



PUBLIC

HOSPITAL

DISTRICT

COMMISSIONER

GUIDE

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Introduction to the Commissioner Guide

The Public Hospital District Commissioner Guide is designed to assist commissioners in determining the scope of their duties and responsibilities under the law, provide a general overview of public hospital district law, and help answer frequently asked questions regarding district operations. The information contained in this guide has been compiled from the Public Hospital District Legal Manual, with a special emphasis on the issues and concerns relevant to commissioners.

This guide can be read as either an introduction to the subject matter for the newly elected commissioner, or as a refresher for the more experienced official. However, all users must keep in mind that this guide is only intended to provide an overview of the applicable areas of the law, and is not comprehensive. This guide should be used in tandem with the PHD Legal Manual, which is updated regularly and contains additional legal background on each topic.

While this guide is intended to provide accurate information, it should not be used as a replacement for the advice of an attorney. If legal advice or other expert assistance is required, the services of a competent professional should be sought.



Table of Contents

SECTION I - What are Public Hospital Districts?	3
A. Special Purpose Districts	3
B. Public Hospital Districts	4
SECTION II - Structure of a Public Hospital District	6
A. Commissioner Districts	6
B. Public Hospital District Management Structure.....	8
SECTION III - The Role of Commissioners	9
A. The Election Process.....	9
B. Commissioner Duties and Limitations	11
C. Board of Commissioners.....	12
D. Commissioner Compensation.....	13
E. Conflicts of Interest.....	14
SECTION IV - Commissioner Meetings & the Open Public Meetings Act .	18
SECTION V - District Finances	19
A. Administration of District Finances	19
B. District Revenues/Property Tax Overview	20
C. Bond Financing	22
D. Limitations on Borrowing.....	27
E. Federal Tax Issues.....	29
F. Other Issues Relating to Borrowing	29
G. Hospital District Payment Issues	30
SECTION VI - Regulatory Compliance	31
A. District Treasurer & District Auditor	31
B. State Audits.....	32
C. Public Bid Law	33



SECTION I - What are Public Hospital Districts?

Compiled from the PHD Legal Manual, Chapter One

This section will focus on the nature and structure of special purpose districts in Washington State generally, and discuss specifically how PHDs operate within that framework.

A. Special Purpose Districts

Special Purpose Districts Defined

Special purpose districts are governmental entities and political subdivisions of the State of Washington which are created by the legislature to carry out certain limited functions. These functions are specified in statutes. The House Committee on Local Government defines a special purpose district as "... any municipal or quasi-municipal corporation that can be created in this state other than counties, cities, towns and townships." PHDs share some characteristics with other special purpose districts, including public utility districts, fire districts and port districts. The most common types of special purpose districts in Washington are fire protection districts and school districts.

Special purpose districts are created expressly to fulfill a need for services to the citizens of the district. Generally, special purpose districts perform functions that are not, for one reason or another, performed by general purpose governments (i.e. counties, cities, or towns).

Powers and Limitations

Special purpose districts are municipal corporations, which means that they possess powers unique to governmental entities. For example, they may finance their activities by tax levies, condemn property, hold elections, and join forces with other governmental entities in cooperative ventures. By the same token, special purpose districts are limited by statutory, constitutional, and regulatory provisions in the same manner as other governmental entities. For example, they are prohibited from lending public credit, owning stock, and giving away public property as gifts.

This latter point is critical to understand. As creatures of statute, special purpose districts must exercise their powers within the limits of the legislation authorizing their creation, and the Washington State Constitution. Municipal corporations possess only those powers expressly granted by statute as well as powers necessarily or fairly implied in or incident to the powers expressly granted. In other words, if there is no statute that specifically authorizes a special purpose district to engage in an activity, or such authority cannot be necessarily or fairly implied, the district is prohibited from engaging in such activity.



B. Public Hospital Districts

As discussed above, PHDs belong to the family of special purpose districts and municipal corporations. They operate under all applicable statutory, constitutional and regulatory provisions of the State of Washington and the United States.

How District Hospitals Compare To and Differ From Non-Profit Hospitals

Public Hospital Districts operate approximately half of the entities licensed as acute care hospitals in Washington. The vast majority of the other hospitals are operated as not-for-profit corporations, with a handful owned and operated by private corporations on a for-profit or proprietary basis.

In many cases, PHDs and not-for-profit hospitals may appear very similar. Both may be focused on community service with “profits” being applied not to rates of return for investors, but to enhanced community services, facility upgrading, or subsidized care for persons unable to pay the full costs of service. The major difference is that Washington law reinforces the need for PHDs to maintain this focus in a very precise way, such as through the election of board members (not-for-profit members are normally appointed) and strict legal restrictions on the use of funds for certain purposes. Also, as a municipal corporation, many of the documents and proceedings of a PHD are open to close public scrutiny through open meetings and public records laws, while not-for-profit activities are monitored in a much more general fashion through state and federal review activities. The process for creating a PHD is also much more rigorous than for a not-for-profit hospital, as detailed in Chapter One of the PHD Legal Manual.

In exchange for meeting these procedural and operational requirements, hospital districts are able to access the benefits associated with being such an entity, such as access to tax revenues, and the power to condemn property.

Public Hospital District Locations

The vast majority of PHDs are located in areas considered to be “rural” in character, emphasizing the importance of PHDs in meeting the challenges facing rural health care.

Laws and Regulations Governing Public Hospital Districts

Hospital district powers are those things which a PHD *may* do, as expressly or implicitly authorized by state law. Duties, on the other hand, are those things which a district *must* do, as required by state law. Of course, there are also things which a PHD *may not* do, which then fall outside the range of both powers and duties. All of these powers, duties, and limitations spring from the body of laws outlined below.

The Revised Code of Washington (RCW) PHDs are organized and exist as a result of chapter 70.44 of the Revised Code of Washington (RCW). It is this statute that allows for the creation of the PHDs and fundamentally defines their purpose, operations, powers and limitations.



In addition to chapter 70.44 RCW, PHDs, as municipal corporations, are affected by statutory provisions that govern governmental entities generally. For example, PHDs, like all municipal corporations, are subject to the Open Public Meetings Act, chapter 42.30 RCW. Thus, all meetings of the governing body of a public agency (board of commissioners) are required to be open to the public. Similarly, PHDs are required to comply with the public record provisions (RCW 42.56.040) of the Code. As a last example, PHD commissioners, as public officials, are prohibited from engaging in activities that result in conflicts of interests. RCW 42.23.030 prohibits a municipal officer from being “beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office” For a further discussion of conflicts of interest law, see Section III of this Guide.

Not all statutory provisions are prohibitive or related to defining the scope of duties. Some statutes authorize an expansion of powers and provide opportunities for PHDs. One important example is the Inter-Local Cooperation Act, chapter 39.34 RCW. This statute allows two or more municipal corporations to join together in cooperative action and jointly finance these ventures (see PHD Legal Manual, Chapter 6).

State Constitution Another state source of the law for PHDs lies in the provisions of the Constitution of the State of Washington, which places restrictions on the powers granted to public hospital districts by statute. Constitutions are the over-riding statements of law affecting a government and its citizens. An example of a state constitutional provision of concern to Washington PHDs is Article VIII, Section 7, which states that no municipal entity shall give or loan money to any individual or corporation except for the necessary support of the poor and infirm. Under the section, governmental entities are also barred from owning stocks or any other interests in corporations. The implications of this constitutional provision on hospital revenues and write-offs of charity care is of great importance (for further discussion see PHD Legal Manual, Chapter 4). Another constitutional provision, Article I, Section 16, limits a provision in chapter 70.44 RCW granting the power of eminent domain to PHDs. Needless to say, PHDs are also bound by applicable provisions of the United States Constitution.

Case Law and Attorney General Opinions Washington’s statutes and constitution have also been shaped over the years by court opinions (state and federal) that clarify, or in some cases confuse the meaning of the laws. Case law and its interpretation of statutory provisions is a definitive source of the law. As is true with all municipal corporations, the courts are very strict in interpreting the powers of PHDs so as to ensure that they do not engage in activities that the legislature did not clearly intend to authorize.

Opinions by the Attorney General (AG) of the State of Washington also help define the boundaries of the statute. Such opinions are viewed as persuasive authority, but are not binding upon PHDs. There are formal and informal opinions which come from the AG’s office. A formal opinion is signed by the Attorney General and is binding on the AG’s office and other Washington agencies, such as the State Auditor’s Office. An



informal opinion is the individual opinion of an Assistant AG and has not been reviewed by the AG. Thus, it does not have the same binding effect on Washington agencies as a formal opinion.

Other Statutes and Regulations Obviously, a hospital managed by a PHD, like any hospital, must comply with the many and local, state, and federal requirements related to operating a hospital. For example, PHDs with hospitals must comply with state licensing regulations, safety standards, zoning laws, federal Medicare standards, and a host of other regulatory requirements. The PHD Legal Manual specifically covers those requirements which apply to a hospital district because of its unique status as a local government authorized under Washington statutory and constitutional provisions.

A brief mention of federal statutory law (and its refinement by case law) completes this introductory discussion of sources of the law relating to PHDs. Antitrust laws are an important example of how federal legislation impacts PHDs. While this subject matter is covered in the PHD Legal Manual (see Chapter 6), few other federal laws have such a unique impact on PHDs and are therefore beyond its scope.

SECTION II - Structure of a Public Hospital District

Compiled from the PHD Legal Manual, Chapter One

A Public Hospital District's management structure is the major difference between it and other non-profit hospitals. As mentioned in the previous section, elected commissioners serve as the hospital's board members. The make-up of this board is considered in the first part of this section, focusing on the statutory requirements regarding the number of commissioners that may serve on the board, how commissioners may be elected, and the process that a district must go through to change either.

The remainder of this section describes the different managerial structures that may be adopted by the board in the running of the day-to-day operations of the hospital.

A. Commissioner Districts

Introduction to Commissioner Districts

As is discussed in detail in Section III of this guide, PHDs are governed by a board of district commissioners who are elected officials. Each board must have a president and a secretary. RCW 70.44.040 and RCW 70.44.053 provide that the board may be comprised of three, five, or seven members. Each commissioner may represent a particular district within the whole of the PHD (where they must reside), or hold an at-large position.



The notion of commissioner districts is common to many types of special purpose districts. In theory, the establishment of commissioner districts allows commissioners to represent geographic constituencies.

From a practical standpoint, commissioner districts do not always serve a vital purpose. This can be the case with PHDs. Therefore, commissioners may also be elected on a strictly at-large basis, or a PHD may have a combination of geographic commissioner districts and at-large positions. [RCW 70.44.040]

Creation of Public Hospital Commissioner Districts

Commissioner districts may be created at the same time that a PHD is formed. RCW 70.44.040 provides that the commissioners of the county or counties in which the proposed PHD is located must determine by resolution whether district board members will be elected from either three, five, or seven commissioner districts, or at-large positions, or both. Then the electorate chooses commissioners on the same ballot as it considers the proposition for forming a PHD. The terms of the inaugural board members are fixed by statute, ranging from one to six years, to ensure that commissioner vacancies will be staggered as evenly as possible. The terms of office are formulated so that the commissioners receiving the greater number of votes at the initial election will serve the longer term of office.

Electorate Voting

Only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner district but voters of the entire public hospital district can vote at a general election to elect a commissioner of the commissioner district [RCW 70.44.040(2)].

Redistricting Commissioner Districts

State law declares that it is the responsibility of each municipal corporation to periodically redistrict its governmental unit based on population information from the most recent federal decennial census [RCW 29A.76.010]. No later than eight months after receipt of federal decennial census information applicable to the district, the board of commissioners must prepare a plan for redistricting its commissioner districts [RCW 29A.76.010 (4)]. The necessary elements of this plan are laid out in the PHD Legal Manual (Chapter 1).

Results of Redistricting

If, as a result of redistricting, more than one commissioner resides in a redrawn commissioner district, the law allows both commissioners to complete their terms of office. When this situation arises, a commissioner or commissioners from that district, equal in number to the number of commissioners in excess of the correct number, will be assigned to a drawn district with less than the correct number. Under state law, the commissioner(s) with the shortest unexpired term(s) will be assigned. If the number of commissioners with the same terms of office exceeds the number to be assigned, the board of commissioners shall select by lot from those commissioners which one or ones are assigned. A commissioner who is assigned in this manner shall be deemed a



resident of the commissioner district to which he or she has been assigned for purposes of determining whether a position is vacant. [RCW 70.44.047]

Abolishing Public Hospital Commissioner Districts

Existing commissioner districts may, by resolution of the board members, be abolished, permitting candidates for any position on the board to reside anywhere in the PHD. Commissioner districts can then be re-established at any general or special election called for that purpose, either by resolution of board members or on petition of the voters. [RCW 70.44.042]

B. Public Hospital District Management Structure

Overview and Options

A hospital district is probably best described as a municipal corporation formed within a defined geographic area to provide health care services to community residents and others in need. And, Washington law is quite clear in requiring that the elected board of commissioners oversee the general conduct of hospital district affairs and that there be a person appointed to the statutory post of superintendent to provide reports to the commissioners on the status of district operations.

However, hospital districts do have a number of options in deciding how it is they wish to directly manage the delivery of health care services. In most cases, the district commissioners hire an administrator who is also appointed the superintendent and who is responsible for the direct management of the health care facilities operated by the district. But, the district may adopt one of the following alternatives in assigning this managerial responsibility:

- The district may choose to lease the entire district and maintain only a minimal involvement in the direct decisions on health care delivery.
- The district may engage a management firm to operate the facility under the board’s guidance. Under such an arrangement, the “administrator” is assigned to the district by the management firm and is the employee of that firm (although the person is chosen with input from the board).
- The district may hire an administrator who does not serve as superintendent, or may even hire administrators for the different facilities owned and operated by the district who are separate from the superintendent.
- The district may hire a part-time administrator (this may occur when the district only operates a clinic or ambulance service).

Practical Consideration

Obviously, the choice of management strategy carries with it different consequences in terms of the scope of direct control by the board and the links to the board in terms of reporting on operational details. Districts should assure that the management style is



consistent with the expectations of the community and that it facilitates the ability to render health care services in an efficient and effective manner.

SECTION III - The Role of Commissioners

Compiled from the PHD Legal Manual, Chapter Two

The activities of organizations, including hospitals and hospital districts, are generally directed by a group of individuals who serve to represent the membership of the controlling entity as a whole. For not-for-profit hospitals, these groups are generally described as boards of directors or trustees. For public hospital districts, these are referred to as boards of commissioners, indicating that the individuals serving in these positions are elected officials, chosen by the voters to govern the hospital district. This section identifies some of the key issues relating to commissioners, including the elections process, commissioner duties, the role of the board, and commissioner compensation.

A. The Election Process

Because a hospital district is a local government, its governing body consists of publicly elected officials. These commissioners must run for office, and the qualifications for office, campaigns, and elections are regulated explicitly by Washington law.

Qualification for Office

The basic qualifications for a PHD commissioner are that he or she be a citizen of the United States and the State of Washington, and be an “elector” within the district boundaries. The State Constitution defines an “elector” as a person at least 18 years of age, who is a citizen of the United States, and who has lived in the precinct at least 30 days preceding the election. [See, PHD Legal Manual, Chapter 2 for further background.]

Election Law Requirements

Because Title 29A applies to virtually all elections in Washington, it should not be surprising that it is a fairly lengthy section of the Washington Code. Topics covered by this section of the code include registration of voters, times for holding elections, ballots, voting machines, absentee voting, polling place regulations, voters’ pamphlets, and crimes and penalties. Rather than provide an overview of all election law, this section merely identifies some of the major issues affecting interested candidates for PHD commissioner posts.

When are Elections Held?

Hospital district commissioner elections are held in odd-numbered years on the first Tuesday following the first Monday in November. [RCW 29A.04.330]



When and How Must a Candidate File?

Except where otherwise provided by this title, declarations of candidacy for the following offices shall be filed during regular business hours with the filing officer no earlier than the first Monday in June and no later than the following Friday in the year in which the office is scheduled to be voted upon. [RCW 29A.24.050]. This is done by filing a declaration of candidacy with the county auditor(s) in person, by mail, or facsimile (fax) transmission, or electronically. [see chapter 29A.24 RCW generally]. A sample declaration is included in the PHD Legal Manual.

A reopening of filing is permitted in nonpartisan elections - including hospital district commissioners - if a void in candidacy or a vacancy in office occurs. [RCW 29A.24.171] If a candidate for non-partisan office dies before the primary or general election, the candidate's name should remain on the ballot. If the deceased candidate gains the most votes, the result is a vacancy in the office to be filled as provided by RCW 42.12.070. The person with the second highest number of votes is not entitled to a certificate of election. [AGO 1999 No. 5]

What Must Candidates Financially Disclose?

Candidates for PHD commissioner must also file forms with the Public Disclosure Commission within two weeks of announcing candidacy. The period covered is the previous twelve months. [RCW 42.17.240] The required contents of the report are set out in RCW 42.17.241.

Campaign Limitations

In general, PHDs, like other local governments, are prohibited from using public resources to assist in any election campaign. These public resources include its buildings, equipment, employees, and mailing lists. Based on this prohibition, a PHD may not act to support or oppose any candidate for commissioner in any way (see also PHD Legal Manual, "Special Issues", Chapter Six). [RCW 42.17.130]

It is permissible for the district to make its facilities available on a non-discriminatory basis for purposes of making an objective and fair presentation of facts relevant to a ballot proposition, if this is part of the normal and regular conduct of the PHD. Thus, it may be possible for the hospital district to hold an open candidate session for those running for post of PHD commissioner.

Who Pays for the Costs of Elections?

Washington law requires that local election costs be prorated among the various districts with issues on the ballot at any election. Thus, in a general election a PHD must pay its share of costs. If a special election is held for only a PHD issue, the hospital district must pay all of the election costs. [RCW 29A.04.410]



B. Commissioner Duties and Limitations

Oath of Commissioners

Prospective commissioners must take an oath of office before commencing their term. This oath should be administered and certified by any officer or notary public authorized to administer oaths, and should state that he or she will faithfully and impartially discharge the duties of office to the best of his or her ability. A commissioner is not technically qualified to hold office until the oath is administered.

Terms of Office

Hospital district commissioners serve six-year terms of office. The only exceptions are those commissioners serving upon the creation of the district, those taking office as a result in the increase in number of commissioners where it is necessary that the initial terms be staggered, and those elected or appointed to serve the remainder of vacant terms. Upon creation of a district, Washington statutes spell out a number of requirements limiting the original commissioners' terms. These are designed to ensure that commissioner vacancies will be staggered as evenly as possible. [RCW 70.44.040 and RCW 70.44.053]

Public Disclosure of Finances

Hospital district commissioners, like all elected and appointed public officials in Washington, must file a statement of financial affairs with the Public Disclosure Commission each year. The filing must be done between January 1 and April 15 for the preceding calendar year. The forms include information on personal and business financial relationships and property holding for the previous year, including specific information on occupation, investments, creditors, business directorships compensation, and real estate holdings. [RCW 42.17.240] Any commissioner who fails to file a report is subject to a \$10 per day fine. Also, the Attorney General or private party can initiate an enforcement proceeding. Finally, if the violation affected the outcome of an election, the result may be held void. [RCW 42.17.390 and 42.17.400]

Commissioner Education

There is no specific requirement that hospital district commissioners pursue educational activities which will support their service as commissioners. However, prudence and the potential protections in liability situations suggest that each district support these educational activities and perhaps adopt a general board action recommending participation by each commissioner.

Commissioner Liability

Most PHD commissioner duties and liabilities are created by the same common law principles which create duties and responsibilities for private hospital trustees. These are generally referred to as "fiduciary" duties. For example, the duty of due diligence and care requires commissioners to use reasonable skill and diligence in the performance of their official duties. Specific liabilities and penalties are also created by



the conflict of interest laws which are discussed in the PHD Legal Manual, Chapter 2, and later in this manual.

Public officials are immune from civil liability for damages for any discretionary decision or failure to make a discretionary decision within his or her official capacity. Commissioners, as public officials can request indemnification from the public hospital district under such circumstances. [RCW 4.96.041] At the same time, the liability does apply to the public agency. [RCW 4.24.470]

C. Board of Commissioners

Duties

The hospital district's board of commissioners is legally responsible for establishing hospital district policy with respect to the powers of a PHD spelled out in RCW 70.44.060. For example, "to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, and operate hospitals and other facilities as required to meet community health needs."

More generally speaking, the board and individual commissioners are responsible for overseeing the hospital district's policies and organization with respect to the operation of the district, including the delivery of quality patient care. In fulfilling its obligation, the board's role is to adopt the necessary general policies to achieve these ends and to delegate the day-to-day operational responsibility with respect to these policies to the district administrator.

Increasing the Number of Commissioners

If a hospital district resolves to increase its number of, the board may elect to submit such a proposal to the voters at either a general or special election. The board is required to submit such a proposal if it receives a petition signed by 10 percent or more of the district's voters. [RCW 70.44.053]

The statutes spell out a number of requirements relating to the increase in commissioners, including redistricting (if commissioners are elected from independent commissioner districts) and the need to stagger commissioner terms. Initially, however, the additional commissioner positions shall be deemed vacant and the board must appoint qualified people to serve in the position until the next general election. [RCW 70.44.056. 42.12.070]

Vacancies and Replacements of Commissioners

Vacancies on the board may occur through resignation, death, removal, conviction of a felony, unexcused nonattendance at meetings, statutory disqualification (e.g., he or she moves out of a district or is determined to hold an incompatible office as described under "Conflicts of Interest," below), or permanent disability preventing the proper discharge of his or her duty. [RCWs 70.44.045 and 42.12.010]



Commissioners may be removed by a “recall” process which is spelled out in Article I, Section 33 of the State Constitution. Basically, a petition must be filed noting the inappropriate acts, be supported by a certain number of electors, and be voted on at a special election. RCW 29A.56.110 sets out the specific requirements of the “recall” process.

Vacancies are filled on a temporary basis. The commissioners remaining on the board name a replacement. [RCW 42.12.070] This appointment is effective only until the next regular election for PHD commissioners at which time a commissioner must be elected to fill the balance of the vacant term. A contingency process addresses situations where there is only one or no commissioners left on the board to make appointments or the remaining commissioners fail to fill the vacancy within 90 days. RCW 42.12.070 also specifies guidelines for filling nonpartisan vacancies.

D. Commissioner Compensation

Setting Salaries and Wages

The compensation of commissioners is specifically outlined by statute. The district must establish the compensation of commissioners at a rate of \$104 for each day or partial day devoted to the business of the district, including days during which he or she attends meetings with commissioners from his or her district or other hospital districts. The two major limitations to the rule are, 1) total compensation paid to each commissioner during any one year may not exceed \$9,984, and 2) commissioners may not be compensated for services performed of a ministerial or professional nature. [RCW 70.44.050]

A commissioner may waive any or all of his or her compensation by written waiver filed with the district. Commissioners’ compensation should be reported on a Form W-2 for federal income tax purposes as would be the case with any other employee. Commissioners also are entitled to be covered under a group policy of insurance maintained for the district’s employees and this may include their immediate family and dependents. As the statute does not limit the type of insurance, presumably this could include any type of group insurance maintained by the district for its employees, such as health, life, dental or disability insurance. The statute also provides that commissioners may be reimbursed for reasonable expenses incurred in connection with business and meetings of the district while away from his or her place of residence. Such expenses may include travel, lodging and sustenance.

Practical Considerations

The State Auditor’s Office has been known to be very scrupulous in its review of commissioners’ compensation. Hospital districts and commissioners should follow the statutory requirements closely, including the record-keeping of the commissioners’ days for which they are entitled to compensation.



E. Conflicts of Interest

Public hospital district commissioners are often faced with situations that create confusion as to whether conflicts of interest laws are being violated. Washington law governing conflicts of interest in municipal governments is principally statutory. Chapter 42.23 RCW is the main source of law in this area. Chapter 42.23 RCW specifically addresses public contracts, expressly prohibiting municipal officers from being beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. [RCW 42.23.030]

Under RCW 42.23.020, the terms “municipal officer” and “officer” include all elected and appointed officials of a municipality, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer. The term “municipality” includes public hospital districts. Unfortunately chapter 42.23 RCW does not define the term “beneficial interest,” an omission which has created some confusion.

Limited to Financial Interest

One recent court of appeals decision limited the statute’s application to municipal officers with a *financial* interest in a contract. In *Barry v. Johns*, 82 Wash. App. 865 (1996), two members of the Mountlake Terrace city council were allowed to vote on a measure approving a contract between the city and a non-profit organization, even though both council members served as unpaid members of the board of directors of the non-profit organization. The court limited the scope of RCW 42.23.030 to include only financial benefits because: a) all the exceptions listed under 42.23.030 involved financial interests, indicating that the legislature only contemplated these types of interests when enacting the law, and b) the declared purpose of chapter 42.23 RCW, consistent with the general policy goals of the state, was to enlarge the pool of citizens eligible to serve on the board of municipal corporations, while uniformly governing “the transaction of business” by municipal officers.

The court also ruled that a clause in the contract limiting the council members’ personal liability in the event a lawsuit was brought against the non-profit organization did not constitute a financial interest since it merely duplicated protection already granted under state law. Since the council members were receiving no financial benefits from the contract, the court held that it would not be in the best interests of the community to force them to resign from their positions on the non-profit organization, and requiring them to abstain from voting on the approval of the contract would compromise their ability to influence an important community issue. The court went on to state that any prejudices or “predilections” the council members may have held as a result of their association with the charity organization was an acceptable part of their “political



agenda.” If the voters disagree with the council members voting decisions, they can vote them out of office.

This case highlights some of the difficulties associated with compliance under the state’s conflicts of interest laws. Chapter 42.23 RCW is sufficiently complex that its provisions can often be interpreted in more than one way, causing confusion amongst municipal officers in cases that fall within the law’s “gray areas”. Further complicating matters are fundamental common law doctrines that also must be factored into a conflicts of interest analysis. While this section is intended to address some of the more common questions regarding these concerns, specific facts of individual situations should be discussed with legal counsel.

Exempt Contracts

Under RCW 42.23.030, a number of specific contracts are expressly exempted from the application of the statute. They generally are contracts of an unavoidable nature where the municipal officer receives no benefit distinguishable from that shared by the public generally and contracts entered into by rural municipalities (with a small population base from which to garner officers) for relatively small sums of money. These exceptions include:

- The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;
- The designation of public depositaries for PHD funds;
- The publication of legal notices required by law to be published by the PHD, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;
- The employment of any person by a PHD or unskilled day labor at wages not exceeding \$200 in any calendar month;
- The letting of any other contract (except a sale or lease as seller or lessor) by a PHD if the total amount received under the contract or contracts by the municipal officer or the municipal officer’s business does not exceed \$1,500 in any calendar month. In order to fall within this exemption, the PHD is required to maintain a list, which must be publicly available, of each contract to which the exemption applies. In addition, the officer who has the beneficial interest in the contract may not vote on the authorization of the contract;
- The approval of any employment contract made with the spouse of a district commissioner if: (a) the spouse’s employment preceded the commissioner’s election to office; (b) the contract is commensurate with the pay plan or collective bargaining agreement of the local government; (c) the commissioner discloses the contract, and



(d) the commissioner excuses him or herself from voting on any measures regarding the contract.

Remote Contract Interest

In addition to the types of contracts expressly exempted from the statute, certain other types of contracts result only in “remote” contract interests which are not deemed to result in a conflict of interest. Under RCW 42.23.040, the types of contract interests that are deemed to be remote interests are limited to the following:

- that of a nonsalaried officer of a nonprofit corporation,
- that of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary,
- that of a landlord or tenant of a contracting party, or
- that of a holder of a less than one percent of the shares of a corporation or cooperative which is the contracting party.

The statute provides that a municipal officer will not be deemed to be interested in a contract in violation of the statute if his or her interest falls into one of these categories, *and*: a) the interest is disclosed to the board prior to contract formation and noted in its official minutes, and b) thereafter the commission approves or ratifies the contract in good faith by a vote of its membership sufficient in number to act for this purpose without counting the vote or votes of the remotely interested official(s). Additionally, none of these exemptions will apply if the officer having the remote interest influences or attempts to influence any other officer to enter into the contract. Therefore, the officer who has such a remote interest probably should not participate, or even appear to participate in any manner in the governing body’s action on the contract.

Gray Areas

When caught in a situation that falls within the “gray areas” of the conflict of interest law, it is often helpful to keep these fundamental principles in mind:

1. Public officers hold a public trust. They generally are held to a standard of behavior that does not (a) undermine, (b) provide an opportunity to undermine, or (c) appear to undermine that trust.
2. Public office is not to be used for the private financial gain of the officer or to secure special privileges for the officer or others.

Although not every activity calling into question one of these principals will amount to a prohibited conflict, they serve as a sound screening device. (Taken from “Conflicts of Interest Regulation in Municipal Government,” Legal Notes: Proceedings of the Washington State Association of Municipal Attorneys Annual Fall Conference., by Maureen Hart, Senior Assistant Attorney General, 1989).



Finally, an individual district may believe that some types of relationships are problematic, and that stricter standards are necessary. Local governments have the authority to adopt their own policies regarding the employment of the spouse of a commissioner, so long as it does not directly conflict with state law.

Incompatible Offices

In addition to conflicts of interest defined by statute, it is well established in the common law of Washington that an individual may not hold multiple offices if those offices are incompatible. In one case, the Washington State Supreme Court held that a Seattle Transit Commission member's private work, that of a trial lawyer with a firm that occasionally represented plaintiffs suing the Transit System, was an "incompatible office." In Kennett v. Levine, 50 Wn.2d 212 (1957) the State Supreme Court recognized that offices are incompatible where the functions of the two are inconsistent or where the occupation of both offices is detrimental to the public interest. The most obvious examples of incompatibility are where one office is subordinate to another in some aspect of its functions and duties. However in this case, the doctrine was extended to apply to between a private business and an appointive public office.

The application of Kennet v. Levine to PHD commissioners gives rise to hard questions. A rigid interpretation could potentially bar physicians on the hospital staff or who are based at the hospital from serving as a commissioner (see previous discussion). How about an ophthalmologist who is not connected with the hospital but who might oppose the opening of an eye clinic because it could compete with his or her business? Unfortunately, there are no clear answers to these questions, despite the attempt made in RCW 42.23.070 (dealing with prohibited acts) to provide guidance. The specific facts and circumstances of each particular case should be considered in consultation with legal counsel before proceeding with actions that could raise conflicts of interest.

Penalty for Violation

Any contract made in violation of Chapter 42.23 RCW may be held void, and the PHD may avoid payment under the current contract, even though it may have been fully performed by another party. RCW 42.23.050.

A public officer who violates this statute may be held liable for a \$500 civil penalty, and may have to forfeit his or her office. RCW 42.23.050. Additionally, chapter 42.20 RCW makes certain conflicts of interests a crime.



SECTION IV - Commissioner Meetings and the Open Public Meetings Act

Compiled from the PHD Legal Manual, Chapter Five

As public entities, hospital districts are subject to state laws mandating public meetings and accessible records. The meetings and records requirements for public hospital districts are substantially the same requirements that govern all local governments in Washington State. Of the two issues, the meetings requirements are probably the one that affect commissioners most directly. This chapter provides the commissioner with a comprehensive publication on open public meetings entitled the *Attorney General of Washington's Open Records & Open Meetings Desk Book*. The Desk Book also contains information on public records. (See the Public Hospital District Legal Manual for additional information on public records requirements.)

Updated versions of the Attorney General's Office Hand Book and the Municipal Research Services Center Public Records publication can be found at:

www.atg.wa.gov/opengovernment/internetmanual.aspx

www.mrsc.org/Subjects/Legal/opma/pg1pkj.aspx

www.mrsc.org/Publications/pr06.pdf

Executive Sessions for PHDs

The publication contained in this section of the legal manual includes nearly all the information hospital districts require about the Open Public Meetings Act and the Public Records Act. However, there are a couple of hospital district specific issues that must be mentioned in this context.

First, hospital districts (unlike other local governments) enjoy an additional exemption to the open meetings requirement. Hospital districts may convene an executive session when dealing with certain issues related to clinical privileges. RCW 70.44.062 states:

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



restriction of clinical or staff privileges of a physician or other health care provider as defined in RCW 7.70.020 shall be done in public session.

Minutes

The state law on minutes is not part of the Open Public Meetings Act. Rather, it is set forth in RCW 42.32.030. Under that statute, minutes of regular and special meetings must be promptly recorded and open to public inspection. Minutes of executive sessions are not required.

Written or taped minutes are public records and, therefore, must be made available for inspection under the Public Records Act [Chapter 42.17 RCW]. Minutes, or portions thereof, may be exempt from disclosure only if they fall within one of the exemptions to the Public Records Act [See Chapter 42.17 RCW]. Consequently, it is possible for a governing body to properly close a meeting under the executive session exemptions but have to release any recorded minutes because they do not fall within an exemption to the Public Records Act.

SECTION V - District Finances

Compiled from the PHD Legal Manual, Chapter Four

This section discusses the financial aspects of operating a hospital district. Specifically, it identifies the unique rules affecting a hospital district's ability to obtain money to support its health care service goals. This section begins by setting out the general administrative requirements which hospital districts should follow in managing their financial affairs. Next, it provides a description of the use of property taxes as a revenue source, (a major potential benefit of district status) and some of the many restrictions and complications affecting property taxes under Washington law. This section also describes some of the different ways that hospital districts may borrow funds. Finally, while hospital districts are generally authorized to expend funds on most anything consistent with their statutory powers, this section identifies and discusses a couple of unique issues relating to the flow of money out of a hospital district: restrictions on gifts and the payment of taxes by the district itself. This section should not serve as a substitute for a thorough study of the Hospital District Legal Manual, which provides more extensive discussion of these topics.

A. Administration of District Finances

In general, hospital districts are expected to exercise sound judgment in the exercise of their business affairs. Failure to do so would mean that the commissioners, superintendent, and other officers of the district were breaching their fiduciary obligations under common law standards. Failure to fulfill this obligation might subject these officers to liabilities or result in the voiding of actions taken by the district. To the extent that such sound judgment includes the use of specific administrative systems and



practices, hospital districts are well advised to assure that these are part of their administrative routines. The bulk of these general fiduciary requirements are common to all hospitals and other health care institutions, and are beyond the scope of this manual. However, most, if not all, of these general procedural requirements should be identified in the process of conducting the audit described at the end of Chapter 4 in the Legal Manual.

Budgeting Requirements

While any prudent hospital district would use a budgeting process, a hospital district budget is also required under RCW 70.44.060(6). Each district must develop a proposed budget by November 1st of each year and file it in the records of the commission. Notice of the filing and the date of the hearing on the budget must be published once a week for two consecutive weeks in a newspaper printed and of general circulation in the county. A hearing on the budget must be held on or before the 15th day of November, and the commissioner board must adopt the final budget by resolution after this hearing. The clear purpose of this budget is to generate a document to be used in the development of tax needs and rates by county officers. The hearing must include consideration of possible increases in property tax revenues. [RCW 84.55.120]

Practical Consideration

The budget required by statute is essentially directed at generating the level of tax receipts required by public hospital districts. Because of the variation in other revenue sources for a PHD, and the fact that a budget used for management control should be much more detailed than this basic budget required by statute, hospital districts might wish to use two budget documents. While the totals and key sub-totals of the budget used at public hearing should match the more detailed management budget, this double budget approach provides a great deal more flexibility for district management.

Amendments

If a district under-estimates its expenditures for the budget required by statute, the PHD should amend it by resolution of the board to reflect the expenditures. The adoption of amendments by the board of commissioners should be of great value to the superintendent by showing, as a matter of public record, that commissioners are aware of the necessary changes and have acted to approve them.

Receipt, Disbursement, and Investment of Funds

Receipt and disbursement of funds is managed by the district treasurer. See Chapter 2 of the PHD Legal Manual for a complete discussion of responsibilities and issues.

B. District Revenues/Property Tax Overview

By far the largest component of the financial resources for hospital district operations comes from revenues generated from medical treatment. Payments for this patient care come from many sources, including private insurers, the state and federal government, and self-paying patients. For hospital districts, patient revenues typically make up over 95 percent of their total budget, with tax revenues making up the balance. This



dependence by a local government on revenues associated with the service provided, rather than using a tax-dominant funding source, is a distinction hospital districts share with port, sewer, water, and public utility districts. For comparison, note that non-tax sources make up less than 10 percent of the revenues for cities and counties. Property taxes are particularly critical to counties, where roughly 70 percent of their funds come from this source. Cities, however, depend on property taxes for only 30 percent of their budgets.

Issues related to the collection of patient revenues by hospital districts are covered in Chapter 4 of the PHD Legal Manual. However, most of the issues related to treatment of patients and collection of revenues are common to all hospitals and beyond the scope of the PHD Legal Manual. The laws pertaining to the generation and collection of hospital district revenues associated with taxes are of unique concern to hospital districts and are covered below.

Washington Property Tax Structure, Generally

Property taxes are taxes assessed on the estimated value of real and personal property owned by individual citizens and businesses in the state. The value is assigned by county property tax assessors or the state department of revenue and typically represents some estimate of the market value of the property. Using this value as the base, local and state revenue officials determine the amount of taxes required to support government by adding up the tax resources identified in each government's budget document as well as any other special property tax funds approved by the voters separate from the budget. Once these are tallied, a tax rate or "levy" per dollar value of property is calculated based on the budget need and the overall value of property in the area.

This is, of course, a dramatically simplified version of how property taxes are determined. An enormously complex set of state laws has evolved which specifies how calculations are to be made, which classes of property and persons should be totally or partially exempt from taxes for public policy reasons, and how the public is to be afforded the opportunity to challenge government decisions with respect to its tax burden. While these issues could have some significance for hospital districts, neither this guide nor the PHD Legal Manual covers them in detail. The guide does, however, focus on a variety of laws, which set limits on the type, amount, and duration of property taxes in Washington.

Washington Tax Levies

Washington law establishes distinct types of property taxes, which may be levied by local governments depending on the specific grants of authority within each class of government's authorizing statute. These are: 1) regular or "maintenance and operations" levies, 2) special or excess levies, 3) bond levies and 4) emergency medical services (EMS) levies. Washington's PHDs are authorized to use each of these levy types, subject to the many rules set out below.



Regular property tax levies are those authorized to be applied year after year for each type of local government. These are normally thought of as supporting the day-to-day activities of the government, and for this reason are commonly described as “maintenance and operations” (M & O) levies. A maximum regular property tax rate is established by statute for each type of local government that has the authority to use these levies. The vast majority of complexity and confusion in Washington law relates to these levies.

Special levies are those authorized to be applied for a given year or years in “excess” of the regular property tax. The Washington State Constitution grants the general authority to local governments to obtain voter approval for one-year special levies. School districts are an exception, and are authorized to have voter approval for six years. Still, each local government class must also be granted the authority to run special levies in statute. Hospital district authority is found in RCW 70.44.060(6).

Bond levies are actually a type of special or excess levy. Simply put, bond levies are special levies authorized to retire voter-approved bonds and apply for the term of the bonds. Of course, the world of property taxes is never quite that simple, and the special rules for bonds and bond levies are numerous.

Emergency medical services levies can be levied by counties, emergency medical services districts, cities, towns, fire protection districts, or public hospital districts for emergency medical purposes. [RCW 84.52.069] If a county levies an EMS tax, another district qualified to levy an EMS tax may only levy for the balance between the amount of the county’s EMS tax and the statutory maximum of the EMS tax.

C. Bond Financing

General Ability to Borrow

As is true of all municipal corporations, PHDs have no inherent authority to borrow money. Although they have broad, implied powers to make expenditures for PHD purposes, their powers to incur obligations for the future payment or repayment of money in order to accomplish the same purposes must be expressly conferred by statute. The statutory authorization, moreover, must conform to applicable constitutional restraints.

Obtaining a Legal Opinion

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



Types of Borrowing Devices

Many of the common PHD borrowing devices discussed in this section are generally well understood. **General obligation bonds** are interest-bearing, fixed term obligations to the payment of which the issuer has pledged its “full faith and credit” – meaning that the issuer is bound to levy taxes and apply other available resources, to pay the principal and interest on the bonds when due or as soon thereafter as possible. There may be limitations, however, on the rate at which tax levies may be made and hence on the speed with which the bonds may be retired. **Revenue bonds** differ from general obligation bonds in that they are payable only out of a special fund, to which normally are pledged the revenues derived from the facility the bonds are issued to finance, and occasionally also other moneys (but not general property taxes). If such fund is insufficient, the bondholders have no recourse to other sources of payment. Other financing devices include warrants, notes, conditional sales contracts, and more recently credit cards.

General Obligation Bonds

PHDs are authorized to issue general obligation bonds [RCW 70.44.060(5)(b)]. The purpose of these bonds must be to acquire or to construct a public hospital or “other health care facilities” [as defined in RCW 70.44.007(1)], or to improve or to extend an existing facility. [RCW 70.44.110]

The bonds must be authorized by resolution of the hospital district commissioners. The resolution must describe the plan of acquisition or of construction, declare the estimated cost of the project and specify the amount of indebtedness to be incurred. The voters need not approve the bonds if the 0.75 percent debt limit has not or will not be exceeded. [RCW 39.36.020(2)] Approval of the voters by a 60 percent majority is required otherwise.

General obligation bonds issued by PHDs are payable from taxes levied upon all taxable property in the district in an amount sufficient, together with other revenues of the district that are available to pay the interest on and the principal of the bonds. [RCW 70.44.130] The amount of taxes is certified to, and collected by, the proper county officer in the county where the district is located. [RCW 70.44.060(6)]

The commission of the PHD is authorized to determine:

- The bond issue amount;
- Date or dates;
- The term (which may not exceed thirty years);
- Conditions;
- Bond denominations;
- Interest rate or rates (which may be fixed or variable);
- Interest payment dates;
- Maturity or maturities;
- Redemption rights;



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- Registration privileges;
 - Manner of execution;
 - Price;
 - Manner of sale;
 - Covenants; and,
 - Form.

Unlimited v. Limited General Obligation Bonds

If the general obligation bonds are payable solely from the district's regular property tax levy, the bonds are referred to as "limited tax" general obligation bonds. If the general obligation bonds are payable from a special levy in excess of the district's regular levy, the bonds are referred to as "unlimited tax" general obligation bonds. As discussed below, special bond levies in excess of a district's regular levy must be approved by a vote of the district's residents. In addition, the proceeds of unlimited tax general obligation bonds may only be used for capital purposes other than the replacement of equipment.

Revenue Bonds

The commissioners of PHDs are authorized to issue revenue bonds for district purposes. [RCW 70.44.060(5)(a)] Issuance of the bonds is covered by the Municipal Revenue Bond Act. [Chapter 35.41 RCW] Analogizing from the provisions of that chapter, the board may issue revenue bonds simply by resolution—voter approval is not required. [RCW 35.41.010; .030]

The bonds may be issued to finance the acquisition, construction, expansion, improvement or operation of hospitals or "other health care facilities," as defined in RCW 70.44.007(1). See also RCW 35.41.100; 70.44.060. Planning, engineering, legal, interest and transaction costs may be included in determining the principal amount of bonds. [RCW 35.41.090]

Revenue bonds issued by PHDs are payable solely from a special fund or funds into which a fixed amount or a fixed proportion of revenues from the facility that the bonds financed are obligated. [RCW 35.41.010]

The rates or charges for the facility financed by the revenue bond should be sufficient to pay the principal and the interest on any bonds or warrants, the transaction costs, and the operating and maintenance expenses of the district. [RCW 35.41.080] The bonds are not considered a general indebtedness of the PHD for statutory debt limitation purposes. [RCW 35.41.030(8)]

The characteristics of revenue bonds are generally similar to the characteristics of general obligation bonds except that the bonds must state on their face that they are payable from a special fund and do not constitute a general indebtedness of the district.



Refunding Bonds

Public hospital districts are authorized by chapter 39.53 RCW to issue bonds, without an election, for the purpose of refunding previously issued bonds in three situations. The first situation is when all or part of an outstanding bond issue is in arrears or about to become due, and insufficient funds are available to retire or to redeem the bonds. The second situation is when it is either necessary or in the public hospital district's best interest to modify the debt service, reserve requirements or other terms under which the bond is being refunded. The third situation is when the public hospital district will save money, taking into account transaction costs, by refunding the bonds. [RCW 39.53.020] General obligation bonds may be issued to refund general obligation bonds, and revenue bonds may be issued to refund other revenue bonds. Under chapter 39.53 RCW, bonds also may be issued to refund warrants and other obligations, including other refunding bonds.

Advance refunding bonds are also authorized by chapter 39.53 RCW. An advance refunding bond is issued for the purpose of refunding a bond first subject to redemption or maturing more than one year after the advance refunding bonds are issued. [RCWs 39.53.010(8) and 39.53.020]

Refunding bonds issued pursuant to chapter 39.53 RCW are payable generally from the same sources – taxes and revenues – as the bonds refunded. Special provisions apply to advance refunding bonds. During the interim period between the issuance of the bonds and the time when the bonds to be refunded mature or are first subject to redemption, the proceeds and investment income from the advance refunding bonds may be used to secure and to pay both the principal of and the interest on the advance refunding bonds themselves. [RCW 39.53.070]

Refunding bonds generally have the same characteristics as the bonds they refund [RCW 39.53.120]. The refunding bonds may be issued in a principal amount in excess of the principal amount of the bonds to be refunded. The excess is limited to an amount reasonably required to accomplish the refunding. The principal amount of the refunding bonds also may be less than the principal amount of the bonds to be refunded, if that sum is sufficient to accomplish the refunding [RCW 39.53.050]. If the bonds to be refunded were voter-approved general obligations bonds, the maturities of the refunding bonds may not extend over longer periods than the maturities of the bonds to be refunded. [RCW 39.53.050]

Warrants

Public hospital districts are authorized to issue three types of warrants: revenue, tax anticipation and general. [RCW 70.44.060(5)(a)]

Revenue Warrants

- Revenue warrants are payable either out of a special fund to which revenues of a public hospital facility are obligated, or are payable from the proceeds of the sale of revenue bonds. Revenue warrants issued against a special fund are not on



indebtedness of the district, and constitute a claim by the warrant holder only against a special fund. [RCW 35.41.050]

- The commission is obligated to fix rates of district facilities that are sufficient, with other monies available, to provide for the payment of the warrants. [RCW 35.41.080]
- If a public hospital district fails to set aside and to pay revenue obligated to a special fund into that fund, then a warrant holder may bring suit against the district to compel compliance. [RCW 35.41.070]

Tax Anticipation Warrants

- The amount of tax anticipation warrants issued may not exceed the anticipated district revenues for one year.
- Tax anticipation warrants, in an amount not to exceed the anticipated tax revenues of one year, are payable from the first tax monies available from the levy of taxes against all taxable property in the district. [RCW 70.44.060(6)]

General Warrants

- The treasurer of the district is authorized to disburse district funds upon warrants issued by an auditor appointed by the Commission upon orders or vouchers approved by the Commission. [RCW 70.44.171]
- Warrants issued by the public hospital district auditor are payable by the district treasurer from funds on deposit with the treasurer. [RCW 70.44.171] If insufficient funds are on deposit with the treasurer when the warrants are presented for payment, the warrants become interest bearing warrants.

Other Types of Short-term Obligations

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

The short-term obligations are repayable out of money derived from the source or sources in anticipation of which they were issued or from any money otherwise legally available for this purpose.

Under certain limited circumstances, public hospital districts are also authorized to establish lines of credit with any qualified public depository.



Public hospital districts may now also use credit cards where appropriate for official government purchases and acquisitions. [Chapter 39.58 RCW]

A public hospital district may execute a conditional sales contract to purchase any real or personal property in connection with the exercise of any powers or duties of the district. The contract is considered a debt of the district for purposes of computing statutory debt limitations. [RCW 70.44.260]

If the contract causes a district to exceed its statutory debt limit, then the contract must be approved by a vote of sixty percent of the voters in an election where the voter turnout exceeds forty percent of the turnout at the last preceding general election.

Public hospital districts are not currently authorized to mortgage, as mortgagor, land and improvements owned by the district.

D. Limitations on Borrowing

There are three types of special limitations which must be taken into account in analyzing the borrowing powers of public hospital districts: debt, levy and 101% limits.

Debt Limits

Debt limits relate to aggregate indebtedness. Limitations are placed by the Constitution and statutes of the State of Washington upon the maximum amount of “debt” or “indebtedness” that public hospital districts can have outstanding at any one time.

A debt limitation is expressed as a percentage of the value of the taxable property within the public hospital district. Debt, moreover, is divided into two categories: non-voted (authorized solely by the public hospital district’s governing body) and voted (authorized by a vote of the qualified voters residing in the public hospital district).

There are constitutional and statutory limits on non-voted indebtedness as well as the cumulative total of non-voted and voted indebtedness. Since the statutory limitation is more restrictive than the Constitution, limiting both non-voted and total indebtedness to lower amounts than the Constitution will permit, it is of greater practical concern.

The indebtedness that a public hospital district may incur without voter approval is limited by statute to .75 percent of the value of the taxable property in the district [RCW 39.36.020(2)]. With the assent of 60 percent of those voting at either a special or a general election, the district’s indebtedness may reach 2.5 percent of the value of the taxable property in the district. These limits are statutory. The Washington Constitution otherwise would permit a non-voted debt limit of 1.5 percent of the value of the taxable property in the district and a voter approved debt limit of 5 percent, for bonds issued for strictly capital purposes. [Washington Constitution, Article VIII, Section 6]



Levy Limitations

The second type of limitation that must be considered in connection with public hospital district finance is limitations on the rate of ad valorem property taxation that may be imposed on any particular piece of property. These limitations are referred to as “levy limitations.” Levy limitations do not affect the validity of the debt itself, as distinguished from debt limitations, but they may determine how soon it could be paid off.

Without an election, a public hospital district is authorized to levy an annual tax on all taxable property in the district up to \$.75 per \$1,000 of assessed valuation [RCW 70.44.060(6)]. Levies in excess of that amount must be authorized by 60 percent of those voting at either a general or special election. If the levy is for the sole purpose of making the required payments of principal and interest on general obligation bonds issued for capital purposes, then the number of voters voting at the election must exceed 40 percent of the number of voters who voted at the preceding general election. [Washington Constitution, Article VIII, Section 2(b), Amendment 59]

With voter approval, public hospital districts are permitted by both statute and the Constitution to levy whatever rate is approved. The Constitution and statutes are identical in terms of excess levy election requirements; a certain minimum number of votes must be cast on the proposition and a 60 percent approving vote must be obtained. For excess debt approval, by contrast, a minimum voter turn-out is not required by the Constitution.

Practical Consideration

Excess debt usually entails excess levies and hence the election requirements normally may be considered the same.

101% Lid

A third kind of limitation upon the issuance or repayment of public hospital district debt instruments is imposed by statute and is called the “101% lid,” which restricts the total dollar amount of taxes which can be raised by any given taxing district. The amount is related to that raised during prior years, with exception made for new improvements, and can be exceeded with voter approval. The purpose of the 101% lid is to restrict the tax increases which would otherwise result from applying regular levy rates to property whose assessed value is dramatically increasing; its rationale is that such increases in assessed value do not always reflect increased ability to pay taxes. This limitation was also discussed in an earlier section of this chapter.

Specific Provisions

The Legislature requires regular levies of public hospital districts be set so regular property taxes payable in the following year do not exceed 101% of the regular tax levies for the district in the highest of the three most recent years [Chapter 84.55 RCW]. The total amount that may be levied is adjusted to include a sum computed by applying the previous year’s regular levy rate to the increase in assessed value resulting from new construction and improvements in the district [RCW 84.55.010]. Special provisions are



made for districts that have not levied in the three most recent years, districts that result from consolidation, districts that have annexed territory, and districts for which the levy limitations have changed [RCW 84.55.020, .030, .040]. Also, the 101% "lid" may be raised if a majority of the voters approve an increase in an election held not more than twelve months prior to the proposed increased levy, thereby creating a new base amount for establishing the "lid" applicable to regular non-voted levies in future years. [RCW 84.55.050]

Not all of the above limitations apply to all methods of financing. Debts payable only from certain funds, such as revenue bonds, usually do not constitute general indebtedness for purposes of the constitutional and statutory limitations applicable to municipalities unless they also are made payable from general taxes. The indebtedness and levy limitations and the 101% lid have no application to debt, which is not payable out of taxes.

Beyond these three kinds of special limitations upon public hospital district borrowing powers – indebtedness limitations, levy limitations, and the 101% lid – there are few other basic statutes affecting the manner in which public hospital districts borrow money. Chapters 39.44 and 39.46 RCW, may influence the form, manner of sale, registrability, and other characteristics of both general obligation bonds and revenue bonds issued by public hospital districts. Chapter 39.62 RCW applies to the manner of executing all public securities and instruments of payment. Chapter 39.53 RCW contains provisions permitting and limiting the funding, refunding or advance refunding of municipal bonds and other instruments of indebtedness.

E. Federal Tax Issues

In general, interest on governmental bonds (i.e., state and local bonds that are not "private activity bonds") is exempt from federal income tax so long as the bonds are registered and are not arbitrage bonds, are not federally guaranteed, do not (if they are advance refunding bonds) violate restrictions on advance refunding, and are covered by a Form 8038 information return filed with the Internal Revenue Service. On the other hand, interest on "private activity bonds" is taxable. Bonds will be "private activity bonds" (1) if more than ten percent of the bond proceeds is used for any private business use (i.e., used directly or indirectly in a trade or business carried on by any person other than the public hospital district) and (2) if payment of the principal of, or interest on, more than ten percent of the proceeds of the issue is (under the terms of the issue or any underlying arrangement) directly or indirectly secured by any interest in property used or to be used for a private business use or by payments in respect of such property, or to be derived from payments (whether or not to the issuer) in respect to property used or to be used for a private business use.

F. Other Issues Relating to Borrowing

There are many other statutes and areas of law pertaining to public hospital district finance which are not covered in this section. This section does not deal with municipal



spending powers, as opposed to borrowing powers. Although the statutes that authorize debt instruments to be issued sometimes state the purposes for which the proceeds may be used, often they simply authorize borrowing “for general municipal purposes.” This section describes the purposes stated in connection with the debt authorization but does not attempt to summarize all of the general powers of public hospital districts. There are, of course, other laws, ranging from environmental protection to securities and tax regulation, which must be considered in many public hospital district financing arrangements.

Practical Consideration

The purpose of this section is simply to provide preliminary information about the financial alternatives and requirements affecting borrowing by public hospital districts. Since the law is constantly changing, and statutes and even constitutional provisions are adopted, repealed, amended, or interpreted by the courts, there can be no assurance that the information contained in this section will remain current. For this reason, and because of the many other considerations involved in a municipal financing transaction, this section is antecedent to, but not a substitute for, competent legal advice from counsel specializing in public finance.

G. Hospital District Payment Issues

Taxation in General

In general, public hospital districts are subject to many different taxes as are private persons, corporations and private not-for-profit hospitals. On a state level, public hospital districts are taxed similarly to private not-for-profit hospitals, although some distinctions are made for governmental status. On a federal level, far more uniqueness exists due to the fact that hospital districts are subdivisions of the state. Taxation is covered much more extensively in the Public Hospital District Legal Manual Chapter 4. One item of note, however, is that a municipality (such as a public hospital district) may not levy a tax on another municipality without express authority. [AGO 1990 No. 3]

Gifting of Funds and Stock Ownership

While hospital districts are clearly authorized—like all local governments, to pay those bills and claims which are related to their purposes and powers, hospital districts also must deal with an over-riding constitutional limit on the ability of governments to make “gifts” to or use funds to own stock in corporations.

The restriction is contained in Article VIII Section 7 of the State Constitution: “No county, city, town or other municipal corporation shall hereafter...become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.” Hospital districts must recognize the limits created by this provision. See the Legal Manual Chapter 4 for more information.



SECTION VI - Regulatory Compliance

Compiled from the PHD Legal Manual Chapters Two, Three and Four

A. District Treasurer & District Auditor

District Treasurer

The PHD statutes assume that the treasurer of the county in which the district is located will serve as the treasurer of the district. However, the statute also allows the commissioners to appoint their own treasurer. Treasurer duties are set out in RCW 70.44.171. The primary responsibility of the district treasurer is to establish, maintain and control the public hospital district general funds and any special funds. All monies are paid to the general fund through the treasurer; all monies are dispersed out of the general fund by the treasurer.

Special funds may be established by resolution. Money may be directed into these funds also by a resolution. Examples of special funds created by districts are capital projects funds and bond payment funds.

Where the PHD Chooses its Own Treasurer

If the PHD chooses to have its own treasurer, that person must file a bond with a surety company that is authorized to do business in Washington. The commissioners should require a bond to adequately protect the district against loss. The commissioners must decide by resolution, the amount of the bond and address any other terms and conditions of the arrangement. *Where Funds are Deposited*

If the county treasurer is also acting as the district treasurer then deposits are made in the county depositories under the "usual restrictions," contracts, and security as provided for county depositories. If the county treasurer is not the district treasurer, then a bank(s) must be designated by the commissioners in which the treasurer is to deposit funds. The bank must be authorized to do business in Washington and it must file and deposit a bond or other appropriate security with the district treasurer.

District Auditor

The district treasurer disperses funds on warrants issued by the district auditor. The district auditor is designated by the commissioner board. The post is intended to provide checks and balances on warrants presented to the district for payment and is different from a traditional in-house private auditor post. See RCW 70.44.171.

Bond Requirement

The commissioner board has the authority to require that any person handling monies or securities on behalf of the district be bonded. The commissioner board may choose to pay the premium on the bond.



B. State Audits

The State Auditor

The State Auditor is an elected official who is part of the executive branch of state government and under the state constitution is the auditor of all public accounts. The State Auditor's Office (SAO) audits PHDs on an annual basis and ensures that districts are in compliance with auditing standards adopted by the SAO and any federal audit standards. The SAO also conducts a legal audit to ensure the district is in compliance with Washington State law. Finally, any inappropriate actions of the PHD are reported by the SAO to the Attorney General for enforcement, where necessary.

Filing Financial Reports

The SAO requires municipalities to file financial reports with the SAO 150 days after the close of each financial year. The report must contain accurate statements of all collections made, or receipts received, by the officers from all sources; all accounts due the public treasury but not collected, all expenditures for every purpose and by what authority authorized and other information. [RCW 43.09.230]

- RCW 43.09.260 requires the SAO to inquire about the following: the financial affairs of the PHD
- the financial condition and resources of the PHD
- legal compliance, including constitution, laws of the state, ordinances and orders of the local government and SAO requirements have been complied with
- the methods and accuracy of PHD accounts and reports

The Structure of the Audit

Although not statutorily required, generally the SAO approaches an audit in the following way:

- A letter is written by SAO to the PHD stating when the audit will begin and the estimated costs.
- The SAO begins to review the districts books and records.
- An entrance interview is conducted where introductions are made and any particularities of the audit are discussed.
- The audit is completed.
- An exit interview is conducted where conclusions of the auditors are presented. A finding is a matter stated in the final report which is not in compliance with applicable laws and regulations. The SAO audit team may also document less serious incidences of noncompliance via a management letter. Generally, exit items are not matters of public record but may be of concern and will be reviewed again by the SAO.
- A draft of the audit report is presented to the district and input and comments from the district are encouraged.



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- The final audit report is prepared.
 - The AG's Office may conduct a follow up to any audit findings concerning the district's intention of complying with the findings.

Contesting a Finding

The district may choose legal action if it strongly disagrees with a finding that has been taken up for review by the AG's Office. Under the Declaratory Judgments Act Ch. 7.24 RCW a PHD can petition the Superior Court for a declaratory judgment for a declaration as to whether the finding is proper.

C. Public Bid Law

A hospital district may want to develop real estate, which it already owns or is planning on purchasing. Some strict legal obligations apply to hospital districts in the area of public bidding and environmental protection, as discussed below. It should be noted at the outset of this section that a much more extensive discussion of property issues is contained in the Public Hospital District Legal Manual, Chapter 3.

Public Bidding Required

Construction projects for public hospital districts are complex legal affairs. The bidding requirements as well as the contracting, monitoring and release of funds necessitate a great deal of documentation, time and effort. PHDs must publicly bid "public works" projects and materials purchases the estimated cost of which is in excess of \$75,000. A small works roster process may be used for projects under \$300,000. An explanation of the small works roster process follows the discussion of the basic bidding process.

What Purchases Must Be Bid?

The public bid statute for hospital districts does not apply to equipment or supplies purchased by the hospital district. Thus, public hospital districts need publicly bid only permanent improvements, fixtures to be attached to its real estate, and materials purchased by the district. The small works roster process is an alternative to the public bid requirements for public works contracts estimated to cost under \$300,000 and for materials purchases up to \$75,000.

In general, the term public works refers to "all work, construction, alteration, repair, or improvement other than ordinary maintenance executed at the cost of the... municipality." [RCW 39.04.010] A public works project of less than \$75,000 invokes many of the same provisions as the public bid statute.

Exemptions to the Bidding Requirement

Competitive bidding requirements may be waived by the governing body of a hospital district for the reasons identified in RCW 39.04.280.

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



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- Purchases of insurance bonds
 - Public works in the event of an emergency

The exemption for purchases involving special facilities or market conditions may apply if a district has documented an attempt to publicly bid a project where there are no bidders willing to participate in the public bid process. The exemption for purchases that are clearly and legitimately limited to a single source of supply can be used by districts, although this exception is of limited benefit since they do not have to publicly bid equipment purchases, where the exemption would be most useful.

Waiver of the competitive bidding requirements may be made by resolution or by the terms of written policies adopted by the municipality. The contract and factual basis for the exception must be recorded and open to inspection. If a resolution is adopted to waive competitive bidding requirements for special facilities or market conditions, the resolution must recite the factual basis for the exception. [RCW 30.04.280]

Basic Bidding Process

Public bidding means that the board of commissioners requests “bids” or invites sealed proposals to perform the construction work based on plans and specifications on file with the district. In the alternative, the board of commissioners may, at the same time and as part of the same notice, invite bids for the work to be done upon plans and specifications to be submitted by the bidders. The district must publish a notice thirteen days prior to the last day upon which bids will be received. Either way, the notice must state generally the work to be done and call for proposals which are to be sealed and filed with the district on or before the day and hour contained in the notice. Bids must be accompanied by bid proposal security in the form of a certified check, cashier’s check, postal money order or surety bond (bid bond) made payable to the order of the district for a sum not less than five percent of the amount of the bid. [RCW 70.44.140].

For all contracts in excess of \$1 million all invitations to bid must require bidders to submit, as part of their bid or within one hour after the published bid submittal time, the names of certain subcontractors with whom the contractor will subcontract for performance of the categories of work designated on the list to be submitted with the bid. The subcontractors required to be named are those for whom the subcontract amount is more than ten percent of the contract price. If the contractor fails to specify a subcontractor as the party to be performing the designated categories of work, the bid shall be deemed nonresponsive and, therefore, void. [RCW 39.30.060]

At the time and date contained in the notice, the bids are to be publicly opened and read. The bid is to be awarded to the lowest responsible bidder upon the plans and specifications on file, or to the best bidder submitting his/her own plans and specifications. [RCW 70.44.140].

No contract may be awarded in excess of the estimated cost of the work. In addition, if the board of commissioners believes that all bids are unsatisfactory, they may reject



them all and re-advertise, in which case the bid proposal security is to be returned to all bidders. [RCW 70.44.140].

If the contract is to be awarded, the bid proposal security must be returned to all bidders except that of the successful bidder, which shall be retained until a contract is entered into for the work and a performance bond satisfactory to the board of commissioners is posted. The performance bond is to be in an amount to be fixed by the board of commissioners (not less than twenty-five percent of the awarded contract). The bid proposal security may be forfeited if the successful bidder fails to enter into a contract with the district within ten days of the date that he/she is notified that he/she is the successful bidder. A low bidder who claims error and fails to enter into contract is prohibited from bidding on the same contract if a second or subsequent call for bids is made for the project. [RCW 70.44.140].

Requirement Of Commission Plan And Estimates

Public hospital districts are required to specify plans and dollar estimates for any additions to the facility. This must include the estimated cost, which must be distinguished from the bid cost. The estimated cost is usually developed at a much earlier point in time. [RCW 70.44.110]

Bids may be called for with alternative provisions. In other words, a district may not be certain that it desires to construct an entire project at a certain time, or it may feel that there are various cost alternatives. The bid can specify alternatives upon which the district can elect in awarding the bid.

On What Basis Must Contracts Be Awarded?

The bid statute does not require that the award be made to the “lowest bidder” but refers to the “lowest responsible bidder.” In determining “lowest responsible bidder,” in addition to price, the following elements shall be given consideration:

- The ability, capacity, and skill of the bidder to perform the work;
- The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- Whether the bidder can perform the contract within the time specified;
- The quality of performance of previous contracts or services;
- The previous and existing compliance by the bidder with laws relating to the contract or services;
- Other information which may have a bearing on the decision to award the contract.

The bid can and should request certain qualifications of contractors who are requested to submit bids. For example, if a public hospital district requires work to be done in a



surgery suite, the district may specify that certain hospital construction experience is necessary. Obviously, the stated qualification requirements cannot discriminate unfavorably against otherwise-reputable contractors for reasons unrelated to bona fide qualifications.

Division Of Public Works

A public hospital district may not divide a project into several small phases of less than \$50,000 each in order to avoid the public bid process. [National Electric Contractors Association, Puget Sound Chapter v. City of Bellevue, 1 Wn App. 81 (1969)]

Bidding: The Hospital District As A Tenant

Under lease of real estate to the public hospital district as a tenant, work performed by the landlord may not have to be publicly bid.

The following are suggested criteria for making a determination about whether the work must be publicly bid:

- The tenant improvements must not be paid for by the landlord in order to avoid the public bid statute (although in all likelihood, the landlord will charge the district the cost of the tenant improvements as rent). A lump sum payment reimbursing the landlord would trigger the public bid statute.
- If the lease is short-term, it is less likely to be viewed as improvements specifically for the public hospital district.
- If the useful life of the improvements exceeds the term of the lease, the improvements are less likely to be viewed as made on behalf of the public hospital district.
- If the tenant improvements are generic to any tenant (i.e., walls, painting, ceiling), even though the district has significant input into the design for its space, it is less likely to necessitate public bidding.
- The terms of the lease should state that all tenant improvements are the property of the landlord during the term of the Lease and upon termination of the lease.

Penalties

The remedy for violating the public bidding statutes is that any municipal officer who is responsible for any part of the entering of the contract in willful and intentional violation of the public bid laws for the district's own resolution, shall be held liable to civil penalty of not less than \$300. They also may be held liable jointly and severally with any other municipal officers for all consequential damages to the district.



Small Works Roster Alternative To Public Bid Statute

State law provides an alternative to the extensive requirements of the public bid statute for public works contracts costing under \$300,000 [RCW 70.44.140; RCW 39.04.155]; and for materials purchases under \$15,000. [RCW 70.44.140(3); RCW 39.04.190].

How to Create and Maintain a Small Works Roster for Public Works Contracts

As an alternative to the requirements for public works contracts, PHDs may create a small works roster for contracts under \$300,000. [RCW 70.44.140] The basic requirements applicable to the roster are covered in RCW 39.04.155.

A PHD establishing a small works roster must adopt rules and pass a resolution implementing the requirements of RCW 39.04.155. If there is an interlocal agreement between local governments, establishing a small works roster to be used by parties to the agreement, the lead entity responsible for implementing the provisions must be clearly identified.

Small Works Roster Contents

The PHD may create one general roster or create a small works roster for different specialties or categories of work. Where applicable, the small works roster may make distinctions between contractors based upon different geographic areas served by the contractor. The roster(s) must consist of all responsible contractors who have requested to be on the list and if required by law, are properly licensed or registered to perform such work in this state. [RCW 39.04.155] A hospital district may require eligible contractors who wish to be placed on a roster to keep current records of any applicable licenses, certifications, registrations, bonding, insurance or other appropriate matters on file with the PHD as a condition of being placed on the roster.

At least once a year the PHD must publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for the rosters. Additionally, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. A PHD may require contractors to sign master contracts that become effective upon a specific small works roster award being made.

Establishing Procedures for Small Works Rosters

If the RCW 39.04.155 small works roster is used, procedures must be established for securing telephone, written or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and contracts are awarded to the lowest responsible bidder as defined in RCW 43.19.1911. See discussion above under "On What Basis Must Contracts be Awarded?"

Invitations for quotations must include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. Detailed plans and specifications do not need to be included in the invitation. Quotations may be invited from all appropriate contractors on the appropriate small works roster. Alternatively, quotations may be invited from at least five contractors on the appropriate small works



roster who have indicated the capability of performing the kind of work being contracted. However, the quotations must be invited in a manner that will equitably distribute the work opportunity among the contractors on the appropriate roster. "Equitably distribute" means that a PHD soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the roster who perform similar services. See RCW 39.04.155(2)(c).

Where the cost of the work is estimated to be over \$100,000 a PHD that chooses to solicit bids from less than all of the appropriate contractors on the appropriate roster must also notify the remaining contractors that quotations are being sought. The PHD has the sole option of determining whether this notice to the remaining contractors is made by: (a) publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (b) mailing a notice to these contractors; or (c) sending a notice to these contractors by facsimile or other electronic means.

Immediately after an award is made the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

Improvements to Real Property Under the Small Works Roster Process

Any PHD using the RCW 39.04.155 small works roster process to award contracts for improvement of real property must make available a list of the contracts awarded under that process at least once every year. See RCW 39.04.200. Improvements include construction, building, renovation, remodeling, alteration or repairs. RCW 39.04.200 requires that the list contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list must also state the location where the bid quotations for these contracts are available for public inspection.

Small Works Roster Manual

The Department of Community, Trade and Economic Development and the Municipal Research Services Center are now required to prepare a small works roster manual and periodically notify local governments authorized to use a small works roster process about this authority. See RCW 39.04.156.

How To Create And Maintain A Small Works Roster For Purchases Of Materials

Hospital districts are exempt from the public bid procedures when purchasing supplies and equipment. However, PHDs are required to follow specific procedures for contracting only with respect to "any purchase of materials, supplies, or equipment, with an estimated cost in excess of \$40,000, shall be by contract. Any purchase of materials, supplies, or equipment, with an estimated cost of less than \$50,000 shall be made using the process provided in RCW 39.04.190." [RCW 70.44.140] The distinction between materials and supplies may not always be clear, however it is limited to a small range of the purchases of PHDs. Generally materials will only be goods purchased for in-house maintenance and repairs and include such items as gravel and plywood. To the extent that the purchase is not materials, it is exempt from the public bid process.



As an alternative to the bid requirements for materials purchases, PHDs may create a small works roster for material purchases under \$15,000. [RCW 70.44.140(3)] As a practical matter, the usefulness of this option may be limited because there is no requirement for a hospital district to publicly bid materials purchases under \$50,000.

The requirements applicable to the roster are discussed in RCW 39.04.190. In order to create the roster, the PHD must first publish in a newspaper of general circulation within the district a notice of the existence of the vendor list and solicit names of vendors. Thereafter, the PHD must publish notice of the list and solicit names of vendors at least twice a year. [RCW 39.04.190(2)] The second step for the PHD is to establish by resolution procedures for securing telephone or written quotations from the vendors to assure that a competitive price is established and to award contracts to the “lowest responsible bidder,” as defined in RCW 43.19.1911 and discussed above under “On What Basis Must Contracts be Awarded?”

PHDs that choose the small works roster alternative must post a list of the contracts awarded to vendors at least once every two months. The list must contain the name of the vendor, the amount of the contract, a brief description of the items purchased and the date it was awarded. The list must also state the location where the bid quotations for these contracts are available for public inspection. [RCW 39.04.200]

Invitations For Bids And Awards Of Contracts For Purchases Of Materials

When a contract is to be let for materials purchases, at least three vendors must be invited to submit bids, whenever possible, to assure that a competitive price is established. A contract awarded using this method need not be advertised. Immediately after an award is made, the bid quotations must be recorded, opened to public inspection and available by telephone inquiry. [RCW 39.04.190(2)]

