



Association of Washington
Public Hospital Districts

Legal Manual

MARCH 2022



AWPHD Legal Manual

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AWPHD
999 Third Avenue , Suite 1400
Seattle, WA 98104
(206) 281-7211

AWPHD.org

March 2022



Association of Washington Public Hospital Districts

999 Third Avenue, Suite 1400, Seattle, WA 98104
Phone 206-281-7211 • www.AWPHD.org

Dear Colleague,

The Association of Washington Public Hospital Districts (AWPHD) is pleased to offer you the 2022 updated *Legal Manual*. The goal of the manual is to provide administrators, commissioners, district staff and the general public a basic source of information about the legal requirements affecting Washington's Public Hospital Districts. (PHDs).

AWPHD and its members are deeply invested in their role as public entities. This manual is just a part of the tools we offer to ensure transparency and operating within the public trust bestowed upon our members.

The original edition was produced in 1992 and took nearly a year and a half to complete. Today, the manual is revised on a biannual basis by the dedicated staff at The Municipal Research and Services Center (MRSC) on behalf of AWPHD. Thank you to them for all the effort put forth on this manual, and the many other ways in which they serve as a resource to PHDs around the state.

I hope this manual serves you well. As always, we would appreciate your thoughts and comments on any aspect of this publication.

You can access the manual digitally: www.awphd.org/resources/phd-resources/ or visit www.AWPHD.org and www.MRSC.org for more resources on PHDs.

Regards,

Matthew Ellsworth
Executive Director

Revision History

MRSC updates this publication periodically to reflect any new legislation or other relevant information impacting public hospital districts. If you are aware of any sections that you think need to be updated or clarified, please email mrsc@mrsc.org.

DATE	SECTIONS REVISED	DESCRIPTION
March 2022	Commissioner Districts— Redistricting	Add special information for redistricting after the 2020 Census
	Public Hospital District Property— Public Works Projects	Update small works roster limits and performance bond and retainage requirements
April 2020	Addition of letter from AWPHD Executive Director, Matthew Ellsworth	
February 2020	Governing Legal Authority – Other State Statutes	WA Supreme Court Decision makes PRA applicable to state legislature in part—Associated Press v. The Washington State Legislature (December 19, 2019)
	General Principles – Public Hospital Districts – What is a Public Hospital District?	Update quote of RCW 70.44.007 (amended in 2018)
	General Principles – Initial Actions of a New Hospital District – Adopt Official Seal	Official seal—state law does not specify how seal is to be used
	General Principles – Initial Actions of a New Hospital District – Appoint a Superintendent	2018 Amendment to RCW 70.44.070(1) removing “two regular meeting” requirement for appointment of superintendent
	Public Hospital District Governance – Commissioners – Commissioner Compensation	Update per-day rates for commissioner compensation
	Public Hospital District Personnel – Superintendent – Appointment, Removal and Compensation	2018 Amendment to RCW 70.44.070(1) removing “two regular meeting” requirement for appointment or removal of superintendent
	Public Hospital District Personnel – District Employees – the Hiring Process	Add Information about Paid Family Medical Leave
	Public Hospital District Personnel – District Employees – Compensation and Benefits	Add new section on Paid Family Medical Leave
	Public Hospital District Personnel – District Employees – Federal Employment Laws	Update Washington minimum wage information; Update FLSA and state law requirements regarding overtime; Update FLMA information to reflect state adoption of paid family and medical leave; Update information on pregnancy/ maternity leave to reflect repeal of state Family Leave Act and adoption of state paid sick leave and paid family and medical leave

DATE	SECTIONS REVISED	DESCRIPTION
February 2020 <i>(continued)</i>	Hospital District Finance – State Auditor Audits	Update SAO description of accountability audits, financial audits and single audits
	Public Hospital District Property – Public Works Projects	Updated limits for small works roster and limited public works projects
January 2017	Entire document reviewed, re-written, and re-published in its entirety	

Contents

Introduction 1

The Purpose of this Manual 1

Governing Legal Authority 1

- Chapter 70.44 RCW 1
- Other State Statutes 1
- State Regulations 2
- State Constitution 2
- Court Decisions 2
- Attorney General Opinions 3
- Local (City and County) Laws 3
- Federal Laws and Regulations 3

Chapter 1

General Principles 4

Chapter Summary 4

Special Purpose Districts 4

- Definition 4
- Powers and Limitations 4

Public Hospital Districts 5

- What is a Public Hospital District? 5
- What is a Rural Public Hospital District? 6
- Boundaries of a Hospital District 6
- Persons Served by a District 6
- Extraterritorial Operation 7
- Extraterritorial Operation Within Another District 8

Formation of a Hospital District 8

- Formation of a Countywide District 8
- Formation of an Intra-County Public Hospital District 9
- Formation of an Inter-County Public Hospital District 9
- Election on District Formation and District Commissioners 9

Initial Actions of a New Hospital District 10

- Elect President and Secretary 10

Adopt Bylaws	10
Adopt Official Seal	11
District Survey	11
Adopt a Plan of Improvements	11
Appoint a Superintendent	11
Designation of Depository Bank	11
Adopt a Budget	11
Purchase Liability Insurance	11
Purchase Health/Other Insurance for Officers and Employees	11
Establish Employee Positions, Compensation, and Personnel Policies	12

Chapter 2

Public Hospital District Governance 13

Chapter Summary 13

Commissioner Districts 13

Establishment	13
Redistricting	14
Abolishing/Reestablishing Commissioner Districts	15

Commissioners 15

Role of Public Hospital District Commissioners	15
Forms of Commissioner Action	15
Number of Commissioners on the Board	16
Qualifications, Oath, and Term of Office	16
Public Hospital District Disclosure of Finances	18
Commissioner Compensation	18
Reimbursement of Expenses	19
Meetings and Agendas	19
Committees of the Board	19
Commissioner Vacancies	19
Liability and Indemnification of Commissioners	20

Open Government 21

Open Public Meetings Act	21
Public Records Act	22
Training Requirements	22
Records Management	22

Conflicts of Interest and Code of Ethics 23

Contractual Conflicts of Interest	23
Remote Interests	25
Code of Ethics	26

Chapter 3

Elections and Lobbying 28

Chapter Summary 28

Types of Elections 28

General Elections 28

Special Elections 28

Primary Elections 29

Election of Commissioners 29

Initial Election 29

Subsequent Elections 30

Ballot Measures 30

Types of Ballot Measures 30

Ballot Titles 30

Use of District Office or Facilities Regarding Ballot Measures and Candidates 31

General Rule 31

Exceptions to Prohibition 31

Application of the Rule to Hospital Auxiliaries or Hospital Foundations 32

Resources for Complying with the Prohibition 32

Lobbying 33

General Rule 33

What Lobbying by a PHD is Allowed? 34

What Lobbying by a PHD is Prohibited? 34

What Lobbying Must be Reported to the Public Disclosure Commission? 35

What About Using Private Sector Lobbyists? 35

Chapter 4

Public Hospital District Personnel 37

Chapter Summary 37

Superintendent 37

Appointment, Removal, and Compensation 37

Powers 38

Duties 38

Treasurer 39

Duties 39

Depository of District Funds 40

Auditor 40

Chaplain 40

District Employees 41

- At-Will Employment 41
- Whistleblowing and Retaliatory Action 42
- The Hiring Process 43
- Labor Relations/Collective Bargaining 46
- Compensation and Benefits 48
- Federal Employment Laws 51
- Other Prohibited Discrimination 59
- Military Leave 60
- Domestic Violence Leave 61
- Holidays 62
- Political Activities of Employees 63
- Free Speech Issues 64
- Code of Ethics (Employees) 64

Contracting for Services/Independent Contractors 65

- Independent Contractor vs. Employee 65
- Contracting Process 66
- Architectural and Engineering Services 66
- Contracting with Other Entities to Provide Health Care Services 67
- Contracting with a Provider that Refuses to Provide Services Described in RCW 9.02.160 68

Chapter 5

Hospital District Finance 69

Chapter Summary 69

Budgeting 69

- Budget Levels 70
- Proposed Budget 70
- Public Hearings 70
- Budget Adoption 71
- Certification to the County 71
- Budget Amendments 71
- Additional Budget Resources 71

Accounting System 71

Revenues 72

- Patient Revenues 72
- Property Taxes 73
- Timber Taxes 78
- Donations and Fundraising 78

Borrowing 78

- Use of Bond Counsel 79
- Types of Borrowing Devices 79

State Taxes 85

- Business and Occupation (B&O) Tax 85
- Retail Sales and Use Tax 85
- Real Estate Excise Tax 86
- Leasehold Excise Tax 86

Gifts of Public Funds 86

- Lending of Money or Credit 87
- Support of the Poor or Infirm 87
- Legal Analysis Employed by Courts 87

State Auditor Audits 89

- Accountability Audits 89
- Financial Audits 89
- Single Audits 90
- Performance Audits 90
- Audit Costs 91
- Other Resources 91

Chapter 6

Public Hospital District Property 92

Chapter Summary 92

Acquisition of Property 92

- Real Property 92
- Personal Property 93

Disposal of Property 94

- Real Property 94
- Sale, Merger, or Lease of a Public Hospital District Hospital 95
- Personal Property 96

Abandoned or Unclaimed Property 96

Public Works Projects 96

- What is a "Public Work"? 96
- What is "Ordinary Maintenance"? 97
- Prevailing Wages Required 97
- Competitive Bidding Process 97
- Small Works Roster 99
- Exemptions from Competitive Bidding 100
- Alternative Public Works Contracting Procedures 101

Bidding Issues Regarding Leased Property 102

Hospital District as Tenant 102

Hospital District as Landlord 103

Application of the State Environmental Policy Act to District Projects 103

Chapter 7

Annexation, Withdrawal, and Reannexation of Territory 104

Chapter Summary 104

Annexation of Territory 104

Petition Method 105

Election Method 107

Withdrawal or Reannexation of Territory 109

Withdrawal of Territory Under RCW 70.44.235 109

Reannexation of Territory Withdrawn Under RCW 70.44.235 110

Withdrawal of Territory Under Chapter 57.28 RCW 110

Chapter 8

Division, Consolidation, and Dissolution of Districts 113

Chapter Summary 113

Division of Districts 113

Consolidation of Districts 114

Dissolution of Districts 116

Introduction

The Purpose of this Manual

This manual is an update to the January 2017 AWPFD Legal Manual. Its purpose is to explain the legal framework under which public hospital districts in Washington State operate. It is intended to provide district commissioners, superintendents, administrators, legal counsel, and other management personnel with information regarding: (1) laws that apply specifically to public hospital districts; and (2) laws that apply generally to all local governments in Washington State—laws such as the Open Public Meetings Act and the Public Records Act.

This manual does not replace the advice of an attorney. It should give the reader an appreciation for the legal boundaries and prompt the reader to ask the right questions of counsel. If legal advice or other expert assistance is required, the services of an attorney should be sought.

This revision of the manual was prepared by the legal staff at Municipal Research and Services Center of Washington ([MRSC](#)). MRSC is a private, nonprofit organization based in Seattle, with a mission of trusted guidance and services supporting local government success. MRSC will update this manual on a periodic basis, as needed by changes in federal and state law, new court decisions, and other legal developments.

Governing Legal Authority

This manual refers extensively to the legal authority governing public hospital districts. Following is a summary and explanation of the various sources of legal authority discussed in the manual.

Chapter 70.44 RCW

The authority, powers, duties, and limitations of a hospital district are set out in [chapter 70.44 RCW](#). That chapter is specific to hospital districts.

Other State Statutes

While [chapter 70.44 RCW](#) is the primary source of powers and limitations for public hospital districts, it is by no means the sole source of a district's powers and limitations. Numerous other statutes in the RCW (Revised Code of Washington) apply generally to local governments, including hospital districts. Many of these other statutes affecting public hospital districts are not directly referenced in [chapter 70.44 RCW](#), but they apply to hospital districts as a result of being applicable generally to local governments, or local governments *and* the state government (i.e., state agencies). For example, the Open Public Meetings Act in [chapter 42.30 RCW](#) applies to the governing bodies of all public agencies, state and local, though not the courts or the state legisla-

ture. Similarly, the Public Records Act in [chapter 42.56 RCW](#) applies to all public agencies, state and local, though not to the courts.

State Regulations

Washington State agencies implement state law, as directed by the state legislature, by the adoption of state regulations that are codified in the [Washington Administrative Code \(WAC\)](#). Of particular relevance to hospital districts are state regulations adopted by the Department of Health ([Title 246 WAC](#)), the Health Care Facilities Authority ([Title 247 WAC](#)), the Department of Ecology ([Title 173 WAC](#) and [Title 197 WAC](#)), and the Department of Labor and Industries ([Title 296 WAC](#)).

State Constitution

Our state constitution operates as to state government differently than the federal constitution operates as to the federal government. As explained by the Washington Supreme Court in [State v. Gunwall](#) (1986):

The United States Constitution is a *grant* of limited power authorizing the federal government to exercise only those constitutionally enumerated powers expressly delegated to it by the states, whereas our state constitution imposes *limitations* on the otherwise plenary power of the state to do anything not expressly forbidden by the state constitution or federal law.

As a creation of the state legislature, a hospital district is subject to the limitations imposed by the state constitution on the state and its political subdivisions. For example, [article 8, section 7](#) prohibits gifts of public funds or property or the loaning of money or credit by counties, cities, and other municipal corporations, including hospital districts, except in support of the “poor” or “infirm.”

Court Decisions

The Washington State courts interpret state law, the state constitution, and the federal constitution, as it applies within the state. As stated by the Washington Supreme Court, “[t]he ultimate power to interpret, construe and enforce the constitution of Washington belongs to the judiciary.” [Leonard v. Spokane](#) (1995). Three levels of the state judiciary have relevance for hospital districts: superior courts; Washington Court of Appeals; and Washington Supreme Court.

The superior court of each county is the trial level court and its decisions are binding only on the parties to a case and do not have precedential authority.

The Washington Court of Appeals hears appeals from superior court decisions, though some appeals go directly to the Washington Supreme Court. The Washington Court of Appeals is divided into three divisions, with each division serving a specific geographic area of the state. A Court of Appeals decision is binding only within that court’s division, but it can be viewed by another division as “persuasive authority.”

The Washington Supreme Court, consisting of nine justices, is the state's highest court. Its opinions are published, become the law of the state, and set precedent for subsequent cases decided in Washington. It hears appeals from Washington Court of Appeals decisions and some direct appeals from the superior courts. Unlike the Washington Court of Appeals, the Washington Supreme Court has discretion as to which appeals it will hear and decide.

For more information on Washington State courts, see the Washington State Administrative Office of the Court's [Guide to Washington State Courts](#).

The federal courts—district courts, courts of appeals, and U.S. Supreme Court (not including specialty courts)—hear cases involving issues of federal law, though state law issues can also be involved. For more information, see the Administrative Office of the U.S. Court's [Federal Courts](#) website.

Attorney General Opinions

[Opinions by the state Attorney General](#) (AG) also help define the boundaries of state law. Such opinions can be viewed by the courts as persuasive authority, but they are not binding upon courts. The AG's office issues both formal and informal opinions. A formal opinion is signed by the AG and is binding on the AG's office and other Washington agencies, such as the State Auditor's Office. An informal opinion is the individual opinion of an Assistant Attorney General and has not been reviewed by the Attorney General. It does not have the same binding effect on Washington agencies as a formal opinion. Only formal opinions are available online on the [AG's website](#).

Local (City and County) Laws

City and county laws, enacted as ordinances and resolutions, that are relevant to hospital districts are mainly those related to zoning and building codes. Hospital district facilities must comply with local zoning requirements and with the state building code ([chapter 19.27 RCW](#)), which is enforced by city and county building officials.

Federal Laws and Regulations

The primary federal laws ([United States Code](#) (U.S.C.)) and regulations ([Code of Federal Regulations](#) (C.F.R.)) of relevance to hospital districts that will be addressed in the manual are those that apply to local governments and employers generally, including the Americans with Disabilities Act; the Fair Labor Standards Act; the Family and Medical Leave Act; and the Age Discrimination in Employment Act.

Other federal laws and regulations of particular significance to the operation of hospitals and the provision of health care services, such as Medicare standards and the [Health Insurance Portability and Accountability Act](#) (HIPAA), will not be addressed in this manual.

Chapter 1

General Principles

Chapter Summary

This chapter discusses the nature of public hospital districts: how they operate as governmental entities, who they serve, and how they are created. As municipal corporations, public hospital districts are governmental entities and political subdivisions of the state. They were created by the state legislature as “special purpose districts” to carry out certain limited functions as specified in statute. Public hospital districts share some characteristics with other special purpose districts, including public utility districts, fire districts, and port districts.

A primary focus of this chapter is the powers, duties, and limitations of public hospital districts. The chapter concludes with an examination of the procedures required to form a public hospital district, as well as the initial actions a public hospital district must take upon formation.

Special Purpose Districts

Definition

A public hospital district is a “special purpose district,” which is a type of limited-purpose local government. Special purpose districts are created by the state legislature to carry out specific purposes—defined by statute—for the benefit of their residents and other persons.

Special purpose districts are classified as municipal corporations (and sometimes as “quasi-municipal” corporations) and have characteristics of both corporate entities and governmental entities. As corporate entities, special purpose districts are capable of contracting, suing, and being sued, like private corporations. As municipal corporations, however, their functions are wholly public.

Powers and Limitations

A special purpose district may exercise its powers only within the limits of the legislation authorizing its creation, and its powers may be either express or implied. The general rule, known as the “Dillon Rule,” is that municipal corporations are limited to the powers expressly granted by the legislature, and to powers necessarily or fairly implied in, or incident to, the powers expressly granted. See, e.g., *Port of Seattle v. Wash. Utils. & Transp. Comm’n* (1979).

Although the powers of special purpose districts are generally construed strictly, the courts recognize a distinction between “governmental” and “proprietary” powers. Generally speaking,

governmental powers are an exercise of delegated sovereign powers of the state, such as the power to regulate activities, levy taxes, condemn property, or to provide general governmental services such as schools, parks, and fire protection. As such, the governmental powers of a special purpose district are strictly construed.

Proprietary powers, by contrast, are exercised for the benefit of a municipal corporation's residents or customers. A local government acts in a proprietary capacity when it acts like a business, such as in providing electrical or water service. See, e.g., *City of Wenatchee v. Chelan County Pub. Util. Dist. No. 1* (2014).

When the legislature authorizes a municipal corporation to engage in a business activity, courts have concluded that municipal corporations have broad authority and may exercise their business powers in much the same way as business corporations, so long as they act within the purposes of their statutory grants.

Given this distinction between governmental and proprietary powers, courts look to the context to determine a special purpose district's powers. The Washington Supreme Court has determined that a rural public hospital district acts in a governmental capacity when providing health care services. See *Skagit County Pub. Hosp. Dist. No. 304 v. Skagit County Pub. Hosp. Dist. No. 1* (2013). But a hospital district acts in its proprietary capacity when engaging in administrative matters, such as when depositing money from insurers and beneficiaries into its bank account. See *Skagit County Pub. Hosp. Dist. No. 1 v. Dep't of Revenue* (2010).

Public Hospital Districts

What is a Public Hospital District?

The state legislature first authorized the creation of public hospital districts in 1945, primarily to encourage the establishment of hospitals in areas where private hospital development did not appear viable. Public hospital districts are created under the authority of [chapter 70.44 RCW](#), which has the following purpose, as stated in [RCW 70.44.003](#):

The purpose of [chapter 70.44 RCW](#) is to authorize the establishment of public hospital districts to own and operate hospitals and other health care facilities and to provide hospital services and other health care services for the residents of such districts and other persons.

Public hospital districts are not required to provide health care services through hospitals. The term "other health care services" is defined by [RCW 70.44.007](#) as: "nursing home, extended care, long-term care, outpatient, rehabilitative, and ambulance services; services that promote health, wellness, and prevention of illness and injury; and such other services as are appropriate to the health needs of the population served."

What is a Rural Public Hospital District?

Legislation enacted in 1992 established a subcategory of hospital district—a “rural public hospital district.” [RCW 70.44.460](#) defines a “rural public hospital district” as “a public hospital district authorized under [chapter 70.44 RCW](#) whose geographic boundaries do not include a city with a population greater than fifty thousand.” The [1992 legislation](#) was enacted to expressly authorize rural public hospital districts to enter into interlocal agreements with other rural public hospital districts to provide for the health care needs of the people served by the districts. See [RCW 70.46.450](#). The intent of this legislation was to create a safe harbor for rural PHDs to enter into cooperative agreements without fear of possible antitrust violations.

Boundaries of a Hospital District

A hospital district’s boundaries may be coextensive with the boundaries of the county in which it is located ([RCW 70.44.020](#)), include an area that is less than an entire county ([RCW 70.44.030](#)), or may include territory in more than one county ([RCW 70.44.035](#)). If the boundaries include less than an entire county or include territory in more than one county, the boundaries must follow existing precinct boundaries. For a map showing the boundaries of hospital districts in the state, see AWPHD’s [Hospital District Map](#).

A hospital district is not, however, limited to establishing facilities for hospital and other health care services only within the district’s boundaries. [RCW 70.44.060\(3\)](#) authorizes hospital districts “to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions.” Nevertheless, the Washington Supreme Court has concluded that this authorization does not mean that a *rural* hospital district may operate within the boundaries of another rural district without that district’s permission. In [Skagit County Pub. Hosp. Dist. No. 304 v. Skagit County Pub. Hosp. Dist. No. 1](#), the court, citing [RCW 70.44.450](#), reasoned that, “the legislature encourages rural PHDs to cooperate rather than compete in each other’s territory without permission.” The *Skagit County Pub. Hosp. Dist.* case limited its holding to rural public hospital districts, leaving it to a future case to decide whether this limitation also applies to non-rural public hospital districts.

Persons Served by a District

[RCW 70.44.003](#) states that hospital districts are authorized “to provide hospital services and other health care service for the residents of such districts *and other persons*.” (Emphasis added.) However, [RCW 70.44.060\(3\)](#) states that a district “must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district . . .” What is the significance of this language about “prior rights” of district residents? Here is a discussion of this question from a previous version of the AWPHD Legal Manual:

Does the PHD statute contemplate that PHDs, when considering service expansion, will place paramount importance on the district residents’ needs above the needs of all other persons when considering service expansion? Or, may PHDs, when planning service ex-

pansion, consider the needs of district residents and non-residents alike? For that matter, must consideration of a PHD's service area drive a decision to expand services?

The better view is that PHDs, when planning service expansion, are not limited to primary consideration of their district residents—that PHDs may consider the needs of district residents and non-residents alike. There are two reasons for this. First, the statute was written prior to the time that the federal government imposed non-discrimination provisions and open access requirements upon hospitals. In other words, because federal law supersedes state law when a conflict exists, hospitals have to treat all patients equally whether they are residents or non-residents.

In addition to the non-discrimination requirements, it is clear that for non-legal reasons districts may feel the need to pursue extraterritorial operations. Service to patient populations outside district boundaries may be of equal importance and, furthermore, service expansion may be motivated by strategies (gathering additional revenues, targeting new patient populations) that are not directly related to a district's service area. Direct service to district residents may only be an incidental or collateral purpose.

The State Attorney General has taken a contrary view, arguing that the primary focus of PHDs must be on district residents:

[A]lthough a district clearly is permitted to provide hospital services and other health care services for non-residents . . . a district's primary focus and emphasis must be on adequately providing for the needs of its residents. AGO 1988 No. 15 (emphasis added).

That there can be two opposite opinions signals that the law is muddy. It won't likely become more clear unless a case on point is litigated or the statute is amended with clarifying language. In the meantime, PHDs should be aware that differing interpretations of the law exist. Nevertheless, it is clear that the commissioners have discretion in determining a district's primary focus and priorities in fulfilling its residents' needs.

Extraterritorial Operation

Public hospital districts have statutory authority to provide hospital and other health care services through facilities located outside of their boundaries—known as “extraterritorial operation.” RCW 70.44.060(3). Extraterritorial operation may be “by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions.” RCW 70.44.060(3).

However, given the Attorney General's opinion that a district's primary focus must be on the needs of its residents (AGO 1988 No. 15), an authorization by a district board to expand services beyond the district's boundaries should formally state, by resolution, that the district's intention is to better serve its residents.

Extraterritorial Operation Within Another District

As stated above, RCW 70.44.060(3) does not allow a rural public hospital district to operate in the territory of another rural district without that district's permission, as concluded the Washington Supreme Court in Skagit County Pub. Hosp. Dist. No. 304 v. Skagit County Pub. Hosp. Dist. No. 1 (2013). The court in that case based its decision on three conclusions of law:

1. The general rule that two municipal corporations cannot perform the same functions at the same time in the same territory;
2. On the authorization in RCW 70.44.450 for rural public hospital districts to enter into cooperative agreements and contracts with other rural public hospital districts to provide for the health care needs of the people served by the districts; and
3. On the legislative statement following RCW 70.44.450 that "declares that it is not cost-effective, practical, or desirable to provide quality health and hospital care services in rural areas on a competitive basis because of limited patient volume and geographic isolation."

Although the court did not address whether this prohibition also applies to non-rural PHDs, the Attorney General opined in AGO 1988 No. 15 that the development and operation of health care facilities by one district within the boundaries of another district without permission would be contrary to the statutory scheme of chapter 70.44 RCW. Although this opinion is not binding on the courts, the Washington Supreme Court may, at some point, agree with the Attorney General and conclude that non-rural PHD's are prohibited from operating in the territory of another PHD without that district's permission.

Formation of a Hospital District

The procedure for forming a hospital district varies based on whether the district to be created is countywide, intra-county, or inter-county. Although the statutes describe the exact process, the procedures are summarized below.

Formation of a Countywide District

The formation of a district whose boundaries will be the same as those of a county—a countywide district—may be initiated either by:

- A resolution adopted by the county legislative body (board of county commissioners or the county council, as the case may be); or
- A petition filed with the county auditor and signed by at least 10 percent of the number of registered voters in the county who voted in the last general county election (those held in even-numbered year, except where a county charter provides otherwise).

The resolution or petition would call for an election to be held on the question of creating a countywide hospital district. The proposition can be voted on at either a special or general election. See [Elections and Lobbying](#).

Formation of an Intra-County Public Hospital District

The formation of an intra-county district, whose boundaries are less than those of the county, may be initiated only by a voter petition signed by at least 10 percent of the number registered voters in the area of the proposed district who voted in the last general county election. The boundaries of the proposed district must follow precinct boundaries.

After the petition is certified by the county auditor, the board of county commissioners must publish the petition, without signatures, and set the date for a public hearing before the board. After the hearing, the board must enter an order fixing the boundaries of the proposed district. If the board finds that territory should be removed from the proposed district, the board may in its order reduce the boundaries. It may not, however, include properties not included in the petition unless the owners of that property request their inclusion in writing.

Formation of an Inter-County Public Hospital District

The formation of an inter-county district, whose boundaries include territory in more than one county, may be initiated only by a voter petition signed by at least 10 percent of the number of registered voters in the area in each county of the proposed district who voted in the last general county election. The boundaries of the proposed district must follow precinct boundaries, and may not divide any voting district.

After the petition is certified by the auditors of the respective counties, the board of county commissioners of each county must publish the petition, without signatures, and set the date for a public hearing before each board. After the hearings, the boards must each enter an order fixing the boundaries of the proposed district within their respective counties. If the boards find that territory should be removed from the proposed district, the boards may in their orders reduce the boundaries. They may not include properties not included in the petition unless the owners of the land request their inclusion in writing.

Election on District Formation and District Commissioners

The ballot measure forming on the formation of the district must include the election of district commissioners. The board (or boards) of county commissioners determine by resolution whether there will three, five, or seven commissioners, and whether they are to be elected by district (three, five, or seven) or at-large. No primary is held for the election of the initial district commissioners.

A proposition to establish a hospital district is approved if a simple majority of those voting votes in favor and the total of votes cast is greater than 40 percent of the total number of votes cast in the proposed district in at the preceding state general election (the election held the previous November). The commissioner candidates receiving the greater number of votes in each district,

or at-large (if applicable), are elected. If the district is not approved the election of commissioners is, of course, null and void.

Initial Actions of a New Hospital District

A new hospital district board of commissioners has many issues to consider, much information to gather, and many decisions to make. It is not the intent of this manual to discuss all of the decisions that will confront a board of a new district, but only to highlight its most significant decisions, including those that are required by statute.

Elect President and Secretary

The first, or one of the first, orders of business of a board of commissioners of a new district is to elect a board president and board secretary. [RCW 70.44.050](#). The board should also establish procedures for such elections and for the terms that board members will serve in those positions.

Adopt Bylaws

The board of commissioners is required to adopt rules governing the transaction of its business. [RCW 70.44.050](#). Such rules are typically in the form of “bylaws,” and they may cover such matters as:

- The terms of and the procedures for electing a board president and secretary;
- The schedule of regular board meetings. See [RCW 42.30.070](#);
- Rules for meeting agendas and the conduct of meetings;
- The procedure for filling board vacancies;
- Committees of the board, if any;
- Establishing district office positions—including superintendent, treasurer (if not the county treasurer; see [RCW 70.44.171](#)), and auditor, along with their authority and duties;
- Rules for avoiding conflicts of interest;
- Code of ethics;
- Indemnification and insurance;
- Procedure for amending the bylaws.

Adopt Official Seal

A public hospital district is required to adopt an official seal pursuant to [RCW 70.44.050](#). However, it should be noted that there do not appear to be any actions under state law that require the official seal of a Washington public hospital district.

District Survey

The district commissioners should conduct a survey of existing hospital and other health care facilities within and without the district to determine the health care needs of district residents. [RCW 70.44.060\(1\)](#).

Adopt a Plan of Improvements

Based on the results of the survey, the commissioners must adopt a plan to meet those health care needs.

Appoint a Superintendent

The commissioners must, by resolution, appoint a superintendent and set his or her salary. [RCW 70.44.070\(1\)](#). See [Superintendent](#) for more information on this position.

Designation of Depository Bank

If the district board decides not to have the county treasurer serve as the treasurer of the district and instead appoint its own treasurer, it must by resolution designate a bank into which district funds are to be deposited. [RCW 70.44.171](#).

Adopt a Budget

The commissioners must adopt a budget for the following calendar year, on or before November 15. [RCW 70.44.060\(6\)](#). See [Budgeting](#) for more information on adoption of a budget. The board may also need to adopt an interim budget to function until the statutorily-required budget becomes effective.

Purchase Liability Insurance

Hospital districts are authorized, in their discretion, to purchase liability insurance to protect officers and employees from claims arising out of the good faith performance of their duties and to hold them harmless from expenses connected with such claims. [RCW 36.16.138](#). Because PHDs are statutorily required, upon request, to pay for the defense of such claims ([RCW 4.96.041](#)), and to pay any monetary penalties resulting from them, purchasing liability insurance is a necessity.

Purchase Health/Other Insurance for Officers and Employees

A PHD board may also decide to purchase health insurance, and other types of insurance, for district officers and employees. The statutes do not specify what types of insurance may be provided to employees, but such insurance could include health, dental, disability, and life insurance. The board may also authorize its commissioners to be covered by the same insurance as employees. [RCW 70.44.050](#).

Establish Employee Positions, Compensation, and Personnel Policies

See District Employees for information on employee positions, employee compensation, and personnel policies.

Chapter 2

Public Hospital District Governance

Chapter Summary

The creation of a hospital district (as discussed in Chapter 1) can be a tricky legal and political undertaking. However, the thickest web of confusion for any hospital district relates to the laws triggered by its day-to-day operations. This chapter examines public hospital district governance; commissioner compensation, financial disclosure, liability, and ethics; the Open Public Meetings Act; the Public Records Act; and ethics rules for district commissioners.

Commissioner Districts

Establishment

Public hospital districts are governed by a board of commissioners. The number of commissioners can be either three, five, or seven, as determined by resolution of the board of county commissioners of the county or counties in which the proposed public hospital district is located. The board of county commissioners also determines by resolution whether the district commissioners will be elected from either three, five, or seven commissioner districts, by at-large positions, or by both. The voters elect commissioners on the same ballot as they consider the proposition for forming the district.

The terms of the inaugural district commissioners are staggered, with the terms determined by statute based on the number of commissioners. The commissioner(s) receiving the greater number of votes at the initial election will serve the longer terms of office. Although commissioner candidates must reside in the district for which they seek a commissioner position (unless the position is at-large), the voters of the entire district vote on each commissioner. No person elected as commissioner may also be a district employee. [RCW 70.44.040](#).

If the hospital district is countywide and the county board of commissioners is divided into three commissioner districts, the county commissioner districts must also be used as the hospital district commissioner districts. In all other new public hospital districts, the county auditor is to draw the initial commissioner districts and designate at-large positions, if appropriate. If the district is located in more than one county, the auditor of the county in which the largest portion of the proposed district is located would perform that function. [RCW 70.44.040\(2\)](#).

Redistricting

In most cases, commissioner districts of a public hospital district must be redrawn periodically as provided in [chapter 29A.76 RCW](#) and [RCW 70.44.040\(2\)](#). (For countywide districts with three commissioners in a county with three county commissioner districts, the public hospital district lines follow those of the county commissioner districts, so the county commissioners, instead of district commissioners, redraw those districts.)

Under [RCW 29A.76.010](#), it is the responsibility of each municipal corporation to periodically redistrict its governmental unit based on population information from the most recent federal decennial census. No later than eight months after receipt of federal decennial census information applicable to the district, the district board of commissioners must prepare a plan for redistricting its commissioner districts. The plan must follow certain criteria:

- Each commissioner district must be as nearly equal in population as possible to each and every other commissioner district.
- Each commissioner district must be as compact as possible.
- Each commissioner district must consist of a geographically contiguous area.
- Population data may not be used for purposes of favoring or disfavoring any racial group or political party.
- The commissioner district boundaries must coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

The district board must hold at least one public hearing on the proposed redistricting at least one week before adopting it. [RCW 29A.76.010\(5\)](#).

The federal decennial census occurs in years ending in zero. The decennial redistricting calendar typically begins in April of the census year and ends before candidate filing week in May of the following year. However, with respect to the 2020 Census only, the Washington State Legislature has extended the redistricting deadlines as described in this MRSC Insight blog: [Redistricting and the 2020 Census](#). Local governments that are not scheduled to elect members of their governing bodies in 2022 (which includes hospital districts) must submit redistricting plans no later than November 15, 2022.

Redistricting Challenge

Any registered voter residing in a commissioner district affected by the redistricting plan may request review of the plan by the superior court of the county in which he/she resides within 45 days of the plan's adoption. A request for review must specify the reasons alleged why the local plan is not consistent with the applicable redistricting criteria (see above).

The superior court will review the challenged plan for compliance with the criteria. If the court finds the plan to be consistent with the criteria, the plan shall take effect immediately. If the court determines that the plan does not meet the criteria, it must remand the plan to the board of commissioners for corrective action within a specified and reasonable time period. Finally, if the court finds that a request for review is frivolous or has been filed solely for purposes of harassment or delay, it may impose appropriate sanctions on the party requesting review, including payment of attorney's fees and costs to the district. [RCW 29A.76.010\(6\)](#).

Practical Considerations for Redistricting

Federal census tracts make for a convenient tool to adjust the population of commissioner districts. Federal decennial census population information is available in several different forms. The information can be as detailed as population per city block, per precinct, or per federal census tract. Usually, federal census tracts are the largest meaningful area. This means that the internal commissioner district boundaries will follow the federal census tract lines. These lines generally will not follow the precinct lines which are commonly used for dividing political districts.

Abolishing/Reestablishing Commissioner Districts

A public hospital district board may, by resolution, decide to abolish commissioner districts, allowing commissioners to reside anywhere within the public hospital district. [RCW 70.44.042](#).

Commissioner districts may be reestablished by district voters at a general or special election that is initiated either by a board resolution or by a petition signed by 10 percent of the district's voters who voted in the last general election. See [Chapter 3](#) regarding these two types of elections, general and special.

Commissioners

Role of Public Hospital District Commissioners

The board of hospital district commissioners is the governing body of a hospital district. The board is responsible for establishing hospital district policies with respect to the district's exercise of its powers as set out in [RCW 70.44.060](#). This includes all decisions with respect to the operations of the district, including the delivery of quality patient care. In fulfilling this responsibility, the board's role is to adopt the necessary general policies and to delegate the district's day-to-day operations to the district superintendent.

Forms of Commissioner Action

The board of commissioners makes its decisions—takes action—in open public meetings by approving motions or resolutions. [RCW 70.44.050](#). A board must act by resolution where a statute specifies the particular action must be approved by resolution.

Resolutions must be approved by at least a majority of the whole board of commissioners ([RCW 70.44.050](#)), while motions require the approval of a majority of the members at a meeting,

if a quorum is present. A quorum is a majority of the whole board. (Note: the “whole board” or “whole commission” is the number of commissioner positions on the board, regardless of whether any positions are vacant. For example, on a five-member board with two positions vacant, a quorum is three members, and a resolution must be approved by all three members.)

What if a board member abstains from voting, because of a conflict of interest or other reason? How does that affect a quorum and the vote required for the board to take action? See MRSC’s [How Are Abstentions Handled When Counting Votes?](#) blog post.

Number of Commissioners on the Board

A hospital district board of commissioners may have three, five, or seven members. The number of commissioners is determined when the district is established, by the resolution of the county commissioners of the county or counties in which the district is located, that submits to the voters the proposition to establish the district. [RCW 70.44.040\(1\)](#).

The number of hospital district commissioners may be increased (to five or seven members) at a general or special election called for that purpose. This process must be initiated either by a resolution of the board or by a petition signed by 10 percent of the voters based on the total vote cast in the last district general election, i.e., the last general election held in an odd-numbered year. [RCW 70.44.053](#).

If the voters approve an increase in the number of commissioners, the additional commissioners are elected at the next district general election (held in November of an odd-numbered year) that occurs 120 or more days after the election authorizing the increase. [RCW 70.44.056](#). The initial terms of the new commissioners are staggered as provided in [RCW 70.44.056](#). The new commissioners will be elected at-large, although the board of commissioners may redistrict the hospital district into five or seven districts, as appropriate. [RCW 70.44.054](#).

Qualifications, Oath, and Term of Office

Qualifications for Elective Office

The basic qualification to hold elective office in this state is for a person to be a U.S. citizen and an “elector” within the boundaries of the jurisdiction in which the person is seeking elective office. [RCW 42.04.020](#). Article 6, section 1 of the state constitution defines an “elector” as a person at least 18 years of age who is citizens of the United States and who has lived in the precinct at least 30 days preceding the election.

A person must also be a registered voter to file as a candidate for elective office. [RCW 29A.24.031\(1\)](#). In a hospital district divided into commissioner districts, a person must be a registered voter in a commission district to qualify as a candidate for a commissioner position in that district. [RCW 70.44.040\(2\)](#).

No person elected as commissioner may also be a district employee. [RCW 70.44.040\(3\)](#).

For information about possible roadblocks to being eligible for elective office, see Chapter 2 (“Can I Seek Office?”) of the MRSC publication *Getting into Office: Being Elected or Appointed into Office in Washington Counties, Cities, Towns, and Special Districts*.

Oath of Office

A successful candidate for a hospital district commissioner position must take an oath of office to commence his or her term of office. As no particular oath is specified for hospital district commissioners, the oath should be “that he or she will faithfully and impartially discharge the duties of the office to the best of his or her ability.” RCW 29A.04.133(3). The oath may be given by any notary public or by any public officer authorized to administer oaths, and must be given without charge. *Id.* Local government officials who are authorized by law to administer the oath of office include:

- Court commissioner;
- Judge;
- Clerk of a court;
- County auditor or deputy auditor;
- County commissioner or county councilmember;
- Mayor; and
- Clerk of a code city or town.

The oath of office may be taken up to 10 days before the date the term of office commences or at the last regular meeting of the board of commissioners prior to that date. RCW 29A.60.280(3). However, if a commissioner is appointed to fill a vacant board position, the oath is taken at the time the commissioner assumes office (after the election results are certified).

Term of Office

Generally, the term of office of a hospital district commissioner may commence on January 1 after the election, if the oath of office has been taken. RCW 29A.60.280(2), (3). The term is for six years. RCW 70.44.040(1). This is true except when a district is first established, at which time the initial commissioners serve staggered terms of two, four, and six years, as provided in RCW 70.44.040(1).

However, when the election is to a position held by someone appointed to that position to fill a vacancy, the term begins as soon as the election results are certified and the oath of office is taken. RCW 42.12.070(6).

Public Hospital District Disclosure of Finances

Hospital district commissioners, like all elected public officials in Washington, must file a Personal Financial Affairs Statement with the state [Public Disclosure Commission](#) (PDC) each year, between January 1 and April 15 for the preceding calendar year. Candidates for district board position positions must also file. [RCW 42.17A.700](#); see also, the PDC's [Personal Financial Affairs Statement Instruction Manual](#).

Persons who seek election to a hospital district board of commissioners are required to file a Personal Financial Affairs Statement within two weeks of becoming a candidate. Persons appointed to fill an unexpired commissioner term must file within two weeks of the appointment.

The contents of financial affairs statements are specified in [RCW 42.17A.710](#). Financial affairs statements are public records [available for viewing or copying](#) by the public.

Note, that this reporting requirement generally does not apply in districts that have fewer than 2,000 registered voters, as of the most recent general election. However, there are certain exceptions to this rule:

- Where a petition for disclosure signed by 15 percent of the number or registered voters, as of the most recent general election, is filed with the PDC;
- Where the district board of commissions vote to apply the reporting requirement to the board and board candidates; or
- Where a candidate receives or expects to receive \$5,000 or more in contributions.

[RCW 42.17A.135](#).

Commissioner Compensation

Salary

By statute, hospital district commissioners receive compensation for service on the board at a rate pursuant to [RCW 70.44.050](#). These rates are adjusted for inflation every five years. As of July 1, 2018, the rate is \$128 per day up to a annual compensation limit of \$12,288. [WSR 18-11-088](#).

Hospital districts should strictly follow the statutory requirements and appropriately document the days for which commissioners are entitled to compensation.

Waiver of Salary

A commissioner may, by written waiver filed with the district, forego any or all of his/her compensation as to any month, prior to the date on which the compensation would otherwise have been paid. [RCW 70.44.050](#).

Insurance

If a district provides “group insurance” for its employees, it may provide the same insurance to its commissioners. The insurance may cover immediate family and dependents. [RCW 70.44.050](#). As the statute does not limit the types of insurance that may be provided, presumably this could include any type of group insurance maintained by the district for its employees, such as health, life, dental, or disability insurance.

Reimbursement of Expenses

Hospital district commissioners are to be reimbursed for reasonable expenses incurred in connection with district business and meetings, including subsistence and lodging and travel while away from his or her place of residence. [RCW 70.44.050](#). See [Chapter 4](#) for a discussion of the considerations and procedures regarding expense reimbursement.

Meetings and Agendas

All meetings of the board of commissioners are subject to the requirements of the Open Public Meetings Act (OPMA), [chapter 42.30 RCW](#). See the [Open Public Meetings Act](#) resources linked to below.

A board of county commissioners should in its bylaws/rules establish the format for agendas and how agendas are established, including how agenda items are added, amended, and deleted.

The OPMA, at [RCW 42.30.077](#), requires that the agendas of regular meetings of any governing body, including boards of hospital district commissioners, be posted online at least 24 hours in advance of the meeting. An agency is not required to post an agenda online if it does not have a website or if it employs fewer than 10 full-time equivalent employees. Noncompliance with this requirement is a violation of the Open Public Meetings Act, but it carries no specific penalty. Any otherwise legal action taken at a meeting is not invalidated because the meeting agenda was not posted in compliance with this requirement.

Committees of the Board

The board may establish committees of the board to assist in board business, such as to investigate issues and make recommendations to the full board on those issues. Such committees may or may not be subject to the Open Public Meetings Act, depending upon their functions and authority. For more information, see MRSC’s [State Supreme Court Says Advisory Committees Are Not Subject to the OPMA](#) blog post.

Commissioner Vacancies

Vacancies in commissioner positions may occur as a result of:

- Nonattendance at commission meetings for 60 days, unless excused by the board of commissioners ([RCW 70.44.045](#));

- Any of the reasons specified in [RCW 42.12.010](#), including: death; resignation; ceasing to be a registered voter in the commissioner district; conviction of a felony or of any offense involving a violation of the commissioner’s official oath; refusal or neglect to take the oath of office; and voiding of an election or appointment; and
- Recall from office, according to the procedure provided in [RCW 29A.56.110 - .270](#).

Commissioner vacancies are filled by appointment by the remaining commissioners. See [RCW 42.12.070](#), which also address how vacancies are filled if more than one position is vacant, if only one member of a board is left as a result of vacancies, or if a vacancy is not filled within 90 days of the occurrence of the vacancy. The person appointed to the vacant position serves until the next general election at which commissioner positions are to be elected. The person elected to the position filled by the appointee takes office as soon as the election results are certified and serves the remainder of the unexpired term for that position, if any. [RCW 42.12.070\(6\)](#).

Liability and Indemnification of Commissioners

Liability

Members of the governing body of a public agency, including a public hospital district, are immune from civil liability for damages for any discretionary decision or failure to make a discretionary decision within their official capacity. [RCW 4.24.470](#).

However, hospital district commissioners are potentially liable individually for actions taken by the board that are not considered “discretionary” and that result from “tortious conduct” by the board that causes damages. Actions that are not considered discretionary include administrative and quasi-judicial actions. For example, a board of hospital district commissioners acts in a quasi-judicial capacity when making a determination regarding a physician’s privileges.

Hospital district commissioners are also subject to statutory penalties for violations of specific laws, such as the Open Public Meetings Act (\$500; [RCW 42.30.120\(1\)](#)) and conflict of interest laws (\$500; [RCW 42.23.050](#)).

Indemnification

Commissioners are rarely, if ever, found individually liable for their actions, but they may nevertheless be named in lawsuits against districts and must defend themselves. [RCW 4.96.041](#) provides that, when an action for damages is brought against an officer, employee, or volunteer of a local government agency for official acts or omissions, that person is entitled to request that the agency defend him or her at the agency’s expense. The request must be granted if the agency determines that “the acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties.”

The agency is required to pay for any nonpunitive damages and may, at the discretion of the board, pay punitive damages found against the officer, employee, or volunteer. [RCW 4.96.041](#).

Open Government

Open Public Meetings Act

All meetings of the board of hospital district commissioners are subject to the requirements of the Open Public Meetings Act (OPMA). Committees established by the board of commissioners may also be subject to the OPMA, depending on their functions. MRSC's [Open Public Meetings Act](#) publication provides a thorough discussion of the requirements of the OPMA. See also MRSC's [Open Public Meetings Act](#) topic page, and the Washington Attorney General's [Open Government Resource Manual](#).

Meetings Regarding Staff Privileges/Quality Improvement Committee

[RCW 70.44.062\(1\)](#) requires confidentiality for certain board of hospital district commissioners meetings and proceedings and authorizes that they be conducted in executive session:

All meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider as that term is defined in [RCW 7.70.020](#), if such other providers at the discretion of the district's commissioners are considered for such privileges, *shall be confidential* and may be conducted in executive session: PROVIDED, That the final action of the board as to the denial, revocation, or restriction of clinical or staff privileges of a physician or other health care provider as defined in [RCW 7.70.020](#) shall be done in public session.

(Emphasis added.)

In addition, that statute, at subsection (2), authorizes, but does not require, certain other meetings and proceeding to be treated as being confidential and to be held in executive session:

All meetings, proceedings, and deliberations of a quality improvement committee established under [RCW 4.24.250](#), [43.70.510](#), or [70.41.200](#) and all meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, to review the report or the activities of a quality improvement committee established under [RCW 4.24.250](#), [43.70.510](#), or [70.41.200](#) may, at the discretion of the quality improvement committee or the board of commissioners, be confidential and may be conducted in executive session. Any review conducted by the board of commissioners or quality improvement committee, or their staffs or agents, shall be subject to the same protections, limitations, and exemptions that apply to quality improvement committee activities under [RCW 4.24.240](#), [4.24.250](#), [43.70.510](#), and [70.41.200](#). However, any final action of the board of commissioners on the report of the quality improvement committee shall be done in public session.

Public Records Act

The Public Records Act (PRA), [chapter 42.56 RCW](#), requires that all public records as defined in the PRA are subject to public disclosure, unless an exemption from disclosure in the PRA or in some other statute applies. MRSC’s [Public Records Act](#) publication provides a thorough overview of the requirements of the PRA. See also MRSC’s [Public Records Act](#) topic page, and the Washington Attorney General’s [Open Government Resource Manual](#).

Medical Records

Of particular importance for hospital districts are the provisions of the state’s Uniform Health Care Information Act, [chapter 70.02 RCW](#), which provides for the confidentiality of medical records—records that contain health care information associated with the identity of a patient and that relates to the patient’s health care. The content of medical records may be disclosed without the patient’s written authorization under [RCW 70.02.030](#) only to specific individuals or entities under circumstances described in [RCW 70.02.050](#), [RCW 70.02.200](#), and [RCW 70.02.210](#), or by the federal Health Information Portability and Accountability Act (HIPAA).

HIPAA, which protects the privacy of individually identifiable health information, is not addressed in this manual, but it, of course, has significance for public hospital districts. One important source of information about HIPAA is the federal Department of Health & Human Services’ [Health Information Privacy](#) webpage.

For information concerning the intersection of HIPAA and state law when disclosing protected health information to law enforcement officials, see the Washington State Hospital Association’s [Hospital and Law Enforcement: Guide to Health Care Related Disclosure](#).

Training Requirements

All public hospital district commissioners must, within 90 days after taking the oath of office, receive training on the requirements of the OPMA (see [RCW 42.30.205](#)), the PRA (see [RCW 42.56.150](#)), and the records retention law in [chapter 40.14 RCW](#) (see [RCW 42.56.150](#)), discussed below. Commissioners must also receive “refresher training” at intervals of no more than four years. The exact training required and who may provide that training is not specified, though the “[t]raining may be completed remotely with technology including but not limited to internet-based training.” [RCW 42.30.205\(3\)](#); [RCW 42.56.150\(4\)](#).

For more information on this training requirement, see MRSC’s [OPMA and PRA Training Requirements for Government Officials](#) blog post as well as the Attorney General’s [Open Government Training](#) webpage.

Records Management

All public agencies are subject to statutory and regulatory requirements regarding the retention and destruction of public records. [RCW 40.14.020](#). Public records may be disposed of—destroyed or archived—only in accordance with the records retention schedules established by the Washing-

ton State Archives, a division of the Secretary of State's Office. Public records must be retained for the minimum retention period as specified in these schedules.

Two records retention schedules adopted by the Washington State Archives apply to public hospital districts: (1) the Local Government Common Records Retention Schedule (CORE); and (2) the Public Hospital Districts Records Retention Schedule.

CORE authorizes the destruction/transfer of public records documenting the common functions and activities of all local government agencies such as the management of the agency and the management of the agency's assets, finances, human resources, and information resources.

In comparison, the Public Hospital Districts Records Retention Schedule covers records not covered by CORE, such as those relating to the functions of agency management, asset and infrastructure management, financial management, health care and treatment, laboratory and pathology management, patient/client account management, pharmacy, and research.

As stated in these retention schedules, "Washington State Archives strongly recommends the disposition of public records at the end of their minimum retention period for the efficient and effective management of local resources." An important exception to this guideline, however, is if a record could be destroyed under the appropriate retention schedule but it is also subject to a records request under the Public Records Act, it may not be destroyed until the records request is resolved. RCW 42.56.100.

Conflicts of Interest and Code of Ethics

Washington law governing conflicts of interest for municipal entities is derived from the state constitution, statutes, and the common law. The general rule is that municipal officers must not use their positions to enrich themselves or to secure special privileges or exemptions for themselves or others. As expressed by the Washington Supreme Court many decades ago, the common law principle that a municipal officer is prohibited from adjudicating his or her own cause is "a maxim as old as the law itself." See *Smith v. Centralia* (1909).

Contractual Conflicts of Interest

The Basic Prohibition

Chapter 42.23 RCW contains the statutes governing contractual conflicts of interest. The basic prohibition is stated in RCW 42.23.030:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.

To be “beneficially” interested in a contract means to be financially interested in that contract. Since Washington is a community property state, an officer is financially interested in a district contract that would be made with that officer’s spouse. (Though, as discussed below, there is a limited exception to the prohibition regarding contracts with district commissioner spouses.) A district officer does not have a financial interest in a contract made with other relatives, with the exception of a minor child or other dependent of the officer. However, a district board of commissioners may decide to adopt a broader prohibition that includes contracts with other relatives, based on the possible perception of a conflict of interest.

Applies to Municipal Officers

The prohibition applies to “municipal officers,” defined broadly in [RCW 42.23.020\(2\)](#) to include:

all elected and appointed officers of a municipality, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer.

This definition is not very helpful, in that it does not define “officer.” However, with respect to public hospital districts, it covers the commissioners, superintendent, treasurer, and auditor, and their “assistants.” It does not cover the hospital district medical staff. To trigger the prohibition, such officers must possess authority over the “making” of a contract.

What is a “Contract” for Purposes of this Prohibition?

Under [RCW 42.23.020\(3\)](#), “contract” is defined to include “any contract” (e.g., employment agreement, contract for services, public works contract) and also any “sale, lease or purchase.”

What is the “Making” of a Contract?

The action of a municipal officer to which this prohibition applies is the “making” of the contract. *Seattle v. State* (1983). The “making” of a contract involves the act of selecting whom to contract with and the act of approving the contract. The prohibition thus applies only to those officers who have the authority to select with whom the district will contract and/or to approve contracts. Those officers that possess such authority may not evade the prohibition simply by delegating that authority to another officer.

Because the prohibition applies to the making of a contract, it would not apply to a contract entered into prior to the contracting party becoming a municipal officer with the authority to make or supervise the making of the contract. However, future amendments and/or revisions (e.g., change orders) to the contract would implicate [RCW 42.23.030](#) because, in effect, the contract would be “re-made” under the officer’s supervision or by or through his or her office.

Exceptions to the Prohibition

[RCW 42.23.030](#) provides for certain contractual exceptions to the basic prohibition. Those exceptions that may be relevant to public hospital district officers are:

- The designation of public depositaries for public hospital district funds;

- The publication of legal notices required by law to be published by the public hospital district;
- Employment as unskilled day labor at wages not exceeding \$200 in any calendar month;
- Contracts in which the total amount received by the district officer or the officer's business does not exceed \$1500 in any calendar month. (But see special exception for rural public hospital districts below.) However, this exception does not apply to:
 - A sale or lease of property by the district; or
 - Contracts for legal services, except for reimbursement of expenditure.
- The district must maintain a list of all contracts awarded under this exception, which list must be publicly available.
- The approval of any employment contract made with the spouse of a district commissioner if: (a) the spouse was employed prior the commissioner's election; (b) the contract is commensurate with the pay plan or collective bargaining agreement for similar employees; (c) the commissioner discloses the contract; and (d) the commissioner does not vote on the contract or any of its terms.

Special exception for rural public hospital districts. Commissioners of a rural public hospital district may enter into contracts that exceed \$1500 in any calendar month as long as the contracts do not exceed \$24,000 in a calendar year. [RCW 42.23.030\(6\)\(c\)](#). That \$24,000 limit is to be increased at the beginning of each year by an amount that is a multiple the change in the Consumer Price Index as of the close of the 12-month period ending December 31st of that previous calendar year. If the new dollar amount is not a multiple of \$10, the increase shall be rounded to the next lowest multiple of \$10.

A district commissioner may not vote on any contract in which he or she may be financially interested, even though one of the above exceptions applies. A district officer's interest in a contract under this statute must be disclosed to the district board of commissioners and noted in the official meeting minutes prior to the district entering into the contract.

Remote Interests

[RCW 42.23.040](#) designates four "remote interests" that are not considered interests under the prohibition in [RCW 42.23.030](#):

- That of a nonsalaried officer of a nonprofit corporation;
- That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
- That of a landlord or tenant of a contracting party; and

- That of a holder of less than one percent of the shares of a corporation or cooperative which is a “contracting party.”

A “contracting party” is defined in RCW 42.23.020(4) as “any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with a municipality.” Under this definition, another governmental entity would not be considered a contracting party. As such, contracts between municipal entities do not implicate this remote interest provision. So, for example, if a district commissioner is also employed as a salaried officer of another municipal entity, he or she would have neither a remote nor a beneficial/financial interest in a contract entered into between the district and the other municipal entity.

If a district officer has a remote interest in a contract being considered by the district and that would be made by or under the supervision of that officer, certain requirements must be complied with for the district to enter into the contract:

- The district officer must fully disclose the contract interest to the board of commissioners;
- The district officer may not vote on the contract, or, as stated in RCW 42.23.040, the officer’s vote cannot be counted. (Note, it is advisable that the district officer simply not vote on the contract.);
- The remote interest must be noted in the board of commissioners’ minutes before entering into the contract, and
- The board of commissioners must approve the contract “in good faith.”

Also, if the district officer influences or attempts to influence any other district officer regarding the contract, the remote interest exception does not apply and the contract is therefore prohibited.

Code of Ethics

Chapter 42.23 RCW also contains a statute, RCW 42.23.070, that sets out a code of ethics—a list of “prohibited practices”—for municipal officers:

- (1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.
- (2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer’s services as such an officer unless otherwise provided for by law.
- (3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of

his or her official position to disclose confidential information acquired by reason of his or her official position.

(4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

A hospital district board of commissioners may adopt an ethics policy that includes additional requirements. Such a policy may not conflict with state law, but it can supplement it. A district ethics policy or code can accomplish the following:

- It can clarify and further explain what is covered in state law.
- It can cover employees as well as officers.
- It can address ethical issues not addressed in RCW 42.23.070.

Chapter 3

Elections and Lobbying

Chapter Summary

This chapter discusses the types of elections and how public hospital district commissioners are initially and subsequently elected. It also addresses ballot measures and the statutory restrictions on using public office or facilities to support or oppose a ballot measure or to assist a campaign for elective office. Finally, this chapter discusses the authority of public hospital districts to lobby and the restrictions on that authority.

Types of Elections

The discussion below about elections provides general information on elections and includes matters specific to public hospital districts. The process for qualifying and running for elective office in general is addressed in great detail in MRSC’s *Getting into Office: Being Elected or Appointed into Office in Washington Counties, Cities, Towns, and Special Districts* publication.

The conduct of elections is governed generally by [title 29A RCW](#), although [chapter 70.44 RCW](#) contains some provisions regarding hospital district elections as well. See, e.g., [RCW 70.44.040](#). There are three basic types of elections: general, special, and primary.

General Elections

A “general election” is defined in state law as “an election required to be held on a fixed date recurring at regular intervals.” [RCW 29A.04.073](#).

- Statewide general elections are elections held on the first Tuesday after the first Monday of November of each year. [RCW 29A.04.321\(1\)](#).
- General municipal elections—those held to elect city, town, and special purpose district positions—are general elections held in odd-numbered years. [RCW 29A.04.330\(1\)](#). Unless a statute specifies a “general municipal election,” its reference to a “general election” means an election held in November of any year.

Special Elections

A “special election is defined as “any election that is not a general election and may be held in conjunction with a general election or primary.” [RCW 29A.04.175](#). Special elections, which are

called by resolution of a county legislative body or of the governing body of a city, town, or special purpose district, may be held on any of the following dates:

- The second Tuesday in February;
- The fourth Tuesday in April;
- The date of the primary election (the first Tuesday in August); or
- The first Tuesday after the first Monday of November (i.e., the date of the general election).

RCW 29A.04.321(2); RCW 29A.04.330(2).

A resolution calling for a special election must be presented to the county auditor at least 46 days prior to the date of a February or April special election, by the Friday before the first day for candidate filing (the Monday two weeks before Memorial Day) for a special election on the date of the primary, or by the date of the primary for a November special election. RCW 29A.04.321(3); RCW 29A.04.330(3).

Primary Elections

A “primary election” is a process for “winnowing” candidates to a final list of two to run in a special or general election. RCW 29A.04.127. Primaries for November general elections are held on the first Tuesday in August. RCW 29A.04.311.

A primary election for a public hospital district commissioner position is nonpartisan; candidates do not indicate a political preference. RCW 29A.52.231.

Who pays for the cost of an election? Washington law requires that each local government (cities, towns, and special purpose districts) with ballot propositions or candidates on the ballot at any election is responsible for its proportionate share of the costs of the election. If a special election is held solely for a public hospital district issue, the hospital district must pay all of the election costs. RCW 29A.04.410.

Election of Commissioners

Initial Election

The initial election of commissioners held at the special election on the formation of a public hospital district does not include a primary election. The first step for a candidate in this and in subsequent elections is to file a declaration of candidacy with the county auditor or the head of the county election’s office in a charter county that has established that office. (See definition of “county auditor” in RCW 29A.04.025.) A three-day special filing period is held for candidates for the initial election commissioners. RCW 70.44.040(1).

Subsequent Elections

After the initial election, district elections for commissioners are held at general elections in odd-numbered years. Although the term of office of a commissioner is six years, the initial terms are staggered as follows, with the first following election being held at the first district election date (November general election in an odd-numbered year) that occurs at least 120 days after the formation election:

- If a district has three commissioners, the successor to one commissioner is elected at the first following district election; the successor to one commissioner is elected at the second following district election; and the successor to one commissioner is elected at the third following district election.
- If a district has five commissioners, the successor to one commissioner is elected at the first following district election; the successors to two commissioners are elected at the second following district election; and the successors to two commissioners are elected at the third following district election.
- If a district has seven commissioners, the successors to two commissioners are elected at the first following district election; the successors to two commissioners are elected at the second following district election; and the successors to three commissioners are elected at the third following district election.

RCW 70.44.040(1). The terms assigned to the initial commissioners are based on the number of votes received, with those receiving the greater number of votes being assigned to the longer terms. *Id.*

Ballot Measures

Types of Ballot Measures

The ballot measures voted on by public hospital district voters deal with tax levies and bond issuance. See Chapter 5, Hospital District Finance. The required percentage of favorable votes necessary to approve such measures varies with the type of measure being voted on. Ballot measures may be held at any special election date.

Ballot Titles

How a ballot measure is presented to the voters—the ballot title—is governed by the rules in RCW 29A.36.071. Under those rules, a ballot title must consist of three elements, or parts:

- An identification of the enacting legislative body—the board of hospital district commissioners in the case of a public hospital district—and a statement of the subject matter;
- A concise description of the measure, which may not exceed 75 words; and

- A question (e.g., “Should this measure be approved? Yes ___ No ___).

The ballot title must be displayed on the ballot substantially as set out in [RCW 29A.72.050](#) for initiative and referendum measures.

For public hospital district ballot measures, the county prosecuting attorney prepares the “concise description.”

The wording of the ballot title as formulated by the county prosecuting attorney may be appealed within 10 days—excluding Saturdays, Sundays, and legal holidays—of the filing of the ballot title with the county auditor or director of the county elections office, as the case may be. The superior court of the county hears the appeal, and the court’s decision is final (may not be appealed). [RCW 29A.36.090](#).

Use of District Office or Facilities Regarding Ballot Measures and Candidates

General Rule

[RCW 42.17A.555](#) (formerly [RCW 42.17.130](#)) establishes a broad prohibition on the use of “the facilities of a public office or agency” to support or oppose a ballot proposition or to assist an election campaign for public office. This prohibition is enforced by the state [Public Disclosure Commission](#) (PDC). Persons who violate the prohibition may be subject to civil penalties of up to \$10,000 and could be referred by the PDC for criminal prosecution. [RCW 42.17A.750](#).

“The facilities of a public office or agency” are defined in [RCW 42.17A.555](#) to include:

use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency.

Ballot propositions to which the prohibition applies are not limited to hospital district propositions, but include *any* ballot proposition that will be appearing on the ballot.

Exceptions to Prohibition

[RCW 42.17A.555](#) provides three exceptions to this prohibition:

- A vote by a board of public hospital district commissioners (as well as other local elected governing bodies) at an open public meeting to express a collective decision of support or opposition to a ballot proposition, as long as the notice of the meeting identifies the title and number of the ballot proposition, and the commissioners and the public are given an approximately equal opportunity to express an opposing view;

- A statement by a hospital district commissioner in support of or in opposition to a ballot proposition at an open press conference or in response to a specific inquiry; and
- Activities that are “part of the normal and regular conduct” of the district.

Under the third exception, a hospital district could, for example, prepare and distribute an objective and neutral presentation of facts (i.e., a “fact sheet”) concerning a ballot measure.

Identical restrictions, and exceptions, to those in [RCW 42.17A.555](#) apply to an initiative to the state legislature, until the initiative is before the legislature. [RCW 42.17A.635\(4\)](#).

It is important to note that [RCW 42.17A.555](#) does not restrict the right of an individual, whether that person is an elective or appointive district official or a district employee, to express his or her personal views supporting or opposing a ballot proposition or candidate or to participate in an election campaign so long as that expression or participation does not involve using district facilities. This means that district officials and employees may campaign on their own time, using their own supplies and equipment, for or against a candidate or ballot proposition, such as by preparing brochures, mailings, doorbelling, and other such activities.

Application of the Rule to Hospital Auxiliaries or Hospital Foundations

This is a gray and undeveloped area of the law, but the general rule is that, if an auxiliary or foundation is formally organized and functions as a completely separate organization from the hospital district, it is not subject to the [RCW 42.17A.555](#) prohibition.

However, merely being a separate organization is not sufficient, by itself, to avoid the prohibition if the substance of the relationship between an auxiliary or foundation belies that separate status. For example, an auxiliary that receives subsidies from a district in the form of free hospital space or free supplies might be considered to be, in substance, an affiliated organization. If so, the resources of the PHD transferred to the auxiliary in the form of subsidization could be considered public funds and, thus, subject to the prohibitions of [RCW 42.17A.555](#).

Before an auxiliary or foundation engages in political activity not permitted by the district itself, the district should obtain legal advice on the best way to structure the relationship between the two organizations.

Resources for Complying with the Prohibition

The PDC is available through its staff to respond to questions concerning ballot measures and campaign issues and to provide informal opinions. The PDC staff encourages local government officials to contact them with questions in advance of a proposed activity that may involve the use of public facilities in a ballot campaign. Also, fact sheets that have been prepared by local governments may be sent to PDC staff to review prior to public distribution. You may contact the PDC

at (360) 753-1111, by email at pdcc@pdcc.wa.gov or by fax at (360) 753-1112. Additional information is available on the [PDC website](#).

In addition, the PDC has prepared [Guidelines for Local Government Agencies in Election Campaigns \(Public Disclosure Law Re: Use of Public Facilities in Campaigns\)](#). These guidelines provide a comprehensive overview of the [RCW 42.17A.555](#) prohibition in an easy-to-read chart format indicating what activities are permitted or not permitted, as well as general questions to consider.

Lobbying

General Rule

The authority of local government agencies to engage in lobbying is provided in [RCW 42.17A.635](#). That law is also administered by the PDC, which provides in its [Public Agency Lobbying Instructions](#) a thorough discussion of this topic, including reporting requirements.

“Lobbying” is defined in [RCW 42.17A.005\(33\)](#) as:

attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state administrative procedure act, [chapter 34.05 RCW](#).

“Legislation” is defined in [RCW 42.17A.005\(31\)](#) as:

bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

Under this definition, lobbying includes a public hospital district’s efforts to block the introduction of legislation and to influence the governor’s action on legislation that has passed both houses.

What is considered “lobbying” by local government agencies, such as public hospital districts, is addressed by [RCW 42.17A.635](#). That statute does not apply to:

- Communicating with a state legislator at the request of the legislator; or
- Communicating “to the legislature, through the proper official channels, requests for legislative action or appropriations that are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties.”

Also, for purposes of [RCW 42.17A.635](#), “lobbying” by local agencies does not include:

- Telephone conversations or written correspondence—*only in-person contacts, including testifying at hearings, are considered lobbying* (see WAC 390-20-052(1) for definition of “in-person lobbying”);
- Requests, recommendations, or other communications between or within local agencies;
- Preparation or adoption of policy positions within a local agency; or
- Attempts to influence federal or local (city or county) legislation.

What Lobbying by a PHD is Allowed?

A public hospital district may, with some limitations, lobby other levels of government. RCW 42.17A.635 allows public hospital districts to expend public funds for state lobbying that is limited to:

- Providing information or communicating regarding matters of official district business to any elected state official—such as a state legislator—or to state agency officers and employees; and
- Advocating the official position or interests of the district to any state elected official or to state agency officers and employees.

In addition, districts are authorized to lobby the federal government pursuant to RCW 70.44.060(10), which authorizes districts to “do all other things necessary to carry out the provisions of [chapter 70.44 RCW].” Given that federal law clearly affects many aspects of the daily operations of a public hospital district, lobbying for changes in federal law can be necessary for a district to successfully carry out the purposes for which it was created. For similar reasons, RCW 70.44.060(10) also authorizes districts to lobby other local governments.

Federal law does, however, restrict what funds a district may use for lobbying. Specifically, 31 U.S.C. §1352 prohibits recipients of federal funds—whether from contracts, grants, loans, or cooperative agreements—to lobby federal officers or employees to obtain, extend, renew, or modify a federal contract, grant, loan, or cooperative agreement.

What Lobbying by a PHD is Prohibited?

A public hospital district may not:

- Use public offices or resources to support or oppose an initiative to the legislature. Though, as with the prohibition in RCW 42.17A.555, discussed above, the following actions are allowed:
 - A vote by a board of public hospital district commissioners at an open public meeting to express a collective decision of support or opposition to an initiative to the legislature, as long as the notice of the meeting identifies the title and number of the initia-

tive to the legislature, and the commissioners and the public are given an approximately equal opportunity to express an opposing view;

- A statement by a hospital district commissioner in support of or in opposition to an initiative to the legislature at an open press conference or in response to a specific inquiry; and
- Activities that are “part of the normal and regular conduct” of the district.

However, according to the PDC, once an initiative is before the legislature, a district may lobby for its passage or defeat. See [Public Agency Lobbying Instructions Basic Information](#).

- Use public funds, directly or indirectly, for gifts or campaign contributions. A “gift” includes anything of value for which no consideration of equal or greater value is received, such as meals, beverages, leisure travel expenses, theater or sporting event tickets, flowers, and the like.
- Engage in “grassroots” lobbying or other indirect forms of lobbying, such as involving stakeholders in the lobbying effort or participating in “call your legislator” ad campaigns.

What Lobbying Must be Reported to the Public Disclosure Commission?

A public hospital district that expends district funds for lobbying must file quarterly statements, called Form L-5, though only for those quarters in which it conducts lobbying. As such, a public hospital district must keep detailed records concerning the amount of time officers or employees spend lobbying, what issues were lobbied, and what lobbying expenditures were incurred.

However, some lobbying is not subject to reporting in Form L-5:

- In-person lobbying by all of a district’s employees or lobbyists (excluding elected officials who lobby on behalf of an agency) totaling, in the aggregate for the district, no more than four days (or parts of four days) during any three consecutive months; and
- In-person lobbying by an elected official on behalf of a district or in connection with his or her powers, duties, or compensation.

What About Using Private Sector Lobbyists?

According to its [Contract Lobbyists](#) webpage, the Public Disclosure Commission has the following to say regarding the use of private sector lobbyists by a public agency, such as a hospital district:

Most public agencies utilize the services of their on-staff employees to conduct the vast majority of their lobbying activities. This is the method that the law and its L-5 reporting requirements for public agencies appear to contemplate.

However, it is becoming more common for state and local agencies to contract with lobbyists from the private sector to handle some or all of their lobbying. When private sector lobbyists are retained, the agency continues to file quarterly L-5 reports when reportable lobbying expenses have been made or incurred. In addition, the private sector (non-public employee) lobbyist must register and report under RCW 42.17A.600 and .615. This private sector lobbyist will register on an L-1 form and file a monthly L-2 report.

Agencies that hire private sector lobbyists should also keep in mind that they remain subject to the restrictions on the uses to which public lobbying dollars may be put. Agencies may not do indirectly—i.e., through an outside lobbyist—what they are not permitted to do directly.

Chapter 4

Public Hospital District Personnel

Chapter Summary

This chapter addresses the officials a public hospital district board of commissioners is required to appoint, including their duties and compensation. It also discusses general personnel issues relating to district employees, including their appointment and removal, and the major federal laws that districts must consider in the personnel context.

Superintendent

Every public hospital district must have a superintendent, a position created by statute, [RCW 70.44.070](#). If a public hospital district operates more than one hospital, the board of commissioners may appoint one superintendent per hospital. A clinic would not qualify as a “hospital” for which a superintendent may be appointed. Where the board has appointed more than one superintendent, the board must assign among the superintendents the powers and duties that are authorized by statute.

Appointment, Removal, and Compensation

Appointment

The district’s board of commissioners, by resolution, appoints the superintendent(s) for an indefinite period. The resolution must be introduced at a regular meeting and adopted by a majority vote. See [RCW 70.44.070\(1\)](#).

Removal

Similarly, the district’s board of commissioners, by resolution, may remove a superintendent at its discretion. The resolution removing the superintendent must be introduced at a regular meeting and adopted by a majority vote. See [RCW 70.44.070\(1\)](#).

Compensation

The superintendent’s compensation, which is within the board’s discretion, is also set by board resolution. [RCW 70.44.070\(1\)](#). “Compensation” may include, in addition to salary, a variety of fringe benefits, such as health insurance. In general, the board of commissioners has discretion in setting the compensation of the superintendent. Though, conceivably, if a superintendent’s compensation were so outrageous that it could be considered payment far beyond the services rendered, the State Auditor’s Office could challenge the compensation as a gift of public funds and prohibited under [article 8, section 7](#) of the Washington State Constitution.

Powers

The superintendent is the chief administrative officer of the district and has control of the administrative functions of the district. The superintendent is responsible to the commission for the efficient administration of all affairs of the district. The superintendent is entitled to attend all board and board committee meetings and to take part in the discussion of any matters pertaining to the district. Superintendents may not, however, vote on board decisions. [RCW 70.44.080](#).

Duties

A public hospital district superintendent has the following duties, as set out in [RCW 70.44.090](#):

- Carry out the orders of the board of commissioners;
- See that all the laws of the state pertaining to matters within the functions of the district are duly enforced;
- Keep the board fully advised about the financial condition and needs of the district;
- Prepare an annual estimate for the ensuing fiscal year of the probable expenses of the district;
- Recommend to the board what development work, extensions, and additions should be undertaken during the ensuing fiscal year (with an estimate of the costs of such development work, extensions, and additions);
- Certify to the board all the bills, allowances, and payrolls, including claims due contractors of public works; and
- Recommend to the board a range of salaries to be paid to district employees.

The above list of duties follows very closely the wording of [RCW 70.44.090](#). Below is a more complete list of the types of activities a superintendent is typically involved in (beyond the routine, day-to-day operations of a district). These activities flow naturally from the list of duties listed above. While not legislatively-defined duties, they represent prudent management duties consistent with the statutory duties. By and large, superintendents are expected to:

- Perfect and submit to the board for approval a plan of organization for the personnel concerned with the operations of the hospital and/or other facility and the district as a whole (the plan should be periodically reviewed);
- Prepare annually and submit to the board a complete budget or budgets showing anticipated receipts and expenditures for the ensuing fiscal year;
- Appoint, control, and discharge all employees as authorized by the applicable budget;
- Ensure that all buildings, equipment, and other facilities are maintained in good repair;

- Make periodic recommendations to the board with respect to the acquisition, development, and extension of desirable health care facilities, equipment, and services;
- Supervise, through the treasurer and auditor, all business affairs including the disbursement of funds, recording of financial transactions, collection of accounts, and purchase and issue of supplies;
- Cooperate with the medical staff;
- Submit regular reports to the board regarding the health care services and financial activities of the hospital and the district, along with any special reports that may be requested by the board;
- Prepare agenda for and attend all board meetings and participate in the discussion of matters being considered;
- Execute on behalf of the district all contracts, agreements, and other documents and papers that the superintendent may be authorized by board resolution to sign; and
- Undertake on personal initiative the performance of such other duties consistent with law and the policies of the board, as may be in the best interest of the district.

Treasurer

The district treasurer is, in most cases, the treasurer for the county in which the district is located, though the commissioners may, by resolution, designate some other person having experience in financial or fiscal matters to serve as the district's treasurer. [RCW 70.44.171](#).

If a person other than the county treasurer is designated by the board as the district treasurer, the board must require the person designated to file a bond, with a surety company authorized to do business in Washington. The bond must be set, by resolution, at an amount and under terms and conditions that will adequately protect the district against loss. The district pays the premium on the bond.

The board may require that any person handling moneys or securities on behalf of the district be bonded. The district may, but is not required to, pay the premium on this bond. [RCW 70.44.171](#).

Duties

The duties of the treasurer are defined in [RCW 70.44.171](#). The primary duty of the district treasurer is to establish, maintain, and control the public hospital district "general" fund and any special funds established by board resolution. All district monies are paid to this general fund through the treasurer, and all district monies are disbursed out of the general fund by the treasurer on warrants issued by an auditor appointed by the board, upon orders or vouchers approved by it.

If the board establishes special funds, it may, by resolution, direct monies into those funds. Examples of such special funds are capital projects funds and bond payment funds.

All interest collected on district funds belong to the district and are to be deposited in the appropriate district funds.

Depository of District Funds

If the district treasurer is also the county treasurer, then all district funds are to be deposited with the county depositories under the usual restrictions, contracts, and security as provided for county depositories.

If the district treasurer is some other person designated by the board, the board must designate, by resolution, a bank or banks into which the treasurer is to deposit district funds. Any bank designated as the district's depository must be authorized to do business in the state. A surety bond to the district or other security must also be filed and deposited with the treasurer of the district and approved by the commissioners by resolution.

Auditor

The board of commissioners is to appoint an auditor whose job it is to review and issue warrants. RCW 70.44.171. The auditor performs the functions required by RCW 42.24.080, which requires authentication and certification of "claims"—for services rendered, labor performed, or materials furnished, or for advance payment that is due pursuant to a contract—prior to payment of those claims.

Chaplain

Public hospital districts may employ chaplains for their hospitals, health care facilities, and hospice programs. RCW 70.44.059. During the 1993 legislative session, WSHA, on behalf of its members, lobbied for and obtained legislative approval of a proposed state constitutional amendment to clarify that public hospital districts are allowed to employ chaplains. This amendment received the required voter approval in the November 1993 general election. Article 1, section 11 of the state constitution prohibits the use of public money or property for the benefit of any religion. However, as a result of the 1993 amendment, that section also provides that "this article shall not be so construed as to forbid the employment of a chaplain . . . by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified." By enacting RCW 70.44.059, the legislature deemed it justified that hospital districts employ chaplains.

District Employees

At-Will Employment

The default rule in Washington State is that public employment of an unspecified duration is “at-will.” Employment “at-will” means that an employer can terminate an employee without cause. However, public employees are afforded some protection from termination by various federal and state laws, such as the federal Civil Rights Act of 1964, the Americans with Disabilities Act, the state “Law Against Discrimination” ([chapter 49.60 RCW](#)), and the nonretaliation requirements of the Local Government Whistleblower Protection Act ([RCW 42.41.040](#)).

[RCW 49.60.180](#) identifies “unfair practices” of employers, including refusing to hire a person or discharging an employee:

because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

Property Interest in Public Employment

If a public employer creates a property interest in a job, then employment is no longer at-will. If an employee has a property interest in his or her job, then that employee may be terminated only “for cause” and only after receiving procedural “due process,” such as a pretermination (“Loudermill”) hearing.

A public hospital district can create a property interest in employment, for example, through its personnel policies, individual employment contracts, or collective bargaining agreements. Even if the individual employee has not negotiated for just cause employment, courts may find an implied contract between the employer and employee. This can occur, for example, as a result of policies in a personnel manual regarding discipline and termination for cause. To retain the default status of at-will employment for district employees, personnel policies should include language making it clear that employment is at-will.

Public Policy Exception to At-Will Employment

The courts have ordered the reinstatement of terminated employees, or have found that an employee has a right of action against the employer, where the terminations violated “public policy.” For example, an employer is prohibited from terminating an employee because he or she refuses to do an illegal act. *Lins v. Children’s Discovery Ctrs.* (1999). In another example, an armored truck driver was discharged when he left his vehicle to aid a woman being threatened by a bank robber; the court found that the discharge violated the public policy of encouraging heroic conduct. *Gardner v. Loomis Armored* (1996).

It is also a violation of public policy to fire an employee for exercising a statutory right, including:

- Filing a complaint under the Washington Industrial Safety and Health Act (WISHA), chapter 49.17 RCW;
- Filing a community right-to-know complaint under chapter 49.70 RCW;
- Filing a minimum wage claim under chapter 49.46 RCW; and
- Filing a family leave claim under chapter 49.78 RCW.

It is also unlawful for an employer to discharge an employee because of certain garnishments (RCW 6.27.170) and wage assignments (RCW 9.94A.7705, RCW 26.18.110(8), RCW 26.23.080, and RCW 74.20A.230).

For more information about termination of employees, see MRSC’s Employee Terminations topic page.

Whistleblowing and Retaliatory Action

A “whistleblower” is an employee who, in good faith, reports alleged “improper governmental action,” which is defined by RCW 42.41.020(1) to mean:

- Action by a local government officer or employee;
- Taken in the performance of the officer’s or employee’s official duties, whether or not the action is within the scope of the employee’s employment;
- That violates any federal, state, or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

Improper governmental action does not include personnel-related matters.

A local government employer may not engage in retaliatory action, such as discipline or termination, against a whistleblowing employee. RCW 42.41.040(1). An employee may request a hearing before an administrative law judge to establish whether retaliatory action has occurred. RCW 42.41.040(4) - (5). If the judge determines that such retaliatory action has occurred, the consequences can be harsh for the employee(s) who engaged in the retaliation:

the administrative law judge may, in addition to any other remedy, impose a civil penalty personally upon the retaliator of up to three thousand dollars payable by each person found to have retaliated against the employee and recommend to the local government that any person found to have retaliated against the employee be suspended with or without pay or dismissed.

RCW 42.41.040(8).

Local governments, including public hospital districts, are required to adopt procedures for employees to report alleged improper governmental action. Such procedures must identify the person or persons within the district to whom to report information concerning an alleged improper governmental action as well as a list of appropriate persons outside the local government to whom to report, which must include the county prosecuting attorney.

Procedures for protection against retaliatory actions must also be adopted. A summary of the procedures must be posted where all employees will have reasonable access to it. If a district fails to adopt a policy for reporting alleged improper governmental action, an employee may report such to the county prosecuting attorney. The identity of a whistleblower must be kept confidential, unless the whistleblowing employee consent to disclosure in writing. [RCW 42.41.030](#).

For more information on whistleblowing, see MRSC's [Whistleblowing](#) topic page.

The Hiring Process

State law does not impose any required recruitment or hiring procedures on a public hospital district. For more information, see MRSC's [Hiring Procedures](#) topic page.

However, as discussed below, both state and federal law, in addition to the basic nondiscrimination laws, impose restrictions on the process.

Recruitment Expenses

[RCW 70.44.060\(9\)](#) specifically authorizes public hospital districts to pay travel and living expenses of:

- Qualified physicians or other health care practitioners who are candidates for medical staff positions; or
- Other qualified persons who are candidates for superintendent or other managerial and technical positions.

Payment of such expenses is authorized when a district finds that its hospitals or other health care facilities are not adequately staffed, and it determines that personal interviews with candidates held in the district are necessary or desirable for the adequate staffing of its facilities.

The expenses reimbursed may include those incurred by family members accompanying the candidate.

Job Descriptions/Essential Functions

Aside from the very practical reasons for developing job descriptions that include the essential functions for each employment position, both the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA) make it an important part of a district's compliance with those laws.

Title I of the ADA prohibits discrimination in employment against “qualified individuals with disabilities.” A qualified individual with a disability is an applicant or employee who, with or without “reasonable accommodation,” can perform the *essential functions* of the job in question. It is permissible then to ask whether an applicant is able to perform the essential functions of the job for which they are applying, with or without reasonable accommodation.

Under the FMLA, an employee has the right to leave of up to 12 weeks for, among other things, “[b]ecause of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job.” 29 CFR § 825.200(a)(4). In addition, effective January 1, 2020, qualified employees are eligible for paid family medical leave under state law. For more information, see MRSC’s Family and Medical Leave webpage.

Preemployment Inquiries

The Washington State Human Rights Commission has adopted a “Preemployment Inquiry Guide” (Chapter 162-12 WAC) to interpret and implement the state Law Against Discrimination, chapter 49.60 RCW, and specifically RCW 49.60.180, which identifies unfair practices of employers. The regulations contained within chapter 162-12 WAC prohibit discriminatory preemployment inquiries, while recognizing an exception when the inquiries are based upon a “bona fide occupational qualification.” WAC 162-12-130 - .135. (See WAC 162-16-240 for a discussion of what is and what is not a bona fide occupational qualification.) These regulations apply to application forms, preemployment interviews, and any other questioning of employment applicants. Public hospital districts should review their application forms and interview practices to ensure compliance with these regulations.

At WAC 162-12-140, the Human Rights Commission provides a chart identifying what it considers to be “fair preemployment inquiries” and “unfair preemployment inquiries,” including ones relating to age, citizenship, disability, marital status, national origin, race, and religion. These inquiry guidelines are designed to help prevent not only intentional discrimination but also what may be perceived as discrimination.

Criminal Background Checks

As a governmental entity that provides services to developmentally disabled persons, vulnerable adults (adults who cannot care for themselves), or children under 16, a public hospital district must inquire about the criminal history of applicants for positions that will or may involve unsupervised access to such persons. RCW 43.43.830 - .832.

A public hospital district may verify an applicant’s conviction record by requesting a transcript of the applicant’s conviction record from the Washington State Patrol after notifying the applicant that such a request will be made. The information can be used only in making the initial employment decision. There is civil liability for failure to request a background check if the failure to do so constitutes gross negligence. In any case, requesting a criminal background check is a good business practice.

As to hospital staff, hospitals are prohibited under RCW 43.43.842 from hiring or retaining an employee or accepting any volunteer or student who:

- Is a respondent in an active protective order under RCW 74.34.130;
- Has been convicted of a crime against persons as defined in RCW 43.43.830, except as provided in RCW 43.43.842(2);
- Convicted of a crime relating to financial exploitation as defined in RCW 43.43.830, except as provided RCW 43.43.842(2); or
- Has been found in any disciplinary board final decision to have abused a vulnerable adult under RCW 43.43.830.

Accordingly, hospitals are required to obtain a transcript of the applicant's conviction record from the Washington State Patrol for applicants to positions that will involve unsupervised access to developmentally disabled persons, vulnerable adults, or children under 16.

Drug Testing

As governmental entities, public hospital districts are subject to state (article 1, section 7) and federal (Fourth Amendment) constitutional privacy restrictions that are implicated in drug testing of applicants and employees. Any permissible drug testing should be pursuant to a formal policy that identifies what employees may be tested and when they may be tested and if preemployment drug testing will be conducted.

Drug Testing of Applicants for Employment

Preemployment drug testing can be required only for positions that implicate public safety. Robinson v. City of Seattle (2000).

Doctors and nurses and other staff responsible for patient care should qualify as holding safety-sensitive positions for which preemployment drug testing may be required. The Ninth Circuit Court of Appeals has held nurses employed by the Department of Labor are employment positions with job functions that directly relate to public health and safety. American Federation of Government Employees v. Martin (9th Cir.1992).

Drug Testing of Employees

Individual drug testing of public employees is permissible when based upon a "reasonable suspicion" of drug use, including off-duty drug use. To implement a reasonable suspicion testing policy, supervisors should be trained to observe and document behavior that justifies a reasonable suspicion of illegal drug use

Public employers may also require random drug testing of employees holding safety-sensitive positions, including doctors, nurses, and other staff responsible for patient care.

Employee use of medical and recreational marijuana. Although medical and recreational use of marijuana is legal in Washington State, employers are not required to allow their use, off-duty or on-duty. In *Roe v. TeleTech Customer Care Mgmt. (Colo.) LLC* (2011), the Washington Supreme Court ruled that Washington’s Medical Use of Marijuana Act does not protect medical marijuana users from adverse hiring or disciplinary decisions based on an employer’s zero tolerance drug policy.

New Hire Reporting

RCW 26.23.040 requires employers to report to the Division of Child Support all new hires, regardless of age, gender, or the number of hours worked, within 20 days of hire. For more information, see the Washington State Department of Social and Health Services’ New Hire Reporting webpage.

Labor Relations/Collective Bargaining

Chapter 41.56 RCW grants public employees the right to collectively organize and bargain in a fashion similar to the protections provided to private employees under the National Labor Relations Act, which applies to private employers.

Chapter 41.58 RCW establishes the Public Employment Relations Commission (PERC) to oversee the labor activities authorized by this and several other statutes, and it grants that agency powers in the areas of dispute resolution, mediation, fact-finding, arbitration, unit determinations, election support, and unfair labor practice determinations.

Public employees have a general right to organize and designate representatives for collective bargaining without interference from the employer or other persons. Chapter 41.56 RCW, among other things, sets forth the means of appointing the bargaining representative, and identifies authorized provisions of collective bargaining agreements, including union security provisions and binding arbitration for labor disputes.

Information provided in this manual concerning labor relations is merely a brief summary of a complex subject. Labor relations law is a specialized field of law. As such, it is recommended that legal counsel that specializes in this area of the law be consulted or contracted with when issues involving unions or collective bargaining come up.

No right to Strike

RCW 41.56.120 states that “nothing contained in this chapter shall permit or grant any public employee the right to strike or refuse to perform his official duties.” In addition, the Washington Supreme Court has concluded that there is no common law right to strike. *Port of Seattle v. International Longshoremen’s & Warehousemen’s Union* (1958). Thus, it is illegal for public hospital district employees to strike. Hospital districts may discharge striking employees, may make threats concerning discharge should a strike occur, and may seek injunctive relief through the courts to stop an illegal strike.

Organizing Campaigns

Public employees have the right to organize and designate representatives for the purposes of collective bargaining. A bargaining representative is any organization whose primary purpose is to represent employees in their employment relations with employers. RCW 41.56.030(2). If a public hospital district's employees express an interest in joining a union, it is unlawful for the district to directly or indirectly interfere with or discriminate against organizing employees. RCW 41.56.040. District employees may decide to approach a union, or a union may approach district employees to organize them.

While the law does not require an employer to be neutral during an organizing campaign, an employer must be careful not to interfere with, restrain, or coerce public employees in the exercise of their right to organize. To do so would be an unfair labor practice. For more information on unfair labor practices, See PERC's [What is an Unfair Labor Practice?](#) webpage.

Employees in a bargaining unit who wish to organize choose a bargaining representative, who must then be certified by PERC. Prior to certification of the bargaining representative, PERC must determine the appropriate bargaining unit for the purpose of collective bargaining.

Bargaining units are created to group together employees who share enough similarities that they can bargain collectively with their employer. In determining the appropriate bargaining unit, PERC considers “the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.” RCW 41.56.060.

If the employer and employees cannot agree on a representative, PERC can choose one itself or conduct an election. RCW 41.56.050 - .090. If an election is held and a majority of employees in the bargaining unit vote in favor of the union, PERC will certify the union as the bargaining representative of the unit. For more information, see PERC's [Elections](#) webpage.

Union Membership

Union membership may not include elected officials (public hospital district board of commissioners) or “confidential employees.” See definition of “public employee in RCW 41.56.030(11). In the case of a hospital district, “confidential employees” are those deputies, assistants, or secretaries whose duties necessarily imply a confidential relationship to “the executive head or body of the applicable bargaining unit” or to the hospital district board of commissioners. *Id.* The idea behind this exclusion of confidential employees is that employers are allowed to exempt certain personnel from the rights of the collective bargaining statute in order to perform the functions of the employer in the collective bargaining process.

Unlike in the private sector, supervisors in the public sector have the right to union membership.

Collective Bargaining Process

After a union is certified as the bargaining representative of the unit, the district and the union begin the collective bargaining process. When a public hospital district board of commissioners is engaging in collective bargaining or planning or adopting the strategy or position to be taken by the board during the course of any collective bargaining, it may meet in closed session that is not subject to the Open Public Meetings Act. [RCW 42.30.140\(4\)](#). That means that a closed session for such purposes may be held without any public notice.

Compensation and Benefits

Salaries/Wages

The statutes are silent as to setting the salaries or wages of public hospital district employees. [RCW 70.44.060\(10\)](#) merely provides that public hospital districts have authority to “make contracts, employ superintendents . . . and all other employees.” This leaves broad discretion to the commissioners in setting salaries and wages.

Sick/Vacation Leave

Due to the passage of [I-1433](#) in November 2016, every employer in Washington State must provide each of its employees with paid sick leave. Under [I-1433](#), an employee shall accrue at least one hour of paid sick leave for every forty hours worked as an employee. [RCW 49.46.210\(1\)\(a\)](#). Note, however, that a public hospital district is free to adopt a more generous sick leave policy than would otherwise be required under [I-1433](#). See [RCW 49.46.120](#).

In contrast, public hospital districts are not required by state law to provide vacation leave benefits, but all probably do provide some such benefits.

Under the Washington Family Care Act ([RCW 49.12.265 - .295](#)), if a public hospital district provides its employees with sick leave or other paid time off, employees are entitled to use their choice of sick leave or other paid time off for the following purposes:

- to care for a child with a health condition that requires treatment or supervision;
- to care for a spouse, parent, parent-in-law, or grandparent, who has a serious health condition or an emergency health condition; and
- to care for children 18 years and older with disabilities that make them incapable of selfcare.

For more information on the Washington Family Care Act, see the Department of Labor and Industries' [Family Care Act](#) webpage.

Washington Paid Family and Medical Leave

Starting January 1, 2020, the Paid Family and Medical Leave Program (PFML), Ch. 50A RCW, allows qualified employees to be paid a portion of their wages, for up to 12 weeks in a 12-month period in most cases, if they miss work for:

- The birth of a child
- The adoption of a younger child
- Caring for themselves or a family member stricken with a serious illness or injury
- Certain military connected events

The federal Family and Medical Leave Act (FMLA) continues to provide leave benefits, but the federal program does not apply to employers with fewer than 50 employees, and the leave, if available, is unpaid.

The Employment Security Department (ESD) is responsible for administering the Paid Family and Medical Leave program. Visit paidleave.wa.gov for more detailed information regarding the program. There is also more information on MRSC's Family and Medical Leave webpage.

Retirement/Pensions

RCW 70.44.060(10) authorizes public hospital districts to enter into “contracts with private or public institutions for employee retirement programs.” Public hospital districts, as political subdivisions of the state, may elect to become members of the Washington Public Employees’ Retirement System (PERS) established under chapter 41.40 RCW.

Health Benefits

Public hospital districts are authorized by RCW 41.04.180 to provide:

hospitalization and medical aid for its employees and their dependents through contracts with regularly constituted insurance carriers or with health care service contractors as defined in chapter 48.44 RCW or self-insurers as provided for in chapter 48.62 RCW, for group hospitalization and medical aid policies or plans.

If a district offers such health insurance, it is required to offer its employees a choice of at least two plans. RCW 41.04.180.

Public hospital districts may also participate in the State Health Care Authority (HCA; formerly the State Employees Insurance and Healthcare Program). RCW 41.04.205. The HCA may establish conditions for participation and has the right to reject the application. *Id.*

Bonuses/Incentives

Public hospital districts may prospectively offer bonus awards to employees in recognition of services rendered under clear criteria adopted in advance by board resolution. Districts may not award bonuses retroactively, for services already rendered. Article 2, section 25 of the state constitution prohibits the granting of extra compensation to public officers and employees for services already rendered.

Similarly, a public hospital district may, under policies adopted in advance and establishing clear criteria, offer incentive awards to employees, such as for suggestions that could improve district services or to reward longevity in employment. See AGO 1995 No. 13, which concludes that cities and towns of all classes have authority to establish and administer employee incentive programs for their employees; that conclusion should also apply to public hospital districts.

Expense Reimbursement

Public hospital districts may reimburse its officers and employees for expenses relating to travel, such as lodging, meals, and use of personal vehicles or other transportation, for district business, in amounts as established by board resolution. RCW 42.24.090. Reimbursement may be for actual expenses incurred, presented in a “detailed account,” or reimbursement “may be computed on a mileage, hourly, per diem, monthly, or other basis,” as determined by the board. *Id.*

For use of personal vehicles for official business, it is common for local governments to reimburse employees based on the IRS “standard mileage rates.”

For IRS treatment of these and other “fringe benefits,” see the IRS Fringe Benefit Guide.

Travel Expense Advances

A public hospital district board of commissioners may, by resolution, allow for reasonable travel expenses to be paid in advance. RCW 42.24.120. To provide for such advances:

- The board of commissioners must establish a revolving fund for the sole purpose of making advance payments for travel expenses. The revolving fund is to be maintained in a bank as a checking account, and advances to employees are to be by check, and the fund is to be replenished by district warrant. RCW 42.24.130.
- The district has a lien against and right to withhold any and all funds payable by the district to the employee to whom an advance is given. RCW 42.24.140.
- On or before the 15th day following the close of the authorized travel period for which expenses have been advanced to an employee, he/she must submit to the district a fully itemized travel expense voucher for all reimbursable items accompanied by the unexpended portion of the advance. RCW 42.24.150.
- Late repayments by an employee bear interest at the rate of 10 percent per annum from the date of default until paid. RCW 42.24.150.

Use of Credit Cards for Travel Expenses

A public hospital district may authorize the use of credit cards by employees for the sole purpose of covering expenses incident to authorized travel. [RCW 42.24.115](#). (Districts may also use credit cards for official government purchases and acquisitions. [RCW 43.09.2855](#).)

Federal Employment Laws

Detailed treatment of federal employment laws—the Fair Labor Standards Act, the Family and Medical Leave Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act—is beyond the scope of this manual. These laws are quite complex and are the subject of frequent litigation. The following discussion provides but a brief summary of these laws, with links to further information.

Fair Labor Standards Act (FLSA)

The FLSA is the federal law that sets minimum wage, overtime pay, equal pay, recordkeeping, and child labor standards. (See MRSC's [Fair Labor Standards Act](#) webpage for more information on the FLSA, including links to relevant statutes and regulations, court decisions, articles, and other reference sources.) The FLSA does not apply to:

- Volunteers;
- Trainees;
- Independent contractors (see [Independent Contractor vs. Employee](#)); and
- Elected officials (i.e., hospital district commissioners).

Minimum Wage

The federal minimum wage provisions are contained in the FLSA. The federal minimum wage is currently \$7.25 per hour and was last increased on July 24, 2009. For further information regarding the federal minimum wage, go to the U.S. Department of Labor's [Minimum Wage](#) webpage.

As discussed below, because the Washington State minimum wage is set at a (far) higher rate than the rate set by the FLSA, employers—including public hospital districts—must comply with the Washington State minimum wage rate.

Relationship of FLSA to State Overtime and Minimum Wage Law

The state minimum wage requirements and labor standards are set out at [chapter 49.46 RCW](#). Beginning January 1, 2017, due to the 2016 voters' passage of [Initiative 1433](#), the state minimum wage was \$11.00 per hour. This rate increased in 2018 to \$11.50, in 2019 to \$12.00, and finally in 2020 to \$13.50 per hour. For information on the state minimum wage, including a link to the required poster, see the Washington Department of Labor and Industries [Minimum Wages](#) webpage.

At present, since the state minimum wage exceeds the minimum wage set at the national level, the state minimum wage is the effective minimum level of pay in Washington, because, where the FLSA and state minimum wage laws conflict, the more liberal or generous law, viewed from the employee's perspective, controls.

Note, that some cities in Washington State have adopted a higher minimum wage than would otherwise be required under state law. Seattle, for instance, has adopted legislation to increase the minimum wage within the city to **\$15.00 per hour**. This legislation will be phased in over time, based upon the size of the employer. For further information, see the city of Seattle's [Minimum Wage Ordinance](#) webpage.

Overtime

Most legal issues involving the FLSA concern its overtime requirements. The FLSA does not attempt to limit the number of hours that an employee can be required to work, either daily or weekly. It simply requires that overtime pay must be paid at a rate of not less than one and one-half times an employee's regular rate of pay for each hour worked in excess of the maximum number of hours applicable to the type of employment in which the employee is engaged, which, for most employees is 40 hours in a seven-day work period.

The FLSA does not require that an employee be paid overtime compensation for hours worked in excess of eight per day, or for work on Saturdays, Sundays, holidays, or regular days of rest, so long as the maximum number of hours prescribed in the FLSA are not exceeded.

Employees Exempt from Overtime Requirements

What complicates the application of the FLSA's overtime requirements is the fact that certain types of employees are exempt from its requirements. The overtime requirements do not apply to certain categories of "exempt" employees, the major categories of which are: executive, administrative, and professional—also referred to as the "white collar exemptions." For each exemption to apply, there is a "test" that must be met. The Wage and Hour Division of the federal Department of Labor (DOL) has useful "fact sheets" on these exemptions and the tests for their application:

- [Fact Sheet #17B: Executive Employees](#)
- [Fact Sheet #17C: Administrative Employees](#)
- [Fact Sheet #17D: Exemption for Professional Employees](#)

Another potentially applicable exemption for hospital district employees is that for "highly compensated" employees, who earn more than \$107,432 beginning in the year 2020. See [Fact Sheet #17H: Highly-Compensated Workers](#).

Effective January 1, 2020, a U.S. Department of Labor regulation increased the salary threshold to be exempt from the FLSA's overtime requirements from \$23,660 per year (\$455 per week) to \$35,568 annually (\$684 per week). In addition, the Washington Department of Labor and Indus-

tries (L&I) is also changing its salary basis test, which will increase to \$35,100 per year (\$675 per week) effective July 1, 2020.

In the new rules that take effect on July 1, 2020, L&I does away with a single salary amount and instead creates two tiers based on the total number of employees: (1) 50 employees or fewer; or (2) 51 employees or more. The salary level is adjusted annually based on cost of living increases, with a more gradual increase for smaller businesses (e.g., 50 employees or fewer). L&I's [New Salary Threshold Implementation Schedule](#) offers a schedule of increases in the salary threshold up to 2028, which shows specific thresholds applicable to the two tiers.

One thing to note is that Washington State has been using the federal threshold because the state's threshold is so low. Washington will continue to use the federal threshold until the state threshold exceeds the federal threshold. In 2020, the federal threshold will be higher than the state's, at \$684 per week or \$35,569 per year compared to \$675 per week or \$35,100 per year. The state's level should exceed the federal level in 2021. The main driver of this is due to the increase in Washington's minimum wage from \$12.00 to \$13.50 an hour (effective January 1, 2020). The way L&I has formulated the new salary threshold is dependent on minimum wage. For more on recent changes to state and federal overtime regulations, please see the MRSC blog article: [More Employees Will Soon Be Eligible for Overtime Pay](#).

It is **very important** to properly classify employees as either exempt or not exempt from the overtime requirements of the FLSA, though it is far better to err on the side of classifying an employee as nonexempt, given the consequences of misclassifying a nonexempt employee as exempt. In that circumstance, the district would not have been paying overtime when it should have been, and the consequences of doing that will include payment of back pay (unpaid overtime compensation) and can include liquidated damages. Willful violations subject an employer to criminal penalties. The only consequence of misclassifying an exempt employee as nonexempt is that the district may end up compensating that employee more than it would otherwise be required to.

Deductions from Salary or Leave Banks for Partial Day Absences by Exempt Employees

The general rule is that employers may not deduct from an exempt employee's salary or earned leave for partial day absences. However, under both the FLSA and state law, public employers have more flexibility in this regard than do private employers.

Public employers, including public hospital districts may deduct from an exempt employee's pay or accrued leave bank for absences for personal reasons or because of illness or injury of less than one work day when accrued leave is not used, if the pay system established by an adopted policy that is based on "principles of public accountability." See 29 C.F.R. Sec. 541.710(a); [WAC 296-128-533\(1\)\(a\), \(b\)](#). A state law that embodies this principle of public accountability is the Washington State Constitution's gift of public funds prohibition in [article 8, section 7](#).

The U.S. Department of Labor has explained the reasoning behind the exception to the general rule:

Public accountability embodies the concept that elected officials and public agencies are held to a higher level of responsibility under the public trust that demands effective and

efficient use of public funds in order to serve the public interest. It includes the notion that the use of public funds should always be in the public interest and not for individual or private gain, including the view that public employees should not be paid for time they do not work that is not otherwise guaranteed to them under the pertinent civil service employment agreement (such as personal or sick leave), and the public interest does not tolerate wasteful and abusive excesses such as padded payrolls or “phantom” employees. [57 Fed. Reg. 37,676 (Aug. 19, 1992)]

Hospital Employees

The FLSA contains an alternative method of calculating overtime pay for nonexempt employees who work in “hospitals or an establishment which is . . . primarily engaged in care of the sick, the aged, or the mentally ill or defective, who reside on the premises” 29 U.S.C. §207(j). This method allows overtime for such employees to be calculated on a 14-day period (rather than the standard seven-day period) as long as the employees are paid overtime for hours worked in excess of eight hours per day and in excess of 80 hours in a 14-day period; thus, overtime must be paid on a daily as well as a biweekly basis.

Compensatory Time

The FLSA provides an element of flexibility for state and local government employers and choice for their employees regarding compensation for statutory overtime hours. The law authorizes a public agency to provide compensatory time (comp time) off in lieu of monetary overtime compensation, at a rate of not less than one and one-half hours of compensatory time for each hour of overtime worked. 29 U.S.C. §207(o).

To grant comp time in lieu of overtime pay, it must be provided for under a collective bargaining agreement, employment agreement, or memorandum of understanding. The “agreement” can be made in one of three ways: through negotiation with individual employees, through negotiation with employees’ representatives or through negotiation with a recognized collective bargaining agent. 29 U.S.C. §207(o).

Compensable Hours of Work

It is, of course, important to know what time spent by nonexempt employees is considered “compensable” under the FLSA. Issues concerning whether certain time is compensable include: on-call-time; travel time; waiting time; training time; rest and meal periods; sleep time, and off-the-clock work (employees voluntarily (or not) working additional hours. Much litigation has centered on this issue of what time is compensable. For general information on this issue, the U.S. Department of Labor’s Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA).

Recordkeeping

Every employer must keep certain records for each nonexempt employee. See 29 CFR Part 516 and the U.S. Department of Labor’s Fact Sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act (FLSA) for a summary.

Relationship of FLSA to Collective Bargaining Agreements and Individual Employment Agreements

A collective bargaining agreement or an individual employment agreement may not establish benefits that are less generous than the FLSA; the provisions of the FLSA will control over such less generous provisions.

Family and Medical Leave Act (FMLA)

Washington state law provides for Paid Family and Medical Leave, but the federal Family and Medical Leave Act remains in effect. The FMLA allows eligible employees to take reasonable unpaid leave (up to 12 full weeks each year) for the birth or adoption of a child, the new placement of a foster child, or the serious health condition of the employee or close family member. The rule regarding who is covered by the FMLA is a bit confusing: although all public agencies (including public hospital districts) are covered by the FMLA, not all public employees are covered. To be covered, employees have to work for the employer for at least 12 months, which need not be consecutive, and must have worked at least 1,250 hours within the prior 12-months. Also, the employee must work at a work site where at least 50 employees are employed, and be within 75 surface miles of that work site.

In general, FMLA leave may be taken in one 12-week period, intermittently, or on a reduced work schedule.

Although the FMLA requires that an employer provide only *unpaid* leave, an employer may, of course, choose to pay employees for all or part of the leave, and an employer may require that employees use any accrued paid leave (e.g., vacation and sick leave) during their FMLA leave. Also, an employee choose to use accrued vacation leave and sick leave (if the leave otherwise qualifies under the district's sick leave policy).

Significantly, at the conclusion of FMLA leave, if an employee's medical condition that prompted the leave is also covered under the ADA as a disability, a continued leave of absence may be a reasonable and required accommodation if no other sufficient accommodation is available.

For more information, see MRSC's Family and Medical Leave topic page, which includes links to relevant statutes and regulations, court decisions, articles, and other reference sources.

Pregnancy/Maternity Leave

State law offers additional benefits to women who experience temporary disability because of pregnancy or childbirth. Under a regulation issued by the Washington State Human Rights Commission, WAC 162-30-020, a female employee who is sick or temporarily disabled because of pregnancy or childbirth shall be treated the same as other employees on leave for sickness or other temporary disabilities. And, RCW 50A.15.110(1) provides that paid family and medical leave (under state law) and FMLA leave is "in addition to any leave for sickness or temporary disability because of pregnancy or childbirth." What this means is that a female employee is entitled to use her paid family leave as well as her FMLA leave (for care and bonding) *after* leave due to the pregnancy or childbirth ends.

Additional Leave to Care for Member of Armed Forces

Congress amended the FMLA in 2008 to provide up to 26 weeks of leave during a single 12-month period to allow a family member to care for a member of the armed forces (and who is a spouse, son, daughter, parent, or next of kin) who has been injured in the line of duty. The legislation also allows a spouse, son, daughter, or parent of a member of the armed forces to take up to 12 weeks of leave to deal with issues that arise when a member of the armed forces is called into active duty. See The Family and Medical Leave Act and National Defense Authorization Act for FY 2008. Similar legislation was adopted in Washington in 2008 (codified in chapter 49.77 RCW) allowing 15 days of leave per deployment. For more information, see the Military Leave section of this manual.

Americans with Disabilities Act (ADA)

The ADA, 42 U.S.C. Ch. 126, is comprised of five titles that prohibit discrimination against disabled persons within the United States. Title I, covering employment, and Title II, covering state and local government programs and services, are the primary parts of the ADA that affect local governments, including public hospital districts.

Definition of Disability

A person is considered disabled under the ADA if he or she has:

- a mental or physical impairment which substantially limits one or more major life activities;
- has a record of such impairment: or
- is regarded as having the impairment.

See 42 U.S.C § 12102 for further definitions and rules of construction regarding the definition of disability.

Broader State Definition of Disability. The definition of “disability” in [RCW 49.60.040\(7\)](#) is broader than the ADA definition and covers a greater number of impairments and medical, mental, or psychological conditions. It also includes temporary conditions. Conditions that are ameliorated or mitigated by medication or other means are disabilities under the Washington State definition, but are often not considered to be disabilities under the ADA. Under the Washington State definition, there is no requirement that a condition must have an impact on a major life activity, or that the impact of the condition be substantially limiting. For more information regarding the state definition of “disability,” see the Washington Human Rights Commission’s [Guide to Disability and Washington State Nondiscrimination Laws](#) webpage.

In adopting this broader definition, the Legislature stated:

The legislature finds that the supreme court, in its opinion in *McClarty v. Totem Electric*, 157 Wn.2d 214, 137 P.3d 844 (2006), failed to recognize that the Law Against Discrimination affords to state residents protections that are wholly independent of those afforded by the federal Americans with Disabilities Act of 1990, and that the law against discrimination has provided such protections for many years prior to passage of the federal act.

[SSB 5349 \(Ch. 317, Laws of 2007\), Sec. 1.](#)

As a result, a broader range of job applicants and employers are protected by Washington’s law against discrimination, which provides similar protections as the ADA.

ADA Title I (Employment)

Title I, which applies to employers with 15 or more employees, prohibits those employers, including public hospital districts, from discriminating against qualified job applicants and workers who are or who become disabled. (Under the state law against discrimination, however, employers with eight or more employees are covered by its provisions. See definition of “employer” in [RCW 49.60.040\(11\)](#).)

The law covers all aspects of employment, including the application process and hiring, training, compensation, advancement, and any other employment term, condition, or privilege. An employer may not discriminate against an employee or applicant who is otherwise qualified and can perform the “essential functions” of the job, with or without reasonable accommodation.

- **Reasonable accommodations.** Reasonable accommodations are job modifications or adjustments that can be made without undue hardship to an employer to enable an employee with a disability to successfully perform the essential functions of the job. The ADA mandates that an employer engage in an interactive process to determine whether and to what extent reasonable accommodation can be made for an employee’s disability.
- **Essential functions.** Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. It is very important, then, that public hospital districts carefully examine each job position to determine which functions or tasks are essential to performance, and that they prepare for each position a written job description that identifies those essential functions.

ADA Title II (Public Services)

Title II applies to all local governments, regardless of the number of employees. Under Title II, state and local government agencies cannot deny their services to people with disabilities or deny participation in programs or activities that are available to people without disabilities. Title II also sets forth the applicable structural accessibility requirements for public entities.

Additional ADA Resources

For more information on the ADA's many and complex requirements, see MRSC's [Americans with Disabilities Act](#) topic page, which provide links to applicable laws, rules, technical guidance, and other information.

For Washington State Human Rights Commission guidance, see its [Disability In Employment](#) webpage. In particular, see its [Guide to Disability and Washington State Nondiscrimination Law](#).

Age Discrimination in Employment Act (ADEA)

In general, the federal Age Discrimination and Employment Act (ADEA), [29 U.S.C Ch. 14](#), prohibits discrimination by employers, including public hospital districts, of both employees and job applicants over the age of 40. The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment. It is unlawful to harass a person because of his or her age. (State law, [RCW 49.44.090\(1\)](#), makes it an unfair employment practice to refuse to hire or to terminate any individual between the ages of 40 and 70 based solely on age. As with all federal discrimination laws that have a state counterpart, the more liberal or generous law, viewed from the employee's perspective, controls.)

The ADEA is not violated if an employer can show that age was a bona fide occupational qualification, that there was a seniority system in place, a bona fide benefit plan, or a reasonable excuse other than age that would not undermine the ADEA. For instance, an employer could argue that there were safety or qualification concerns associated with all or substantially all older employees (established with factual evidence), or that age discrimination was justified because individual testing would not be practical. [Western Airlines v. Criswell](#), 472 U.S. 400 (1985).

State law contains a similar "bona fide occupational qualification." [RCW 49.44.090](#) states that public employers may establish "reasonable minimum or maximum age limits with respect to candidates for certain positions in public employment which are of such a nature as to require extraordinary physical effort, or which for other reasons warrant consideration of age factors."

An employer may ask an employee to waive his/her rights or claims under the ADEA. However, the ADEA, as amended by the Older Workers Benefit Protection Act, sets out specific minimum standards that must be met for a waiver to be considered knowing and voluntary and, therefore, valid. 29 U.S.C § 626(f). Among other requirements, a valid ADEA waiver must:

- be in writing and be understandable;

- specifically refer to ADEA rights or claims;
- not waive rights or claims that may arise in the future;
- be in exchange for valuable consideration in addition to anything of value to which the individual already is entitled;
- advise the individual in writing to consult an attorney before signing the waiver; and
- provide the individual at least 21 days to consider the agreement and at least seven days to revoke the agreement after signing it.

For more information on the ADEA, see the U.S. Equal Employment Opportunity Commission's (EEOC) webpage on Age Discrimination.

Other Prohibited Discrimination

Federal Civil Rights Law

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. 42 U.S.C § 2000e-2(a). This includes the prohibition of discrimination in hiring, discipline, discharge, employment opportunities, and training programs. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

Title VII does prohibit an employment practice or action "in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise." 42 U.S.C § 2000e-2(e).

Title VII, as well as other federal laws regarding discrimination in employment, is enforced by the U.S. Equal Employment Opportunity Commission (EEOC).

State Antidiscrimination Law

Washington's antidiscrimination in employment law is broader than federal law, covering, in addition to what is covered by federal law, honorably discharged veteran or military status, marital status, and sexual orientation. RCW 49.60.180. Like federal law, state law provides an exception based upon a bona fide occupational qualification. *Id.*

Sexual Harassment

Sexual harassment is prohibited as part of Title VII of the Civil Rights Act of 1964 prohibition on discrimination on the basis of sex. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- an employee must submit to the behavior to keep their job or to get a promotion, a good job assignment or some other job benefit; or
- the behavior unreasonably interferes with work performance or creates an intimidating, hostile or offensive working environment.

See 29 CFR 1604.11(a).

State law also protects against sexual harassment in the workplace, as part of its prohibition of discrimination on the basis of sex. RCW 49.60.180.

To comply with both state and federal law, local government agencies, including public hospital districts, should make it known to all employees that the agency has zero tolerance for sexual harassment in the workplace. Public hospital districts should develop a formal but easily understood policy against sexual harassment, with a sensible complaint procedure, and they must effectively communicate this policy to all employees. Additionally, employers must exercise reasonable care to promptly correct any sexually harassing behavior.

For more information, see MRSC's Sexual Harassment topic page.

Military Leave

Federal Law (USERRA)

The Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Ch. 43, grants reemployment rights to persons who are absent from a position of employment because “service in the uniformed services,” which includes active duty, active duty training, and inactive duty training for the Army, Navy, Marine Corps, Air Force, and Coast Guard, and full-time National Guard service. The reemployment rights end after five years cumulative total of military service.

For more information on military leave and USERRA, see MRSC's Military Leave topic page.

State Law

Under Washington law, an employee is entitled to a paid military leave of absence for a period not to exceed 21 days during each year, beginning October 1 and ending the following September 30. RCW 38.40.060. Such leave is in addition to any vacation or sick leave to which the employee is entitled, and is applied only to those days the employee is scheduled to work.

A 1999 attorney general opinion, AGO 1999 No. 2, concluded that a day for purposes of this law is calculated according to the number of days the person would have worked, but for the military training.

As elected officials, the commissioners of a public hospital district are not considered “employees” for purposes of RCW 38.40.060, but they are entitled under RCW 73.16.041 to an extended leave of absence (granted by the board of commissioners) for active service or training. The board of commissioners may appoint a “temporary successor” to fill the position during the period of leave.

Military Family Leave (State and Federal)

State law also provides that an employee is entitled to up to 15 days of unpaid leave while their military spouse is on leave from a deployment or before and up to deployment, which can begin once the spouse receives official notification of an impending call or order to active duty. RCW 49.77.030.

As a result of 2008 amendments to the FMLA, federal law similarly provides for military family leave. 29 U.S.C. § 2612(a)(1)(E).

Domestic Violence Leave

Under the state Domestic Violence Leave Act, chapter 49.76 RCW, an employee may take reasonable leave from work, intermittent leave, or leave on a reduced leave schedule, with or without pay, to:

- seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or employee’s family members;
- seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the employee’s family member;
- obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;
- obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking; or
- participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee’s family members from future domestic violence, sexual assault, or stalking.

Holidays

State Legal Holidays

RCW 1.16.050(1) provides a list of “state legal holidays,” as follows:

- Sunday
- New Year’s Day
- Martin Luther King, Jr. Birthday
- Presidents’ Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans’ Day
- Thanksgiving Day
- Day after Thanksgiving (Native American Heritage Day)
- Christmas Day

This statute also provides that when a legal holiday falls on a Saturday, the preceding Friday is the legal holiday, and that whenever a legal holiday falls on a Sunday, the following Monday is the legal holiday.

According to the Office of the Attorney General, none of the statutory legal holidays are paid holidays, unless so provided by the employing local government agency, including a public hospital district. See [AGO 1977 No. 3](#). Nevertheless, it is assumed by many local government employers that these are all paid holidays. It is recommended that public hospital districts make it clear in their personnel policies whether or not these are paid holidays.

However, local government employers, including public hospital districts, are not required to observe these holidays. A public hospital district may by resolution and/or in an agreement with employees (e.g., collective bargaining agreement) observe any or none of the above listed holidays.

Personal (Floating) Holiday

State and local government employees, including those of a public hospital district, are entitled to “one paid holiday per calendar year.” (Emphasis added.) Employees may select the day to take this

personal holiday, after consulting with the appropriate hospital district supervisor under guidelines established by district resolution. [RCW 1.16.050\(2\)](#).

Two Unpaid Religious Holidays

Legislation enacted in 2014 grants public employees two unpaid religious holidays—“for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization”—per calendar year. Employees may select the day to take these days, after consulting with the appropriate hospital district supervisor under guidelines established by district resolution. If an employee prefers to take these two unpaid holidays on specific days, the employer must allow the employee to do so unless the employee’s absence would impose an undue hardship on the employer, or the employee is necessary to maintain public safety. [RCW 1.16.050\(3\)](#).

For more information on these two unpaid religious holidays, see the following MRSC blog posts:

- [Two New \(Unpaid\) Holidays for Government Employees;](#)
- [OFM Defines “Undue Hardship” for Newly Required Unpaid Holidays; and](#)
- [New Bill Gives Public Employees Two Unpaid Religious Holidays Per Year: What Does It Mean for Employers?.](#)

Political Activities of Employees

[RCW 41.06.250\(2\)](#), guarantees employees of political subdivisions of the state the right to vote and to express their opinions on all political subjects and candidates:

Employees of the state or any political subdivision thereof shall have the right to vote and to express their opinions on all political subjects and candidates and to hold any political party office or participate in the management of a partisan, political campaign. Nothing in this section shall prohibit an employee of the state or any political subdivision thereof from participating fully in campaigns relating to constitutional amendments, referendums, initiatives, and issues of a similar character, and for nonpartisan offices.

A public hospital district cannot adopt a policy that infringes on this right of political expression guaranteed by this statute to its employees. [RCW 41.06.250\(5\)](#).

Employees, however, are not protected by this provision when engaging in such activities during work time, and they may not use work time or district facilities (e.g., copy machines, email, telephones) in support or opposition to a ballot proposition or to assist a campaign for any person’s election to office. [RCW 42.17A.555\(1\)](#). As stated in [WAC 390-05-271\(1\)](#), a regulation adopted by the Public Disclosure Commission:

RCW 42.17A.555 does not restrict the right of any individual to express his or her own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use of the facilities of a public office or agency.

Free Speech Issues

Government employees, including those of a public hospital district, may not be disciplined or discharged for speech that is protected by the First Amendment—speech that is a matter of public concern in connection with the operation of the government agencies for which they work.

The courts, beginning with a U.S. Supreme Court decision, *Pickering v. Board of Education* (1968), have held that when a public employee's speech involves matters of public concern, a court must then balance the employee's interest in exercising his or her right to freedom of speech against the government's interest "as an employer, in promoting the efficiency of the public services it performs through its employees." Speech involving an employee's own personal situation is not protected speech.

Citing *Pickering*, the *Washington Supreme Court in Binkley v. Tacoma* (1990) set out a four-step test to determine if a public employer has violated a public employee's right to free speech:

- The employee must establish that his/her speech dealt with a matter of public concern;
- If the speech dealt with a matter of public concern, the public employee must prove that his/her interest in "commenting upon matters of public concern" is greater than the employer's interest in "promoting the efficiency of the public services it performs."
- The public employee must demonstrate that his/her speech was a substantial or motivating factor in the adverse employment decision of which he/she complains.
- If the public employee is able to prove these three elements, the burden shifts to the employer to prove that it would have reached the same decision even in the absence of the employee's protected conduct.

Code of Ethics (Employees)

As noted in the section in Chapter 2 dealing with codes of ethics for municipal officers, a public hospital district may enact a code of ethics that cover district employees as well as covering district officers. Such codes might deal with matters such as:

- Conflicts of interest;
- Accepting gifts or favors;

- Restrictions regarding future employment (e.g., employee involved in negotiation of a contract then accepting employment with contracting party);
- Disclosure of privileged, confidential, or proprietary information;
- Misuse of district resources (for personal benefit);
- Private employment that interferes with discharge of district duties; and
- Political activities in violation of [RCW 42.17A.555](#).

For more information, and some sample policies, see MRSC's [Codes of Ethics](#) topic page.

Contracting for Services/Independent Contractors

In general, public hospital districts have great latitude in contracting for services required to operate the district. Several types of services are specifically authorized by statute and many more are implied in the broad statutory delegation of authority to the board of commissioners. A few types of services require the public hospital district to follow specific procedures prior to the retaining of an individual or business for professional services.

Independent Contractor vs. Employee

A critical consideration in contracting for services of a type that hospital district employees could perform is to properly classify and treat the provider of those services as either an independent contractor or a district employee.

The line between independent contractor and employee can sometimes be unclear, but it is best to err on the side of classifying the service provider as an employee. The consequences of misclassifying an employee as an independent contractor can be severe. For example, a public hospital district is responsible for income tax withholding, Social Security, Medicare, and unemployment taxes. Penalties, interest, and back taxes can be owed when an employee is mistakenly treated as an independent contractor. Also, for FLSA purposes, a district owes an employee, but not an independent contractor, for overtime.

There are various “tests” that are applied in making this determination. Although these tests are applied for different purposes (e.g., federal income taxes, workers compensation, etc.), the elements of these tests are basically the same. One of the key components of the IRS test is that an employee is under the control of the employer. If the employer has the right to exercise control over the worker, then the worker is an employee. Generally, an employment relationship exists if the employer (1) has the right to discharge the worker, (2) furnishes tools and supplies, (3) provides a place to work (e.g., an office) and (4) has control over what is to be done and how it will be done. When an employer is uncertain of the classification, it can file [Form SS-8](#) to request the IRS to make the determination.

Here are links to further information on this distinction between independent contractors and employees, including to some of the tests that are employed:

- [Independent Contractor \(Self-Employed\) or Employee?](#), IRS
- [Independent Contractor Guide - A Step-by-Step Guide to Hiring Independent Contractors in Washington State](#), Washington Department of Labor and Industries
- [Laws: Fair Labor Standards Act Advisor - Independent Contractors](#), US Dept. of Labor
- [RCW 51.08.195](#) (test for worker's compensation purposes)
- [WAC 162-16-230](#), Jurisdiction - Independent contractors, Washington Human Rights Commission

If an employer has a reasonable basis for not treating a worker as an employee, it may be relieved from having to pay employment taxes for that worker. The employer must have a history of classifying the workers and other workers in similar positions as independent contractors, treating them consistently as such for all periods after 1977. There must also be a reasonable basis for the classification, such as reliance on a prior judicial ruling, reliance on past audits, or industry practice. See IRS [Publication 1976, Section 530 Employment Tax Relief Requirements](#) for more information.

Contracting Process

No specific process is required in state law for contracting for services, except for architectural and engineering services. (Contracting with contractors for public works projects is covered in Chapter 6.) MRSC's [Contracting for Services](#) publication provides guidance to local government agencies, including public hospital districts, on recommended practices for contracting for services. This publication encourages fair and open competition in selecting firms to perform all types of service contracts and recommends policies that maintain that transparency. See also MRSC's [Personal Services Contracts](#) topic page.

Architectural and Engineering Services

[Chapter 39.80 RCW](#) establishes procedures that hospital districts must follow when procuring architectural and engineering services. Architectural and engineering services, for purposes of that chapter, are services provided by any person, other than an employee of a district, that fall under the general statutory definitions of:

- Architecture ([RCW 18.08.320](#))
- Engineering ([RCW 18.43.020](#))
- Land surveying ([RCW 18.43.020](#))
- Landscape architecture ([RCW 18.96.030](#))

Unlike public works contracts that are awarded to the lowest responsible bidder, architectural and engineering contracts are awarded primarily based on qualifications, rather than cost, a process known as “qualifications-based selection.” Under this process, a hospital district to publish advance notification in one of two ways:

- By issuing an announcement for each project; or
- By issuing a general announcement describing the anticipated requirements for a category or type of service

These announcements should concisely describe the general scope and nature of the project or work, as well as the address of an agency representative who can provide further information. RCW 39.80.030.

Public hospital districts must encourage architectural and engineering firms to submit annually a statement of qualifications and performance data. RCW 39.80.040. With respect to specific projects, districts are to evaluate such statements of qualifications and performance data on file along with those submitted by other firms regarding that project.

Following the evaluation, a district invites one or more firms to meet with district officials to discuss the project and the relative benefits of various methods of providing the desired services. The district then selects from among those firms the one “most highly qualified” to provide the required services. Districts are not to consider cost when determining which firm is the most highly qualified. RCW 39.80.050.

After choosing the most qualified firm, the district then negotiates with that firm for a contract at a price the district determines is fair and reasonable, considering the estimated value of the services to be rendered, as well as the scope and complexity of the project. If a satisfactory contract cannot be negotiated, the district formally terminates the negotiations with that firm and attempts to negotiate a contract with the next most qualified firm. The process continues until an agreement is reached or the search is terminated.

In emergency situations, a district can dispense with these procedures upon a finding that an emergency requires the immediate execution of the work involved. RCW 39.80.060.

Contracting with Other Entities to Provide Health Care Services

RCW 70.44.240 authorizes public hospital districts to contract or join with any other public hospital district, publicly-owned hospital, nonprofit hospital, legal entity, or individual to acquire, manage, or operate any hospital or provide hospital or other health care facilities, including health maintenance services. If a public hospital district chooses to contract or join with other parties under the authority of this statute, it may do so through establishing a nonprofit corporation, partnership, limited liability company, or other legal entity of its choosing and in which the public hospital district and the other party or parties participate.

Thus, for example, a hospital district may enter into joint ventures with physicians for providing healthcare services. These joint ventures may take the shape of many different forms, with one major exception being the formation of a separate for-profit corporation. Article 8, section 7 of the Washington State Constitution prohibits municipal corporations from owning, directly or indirectly, shares of stock or bonds in corporations, companies, or associations. Thus, a hospital district and physician could not participate in owning the stock of a corporation formed for the purposes of a joint venture for healthcare services under RCW 70.44.240.

Contracting with a Provider that Refuses to Provide Services Described in RCW 9.02.160

In AGO 2013 No. 3, the Attorney General opined that a public hospital district that provides, directly or by contract, maternity care benefits, services, or information to women, through any program administered or funded in whole or in part by the district, must also provide the substantially equivalent benefits, services, or information to permit them to voluntarily terminate their pregnancies, as required by RCW 9.02.160 and RCW 9.02.100. Both statutes were enacted as part of Initiative 120, known as the Washington Abortion Rights Initiative, which the voters approved in 1991.

Chapter 5

Hospital District Finance

Chapter Summary

In general, hospital districts are expected to exercise sound judgment in the exercise of their business affairs. Failure to do so would mean that the commissioners, superintendent, and other officers of the district were breaching their fiduciary obligations under common law standards. Failure to fulfill this obligation might subject these officers to liabilities or result in the voiding of actions taken by the district. The Statement of Auditing Standard (SAS) No. 115 requires that the State Auditor evaluate the oversight of financial affairs of the district to ensure that financial statements are accurately stated and that proper internal controls are implemented to prevent or detect misstatements of the district's financial condition. A lack of documented or effective oversight by the elected officials may result in an audit finding under SAS No. 115.

This chapter provides a general overview of hospital district finance to help provide a solid foundation from which hospital district officials can exercise sound judgment when transacting hospital district business.

Budgeting

The budget is a legal document that forecasts a public hospital district's financial resources and that authorizes the spending of those resources for the fiscal year (calendar year). A budget provides both the right to spend and limits the amount to be spent.

As described in the State Auditor's BARS Manual:

At a minimum, local governments' budget must meet the requirements of Washington state law and the State Auditor's Office [SAO]. The SAO does not prescribe how to budget or what a budget should look like. The adopted budget should be of sufficient detail to be meaningful and meet the intention of the law. The SAO considers budgets showing revenues and expenditures at the legal fund level to be the minimum acceptable level of detail.

Budgeting is more than just an activity to satisfy state law. It is a sophisticated process of strategic planning, communication and policy development resulting in a detailed plan of operations for allocating and monitoring the use of limited resources among various competing demands.

In Washington State, budgets must be balanced—anticipated revenues must equal forecasted expenditures.

The budget required by statute is essentially focused on the level of tax receipts required by public hospital districts to support the cost of operations. The budget is a public document that demonstrates how limited resources are used to support services, but it is also a tool used by management to monitor operations throughout the year. As a result, it is important to present a budget intended for the user, one that provides detail for management and another that provides a summary of income types and activities for the public. The budget used at a public hearing should match the more detailed comprehensive management budget document.

Budget Levels

Budget levels refer to the amount of appropriation authority and degree of flexibility that the district sets for its general fund budget. The level of appropriation authority varies depending upon district policy and the desired degree of management oversight. The two most common types of budget appropriation levels are the fund level budget and the department and/or program level budget.

- **Fund Level.** This refers to an appropriation level at the broadest level of authority. A fund level budget allows for the greatest amount of flexibility in that the authority to spend is set for the district general fund as a whole rather than the activities or programs that are provided for within the general fund. This type of appropriation provides the district and its department heads with a greater degree of flexibility and grants the authority to manage the appropriations for programs and services to meet the goals and objectives of the district. This broad level of authority requires that management monitor the activities throughout the budget period to ensure that actual expenditures fall within the expectations of district management.
- **Department/Program Level.** This refers to a budget appropriation level that limits expenditures to department or program activities projections established during the budget process. This level of budgeting provides for control over the costs of the program and sets a level of intended service and no more.

Proposed Budget

RCW 70.44.060(6) requires that the district superintendent annually prepare a proposed district budget and file it with the board of hospital district commissioners on or before November 1.

Public Hearings

The district board is required to hold a public hearing on the proposed budget along with an additional public hearing on the setting of the property tax levy, to be held prior to the district requesting taxes be levied.

Public Hearing on Revenue Sources

A separate property tax levy hearing must be held that includes consideration of possible increases in property tax revenues. RCW 84.55.120. The property tax levy hearing must be held prior to the time the taxing district levies the taxes or makes the request to have the taxes levied.

A Public Hearing on the Proposed Budget

A public hearing on the proposed budget for the district must be held on or before November 15. Any district taxpayer is entitled to be heard at the public hearing against the whole or any part of the proposed budget.

Notice of the proposed budget and the date of the public hearing must be published once a week for two consecutive weeks in a newspaper printed and of general circulation in the county.

Budget Adoption

Following the public hearing on the budget, the board of hospital district commissioners, by resolution, adopts the budget and fixes the final amount of expenditures for the ensuing year.

Certification to the County

RCW 84.52.020 requires that all taxing districts certify to the county legislative authority, budgets or estimates of the amounts to be raised by taxation on the assessed valuation of the property in the district. A public hospital district must file its budgets or levy request with the clerk of the county legislative authority on or before November 30th each year.

Budget Amendments

Although public hospital districts are not statutorily-required to amend their budgets if actual expenditures exceed those budgeted, the prudent practice is for the board of commissioners, by resolution, to amend the budget when expenditures exceed those budgeted.

Additional Budget Resources

- Washington State Auditor's BARS Manual;
- MRSC Budget Suggestions (published each year); although geared towards cities and towns, this publication contains summaries of new legislation; revenue and inflation forecasts; and articles on financial issues that may also be of interest to hospital districts;
- Government Finance Officers Association (GFOA)'s Budgeting and Financial Planning Best Practices webpages; and
- GFOA's Recommended Budget Practices publication.

Accounting System

Districts must use uniform revenue and expenditure categories specified by the State Auditor's Office (SAO). These categories are provided in the SAO publication known as the Budgeting, Accounting and Reporting System (BARS). SAO publishes BARS manuals, provides training, col-

lects the data, and publishes reports on its website in the Local Government Financial Reporting System (LGFRS).

The Department of Health (DOH) uses the SAO BARS coding system to collect financial data from local health jurisdictions (LHJs), including public hospital districts, about the types of public health services provided and the types of revenue used to fund these services. DOH publishes this data each year in the LGFRS reports.

The SAO prescribes financial reporting requirements for LHJs that vary based upon size of the jurisdiction and whether it is a separate governmental jurisdiction or part of county government. If the LHJ is a separate district (e.g., a public hospital district), it reports directly to SAO on forms prescribed in the BARS manual.

Revenues

Patient Revenues

By far the largest source of revenue for hospital district operations come from payments for medical treatment. These payments come from many sources, including private insurers, the state and federal government, and self-paying patients. For hospital districts, patient revenues typically make up over 95% of their total budget, with tax revenues making up the balance.

While hospital districts receive most of their funding from patient revenues, most of the laws affecting this are common to all hospitals and are beyond the scope of this manual. However, two special issues discussed in this section are relevant to public hospital districts: discounting practices and charity care.

Discounting

Consistent with changes in, and ultimately the sunset of, hospital rate-setting authority by the Washington State Hospital Commission in 1989, hospital districts have been increasingly asked for, or have offered, discount rates for the delivery of their health care services. From time to time, questions have arisen as to whether discounting practices are permissible for public hospital districts.

The usual question raised is whether it is permissible under article 8, section 7 of the Washington Constitution, which prohibits gifts of public funds. It appears that discounts are constitutionally permissible so long as the hospital district is deriving an economic benefit through the discount practice. Thus, if discounting means greater volumes of patients, prompter payment of bills, or any other legitimate business advantage, the practice may be justified.

Do hospital districts have the authority to discount as a matter of municipal authority? RCW 70.44.060(3) authorizes a hospital district board of commissioners to provide and charge for health care services, and discounts would appear to be a logically-implied power arising from that authority.

Charity Care

The 1989 Legislature enacted [RCW 70.170.060](#), which prohibits any Washington hospital, including those operated by public hospital district, from denying access to emergency care based on inability to pay, or adopting admission policies that significantly reduce charity care. This requirement is consistent with [article 8, section 7](#), which allows gifts of public funds in support of the poor or infirm. See section on [Gifts of Public Funds](#).

[RCW 70.170.060](#) directs each hospital to develop a charity care policy. The Department of Health (DOH) is responsible for rule-making and monitoring related to charity care, and is required to report to the Legislature and Governor on an annual basis. See [chapter 246-453 WAC](#) for DOH regulations concerning charity care. See also charity care policies of Washington hospitals on DOH's [Hospital Policies](#) webpage.

Hospital charity care policies must provide that all persons receiving hospital-based care with income at or below the federal poverty level are entitled to charity care without charge. [RCW 70.170.060\(5\)](#). In addition, all persons with incomes between 100 and 200 percent of the federal poverty level qualify for discounts based on the hospital's sliding fee schedule (specified in the charity care policy). [WAC 246-453-040](#). Thus, hospital districts are not only authorized to provide charity care, but must do so in a manner consistent with these laws.

Collections

Public hospital districts may accept payment by credit card for patient billings. Districts may pass on to patients the fees that credit card companies charge for the use of their services. For more information, see MRSC's [Credit Card Acceptance](#) webpage.

As previously noted, the laws governing charges for patient care and their collection are beyond the scope of this manual. The remainder of this chapter on district revenues will focus on tax revenues.

Property Taxes

The Washington State property tax is one of the most complicated in the nation. Property taxes are taxes assessed on the estimated value of real and personal property (assessed value) within the taxing district. However, certain property, such as that owned by governmental entities, is exempt from the assessment of property taxes. The value is assigned to property by county assessors typically represents some estimate of the market value of the property.

Washington State has a budget-based system of property taxation. There are three main components to the property tax:

- Levy
- Assessed value (AV)
- Levy rate

As part of the budget process, the taxing jurisdiction establishes the amount of property tax revenue needed to fund the budget. That amount needed to fund the budget is called the levy. It is the total amount to be collected from the taxpayers by a taxing district.

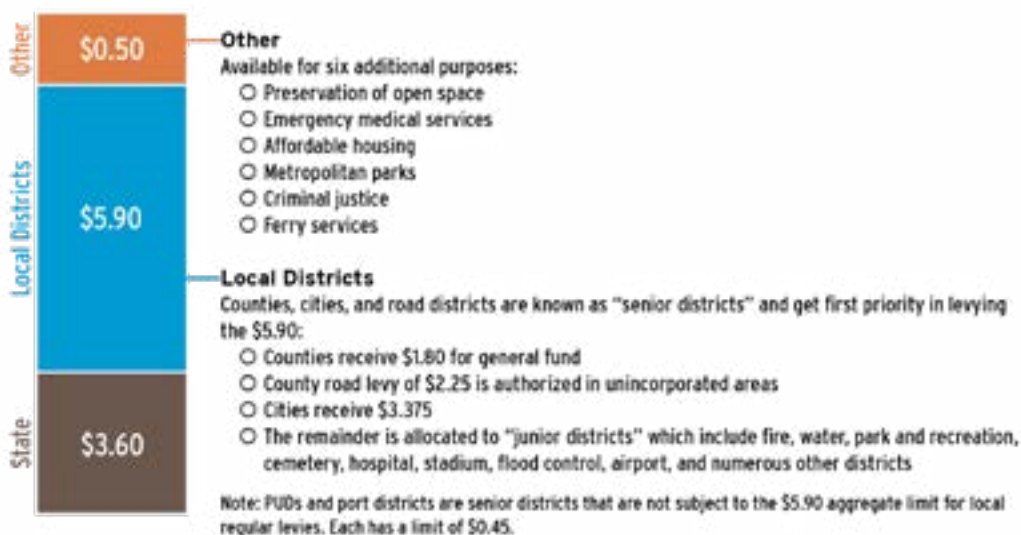
By November 30 of each year, the amount of taxes to be levied by taxing districts are certified to the county assessor who computes the levy rate necessary to raise that amount of revenue. The county assessor calculates the levy rate necessary by dividing the total levy amount by the assessed value of taxable property in the district. By law, this number is expressed in terms of a dollar rate per \$1,000 of valuation. For example, a rate of \$0.00025 is expressed as 25¢ per \$1,000 of assessed value. The formula for property tax collections is expressed as:

$$\text{Levy} = \text{Levy Rate} \times \text{Assessed Value (AV)}$$

Regular Levy Rate Limits

The Washington State Constitution and [RCW 84.52.050](#) limit the annual rate of property taxes that may be imposed on an individual parcel of property to 1% of its true and fair value. Since tax rates are stated in terms of dollars per \$1,000 of value, the 1% limit is the same as \$10 per \$1,000 and is often referred to as the \$10 limit. Taxes imposed under this limit are termed “regular” levies, while those outside the limit are “excess” or “special” levies.

The following chart shows how the \$10 limit is allocated. Under [RCW 84.52.043\(2\)](#), the allocation for cities, counties and most special districts, including hospital districts, is \$5.90 per \$1,000 assessed value. [RCW 70.44.060\(6\)](#) limits a public hospital district’s share of the \$5.90 aggregate limit to an annual regular levy rate of 75¢ per \$1,000 of assessed value, resulting from two separate 50¢ and 25¢ authorizations. The 50¢ and 25¢ authorizations have different priorities in the prorationing pecking order, which is discussed below.



What happens if these regular levy rate limits are exceeded? It's complicated. First, it's important to remember that there are two limits:

- One is the 1% constitutional limit.
- The other is the \$5.90 limit on cities, counties, and junior taxing districts.

If either of these limits are exceeded, then the junior taxing district levies involved must be reduced through “prorating.” See [RCW 84.52.010](#). A public hospital district is considered a “junior taxing district” pursuant to [RCW 84.52.043\(2\)](#). The order in which levies are reduced under prorating is given in [RCW 84.52.010\(2\)](#).

Which levies are lowered in prorating, by how much, and in what order depends upon whether the \$5.90 limit or the 1% limit has been exceeded. The Department of Revenue's [Property Tax Levies Operations Manual](#) and [WAC 458-19-075](#) include step-by-step instructions for calculating prorating. The Department of Revenue has developed [Prorating Worksheets](#) (look under the levy forms subheading) for both the \$5.90 aggregate limit and the 1% aggregate limit to help in making these calculations.

Levy Increase Limit

In addition to the limit on the overall levy rate, there is a 1% limit on the amount an individual taxing district can increase the property tax levy, or the total amount of taxes that will be collected in a given year.

In Washington, property tax increases are not based on the increasing value of properties. They are based on last year's property tax levy, which is simply the amount of the property taxes that were assessed in the prior year. Each year's levy may be increased by no more than 1%, unless the public votes for a greater increase or the jurisdiction uses banked capacity. See the Washington State Department of Revenue's [Resolution/Ordinance Procedures for Increasing Property Tax Revenue](#) for the proper procedures for increasing the property tax levy.

Banked Levy Capacity

Public hospital districts can levy less than the maximum and then make it up in a future year, using “banked capacity.” [RCW 84.55.092](#) provides the ability to protect the unused levy capacity for future use. For a thorough discussion of how to bank capacity, see [What is Banking Levy Capacity?](#) on the MRSC [Property Tax in Washington State](#) topic page.

Levy Lid Lift

A levy lid lift is the means to exceed the 101% levy limit. A district may ask its voters to authorize an amount that exceeds the levy limit or “lift the levy lid.”

A public hospital district can ask the voters to approve, by majority vote, a single-year lid lift (one year) or a multiple-year lid lift (up to six years). In either case, approval of the lid lift must occur

within 12 months of when it will be imposed. The lift is temporary unless the ballot specifically states the resulting levy will be used for future levy limit calculations. [RCW 84.55.050](#).

Excess (Special) Levies

Excess levies are those that impose property taxes over and above the regular property tax levies described previously. They are in “excess” of the limits put on regular levies. [RCW 70.44.060](#) and [RCW 84.52.052](#) authorize public hospital districts to impose excess levies, if approved by the voters at any special election.

Public hospital districts may impose a one-year excess levy, commonly known as an “operations and maintenance” (O&M) levy. The rate for such levies may be set at any amount, though the requirement of voter-approval establishes a practical ceiling.

Article 7, section 2(a) of the state constitution requires that excess levies receive 60 percent “supermajority” voter approval, though under two different scenarios depending on voter turnout:

- If at least 60 percent of the voters vote “yes” with a voter turnout of more than 40 percent of the number of people voting in the last general election, the measure is passed.
- If the voter turnout is 40 percent or less of the number voting in the last general election, the number of “yes” votes must be equal to at least 60 percent times 40 percent of the number of people voting in the last general election for the measure to pass. If, for example, 1,000 people voted in the last general election, as long as at least 240 ($1,000 \times .4 = 400$; $400 \times .6 = 240$) people vote “yes, the levy will pass even if the number voting is less than 400 (40 percent of those voting in the last general election).

The excess levy must be submitted to the voters not more than 12 months prior to the date on which the proposed initial levy is to be made and not more than twice in that 12-month period,

Emergency Medical Service (EMS) Levies

Public hospital districts are authorized by [RCW 84.52.069](#) to levy, with voter approval, an additional property tax of up to 50 cents per thousand dollars of assessed valuation to support emergency medical services. However, if a county levies an EMS tax, a public hospital district within that county may not levy the tax, unless the amount of the county’s tax is less than 50 cents, in which case a district may levy an amount that, added to the amount of the county tax, does not exceed 50 cents. [RCW 84.52.069\(6\)](#).

An EMS levy is a “regular property tax levy,” and, as such, it is subject to the levy increase limits (Link to Levy Increase Limit section above).

This levy is not subject to the limitation in [RCW 84.52.043\(2\)](#), which provides that the aggregate levies for cities, counties, and most special districts may not exceed \$5.90 per thousand dollars assessed valuation. [RCW 84.52.069\(7\)](#) and [RCW 84.52.043\(2\)\(d\)](#). It is, however, subject to the

constitutional and statutory provisions that the aggregate of all regular property tax levies may not exceed one percent of assessed value (\$10 per thousand dollars assessed valuation).

Use of EMS Levy

An EMS levy may be used only for:

the provision of emergency medical care or emergency medical services, including related personnel costs, training for such personnel, and related equipment, supplies, vehicles and structures needed for the provision of emergency medical care or emergency medical services.

RCW 84.52.069(5).

Duration of EMS Levy

The levy presented to the voters can be imposed for six years, ten years, or permanently. If a public hospital district imposes a permanent levy, it must account separately for the expenditure of the revenues and it must maintain a statement of accounting that is updated every two years and that is available to the public at no charge. RCW 84.52.069(3).

In addition, a permanent levy is subject to a referendum *at any time*, following the procedure in RCW 84.52.069(4). This provision means the “permanent” levy may not actually be permanent.

Voter Approval Threshold for EMS Levy Approval

As with excess levies, EMS levies require 60 percent voter approval, under the same two scenarios of voter approval for excess levies.

Additional Property Tax Resources:

- Washington State Department of Revenue’s (DOR) Property Tax Levies Operations Manual;
- MRSC’s Property Tax in Washington State topic page;
- MRSC’s Special Purpose District Revenues topic page;
- MRSC’s Why is Property Tax So Complicated? blog post;
- MRSC’s Levy Lid Lifts topic page; and
- DOR’s Ballot Measure Requirements (“This guide explains the requirements taxing districts must follow to create ballot measures for levies seeking voter approval.”)

Timber Taxes

Public hospital districts with voted bonds (for capital purposes) under [RCW 84.52.056](#) receive a portion of the revenues from tax, authorized under [RCW 84.33.051](#), imposed and collected by counties on the harvest of timber on privately-owned land.

Timber tax revenues are placed in timber tax account for each county and distributed to local governments under [RCW 84.33.081](#) as follows:

- First, there is a distribution to each taxing district in the county which has debt service payments due in the calendar year through voter-approved bonds or excess levies passed for a capital project fund in an amount equal to the timber assessed of the district times the tax rate levied for the debt service or capital project. Distributions under this provision may be used only for debt service and capital projects payments and moneys are distributed one-half in the first quarter of the year and one-half in the third quarter.
- If there is any money remaining after the above distributions, an amount is designated for school districts, and, if there is still funds left, each taxing district in the county receives an amount equal to the timber assessed value times the regular and special levy rate of each district.

Donations and Fundraising

The 2011 Legislature amended [RCW 70.44.060](#), at subsection (11), to expressly allow public hospital districts to accept and to solicit gifts of “real or personal property, or both, in trust or otherwise,” or, in other words, to fundraise. A district may contract with for-profit or nonprofit organizations for fundraising purposes.

Before performing any fundraising activities, a district should have in place policies describing who may approve fundraising activities and provisions for accepting donations with conditions or restrictions. A district must also establish adequate accounting controls for tracking and spending donated funds.

Borrowing

As is true of all municipal corporations, public hospital districts have no inherent authority to borrow money. As such, a district’s authority to borrow must be expressly conferred by statute. The authority for a hospital district to borrow using any type of debt is provided for in [chapter 39.36 RCW](#) and further in [chapter 70.44 RCW](#) applicable to hospital districts. The types of debt allowed in Washington State are either long-term or short-term.

Long-term obligations are bonds that allow for bondholders to have a legal claim on all the general income of the district if a default occurs. Long-term bonds will not mature for more than 10 years, but may not exceed a 30-year maturity. They are exempt from federal income tax. Long-term bonds are generally used to finance a capital facility project.

Short-term obligations are often used to cover temporary cash flow deficits and include tax, bond, revenue, or grant anticipation notes or bank lines of credit. Short-term obligations are typically for a period of one year or less.

Use of Bond Counsel

Because of the need for express authority for bond issuance, the practice has arisen of obtaining a legal opinion, usually from an independent law firm with special expertise in public finance and federal tax law, in connection with public financing arrangements. Before a lender will advance money to a public hospital district, before a contractor will accept a municipal debt instrument in payment for goods or services, before an underwriter or investor will purchase such an instrument, each may require assurance that the public hospital district is duly acting within its lawful authority. A legal opinion by a recognized municipal bond counsel serves this purpose.

Types of Borrowing Devices

General Obligation (GO) Bonds

RCW 70.44.060(5)(b) authorizes public hospital districts to issue general obligation bonds, in accordance with chapter 39.46 RCW. General obligation bonds are interest-bearing, fixed term obligations to the payment of which the issuer has pledged its “full faith and credit”—meaning that the issuer is bound to levy taxes and apply other available resources, to pay the principal and interest on the bonds when due or as soon thereafter as possible.

There are two basic kinds of general obligation bonds:

- **Unlimited tax general obligation bonds (UTGO or voted debt).** Unlimited general obligation bonds are payable from a special levy in excess of the district’s regular property tax levy. They must be approved by 60 percent of the voters, with a voter turnout that is at least 40 percent of those voting in the most recent general election.

UTGO bonds may only be used for capital purposes as defined by statute: to acquire or to construct a public hospital or “other health care facilities” (RCW 70.44.007(1)), or to improve or to extend an existing facility (RCW 70.44.110).

- **Limited tax general obligation bonds** (also called LTGO bonds, or nonvoted debt), may be issued by a vote of the hospital district board of commissioners. Because the voters have not been asked to approve a tax increase to pay for the principal and interest, general fund revenues must be pledged to pay the debt service on LTGO bonds. Receipts from the bonds may be used for any district purpose.

Revenue Bonds

RCW 70.44.060(5)(a) authorizes public hospital districts to issue revenue bonds for district purposes. Revenue bonds are payable solely out of a special fund or funds into which are deposited a fixed amount or a fixed proportion of revenues from a hospital or other facility

financed by the bonds. The board of commissioners may issue revenue bonds by resolution; voter approval is not required.

Issuance of the bonds is governed by the Municipal Revenue Bond Act, chapter 35.41 RCW. Under that legislation, the rates or charges for the facility financed by the revenue bond must be sufficient to pay the principal and the interest on any bonds or warrants, the transaction costs, and the operating and maintenance expenses of the facility (RCW 35.41.080(2)). The bonds are not considered a general indebtedness of the public hospital district for statutory debt limitation purposes, and they must state so on their face (RCW 35.41.030(8)).

If a public hospital district fails to set aside and to pay revenue obligated to a special fund into that fund, then a bondholder may bring suit against the district to compel it to do so. RCW 35.41.070.

Refunding and Advance Refunding Bonds

Refunding bonds, authorized by chapter 39.53 RCW, are bonds that are issued to replace and refinance outstanding general obligation or revenue bonds. They are payable generally from the same sources—taxes and revenues—as the bonds refunded, and they have the same characteristics as the bonds they refund.

These bonds are issued by resolution of the board of commissioners, without a public vote, and can be used in three situations:

- When all or part of an outstanding bond issue is in arrears or about to become due, and insufficient funds are available to retire or to redeem the bonds.
- When it is either necessary or in a public hospital district's best interest to modify the debt service, reserve requirements, or other terms under which a bond is being refunded.
- When a public hospital district will save money, taking into account transaction costs, by refunding the bonds.

Refunding bonds may be issued in a principal amount in excess of the principal amount of the bonds to be refunded. The excess is limited to an amount reasonably required to accomplish the refunding. The principal amount of the refunding bonds also may be less than the principal amount of the bonds to be refunded, if that sum is sufficient to accomplish the refunding. RCW 39.53.050.

Advance refunding bonds, also authorized by chapter 39.53 RCW, are issued for the purpose of refunding a bond first subject to redemption or maturing more than one year after the advance refunding bonds are issued.

Warrants

Public hospital districts are authorized to issue two types of warrants for purposes of short-term borrowing: revenue warrants and tax anticipation warrants. RCW 70.44.060(5), (6). They are ways

to raise temporary cash to bridge the gap between the time that expenditures have to be made and revenues are received.

Revenue Warrants

Issuance of revenue warrants is, like revenue bonds, governed by the Municipal Revenue Bond Act, [chapter 35.41 RCW](#). Revenue warrants are payable either out of a special fund to which revenues of a public hospital facility are obligated, or are payable from the proceeds of the sale of revenue bonds. Revenue warrants are not considered a general indebtedness of the public hospital district for statutory debt limitation purposes, and they constitute a claim by the warrant holder only against a special fund. [RCW 35.41.050](#).

The board of commissioners must fix rates that are charged for district services at a level that is sufficient, with other monies available, to provide for the payment of the warrants. [RCW 35.41.080](#). If a public hospital district fails to set aside and to pay revenue obligated to a special fund into that fund, then a warrant holder may bring suit against the district to compel it to do so. [RCW 35.41.070](#).

Tax Anticipation Warrants

Tax anticipation warrants are issued in anticipation of property tax revenues. They may be issued in an amount not to exceed the anticipated tax revenues of one year, are payable from the first tax monies available from the levy of property taxes when collected. [RCW 70.44.060\(6\)](#).

Other Types of Short-Term Obligations

Short-Term Obligations under Chapter 39.50 RCW

Public hospital districts may also borrow money and issue short-term obligations pursuant to [chapter 39.50 RCW](#). The proceeds of the short-term obligations may be used for any lawful purpose of the public hospital district. Short-term obligations may be issued in anticipation of the receipt of revenues, taxes, or grants, or the sale of (1) general obligation bonds, if the bonds may be issued without the assent of the voters, or, if previously ratified by the voters, and (2) revenue bonds, if the bonds have been authorized by resolution. [RCW 39.50.020](#).

Tax anticipation notes must be paid off no later than June 30 following the year in which they are issued. [RCW 39.50.030\(1\)](#).

Grant anticipation notes may be used to finance expenditures between the time a grant is officially awarded and the funds are actually received.

Bond anticipation notes are used to provide startup cash for projects before long-term bonds are issued. They may also be used to finance a project while waiting for interest rates to become more favorable.

Lines of Credit

RCW 39.46.050 authorizes any local government authorized to issue bonds to establish lines of credit with any qualified public depository to be drawn upon in exchange for its bonds or other obligations. A public hospital district board of commissioners may delegate to its treasurer the authority to determine the amount of credit extended, and to pay interest and other finance or service charges.

The amount of outstanding principal drawn against a line of credit counts against a district's debt limit.

Swap Agreements

Chapter 39.96 RCW authorizes certain public hospital districts to enter into payment agreements ("swap agreements") that allow them to exchange fixed rate debt for variable rate debt and vice-versa. This exchange allows districts to lower the net cost of borrowing or reduce exposure to fluctuations in interest rates.

To be authorized to enter into a swap agreement, a public hospital district must meet one of the following conditions under RCW 39.96.020(3):

- Received at least \$100 million in gross revenues during the preceding calendar year; or
- Has or will have outstanding obligations in an aggregate principal amount of at least \$100 million as of the date a swap agreement is executed or is scheduled by its terms to begin.

To enter into a swap agreement, a district must:

- Adopt a resolution with a finding that the payment agreement, if fully performed by the parties involved, will either "reduce the amount or duration of its exposure to changes in interest rates" or "result in a lower net cost of borrowing with respect to the related obligations."
- Obtain on or before the date of the agreement's execution a written certification from a financial advisor (as defined in RCW 39.96.020(1)) that: (a) the terms and conditions of the agreement or ancillary agreements (including interest rates and any amounts payable under the agreement) are "commercially reasonable in light of then existing market conditions"; and (b) the finding district's resolution is "reasonable."
- Before selecting the other party to the swap agreement, solicit and "give due consideration" to proposals for swap agreements from at least two entities that meet the criteria of RCW 39.96.040(2).

RCW 39.96.030(2) - (3). Other terms and conditions for entering into a swap agreement are set out in RCW 39.96.040.

RCW 39.96.050 authorizes the source of funds for making swap agreement payments and also authorizes districts to enter into credit enhancement and other similar arrangements “in connection with or incidental to” the execution of a swap agreement. The treatment and status of the amounts payable under the swap agreement are addressed in RCW 39.96.060.

Debt Limitations

The amount that a hospital district can borrow varies depending upon the type of debt being issued and the ability of the district to be able to secure financing.

Revenue bonds, for example, may finance capital acquisitions with user fees generated by the district to repay the debt; however, revenue bonds are not backed by the full faith and credit of the district. As a result, investors may consider them somewhat less secure than general obligation bonds.

Revenue bonds are not subject to statutory or constitutional debt limits. However, the bond market does provide an effective limit to the amount of bonds issued. One method used by investors to determine sufficiency of the revenue stream is by looking at the anticipated net income and comparing it to the debt service requirements. Revenue bond covenants will usually require a minimum coverage level to ensure financial viability.

General obligation (G.O.) debt capacity and the purposes for which it can borrow are ruled by both statute and the state constitution. A district’s debt limits or debt capacity are subject to two sets of restrictions. First, under the statutory and constitutional provisions, debt limits set the maximum amount of G.O. debt that a district can have outstanding at any one time. Second, debt limits restrict how much of this capacity can be used for various purposes.

Both the constitutional and statutory debt limits are based on the assessed valuation of the taxable properties within the district. These debt limits also set the maximum amount of general obligation debt that a district can have outstanding at any time. Since the statutory limitation is more restrictive than the constitution, this section shall focus on the statutory limitations of G.O. debt.

Loans from state and federal agencies that draw revenue do not count against the debt limit for the hospital district. Additionally, the following obligations do not constitute debt for debt limitation purposes:

- Outstanding warrants or checks (except for registered warrants)
- Accounts payable and other obligations that will be paid from funds currently available
- Obligations payable from special funds and solely from unanticipated service revenue
- Accrued interest that has not matured
- Refunded or revenue debt
- Special assessment debt

- Interfund loans
- Pension and OPEB obligations
- Pollution remediation liabilities
- Compensated absences
- Contingent liabilities (unless the contingency has been triggered and a liability is recognized).

A debt limitation is expressed as a percentage of the value of the taxable property within the public hospital district. Debt, moreover, is divided into two categories: non-voted (authorized solely by the public hospital district's governing body) and voted (authorized by a vote of the qualified voters residing in the public hospital district). While there are limits on the non-voted indebtedness, the voted limitations include the cumulative total of both. It should be noted that the district commissioners can always require a vote of the people for **all** debt.

The statutory limits of indebtedness that a public hospital district may incur without voter approval is limited to .75 percent of the value of the taxable property in the district. [RCW 39.36.020\(2\)](#). With the assent of 60 percent of those voting at either a special or a general election, the district's indebtedness may reach 2.5 percent of the value of the taxable property in the district.

(The Washington Constitution, at [article 8, section 6](#), otherwise permits a non-voted debt limit of 1.5 percent of the value of the taxable property in the district and a voter approved debt limit of 5 percent, for bonds issued for strictly capital purposes.)

Without an election, a public hospital district is authorized to levy an annual tax on all taxable property in the district up to \$.75 per \$1,000 of assessed valuation. [RCW 70.44.060\(6\)](#). Levies in excess of that amount must be authorized by 60 percent of those voting at either a general or special election. If the levy is for the sole purpose of making the required payments of principal and interest on general obligation bonds issued for capital purposes, then the number of voters voting at the election must exceed 40 percent of the number of voters who voted at the preceding general election. Washington Constitution, [Article VII, Section 2\(b\)](#).

With voter approval, public hospital districts are permitted by both statute and the state constitution to levy whatever rate is approved. The constitution and statutes are identical in terms of excess levy election requirements; a certain minimum number of votes must be cast on the proposition and a 60 percent approving vote must be obtained.

Federal Tax Issues

In general, interest on governmental bonds (i.e., state and local bonds that are not "private activity bonds") is exempt from federal income tax so long as the bonds are registered and are not arbitrage bonds, are not federally guaranteed, do not (if they are advance refunding bonds) violate restrictions on advance refunding, and are covered by a [Form 8038](#) information return filed with

the Internal Revenue Service. On the other hand, interest on “private activity bonds” is taxable. Bonds will be “private activity bonds” (i) if more than 10 percent of the bond proceeds is used for any private business use (i.e., used directly or indirectly in a trade or business carried on by any person other than the public hospital district) and (ii) if payment of the principal of, or interest on, more than 10 percent of the proceeds of the issue is (under the terms of the issue or any underlying arrangement) directly or indirectly secured by any interest in property used or to be used for a private business use or by payments in respect of such property, or to be derived from payments (whether or not to the issuer) in respect to property used or to be used for a private business use.

State Taxes

This section deals with the obligation of public hospital districts to pay various state taxes. Districts are subject to many different taxes, as are private persons, corporations, and private nonprofit hospitals. On the state level, public hospital districts are taxed similarly to private nonprofit hospitals, although some distinctions are made for a district’s governmental status, as set forth below.

Business and Occupation (B&O) Tax

The B&O tax is a gross receipts tax levied and collected from every person or company who engages in a business activity within the state. It is calculated on the gross proceeds or income from business activities. [RCW 82.04.220](#). It applies to all municipal corporations, including public hospital districts. [RCW 82.04.030](#). As such, it applies to the gross income derived as compensation for medical services to patients. The rate of the tax for public hospital districts is 1.5 percent. [RCW 82.04.260\(0\)](#).

The B&O tax does not apply to payments from a governmental program such as Medicare or Medicaid. [RCW 82.04.4311](#). However, the tax applies to amounts received from Medicare beneficiaries and their secondary insurers for Medicare beneficiaries’ copayments and deductibles. [RCW 82.04.4311](#); *Skagit County Public Hosp. Dist. No. 1 v. Dept. of Revenue* (2010).

Other activities by public hospital districts that generate gross revenues from sources other than direct patient care may also be subject to the B&O tax. See [WAC 458-20-168](#) for the rules governing application of the state B&O tax to hospitals, including public hospitals.

Retail Sales and Use Tax

The retail sales tax applies to the sales of tangible personal property and certain specified services, but not to the provision of medical or healthcare services. The use tax is paid by the consumer when the retail sales tax was not collected by the seller/service provider. The sales tax includes the state and local components of the tax.

The sales and use tax applies to public hospital district as a purchaser of goods and services.

- See [WAC 458-20-168](#) for the rules governing application of the state sales and use tax to hospitals, including public hospitals.

- See [WAC 458-20-18801](#) for the rules governing application of the state sales and use tax to medical products, including prescription drugs (which, subject to certain requirements, are exempt). See also [RCW 82.08.0281](#) (Exemptions—Sales of prescription drugs).

Real Estate Excise Tax

The real estate excise tax is levied on sales of real estate, measured by the full selling price, including the amount of any liens, mortgages, and other debts given to secure the purchase. [RCW 82.45.060](#) and [RCW 82.45.030](#).

The tax applies to the purchase of real property by a public hospital district but not to the sale of real property by a district. [RCW 82.45.010\(3\)\(n\)](#); [WAC 458-61A-205](#).

The state levies this tax at the rate of 1.28 percent. [RCW 82.45.060](#). Cities and counties may also impose this tax. See [chapter 82.46 RCW](#). Therefore, the total tax payable may vary from county to county and from city to city.

Leasehold Excise Tax

Most leases of publicly-owned real and personal property in the state are subject to a leasehold excise tax in lieu of a property tax. [RCW 82.29A.030](#). The rate of the tax is 12.84 percent of the “taxable rent,” which is defined in [RCW 82.29A.020\(2\)\(a\)](#). [RCW 82.29A.030](#).

The leasehold excise tax is an obligation of the lessee but must be collected by the lessor and, if not properly collected, becomes the obligation of the lessor.

[RCW 82.29A.130](#) provides certain exemptions from the tax, including temporary leases of less than 30 days and leases with taxable rents less than \$250 annually.

Gifts of Public Funds

[Article 8, section 7](#) of the Washington State Constitution prohibits municipalities from lending money or credit or making a gift of public funds or property “except for the necessary support of the poor and infirm.” A “gift,” in legal terms, is a voluntary transfer of funds or property without consideration—without getting anything in return.

The purpose for the constitutional rule “is to prevent the appropriation of public funds for private enterprises.” *Tacoma v. Taxpayers of Tacoma* (1987). Thus, this prohibition is not applicable to payments from one public entity to another, regardless of whether such payments might be characterized as a gift or loan of money. *City of Marysville v. State* (1984). (But, see [RCW 43.09.210](#), requiring that “[a]ll service rendered by, or property transferred from, one department, public improvement, undertaking, institution, or public service industry to another, shall be paid for at its true and full value.”)

Lending of Money or Credit

While a loan of money means what it seems to mean, the definition of a lending of credit is not so apparent. Lending of credit refers to a local government acting as a guarantor or surety for a private obligation. *State ex rel. O'Connell v. Public Utils. Dist. No. 1* (1971). More specifically, it might be defined as a government acting as surety to allow a private party to obtain credit which would otherwise not be available or not available at as favorable of an interest rate.

Support of the Poor or Infirm

“Poor and infirm,” as used in [article 8, section 7](#), has been interpreted by the courts to mean poor or infirm. *Health Care Facilities v. Ray* (1980). Although “infirm” is a somewhat outdated term, it is clear that it can apply to the services provided to patients by a public hospital district.

The provision of charity care by public hospital districts meets the exception for the use of public funds in support of the poor and infirm. [Chapter 70.170 RCW](#) authorizes hospital districts to provide charity care, but in the manner provided in that chapter. The state Department of Health has issued regulations in [chapter 246-453 WAC](#) to implement [chapter 70.170 RCW](#). Under those regulations, hospital charity care policies must provide that all persons receiving hospital-based care with incomes at or below the federal poverty level are entitled to charity care without charge; all persons with incomes between 100 and 200 percent of the federal poverty level qualify for discounts based on the hospital's sliding fee schedule (specified in the charity care policy).

Legal Analysis Employed by Courts

The courts have employed a two-prong analysis to determine whether an unconstitutional gift of public funds has occurred:

- Are the funds are being expended to carry out a fundamental purpose of the government? If the answer to the question is yes, then no gift of public funds has been made.
- If the funds are not being expended to carry out a fundamental purpose of the government, the court focuses on the consideration received by the public agency and the donative intent of the appropriating body. In assessing consideration, courts do not inquire into adequacy of the consideration in determining whether there was an unconstitutional gift, rather they only look for its presence. Donative intent is the intent to give a gift.

Gift Prohibition Applied to Hospital Districts

The Washington appellate courts have only once addressed application of [article 8, section 7](#) to a public hospital district. In *Wash. Hosp. Liab. Ins. Fund v. Public Hosp. Dist. No. 1* (1990), the Washington Court of Appeals held that an insurance policy that provides indemnification to the hospital district's treasurer against a claim by the district is not a prohibited gift of public funds because the policy limits payment to the good faith rendering of services. A rendering of services constitutes consideration removes the case from the realm of gifts prohibited by [article 8, section 7](#).

Examples of Gift of Public Funds/Lending of Credit Court Decisions

Although these examples involve municipal corporations other than public hospital district, they provide guidance to public hospital districts in similar circumstances:

Examples of Where Public Funds can be used Because they Carry out a Fundamental Public Purpose or Support the Poor or Infirm

- The state’s Health Care Facilities Authority can issue tax exempt bonds for the benefit of nonprofit hospitals. The use of the public credit for this purpose was permitted because it was for the support of the infirm. *Health Care Facilities Authority v. Ray* (1980).
- Local police officers may assist citizens who have locked themselves out of their vehicles free of charge as this is part of a police department’s community caretaking function. *Hudson v. City of Wenatchee* (1990).
- Providing entitlement payments as “a form of public assistance . . . as cash or service, in carrying out a program to further an overriding public purpose or satisfy a moral obligation.” Examples of these programs of “great value” include: payment for daycare, vaccinations, fare-free bus zones, and relocation assistance for those displaced by condemnation. “Although many of these payments involve private benefit, the overall public purpose” makes any private benefit “incidental.” *Seattle v. State* (1983).
- Extension of city water system beyond municipal boundaries to service private individuals was allowed as the purpose being advanced was the construction, improvement, and extension of a publicly owned and operated facility. *Berglund v. Tacoma* (1967).

Examples of Where no Fundamental Public Purpose was Found, but Adequate Consideration was Present

- Where city employees dine in a restaurant while on city business, the city may pay for tips to the servers, because the service provided by the staff was adequate consideration for the tips. *City of Bellevue v. State* (1979).
- Financing the redevelopment of a private facility (parking garage) under a plan by which a nonprofit foundation issues bonds on behalf of the local government, uses the proceeds to purchase the facility after it has been redeveloped, and then transfers ownership of the facility to the local government at no cost after the debt has been retired. *CLEAN v. City of Spokane* (1997).
- Rate relief in exchange for participating rate payers submitting to an energy audit, installing approved conservation measures, and having the installed measures inspected by the city, where the city could show a definable savings in the first year (holding that consideration was the electricity the city saved through installation of conservation measures). *City of Tacoma v. Taxpayers* (1987).

Examples of Where use of Funds was Prohibited

- Purchase of property by a city with the intent of reselling it to a private party is an unconstitutional loan of the city's credit, regardless of whether it may serve a laudable public purpose. *Lassila v. City of Wenatchee* (1978).
- Expending funds without consideration for promotional hosting of businessmen and other private individuals, even though the individuals' presence served the legitimate purpose of cultivating trade relations and promoting business. *State ex rel. O'Connell v. Port of Seattle* (1965). The state constitution subsequently amended to allow such promotional hosting by port districts.
- Using county funds to pay for the expenses of a fair association (a private corporation) even though the expenditure was for a worthy cause, it nevertheless was given to a corporation in violation of article 8, section 7. *Johns v. Wadsworth* (1914).

State Auditor Audits

Chapter 43.09 RCW requires the State Auditor's Office (SAO) to examine the financial affairs of local governments. The SAO conducts a range of audits, including accountability audits, financial statement audits, federal single audits of grant spending, and performance audits. For more detailed information and resources for local governments regarding financial matters such as accounting, auditing and reporting, see the SAO's Government Resources Database.

Accountability Audits

RCW 43.09.260 requires that the SAO audit the financial affairs of local governments, including public hospital districts, at least once every three years. The purpose of these audits is described by the SAO as follows:

An accountability audit evaluates whether a local government has adhered to applicable state laws, regulations and its own policies and procedures. We audit records to ensure public funds are accounted for and controls are in place to protect public resources from misappropriation and misuse. We are required to examine the financial affairs of all local governments at least once every three years.

Financial Audits

RCW 43.09.230 requires all local governments to submit an annual financial report to the SAO within 150 days of fiscal year end. Cash basis annual financial reports can be filed online using the SAO online filing web tool. Both Generally Accepted Accounting Principles (GAAP) and Cash Basis reporting districts are encouraged to file their transaction detail online to allow for data collection to the Local Government Financial Reporting System.

The SAO performs financial statement audits to determine if the local governments' financial statements are accurate and complete. The SAO describes the financial audit process as follows:

We perform financial statement audits to provide an independent opinion on a local government's financial statements and the results of its operations and cash flows. In other words, these audits determine whether the financial statements present a reliable, accurate picture of a government's finances. A local government is required to receive an audit of its financial statements if it:

- Receives over \$2 million in annual revenues, or
- Spends more than \$750,000 in federal financial assistance, or
- Is specified in financing arrangements, such as bonds, loans or grant agreements.

All local governments are required by RCW 43.09.230 to submit an annual financial report to our office within 150 days of the end of their fiscal year. Learn about the Local Government Advisory Committee, which consults with SAO to create statewide accounting guidance that affects local governments.

Single Audits

Local governments that annually spend at least \$750,000 in federal financial assistance are required to obtain an audit pursuant to the federal Single Audit Act of 1984. The SAO conducts these single audits, and the SAO's webpage states the following:

Recipients of federal funding must arrange for an audit when they spend \$750,000 or more in federal awards in a year. A federal single audit's objective is to determine and report on whether a local government that received federal funding has complied with applicable requirements. Each federal single audit contains two components:

- An audit of the local government's internal controls and compliance with federal requirements.
- An audit of financial statements.

Single audits typically must be completed and submitted to the Federal Audit Clearinghouse within nine months following the fiscal year end being reported on.

Performance Audits

Initiative 900, Performance Audits and Government Entities, passed by the voters in 2005, requires all state and local government entities to undergo performance audits to ensure ac-

countability and guarantee that tax dollars are spent as cost-effectively as possible. See also [RCW 43.09.470](#). The SAO conducts performance audits in accordance with the U.S. General Accounting Office auditing standards. For information about performance audits, see the [SAO's About Performance Audits](#) webpage.

Audit Costs

[RCW 43.09.280](#) provides that the costs of each audit is to be borne by the entity subject to the audit. The SAO certifies the expense of the audit to the fiscal officer of the local government agency—the treasurer, in the case of a public hospital district—and the local agency must make payment within 30 days of the certification. If not paid within that 30-day period, the SAO may certify the expense to the auditor of the county in which the district is situated, who must promptly issue a warrant on the county treasurer payable out of the county current expense fund, which fund is to be reimbursed out of the tax funds collected by the county auditor on behalf of the district.

Pursuant to [RCW 43.09.281](#), the SAO has adopted a procedure to appeal the charges assessed for an audit. The appeal process is set out in [chapter 48-21 WAC](#).

Other Resources

- MRSC's [Audit Preparation Checklist](#); and
- MRSC's [Federal Single Audit Checklist](#).

Chapter 6

Public Hospital District Property

Chapter Summary

This chapter addresses issues associated with the ownership and management of real and personal property of a public hospital district, including the laws governing purchasing and public works projects.

Acquisition of Property

Real Property

Public hospital districts may acquire real property in three different ways: by purchase, by the exercise of eminent domain authority (condemnation), and by gift.

Purchase of Real Property

Public hospital districts have the general statutory authority to purchase real estate. RCW 70.44.060(2). They may purchase property through an executory conditional sales contract (real estate contract), as long as the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of the limitation imposed by RCW 39.36.020 (.75 percent of the value of the taxable property in the district), unless approved by the voters in the same manner bond issues for capital purchases must be approved. RCW 70.44.260. Such bond issues requires approval of 60 percent of those voting.

Public hospital districts are not authorized by state law to purchase property using a mortgage.

State law does not require any particular process for public hospital districts to follow in acquiring real property. As a general rule, hospital districts should not pay much greater than fair market value for real property, to avoid implicating the constitutional gift of public funds prohibition. Where the owner of real property needed for district purposes is unwilling to sell at a reasonable price, such property may be acquired through condemnation or by purchase in lieu of condemnation.

Eminent Domain (Condemnation)

Eminent domain is the taking of property for public use without the owner's consent, conditioned upon payment of just compensation to the owner. RCW 70.44.060(2) grants public hospital districts the power to acquire property through the eminent domain process, by the same procedures that cities and towns exercise the power of eminent domain, as provided in chapter 8.12 RCW.

Limitations on Eminent Domain Power

Public hospital districts may condemn, in addition to private property, state and county land for hospital district purposes. RCW 70.44.060(4). It may not, however, exercise that power against “any health care facility,” such as a hospital, clinic, or nursing home. RCW 70.44.060(2). Also, it may not condemn property owned by a city or town, as there is no statutory authorization to do so.

The threshold for exercising the power to acquire property by eminent domain is that the acquisition is for a “public use.” Although no case law addresses what is a “public use” in the context of a public hospital district’s condemnation of property, it presumably includes acquiring property for a public hospital district facility.

Eminent Domain Process

The process for acquiring property by eminent domain is complex and beyond the scope of this manual. The process must be initiated by resolution of the board of hospital district commissioners. RCW 70.44.060(2). Purchase through negotiation should be attempted first. See RCW 8.26.180.

Personal Property

Personal property refers to property other than land and its attachments. Thus, a hospital district’s personal property refers to equipment, materials, supplies, and intangible property such as uncashed checks or warrants.

Purchase of Personal Property

State law does not require public hospital districts to engage in any particular process for the purchase of equipment or supplies. While RCW 70.44.140(3) states that any purchases with an estimated cost of up to \$15,000 may be made using the vendor list process in RCW 39.04.190, thus suggesting that purchases over that amount must be competitively bid, there is simply no such competitive bidding requirement for purchasing, except for purchases of materials, as discussed below.

The purchase of “materials” is subject to competitive bidding requirements. RCW 70.44.140(1) begins by stating:

All materials purchased and work ordered, the estimated cost of which is in excess of seventy-five thousand dollars, shall be by contract. Before awarding any such contract, the commission shall publish a notice at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work.

The statute then goes on to describe a competitive process for contracting for such work and materials. State law does not define “materials” in this context, but the State Auditor’s Office’s *Public Hospital District Audit Planning Guide* (March 12, 2014), used internally by the SAO and not available online, states that, “With respect to purchases, competitive bidding is required for materials, but the law does not clearly require bidding for equipment and supplies.” It also states:

Materials and supplies include articles which form a part of a finished product, while equipment is used in carrying on the work (such as tools, appliances, etc.). Materials and supplies are entirely consumed in that process and become a physical part of the product, while equipment does neither.

Use of Credit Cards for Purchases

Public hospital districts may use credit cards for official government purchases and acquisitions. RCW 43.09.2855. To use credit cards, the hospital district board of commissioners must adopt a system for:

- The distribution of the credit cards;
- The authorization and control of the use of credit card funds;
- The credit limits available on the credit cards;
- Payment of the bills; and
- Any other rule necessary to implement or administer the system.

Disposal of Property

Real Property

RCW 70.44.300 sets out the requirements for a public hospital district's sale of surplus real property:

- The board of hospital district commissioners must by resolution declare the property to be surplus—that it is no longer required for public hospital district purposes or that its sale will further the purposes of the district.
- The sale must be preceded, not more than one year prior to the date of sale, by appraisals obtained from three real estate brokers, three licensed real estate appraisers, or three independent experts involving health care property, selected by the board of commissioners.
- A public hospital district may not sell real property for an amount less than 90 percent of the average of the three appraisals.
- The board of commissioners may determine it advisable to contract with a licensed real estate broker for the sale, at a commission rate not to exceed seven percent of the sale price of a single parcel.

RCW 70.44.300(3) also sets out the requirements for sales of real property valued at more than \$100,000:

- **Notice.** A notice of the intended sale must be published in a local legal newspaper of general circulation within the district at least once each week for two consecutive weeks. The notice must describe the property and designate the place and time of a public hearing concerning the proposed sale.
- **Public hearing.** The board of commissioners must hold a public hearing on the proposed sale and it hear and consider evidence for and against the sale.

The board of commissioners may lease surplus real property on such terms and conditions deemed in the best interests of the district. RCW 70.44.310.

Sale, Merger, or Lease of a Public Hospital District Hospital

RCW 70.44.315 imposes evaluation criteria and requirements on the acquisition of a public hospital district's hospital. "Acquisition" is defined in subsection (4)(a) of that statute to mean:

an acquisition by a person of any interest in a hospital owned by a public hospital district, whether by purchase, merger, lease, or otherwise, that results in a change of ownership or control of twenty percent or more of the assets of a hospital currently licensed and operating under RCW 70.41.090.

RCW 70.44.315 does not apply to acquisitions by:

- Nonprofit corporations with a substantially similar charitable health care purpose; 501(c)(3) organizations;
- Governmental entities;
- Business or other legal entities whose members, partners, or otherwise designated controlling parties are all non-profit corporations having a substantially similar charitable health care purpose, 501(c)(3) organizations, or governmental entities; or
- Two or more governmental entities, including those acting under the Interlocal Cooperation Act, chapter 39.34 RCW.

In addition to determining compliance with the requirements identified in RCW 70.44.315(1), the board of commissioners must:

- Determine whether the district should retain a right of first refusal to repurchase the assets by the district if the hospital is subsequently sold to, acquired by, or merged with another entity;
- Obtain a written opinion from a qualified independent expert, or the Washington State Department of Health, as to whether the proposed sale meets the legal standards set out in RCW 70.45.080. The board of commissioners must, upon request provide the depart-

ment or expert with any necessary documents or information pertaining to the proposed transaction, and reimburse the department for costs it incurs in preparing an opinion.

- Within 10 days of receiving the opinion, publish in at least one newspaper of general circulation a notice of the opinion, how to get a copy, and giving the time and location of a public hearing regarding the proposed sale;
- Within 30 days of receiving the opinion, hold a public hearing regarding the proposed sale.

The board may then approve the acquisition no sooner than 30 days following the public hearing.

Personal Property

The board of commissioners may sell or otherwise dispose of surplus property that it determines by resolution is no longer need for hospital district purposes. The property may be disposed of by any means the board deems appropriate. [RCW 70.44.320](#).

Abandoned or Unclaimed Property

A public hospital district may have in its possession property owned by someone else. If the property is lost and found, the procedures in [chapter 63.21 RCW](#) should be followed.

If the property held by the district is intangible (e.g., cash, checks, deposits, interest, credit balances) and the rightful owner has not claimed it, the procedures in [chapter 63.29 RCW](#), the Uniform Unclaimed Property Act, must be followed. Special requirements apply to unclaimed property held by local governments. For information on those requirements, see the Washington Department of Revenue's [Local Government Guide to Unclaimed Property](#).

Public Works Projects

Public hospital districts must contract out through a competitive bid process all “public works” projects and materials purchases estimated to cost over \$75,000. [RCW 70.44.140](#). The estimated cost of a public works project includes any applicable sales tax. Alternatively, a public hospital district may use the small works roster process under [RCW 39.04.155](#) for projects costing between \$75,000 and \$350,000 (and projects costing less than \$75,000 if desired).

What is a “Public Work”?

[RCW 39.04.010\(4\)](#) defines “public work” as

all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein.

This statute then goes on to state that “All public works, *including maintenance when performed by contract* shall comply with [chapter 39.12 RCW](#),” which requires payment of prevailing wages.

(Emphasis added.) The Washington Court of Appeals has held that “maintenance” in the phrase “maintenance when performed by contract” includes “ordinary maintenance.” *City of Spokane v. Department of Labor and Industries* (2000). Consequently, maintenance is “ordinary” only when it is performed by hospital district employees; when maintenance is contracted out, it is not “ordinary” and is subject to competitive bidding requirements (if any), as well as prevailing wage requirements.

What is “Ordinary Maintenance”?

The statutes provide no definition of “ordinary maintenance.” However, WAC 296-127-010(7)(b)(ii), which defines “ordinary maintenance” in the context of prevailing wages, can be used to craft a definition that distinguishes ordinary maintenance from a public work for bidding purposes:

Ordinary maintenance is defined as maintenance work performed by the regular employees of the state or any county, municipality, or political subdivision created by its laws.

Prevailing Wages Required

Contractors on all hospital district public works projects must pay prevailing wages. (However, if the contractor is a “sole proprietor,” prevailing wages are not required.) Prevailing wages must also be paid under “all public building service maintenance contracts.

“Prevailing wage” is defined as the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers, and mechanics. RCW 39.12.010(1), (2). Prevailing wages are established by the Department of Labor and Industries (L&I) for each trade and occupation employed in the performance of public work. They are established separately for each county, and are reflective of local wage conditions. For more information on prevailing wages, see the Washington Department of Labor and Industries’ [Prevailing Wage](#) webpage.

Competitive Bidding Process

That process is set out in RCW 70.44.140 as follows:

- **Publication of notice.** A district must publish a notice at least 13 days before the bid submittal deadline, but the publication method is not specified.
- **Contents of notice.** The notice must state generally the work to be done and call for sealed bids to be filed with the board of commissioners on or before the date and hour specified.
- **Bid specifications.** Solicited bids must be based on the plans and specifications on file at the hospital district, but a district may also solicit bids based on plans and specifications submitted by the bidders.
- **Bid security.** Bids must be accompanied by a “bid proposal security” (bid bond) in an amount not less than five percent of the bid amount in the form of a certified check, ca-

shier's check, postal money order, or surety bond made payable to the order of the board of commissioners. A bid may not be considered if not accompanied by a bid proposal security. The bid proposal security belonging to the unsuccessful bidders must be returned as soon as practical after the bid opening. If the successful bidder does not enter into the contract, the bid proposal security is forfeited.

- **Bid opening.** A public bid opening must be conducted at the time and place stated in the notice.
- **Responsible bidders.** A bidder may not be considered for the award of a contract unless the bidder is “responsible.” RCW 39.04.350 contains bidder responsibility criteria that a bidder must meet to be considered a responsible bidder and qualified to be awarded a public works project. It also authorizes allows districts to adopt relevant supplemental bidder responsibility criteria for a particular project.
- **Bid award.** No bid may be awarded that is greater than the estimated cost of the project. The hospital district may not negotiate with any of the bidders. With these points in mind, the board of commissioners may award the contract to:
 - The lowest responsible bidder, based on plans and specifications on file with the district; or
 - The best responsible bidder submitting his or her own plans and specifications.
- **May reject all bids.** The board of commissioners must reject all bids if all are above the estimated cost of the project, or it may do so if the board determines that all bids are otherwise “unsatisfactory.” The board must then return the bid bonds and readvertise the project.
- **Bid protests.** If the district receives a written protest from a bidder within two full business days following the bid opening, it may not execute a contract with anyone other than the protesting bidder without first providing at least two full business days’ written notice of its intent to execute a contract. RCW 39.04.105.

Performance Bond Required

RCW 39.08.010 requires that public works contractors provide performance bonds to guarantee that the contractor, or the surety itself, will complete the project and pay all subcontractors, workers, and suppliers.

Performance bonds may be waived for small works roster projects under \$150,000 using the limited public works process authorized by RCW 39.04.155(3). For public works contracts under \$150,000 that do require performance and payment bonds, the contractor may ask the agency to waive the bonds and instead retain 10% of the contract amount for 30 days after the date of final acceptance, or until the receipt of all necessary releases from the Department of Revenue and Department of Labor and Industries, whichever is later.

Retainage and Retainage Bonds

RCW 60.28.011 requires public agencies to withhold up to five percent of the value of a “public improvement” contract as retainage until the project is accepted by the district as being completed. This provides a financial incentive for contractors to finish a project, as well as a limited amount of financial protection for the involved parties.

Normally, five percent of each contract payment is withheld, and the money must be set aside one of three ways, chosen by the contractor:

- A public fund;
- A private interest-bearing account; or
- A private escrow account

Instead of having retainage withheld from the contract payments, a contractor may opt to submit a retainage bond instead covering any or all of the amount. A district must accept a retainage bond unless it can demonstrate a good reason for refusing.

A contractor may request that the retainage be reduced to 100 percent of the value of the remaining contract, realistically when at least 95 percent of the contract has been paid.

Retainage Release

The district must release the retainage to the contractor after the project is completed, minus any claim amounts. All workers, subcontractors, and suppliers have lien rights against the retainage and can claim all or part of the money if the contractor does not pay them. In addition, the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries all have lien rights against the retainage for payment of unpaid excise taxes, industrial insurance/workers’ comp, and unemployment compensation.

For more information on retainage release, see the Retainage Release section of MRSC’s Public Works Project Closeout topic page.

Small Works Roster

RCW 70.44.140(2) authorizes public hospital districts, as an alternative to the competitive bidding process for public works projects, to use the small works roster process under RCW 39.04.155. Small works rosters are lists of qualified contractors who can bid for an eligible project below \$350,000. Rosters are less restrictive and time-consuming than full formal competitive bids. RCW 39.04.155(2) establishes the requirements for roster contracts.

Multiple agencies may use the same roster to reduce operating costs and expand the pool of available contractors, either by interlocal agreement or through a roster service provider. One example of such a roster service provider is MRSC Rosters, which all local agencies in Washington are eligible to join.

For more information on small works rosters, see MRSC’s [Small Public Works Rosters](#) topic page and MRSC’s [Small Works Roster Manual for Local Governments](#).

Exemptions from Competitive Bidding

Public Works Projects

[RCW 39.04.280\(1\)\(e\)](#) provides that competitive bidding requirements may be waived for public works projects in the event of an emergency. “Emergency” is defined by [RCW 39.04.280\(3\)](#) as:

unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

Purchases

[RCW 39.04.280\(1\)\(a\)-\(c\)](#) also authorizes waiver of competitive bidding requirements for certain purchases. But, because public hospital districts are required to go out for bids only for the purchase of materials with an estimated cost of greater than \$75,000 and because materials are typically purchased as part of a public works project and not bid separately, there likely will be little need to exercise this waiver authority for purchase. Nevertheless, a public hospital district may waive bidding requirements for the following purchases:

- Purchases that are clearly and legitimately limited to a single source of supply;
- Purchases in the event of an emergency; and
- Purchases involving special facilities or market conditions.

Procedures for Using Exemptions

If a public hospital district chooses to use one of these exceptions, other than in the event of an emergency, the board of commissioners must either: (1) pass a resolution, stating the factual basis for the waiver; or (2) apply a previously-adopted written policy. If the board chooses the latter, immediately after the award of any contract, the contract and the factual basis for the waiver must be recorded and open to public inspection. [RCW 39.04.280\(2\)\(a\)](#).

In an emergency situation, the person designated by the board of commissioners to act on its behalf in the event of an emergency may declare that an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the district to address the emergency. If a contract is awarded without competitive bidding due to an emergency, the board or its designee must make written findings of the existence of an emergency and enter them “of record” no later than two weeks following the contract’s award. [RCW 39.04.280\(2\)\(b\)](#).

Alternative Public Works Contracting Procedures

Chapter 39.10 RCW authorizes “public bodies,” including public hospital districts, to use a design-build procedure and a general contractor/construction manager contracting procedure as alternative processes for certain public works projects. These complex procedures will only be briefly summarized here.

Certain public agencies that have proper experience and that will have many projects may be certified by the Capital Projects Advisory Review Board (CPARB) to use alternative procedures for up to three years. The CPARB may renew their certifications for an additional three years. Other public agencies without experience may be certified for a designated project for three years.

Design-Build

The design-build procedure is a multi-step competitive process to award a contract to a single firm that agrees to both design and build a public facility that meets specific criteria. See RCW 39.10.300 - .330. It may be used on projects valued over \$2 million that meet the criteria specified in RCW 39.10.300(1).

The contract is awarded following a public request of proposals for design-build services. Following extensive evaluation of the proposals, the contract is awarded to the firm that submits the best and final proposal with the lowest price.

General Contractor/Construction Manager (GC/CM)

The GC/CM method employs the services of a project management firm that bears significant responsibility and risk in the contracting process. The government agency contracts with an architectural and engineering firm to design the facility and, early in the project, also contracts with a GC/CM firm to assist in the design of the facility, manage the construction of the facility, act as the general contractor, and guarantee that the facility will be built within budget. When the plans and specifications for a project phase are complete, the GC/CM firm subcontracts with construction firms to construct that phase. See RCW 39.10.340 - .410.

Under RCW 39.10.340, The GC/CM procedure may be used for public works projects where at least one of the following applies:

- Implementation of the project involves complex scheduling, phasing, or coordination;
- The project involves construction at an occupied facility which must continue to operate during construction;
- The involvement of the general contractor/construction manager during the design stage is critical to the success of the project;
- The project encompasses a complex or technical work environment;
- The project requires specialized work on a building that has historic significance; or

- The project is, and the public body elects to procure the project as, a heavy civil construction project.

Building Engineering Systems

RCW 39.04.290 allows a hospital district to award contracts of any value for the design, fabrication, and installation of building engineering systems by either:

- Using a competitive bidding process or a request for proposals, with those who bid providing final specifications and a bid price for the work; or
- Using a competitive bidding process in which bidders provide final specifications for the work as part of a larger project.

In either instance, the final specifications must be approved by “an appropriate design, engineering, and/or public regulatory body.” If these procedures are followed, the requirements of [chapter 39.80 RCW](#), relating to architectural and engineering services, do not apply.

Bidding Issues Regarding Leased Property

Hospital District as Tenant

When leasing real property as a tenant, work performed by the landlord may or may not have to be publicly bid. This is a gray area and a hospital district should consult legal counsel before making a determination about whether the work must be publicly bid.

The following are criteria the hospital district may want to consider in making that determination:

- The tenant improvements must not be paid for by the landlord in order to avoid competitive bidding (although in all likelihood, the landlord will charge the district the cost of the tenant improvements as rent). A lump sum payment reimbursing the landlord would trigger any applicable competitive bidding requirements.
- If the lease is short-term, improvements are less likely to be viewed as being specifically for the district.
- If the useful life of the improvements exceeds the term of the lease, the improvements are less likely to be viewed as made on behalf of the district.
- If the tenant improvements are generic to any tenant (e.g., walls, painting, ceiling), even though the district has significant input into the design for its space, it is less likely to implicate competitive bidding requirements.

- The terms of the lease should state that all tenant improvements are the property of the landlord during the term of the lease and upon termination of the lease.

In addition, [RCW 39.04.260](#) states that where a hospital district causes any work, construction, alteration, repair, or improvement (other than ordinary maintenance) to be performed by a private party and the district then contracts, rents, leases, or purchases at least 50 percent of the project, the district must comply with [chapter 39.12 RCW](#), the prevailing wage law.

Hospital District as Landlord

Some gray areas exist regarding whether compliance with public works laws, particularly the prevailing wage law, is required when a hospital district leases property to a private entity and that private entity wishes to have improvements constructed on the property. In [AGO 1988 No. 17](#), the Attorney General's Office concluded:

where a public hospital district leases property to a private party, contemplating the construction of improvements to be used by the district for public purposes, the construction project is a "public work" for purposes of the prevailing wage law. Where the improvements will be constructed for private purposes, the project is not a "public work." Projects constructed partly for public and partly for private purposes must be analyzed on a case-by-case basis.

Application of the State Environmental Policy Act to District Projects

The State Environmental Policy Act (SEPA), [chapter 43.21C RCW](#), requires that, when a public agency proposes an "action," such as construction project, it must consider the environmental impacts of such a project. A public hospital district is the "lead agency" for purposes of environmental review when it proposes development/construction of a project that is not exempt from SEPA review. Small projects are exempt from such environmental review. See "categorical exemptions" for "minor new construction" in [WAC 197-11-800\(1\)](#) and (2).

SEPA is implemented through regulations adopted by the state Department of Ecology (DOE) in [chapter 197-11 WAC](#). Extensive and detailed guidance on SEPA requirements can be found in DOE's [SEPA Handbook](#). See also DOE's [State Environmental Policy Act \(SEPA\)](#) webpages as well as MRSC's [State Environmental Policy Act](#) topic page.

Chapter 7

Annexation, Withdrawal, and Reannexation of Territory

Chapter Summary

This chapter discusses the methods by which territory may be annexed, withdrawn, or reannexed to a public hospital district.

Any proposed changes in the boundaries of a hospital district located in a county that has established a **boundary review board** are subject to *potential* review by that boundary review board. [RCW 36.93.090](#). Such review is “potential” because a **boundary review board** will not review a proposed boundary change unless its jurisdiction is invoked. See [RCW 36.93.100](#). A boundary review board has the following authority:

- to approve the proposed change in boundaries;
- to disapprove the proposed change in boundaries; or
- to modify the boundaries of the proposed change by adding or deleting territory and approve the proposed change as modified.

A boundary review board may not modify or deny a proposed change in boundaries unless there is evidence on the record to support a conclusion that the proposed change is inconsistent with one or more of the objectives under RCW 36.93.180. For more information on boundary review boards, see [Section 8.2, The Statutory Boundary Review Board](#), from the MRSC publication, *Annexation by Washington Cities and Towns*.

Annexation of Territory

State law authorizes two basic methods by which a public hospital district may annex contiguous territory: (1) a petition method; and (2) an election method. Only “contiguous” territory may be annexed. “Contiguous” is not defined in state law, but the dictionary defines the term as meaning in actual physical contact or sharing a boundary. Whether touching at a single point is sufficient is unclear, though courts in other states have held that it is not sufficient. A public hospital district may annex territory in more than one county.

Collection of Taxes in Annexed Area. For purposes of collecting property taxes in areas annexed to a district, the annexation **must be effective by August 1** of the year in which the property tax levy is made for such taxes to be assessed and collected the following year. [RCW 84.09.030\(1\)](#) (a). For example, hospital district taxes are assessed and collected in 2016 with respect to an area annexation by August 1, 2015. Hospital district taxes are assessed and collected in 2017 with respect to an area annexation after August 1, 2015 and not later than August 1, 2016.

Petition Method

Annexation of territory to a public hospital district may be initiated by the filing of a petition with the board of hospital district commissioners, only in either of two circumstances:

There are no registered voters in the territory proposed to be annexed; or

The petition is also signed by all registered voters in the territory proposed to be annexed.

[RCW 70.44.200](#).

Petition Requirements

Who must sign the petition to annex to a hospital district depends on whether there are registered voters residing in the territory to be annexed:

- *If there are no registered voters in the area proposed for annexation*, the petition must be signed by owners of not less than 60 percent of the area proposed to be annexed;
- *If there are registered voters in the area proposed for annexation*, the petition must be signed by owners of not less than 60 percent of the area proposed to be annexed and by all of the registered voters in the area proposed to be annexed.

The statutes governing hospital districts are silent as to how the sufficiency of an annexation petition—whether it is signed by sufficient property owners or by all the registered voters—is determined. However, it is recommended that the sufficiency of a petition be determined according to the rules required for petitions for annexation to cities in [RCW 35.13.005/RCW 35A.01.040](#) (these statutes contain the same language).

Outstanding Indebtedness

The petition may provide that the annexed property will assume and be assessed and taxed to pay for all or any portion of the outstanding indebtedness (e.g., bonds) of the district to which it is annexed at the same rates as other property within such district. If the petition so provides, it must be signed by all owners of property in the area to be annexed for this outstanding indebtedness to become an obligation of those property owners.

Unless so provided in the annexation petition, annexed property will not be taxed for any outstanding district indebtedness contracted prior to or that exists at the date of annexation.

Public Hearing

If the board of commissioners wants to consider the petition for annexation, it must set a date and provide notice for a public hearing. The board of commissioners is not required to consider an annexation proposed in a petition filed with the board. The notice must include the following:

- A description of the boundaries of the territory proposed for annexation;
- The time and place of hearing; and
- An invitation to interested persons to appear and voice approval or disapproval of the annexation.

Notice of the public hearing must be as follows:

- Publication once a week for at least two consecutive weeks in a newspaper of general circulation within the territory proposed to be annexed; and
- Posting in three public places within the territory proposed to be annexed.

When an annexation is proposed in a county that has a boundary review board, a notice of intention must be filed with that board within 180 days of when the annexation is proposed. [RCW 36.93.090](#). The hospital district board of commissioners should not approve a proposed annexation until either the jurisdiction of the boundary review is invoked under [RCW 36.93.100](#) or the boundary review board has reviewed and approved the proposed annexation.

Resolution of Annexation

Following the public hearing, the board of commissioners may by resolution decide to annex the territory, and it may approve annexation of all or any portion of the proposed territory. The board may not include in the annexation any property not described in the petition. Upon passage of the annexation resolution, the territory annexed becomes part of the district.

If the annexation petition and the annexation resolution provide for property owners to assume any or all of the district's outstanding indebtedness, and the petition has been signed by property owners within the area to be annexed, such outstanding indebtedness will become an obligation of those property owners.

A certified copy of the resolution must be filed with the legislative authority of the county or counties in which the annexed property is located.

By what standards must the board of hospital district commissioners determine whether to annex territory? The law is silent on this point. It is probably prudent to look at language in the public hospital statute relating to annexation by the election method, [RCW 70.44.220](#). In that statute, the standard to be used by the board of commissioners in deciding whether an election should be held on a proposed annexation is whether the annexation will be conducive to the welfare and benefit of persons and property within the territory to be annexed and the welfare and benefit of persons and property within the district.

Election Method

Property may also be annexed to a public hospital district by an election held pursuant to a resolution by the board of commissioners calling for an election, if, of course, there are registered voters within the area proposed for annexation. [RCW 70.44.210](#).

If a petition for annexation, as discussed above, is not signed by all the registered voters, then a district may annex that territory only by the election method. [RCW 70.44.200\(6\)](#).

First Resolution Calling for Election

The first resolution for an annexation election must contain the following:

- A description of the boundaries of the territory to be annexed;
- A statement that the annexation of the territory to the public hospital district will be conducive to the welfare and benefit of the persons or property within the district and within the territory proposed to be annexed; and
- The date, time, and place for a public hearing held by the board of commissioners on the annexation, which date may be more than 60 nor less than 40 days following adoption of the resolution.

[RCW 70.44.210](#).

Notice of Public Hearing

Notice of the public hearing must be published once a week for at least two consecutive weeks in one or more newspapers of general circulation within the proposed annexed territory. The published notice must include:

- A description of the boundaries of the territory proposed to be annexed;
- The time and place of the hearing; and
- A statement that any changes in the boundaries of the proposed territory will be considered by the board of commissioners at the hearing.

[RCW 70.44.220](#).

Public Hearing

Any interested person may attend the hearing and may speak regarding the proposed annexation. RCW 70.44.220.

The commissioners may make such changes in the proposed annexation boundaries as they deem “reasonable and proper.” The board may delete territory, but not so as to create an “island” of included or excluded lands. The board may add territory, but only after holding a second public hearing, with notice as is required for the original hearing. RCW 70.44.220.

Second Resolution Calling for Election

At the next regular meeting of the board following the conclusion of the annexation hearing, if the board of commissioners find that the proposed annexation “will be conducive to the welfare and benefit of the persons and property therein and the welfare and benefit of the persons and property within the public hospital district,” it must adopt a resolution calling for a special election on the proposed annexation. This resolution must include, in addition to this finding:

- The boundaries of the territory to be annexed;
- A call for a special election to be held not more than 120 days nor less than 60 days following the adoption of the resolution.

RCW 70.44.220.

The resolution must be submitted to the county auditor at least 46 days prior to the election date if the special election is to be held either on the second Tuesday in February or the fourth Tuesday in April. If the special election is to be held on the date of the August primary (the first Tuesday in August), the resolution must be submitted to the county auditor no later than the Friday immediately before the first day of regular candidate filing (the Monday two weeks before Memorial Day). If the special election is to be held on the date of the November general election, the resolution must be submitted to the county auditor no later than the day of the primary election. RCW 29A.04.330(2), (3).

Annexation Election

The special election on the annexation is conducted in the same manner as an election on the formation of a public hospital district, except notice of the election must be published in one or more newspapers of general circulation in the territory proposed to be annexed. RCW 70.44.230. And, the ballot proposition should be in the form set out in RCW 70.44.230.

Approval of Annexation

An annexation is approved by a simple majority vote. RCW 70.44.230.

Unlike with the petition method of annexation, there is no provision in the statutes governing the election method of annexation that provides for the voters to decide whether property owners will assume any or all of the district's outstanding indebtedness.

Withdrawal or Reannexation of Territory

There are two ways by which the boundaries of a public hospital district may be reduced:

- The withdrawal of territory; and
- Dividing a district into two smaller districts.

This section describes the procedures for withdrawing territory, as well as the process for reannexing withdrawn territory. Withdrawal of territory from a district can be used to avoid the proration of its regular property taxes. Or, territory can be withdrawn simply because the district cannot, for some reason, adequately serve the needs of the persons residing in that territory.

There are two methods by which territory may be withdrawn from a public hospital district: (1) the process described in [RCW 70.44.235](#); and (2) the process for withdrawal of territory from water-sewer districts in [chapter 57.28 RCW](#). An area withdrawn by the process in [RCW 70.44.235](#) may be reannexed following the procedure in that same statute.

Withdrawal of Territory Under RCW 70.44.235

The withdrawal of territory from a public hospital district under [RCW 70.44.235](#) is accomplished with the passage of two resolutions:

- A first resolution is passed by the district commissioners, requesting withdrawal and finding that inclusion of this area within the public hospital district will result in a reduction of the district's tax levy rate under [RCW 84.52.010](#) (prorationing).
- A second resolution, that approves the withdrawal, must be passed by either: (1) by the city or town council if the area proposed to be withdrawn is located within a city or town; or (2) by the legislative authority of the county within which the area is located, if that territory proposed to be withdrawn is not within a city or town.

When a withdrawal of territory—or a reannexation of withdrawn territory—is proposed in a county that has a boundary review board, a notice of intention must be filed with that board within 180 days of when the withdrawal or reannexation is proposed. [RCW 36.93.090](#). The hospital district board of commissioners should not approve a proposed withdrawal or reannexation until either the jurisdiction of the boundary review is invoked under [RCW 36.93.100](#) or the boundary review board has reviewed and approved the proposed withdrawal or reannexation.

The withdrawal is effective at the end of the day on December 31 of the year in which the second resolution is adopted. But, for purposes of establishing boundaries for property tax purposes, the boundaries are established immediately upon the adoption of the second resolution.

Reannexation of Territory Withdrawn Under RCW 70.44.235

The process to reannex territory withdrawn under [RCW 70.44.235](#) is, basically, the same as the process to withdraw territory, with the passage of two resolutions:

- A first resolution is passed by the district commissioners proposing the reannexation; and
- A second resolution, that approves the reannexation, must be passed by either: (1) by the city or town council if the area proposed to be reannexed is located within a city or town; or (2) by the legislative authority of the county within which the area is located, if that territory proposed to be reannexed is not within a city or town.

The reannexation is effective at the end of the day on December 31 of the year in which the second resolution is adopted. But, for purposes of establishing boundaries for property tax purposes, the boundaries are established immediately upon the adoption of the second resolution.

A referendum petition signed by registered voters of the area proposed to be reannexed equal in number to 10 percent of the total number of the registered voters residing in that area may be filed, as appropriate, with either the city or town council or county legislative authority within 31 days of adoption of the second resolution. A sufficient petition so filed will have the effect of holding the resolutions in abeyance. A ballot proposition on the reannexation must be submitted to the voters of the area at the next special election date. The reannexation is approved by simple majority vote.

Withdrawal of Territory Under Chapter 57.28 RCW

[RCW 70.44.400](#) authorizes, as an alternative, the withdrawal of territory from public hospital district using the more complex process in [chapter 57.28 RCW](#) for withdrawal of territory from water-sewer districts.

Initiation by Petition

A withdrawal of territory from a public hospital district under the process in [chapter 57.28 RCW](#) may be initiated by either:

- A petition signed by at least 25 percent of qualified voters residing within the territory proposed to be withdrawn, filed with the county auditor (the county auditor's duties with respect to a filed petition are set out in [RCW 57.28.020](#)). The petition must state:
 - That the territory proposed to be withdrawn is of such location or character that hospital district services cannot be furnished to it by the district at reasonable cost; and
 - That the withdrawal of such territory will be of benefit to such territory and conducive to the general welfare of the balance of the district.

A petition found to be sufficient by the county auditor must be transmitted to the district board of commissioners. RCW 57.28.010.

- A petition of landowners, in the event there are no qualified voters residing within the territory proposed to be withdrawn, signed by owners of the majority of the acreage of the territory proposed to be withdrawn and filed with the district board of commissioners. RCW 57.28.030.
- A resolution of the board of commissioners proposing the withdrawal and setting a date for a public hearing. If any portion of the territory proposed by the board to be withdrawn lies within a city or town, the district must first notify the city or town of its intent to withdraw the territory. If the city or town council takes no action (approve or disapprove the proposed withdrawal) within 60 days, the board may proceed with this resolution method. If the city or town council disapproves, then the withdrawal will have to proceed by one of the two petition methods. RCW 57.28.035.

Since the proposed withdrawal is potentially subject to boundary review board review (RCW 57.28.001), a notice of intention must be filed with the boundary review board review, if one exists in the county.

Public Hearing

Upon receipt of a petition and the auditor's certificate of sufficiency, or if the petition is signed by landowners and the board of commissioners is satisfied as to its sufficiency, the board is to fix a date for a public hearing and give notice of the petition and the hearing time and place, and also identifying the boundaries of the territory proposed to be withdrawn. RCW 57.28.040. (If the withdrawal is initiated by board resolution, the board resolution will provide notice of the hearing and the boundaries. RCW 57.28.035.)

The board has the discretion to require the petitioners to furnish a bond to cover the costs incurred by the district in connection with the withdrawal process, including the cost of the election. If the board requires a bond and the petitions fail to provide one, the board may decide not to act on the petition. RCW 57.28.040.

Board Findings/Resolution

Following the hearing (which can be adjourned and continued, though not for longer than a month), the board is to make any reduction in the boundaries of the withdrawal it deems proper and must make findings regarding the following questions:

- Would the withdrawal of such territory be of benefit to such territory?
- Would such withdrawal be conducive to the general welfare of the balance of the district?

The board then adopts a resolution that includes the findings on these questions, along with any recommendations it may adopt. RCW 57.28.050.

Within 10 days of the hearing, the board must transmit to the county legislative authority the withdrawal petition and a certified copy of its findings and recommendations. [RCW 57.28.060](#).

Hearing by County Legislative Authority

Upon receiving the petition and certified copy of the board's findings and recommendations, the county legislative authority must set a hearing time and place and publish notice of the petition, the proposed withdrawal boundaries, and of the hearing, at least once a week for two or more weeks in successive issues of a newspaper of general circulation in the district. [RCW 57.28.070](#).

County Legislative Authority Findings

Following the hearing, the county legislative authority is to make findings on the same questions upon which the hospital district board made findings. Two options follows those findings:

- **The territory is withdrawn.** If the findings answer the questions affirmatively and are the same as the district board's findings, the county legislative authority must by resolution declare that the territory be withdrawn from the district. The boundaries of the area withdrawn may not be changed except with the unanimous written consent of the district board. [RCW 57.28.080](#).
- **Or, an election is held.** If the county legislative authority answers any of the questions in the negative or if any of its findings are different from the district board's findings, the petition for withdrawal is deemed denied, it must call a special election on the question of withdrawal to be held not less than 30 days or more than 60 days from the date of the final hearing. [RCW 57.28.090](#).

Notice of Election on Withdrawal

If an election is called, a notice that describes the boundaries of the proposed withdrawal established by the county legislative authority and identifies the district involved must be published in a newspaper of general circulation in the territory proposed to be withdrawn at least once a week for a minimum of two successive weeks prior to the election. [RCW 57.28.100](#) and [RCW 57.24.020](#). These statutes also require posted notice, in at least four public places within the boundaries of the territory proposed to be withdrawn, that designates the places where the election is to be held. However, since elections in this state are now held by mail, there is no need for this posted notice.

Election on Withdrawal

All qualified voters residing within the district may vote at the election. The election ballot must be substantially as stated in [RCW 57.28.090](#). If a majority of the voters favor withdrawal, the county legislative authority must within 10 days of the official canvas establish by resolution that the territory is withdrawn from the district. [RCW 57.28.100](#).

If the territory is withdrawn, property owners within the withdrawn territory remain subject to any outstanding indebtedness. [RCW 57.28.110](#).

Chapter 8

Division, Consolidation, and Dissolution of Districts

Chapter Summary

This chapter describes the processes by which a public hospital district may divide itself into two districts, by which two or more districts may consolidate into one, and by which a district may be dissolved.

Division of Districts

A public hospital district may divide into two separate districts, subject to approval of the plan of division first by the superior court and then by the voters. The boundaries of the new districts must follow, as closely as reasonably possible, the then existing precinct boundaries and must include all of the territory encompassed by the existing district. The division of a district requires a complicated series of procedural steps, as set out in [RCW 70.44.350 - .380](#). The following is a brief overview of those steps.

- **Determination of Public Interest.** The commissioners of the existing public hospital district must, by resolution, make a finding that dividing the district is in the public interest. [RCW 70.44.350](#).
- **Plan of Division.** The district commissioners must adopt and approve a plan of division. The requirements for this plan are detailed in [RCW 70.44.360](#).
- **Necessary Resolution(s).** The district commissioners must pass a resolution or series of resolutions that: finds that division is in the public interest; approves the plan; authorizes the filing of a petition in the county superior court; requests a special election; and directs all officers and employees of the existing district to take actions necessary to carry out the division. [RCW 70.44.350](#).
- **Petition to Superior Court.** Upon passage of the resolution approving the plan of division, the district commissioners must petition the superior court in the county where the district is located requesting court approval of the plan. This initiates the court hearing. [RCW 70.44.370](#).
- **Court Hearing.** The court receiving the petition will, after notice as directed by the court, conduct a hearing on the division plan and then may enter its order approving the divi-

sion of the existing district and its assets and outstanding obligations, if it finds that the division to be fair and equitable and in the public interest. [RCW 70.44.370](#).

- **Election.** Following entry of a court order authorizing the division, the appropriate county officer (the county auditor in non-charter counties) must call a special election on the proposed division. The proposed division is approved if a majority vote in favor. At this same election, three commissioners for each of the new districts are also elected. The election process is detailed in [RCW 70.44.380](#).
- **Creation of New Commissioner Districts and Positions.** If the voters approve the division, the original district ceases to exist and the creation of new districts will be complete. All assets of the original district become the property of the new districts and all outstanding obligations of the original district are assumed by the new districts, all according to the division plan. The newly elected commissioners will assume their positions. [RCW 70.44.380](#).

Consolidation of Districts

Two or more contiguous public hospital districts, whether located in one or more counties, may consolidate into one district by following the procedure outlined in [chapter 35.10 RCW](#) for the consolidation of cities and towns. [RCW 70.44.190](#). The process for consolidation is summarized as follows:

- **Initiation by Joint Resolution.** The process for consolidation of public hospital districts may be initiated by adoption of a joint resolution by the boards of commissioners of each district. The resolution must provide for an election to be called as specified in [RCW 35.10.410](#).
 - **Notification to county.** The boards of commissioners of the districts proposing to consolidate must notify the county legislative authority of each county in which the districts are located. [RCW 35.10.410](#).
- **Initiation by Voter Petition.** Consolidation may also be initiated by a petition filed with the board of commissioners of each district and that is signed by voters in number equal to not less than 10 percent of voters who voted in the district at the last general municipal election (November of odd-numbered years). [RCW 35.10.420](#).
 - Notification to county. The districts must forward a copy of the petition to the county auditor, who is to determine the sufficiency of the petitions, which must conform to the requirements in [RCW 35A.01.040](#).
 - Call for election. If the county auditor finds the petition to be sufficient, he or she must call for an election as provided in [RCW 35.10.420](#).

- **Commissioner Districts.** If commissioner districts are desired, the joint resolution or the voter petition, as the case may be, must specify the number of commissioner districts (three, five, or seven, in accordance with [RCW 70.44.040](#)) and must contain a map of the proposed consolidated district that clearly delineates the boundaries of each commissioner district, each of which must contain approximately the same population. [RCW 35.10.550](#).
- **Assumption of General Obligation Indebtedness.** The joint resolution or the petition may contain a proposal that a general obligation indebtedness of one or more of the districts proposed to be consolidated will be assumed by the proposed consolidated district, in which case, the joint resolution or petition must specify the improvement or service for which such general obligation indebtedness was incurred and state the amount of any such indebtedness and the rate of interest. [RCW 35.10.440](#).
- **Public Meetings on Proposed Consolidation.** The county legislative authority (board of county commissioners or county council) must hold a public meeting on the proposed consolidation. If the consolidation involves territory in more than one county, the legislative authority of each county must hold a public meeting. [RCW 35.10.450](#).

In counties with a boundary review board, that board may also hold a public meeting on the proposed consolidation, if requested by the county legislative authority.

The purpose of these meetings is to present information on the proposed consolidations and to air view both for and against. Neither the county legislative authority nor the boundary review board have any decision-making authority regarding the proposed consolidation.

The notice and scheduling of these public meetings and the topics to be addressed in them is set out in [RCW 35.10.450](#).

- **Election on Consolidation.**
 - **Ballot questions.** If a proposal for assumption of indebtedness is to be submitted to the voters of a district in which the indebtedness did not originate, the proposal must be separately stated on the ballot. [RCW 35.10.460](#).

If the question of the name of the proposed consolidated district is to be submitted to the voters, that question must also be separately stated and the ballots must present the option of a voter to select one of the names of the proposed consolidated district. [RCW 35.10.460](#).
 - **Canvas of votes.** The canvas is done in accordance with [RCW 35.10.470](#). The votes cast in each district are counted separately. The consolidation is approved if a majority of voters in each district vote in favor.

Determining the result of the vote on the assumption of indebtedness, if any, is more complex. For details, see [RCW 35.10.470](#).

The question of the name of the district, if voted upon, is decided by the greatest number of combined votes from the districts involved.

- **Effective Date of Consolidation.** If approved by the voters, the consolidation is effective when the newly-elected commissioners of the consolidated district are elected and assume office.
- **Election of Commissioners.** [RCW 35.10.480](#) states this election must occur as specified in [RCW 35A.02.050](#). Under that statute, the commissioners of the consolidated hospital district are to be elected at the next general municipal election if one is to be held more than 90 days but not more than 180 after certification of the results of the consolidation election, or otherwise at a special election.

If the election is to be at the next general municipal election, [RCW 35A.02.050](#) requires that a primary election is to be held first, on the date specified for a primary election in [RCW 29A.04.311](#), which is the first Tuesday in August.

If, instead, the election is to be at a special election, the primary is to be held first at a special election date.

The commissioners elected will serve staggered terms, presumably in accordance with the staggering of terms of newly-elected commissioners at the election on the formation of a new district under [RCW 70.44.040](#). The staggering of terms under [RCW 35A.02.050](#), which is for a code city, does not work with a public hospital district, which has longer terms for elected commissioners than a code city has for elected councilmembers.

- **Costs of Election(s).** The costs of the elections are the responsibility of the consolidated district. If consolidation is not approved, the costs are to be borne proportionately by each district in ratio to the number of inhabitants residing in the total area in which the election was held, as shown by the figures released at the most recent state or federal census or by a determination of the state Office of Financial Management. [RCW 35.10.500](#).

Dissolution of Districts

[Chapter 70.44 RCW](#) is silent about how a public hospital district may be dissolved. However, [chapter 53.48 RCW](#) sets out a uniform procedure for the dissolution of most special purpose districts, including a public hospital district. The procedure ensures that a district is not dissolved before all its debts are paid off. A dissolution must be approved by a superior court. If any assets remain after all debts of the district have been repaid, they are transferred to the school district or districts in which the public hospital district is located.

Dissolution of a public hospital district requires the following procedural steps:

- **Petition.** A petition asking for an order of dissolution signed by a majority of the district board of commissioners must be presented to the superior court of the county in which the district is located. RCW 53.48.020.
- **Hearing.** Upon the filing of a petition for dissolution, the superior court must enter an order setting a date for a hearing on the matter, to be held not less than 30 days from the date of filing. Notice must be provided as set out in RCW 53.48.030.
- **Order of Dissolution.** After the hearing, the court enters an order either dissolving or refusing to dissolve the district. For a court to enter an order dissolving the district, it must formally find that the best interests of all persons concerned will be served by the proposed dissolution. RCW 53.48.040.
- **Sale of Assets (Solvent District).** If the court finds that the public hospital district is financially solvent, it will order a sale by the county sheriff of all assets except cash. RCW 53.48.040. The sale proceeds, together with any cash on hand must, after the payment of any costs and expenses, be paid to the treasurer of the county and placed to the credit of the school district or districts located within the public hospital district boundaries.
- **If District is Insolvent.** If the court finds that the public hospital district is financially insolvent, the court must determine the extent and nature of the indebtedness of the district, including an identification of the creditors and their claims. RCW 53.48.060.
 - **Second hearing.** The court must then set a date and place for a second hearing, to be held not less than 60 days nor more than 120 days from the first hearing. The purpose of this second hearing is to determine the “ways and means” of retiring the established business indebtedness of the district and paying all costs and expenses of any necessary insolvency proceeding. These “ways and means” may include the levy of assessments against the property in the district. RCW 53.48.060.
 - **Hearing notice.** The county clerk must give notice of this second hearing by publication in a newspaper of general circulation in the county in which the district is located, at least 21 days before the hearing. Notice must also be given to all creditors and other interested parties as the court may deem necessary or advisable. At least one notice must be posted in the district. The notice must announce the filing of the petition, its purpose, the finding of the court on the petition, and the purpose of the second hearing. RCW 53.48.070.
 - **Levy to pay deficit.** At the second hearing, the court has the authority to order the sale of district property. If the proceeds of this sale, together with any cash remaining on hand to the credit of the district, are not sufficient to retire the entire indebtedness, together with all costs and expenses, then the court has authority to order the district board of commissioners to levy taxes against the property in the district sufficient to

retire the indebtedness and pay the costs and expenses. RCW 53.48.080. At the hearing, any property owner within the district may appear and be heard for or against such a levy. RCW 53.48.080.

- **Order of dissolution.** After the indebtedness of the district has been settled or paid, the court must then again decide the matter of dissolution. The court must determine whether the best interests of all persons concerned will be served by the proposed dissolution and must make a finding to this effect. The court will then enter an order dissolving—or refusing to dissolve—the district. RCW 53.48.090.