Chapter 553

1959 REPLACEMENT PART

Water Control Districts

DEFINITIONS; ORGANIZATION; ELECTIONS; POWERS OF DISTRICT

553.010 Definitions
553.020 Authority to create water control districts; purposes
553.030 Petition for creation of district; jurisdiction of county court; undertaking
553.040 Notice of time and place of hearing
553.050 Appearance by landowners and interested persons; dismissal of petition or fixing boundaries; order approving petition; notice of final hearing
553.060 Election on creation of district; order creating district
553.070 Change of boundaries; effect; consent of contracting agency or vendor
553.080 Conduct of elections generally; procedure; notice; expense
553.090 Nature and powers of district
553.100 Validation of districts
553.110 Vested water rights protected; consent of other districts or owners of lands to inclusion in district or assessment

GOVERNING BODY

553.210 Election of directors; who entitled to vote; terms; vacancies
553.220 Organization meeting; officers; duties; compensation; meetings
553.230 Powers and duties of board
553.240 County court as governing body

CONSTRUCTION OF WORKS IN SUBDISTRICTS; DETERMINATION OF BENEFITS

553.310 Petition for creation of subdistrict for drainage, flood or surface water control, or irrigation works; order
553.320 Engineering plan; notice of completion; inspection; hearing; changes in plan; approval; rejection upon objections of landowners
553.330 Cost of works assessed in proportion to benefits; lands in subdistrict to be charged
553.340 Determination of benefits; board of appraisers
553.350 Assessment of benefits and damages by appraisers; benefits less than costs; recommendation to amend engineering plan; final report and certificate
553.360 Hearing on report of appraisers; exceptions; entry of order; appeal
553.370 Reappraisal after construction of works; when authorized
553.380 Reduction of benefits

ASSESSMENTS; CLAIMS

553.510 Classes of special assessments
553.520 Apportioning assessments; adjustment of benefits
553.530 Disposition of funds received
553.540 Assessments to be levied by order of board; filing copy thereof; notice; lien; time for payment; interest
553.550 Loans; assignment of assessments as security for
553.560 Foreclosure of assessment; procedure; district may bid and purchase; deed; right of redemption
553.570 Withdrawal of land from foreclosure sale; payment of lien, taxes and proportion of costs
553.580 Payment of state and county taxes by district
553.590 Claims; presentation; payment

CONTRACTS WITH OTHER GOVERNMENTAL UNITS FOR CONSTRUCTION OF WORKS; TAX TO MEET

553.710 Contracts with other governmental agencies or units; levy of tax to meet obligations under
553.720 Manner of collecting tax; budget; equalizing levy
553.730 Limitation on tax levy
553.740 Issuance of warrants

APPEALS

553.810 Appeal to county court; notice; manner of hearing; order
553.820 Appeal to circuit court; trial de novo; review by Supreme Court

CROSS REFERENCES

Budget law for districts, Ch. 294
Discrimination in employment on account of age, 659.026
Federal flood control projects, cooperation with State Water Resources Board, 549.635
Federal Watershed Protection and Flood Prevention Act, district-federal agreements under, 190 150
Joint or cooperative action between irrigation districts and other water users' organizations, 545.124
Population, determination of, 190.520
Referendum on laws affecting districts, procedure, 254.320, 254.340
Release of water from impoundment or diversion structure, notice of by State Engineer if hazard results, 541.510
Reports to State Treasurer concerning districts, 205.240

Tax and indebtedness limitations for districts, Const. Art. XI, § 11
Water resources policy, state, conformance with required, 536.300 to 536.400

553.080

Notice of election given before March 9, 1959, in accordance with general election laws, is validated, ratified and confirmed, 1959 c.71 §2

553.100

Court procedure to test validity of organization and proceedings of a district, 33.710, 33.720

553.230

Unemployment compensation, 657.020, 657.065, 657.097, 657.505

DEFINITIONS; ORGANIZATION; ELECTIONS; POWERS OF DISTRICT

553.010 Definitions. As used in this chapter, except where the context clearly indicates a different meaning:

(1) "Board" means the board of directors of a water control district created under the provisions of this chapter.

(2) "District" means, unless otherwise qualified or modified, a water control district created under the provisions of this chapter.

(3) "Court" means the county court having jurisdiction over a water control district and includes the board of county commissioners; notwithstanding a transfer of the judicial functions of the county court in any county to the circuit court, the county court of such county shall take jurisdiction over water control districts.

(4) "Land" or "tract of land" means real property, together with improvements thereon, whether publicly or privately owned, within a district.

(5) "Landowner," "owner," "owner of land" and "owner in fee" are synonymous and mean a person, firm, private corporation, association, municipal corporation, public corporation, county, the State of Oregon, or the Federal Government or any agency thereof, owning a tract of land situated within a district. The vendee named in a bona fide contract of sale of a tract of land situated within a district shall be considered as a landowner to the exclusion of the vendor. Whenever two or more persons own a tract of land as tenants in common or by entirety, each such person shall be regarded as a landowner.

(6) "Works" means dams, storage reservoirs, canals, ditches, dikes, levees, revetments, and all other structures, facilities, improvements and property necessary or convenient for draining land, controlling flood or surface waters, or supplying lands with water for irrigation, domestic or other purposes.

(7) "Notice by publication" means the giving of notice by publication in a newspaper defined as a legal publication under the laws of Oregon in each county in which lands within a district are located. A notice of a hearing to be held before the board of a district or the court shall be published once each week for four consecutive weeks and the last publication of such notice shall be at least 10 days before the date set for the hearing. All other notices required to be published under the provisions of this chapter shall be published once each week for two consecutive weeks, and the last publication shall be at least five days before the date of the event for which the notice is given.

(8) "Engineering plan" means the plans and specifications for the works to be constructed or purchased within any subdistrict, including such maps, profiles, plans and other data and descriptions as may be necessary to set forth the location, character of the work, the property benefited, taken or damaged, together with all descriptions of any and all rights of way or other property which may be required for the construction of any works, together with the estimates of the cost of the works and of the benefits and damages which will accrue to each tract of land within a subdistrict upon the construction or purchase of the works.

(9) "Apportion" means to determine the proportionate share of any assessment which is to be borne by a tract of land subject to assessment. Such determination shall be made by calculating the percentage ratio of the appraised benefits of a tract of land to the total appraised benefits accruing to all tracts of land subject to the assessment and allocating to the tracts of land the same percentage of the total sum of money to be raised by the assessment.

(10) "New assessed valuation" means the assessed valuation of a tract of land as assessed by the county assessor for the county in which the land is located for the year in which an adjustment of benefits is made by a district.

(11) "Original appraised benefits" means the benefits determined to accrue to a tract of land by an appraisal.

(12) "Original assessed valuation" means the assessed valuation of a tract of land as assessed by the county assessor for the county in which the land is located for the year in which the original benefits were determined.

553.020 Authority to create water control districts; purposes. Water control districts may be created as provided in this chapter for the purpose of acquiring, purchasing, constructing, improving, operating and maintaining drainage, irrigation, and flood and surface water control works in order to prevent damage and destruction of

life and property by floods, to improve the agricultural and other uses of lands, and to improve the public health, welfare and safety.

553.030 Petition for creation of district; jurisdiction of county court; undertaking. (1) Upon the filing of a petition for the creation of a district with the county clerk of the county in which are located the greater part of the lands within the boundaries of the proposed district, the county court of such county thereafter shall have jurisdiction over the lands within the district co-extensive with the boundaries thereof, without regard to county lines.

(2) A petition for the creation of a district shall be signed by the owners of more than 20 percent of the acreage within the boundaries of the proposed district as described in the petition. The petition shall contain the name for the proposed district; the boundaries proposed therefor; an estimate of the acreage of land within such boundaries and an estimate of the acreage of land in each county if they are in more than one county; an allegation that all or substantially all such lands will be benefited by the construction of drainage, irrigation, flood or surface water control works and that the construction of such works will be conducive to the public health, welfare or safety; and a prayer that the lands included within such boundaries be organized as a water control district under the provisions of this chapter. Each signer shall state his address and the number of acres of land owned by him and the county in which such lands are located.

(3) The petition shall be accompanied by a good and sufficient undertaking in form and amount to be approved by the court, conditioned that the petitioners will pay all expenses incurred by the county or the court in the organization of such district.

(4) The petition shall be verified by the affidavit of one of the petitioners.

553.040 Notice of time and place of hearing. After the filing of the petition the court shall enter an order fixing a time and place for the first hearing on the petition and directing the county clerk in whose office the petition is filed to give notice by publication of such hearing. The notice shall state the name proposed for the district, and the time and place fixed by the court for the first hearing thereon, and shall be notice to all owners or persons claiming interest in any land within the boundaries of the district as described in the petition to appear and state their objections to the creation of the proposed district. The notice shall set forth a true and correct copy of the petition, except that the names and addresses of the signers of the petition shall not be included as a part of the notice.

553.050 Appearance by landowners and interested persons; dismissal of petition or fixing boundaries; order approving petition; notice of final hearing. (1) At the time and place fixed for the first hearing, or at any time and place to which the hearing may be adjourned, any landowner or other person interested may appear and present written or oral statements for or against the granting of the petition and the creation of the district or the proposed boundaries for the district.

(2) If the court finds that the lands within the proposed district will not be benefited by the creation of the district, the court shall dismiss the petition; if the court finds that the lands within the boundaries of the proposed district will be benefited by the creation of the district, the court shall fix the boundaries for the district.

(3) The court shall not exclude from the district any lands originally included within the boundaries described in the petition if such lands will be benefited by the creation of the district, nor shall the court change the proposed boundaries and include lands not within them unless the lands included are adjacent to the proposed boundaries and the owners of such lands request in writing that their lands be included in the district.

(4) If the court approves the petition, it shall enter an order so declaring, which order shall set forth the name of the district and the boundaries as determined by the court, and shall fix a place, and a time not less than 30 nor more than 50 days from the date of the order, for a final hearing on the petition, and declaring that if written requests for an election are not filed as provided in ORS 553.060, the court will, at the time of the final hearing, enter its order creating the district. Notice of such final hearing shall be given by publication of a copy of the order.

553.060 Election on creation of district; order creating district. (1) If written re-

quests for an election signed by the owners of more than 20 percent of the acreage within the boundaries for the district as fixed by the court are filed with the court on or before the date of the final hearing, the court shall provide, by order, for the holding of an election for submitting to the qualified voters the question of forming such district. After the election is held, if it is determined by the court that the majority of the votes cast were in favor of the formation of the district, the court shall enter an order creating the district. If a majority of the votes cast opposed the creation of the district, the court shall enter an order dismissing the petition. If requests for an election are signed by owners of less than 20 percent of the acreage within the boundaries for the district as fixed by the court, the court shall dismiss such requests and shall enter an order creating the district.

(2) An order creating a district, whether such district is created with or without an election, shall state the name selected for the district and shall describe the boundaries therefor as determined by the court, and shall declare such territory organized as a water control district. A certified copy of such order shall be filed for record in the office of the recorder of conveyances of each county in which lands within the district are located.

553.070 Change of boundaries; effect; consent of contracting agency or vendor. (1) After the creation of a district the boundaries thereof may be changed by the inclusion of lands outside of such boundaries or by the exclusion of lands not benefited within such boundaries, upon the petition of the owners thereof. Such petition shall be presented to the court and the proceedings thereon shall be the same as the proceedings on the original petition.

(2) No change of boundaries shall impair or affect the organization of the district or its rights in or to property within or without the district, or affect, impair or discharge, without the consent of the board, any contract, obligation, lien or charge for which lands excluded would have been liable had such change of boundaries not been made.

(3) If any contract has been entered into between the district and the United States or the State of Oregon or any agency of either of them, or if the district has contracted to purchase any existing works and the purchase price has not been paid in full, no change shall be made in the boundaries of the district without the written consent of such contracting agency or the vendor of such existing works.

553.080 Conduct of elections generally; procedure; notice; expense. (1) All elections held for the purposes set forth in this chapter, except the election of directors and officers, shall be conducted as nearly as practicable in accordance with the general election laws.

(2) Ballots shall be in such form as determined by the board of the district holding the election.

(3) The county clerk of each county in which lands within the district are located shall conduct elections in his county and shall appoint judges and clerks and designate polling places therein.

(4) Unless a district election is held at the same time as a general or special election conducted for state or county purposes, the polls shall be kept open from 1:00 p.m. to 8 p.m. on the day of the election.

(5) The county clerk of each county in which an election is held under the provisions of this chapter shall give notice of the election by causing the purpose of, the date of and the polling places designated for holding the election, to be:

(a) Posted for four successive weeks prior to the election in each of three public places within the district or proposed district; and

(b) Published once a week for four successive weeks prior to the election in a newspaper of general circulation in the district or proposed district, or if there is no such newspaper, in some newspaper published and of general circulation in the county in which are located the greater part of the lands within the boundaries of the district or proposed district.

(6) The county clerk of each county in which an election is held under the provisions of this chapter shall canvass the votes cast in his county and issue a certificate which shall set forth the number of affirmative and negative votes cast in his county. Such certificate shall be transmitted to the court having jurisdiction over the district or proposed district. After receiving the certificate the court shall determine the total votes cast in all counties in which are located lands

within the district, and shall enter an order in which shall be stated the total number of affirmative and negative votes cast and the result of the election.

(7) All expenses of conducting an election shall be paid by the district to the county clerk. [Amended by 1959 c.71 §1]

553.090 Nature and powers of district. A water control district formed under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body, corporate and politic, exercising public power. It shall have full power to carry out the objects of its creation and to that end may:

(1) Have and use a seal.

(2) Have perpetual succession.

(3) Sue and be sued in its own name.

(4) Acquire by condemnation, purchase, devise, gift or voluntary grant real and personal property or any interest therein, located inside or outside of the boundaries of the district.

(5) Contract with the United States or with any county, city or state, or public district, or any of their departments or agencies, for the construction, preservation, improvement, operation or maintenance of any works.

(6) Build, construct, purchase, improve, operate and maintain all works and improvements necessary or desirable under any engineering plan adopted by the district.

(7) Enter into contracts and employ agents, engineers and attorneys.

(8) Appropriate and acquire water and water rights and sell, lease and deliver water for irrigation and other purposes.

(9) Create special assessment districts, hereinafter referred to as subdistricts, for the purpose of levying assessments against lands benefited by works constructed by the district.

(10) Levy assessments against lands benefited by works constructed by the district in order to provide funds for the construction, purchase, improvement, operation or maintenance of such works.

(11) Borrow money and secure the repayment thereof by the assignment of sums of money due the district under levied assessments.

(12) Do such other acts or things as may be necessary for the proper exercise of the powers herein granted.

553.100 Validation of districts. All districts organized before July 16, 1949, under the provisions of chapter 289, Oregon Laws 1947, on the theory that under the laws as they then existed a water control district could be organized under the jurisdiction of the county court of a county in which the judicial functions of the county court have been transferred to the circuit court, or where the notice of the first hearing on the petition for the creation of the water control district did not set forth the names and addresses of the signers of the petition, or the boundaries of the district as determined by the court contain noncontiguous lands, shall be deemed to be legally organized and confirmed, and any district being organized on July 16, 1949, in such manner shall be deemed to be legally organized.

553.110 Vested water rights protected; consent of other districts or owners of lands to inclusion in district or assessment. (1) This chapter shall not be construed to affect, amend or repeal any other law of Oregon or to affect or impair the vested rights of any person, municipal corporation, irrigation district, drainage district, the state, or any county to the use of water or rights in the use of water.

(2) No lands located within the boundaries of any municipal corporation, irrigation district or drainage district shall be included within the boundaries of a water control district without the consent of such municipal corporation, irrigation district or drainage district.

(3) No lands publicly owned and no lands of any railroad or public utility shall be assessed without the consent of the owner thereof.

553.120 to 553.200 [Reserved for expansion]

GOVERNING BODY

553.210 Election of directors; who entitled to vote; terms; vacancies. After the creation of a district, the court shall order the holding of a meeting of the landowners for the purpose of electing a board of directors. Notice of such meeting shall be given by publication. The landowners who attend the meeting shall elect nine directors who are owners of land within the district; however, the directors need not reside within the district. Each landowner shall be entitled to one vote, and each firm, corporation, association, public corporation, municipal corporation or county owning land within

a district shall be entitled to vote as a single landowner through any officer or agent authorized in writing. The guardian, administrator or executor authorized to act as such of a person or estate owning land within a district shall be considered a landowner for the purposes of this section where the owner in fee is not otherwise entitled to vote. The nine persons receiving the highest number of votes shall be declared elected as directors. Each director shall be elected for a term of three years except the directors elected at the first meeting of the landowners. Of the directors first elected, the terms of three shall expire in one year, three in two years, and three in three years, from the first Tuesday in January next succeeding their election, the terms to be decided by lot. Thereafter an annual meeting of the landowners shall be held in each district during November in each year to elect a successor for any director whose term will expire the following January. If there is no suitable place within the district to hold a meeting of the landowners the meeting may be held outside of the district at the nearest convenient place as determined by the board of directors. Notice of such annual meeting, in which shall be stated the time and place for the meeting, shall be given by publication. In case of a vacancy in the office of director, the board shall appoint a successor to fill the unexpired portion of the term.

553.220 Organization meeting; officers; duties; compensation; meetings. As soon as possible after an election of directors, the directors shall meet for the purpose of qualifying all persons elected as directors and for the purpose of electing officers of the district. Each director shall qualify by subscribing to an oath of office. The directors shall elect from their number a president and vice president and shall appoint a secretary-treasurer. Such officers shall have such authority and duties as may be given to them by the board. No director shall receive compensation; however, a director shall be reimbursed for actual and necessary expenses incurred by him while engaged in official business of the district by direction of the board. The board shall hold such meetings as may be necessary or convenient.

553.230 Powers and duties of board. The board shall:

(1) Manage and conduct the affairs of the district.

(2) Adopt a seal.

(3) Make and execute all necessary contracts.

(4) Employ and appoint such agents, officers and employes as may be required, and prescribe their duties and fix their compensation.

(5) Establish reasonable rules and regulations for the administration of the affairs of the district.

(6) Withhold deliveries of water to lands upon which there are delinquent assessments.

(7) Levy assessments for special benefits and apportion the same among the lands within the district liable therefor as provided in this chapter.

(8) File on unappropriated waters within the state for the purposes of the district and lands within the district.

(9) Establish and maintain funds and accounts for the funds of the district and of any subdistrict within the district.

(10) Obtain an annual audit of the books of the district.

(11) Fix the location of the principal office of the district at some convenient place within or without the district.

(12) Require adequate bonds of all officers, directors, agents and employes of the district and pay premiums therefor with district funds.

(13) Keep a record of all of the proceedings of the board.

(14) Furnish a record book to the recorder of conveyances of each county in which lands within the district are located, in which shall be recorded all contracts, orders levying assessments and creating subdistricts, and other documents required by law to be recorded.

553.240 County court as governing body. (1) The county court may be established as the governing body of a water control district in the manner provided in this section.

(2) After the creation of a water control district, the boundaries of which are conterminous with the boundaries of the county, the landowners of the district shall, at the time for the election of the first governing body under ORS 553.210, have the option of electing the county court or a board of directors as the governing body of the district. The election shall, so far as applicable, be held in the manner provided under ORS 553.210.

(3) If a majority of the votes cast at the election is in favor of the county court as the governing body of the district, all duties, functions and powers granted to a board of directors of a water control district are vested in the county court which shall exercise those duties, functions and powers. The county court shall be the governing body of the water control district until the district is dissolved. [1957 c.606 §2]

553.250 to 553.300 [Reserved for expansion]

CONSTRUCTION OF WORKS IN SUBDISTRICTS; DETERMINATION OF BENEFITS

553.310 Petition for creation of subdistrict for drainage, flood or surface water control, or irrigation works; order. Whenever the owners of more than 50 percent of the acreage in any contiguous body of land located within a district desire to have the district undertake the construction or purchase of any drainage, flood or surface water control, or irrigation works which will benefit their lands, they shall petition the board for the creation of a subdistrict. The petition shall state the boundaries proposed for the subdistrict; the name and address of each person signing the petition; a brief general statement as to the works the petitioners desire to have constructed or purchased; a stipulation that the signers of the petition will pay all expenses incurred by the district, including engineering plans and appraisals, for and on account of the subdistrict; and a prayer asking that the lands described be organized as a subdistrict. The petition shall be considered by the board at its next meeting, and if it meets with the approval of the board, the board shall adopt an order creating the subdistrict in which shall be described the boundaries of the subdistrict. A subdistrict may include all or any part of the lands within a district. A copy of the order shall be recorded in each county in which lands within the subdistrict are located.

553.320 Engineering plan; notice of completion; inspection; hearing; changes in plan; approval; rejection upon objections of landowners. After the creation of a subdistrict, the board shall secure an engineering plan for the improvements requested in the petition for the creation of the subdistrict. The board may adopt as an engineering plan for a subdistrict any plans theretofore made by any department or agency of the Federal Government or the State of Oregon or any plans proposed for any soil conservation district in which lands within the subdistrict are located, or the board may employ a qualified engineer to make such engineering plan. Upon completion of the plan the board shall cause notice thereof to be given by mail to the owners of the tracts of land within the subdistrict and shall permit the inspection of the plan at the office of the subdistrict by all landowners. The notice shall fix a time and place for a hearing of all objections to the plan, which hearing shall be held not less than 20 nor more than 30 days after the date of mailing the notice. At the hearing the board shall make such changes in the engineering plan as it deems necessary in the light of any objections or suggestions made by any person appearing at the hearing. After the hearing, the board shall approve the plan as corrected or changed, by adopting an order of approval. However, if the owners of more than 50 percent of the lands within the subdistrict file written objections to the order approving the engineering plan with the secretary of the district within 15 days after the date of such order, no further action shall be taken under the order and the plan shall be considered to have been rejected by the landowners. Whenever an engineering plan for a subdistrict is so rejected by the landowners the board may obtain a new engineering plan and present it to the landowners in the manner above provided or the board may dissolve the subdistrict.

553.330 Cost of works assessed in proportion to benefits; lands in subdistrict to be charged. The cost of building, constructing, purchasing, operating, maintaining and improving the works described in an engineering plan for a subdistrict shall be assessed against the lands to be benefited by the works in proportion to the benefits to be received by each tract of land. Only the lands within a subdistrict shall be liable for, charged with or in any manner assessed or taxed for the payment of judgments, claims, damages, costs, expenses, debts or other liabilities of or against a district that accrue from, arise out of or are incurred in the building, constructing, purchasing, operating, maintaining or improving the works of such subdistrict.

553.340 Determination of benefits; board of appraisers. The board, with such assistance as it deems necessary, shall prepare a benefit roll and determine the benefits that will accrue to each tract of land located within a subdistrict upon the construction of the works described in the engineering plan for the subdistrict. After such determination is made each landowner shall be given written notice thereof by registered mail. If the landowner does not file written objections thereto within 30 days of the date the notice is mailed, he shall be deemed to have consented to the allocation of benefits to his lands. If a landowner files objections within 30 days, the determination of the benefits that will accrue to his lands shall be referred to a board of appraisers. A board of three appraisers shall be appointed by the court, upon the petition of the board of directors, whenever one or more landowners within the subdistrict files an objection. Each of the appraisers shall, before assuming his duties, take and subscribe to an oath that he will faithfully and impartially discharge his duties as an appraiser and will make a true report of all work done by him. The court may, by order, remove any appraiser at any time and shall fill all vacancies on the board of appraisers or may appoint a new board as the case may require. The appraisers shall receive such compensation as the board of directors, with the approval of the court, determines, and shall be reimbursed for the expenses they incur in the exercise of their duties.

553.350 Assessment of benefits and damages by appraisers; benefits less than costs; recommendation to amend engineering plan; final report and certificate. (1) The appraisers shall assess the amount of benefits and the amount of damages, if any, that will accrue to each tract of land which they are directed by the board of directors to appraise, and shall determine the value of any lands to be acquired and used for rights of way and other purposes by the subdistrict. The appraisers shall determine the benefits to the lands themselves and to any buildings and other structures erected on such lands. The appraisers shall take into consideration the agricultural or other uses of such lands, the increase in value thereof upon the completion of the proposed works, and the increased income which will be derived from the lands upon the construction of the works. In making their appraisal, the appraisers shall give due consideration and credit to any works that have already been constructed and which benefit any tract of land they are appraising. The appraisers shall have no power to change the engineering plan.

(2) Whenever it appears to the appraisers that the benefits to all the lands within the subdistrict will be less in value than the cost of the proposed works, the appraisers shall file a preliminary report of their work with the board of directors and recommend to the board that the engineering plan be amended so that the proposed works can be constructed at a cost less than the benefits to be derived therefrom. If the board obtains an amended engineering plan, the appraisers shall proceed with their work.

(3) Upon completing their work, the appraisers shall file a final report with the court and certify that the appraisal has been completed and that there is nothing further for them to do in regard to the matter.

553.360 Hearing on report of appraisers; exceptions; entry of order; appeal. (1) After the filing of the report of the appraisers, the court shall enter an order fixing the time and place for a hearing on the report and directing the secretary of the district to give notice of the hearing by publication. The notice shall contain a description of each tract of land appraised, together with the names of the owners, if known, and shall state that the appraisers appointed to assess the benefits and damages to the lands described and to appraise the cash value of the lands necessary to be taken for rights of way and other works within or without the limits of the subdistrict, have filed their report with the court and that the owner of each tract of land included therein is given notice that he may examine the report and file objections to the report or to any determination of benefits or damages on or before the date set for the hearing.

(2) The district or any person owning or having any interest in the lands described, or the owner of any tract of land within the subdistrict for which the appraisals were made, may file exceptions to the report of the appraisers or to any determination of benefits or damages determined to accrue to lands upon the construction of the proposed works or to the determination of the

cash value of the lands necessary to be taken for rights of way or other works.

(3) The court shall hear all objections and make such amendments and modifications to the report of the appraisers as to the court may seem equitable. Upon the conclusion of the hearing the court shall enter its order in which shall be given the description of each tract of land appraised, the value of the benefits and damages which the court determines will accrue to each tract, and the value of lands necessary to be taken for rights of way and other works.

(4) Any party interested may take an appeal from such order in the manner set forth in ORS 553.810 and 553.820. The order shall be filed in the office of the recorder of conveyances of the county in which the court is situated, and a certified copy of the order shall be filed with the recorder of conveyances of each other county in which lands within the subdistrict are located.

553.370 Reappraisal after construction of works; when authorized. In the event that it is determined, after the construction of any works within a subdistrict, that any lands within the subdistrict are benefited and the benefits accruing to such lands were not determined by the board or by appraisal or the benefits determined by the board are less than the benefits actually accruing to the property, or in case any person makes use of or profits by the works within any subdistrict to a degree not compensated for in the original determination of benefits by the board or by appraisal, or in case the directors of the district find it necessary to take or damage any additional property, the directors shall petition the court for appointment of a board of appraisers to appraise or reassess the benefits accruing to any tract of land within the subdistrict or to appraise the damages to or value of any property taken. After the appraisers file their report, the court shall act thereon in the manner provided for the approval by the court of the original appraisal.

553.380 Reduction of benefits. In the event that it is determined after the construction of any works within a subdistrict that the benefits received by any tract of land are materially less than the appraised benefits, the board may, upon the petition of any owner of a tract of land, hold a hearing on the question of whether the benefits should be reduced. The board shall give notice by mail 30 days prior to such hearing to all other owners of land within the subdistrict. After hearing evidence for and against the reduction of benefits assessed against the tract of land in question, the board shall make an order reducing the amount of assessed benefits or dismissing the petition.

553.390 to 553.500 [Reserved for expansion]

ASSESSMENTS; CLAIMS

553.510 Classes of special assessments. In order to raise the funds required by a district for the construction, purchase, operation, maintenance and improvement of works constructed for drainage, flood and surface water control, or irrigation purposes in any subdistrict, and in order to pay the general overhead and other expenses of a district which are not chargeable directly to any subdistrict, the lands benefited by any or all of such types of works and by the operation of the district shall be subject to special assessments of the following classes:

(1) A preliminary assessment, which shall be levied for the purpose of defraying the expenses incurred by the district upon the organization of the subdistrict, and for defraying the costs incurred by the district in obtaining an engineering plan necessary for the construction of the works for which the subdistrict is organized, and for defraying such other expenses as may be incurred by the district prior to the time that construction assessments levied on the lands within a subdistrict are paid to the district. The board shall determine in its discretion whether such preliminary assessment shall be paid in one lump sum or in two or more annual instalments. The board may apportion the preliminary assessment on the basis of the assessed valuation of all the lands in the subdistrict or on the basis of the number of tracts of land in the subdistrict with each tract of land being assessed an equal amount or on the basis of each acre benefited being assessed an equal amount. All lands owned by the same person shall be considered one tract. A preliminary assessment shall be credited against a construction assessment when levied. If a tract of land is not subject to a construction as-

sessment after the benefits from the proposed works are determined, the preliminary assessment shall be canceled or refunded to the landowner.

(2) A construction assessment, which shall be levied for the purpose of defraying the cost of constructing or purchasing the works in each subdistrict. The construction assessment shall be levied as soon as the board is able to determine the probable cost of constructing or purchasing the works described in the engineering plan for a subdistrict or a construction assessment may be levied for the construction or purchase of works in accordance with any loan agreement with the government of the United States or the State of Oregon for money to be used in the construction or purchase of such works or in accordance with a purchase agreement entered into with the seller of such works. All construction assessments shall be paid in 10 equal instalments and shall bear interest at a rate not to exceed six percent per annum until paid from the date the first instalment of the assessment is due. Any landowner may make advance payments on the construction assessment levied against his lands. The board may, in its discretion, decrease the amount of any annual instalment and spread the payment of the construction assessment over a period longer than 10 years. Such decrease shall apply uniformly to all lands within the subdistrict. Whenever the board determines that the original construction assessment is not in an amount sufficient to pay the cost of constructing or purchasing the works described in the engineering plan for the subdistrict, the board shall assess a second construction assessment.

(3) A maintenance and operation assessment, which shall be levied for the purpose of defraying the cost of maintaining and operating the works constructed within any subdistrict. On or before November 1 of each year the board shall determine the probable cost of maintaining and operating the works within each subdistrict during the ensuing calendar year.

(4) An improvement assessment, which shall be levied for the purpose of defraying the cost of making improvements within a subdistrict. On or before November 1 of each year the board shall determine the probable cost of making any necessary improvements to any completed works within each subdistrict. No improvement assessment levied in any one year shall be greater in amount than one percent of all construction assessments levied against the same tract of land. In case of an emergency the board may, upon the approval of the owners of over half of the lands affected, levy, assess and collect a special improvement assessment. The board may, in its discretion, levy an improvement assessment within the limitations above provided in order to accumulate a fund to make improvements in future years. [Amended by 1959 c.605 §1]

553.520 Apportioning assessments; adjustment of benefits. (1) After determining the sum of money to be raised by any assessment, except a preliminary assessment, the board shall apportion the same among the lands liable therefor. Benefits used as a basis for apportioning maintenance and operation assessments and improvement assessments, except assessments levied for the operation, maintenance and improvement of irrigation works, may be adjusted from year to year in such manner that the adjusted benefits are in the same proportion to the new assessed valuation of the tract of land as the original appraised benefits are in proportion to the original appraised benefits plus the original assessed valuation of such tract of land.

(2) Adjusted benefits shall be made the basis for apportioning the maintenance and operation assessments and the improvement assessment, and shall not be used as a basis for apportioning construction assessments or preliminary assessments. Benefits determined to be accruing to lands upon the construction of irrigation works shall not be adjusted in any manner.

553.530 Disposition of funds received. (1) All sums of money received by a district in payment of any assessment shall be kept in a separate fund for each subdistrict from which the assessment is collected. All funds remaining unexpended in any construction fund after the payment of all costs incurred for the construction of works in any subdistrict shall be paid into the improvement fund for such subdistrict, and any funds remaining on hand in any maintenance and operation fund for any year for any subdistrict shall likewise be paid into the improvement fund of that subdistrict.

(2) The district shall maintain a general fund in which shall be kept all funds received by the district for paying the general

overhead and other expenses of the district. The district shall pay into the general fund such portion of each of the special assessments levied against lands within subdistricts as is necessary to pay the general expenses and overhead of the district.

553.540 Assessments to be levied by order of board; filing copy thereof; notice; lien; time for payment; interest. (1) All assessments shall be levied by an order of the board. The order shall state the description of the land assessed, the name of the owner of the land as such name appears on the records of the district, the type and kind of assessment, the amount of the assessment due, and the due date. It shall not be necessary to issue a separate order for each tract of land in a subdistrict, and any number of tracts in the same subdistrict and the same county may be included in one order. A copy of the order levying an assessment, certified and acknowledged by the secretary of the district, shall be filed with the recorder of conveyances of the county in which the land is located. Upon being filed, the assessment shall constitute a lien against the land assessed, prior in time to any other liens, rights or interests in the tracts of land described except liens for taxes levied by the state or county.

(2) Notice of all assessments levied by a district shall be given to the landowner by mail and shall be payable on the thirtieth day after such notice is mailed. All assessments paid after the due date shall be charged interest at the rate of six percent per annum. All assessments shall be paid to the secretary-treasurer of the district and a receipt shall be issued therefor. From time to time the board shall order the satisfaction of the liens against lands on which assessments have been paid, and a copy of such order shall be filed with the recorder of conveyances of the county in which the lands are located.

553.550 Loans; assignment of assessments as security for. A district may borrow money and secure repayment of the same by the assignment of any assessments theretofore levied. Whenever a levied assessment is assigned to secure the repayment of any sum of money borrowed, the assessment shall be paid to the assignee thereof or his agent.

553.560 Foreclosure of assessment; procedure; district may bid and purchase; deed; right of redemption. (1) After the date fixed as the time when an assessment shall become due, the board, by resolution, shall direct that all delinquent assessments then unpaid, whether for operation and maintenance, improvement, construction, or other purposes, shall be foreclosed by the district. Such foreclosure shall follow the general procedures of a suit in equity and shall be filed in the circuit court of the county in which the land to be foreclosed is situated. If land in two or more counties is to be foreclosed, separate proceedings shall be commenced in each county as to the lands therein. The district may recover in such suit the costs and disbursements and other expenses of foreclosure, together with a reasonable sum as attorney's fees to be allowed by the court. Any number of tracts of lands, whether they are delinquent for the same or any number of assessments or for the same or several years, may be foreclosed in the same suit.

(2) The decree in such suit shall order the sale of such property and fix the time for holding the sale, which shall be not more than four weeks from the date of the decree, and shall order the sheriff of the county to hold the same as other foreclosure sales, upon giving notice thereof for two consecutive weeks prior to the day of sale, by publication of notice once each week in a newspaper published in the county in which the land to be sold is situated and by posting notices in three public and conspicuous places in the county at least two weeks prior to the day of sale.

(3) The district may be a bidder and purchaser of property upon such sale. Upon such sale the sheriff immediately shall issue a deed to the property sold, and no right of redemption shall exist.

553.570 Withdrawal of land from foreclosure sale; payment of lien, taxes and proportion of costs. At any time prior to sale or at the time of sale as provided by ORS 553.560, the former owner, assessment payer or holder of legal or equitable title or lien upon or to any tract of land included in the foreclosure and decree may pay the amount of the lien foreclosed, together with such amount of state and county taxes as the district may have paid and a proportionate amount of the costs incurred in such foreclosure proceedings, and withdraw the tract of land from the foreclosure sale. If made prior to the decree, the payment shall be tendered to the clerk of the court, together

with a written appearance in the suit. If made after the decree is entered, the payment shall be tendered to the sheriff ordered to hold the sale. If payment is made before decree, the tract of land then shall be excluded from the foreclosure proceedings. If payment is made after decree, the district shall issue satisfaction of lien to such former owner, assessment payer or holder of equitable or legal title upon the tract of land and file the same for record.

553.580 Payment of state and county taxes by district. At any time after any assessment levied under this chapter becomes delinquent, the district may pay any state and county taxes due or delinquent against such tracts of land as are delinquent in the payment of the district assessment, and add such amount to and foreclose the same as part of the lien of the district against such tracts of land.

553.590 Claims; presentation; payment. All claims against the district shall be presented to the district board for allowance or rejection. Upon allowance, the claim shall be attached to a voucher verified by the claimant or his agent, approved by the president of the board and countersigned by the secretary, and directed to the treasurer of the district for the issuance of a check for payment of the claim against the proper fund in the custody of the district. Each claim presented and approved by the board shall have indorsed upon it the particular fund from which it is to be paid by the treasurer. Claims against the district for administrative expense and for any costs or expenses which are not properly chargeable directly to a particular subdistrict shall, when allowed by the district board, be paid from the general fund of the district.

553.600 to 553.700 [Reserved for expansion]

CONTRACTS WITH OTHER GOVERNMENTAL UNITS FOR CONSTRUCTION OF WORKS; TAX TO MEET

553.710 Contracts with other governmental agencies or units; levy of tax to meet obligations under. After the creation of a subdistrict, a water control district may enter into a contract with the Government of the United States or with the State of Oregon or with any agency or subdivision thereof or with any municipal corporation for the construction of works within the subdistrict or outside of the subdistrict for the benefit of lands within the subdistrict. If by reason of any such contract a district becomes obligated to contribute all or any part of the cost of constructing such works or to furnish rights of way or to pay for the cost of improvements to be made in conjunction with the construction of such works or to maintain and operate the works after the construction thereof, the district may levy an ad valorem tax against the lands within the subdistrict for the purpose of raising funds with which to discharge its contract obligations and to pay the costs and expenses incurred by the district in connection therewith. The levy of an ad valorem tax for such purposes shall be in lieu of and not in addition to any other method of levying assessments by a water control district.

553.720 Manner of collecting tax; budget; equalizing levy. The ad valorem tax provided for in ORS 553.710 shall be levied and collected in the manner otherwise provided by law for the levy and collection of real property taxes. The board shall prepare a budget in the form, manner and time prescribed in ORS 294.305 to 294.415 (the local budget law), for each subdistrict for which taxes are to be levied and assessed, and in accordance therewith shall fix the amount of money to be raised by taxation for each subdistrict. Thereafter the levy shall be equalized and the tax collected and turned over to the district as otherwise provided by law for public corporations.

553.730 Limitation on tax levy. No levy of an ad valorem tax under ORS 553.710 for any one year shall exceed two percent of the assessed valuation of the lands within a subdistrict. If the total sum of money required to be raised under the terms of a contract entered into by a district, together with the sum of money to be raised to pay the costs and expenses of the district incurred in connection therewith, exceeds such limitation, a levy for each year thereafter shall be made by the district until the entire contract obligation has been discharged.

553.740 Issuance of warrants. After the amount of a levy under ORS 553.710 is determined and turned over to the county assessor, a district may issue warrants to an amount not in excess of 75 percent of the amount of the levy. The warrants shall be serially numbered and shall bear interest of not more than six percent and shall be paid

by the treasurer of the district in the order of issuance upon receipt of funds from the county treasurer.

553.750 to 553.800 [Reserved for expansion]

APPEALS

553.810 Appeal to county court; notice; manner of hearing; order. All orders of a board levying assessments or otherwise affecting the rights of any landowner or person having an interest in a tract of land may be appealed to the county court having jurisdiction over the district. Notice of appeal shall be given in writing and filed with the court, and a copy served on the board or any of its officers, prior to the date on which the assessment is to be payable or the order appealed from is to be effective. All such appeals shall be heard by the court in a summary manner. After hearing an appeal the court shall issue an order thereon in accordance with its determination.

553.820 Appeal to circuit court; trial de novo; review by Supreme Court. All orders of the county court, including orders made on appeal from orders of the board, may be appealed by the district or any party in interest to the circuit court which has jurisdiction over the land affected by the order appealed from. On an appeal to the circuit court all questions of fact shall be tried de novo as an action at law before a jury, unless a jury is waived as otherwise provided by law. Any party to an appeal may appeal from the judgment of the circuit court to the Supreme Court, as otherwise provided by law.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 1, 1959.

Sam R. Haley
Legislative Counsel