

# Enrolled House Bill 3096

Sponsored by Representative WHISNANT, Senator KNOPP

CHAPTER .....

## AN ACT

Relating to water improvement companies; amending ORS 554.020, 554.040, 554.060, 554.080, 554.135, 554.210, 554.300, 554.320, 554.380 and 554.420; repealing ORS 554.050; and declaring an emergency.

### Be It Enacted by the People of the State of Oregon:

**SECTION 1.** ORS 554.020 is amended to read:

554.020. (1) One or more natural persons of the age of 18 or more, a domestic or foreign corporation, a partnership or an association, by submitting articles of incorporation to the Office of the Secretary of State for filing, may act as incorporators of a corporation for one or more of the following purposes:

- (a) Irrigating or draining land.
- (b) Furnishing land with water for domestic use.
- (c) Protecting land by flood control.

**(d) Taking ownership of and operating existing sanitary sewer facilities when water for domestic use is supplied pursuant to paragraph (b) of this subsection.**

(2) [A] **The incorporators shall file a** true copy of the articles of incorporation [*under subsection (1) of this section shall be filed*] in the county clerk's office of the county where the land incorporated is situated.

(3) The requirements for filing a document under ORS 554.005[,] apply to articles of incorporation.

**SECTION 2.** ORS 554.080 is amended to read:

554.080. When the articles of incorporation are filed by the Secretary of State, [*the persons appointed in the articles as directors, and their successors in office, associates and assigns, by the name assumed in such articles, shall thereafter be deemed a body corporate with power*] **the corporation is deemed to be established and has the power:**

- (1) To sue and be sued.
- (2) To contract and be contracted with.
- (3) To have [*and*], use **and alter** a corporate seal [*and to alter the same at pleasure*].

(4) To purchase, condemn by the power of eminent domain, possess and dispose of [*such*] real and personal property as [*may be*] necessary and convenient to carry [*into effect the objects*] **out the purposes** of the corporation, and to take, hold, possess and dispose of all real and personal property donated to [*such*] **the** corporation [*by the United States or by any state, territory, county, city or other municipal corporation or by any person, for the purpose of aiding in the objects of such*] **to carry out the purposes of the** corporation.

(5) To appoint [*such*] subordinate officers, employees and agents as [*the business of*] the corporation [*may require*] **requires**, and prescribe their duties and compensation.

(6) To make, establish or amend bylaws, rules and regulations, not inconsistent with the laws of the state, the articles of incorporation, or the covenants and provisions of the landowners' notice provided in ORS 554.170 to 554.190, if any is filed, prescribing the manner and mode of conducting the business of the corporation, distributing and using water in domestic use, [*irrigation*] **irrigating land**, [*usage of*] **using** any drainage or flood control works, **collecting and treating sewage** and enforcing the collection of rates, tolls, charges, fees, fines and assessments[, *but such*]. [*bylaws*] **Bylaws**, rules and regulations must be ratified by two-thirds of the votes of the members of the corporation.

(7) To prescribe, fix, make and charge and collect from the water users or those who receive the benefits of the corporation, rates, tolls, fees, fines and charges for [*the*] maintenance and operation of the corporation, [*for the*] use of water[,] or for [*the use of any of*] the works of the corporation, or for violation of any of the bylaws, rules and regulations of the corporation[;]. [*such*] **The** rates, tolls, fines, fees and charges shall be a lien on the crops produced as prescribed in ORS 545.275, and may [*also*] be [*made*] a lien upon the land to which the water was furnished, or benefit was provided, as prescribed in ORS 554.135.

(8) To make, levy and collect [*any assessment*] **assessments** either ratably or in proportion to the benefits received as **provided by** the bylaws or recorded landowners' notice [*may provide*], upon the lands described in the articles of incorporation[, *for the purpose of providing the amount of money required to be raised by*] **to fund** the corporation [*through such assessments*] for any [*purposes whatsoever*] **purpose**, including maintenance and operation, estimated delinquencies on assessments, principal and interest of maturing indebtedness, and [*such*] reserve [*as may be*] necessary or provided by the bylaws, subject to the limitations, restrictions and provisions of the recorded landowners' notice.

**SECTION 3.** ORS 554.135 is amended to read:

554.135. (1) In lieu of the method of levy and assessment provided for in ORS 554.130, the board of directors may provide in the bylaws or by resolution for the billing and collection of the rates, tolls, fees, fines and charges of the corporation in the manner provided in this section. The provision in the bylaws or the resolution may apply to rates, tolls, fees, fines and charges for the operation and maintenance of the corporation, for the use of water, or for the use of any of the works of the corporation, or for violation of any of the bylaws, rules and regulations of the corporation, or for principal and interest of maturing indebtedness.

(2) The bylaws or the resolution establishing the rates, tolls, fees, fines and charges shall fix the time when they shall become due and payable, and shall also fix a time after which they shall become delinquent, which time shall be any time within one year from the due date.

(3) If any rates, tolls, fees, fines or charges remain unpaid after the delinquency date, **the corporation may file a notice of lien and collect the delinquent charges in the manner provided for collection of incurred charges of an irrigation district under ORS 545.494, 545.496, 545.498, 545.502, 545.504 and 545.506.** [*the secretary of the corporation may file a Notice of Claim of Lien with the recording officers of the county of each county in which land is situated which received or was entitled to receive the benefit of the water delivery or other benefits from the corporation for which the rates, tolls, fees, fines or charges have been made. The Notice of Claim of Lien shall be in writing and must contain:*]

[*(a) The name of the person or entity to whom water was delivered or was deliverable or who received benefits from or was entitled to receive benefits from the works of the corporation;*]

[*(b) A statement of the amount claimed past due; and*]

[*(c) A description of the land which received or was entitled to receive the benefit of the water delivery or other benefits of the corporation sufficient for identification. Upon such filing, the rates, tolls, fees, fines or charges shall become a lien upon all lands therein described in the amounts set forth opposite each tract of land.*]

(4) If rates, tolls, fees, fines or charges, or any installment thereof, are not paid when due, interest shall be charged and collected on the past due amount at the rate of one and one-half percent per month, or fraction of a month, until paid.

*[(5) Upon the filing of the Notice of Claim of Lien, the board of directors by resolution may direct that all delinquent rates, tolls, fees, fines and charges represented thereby shall be foreclosed by the district. The foreclosure shall follow the procedures and be accomplished in the manner provided in ORS 545.502, 545.504 and 545.506.]*

**SECTION 4.** ORS 554.210 is amended to read:

554.210. (1) Owners of all the land described in the articles of incorporation may, by unanimous agreement in writing, subscribed and acknowledged by them[,]:

(a) Cause to be prepared and approve and adopt detailed plans and specifications for the works and improving of the lands under the plan described in the articles of incorporation[, and];

(b) Make a report upon the same, including an estimate of the *[probable]* cost *[thereof, and shall thereupon]; and*

(c) File the *[same]* **plans, specifications and report** with the secretary of the corporation. *[In such case]*

**(2) When the owners have acted pursuant to subsection (1) of this section:**

(a) The board of directors shall adopt a resolution briefly reciting the facts *[thereof]* **of the plans, specifications and report** and accepting, approving and adopting *[the same]* **them** as the plan of improvement of the land described in the articles of incorporation.

(b) *[Such]* **The** plans, and specifications and report shall be the plans of the corporation for the works and improvement of the land.

(3) If the landowners do not *[so]* adopt plans, *[and]* specifications and a report thereon by unanimous consent, *[such]* **the** plans, *[and]* specifications and report may be adopted by resolution at a meeting of members as provided in *[subsection (2)]* **subsections (4) to (6)** of this section.

*[(2)]* (4) *[In such case,]* The board of directors at any meeting of the board may adopt a resolution:

(a) Designating and authorizing the *[expenditure of a certain amount of money]* **expenditures** for preliminary investigation and report upon the plans and cost of works and construction, or repair or reconstruction of the same, or purchasing or acquiring any property, ditches, dikes, levees, plants, improvements, easements, rights of way, water rights, or other things necessary, advantageous or beneficial for improving the land under the plan described in the articles of incorporation; or *[they may by resolution determine and declare]*

(b) **Determining and declaring** that such preliminary investigation and the expense thereof is unnecessary.

**(5) Pursuant to action under subsection (4) of this section,** the directors shall then:

(a) Secure a competent engineer, if *[they determine that it is]* necessary or desirable, who shall make *[such]* **the** investigation, and prepare detailed plans and specifications and make a report upon the same, including an estimate of the *[probable]* cost thereof, *[or they may]; or*

(b) Prepare detailed plans and specifications and report with an estimate of the *[probable]* cost thereof without securing an engineer.

(6) The directors shall submit the detailed plans and specifications and report to a meeting of the members of the corporation for adoption. Adoption must in that case be made by resolution passed by a two-thirds vote of all the votes to which the members may be entitled.

**(7) Notwithstanding subsections (1) to (6) of this section, when a corporation formed under ORS chapter 554 takes ownership of existing sanitary sewer facilities under ORS 554.020 (1)(b), the board of directors may adopt as detailed plans and specifications of the corporation the plans and specifications of the former owner or operator of the sanitary sewer facilities without securing a competent engineer.**

**SECTION 5.** ORS 554.050 is repealed.

**SECTION 6.** ORS 554.040 is amended to read:

554.040. The articles of incorporation shall specify:

- (1) The duration of the corporation, if limited.
- (2) The name assumed by the corporation and by which it shall be known, which name must include the words "district improvement company," except that:
  - (a) A corporation organized under ORS 554.005 to 554.340 but not organized for profit, or a corporation incorporated before March 4, 1937, under chapter 172, Oregon Laws 1911, which amends its articles to state that the corporation shall not operate for profit [*and also to state the matters provided in ORS 554.050*], may omit the word "company" from the name and adopt a name using the words "improvement district" combined with other appropriate words to designate the name of such district; and
  - (b) A district converted to a corporation under ORS 554.380 shall replace the word "district" with the words "improvement company."
- (3) The particular land to be improved by the works of the corporation, describing the land by legal subdivisions so far as possible and otherwise by tracts or lots of duly platted land or by metes and bounds, with the acreage thereof and the names of the respective owners as shown by the records of the county, and the total number of acres.
- (4) In general but clear language, the purpose and intent of the corporation, and describe in general language the proposed plan of improvement whether for one or more of the purposes named in ORS 554.020.
- (5) The number of directors and the names of those first holding such office, and the mode and times of the election of their successors in office.
- (6) The location of the principal office of the corporation for the transaction of business, which must be in a county where at least a portion of the land to be improved is situated, and the mailing address, if different.
- (7) Whether or not such corporation is organized for profit to the corporation or to its members [*other than the benefits accruing from such improvements which are referred to in ORS 554.050*].
- (8) The initial registered agent and the address, including any street and number, of the registered office of the corporation.
- (9) The name and address of each incorporator.
- (10) The method of allocating votes to the membership, which may be based on:
  - (a) One vote for each acre of land owned; or
  - (b) One vote for each parcel as defined in the bylaws of the corporation, regardless of the number of acres owned.

**SECTION 7.** ORS 554.060 is amended to read:

554.060. (1) No action, suit or proceeding shall be maintained [*for the purpose of avoiding, setting aside or otherwise questioning or affecting the validity of the organization of a corporation formed for the purposes stated in ORS 554.050 unless the action, suit or proceeding is commenced within three months from the date of the filing of the articles of incorporation by the Secretary of State, or*] for the purpose of questioning the sufficiency or correctness of any statement [*therein*] **within the articles of incorporation** when the provisions of ORS 554.005 to 554.340 with respect thereto have been substantially complied with.

(2) No error in the description of any tract or parcel of land included in such district or in naming the owner thereof shall affect the incorporation or relieve the land from the same unless the owner has been materially prejudiced, misled or injured thereby, and has instituted proceedings because of same within three months after actual notice in any manner brought to the owner. Notwithstanding any error, defect or omission in the articles of incorporation in such case, the corporation is hereby declared to be a legally organized corporation as to all such owners.

**SECTION 8.** ORS 554.300 is amended to read:

554.300. (1) The articles of incorporation of any corporation organized under ORS 554.005 to 554.340 may at any time be amended so as to include or exclude land as provided under ORS 554.510 to 554.590, include or delete matters described under ORS 554.040 [*or 554.050*] or to make other amendments authorized under this chapter. An amendment shall not affect the date of priority of the lien of the corporation upon any land, but as to any new land included by an amendment the lien

shall attach from the date of the recording of the amended notice. No land can be excluded until its proportionate share of all existing debts of the corporation has been paid.

(2) An amendment other than an amendment to include or exclude land shall be voted upon by the members at a regular meeting or a special meeting called for that purpose. The amendment shall require approval by two-thirds or more of the votes of the members present or by proxy. The articles of amendment shall be submitted to the Office of the Secretary of State for filing.

(3) In addition to the procedures available for administrative dissolution under ORS 554.302 and 554.305, any such corporation may be dissolved and its affairs terminated as provided in subsections (4) and (5) of this section. However, no corporation may be dissolved as provided in subsections (4) and (5) of this section before payment or release of all debts and obligations of the corporation, including every contract and agreement with the federal or the state government, or its or their constituted governmental authorities or agencies, or the assumption of its obligations by another with the consent of all parties.

(4) The board of directors of the corporation shall cause notice to be given of a meeting of the members, which notice shall contain a statement to the effect that the dissolution of the corporation will be considered at the meeting, and a brief statement of the reasons why dissolution is deemed advisable. The question of whether or not the corporation shall be dissolved may be presented at the meeting, and if two-thirds or more of the votes of the members present or by proxy are cast in favor of dissolution, the board shall proceed to dissolve the corporation and liquidate its affairs. The board shall constitute a board of trustees and as such shall dispose of the property of the corporation and pay its debts and obligations or procure releases thereof; provided, that in case an irrigation district, drainage district or flood control district is organized to include the lands in the corporation or any part thereof, the board of directors of the corporation, or the board of trustees in case the corporation has voted to dissolve, shall convey to such irrigation, drainage or flood control district any and all irrigation works or other property owned by such corporation, upon the assumption by the irrigation, drainage or flood control district of the obligations of the corporation.

(5) Upon completing the liquidation of the corporation, the trustees shall submit to the Office of the Secretary of State for filing a statement that the corporation has been dissolved and its affairs liquidated. The trustees also shall send a true copy of the statement to the county clerk of the county in which the corporation had its principal place of business, that the corporation has been legally dissolved, and the clerk shall record the statement in the records of the office of the clerk.

**SECTION 9.** ORS 554.320 is amended to read:

554.320. The property and income of a corporation organized under the provisions of ORS 554.005 to 554.340, but not for profit[, *the articles of incorporation of which recite the things mentioned in ORS 554.050*], or a corporation organized under ORS 554.380, shall be exempt from taxation. The property and income of corporations which were incorporated under chapter 172, Oregon Laws 1911, and which amend their articles to state that the corporation shall not operate for profit [*and also to state the matters provided in ORS 554.050,*] shall also be exempt from taxation.

**SECTION 10.** ORS 554.380 is amended to read:

554.380. (1) After the vote held under ORS 554.375 and the delivery of a certified copy of the order proclaiming the results of the vote to the Secretary of State, the board of supervisors or the advisory board of the district shall proceed with the organization of a corporation for drainage or for flood control under this chapter. The corporation shall be organized as provided in this chapter except as provided otherwise in this section.

(2) The articles of incorporation filed by the board of supervisors or the advisory board of the district shall be as specified in ORS 554.040 [*and 554.050 (1) to (5)*] except that:

(a) The articles shall declare that the corporation is organized for the purpose of draining land or for the purpose of protecting land by flood control or for both drainage and flood control. If the reorganizing district is also providing water for irrigation or other authorized purposes, the articles shall also contain such purposes.

(b) The articles shall state that the board of supervisors or the advisory board of the district being reorganized are the directors of the corporation and shall hold office until the dates on which

their terms of office as supervisors or members of the advisory board of the district would have expired.

(c) The articles shall specify that the corporation is a successor corporation to a drainage district under ORS chapter 547 or a diking district under ORS chapter 551 and that the name assumed by the corporation shall be the same as the district being reorganized except that the words "improvement company" shall be substituted for the word "district."

(d) The articles shall declare that the corporation is not formed for the purpose of operating the corporation for profit other than from the benefits of improvement of the land for which the corporation is formed.

(e) The articles shall declare that the lands to be improved by the works of the corporation are the same lands formerly included within the boundaries of the district being reorganized. In lieu of describing such lands as provided in ORS 554.040 (3), the lands may be identified by assessor's map number with a map or maps attached showing the location and identification thereon of the lands.

(f) The articles shall specify that the corporation shall:

(A) If formed for the purpose of draining land, continue operation and maintenance of the district's existing drainage works and any other works authorized under ORS 547.320 and 547.325; or

(B) If formed for the purpose of protecting land by flood control, provide maintenance of the district's existing flood control works or any other works authorized under ORS chapter 551.

(g) The articles shall declare that the corporation assumes all of the rights, duties and obligations legally incurred under contracts, covenants, other agreements, leases and business transactions entered into or begun before the date of dissolution of the district being reorganized and dissolved.

*[(3) The corporation organized under this section shall be deemed a public corporation without the required unanimous voluntary consent of all members otherwise provided for in ORS 554.050 (6).]*

*[(4) (3) Every owner of land described in the articles of incorporation of the reorganizing district is a member of the corporation.*

*[(5) (4) Notwithstanding any other law, the corporation formed under this section shall assume all debts and obligations of the dissolving district and may impose charges or assessments for the debts and obligations and for operational costs without the execution and recording of the landowners' notice under ORS 554.180. All lands subject to liens and encumbrances for such debts and obligations shall remain subject to the liens and encumbrances. A landowners' notice encumbering land for any new nonoperational debt shall require the consent of landowners representing two-thirds of the lands in the district.*

**SECTION 11.** ORS 554.420 is amended to read:

554.420. (1) Articles of incorporation of any district improvement company organized before March 4, 1937, under the provisions of chapter 172, Oregon Laws 1911, and the recorded notice of the owners of the lands described in such articles of incorporation, may be amended as provided in this section.

(2) If the members desire to amend the articles of incorporation they shall execute the amended articles, stating therein that such articles are for the purpose of amending articles of the same corporation of record in the Office of the Secretary of State and in the county where the land therein described is situated; that the amended articles are signed by an officer, director or court-appointed fiduciary by authority of a resolution of the board of directors; and that such articles as amended and adopted are as therein set out. The amended articles *[shall specify as provided in]* **must conform with** ORS 554.040 *[and may determine and state the matters provided in ORS 554.050]*. The amended articles must describe the land with particularity and state the owners thereof and the persons having any interest therein. The board of directors shall determine whether all landowners and persons having any interest in the lands have duly executed the same.

(3) If satisfied therewith the board of directors may, upon the execution by all landowners of the amended landowners' notice and being satisfied therewith and that all have executed the same, by

resolution authorize an officer, director or court appointed fiduciary to execute the same on behalf of the corporation. Thereupon the amended articles shall be submitted to the Office of the Secretary of State for filing. The requirements for filing a document under ORS 554.005 apply to the amended articles.

(4) One true copy of the amended articles also shall be filed in each county where the land is situated.

(5) The landowners' amended notice shall be executed and recorded in the manner provided in ORS 554.180 and 554.190.

(6) From the filing of the amended articles by the Secretary of State, the amended articles and landowners' notice shall be effective instruments for every purpose; provided that such amended notice shall in no manner affect any lien, encumbrance, interest or estate in any of the lands attached, fixed or vested at the time of filing the same, or the priority thereof. If in such amendments it appears that the corporation is not for profit and it is so stated therein [as provided in ORS 554.050], the corporation shall thereafter pay any applicable fee under ORS 554.016.

**SECTION 12. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.**

**Passed by House April 25, 2013**

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate May 28, 2013**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2013

**Approved:**

.....M.,....., 2013

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2013

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Kate Brown, Secretary of State