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Memorandum Date: November 21, 2008
Board Agenda Date: November 25, 2008

TO: Board of County Commissioners
DEPARTMENT: Administration, Intergovernmental Relations
PRESENTED BY: Trina Laidlaw, Assistant County Counsel
Alex Cuyler, Intergovernmental Relations Manager
AGENDA ITEM TITLE: Legislative Concept Development – Amendments to Public Health Laws

I. MOTION

Move to direct County Administrator to oversee appropriate staff involvement intended to result in draft legislation and bill sponsorship to: 1) limit the County's obligation to perform public health services to the extent funding is available through the Oregon Department of Human Services (DHS) and, 2) clarify that DHS does not have the right to take over the public health authority in Lane County when it does not provide sufficient funding and require the County to pay for the extra expenses incurred by DHS to perform those services.

II. AGENDA ITEM SUMMARY

As part of the lead up to the 2009 Legislative Session, the Board is being asked to consider requesting a legislative change related to funding for public health services. The state pressures addressed by these proposed changes have been shared by other counties, not exclusively but most significantly by those counties which face loss of federal timber payments. Even though the counties have received short term partial payment from the federal government, and the state now appears to be bracing for significant budget reductions, the concerns raised by these proposed changes remain. The general legislative policy for local public health services (ORS 431.375) is that the state, in partnership with county governments, should provide basic public health services. The state is not fully compensating counties for assuming public health authority responsibilities, and takes the position that if the counties object, the counties should pay the additional costs, presumably higher, for DHS to perform these services. The legislative changes proposed in this agenda item are necessary to clarify the original intent of the public health laws, rather than to propose drastic change.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

In Spring 2007, when the County faced significant reduction of federal timber payments, two representatives from the Oregon Department of Human Services, including Mr. Clyde Saiki, Deputy Director for Operations, were invited to a Board meeting to discuss funding of public health services. They explained that these services are best administered locally, and supported Lane County agreeing to provide "minimum" services in order to continue as the local public health authority. The DHS representatives also stated to the Board that if Lane County did not agree to provide the

"minimum" services, DHS had a right to take over the public health authority in Lane County and require Lane County to pay for the additional expenses in having the state perform this function. Historically, DHS has not provided sufficient funds to counties to provide "minimum" public health services, and Lane County has been contributing its general fund dollars to pay the difference. A generally held view is that if the State were to instead provide the same services, the cost would be higher.

In 2003, the Association of Oregon Counties developed HB 3638. This bill sought to modify a number of human services statutes to clarify that the counties' obligations to provide services were limited to the extent the state provided funding. This bill included proposed changes to public health laws substantially similar to the ones proposed in this agenda packet relating to ORS 431.375(2), ORS 431.385(2), and ORS 431.405. The proposed changes in HB 3638 to the public health law were not adopted, but a change was adopted to the "Local Mental Health and Developmental Disability Services" statute ORS 430.610, Legislative Policy: "(1) **Subject to the availability of funds**, mental health services should be available to all persons with mental or emotional disturbances, mental retardation, developmental disabilities, alcoholism or drug dependence, and persons who are alcohol or drug abusers....." (**bolded** language added in 2003).

B. Policy Issues

There are a number of policy issues which the Board may wish to address, including but not limited to:

1. Should Lane County be a leader in insisting that DHS provide sufficient funds for the County to perform local public health authority services?
2. Should Lane County continue to support these services, in part, through county general funds without objection?
3. Should Lane County object to DHS taking over public health authority responsibilities in Lane County, perhaps requiring the transfer of county employees to the state, and charging the County for any higher costs for the state to provide the services?
4. How much support would other counties provide?
5. Is this an appropriate time for the County to pursue legislative changes, considering such factors as:
 - a. The state's impending budget crisis,
 - b. Statements made by DHS after the meeting with the Board in Spring 2007 that they would not exercise any right it had to take over the public health authority, and that they are still considering their position at a high administrative level,
 - c. The County receiving some federal timber payments for the next four years,
 - d. By statute, the Conference of Local Health Officials is a group of local health officers from the counties who provide input to DHS on standards relating to education and experience for personnel, organization, operation and extent of activities expected of local health departments to carry out their responsibilities in implementing

public health laws, and assisting in establishing elements of public health plans. It is not clear what position this group or AOC would take on these proposed changes.

C. Analysis

1. Sufficient Funding from State for Public Health Services.

Current Oregon statutes relating to public health: 1) Establish the Public Health Account in the General Fund, separately classifying federal and other monies, and continuously appropriating these funds to the DHS for the payment of expenses of the department (ORS 431.210); 2) Designate DHS as the state agency to apply to and receive grants from the federal government related to public health (ORS 431.250); 3) Require DHS to provide payments to the local public health authority from funds available to the DHS for local public health purposes on a per capita or other equitable formula basis (ORS 431.380). This suggests that the state is required to pay for public health services. There is no statutory authority suggesting that the counties are required to contribute local funds to pay for public health services.

The proposed changes to the general policy statutes (ORS 431.375 and ORS 431.405) would clarify the original intent that the counties administer public health programs and services **to the extent funds are made available through the state.**

2. County Option to Not Continue as Public Health Authority

Currently, ORS 431.375(2) and (3) state that a county government is the local public health authority unless the county contracts with private persons or an agency to act in this capacity or the county relinquishes authority to the state. "If the authority is relinquished, the state may then contract with private persons or an agency or perform the services." All expenditure of public funds utilized to provide public health services on the local level must be approved by the local public health authority unless the county has relinquished authority to the state.

This statute was adopted in 1983 (HB 2945) and suggests that the intent was to provide flexibility and options for providing public health services. In 1983 testimony before the House Human Resources Committee, the Oregon Department of Human Resources, Health Division described the bill as identifying and establishing a public health authority at the local level to include county government, "and providing several options for the management of local public health services through contracting or state back-up." The Health Division also expressed support that the local public health authority should be in the role of managing funds locally (rather than at the state level) – to set priorities and assure coordination of services. The only funds which appear to be referenced here are state, not county, funds and the county was intended to have the option of relinquishing the public health authority. If the Legislature had intended that a county pay the state for exercising its option to relinquish the public health authority, it could have expressly required that, but it did not.

ORS 431.385(2) currently gives the local public health authority the option not to submit an annual plan. The plan is due on May 1, and forms the basis for DHS to provide the County with funds. "If the local public health authority decides not to submit an annual plan,...the department shall become the local public health authority for that county...." If the Legislature had intended that a county pay the state for exercising the option not to submit an annual plan, it could have expressly required that, but it did not.

The proposed changes to ORS 431.375 and ORS 431.385 would clarify that the County's options to relinquish or not submit a plan were intended to be without penalty, and that only funds available through the state are intended to be used.

3. DHS Taking Charge When Local Officers Are Delinquent

DHS relies on ORS 431.170, a statute covering its ability to enforce health laws and rules when local officers are delinquent as the basis for its argument that it can take over Lane County public health functions. This statute currently says that the Director of Human Services shall take direct charge of the functions that are necessary to preserve the public health in any county whenever any county official fails or refuses to administer or enforce the public health laws or rules that the director or board is charged to enforce. It also provides that the necessary expenses of the state are to be paid by the county.

DHS's position is, essentially, that the County Commissioners would be "delinquent" county officials for failing or refusing to administer or enforce public health laws or rules by exercising the county's statutory legal options of relinquishing public health authority or choosing not to submit a plan. Because of this delinquency, DHS would be entitled to have the county pay for its additional expenses in performing public health services after the County relinquishes.

ORS 431.170 has been a law since prior to 1959. Before 1977, the statute provided that the Health Division could take charge of any county or city whenever any county or city official neglected or refused to enforce rules and regulations of statutes listed in ORS 431.130 or the peace officers of a county or city refuse to or are unable to enforce those rules and regulations when directed to do so. The statutes listed in ORS 431.130 (repealed in 1977) included support for homeless, neglected and abused children, support for wayward girls and maternity and venereal cases, inspecting day care facilities, spreading communicable diseases, quarantine, disease control in schools, rabies control, swimming facilities, water supplies, persons with chronic nervous disorders. It also included some general statutes relating to boards of health for counties, general enforcement of health laws and regulations. It, however did not include ORS 431.375 and ORS 431.385 above because those laws did not exist until 1983.

The proposed legislative changes to ORS 431.170 would clarify that DHS's ability to take over is limited to failure to enforce public health laws relating directly to the public health of citizens when a county is serving as the public health authority at the time. Proposed changes would specifically exclude the Board's decisions to relinquish public health authority or not submit an annual plan.

D. Alternatives/Options

1. Direct the County Administrator to develop draft legislative language to limit the County's obligation to perform public health services to the extent funding is made available through the Oregon Department of Human Services and to clarify that DHS does not have a right to take over the public health authority in Lane County when it does not provide sufficient funding to perform the public health authority services and then require the County to pay the additional costs DHS incurs to perform those services.

2. Do nothing and continue to support public health services with county funds, in addition to state funds, and provide the "minimum" services DHS identifies.

IV. RECOMMENDATION

Staff recommends option 1.

V. TIMING/IMPLEMENTATION

The Legislative Session begins in January, 2009, and staff would begin to seek support from other counties and a sponsor for the bill as soon as possible.

VI. FOLLOW-UP

Staff will continue to update the Legislative Committee regarding the feasibility of a successful effort to amend the public health laws.

VII. ATTACHMENTS

Proposed Legislative Changes to Public Health Laws

Proposed Legislative Changes to Public Health Laws

(The proposed changes are to add language **in bold** to the following statutes, and to delete language in brackets [])

ORS 431.170 Enforcing health laws and rules when local officers are delinquent. (1) The Director of Human Services shall take direct charge of the functions that are necessary to preserve the public health in any county or district **currently serving as a public health authority** whenever any county or district official fails or refuses to administer or enforce the [public health] laws or rules **relating directly to the public health of citizens** that the director or board is charged to enforce. **The exercise of this authority is limited to the action and time necessary to preserve the public health.**

(2) The director may call to the aid of the director such assistance as is necessary for the enforcement of such statutes and rules, the expense of which shall be borne by the county or district making the use of this procedure necessary, to be paid out of the respective county or district treasury upon vouchers properly certified by the director.

(3) Decisions by a county or district to relinquish public health authority to the state or to contract with private persons or an agency to act in this capacity pursuant to ORS 431.375(2), or to not submit an annual plan to the Department of Human Resources pursuant to ORS 431.385(2) does not constitute failure or refusal by a county or district official to administer or enforce public health laws or rules covered by subsections (1) and (2) above.

LOCAL PUBLIC HEALTH SERVICES

ORS 431.375 Policy on local public health services; local public health authority; contracts for provision of maternal and child public health services by tribal governing council. (1) The Legislative Assembly of the State of Oregon finds that each citizen of this state is entitled to basic public health services which promote and preserve the health of the people of Oregon. To provide for basic public health services the state, in partnership with county governments, shall maintain and improve public health services through county or district administered public health programs **to the extent funds are made available through the state.**

ORS 431.375(2) County governments or health districts established under ORS 431.414 are the local public health authority responsible for management of local public health services unless the county contracts with private persons or an agency to act as the local public health authority or the county relinquishes authority to the state. If authority is relinquished, the state **using funds available to it** may then contract with private persons or an agency **to perform the services**, or perform the services **directly.**

ORS 431.385(2) If the local public health authority decides not to submit an annual plan under the provisions of ORS 431.375 to 431.385 and 431.416, the department shall become the local public health authority for that county or health district **using funds available to the state to pay for public health services.**

LOCAL BOARDS OF HEALTH

ORS 431.405 Purpose of ORS 431.405 to 431.510. It is the purpose of ORS 431.405 to 431.510 to encourage improvement and standardization of health departments in order to provide a more effective and more efficient public health service throughout the state **to the extent funds are made available through the state.**

Memorandum Date: November 20, 2008
Order Date: November 25, 2008

TO: Board of County Commissioners
DEPARTMENT: Administration, Intergovernmental Relations
PRESENTED BY: Alex Cuyler, Intergovernmental Relations Manager
AGENDA ITEM TITLE: Legislative Concept Development – Apportionment of Election Expenses

I. MOTION

Move to direct County Administrator to oversee appropriate staff involvement in a project intended to result in draft legislation and bill sponsorship that would allow Lane County's Management Services Department, Elections Division, to apportion elections expenses stemming from general and primary elections to cities and districts.

II. AGENDA ITEM SUMMARY

As part of the lead up to the 2009 Legislature, the Board is being asked to consider requesting a legislative change related to how the County recovers certain costs related to the general and primary elections. State law currently requires the Secretary of State to reimburse county clerks for elections, with the exception of primary and general elections. It additionally requires cities to bear the expenses of elections, with an exception for primary and general elections. One outcome of these laws is that the general and primary ballot can become crowded with measures, which leads to additional voting related issues. For instance, in the 2008 general election, Lane County's mail in ballot required additional postage due to its length. This could have lead to voter confusion, and a worst case scenario of returned ballots due to in-sufficient postage.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

- On October 22, 2008, the Lane County Clerk, Annette Newingham, testified at the Board of County Commissioners meeting regarding the overweight ballot that Lane County voters received for the general election. She was invited to testify due to inquiries and comments from state and federal representatives who were alarmed at the potential for ballots to be returned to voters who had not necessarily realized that additional postage was required due to the length of the ballot. During her testimony, she outlined a partial cause of the lengthy ballot as being the incentive created by state law exempting cities and districts from having their elections costs apportioned and subsequently invoiced for primary and general elections.
- On October 9, 2008, the Lane County legislative committee addressed this issue, and reviewed the pertinent state statutes and the potential fixes identified by the Clerk and the Intergovernmental Relations Manager. Commissioner Bill Dwyer agreed that this item should come before the full Board.

B. Policy Issues

Compliance with Oregon Revised Statutes pertaining to the apportionment and reimbursement of county election expenses, ORS 246.179 and ORS 254.046 primarily.

C. Board Goals

Resource Planning and Allocation

C1(a) The County will continually review its mission, vision, and guiding principles for future service delivery.

D. Financial and/or Resource Considerations

- The undertaking of a legislative change to allow for dissolution without an election will require human resources which the County already has in place, but will entail certain commitments within the realm of the legislative session for the Board, for instance hearing testimony and travel time.
- At its October 22, 2008 meeting the Board passed a motion directing the Administrator to negotiate with the US Postal Service such that in-sufficient postage charges related to Lane County ballots would be covered by the Lane County general fund. These expenses were estimated to be approximately \$5,000.

E. Analysis

The vote by mail process in Oregon is considered a model that many other states are closely watching. Thus far it has been a successful tool to increase participation and generally improve the elections process. Lane County's recent experience with an overweight ballot is the first instance of a potential flaw to the process, but remains a very real possibility to occur again. There are many reasons why the primary and general elections are the desired time to place a local measure onto the ballot, however, the avoidance of costs should not be one of them.

At least one local state representative, Chris Edwards, is very interested in seeing a legislative solution to the issue. Ultimately, it may be that a federal solution is what will entirely eliminate the issue of in-sufficient postage, but, the State Legislature could take steps to amend Oregon Revised Statutes such that there is less incentive to "load-up" the general and primary elections with local measures.

F. Alternatives/Options

- 1.) Direct the County Administrator to develop draft legislative language to reduce the incentive for cities and districts to seek out the general and primary elections as the election of choice for local measures, by amending state law such that counties are allowed to charge cities and districts the apportioned election expenses.
- 2.) Do nothing

IV. RECOMMENDATION

Staff recommends option 1.

V. TIMING/IMPLEMENTATION

The Legislative Session begins in January, 2009, and staff would begin to seek a sponsor for such a bill immediately.

VI. FOLLOW-UP

Staff will continue to update the Legislative Committee regarding the plausibility of a successful effort to amend ORS 198.

VII. ATTACHMENTS

Draft concept, developed by Annette Newingham and Alex Cuyler

Change current legislative language to have districts, cities, state pay for their apportioned costs.

246.179 Reimbursement of county clerk for special elections for United States Senator or Representative(+,primary, general+) and for recall elections involving state office. (1)

Notwithstanding ORS 246.250, the Secretary of State shall reimburse each county clerk for necessary expenses of an election described in subsection (2) of this section based on a claim filed by the county clerk and approved by the Secretary of State. The claim shall be made on a form designed by the Secretary of State. The Secretary of State shall make the reimbursement from funds made available to the Secretary of State by the Emergency Board.

(2) The Secretary of State shall reimburse each county clerk for necessary expenses of:

(a) A special primary election or a special election to fill a vacancy in the election or office of United States Senator or Representative in Congress held on a date other than the date of the primary election or the general election; or

(b) A recall election involving the holder of a state office. As used in this subsection, "state office" has the meaning given that term in ORS 249.002.

(+)(c) A primary or general election held in even numbered years.+)

[1983 c.567 §2; 1987 c.267 §2; 1993 c.194 §§1,2; 1995 c.712 §2]

254.046 Expense of city election. *(-If a city holds a special election on a date other than the primary election or general election, it shall bear the expense of the election.-)***(+The expenses incurred for a city election shall be paid by that city.+)** [1979 c.190 §228; 1987 c.267 §38; 1995 c.712 §52]

255.305 Election expenses paid by district; exceptions; apportionment of expenses; rules. (1)

Except as otherwise provided by ORS 198.775, 261.210, 568.542 and 607.025, the expenses incurred for a district election shall be paid by that district.

(2) When two or more districts hold an election on the same day, the expenses of the election shall be equitably apportioned among the districts.

(3) The Secretary of State by rule:

(a) May designate a formula for the apportionment of expenses under subsection (2) of this section; and

(b) Designate categories of election expenses that are chargeable to a district. [Formerly 259.230; 1983 c.514 §14; 1995 c.243 §3]

607.025 Cash deposit by petitioners for special election. When, at the request of the petitioners, the election is to be held on a day other than one on which a primary election or general election is scheduled to be held, and if the request is approved by the county court or board of county commissioners, one or more of the petitioners shall deposit money with the county clerk in an amount to be fixed by the county court or board of county commissioners, which shall be a sum deemed by it sufficient to defray the probable expenses of the special election. Until the money is deposited, the county clerk shall neither take action nor incur expense in connection with the special election. If the amount deposited exceeds the total expenses of the election, as ascertained by the county clerk and certified by the county clerk to the county court or board of county commissioners, the excess shall be returned to the petitioner or petitioners who deposited the money. [Amended by 1957 c.604 §10; 1995 c.712 §110]

568.542 Payment of expenses for director election from county funds. The expenses incurred for the election of directors of a soil and water conservation district under ORS 568.210 to 568.808 and 568.900 to 568.933 shall be paid out of county funds by the county or counties within which the territory of the district lies. [1995 c.243 §2]