm completes construction, addition, modification or installation of the qualified property within a reasonable time and without interruption of construction,

addition, modification or installation activity; and

(iv) The property meets all other applicable requirements for exemption under ORS 285C.175.

(b) A business firm that is currently authorized or qualified in the enterprise zone shall be allowed until 10 years after the effective date of the termination of the enterprise zone to apply for authorization under ORS 285C.140 and to subsequently claim the exemption for any qualified property that is constructed, added, modified or installed inside the former enterprise zone boundaries, as those boundaries existed at the time of termination, and entirely outside of the boundaries of any current enterprise zone. Construction, addition, modification or installation of qualified property must commence prior to the end of the final tax year in which qualified property of the firm is exempt under ORS 285C.175 and must be completed within a reasonable time and without interruption of construction, addition, modification or installation activity. The property must meet all other applicable requirements for exemption under ORS 285C.175.

(c) Disqualification under ORS 285C.240 of all exempt property of the business firm after the effective date of the termination of the enterprise zone shall prohibit and terminate all authorizations sought or obtained by the business firm that would not otherwise be allowed except for paragraph (b) of this subsection. Disqualification under ORS 285C.240 of all exempt property of the business firm on or after the effective date of the termination of the enterprise zone shall cause the assessor to deny any claim for exemption under ORS 285C.175 of qualified property of the business firm made in a subsequent tax year.

(2) An enterprise zone designated by the Director of the Economic and Community Development Department under ORS 285C.080, 285C.085 or 285C.250 shall terminate when 10 years plus that number of days necessary to delay the date of termination to the June 30 next following have elapsed since the enterprise zone was originally designated.

(3) An enterprise zone designated by the director under ORS 285C.080, 285C.085 and 285C.250 shall terminate prior to the time specified in subsection (2) of this section only as provided in subsections (4) to (6) of this section.

(4) The governing body of the sponsor may submit a resolution requesting termination of the enterprise zone to the Economic and Community Development Department. The sponsor shall provide copies of the resolution to the county assessor and the Department of Revenue. After receipt of the request, the director shall order termination of the enterprise zone and shall specify the effective date of the termination.

(5) If a sponsor is unable or unwilling to carry out its responsibilities under ORS 285C.105, the director shall order termination of the enterprise zone and shall specify the effective date of the termination. However, in the case of failure to provide enhanced local public services, local incentives or local regulatory flexibility included in the application for designation as an enterprise zone or in the resolution under ORS 285C.115 (7), termination is not required if the sponsor provides to authorized or qualified business firms new enhanced local public services, local incentives or local regulatory flexibility that is of comparable value, or makes reasonable corrections of shortcomings in existing local incentives. A sponsor may reduce the time within which it will provide enhanced local public services, local incentives and local regulatory flexibility to a time period equal to the amount of time allowed for an exemption under ORS 285C.175 without causing termination under this section.

(6) An enterprise zone designated on or after January 1, 2004, shall terminate if no qualified business firm has located within the zone by December 31 following the date that is six years after the date the zone was designated.

(7) A reservation enterprise zone designated under ORS 285C.306 shall terminate in accordance with subsection (2) of this section, but may be redesignated at any time under ORS 285C.306. [Formerly 285B.686]

285C.250 Designation of new zone following zone termination. (1) Within a reasonable period of time prior to the termination of enterprise zones under ORS 285C.245 (2), the Director of the Economic and Community Development Department shall competitively designate the same number of enterprise zones effective immediately after termination of the previous enterprise zones. The determination by the director as to the areas designated as enterprise zones shall be final.

(2) When an enterprise zone is terminated under ORS 285B.686 (4) to (6), the director may competitively designate a new enterprise zone. The sponsor of the enterprise zone terminated under ORS 285C.245 (4) or (5) is not eligible to apply for a new enterprise zone, except for a county government when the terminated zone was also jointly sponsored by one or more cities or ports.

(3) Sponsors of existing enterprise zones that are due to terminate may reapply for designation under subsection (1) of this section.

(4) Any city, county or port may apply to the director for designation of an enterprise zone in accordance with the criteria set forth in ORS 285C.065 and 285C.090. In addition, the Economic and Community Development Department by rule shall determine the minimum level of economic hardship in any area to be included within an enterprise zone, any other criteria necessary to evaluate the need for the enterprise zone and the potential for accomplishing the purposes of ORS 285C.050 to 285C.250.

(5) All enterprise zones designated under this section shall terminate in accordance with ORS 285C.245 (2).

(6) When the director designates enterprise zones under this section, there is no limit on the relative number of urban or rural enterprise zones designated.

(7) The director may determine when to accept applications for any enterprise zone that terminates under subsection (2) of this section or is not designated under subsection (1) of this section for lack of qualified applicants. [Formerly 285B.689; 2005 c.94 §10; 2005 c.704 §12]

(Sunset Date)

285C.255 Sunset of enterprise zone program. (1) Notwithstanding any other provision of ORS 285C.050 to 285C.250:

(a) An area may not be designated as an enterprise zone after June 30, 2009;

(b) A business firm may not obtain authorization under ORS 285C.140 after June 30, 2009; and

(c) An enterprise zone, except for a reservation enterprise zone, that is in existence on June 29, 2009, is terminated on June 30, 2009.

(2) Notwithstanding subsection (1) of this section:

(a) A reservation enterprise zone may be designated under ORS 285C.306 after June

30, 2009; and

(b) A business firm may obtain authorization under ORS 285C.140 after June 30, 2009:

- (A) If located in a reservation enterprise zone; or
- (B) As allowed under ORS 285C.245 (1)(b). [2003 c.662 §49]

Note: 285C.255 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 285C or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

285C.260 [Formerly 285B.731; renumbered 285C.045 in 2005]

RESERVATION ENTERPRISE ZONES

285C.300 Definitions for ORS 285C.300 to 285C.320. As used in ORS 285C.300 to 285C.320:

(1) “Eligible business” means a business that:

(a) Is engaged within a reservation enterprise zone in the manufacture or provision of goods, products or services to other businesses or to the general public, through activities including, but not limited to, manufacturing, assembly, fabrication, processing, shipping, storage, retail sales or services, child care, housing, retail food service, health care, tourism, entertainment, financial services, professional services, energy development, construction or similar activities; and

(b) Occupies or owns a new business facility within a reservation enterprise zone.

(2) “New business facility”:

(a) Means a physical asset within a reservation enterprise zone that satisfies the following requirements:

(A) The facility is used by a business in the operation of a revenue-producing enterprise, except that the revenue-producing enterprise must consist of activity other than leasing the facility to another person; and

(B) The facility is acquired by or leased to a business on or after January 1, 2002, including a facility, the title or possession of which is transferred to the business on or after January 1, 2002, or a facility, the construction, erection or installation of which is completed on or after January 1, 2002;

(b) Subject to paragraph (c) of this subsection, includes a facility acquired or leased from a person that used the facility in a revenue-producing enterprise within the boundaries of the same Indian reservation immediately prior to the transfer of title or possession of the facility to the business; and

(c) Does not include:

(A) A facility that is used in a revenue-producing enterprise that is the same or substantially identical to the revenue-producing enterprise in which the facility was previously used within the boundaries of the same Indian reservation; or

(B) Any property that merely replaces existing property and that does not expand the capacity of the revenue-producing enterprise in which the facility is to be used.

(3) “Reservation enterprise zone” means a zone designated by ORS 285C.306.

(4) “Tribal government” means the governing body of an Indian tribe, if the

governing body has the authority to levy, impose and collect taxes within the boundaries of the reservation of the tribe.

(5) “Tribal tax” means any specific tax that is or may be levied or imposed by a tribal government upon a business and that is measured with reference to a specific level or quantity of that business’s income, operations, use or ownership of property. “Tribal tax” includes, but is not limited to, an income or excise tax, an ad valorem property tax, a gross receipts tax or a sales and use tax. [Formerly 285B.766]

285C.303 Legislative findings. The Legislative Assembly finds that the welfare of the residents of the rural Indian reservations of this state is acutely dependent upon the growth, development and expansion of employment and business opportunities within reservation boundaries. Geographic and other obstacles have made it difficult for rural Indian reservations to attract and retain private business investment. The tax systems of this state, by subjecting businesses located within reservation boundaries to state taxation in addition to any taxation imposed by the reservations themselves, has heightened the economic isolation of this state’s rural reservations and impeded the efforts of Indian tribes to develop sufficient tax bases to fund essential governmental services on their reservations. The Legislative Assembly further finds that it is in the best interests of this state to create equality that will enable rural Indian reservations to attract and retain private business investment. The Legislative Assembly declares that it is the purpose of ORS 285C.300 to 285C.320 to remove the tax disincentives that currently inhibit private business and industry from locating and operating enterprises within the boundaries of the rural Indian reservations of this state. [Formerly 285B.767]

285C.306 Reservation enterprise zones. (1) Trust land of an Indian tribe that meets all of the following requirements is designated as a reservation enterprise zone for the purposes of ORS 285C.300 to 285C.320:

- (a) The Indian tribe is a federally recognized Indian tribe;
- (b) The reservation of the Indian tribe is entirely within the boundaries of this state;
- (c) The land for which zone designation is sought is land held in trust by the United States for the benefit of the Indian tribe and is located entirely within the boundaries of the reservation;
- (d) Fifty percent or more of the households within the boundaries of the reservation have incomes below 80 percent of the median income of this state, as defined by the most recent federal decennial census; and
- (e) The unemployment rate within the reservation for all enrolled members of the tribe is at least 2.0 percentage points greater than the comparable unemployment rate for this state, as defined by the most recently available data published or officially provided and verified by the United States Government, the Employment Department, the Portland State University Center for Population Research and Census or a special study conducted under a contract with a regional academic institution.

(2) At the request of a tribal government, the Economic and Community Development Department shall determine if trust land is designated as a reservation enterprise zone under this section. [Formerly 285B.770; 2005 c.704 §3]

285C.309 Income tax credit for new business facility in reservation enterprise

zone. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to an eligible business operating a new business facility in a reservation enterprise zone.

(2) The amount of the credit allowed to the eligible business shall equal:

(a) The amount of tribal property tax imposed on a new business facility of an eligible business that is paid or incurred by the eligible business during the income or corporate excise tax year of the eligible business; or

(b) If the eligible business has not previously conducted business operations within the reservation enterprise zone, the amount of tribal tax paid or incurred by the eligible business during the income or corporate excise tax year of the eligible business.

(3) The credit allowed to the eligible business may not exceed the tax liability of the eligible business for the tax year and may not be carried over to another tax year.

(4) A credit is allowable under this section only to the extent the tribal tax on which the credit is based is imposed on businesses not owned by Indians on a uniform basis within the territory over which the tribal government has the authority to levy, impose and collect taxes.

(5) The credit shall be claimed on a form prescribed by the Department of Revenue containing the information required by the department, including information sufficient for the department to determine that the taxpayer is an eligible business and that the facility operated by the business is a new business facility.

(6) An eligible nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by subsection (1) of this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(7) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(8) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(9) An eligible business claiming a credit under this section shall maintain records sufficient to authenticate the allowance of the credit claimed under this section and shall furnish the department with these records upon the request of the department.

(10) A credit claimed by an eligible business may not be disallowed solely because the eligible business conducts business operations both within and outside of a reservation enterprise zone. [Formerly 285B.773]

285C.320 Status of reservation enterprise zone; sponsor. (1) A reservation enterprise zone shall be considered to be a rural enterprise zone for purposes of ORS 285C.050 to 285C.250. The tribal government of the reservation shall be considered to be the sponsor of the reservation enterprise zone.

(2) Reservation enterprise zones may not be taken into account in determining the number of rural enterprise zones allowable in this state under ORS 285C.050 to 285C.250, and are not subject to numerical limitation under ORS 285C.050 to 285C.250.

(3) In order for property within a reservation enterprise zone to be exempt under ORS

285C.175, the business firm and property must meet all of the requirements applicable to business firms and property in any rural enterprise zone.

(4) As used in this section, "business firm" has the meaning given that term in ORS 285C.050. [Formerly 285B.776; 2005 c.94 §11]

RURAL RENEWABLE ENERGY DEVELOPMENT ZONES

285C.350 Definitions for ORS 285C.350 to 285C.370. As used in ORS 285C.350 to 285C.370:

(1) "Applicant" means the city, county or group of counties applying for designation of territory as a rural renewable energy development zone.

(2) "Renewable energy" means electricity that is generated through use of a renewable energy resource, as defined in ORS 469.185.

(3) "Rural county" means a sparsely populated county, as defined in ORS 285C.050. [2003 c.662 §69; 2005 c.94 §12]

285C.353 Designation of rural renewable energy development zones; requirements; multiple designations; zone sponsor. (1) A rural county, a city in a rural county or a combination of contiguous rural counties may apply to the Director of the Economic and Community Development Department for designation of the entire territory of the applicant as a rural renewable energy development zone.

(2) An application for designation of a rural renewable energy development zone shall be in such form and shall contain such information as the Economic and Community Development Department prescribes by rule. The application shall include a copy of the resolution of the governing body of each city or rural county that constitutes the applicant that states that the city or county seeks rural renewable energy development zone designation.

(3) The director shall approve designation of the territory of the applicant as a rural renewable energy development zone if:

(a) The area consists of territory in a rural county or is two or more contiguous rural counties; and

(b) The area would qualify for enterprise zone designation, without regard to any applicable numerical limitation on enterprise zones or to ORS 285C.090.

(4)(a) The designation of an area as a rural renewable energy development zone authorizes the exemption of up to an amount, determined as prescribed in paragraph (d) of this subsection, in real market value of property described in ORS 285C.359 that meets the requirements for exemption under ORS 285C.362.

(b) An applicant may seek subsequent additional designations under this section. An application for additional designation shall be made in the same manner as an application for initial designation, and shall be approved by the director if the application for additional designation meets the qualifications for designation under subsection (3) of this section.

(c) Each additional designation approved under this section authorizes the exemption of a new amount, determined as prescribed in paragraph (d) of this subsection, in real market value of property described in ORS 285C.359 that meets the requirements for exemption under ORS 285C.362.

(d) Each amount authorized for exemption under this section shall be determined as follows:

(A) The amount shall be set forth in the resolution described in subsection (2) of this section.

(B) If no amount is specified in the resolution described in subsection (2) of this section, the amount shall be \$100 million.

(C) The amount may not exceed \$100 million for any single designation under this section.

(D) The amount applies only to exemptions first claimed for a tax year that begins after January 1 following the date of adoption of the resolution described in subsection (2) of this section.

(5) If an application for designation was made by one city or county, that city or county shall serve as sponsor of the rural renewable energy development zone. If the application for designation was made by two or more rural counties, the application shall identify which county shall serve as the sponsor of the zone. [2003 c.662 §70; 2005 c.595 §4]

285C.356 Application for authorization. (1) Following designation of a rural renewable energy development zone, an eligible business firm seeking an exemption under ORS 285C.362 may apply for authorization under ORS 285C.140.

(2) The firm shall include a written description of the locations, extent and expected real market value of the proposed renewable energy development project.

(3) The firm shall be authorized if the firm would otherwise be authorized under ORS 285C.140, but the authorization is limited to investments in the renewable energy development project described in the application submitted by the firm. [2003 c.662 §71]

285C.359 Qualified property. Property shall qualify for exemption under ORS 285C.362 if the property meets all of the following requirements:

(1) The property constitutes all or a part of a facility used to generate renewable energy or is used to support or maintain a renewable energy facility;

(2) The property is newly constructed or installed in the rural renewable energy development zone; and

(3) The property meets all other requirements for qualification under ORS 285C.180. [2003 c.662 §72]

285C.362 Exemption; requirements; duration. (1) Property of an authorized business firm is exempt from ad valorem property taxation if:

(a) The property is qualified property under ORS 285C.359;

(b) The firm meets the qualifications under ORS 285C.200; and

(c) The firm has entered into a first-source hiring agreement under ORS 285C.215.

(2)(a) Property described in subsection (1) of this section is exempt from ad valorem property taxation only to the extent the real market value of the property, when added to the real market value of all other property in the rural renewable energy development zone that has received an exemption under this section, is less than the exemption authorization level established for the zone under ORS 285C.353 (4).

(b) For purposes of this subsection, real market value shall be determined as of the

assessment date for the first year that property is exempt under this section.

(3) The exemption allowed under this section applies to the first tax year for which, as of January 1 preceding the tax year, the qualified property is in service. The exemption shall continue for the next two succeeding tax years if the property continues to be owned or leased by the business firm, operated to generate renewable energy or to support or maintain renewable energy facilities, and located in the rural renewable energy development zone.

(4)(a) The property may be exempt from property taxation under this section for up to two additional tax years consecutively following the tax years described in subsection (3) of this section if authorized by a written agreement entered into by the firm and the sponsor under ORS 285C.160.

(b) Notwithstanding ORS 285C.160, a contiguous county that applied for a rural renewable energy development zone designation may elect to not participate in a two-year extension of the exemption under this subsection. The election shall be made by resolution of the governing body of the contiguous county on or before execution of the written agreement between the firm and the sponsor under ORS 285C.160. [2003 c.662 §73]

285C.365 Application of enterprise zone laws. Except where inconsistent with the provisions of ORS 285C.350 to 285C.370, the provisions of ORS 285C.050 to 285C.250 apply to rural renewable energy development zones as if rural renewable energy development zones were enterprise zones, and to the exemption or disqualification from exemption of property located in rural renewable energy development zones. [2003 c.662 §74]

285C.370 Rules. The Economic and Community Development Department may adopt rules for implementing and administering ORS 285C.350 to 285C.370, including rules that define terms. [2003 c.662 §75]

LONG TERM TAX INCENTIVES FOR RURAL ENTERPRISE ZONES

285C.400 Definitions for ORS 285C.400 to 285C.420. As used in ORS 285C.400 to 285C.420:

(1) “Business firm” has the meaning given that term in ORS 285C.050.

(2) “Certified business firm” means a business firm that has been certified under ORS 285C.403.

(3) “County with chronically low income or chronic unemployment” means, based on the most recently revised annual average unemployment rate or annual per capita income levels available, a county in which:

(a) The median ratio of the per capita personal income of the county to the equivalent annual personal income figure of the entire United States for each year, as reported by the Bureau of Economic Analysis of the United States Department of Commerce, is equal to or less than 0.75 over the last 10 years;

(b) The median ratio of the unemployment rate of the county to the equivalent rate of the entire United States for each year is at least 1.3 over the last 20 years or over the last 10 years; or

(c) The population of the county has experienced a negative net migration, irrespective of natural population change, since the most recent federal decennial census occurring three or more years prior to the current estimated population figure for the county, based on available population statistics.

(4) "Facility" means the land, real property improvements and personal property that are used:

(a) At a location in a rural enterprise zone that is identified in the application for certification under ORS 285C.403; and

(b) In those business operations of the business firm that are the subject of the application for certification under ORS 285C.403.

(5) "Rural enterprise zone" has the meaning given that term in ORS 285C.050. [Formerly 285B.781; 2005 c.94 §13]

285C.403 Certification of business firm; application; review; appeal. (1) Any business firm proposing to apply for the tax exemption provided under ORS 285C.409 shall, before the commencement of construction or installation of property or improvements at a location in a rural enterprise zone and before the hiring of employees, apply for certification with the sponsor of the zone and with the county assessor of the county or counties in which the zone is located. The application shall be made on a form prescribed by the Department of Revenue.

(2) The application shall contain the following information:

(a) A description of the firm's proposed business operations and facility in the rural enterprise zone;

(b) A description and estimated cost or value of the property or improvements to be constructed or installed at the facility;

(c) An estimate of the number of employees at the facility that will be hired by the firm;

(d) A commitment to meet the applicable requirements of ORS 285C.412;

(e) A commitment to satisfy all additional conditions agreed to pursuant to the written agreement between the rural enterprise zone sponsor and the business firm under subsection (3)(c) of this section; and

(f) Any other information considered necessary by the Department of Revenue.

(3) The sponsor and the county assessor shall certify the business firm by approving the application if the sponsor and the county assessor determine that all of the following requirements have been met:

(a) The governing body of the county and city in which the facility is located has adopted a resolution approving the property tax exemption for the facility.

(b) The business firm has committed to meet the applicable requirements of ORS 285C.412.

(c) The business firm has entered into a written agreement with the sponsor of the rural enterprise zone that may include any additional requirements that the sponsor may reasonably request, including but not limited to contributions for local services or infrastructure benefiting the facility. The written agreement shall state the number of consecutive tax years for which the facility, following commencement of operations, is to be exempt from property tax under ORS 285C.409. The agreement may not provide for a period of exemption that is less than seven consecutive tax years or more than 15

consecutive tax years. If the agreement is silent on the number of tax years for which the facility is to be exempt following placement in service, the exemption shall be for seven consecutive tax years.

(d) The facility is located in a county with chronically low income or chronic unemployment, based on the most recently revised annual data available when the written agreement with the zone sponsor is executed.

(4) The approval of an application by both the sponsor and the county assessor under subsection (3) of this section shall be prima facie evidence that the business firm will qualify for the property tax exemption under ORS 285C.409.

(5) The sponsor and the county assessor shall provide copies of an approved application to the applicant, the Department of Revenue and the Economic and Community Development Department.

(6) If the sponsor or the county assessor fails or refuses to certify the business firm, the business firm may appeal to the Oregon Tax Court under ORS 305.404 to 305.560. The business firm shall provide copies of the firm's appeal to the sponsor, the county assessor, the Economic and Community Development Department and the Department of Revenue. [Formerly 285B.783; 2005 c.94 §14]

285C.406 Claiming property tax exemption or income tax credit. In order for a taxpayer to claim the property tax exemption under ORS 285C.409 or a corporate excise or income tax credit under ORS 317.124:

(1) The written agreement between the business firm and the rural enterprise zone sponsor that is required under ORS 285C.403 (3)(c) must be entered into prior to the termination of the enterprise zone under ORS 285C.245; and

(2) The business firm must obtain certification under ORS 285C.403 on or before June 30, 2009. [Formerly 285B.796; 2005 c.94 §15; 2005 c.667 §3]

285C.409 Property tax exemption; requirements; duration. (1) A facility of a certified business firm is exempt from ad valorem property taxation:

(a) For the first tax year following the calendar year in which the business firm is certified under ORS 285C.403 or after which construction or reconstruction of the facility commences, whichever event occurs later;

(b) For each subsequent tax year in which the facility is not yet in service as of the assessment date; and

(c) For a period of at least seven consecutive tax years but not more than 15 consecutive tax years, as provided in the written agreement between the business firm and the rural enterprise zone sponsor under ORS 285C.403 (3)(c), if the facility satisfies the requirements of ORS 285C.412. The period described in this paragraph shall commence as of the first tax year in which the facility is in service as of the assessment date.

(2) An exemption under this section may not be allowed for real or personal property that has received a property tax exemption under ORS 285C.170 or 285C.175.

(3) For each tax year that the facility is exempt from taxation under this section, the county assessor shall:

(a) Enter on the assessment and tax roll, as a notation, the real market value and assessed value of the facility.

(b) Enter on the assessment and tax roll, as a notation, the amount of tax that would be due if the facility were not exempt.

(c) Indicate on the assessment and tax roll that the property is exempt and is subject to potential additional taxes as provided in ORS 285C.420 by adding the notation “enterprise zone exemption (potential additional tax).”

(4) The amount determined under subsection (3)(b) of this section and the name of the business firm shall be reported to the Department of Revenue on or before December 31 of each tax year so that the department may compute the distributions described in ORS 317.131.

(5) The following property may not be exempt from property taxation under this section:

(a) Land.

(b) Any property that existed at the facility on an assessment date before the assessment date for the first tax year for which property of the firm is exempt under this section. [Formerly 285B.786; 2005 c.94 §16]

285C.412 Conditions for continued exemption. In order for a facility of a business firm to continue to be exempt from ad valorem property taxation under ORS 285C.409 for a tax year following the first assessment date on which the facility is in service, all of the conditions of any one of the alternative subsections in this section must be met:

(1) In order for the exemption under ORS 285C.409 (1)(c) to be allowable pursuant to this subsection:

(a) By the end of the calendar year in which the facility is placed in service, the total cost of the facility exceeds the lesser of \$25 million or one percent of the real market value of all nonexempt taxable property in the county in which the facility is located, as determined for the assessment year in which the business firm is certified (and rounded to the nearest \$10 million of such value);

(b) The business firm hires or will hire at least 75 full-time employees at the facility by the end of the fifth calendar year following the year in which the facility is placed in service; and

(c) The annual average compensation for employees, based on payroll, at the business firm’s facility is at least 150 percent of the average wage in the county in which the facility is located. This requirement may be initially met in any year during the first five years after the year in which operation of the facility begins, and thereafter is met if the annual average compensation at the facility for the year exceeds the average wage in the county for the year in which the requirement is initially met.

(2) In order for the exemption under ORS 285C.409 (1)(c) to be allowable pursuant to this subsection:

(a) The facility meets the total cost requirements set forth in subsection (1)(a) of this section;

(b) The business firm meets the annual average compensation requirements set forth in subsection (1)(c) of this section; and

(c)(A) The business firm hires or will hire at least 10 full-time employees at the facility by the end of the third calendar year following the year in which the facility is placed in service, and at the time that the business firm is certified, the location of the facility is in a county with a population of 10,000 or fewer; or

(B) The business firm hires or will hire at least 35 full-time employees at the facility by the end of the third calendar year following the year in which the facility is placed in service, and at the time that the business firm is certified, the location of the facility is in a county with a population of 40,000 or fewer.

(3) In order for the exemption under ORS 285C.409 (1)(c) to be allowable pursuant to this subsection:

(a) By the end of the calendar year in which the facility is placed in service, the total cost of the facility exceeds the lesser of \$12.5 million or one-half of one percent of the real market value of all nonexempt taxable property in the county in which the facility is located, as determined for the assessment year in which the business firm is certified (and rounded to the nearest \$10 million of such value);

(b) At the time that the business firm is certified, the location of the facility is 10 or more miles from Interstate Highway 5, as measured between the two closest points between the facility site and anywhere along that interstate highway;

(c) The business firm meets the annual average compensation requirements set forth in subsection (1)(c) of this section; and

(d)(A) The business firm hires or will hire at least 50 full-time employees at the facility by the end of the third calendar year following the year in which the facility is placed in service; or

(B) The business firm satisfies the requirements of subsection (2)(c)(A) or (B) of this section.

(4) In order for the exemption under ORS 285C.409 (1)(c) to be allowable pursuant to this subsection:

(a) Within three years either before or after the property tax year in which the facility is placed in service, the business firm places one or more other facilities in the same or another enterprise zone for which the business firm is certified and otherwise meets the requirements of ORS 285C.400 to 285C.420;

(b) The total cost of all facilities of the business firm exceeds \$25 million by the end of the calendar year in which the last such facility is placed in service;

(c) The business firm meets the annual average compensation requirements set forth in subsection (1)(c) of this section independently for each facility of the firm; and

(d) The business firm hires or will hire a total of at least 100 full-time employees at all of the firm's facilities by the end of the fifth calendar year following the year in which the first such facility is placed in service.

(5) In order for the exemption under ORS 285C.409 (1)(c) to be allowable pursuant to this subsection:

(a) By the end of the calendar year in which the facility is placed in service, the total cost of the facility exceeds \$200 million;

(b) At the time that the business firm is certified, the location of the facility meets the siting requirements of subsection (3)(b) of this section;

(c) The business firm hires or will hire at least 10 full-time employees at the facility by the end of the third calendar year following the year in which the facility is placed in service; and

(d) The business firm meets the annual average compensation requirements set forth in subsection (1)(c) of this section. [Formerly 285B.789]

285C.415 Notice to county assessor. Upon meeting the applicable requirements of ORS 285C.412, the certified business firm shall notify the county assessor in writing that the applicable requirements have been met. [Formerly 285B.790]

285C.420 Disqualification; exception; additional taxes. (1) If a certified business firm does not begin operations or is not reasonably expected to begin operations, as determined by the county assessor consistent with criteria established by rule of the Department of Revenue, or fails to meet the minimum requirements set forth in ORS 285C.412, while receiving an exemption under ORS 285C.409, the assessor shall, as of the next tax year, disqualify the property from the exemption.

(2)(a) If a certified business firm that has achieved the minimum applicable full-time hiring requirements and annual average wage requirements at a facility under ORS 285C.412 subsequently fails to maintain the applicable minimum number of full-time employees or the minimum annual average compensation level at the facility, the assessor shall disqualify the facility from exemption under ORS 285C.409.

(b) This subsection does not apply if the decrease in hiring or in annual average compensation is caused by circumstances beyond the control of the business firm, including force majeure.

(3) Upon disqualification, there shall be added to the tax extended against the property on the next general property tax roll, to be collected and distributed in the same manner as the remainder of ad valorem property taxes, an amount equal to the taxes that would otherwise have been assessed against the property and improvements for each of the tax years for which the property was exempt under ORS 285C.409.

(4) The additional taxes described in this section shall be deemed assessed and imposed in the year to which the additional taxes relate. [Formerly 285B.793]

285C.450 [Formerly 285B.825; 2005 c.119 §2; renumbered 307.841 in 2005]

285C.453 [Formerly 285B.827; 2005 c.119 §3; renumbered 307.844 in 2005]

285C.456 [Formerly 285B.830; 2005 c.119 §4; renumbered 307.847 in 2005]

285C.459 [Formerly 285B.833; 2005 c.119 §5; renumbered 307.851 in 2005]

285C.462 [Formerly 285B.848; 2005 c.119 §6; renumbered 307.854 in 2005]

285C.465 [Formerly 285B.839; 2005 c.119 §7; renumbered 307.857 in 2005]

285C.468 [Formerly 285B.842; 2005 c.119 §8; renumbered 307.861 in 2005]

285C.471 [Formerly 285B.845; 2005 c.119 §9; renumbered 307.864 in 2005]

285C.480 [Formerly 285B.836; 2005 c.119 §10; renumbered 307.867 in 2005]

BUSINESS DEVELOPMENT INCOME TAX EXEMPTION

285C.500 Definitions for ORS 285C.500 to 285C.506. As used in ORS 285C.500 to 285C.506:

(1) “Business firm” has the meaning given that term in ORS 285C.050.

(2) “County per capita personal income” means the per capita personal income level published by the Bureau of Economic Analysis of the United States Department of Commerce for a county.

(3) “County unemployment rate” means the most recently available unemployment rate for the county, as determined by the Employment Department.

(4) “Facility” means the land, real property improvements and personal property that are used by a business firm to conduct business operations, and that are the subject of an application for preliminary certification under ORS 285C.503 or annual certification under ORS 285C.506.

(5) “Qualified location” means any area that is:

(a) Zoned for industrial use or is within the urban growth boundary of a city that has 15,000 or fewer residents; and

(b) Located in a county that, during either of the two years preceding the date an application for preliminary certification is filed under ORS 285C.503, had both:

(A) A county unemployment rate that was in the highest quartile of county unemployment rates in this state; and

(B) A county per capita personal income that was in the lowest third of county per capita personal incomes in this state.

(6) “Urban growth boundary” means an urban growth boundary contained in a city or county comprehensive plan that has been acknowledged by the Land Conservation and Development Commission pursuant to ORS 197.251 or an urban growth boundary that has been adopted by a metropolitan service district under ORS 268.390 (3). [Formerly 285B.103; 2005 c.94 §17]

Note: The amendments to 285C.500 by section 1, chapter 595, Oregon Laws 2005, apply to preliminary certifications issued under ORS 285C.503 on or after January 1, 2011, and annual certifications issued under ORS 285C.506 that are associated with preliminary certifications issued under ORS 285C.503 on or after January 1, 2011. See section 2, chapter 595, Oregon Laws 2005. 285C.500, as amended by section 1, chapter 595, Oregon Laws 2005, is set forth for the user’s convenience.

285C.500. As used in ORS 285C.500 to 285C.506:

(1) “Business firm” has the meaning given that term in ORS 285C.050.

(2) “County per capita personal income” means the per capita personal income level published by the Bureau of Economic Analysis of the United States Department of Commerce for a county.

(3) “County unemployment rate” means the most recently available unemployment rate for the county, as determined by the Employment Department.

(4) “Facility” means the land, real property improvements and personal property that are used by a business firm to conduct business operations, and that are the subject of an application for preliminary certification under ORS 285C.503 or annual certification under ORS 285C.506.

(5) “Qualified location” means any area that is:

(a) Zoned for industrial use or is within the urban growth boundary of a city that has

15,000 or fewer residents; and

(b) Located in a county that, during either of the two years preceding the date an application for preliminary certification is filed under ORS 285C.503, had both:

(A) A county unemployment rate that was in the top half of county unemployment rates in this state; and

(B) A county per capita personal income that was in the bottom half of county per capita personal incomes in this state.

(6) "Urban growth boundary" means an urban growth boundary contained in a city or county comprehensive plan that has been acknowledged by the Land Conservation and Development Commission pursuant to ORS 197.251 or an urban growth boundary that has been adopted by a metropolitan service district under ORS 268.390 (3).

Note: Section 3, chapter 595, Oregon Laws 2005, provides:

Sec. 3. Notwithstanding ORS 285C.500 (5), for purposes of preliminary certifications issued under ORS 285C.503 on or after January 1, 2006, and before January 1, 2011, and annual certifications issued under ORS 285C.506 that are associated with preliminary certifications issued under ORS 285C.503 on or after January 1, 2006, and before January 1, 2011:

(1) "Qualified location" means any area that is:

(a) Within the urban growth boundary of a city that has 15,000 or fewer residents or is land zoned for industrial use; and

(b) Located in a county that, during either of the two years preceding the date an application for preliminary certification is filed under ORS 285C.503 and this section, had:

(A) A county unemployment rate that was in the highest third of county unemployment rates in this state; or

(B) A county per capita personal income that was in the lowest third of county per capita personal incomes in this state.

(2) The minimum annual compensation requirements of ORS 285C.503 (5)(d) do not apply.

(3) In lieu of the requirements of ORS 285C.506 (5), the Economic and Community Development Department shall approve an application for annual certification if the business firm satisfies the requirements of ORS 285C.506 (5)(a) and (b) and the business firm satisfies the employment requirements of ORS 285C.503 (5)(c). [2005 c.595 §3]

285C.503 Preliminary certification of facility; application; fee; review; appeal.

(1) A business firm seeking the income and corporate excise tax exemption allowed under ORS 316.778 or 317.391 shall, before the commencement of construction, reconstruction, modification or installation of property or improvements at the location for which the exemption is sought and before the hiring of any employees at that location, apply to the Economic and Community Development Department for preliminary certification under this section.

(2) The application shall be on a form prescribed by the department and shall contain the following information:

(a) The proposed location of the facility;

(b) A description of the property to be constructed, reconstructed, modified, acquired,

installed or leased and that is to comprise the facility when the business firm commences business operations at the facility;

(c) If any property described in paragraph (b) of this subsection is to be leased, the term of the lease;

(d) The number of full-time, year-round employees the business firm intends to hire;

(e) The minimum annual average compensation intended to be given to the employees described in paragraph (d) of this subsection;

(f) A description of any other business activities of the firm in this state at the time of application, sufficient for the department to be able to determine if the proposed facility will constitute a new business in this state; and

(g) Any other information that the department requires.

(3) An application filed under this section must be accompanied by a fee in an amount prescribed by the Economic and Community Development Department by rule. The fee required by the department may not exceed \$500.

(4)(a) When an application is filed under this section, the department shall send copies of the application to the governing bodies of the city and county in which the facility is proposed to be located. If the facility is to be located within a port, the department shall also send a copy of the application to the governing body of the port.

(b) The governing body of a city, port or county described in paragraph (a) of this subsection may object to the preliminary certification of a business firm if the firm would be:

(A) In competition with an existing business employing individuals within the city, port or county; or

(B) Incompatible with economic growth or development standards that the city, port or county had adopted prior to the date of application for preliminary certification.

(c) If the governing body of the city, port or county decides to object to preliminary certification of the firm, the governing body shall adopt a resolution stating its objection and the reason for its objection.

(d) The governing body of a city, port or county has 60 days from the date the application is sent to the city, port or county to object to preliminary certification. If the objection is not made within the 60-day period, the city, port or county shall be deemed to have agreed to preliminary certification.

(5) When an application is filed under this section, the department shall review the application and determine whether all of the following requirements are met:

(a) The proposed facility is to be located at a qualified location.

(b) The proposed facility is intended to operate as a facility for at least 10 years following the date the facility becomes operational.

(c) The business firm intends to hire at least five employees for full-time, year-round employment.

(d) The newly hired employees described in paragraph (c) of this subsection are to receive a minimum annual compensation of:

(A) 150 percent of the county per capita personal income of the county in which the facility is to be located as of the date of the application for preliminary certification; or

(B) 100 percent of the county per capita personal income of the county in which the facility is to be located as of the date of the application for preliminary certification and the business firm will provide health insurance coverage to the employees at the facility

who are described in paragraph (c) of this subsection that equals or exceeds the health insurance benefits provided to employees of the city, port or county in which the facility is to be located.

(e) The business operations of the business firm that are to be conducted at the facility constitute a new business that the firm does not operate at another location in this state.

(f) The business operations of the business firm will not compete with existing businesses in the city or county in which the facility is to be located.

(6) If the department determines that the proposed facility, if completed as described in the application, meets the criteria set forth in subsection (5) of this section and the governing body of the city, port or county does not object under subsection (4) of this section to preliminary certification of the firm, the department shall issue a preliminary certification to the firm.

(7) If the department determines that the proposed facility, as set forth in the application, does not meet the requirements for preliminary certification under this section, the department may not issue a preliminary certification. The applicant may appeal the decision to not issue a preliminary certification in the manner of a contested case under ORS chapter 183. No appeal may be made if the reason for not issuing a preliminary certification is the objection of the governing body of the city, port or county under subsection (4) of this section. [Formerly 285B.105]

285C.506 Annual certification of facility; application; fee; review; appeal; duration of certification. (1) Following completion of the construction, reconstruction, modification, acquisition, installation or lease of the facility, the hiring of employees to conduct business operations at the facility and the commencement of operations at the facility, a business firm that obtained preliminary certification under ORS 285C.503 may apply for annual certification under this section.

(2) The application shall be filed with the Economic and Community Development Department on or before 30 days after the end of the income or corporate excise tax year of the business firm.

(3) The application shall contain the following information:

(a) A description of the business operations conducted at the facility;

(b) The date business operations commenced at the facility;

(c) The number of full-time, year-round employees employed by the business firm at the facility;

(d) A schedule of the annual compensation paid to the employees; and

(e) Any other information required by the department.

(4) An application filed under this section must be accompanied by a fee in an amount prescribed by the department by rule. The fee required by the department may not exceed \$100.

(5) The department shall review a business firm's application and approve the application if:

(a) The business operations of the firm at the facility commenced within 10 years before the end of the tax year preceding the date of application for annual certification;

(b) The facility and the business operations actually conducted at the facility are reasonably similar to the proposed facility and proposed operations described in the application for preliminary certification; and

(c) The business firm has satisfied the employment and minimum compensation requirements described in ORS 285C.503 (5)(c) and (d).

(6) In the case of the first application for annual certification filed by a business firm under this section, the department may approve the application only if, in addition to the requirements under subsection (5) of this section:

(a) Business operations commenced at the facility within a reasonable period of time, as determined by the department by rule, following the date of preliminary certification under ORS 285C.503; and

(b) There has not been a significant interruption in construction, reconstruction, modification or installation activity at the location, as determined by the department by rule, following the date of preliminary certification under ORS 285C.503.

(7) The department may consult with the city or county in determining whether to approve or disapprove an application under this section.

(8) If the department approves an application, it shall issue an annual certification to the business firm.

(9) If the department disapproves an application, the business firm or any owner of the business firm may not be allowed the exemption described in ORS 316.778 or 317.391 for the tax year for which the annual certification was sought or for any subsequent tax year.

(10) The decision of the department to disapprove an application under this section may be appealed in the manner of a contested case under ORS chapter 183.

(11) An annual certification may not be issued under this section for a tax year that is more than nine consecutive tax years following the first tax year an exemption is allowed under ORS 316.778 or 317.391 with respect to the facility.

(12) The department must approve or disapprove an application under this section within 30 days of the date the application is filed. [Formerly 285B.108]

ADVANCED TELECOMMUNICATIONS FACILITIES INCOME TAX CREDIT

285C.530 Definitions for ORS 285C.530 and 285C.533; tax credit certification; application; rules; fees. (1) As used in this section and ORS 285C.533:

(a) “Advanced telecommunications facilities” means high-speed, dedicated or switched broadband telecommunications infrastructure or equipment that enables users to send or receive high quality voice, data or video telecommunications using any technology.

(b) “Last mile connection” means a communications channel from the feed from a connecting bypassing intercity telecommunications carrier through a telecommunications switching center, or an individual message distribution point, to a user terminal.

(c) “Local exchange carrier” means a person that holds a certificate of authority issued by the Public Utility Commission under ORS 759.020 to provide intrastate telecommunications service or local exchange telecommunications service within this state.

(d) “Telecommunications carrier” means a provider of telecommunications services, but does not include an aggregator, as defined in 47 U.S.C. 226.

(2) A telecommunications carrier seeking a tax credit under ORS 315.511 for the installation of advanced telecommunications facilities, prior to incurring any costs

associated with the installation, shall apply to the Economic and Community Development Department for certification of the facilities as advanced telecommunications facilities.

(3) The application for certification shall be in the form and shall contain the information required by the department pursuant to rules adopted by the department for the administration of the tax credit certification under this section, including but not limited to:

(a) A complete description of the installation project and the customers to be served by the project;

(b) The expected costs for completing the project;

(c) The expected start date and the expected date on which the advanced telecommunications facilities are to be placed in service;

(d) The geographic area or areas in which the advanced telecommunications facilities are to be installed; and

(e) A description of how the facilities will be integrated into the operations of the intrastate telecommunications services provided by the telecommunications carrier.

(4) The application for certification shall be accompanied by technical documentation demonstrating that the facilities will meet or exceed applicable minimum performance standards established by the department under ORS 285C.533.

(5) The department may approve or deny an application for certification or may request changes to the application before issuing certification. Denial of an application may be appealed to the department in the manner of a contested case under ORS chapter 183.

(6) The department shall approve an application and certify the facilities as advanced telecommunications facilities if the facilities:

(a) Are to be located in an area in which current minimum bandwidth service is not available to a majority of customers;

(b) Improve access to advanced telecommunications services for a majority of all customers in unserved or underserved service areas; and

(c) Meet the minimum performance standards to comply with ORS 285C.533.

(7) Upon approval of an application, the department shall send to the applicant a written certification of the facilities as advanced telecommunications facilities. The certification shall state the date by which the facilities must be placed in service and the cost of the facilities that are being certified.

(8) Notwithstanding subsection (6) of this section, the department may not approve an application and certify a facility if the cost of the facility plus the certified costs of all other facilities that have been certified during the year exceeds \$10 million.

(9) The department may establish by rule the amount of fees charged to applicants seeking certification of facilities as advanced telecommunications facilities. Revenues from the fees shall be used to offset the costs incurred by the department in administering the tax credit certification under this section. [Formerly 285B.486]

285C.533 Performance standards for advanced telecommunications facilities; rules. (1) The Economic and Community Development Department shall adopt rules setting minimum performance standards that facilities must meet to be certified as advanced telecommunications facilities. The rules must establish minimum performance

standards in the following areas:

- (a) Enhancement of individual and business access to advanced telecommunications services at an economically reasonable cost;
- (b) Development and transition to a fully competitive telecommunications marketplace;
- (c) Provision of bidirectional bandwidth capabilities to customers;
- (d) Accessibility to competitive local exchange carriers;
- (e) Improvement in access by public and private educational institutions, rural health clinics and libraries to advanced telecommunications services;
- (f) Improvement in telecommunications connections between communities in this state;
- (g) Improvement in last mile connections within this state; and
- (h) Improvement in access by Oregon health care providers to interactive video and other health care applications requiring advanced telecommunications services.

(2) In order for facilities to be certified under ORS 285C.530, the facilities must meet or exceed the minimum performance standards in at least one of the areas set forth in subsection (1) of this section. [Formerly 285B.488]

STRATEGIC INVESTMENT PROGRAM

(Generally)

285C.600 Definitions for ORS 285C.600 to 285C.626. As used in ORS 285C.600 to 285C.626:

- (1) “Business firm” has the meaning given that term in ORS 285C.050.
- (2) “Eligible project” means a project that meets criteria established by the Oregon Economic and Community Development Commission to be exempt from property taxation under ORS 307.123.
- (3) “First-source hiring agreement” has the meaning given that term in ORS 285C.050.
- (4) “Publicly funded job training provider” has the meaning given that term in ORS 285C.050.
- (5) “Rural area” means an area located entirely outside of the urban growth boundary of a city with a population of 30,000 or more, as the urban growth boundary is acknowledged on December 1, 2002.
- (6) “Strategic investment zone” means a geographic area established under ORS 285C.623, within which the property of eligible projects may be exempt from property taxation under ORS 307.123. [Formerly 285B.380; 2005 c.237 §1]

285C.603 Purpose. The Legislative Assembly declares that a significant purpose of the strategic investment program established in ORS 285C.600 to 285C.626 and 307.123 is to improve employment in areas where eligible projects are to be located and urges business firms that will benefit from an eligible project to hire employees from the region in which the eligible project is to be located whenever practicable. [2003 c.800 §5; 2005 c.237 §2]

285C.606 Determination of projects for tax exemption; limitations; revenue bond financing; first-source hiring agreements. (1) The State of Oregon, acting through the Oregon Economic and Community Development Commission, may determine that real and personal property constituting a project shall receive the tax exemption provided in ORS 307.123 if:

- (a) The project is an eligible project;
- (b) The project directly benefits a traded sector industry, as defined in ORS 285B.280; and
- (c) The total cost of the project equals or exceeds:
 - (A) \$100 million; or
 - (B) \$25 million, if the project is located in a rural area.

(2) In addition to and not in lieu of the determination described in subsection (1) of this section, the State of Oregon, acting through the Oregon Economic and Community Development Commission, shall determine that real and personal property constituting a project shall receive the tax exemption provided in ORS 307.123 if:

- (a) The requirements of subsection (1) of this section are met; and
- (b) The project is to be constructed or installed in a strategic investment zone established under ORS 285C.623.

(3) Notwithstanding subsection (1) or (2) of this section, property may not qualify for the tax exemption under ORS 307.123 if the property:

- (a) Was previously owned or leased by the business firm benefitting from the tax exemption;
- (b) Was previously exempt under ORS 307.123 for any period of time; or
- (c) If located in a strategic investment zone, is not newly constructed or newly installed property.

(4) The State of Oregon, acting through the State Treasurer, may authorize and issue revenue bonds for an eligible project that qualifies for exemption under ORS 307.123 if the project also is eligible for funding through the issuance of revenue bonds under ORS 285B.320 to 285B.371.

(5) A business firm that will be benefited by an eligible project shall enter into a first-source hiring agreement with a publicly funded job training provider that will remain in effect until the end of the tax exemption period.

(6) If an eligible project is leased or subleased to any person, the lessee shall be required to pay property taxes levied upon or with respect to the leased premises only in accordance with ORS 307.123.

(7) For purposes of determining the assessment and taxation of the eligible project in ORS 307.123 and the calculation of the community services fee in ORS 285C.609 (4)(b), the Oregon Economic and Community Development Commission, when it determines that the project is an eligible project, shall:

- (a) Describe the real and personal property to be included in the eligible project;
- (b) Establish the maximum value of the property subject to exemption; or
- (c) Employ a comparable method to define the eligible project.

(8) Property of an eligible project that is currently exempt under ORS 307.123 may remain exempt for any remaining period of exemption allowed under ORS 307.123 upon the property being acquired by a business firm that is different from the business firm that initially benefited from the exemption, if the acquiring firm satisfies all applicable

requirements under ORS 285C.600 to 285C.626 and assumes the obligations, conditions, requirements and other terms of the agreement described in ORS 285C.609 (4).
[Formerly 285B.383; 2005 c.237 §4]

285C.609 Request by county; community services fee agreement; distribution of fee proceeds. (1) A determination under ORS 285C.606 (1) by the Oregon Economic and Community Development Commission that a project shall be exempt from property taxation under ORS 307.123 must be requested by official action of the governing body of the county taken at a regular or duly called special meeting thereof by the affirmative vote of a majority of its members.

(2) The governing body of any Oregon county shall forward appropriate prospective eligible projects to the Economic and Community Development Department for processing.

(3) For purposes of this section, for projects located on a federally recognized Oregon Indian reservation, the governing body of a county shall be considered to be the governing body of the federally recognized Oregon Indian tribe.

(4) The county may not make the request under subsection (1) of this section unless, after a public hearing:

(a) The county and, if the proposed eligible project will be located within a city, the city have entered into an agreement with the business firm, as described in this subsection.

(b) The agreement provides for the payment of a fee by the business firm, as follows:

(A) The fee shall be for community services support that relates to the direct impact of the eligible project on public services.

(B) The fee shall be in an amount equal to 25 percent of the property taxes that would, but for the exemption, be due on the exempt property in each assessment year, but not exceeding \$2 million in any year or, if the eligible project is located in a rural area, \$500,000 in any year.

(C) The fee shall be paid annually during the tax exemption period, as of a date set forth in the agreement.

(c) The agreement provides for the refunding or crediting of overpayments, for interest on late payments or underpayments and for the manner in which the appeal of the assessed value of the property included in the project will affect the fee.

(5) The agreement described in subsection (4) of this section may provide for any other requirements related to the project.

(6)(a) The fee collected under subsection (4)(b) of this section shall be distributed by the county based on an agreement. The agreement is effective only if:

(A) The county and the city, if any, in which the eligible project is located have entered into the agreement; and

(B) Local taxing districts listed in ORS 198.010 or 198.180 that constitute at least 75 percent of the property tax authority of all local taxing districts listed in ORS 198.010 or 198.180 in the code area in which the eligible project is located have entered into the agreement.

(b) If an effective agreement is not entered into under paragraph (a) of this subsection within three months after the date of the determination by the commission under ORS 285C.606 (1), the commission shall, by official action, establish a formula for distributing

the fee collected under subsection (4)(b) of this section. [Formerly 285B.386]

285C.612 Eligible project application fees. (1) The Oregon Economic and Community Development Commission shall collect the fees set forth in subsection (2) of this section from an applicant that seeks to have the real and personal property constituting the eligible project declared eligible for the tax exemption provided in ORS 307.123. The fee may be collected even though the project has not been determined to be eligible for the tax exemption.

(2) The fees described in subsection (1) of this section are as follows:

(a) \$10,000, or \$5,000 if the project is located in a rural area, upon application to the commission; and

(b) \$50,000, or \$10,000 if the project is located in a rural area, when the eligible project is determined by the commission to be eligible for the tax exemption provided in ORS 307.123. The commission shall pay 50 percent of this fee to the Department of Revenue for the purpose of administration of ORS 307.123.

(3) The fees collected under subsection (2) of this section shall be deposited in the Oregon Community Development Fund created under ORS 285A.227. [Formerly 285B.389]

285C.620 Confidentiality of project information. Notwithstanding ORS 192.410 to 192.505, the identity of an applicant for an eligible project determination under ORS 285C.606, the application form submitted to the county governing body and the Oregon Economic and Community Development Commission and the negotiations conducted between the applicant and the county shall be confidential, until the county governing body gives notice of its intent to take official action on the application. [Formerly 285B.392]

(Strategic Investment Zones)

285C.623 Strategic investment zones; establishment; fees. (1) A county seeking to ensure that all eligible projects constructed or installed within a particular geographic area within the county receive the tax exemption under ORS 307.123 may request designation of the geographic area as a strategic investment zone. The request must be made by official action of the governing body of the county taken at a regular or duly called special meeting of the governing body by the affirmative vote of a majority of members of the governing body. The request must set forth the proposed boundaries of the zone.

(2) The governing body of the county shall forward appropriate actions requesting zone establishment to the Economic and Community Development Department for consideration by the Oregon Economic and Community Development Commission. If the commission determines that the proposed zone is likely to achieve the purpose set forth in ORS 285C.603 and other objectives established for the zone by the requesting county, the department or the commission, the commission shall designate the geographic area a strategic investment zone.

(3) Any eligible project described in ORS 285C.606 (2) and newly constructed or installed after the date of zone designation under this section shall qualify for exemption

under ORS 307.123 if the business firm benefited by the eligible project complies with the fee agreement described in subsection (4) of this section.

(4) The county may not make the request under subsection (1) of this section unless, after a public hearing:

(a) The county and, if the proposed zone will be located within a city, the city have entered into an agreement described in this subsection.

(b) The agreement provides for the payment of a fee by each business firm that is to own or operate an eligible project within the proposed zone, as a condition for the exemption under ORS 307.123. The agreement shall provide for the payment of the fee, as follows:

(A) The fee shall be for community services support that relates to the direct impact of the eligible project on public services.

(B) The fee shall be in an amount equal to 25 percent of the property taxes that would, but for the exemption, be due on the exempt property in each assessment year, but not exceeding \$2 million per eligible project in any year or, if the eligible project is located in a rural area, \$500,000 per eligible project in any year.

(C) The fee shall be paid annually during the tax exemption period by each business firm having an eligible project within the zone, as of a date set forth in the agreement.

(c) The agreement provides for the refunding or crediting of overpayments, for interest on late payments or underpayments and for the manner in which the appeal of the assessed value of the property included in the project will affect the fee.

(5) The agreement described in subsection (4) of this section may provide for any other requirements that each business firm must comply with in order for the eligible project of the firm to qualify for exemption under ORS 307.123.

(6)(a) The fee collected under subsection (4)(b) of this section shall be distributed by the county based on an additional agreement described in this subsection. An agreement described in this subsection is effective only if:

(A) The county and the city, if any, in which the eligible project is located have entered into the agreement; and

(B) Local taxing districts listed in ORS 198.010 or 198.180 that constitute at least 75 percent of the property tax authority of all local taxing districts listed in ORS 198.010 or 198.180 that are in the code area in which the eligible project is located have entered into the agreement.

(b) If an additional agreement is not entered into under paragraph (a) of this subsection within three months after the date of the determination by the commission under ORS 285C.606 (1), the commission shall, by official action, establish a formula for distributing the fee collected under subsection (4)(b) of this section. [2005 c.237 §5]

285C.626 Business firm application for project within strategic investment zone.

(1) A business firm seeking the exemption under ORS 307.123 for a project the firm intends to install or construct within a strategic investment zone shall apply to the Economic and Community Development Department. The application shall be in the form and shall contain the information required by the department.

(2) A completed application containing all of the required information shall be considered by the Oregon Economic and Community Development Commission for the purposes of determining whether the project constitutes an eligible project under ORS

285C.606. [2005 c.237 §3]