

# TITLE 36

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# Chapter 431

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**STATE ADMINISTRATION**

**431.005** [1973 c 358 §1; repealed by 1977 c 751 §39]

**431.010** [Amended by 1967 c 461 §1; 1969 c 695 §7; 1971 c.650 §5; repealed by 1973 c 358 §15]

**431.015** [1973 c.358 §2; repealed by 1977 c.751 §39]

**431.019** [1973 c 358 §2a; repealed by 1977 c 751 §39]

**431.020** [Amended by 1967 c 461 §2; 1971 c.650 §6; repealed by 1973 c.358 §15]

**431.023** [1973 c 358 §4; repealed by 1977 c.751 §39]

**431.025** [1971 c 650 §11; repealed by 1973 c 358 §15]

**431.030** [Repealed by 1971 c.650 §51]

**431.035 Assistant Director's authority to delegate functions.** (1) The Assistant Director for Health may delegate to any of the officers and employes of the Health Division the exercise or discharge in the assistant director's name of any power, duty or function of whatever character vested in or imposed upon the assistant director by the laws of Oregon. However, the power to administer oaths and affirmations, subpoena witnesses, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records may be exercised by an officer or employe of the Health Division only when specifically delegated in writing by the assistant director.

(2) The official act of any such person so acting in the assistant director's name and by his authority shall be deemed to be an official act of the assistant director. [1973 c 829 §2]

**431.040** [Amended by 1969 c 314 §39; 1971 c.650 §7; repealed by 1973 c 358 §15]

**431.045 Public Health Officer; appointment; duties to include being Deputy Assistant Director for Health.** (1) The Assistant Director for Health, after interview of qualified persons, shall appoint a physician licensed by the Board of Medical Examiners for the State of Oregon as the Public Health Officer. The Public Health Officer shall be a person who is certified by the American Board of Preventive Medicine.

(2) The Public Health Officer shall serve as Deputy Assistant Director for Health and be responsible to the Assistant Director for Health for the medical and paramedical aspects of the health programs within the division, and such other duties as the assistant director may prescribe.

(3) The Public Health Officer and his personal secretary shall be in the unclassified service, and their salaries shall be set as pro-

vided by law. [1971 c.650 §2; 1973 c.358 §5; 1977 c 267 §18]

**431.050** [Amended by 1967 c 461 §3; repealed by 1971 c 650 §51]

**431.053** [1973 c.358 §3, repealed by 1977 c.751 §39]

**431.055** [1967 c.363 §2; repealed by 1971 c.650 §51]

**431.060** [Repealed by 1971 c 650 §51]

**431.065 Custody of records.** (1) The Assistant Director for Health may designate employes to be custodian of records within any of the administrative units of the Health Division, and persons so designated shall have the duties and powers of custodians of public records as prescribed by law.

(2) Such designation shall be in writing and notice thereof shall be filed in the offices of the Secretary of State and the assistant director, and in the administrative unit to which the authorization applies.

(3) Authority conferred upon employes of the Health Division under this section is in addition to that conferred upon the assistant director by statute. The assistant director shall be responsible for the acts of designees under this section. [1971 c 37 §2; 1977 c.582 §7]

**431.070** [1961 c.723 §1, 1969 c 314 §40; repealed by 1971 c.650 §51]

**ENFORCEMENT OF HEALTH LAWS AND RULES**

**431.110 General powers of Health Division.** The Health Division shall:

(1) Have direct supervision of all matters relating to the preservation of life and health of the people of the state.

(2) Keep the vital statistics and other health related statistics of the state.

(3) Make sanitary surveys and investigations and inquiries respecting the causes and prevention of diseases, especially of epidemics.

(4) Investigate, conduct hearings and issue findings in connection with annexations proposed by cities as provided in ORS 222.850 to 222.915.

(5) Have full power in the control of all communicable diseases.

(6) Have authority to send a representative of the division to any part of the state when deemed necessary.

(7) From time to time, publish and distribute to the public in such form as the division determines, such information as in its judg-

ment may be useful in carrying on the work or purposes for which the division was established. [Amended by 1955 c 105 §1, 1967 c 624 §18, 1971 c 650 §9, 1977 c 582 §8]

**431.120 Duties of Health Division.** The Health Division shall:

(1) Enforce state health policies and rules.

(2) Have the custody of all books, papers, documents and other property belonging to the State Health Commission, which may be deposited in the division's office.

(3) Give such instructions as may be necessary, and forward them to the various local public health administrators throughout the state.

(4) Routinely conduct epidemiological investigations for each case of sudden infant death syndrome including, but not limited to, the identification of risk factors such as birth weight, maternal age, prenatal care, history of apnea and socioeconomic characteristics. The division may conduct such investigations through local health departments only upon adoption by rule of a uniform epidemiological data collection method. [Amended by 1971 c 650 §10, 1977 c 582 §9, 1981 c 385 §1]

**431.130** [Amended by 1959 c 629 §5, 1959 c 684 §2, 1961 c 725 §10, 1963 c 32 §1, 1965 c 362 §3, 1969 c 14 §2; 1969 c 641 §16, 1971 c 195 §1, 1971 c 413 §13, 1971 c 763 §13, 1973 c 408 §33, 1973 c 833 §41, 1973 c 835 §233, repealed by 1977 c 582 §61]

**431.140 Effect of rules.** (1) All rules of the Health Division shall have the force and effect of law.

(2) All state and local officers and employees, including peace officers, shall enforce such rules subject to the authority of the Assistant Director for Health. [Amended by 1959 c 314 §21, 1973 c 833 §42, 1977 c 582 §10]

**431.150 Enforcement of health laws generally.** (1) The local public health administrators are charged with the strict and thorough enforcement of the public health laws of this state in their districts, under the supervision and direction of the Health Division. They shall make an immediate report to the division of any violation of such laws coming to their notice by observation, or upon the complaint of any person, or otherwise.

(2) The Health Division is charged with the thorough and efficient execution of the public health laws of this state in every part of the state, and with supervisory powers over all local public health administrators, to the

end that all the requirements are complied with.

(3) The Health Division may investigate cases of irregularity or violation of law. All local public health administrators shall aid the division, upon request, in such investigation.

(4) When any case of violation of the public health laws of this state is reported to any district attorney or official acting in said capacity, such official shall forthwith initiate and promptly follow up the necessary proceedings against the parties responsible for the alleged violations of law.

(5) Upon request of the Health Division, the Attorney General shall likewise assist in the enforcement of the public health laws of this state. [Amended by 1959 c 314 §22; 1971 c 650 §12, 1973 c 833 §43, 1973 c 835 §165, 1974 s s c 36 §12; 1977 c 582 §11]

**431.155 Restraining violation of public health laws.** (1) Whenever it appears to the Health Division that any person is engaged or about to engage in any acts or practices which constitute a violation of any statute administered by the division or its assistant director, or any rule or order issued thereunder, the division may institute proceedings in the circuit courts to enforce obedience thereto by injunction, or by other processes, mandatory or otherwise, restraining such person, or its officers, agents, employes and representatives from further violation of such statute, rule or order, and enjoining upon them obedience thereto.

(2) The provisions of this section are in addition to and not in substitution of any other enforcement provisions contained in any statute administered by the Health Division or its assistant director. [1967 c 94 §2; 1971 c 650 §13; 1977 c.582 §12]

**431.160 Jurisdiction and commencement of prosecutions.** (1) District courts have concurrent jurisdiction with the circuit courts of all prosecutions arising under the public health statutes.

(2) The district attorney, county attorney or Attorney General may institute prosecutions for violation of any public health statute by information, by indictment or by complaint verified before any magistrate. [Amended by 1959 c 314 §23, 1973 c 833 §44, 1977 c 582 §13]

**431.170 Enforcing health laws and rules when local officers are delinquent.**

(1) The Assistant Director for Health shall take direct charge of the functions that are necessary to preserve the public health in any county or district whenever any county or district official fails or refuses to administer or enforce the public health laws or rules which he, his department or board is charged to enforce.

(2) The Assistant Director for Health may call to his aid such assistance as is necessary for the enforcement of such statutes and rules, the expense of which shall be borne by the county or district making the use of this procedure necessary, to be paid out of the respective county or district treasury upon vouchers properly certified by the Assistant Director for Health. [Amended by 1959 c 314 §24, 1973 c 833 §45; 1977 c 582 §14]

**431.180 Interference with individual's selection of physician or treatment or with religious practice prohibited.** Nothing in the public health laws shall be construed to empower or authorize the Health Division or its representatives, or any county or district board of health or its representatives to interfere in any manner with the individual's right to select the physician or mode of treatment of his choice, nor interfere with the practice of any person whose religion treats or administers to the sick or suffering by purely spiritual means. However, sanitary laws and rules must be complied with. [Amended by 1977 c 582 §15]

**431.190 Advisory board on health care professions; duties; purpose of board rules.** The Assistant Director for Health shall appoint, not later than 60 days after October 4, 1977, an advisory board under ORS 431.325 to study the practices and procedures of the health care professions in this state and to recommend rules relating to the auditing of health care practices in hospitals which will:

(1) Promote standard record keeping by hospitals and persons practicing any of the healing arts in hospitals;

(2) Establish those criteria most appropriate for determining the proper objects of such auditing; and

(3) Insure auditing of those practices and procedures most relevant to the causes and occurrence of professional negligence in hospitals. [1977 c 448 §8]

**FINANCIAL  
ADMINISTRATION; SURPLUS  
PROPERTY; FEDERAL AID**

**431.210 Health Division Account.** (1) There is established in the General Fund the Health Division Account, classified separately as to federal and other moneys.

(2) All fines, fees, penalties, federal apportionments or contributions and other moneys received by the Health Division shall be turned over to the State Treasurer not later than the 10th day of the calendar month next succeeding their receipt by the division and shall be credited to the Health Division Account.

(3) All moneys credited to the Health Division Account hereby are appropriated and made available for the payment of expenses of the Health Division. [Amended by 1971 c 650 §14, 1973 c 427 §5; 1977 c 582 §16]

**431.220 Record of moneys in Health Division Account.** The division shall keep a record of all moneys deposited in the Health Division Account. This record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged. [Amended by 1973 c 427 §6; 1977 c 582 §17]

**431.230 Emergency or revolving fund.** (1) The Assistant Director for Health may request in writing the Executive Department to, and when so requested, the Executive Department shall, draw a warrant on the Health Division Account in favor of the Assistant Director for Health in a sum not exceeding \$20,000, which sum shall be used by the assistant director as an emergency or revolving fund.

(2) The emergency or revolving fund shall be deposited with the State Treasurer, and shall be at the disposal of the Assistant Director for Health. It may be used to pay advances for salaries, travel expenses or any other proper claim against, or expense of, the division.

(3) All claims for reimbursement of advances paid from the emergency fund shall be approved by the Health Division. When such claims are so approved, warrants covering them shall be drawn in favor of the Assistant Director for Health and charged against the appropriate fund or account, and shall be used to reimburse the emergency or revolving fund.

[Amended by 1973 c 427 §7, 1975 c 614 §16]

431.240 [Repealed by 1955 c 147 §1]

**431.250 Federal grants to be handled by Department of Human Resources; disbursement; planning.** (1) The Department of Human Resources hereby is designated as the state agency to apply to and receive from the Federal Government or any agency thereof such grants for promoting public health and the prevention of disease, including grants for cancer control and industrial hygiene programs, as may be available to this state or any of its political subdivisions or agencies. The department may designate any of its divisions to make applications and receive funds for the purposes set forth in this subsection.

(2) For the purposes of subsection (1) of this section, the department shall:

(a) Disburse or supervise the disbursement of all funds made available at any time by the Federal Government or this state for those purposes.

(b) Adopt, carry out and administer plans for those purposes. Plans so adopted shall be made state wide in application in so far as reasonably feasible, possible or permissible, and shall be so devised as to meet the approval of the Federal Government or any of its agencies, not inconsistent with the laws of the state.

(3) The State Health Planning and Development Agency is hereby designated as the state agency to apply to and receive from the Federal Government or any agency thereof such grants for the administration of the Federal Act and including grants for health care facility construction or remodeling.

(4) For the purposes of subsection (3) of this section, the state agency shall:

(a) Disburse or supervise the disbursement of all funds made available at any time by the Federal Government or this state for those purposes.

(b) Administer plans for those purposes. Such plans shall be made state wide in application in so far as reasonably feasible, possible or permissible, and shall be so devised as to meet the approval of the Federal Government or any of its agencies, not inconsistent with the laws of the state. [Amended by 1961 c 706 §20a; 1967 c 343 §1; 1971 c.650 §15, 1973 c 829 §20, 1977 c 751 §34, subsections (3), (4) renumbered 442 110]

## STATE LABORATORY

**431.310 Bacteriological and other examinations by state laboratory; fees.** (1) For the better protection of the public health the laboratory of the Health Division shall make bacteriological and other examinations of water, milk, blood, secretions or tissues required by any state, county or city institution, or officer, and may make such examinations for any licensed physician in accordance with the rules of the division.

(2) The division shall establish by rule and collect fees for tests performed in the state public health laboratory, not to exceed:

(a) \$10 per specimen for various metabolic disease tests;

(b) \$25 per specimen for mycology and virology tests;

(c) \$40 per specimen for reference culture tests; and

(d) \$2 per specimen for toxoplasmosis tests.

(3) All money received for such tests shall be deposited in the Health Division Account to be used for expenses of the division. [Amended by 1977 c.582 §18, 1981 c.630 §1]

**Note:** Section 5, chapter 630, Oregon Laws 1981, provides:

**Sec. 5.** The fee established by ORS 431.310 (2)(a) shall not be collected after June 30, 1983. The Health Division shall report to the Sixty-second Legislative Assembly on the economic impact of the fee and the effect of its imposition on infant health.

**431.320** [Repealed by 1967 c 146 §1 (431.330, 431.335, 431.340, 431.345 and 431.350 enacted in lieu of 431.320)]

## LICENSING OF HEALTH FACILITIES

**431.325 Authority of Health Division in licensing health facilities; advisory boards.** (1) The Health Division is the authority responsible for licensing of health facilities in this state. The Assistant Director for Health may appoint advisory boards, the members of which shall be skilled by training or experience in the areas of their responsibilities and who shall serve at his pleasure, who shall assist and advise him in carrying out his responsibilities and those of the division in the licensing, approval or supervision of clinical laboratories, hospitals, nursing homes, homes for the aged, group care homes, mobile home and tourist facilities or swimming facili-

ties, or in the performance of any other duties of the assistant director or the division, as the assistant director may in his discretion deem appropriate.

(2) Members of such boards shall be entitled to compensation and expenses as provided in ORS 292.495.

(3) The Health Division shall establish general or specific standards of health and sanitation applicable to health facilities, and shall implement and require compliance with such standards. [1971 c.650 §17; 1977 c.582 §19]

### CONFERENCE OF LOCAL HEALTH OFFICIALS

**431.330 Conference of Local Health Officials; officers of conference.** (1) The Conference of Local Health Officials is created. The conference shall consist of all local health officers and public health administrators, appointed pursuant to ORS 431.418 and such other local health personnel as may be included by the rules of the conference.

(2) The Conference of Local Health Officials shall select one of its members as chairman, another as vice chairman and another as secretary with such powers and duties necessary to the performance of the functions of such offices as the conference shall determine. The chairman, after consultation with the Assistant Director for Health, shall appoint from the conference membership an executive committee. The executive committee with the chairman shall advise the Assistant Director for Health in the administration of ORS 431.330 to 431.350. [1967 c 146 §2 (enacted in lieu of 431 320), 1977 c.582 §20; 1979 c 96 §1]

**431.335 Meetings of conference; notice; expenses of members and officers of conference.** (1) The Conference of Local Health Officials shall meet at least annually at a place, day and hour determined by the executive committee and the Assistant Director for Health. The conference may meet specially at such other times as the Assistant Director for Health or the executive committee considers necessary.

(2) The Assistant Director for Health shall cause at least 10 days' notice of each meeting date to be given to the members. The chairman or his authorized representative shall preside at all meetings of the conference.

(3) Each conference member shall receive from the local board which he represents from

funds available under ORS 431.510, his actual and necessary travel and other expenses incurred in attendance at no more than two meetings of the conference per year. Additionally, subject to applicable law regulating travel and other expenses for state officers, a local health official who is a member of the executive committee of the conference or who is the chairman shall receive from funds available to the Health Division, his actual and necessary travel and other expenses for attendance at no more than six meetings per year of the executive committee called by the Health Division. [1967 c 146 §3 (enacted in lieu of 431.320), 1977 c.582 §21]

**431.340 Recommendations of conference.** The Conference of Local Health Officials may submit to the Health Division such recommendations on the rules and standards specified in ORS 431.345 and 431.350. [1967 c.146 §6 (enacted in lieu of 431.320), 1977 c.582 §22]

**431.345 Minimum standards for financial assistance to local boards of health.** In order to establish criteria for local boards of health to qualify for such financial assistance as may be made available, the Health Division, upon receipt of written approval from the Conference of Local Health Officials shall adopt minimum standards governing:

(1) Education and experience for professional and technical personnel employed in local health departments, such standards to be consistent with any applicable merit system.

(2) Organization, operation and extent of activities which are required or expected of local health departments to carry out their responsibilities in implementing the public health laws of this state and the rules of the Health Division. [1967 c.146 §5 (enacted in lieu of 431.320); 1977 c.582 §23]

**431.350 State board to adopt rules for ORS 431.330 to 431.350.** Upon receipt of written approval from the Conference of Local Health Officials the Health Division shall adopt rules necessary for the administration of ORS 431.330 to 431.350. [1967 c 146 §4 (enacted in lieu of 431 320), 1977 c 582 §24]

**LOCAL BOARDS OF HEALTH**

**431.405 Purpose of ORS 431.405 to 431.510.** It is the purpose of ORS 431.405 to 431.510 to encourage improvement and standardization of health departments in order to provide a more effective and more efficient public health service throughout the state. [1961 c 610 §1]

**431.410 Boards of health for counties.** The governing body of each county shall constitute a board of health ex officio for each county of the state and may appoint a public health advisory board as provided in ORS 431.412 (5) to advise the governing body on matters of public health. [Amended by 1953 c 189 §3, 1961 c 610 §2, 1973 c 829 §20a]

**431.412 County board of health; formation; composition; advisory board.** (1) The governing body of any county shall establish a county board of health, when authorized so to do by a majority of voters of the county at any general or special election, and may, if such authorization is made, establish a public health advisory board as provided in subsection (5) of this section.

(2) The county board of health shall consist of:

(a) One member of the county governing body selected by the body.

(b) One member of the administrative school board, the county school board or the education service district board who resides in the county and is selected by the education service district board, or the designee of that member.

(c) One physician who has been licensed to practice medicine in this state by the Board of Medical Examiners for the State of Oregon.

(d) One dentist who has been licensed to practice dentistry in this state by the State Board of Dental Examiners.

(e) Three others.

(3) The members referred to in paragraphs (c) to (e) of subsection (2) of this section shall be appointed by the members serving under paragraphs (a) and (b) of subsection (2) of this section. The term of office of each of such appointed members shall be four years, terms to expire annually on February 1. The first appointments shall be for terms of one, two, three or four years, as designated by the appointing members of the board.

(4) Whenever a county board of health is created under this section, such board shall be

in lieu of the board provided for in ORS 431.410.

(5) The governing body of the county may, as provided in subsection (1) of this section, appoint a public health advisory board for terms of four years, the terms to expire annually on February 1. The first appointments shall be for terms of one, two, three or four years as designated by the governing body. The advisory board shall meet regularly to advise the county board of health on matters of public health. The advisory board shall consist of:

(a) One registered nurse licensed by the Oregon State Board of Nursing who has had public health training or experience.

(b) One optometrist licensed by the Oregon Board of Optometry.

(c) One chiropractor licensed by the State Board of Chiropractic Examiners.

(d) One veterinarian licensed by the Oregon State Veterinary Medical Examining Board.

(e) One sanitarian registered with the Sanitarians Registration Board of the Health Division.

(f) Two other persons who are well informed on public health matters. [Formerly 431 470, 1963 c 544 §49, 1977 c 582 §25; 1981 c.127 §1]

**431.414 District board of health; formation; composition; advisory board.** (1) Two or more contiguous counties may combine for the purpose of forming a district health unit when the governing body of each of the counties concerned adopt resolutions signifying their intention to do so.

(2) The governing bodies of the counties forming the district may meet together, elect a chairman and transact business as a district board of health whenever a majority of the members of the governing bodies from each of the participating counties are present at any meeting.

(3) In lieu of the procedure in subsection (2) of this section, the governing bodies of the counties forming the district may, by a two-thirds vote of the members from each participating county, establish and, except as provided in paragraph (f) of this subsection, appoint a district board of health which shall consist of:

(a) One member from each participating county governing body selected by such body.

(b) One member from a school administrative unit within the district.

(c) One member from the administrative staff of a city within the district.

(d) Two physicians who have been licensed to practice medicine in this state by the Board of Medical Examiners for the State of Oregon and who are residents of the district.

(e) One dentist who has been licensed to practice dentistry in this state by the State Board of Dental Examiners and who is a resident of the district.

(f) One person who is a resident of the district and who is to be appointed by the members serving under paragraphs (a) to (c) of this subsection.

(4) The term of office of the members referred to in paragraphs (c) to (f) of subsection (3) of this section shall be four years, the terms to expire annually on February 1. The first appointments shall be for terms of one, two, three or four years, as may be designated by two-thirds vote of the members from each participating county.

(5) Whenever a district board of health is created under this section, such board shall be in lieu of the board provided for in ORS 431.410 or 431.412.

(6) The governing bodies of the counties making up the district may appoint a public health advisory board for terms of four years, the terms to expire annually on February 1. The first appointments shall be for terms of one, two, three or four years as designated by the governing body. The advisory board shall meet regularly to advise the district board of health on matters of public health. The advisory board shall consist of:

(a) One registered nurse licensed by the Oregon State Board of Nursing who has public health training or experience.

(b) One optometrist licensed by the Oregon Board of Optometry.

(c) One chiropractor licensed by the State Board of Chiropractic Examiners.

(d) One veterinarian licensed by the Oregon State Veterinary Medical Examining Board.

(e) One sanitarian registered with the Sanitarians Registration Board of the Health Division.

(f) Two other persons who are well informed on public health matters. [Formerly 431 610, 1973 c 829 §21, 1977 c 582 §26]

**431.415 Powers and duties of local health boards; fee schedules.** (1) The district or county board of health is the policy-making body of the county or district in implementing the duties of local departments of health under ORS 431.416.

(2) The district or county board of health shall adopt rules necessary to carry out its policies under subsection (1) of this section. The county or district board of health shall adopt no rule or policy which is inconsistent with or less strict than any public health law or rule of the Health Division.

(3) With the permission of the county governing body, a county board may, and with the permission of the governing bodies of the counties involved, a district board may, adopt schedules of fees for public health services reasonably calculated not to exceed the cost of the services performed. The health department shall charge fees in accordance with such schedule or schedules adopted. [1961 c 610 §6; 1973 c.829 §22; 1977 c 582 §27]

**431.416 Local departments of health; duties.** The district or county department of health shall:

(1) Administer and enforce the rules of the county or district board of health and public health laws and the rules of the Health Division which each local public health administrator or the county or district board of health is charged with carrying out, or which the board or the county commission has by agreement with the Health Division contracted or has been delegated to carry out.

(2) Conduct activities necessary for the preservation of health or prevention of disease in the area under its jurisdiction. [1961 c 610 §8, 1973 c 829 §23; 1977 c 582 §28]

**431.418 Local public health administrator; health officer; duties; salary.** (1) Each district or county board of health shall appoint a qualified public health administrator to supervise the activities of the district or county department in accordance with law. In making such appointment, the district or county board of health shall consider standards for selection of administrators prescribed by the Health Division.

(2) Where the public health administrator is a physician licensed by the Board of Medical Examiners for the State of Oregon, the administrator shall serve as health officer for the district or county board of health. Where the public health administrator is not a physi-

cian licensed by the Board of Medical Examiners for the State of Oregon, the administrator will employ or otherwise contract for services with a health officer who shall be a licensed physician and who will perform those specific medical responsibilities requiring the services of a physician and shall be responsible to the public health administrator for the medical and paramedical aspects of the health programs.

(3) The public health administrator shall:

(a) Serve as the executive secretary of the district or county health board, act as the administrator of the district or county health department and supervise the officers and employes appointed under paragraph (b) of this subsection.

(b) Appoint with the approval of the health board, administrators, medical officers, public health nurses, sanitarians and such other employes as are necessary to carry out the duties and responsibilities of the office.

(c) Provide the board at appropriate intervals information concerning the activities of the department and submit an annual budget for the approval of the county governing body except that, in the case of the district public health administrator, the budget shall be submitted to the governing bodies of the participating counties for approval.

(d) Act as the agent of the Health Division in enforcing state public health laws and rules of the Health Division, including such sanitary inspection of hospitals and related institutions as may be requested by the Health Division.

(e) Perform such other duties as may be required by law.

(4) The public health administrator shall serve until removed by the appointing board. The public health administrator shall engage in no occupation which conflicts with official duties and shall devote full time to duties as public health administrator. However, if the board of health is not created under ORS 431.412, it may, with the approval of the Assistant Director for Health, require less than full-time service of the public health administrator.

(5) The public health administrator shall receive a salary fixed by the appointing board and shall be reimbursed for actual and necessary expenses incurred in the performance of duties. [1961 c 610 §7, 1973 c 829 §24; 1977 c 582 §29, 1981 c 127 §2]

**431.420** [Amended by 1961 c 610 §9, 1973 c 829 §25, 1977 c 582 §30, repealed by 1981 c 127 §4]

**431.430** [Amended by 1961 c 610 §10, 1973 c.829 §26, repealed by 1981 c 127 §4]

**431.440 Public health administrators have police powers.** All district and county public health administrators shall possess the powers of constables or other peace officers in all matters pertaining to the public health. [Amended by 1961 c 610 §11, 1973 c 829 §27]

**431.450** [Amended by 1961 c 610 §14, 1973 c 829 §28; repealed by 1981 c 127 §4]

**431.460** [Amended by 1961 c 610 §12, 1973 c 829 §29, repealed by 1981 c 127 §4]

**431.470** [Amended by 1961 c 610 §3, renumbered 431 412]

**431.480 City boards abolished; expenditure of funds obtained from school district.** (1) All city boards of health are abolished.

(2) Any school district may appropriate money to be expended for public health measures in such school district by the county or district board of health. [Amended by 1961 c 610 §5; 1973 c 829 §30]

**431.490** [Repealed by 1961 c 610 §18]

**431.500** [Amended by 1953 c 189 §3; repealed by 1961 c 610 §18]

**431.510 Quarters and funds for local health boards.** (1) The governing body of the county shall provide adequate quarters and facilities for the office and health work of the county board of health and shall appropriate sufficient funds for the administration of the board and the operation of the health department.

(2) Where a district board is established under ORS 431.414, the governing body of each participating county shall appropriate annually a sum which shall be specifically designated for the operation of the board of health and the district department of health.

[Amended by 1961 c 610 §13, 1973 c 829 §31]

**431.520 Disposal of local health records.** Public records, as defined in ORS 192.005, of district and county departments of health and community mental health clinics may be destroyed or otherwise disposed of in accordance with rules prescribed by the State Archivist. However, no records shall be required to be maintained for more than seven years from the date of the last entry for purposes of preserving evidence for any action, suit or proceeding. [1969 c 446 §2; 1973 c 829 §32]

**431.530 Authority of local health administrator in emergency.** (1) The local public health administrator may take any action which the Health Division or its assistant director could have taken, if an emergency endangering the public health occurs within the jurisdiction of any local public health administrator and:

(a) The circumstances of the emergency are such that the Health Division or its assistant director cannot take action in time to meet the emergency; and

(b) Delay in taking action to meet the emergency will increase the hazard to public health.

(2) Any local public health administrator who acts under subsection (1) of this section shall report the facts constituting the emergency and any action taken under the authority granted by subsection (1) of this section to the Assistant Director for Health by the fastest possible means. [1973 c 829 §9; 1977 c 582 §31]

**431.550 Authority of Health Division to collect information from local public health administrators.** Nothing in ORS 431.412, 431.418 and this section shall be construed to limit the authority of the Health Division to require facts and statistics from local public health administrators under its general supervisory power over all matters relating to the preservation of life and health of the people of the state. [1981 c.127 §3]

**431.605** [1971 c.650 §44; repealed by 1973 c 358 §15]

**431.610** [Amended by 1961 c 610 §4, renumbered 431 414]

**431.615** [1971 c 650 §45, repealed by 1973 c 358 §15]

**431.620** [Repealed by 1961 c 610 §18]

**431.625** [1971 c 650 §46, repealed by 1977 c 582 §61 and 1977 c 751 §17a]

**431.630** [Repealed by 1961 c 610 §18]

**431.640** [Repealed by 1961 c.610 §18]

**431.650** [Repealed by 1961 c 610 §18]

**431.660** [Repealed by 1961 c 610 §18]

**431.670** [Repealed by 1961 c 610 §18]

### HEALTH HAZARD ANNEXATIONS OR DISTRICT FORMATION

**431.705 Definitions for ORS 431.705 to 431.760.** As used in ORS 431.705 to 431.760, unless the context requires otherwise:

(1) "Assistant director" means the Assistant Director for Health.

(2) "Affected territory" means an area that is the subject of a proceedings under ORS 431.705 to 431.760 where there is a danger to public health or an alleged danger to public health.

(3) "Boundary commission" means a local government boundary commission created under ORS 199.410 to 199.430, 199.435 to 199.464, 199.480 to 199.505 and 199.510.

(4) "Commission" means the Environmental Quality Commission.

(5) "Danger to public health" means a condition which is conducive to the propagation of communicable or contagious disease-producing organisms and which presents a reasonably clear possibility that the public generally is being exposed to disease-caused physical suffering or illness, including a condition such as:

(a) Impure or inadequate domestic water.

(b) Inadequate installations for the disposal or treatment of sewage, garbage or other contaminated or putrefying waste.

(c) Inadequate improvements for drainage of surface water and other fluid substances.

(6) "District" means any one of the following:

(a) A metropolitan service district formed under ORS chapter 268.

(b) A county service district formed under ORS chapter 451.

(c) A sanitary district formed under ORS 450.005 to 450.245.

(d) A sanitary or a water supply authority formed under ORS 450.675 to 450.980.

(e) A domestic water supply district formed under ORS chapter 264.

(7) "Division" means the Health Division of the Department of Human Resources.

(8) "Requesting body" means the county court, or local or district board of health that makes a request under ORS 431.715.

(9) "Service facilities" means water or sewer installations or works. [1973 c.361 §1, 1975 c 266 §1; 1981 c.452 §1]

**431.710 When division to initiate district formation or annexation.** (1) ORS 431.705 to 431.760 shall not apply if the affected territory could be subject to an annexation proceeding under ORS 222.850 to 222.915.

(2) If the division, in accordance with ORS 431.705 to 431.760, finds that a danger to public health exists within the affected territory and that such danger could be removed or alleviated by the construction, maintenance and operation of service facilities, the division shall initiate proceedings for the formation of or annexation to a district to serve the affected territory. If the affected territory is located within a district that has the authority to provide the service facilities, the division shall order the district to provide service facilities in the affected territory. [1973 c.361 §2, 1981 c.888 §3]

**431.715 Resolution requesting division to initiate formation or annexation.**

(1) The county court or the local or district board of health having jurisdiction over territory where it believes conditions dangerous to the public health exist shall adopt a resolution requesting the division to initiate proceedings for the formation of a district or annexation of territory to, or delivery of appropriate water or sewer services by, an existing district without vote or consent in the affected territory. The resolution shall:

(a) Describe the boundaries of the affected territory;

(b) Describe the conditions alleged to be causing a danger to public health;

(c) Request the division to ascertain whether conditions dangerous to public health exist in the affected territory and whether such conditions could be removed or alleviated by the provision of service facilities; and either

(d) Recommend a district that the affected territory could be included in or annexed to for the purpose of providing the requested service facilities; or

(e) Recommend that an existing district provide service facilities in the affected territory.

(2) The requesting body shall cause a certified copy of the resolution, together with the time schedule and preliminary plans and specifications, prepared in accordance with subsection (3) of this section, to be forwarded to the division.

(3) The requesting body shall cause a study to be made and preliminary plans and specifications prepared for the service facilities considered necessary to remove or alleviate the conditions causing a danger to public health. The requesting body shall prepare a

schedule setting out the steps necessary to put the facilities into operation and the time required for each step in implementation of the plans.

(4) If the preliminary plans involve facilities that are subject to the jurisdiction of the commission, a copy of the documents submitted to the division under subsection (2) of this section shall be submitted to the commission for review, in accordance with ORS 431.725, of those facilities that are subject to its jurisdiction. No order or findings shall be adopted under ORS 431.735 or 431.756 until the plans of the requesting body for such facilities, if any, have been approved by the commission.

[1973 c.361 §3, 1981 c.888 §4]

**431.717 Compelling adoption of resolution.**

(1) Any person who may be adversely affected by the failure of a county court to adopt a resolution as required by ORS 431.715 (1) may seek to compel the adoption of such resolution through a writ of mandamus under ORS 34.110 to 34.240.

(2) The prevailing party in a proceeding under ORS 34.110 to 34.240 authorized by subsection (1) of this section is entitled to reasonable attorney fees in addition to costs and necessary disbursements. [1981 c.888 §6]

**431.720 Commission to review certain plans; approval of plans.**

(1) Upon receipt of the documents submitted under ORS 431.715 (4), the commission shall review them to determine whether the conditions dangerous to public health within the affected territory could be removed or alleviated by the provision of service facilities that are subject to the jurisdiction of the commission.

(2) If the commission considers such proposed facilities and the time schedule for installation of such facilities adequate to remove or alleviate the dangerous conditions, it shall approve the part of the plans that are subject to its jurisdiction and certify its approval to the division.

(3) If the commission considers the proposed facilities or time schedule inadequate, it shall disapprove the part of the plans that are subject to its jurisdiction and certify its disapproval to the division. The commission shall also inform the requesting body of its approval or disapproval and, in case of disapproval, of the particular matters causing the disapproval. The requesting body may then submit additional or revised plans. [1973 c.361 §4]

**431.725 Division to review resolution; notice of hearing.** (1) Upon receipt of the certified copy of a resolution adopted under ORS 431.715, the division shall contact the requesting body within 30 days of receipt of the request and schedule the review and investigation of conditions in the affected territory. The division shall review and investigate conditions in the affected territory in accordance with the agreed upon schedule unless both parties agree to an extension. If it finds substantial evidence that a danger to public health exists in the territory, it shall issue an order setting a time and place for a hearing on the resolution. The hearing shall be held within the affected territory, or at a place near the territory if there is no suitable place within the territory at which to hold the hearing, not less than 30 or more than 50 days after the date of the order.

(2) Upon issuance of an order for a hearing, the division shall immediately give notice of the time and place of the hearing on the resolution by publishing the order and resolution in a newspaper of general circulation within the territory once each week for two successive weeks and by posting copies of the order in four public places within the territory prior to the hearing. [1973 c 361 §5; 1981 c 452 §2]

**431.730 Conduct of hearing.** (1) At the hearing on the resolution, any interested person shall be given a reasonable opportunity to be heard or to present written statements. The hearing shall be for the sole purpose of determining whether a danger to public health exists due to conditions in the affected territory and whether such conditions could be removed or alleviated by the provision of service facilities. It may be conducted by the assistant director or by a hearings officer designated by the assistant director. It shall be conducted in accordance with the provisions of ORS 183.310 to 183.550. The division shall publish a notice of the issuance of said findings and recommendations in the newspaper utilized for the notice of hearing under ORS 431.725 (2) advising of the opportunity for presentation of a petition under subsection (2) of this section.

(2) Within 15 days after the publication of notice of issuance of findings in accordance with subsection (1) of this section, any person who may be affected by the findings, or the affected district, may petition the assistant director according to rules of the division to present written or oral arguments relative to

the proposal. If a petition is received, the assistant director may set a time and place for receipt of argument. [1973 c 361 §6; 1975 c.266 §2]

**431.735 Assistant Director's authority under ORS 431.705 to 431.760.** (1) If the assistant director after investigation finds that no danger to public health exists because of conditions within the affected territory, or that such a danger does exist but the conditions causing it could not be removed or alleviated by the provision of service facilities, he shall issue an order terminating the proceedings under ORS 431.705 to 431.760 with reference to the affected territory.

(2) If the assistant director finds, after investigation and the hearing required by ORS 431.725, that a danger to public health exists because of conditions within the territory, and that such conditions could be removed or alleviated by the provisions of service facilities in accordance with the plans and specifications and the time schedule proposed, he shall enter his findings in an order, directed to the officers described by ORS 431.740, setting out the service facilities to be provided.

(3) If the assistant director determines that a danger to public health exists because of conditions within only part of the affected territory, or that such conditions could be removed or alleviated in only part of the affected territory by the provision of service facilities, he may, subject to conditions stated in ORS 431.705 to 431.760, reduce the boundaries of the affected territory to that part which presents a danger or in which the conditions could be removed or alleviated if the area to be excluded would not be surrounded by the territory remaining to be annexed and would not be directly served by the sanitary, water or other facilities necessary to remove or alleviate the danger to public health existing within the territory remaining to be annexed. The findings shall describe the boundaries of the area as reduced by the assistant director.

(4) In determining whether to exclude any area the assistant director may consider whether or not such exclusion would unduly interfere with the removal or alleviation of the danger to public health in the area remaining to be annexed and whether the exclusion would result in an illogical boundary for the provision of services.

(5) The requesting body or the boundary commission shall, when requested, aid in the determinations made under subsections (3)

and (4) of this section and, if necessary, cause a study to be made. [1973 c 361 §7, 1975 c 266 §3]

**431.740 Notice to boundary commission; service facilities to conform to plans and schedules.** (1) If a boundary commission has jurisdiction of the affected territory, the assistant director shall file his findings and order with such boundary commission. If the affected territory is not within the jurisdiction of a boundary commission, the assistant director shall file his findings and order with the county court of the county having jurisdiction of the territory.

(2) The division and the commission shall use their applicable powers of enforcement to insure that the service facilities are constructed or installed in conformance with the approved plans and schedules. [1973 c 361 §8]

**431.745 Petition for alternative plan.** (1) At any time after the adoption of a resolution under ORS 431.715, a petition, signed by not less than 51 percent of the registered voters in the affected territory, may be filed with the division. The petition shall suggest an alternative plan to the proposed formation or annexation for removal or alleviation of the conditions dangerous to public health. The petition shall state the intent of the residents to seek annexation to an existing city or special district authorized by law to provide service facilities necessary to remove or alleviate the dangerous conditions. The petition shall be accompanied by a proposed plan which shall state the type of facilities to be constructed, a proposed means of financing the facilities and an estimate of the time required to construct such facilities and place them in operation.

(2) Upon receipt of such petition, the division shall immediately forward a copy of the petition to the commission, if the plan accompanying the petition involves facilities that are subject to the jurisdiction of the commission. The division also shall forward a copy of the petition to the requesting body and to the county court or boundary commission where the division filed its findings under ORS 431.740 and direct the county court or boundary commission to stay the proceedings pending the review permitted under this section and ORS 431.750. [1973 c 361 §9]

**431.750 Commission review of alternative plan; certification of alternative plan.** (1) If the alternative plan submitted under ORS 431.745 (1) involves service facilities

that are subject to the jurisdiction of the commission, the alternative plan shall be submitted to and reviewed by the commission and shall be approved or rejected by the commission within 30 days from the date of filing with the division. In reviewing the alternative plan, the commission shall consider whether, in its judgment, the plan contains a preferable alternative for the alleviation or removal of the conditions dangerous to public health. If the commission determines that the original plan provides the better and most expeditious method of removing or alleviating the dangerous conditions, it shall disapprove the alternative plan and inform the division of its decision. The division shall order the proceedings on the finding filed under ORS 431.740 to resume.

(2) If the commission finds that the alternative plan provides a preferable method of alleviating or removing the dangerous conditions, the petitioners shall be granted six months within which to present to the commission information showing:

(a) That the affected territory has annexed to a city or special district authorized by law to provide the service facilities necessary to remove or alleviate the dangerous conditions, and that the financing of the extension of such facilities to the territory has been assured.

(b) Detailed plans and specifications for the construction of such facilities.

(c) A time schedule for the construction of such facilities.

(d) That such facilities, if constructed, will remove or alleviate the conditions dangerous to public health in a manner as satisfactory and expeditious as would be accomplished by the formation or annexation proposed by the original plans.

(3) The commission shall review the plan presented to it by the petitioners under subsection (2) of this section and shall promptly certify to the division whether the requirements of subsection (2) of this section have been met. If the requirements have been met, the division shall certify the alternative plan to the county court or boundary commission having jurisdiction and direct it to proceed in accordance with the alternative plan and in lieu of the plans filed under ORS 431.740. If the requirements of subsection (2) of this section are not met by the petitioners, the division shall certify that fact to the county court or boundary commission having jurisdiction.

tion and direct it to continue the proceedings on the plans filed under ORS 431.740. [1973 c 361 §10]

**431.755** [1973 c.361 §11; repealed by 1975 c 266 §4 (431 756 enacted in lieu of 431.755)]

**431.756 Judicial review.** Judicial review of orders under ORS 431.705 to 431.760 shall be as provided in ORS 183.480, 183.485, 183.490 and 183.500. [1975 c 266 §5 (enacted in lieu of 431 755)]

**431.760 Certain persons prohibited from participating in proceedings.** (1) A person who owns property or resides within affected territory that is subject to proceedings under the provisions of ORS 431.705 to 431.760 shall not participate in his official capacity in any investigation, hearing or recommendation relating to such proceedings. If the assistant director is such a person, he shall so inform the Governor, who shall appoint another person to fulfill the duties of the assistant director in any investigation, hear-

ing or recommendation relating to the such proceeding.

(2) Subsection (1) of this section does not excuse a member of a county court from voting on the order required by ORS 198.792 (2) or 451.445 (1). [1973 c 361 §12]

## PENALTIES

**431.990 Penalties.** Unless otherwise specifically provided by any other statute, failure to obey any rules of the Health Division, or failure to obey any lawful written order issued by the Assistant Director for Health or any district or county public health administrator is a Class A misdemeanor. [Amended by 1959 c.629 §46; 1961 c 610 §15, 1973 c.408 §34; 1973 c.829 §33, 1977 c.582 §32]

