

# Chapter 568

2007 EDITION

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 568.020 [Repealed by 1983 c.499 §1]  
 568.030 [Repealed by 1983 c.499 §1]  
 568.040 [Repealed by 1983 c.499 §1]  
 568.050 [Repealed by 1983 c.499 §1]  
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 568.120 [Amended by 1969 c.314 §66; repealed by 1983 c.499 §1]  
 568.130 [Repealed by 1983 c.499 §1]

## SOIL AND WATER CONSERVATION DISTRICTS

### (Generally)

**568.210 Definitions for ORS 568.210 to 568.808 and 568.900 to 568.933.** As used in ORS 568.210 to 568.808 and 568.900 to 568.933, unless the context requires otherwise:

- (1) "Agency of this state" means any public body as defined in ORS 174.109.
- (2) "Department" means the State Department of Agriculture.
- (3) "Director" means one of the members of the local governing body of a district elected or appointed in accordance with the provisions of ORS 568.210 to 568.808 and 568.900 to 568.933.
- (4) "District" means a soil and water conservation district.
- (5) "Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation is available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.
- (6) "Elector" means an individual qualified to vote under section 2, Article II, Oregon Constitution.
- (7) "Government" or "governmental" means the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of the govern-

ment of the United States, and any public body as defined in ORS 174.109.

(8) "Land" or "acres of land" includes land owned by any of the parties enumerated in subsection (10) of this section.

(9) "Land occupier" or "occupiers of land" includes any person who is in possession of any land lying within a district, whether as lessee, renter or tenant.

(10) "Landowner" includes any person or public body as defined in ORS 174.109 shown by records of the county to be the owner of land or having such land under contract to purchase, lying within a district.

(11) "Long-range program" means a long-range plan for the conservation and development of the renewable natural resources of a district.

(12) "Nominating petition" means a petition filed under ORS 568.520 to nominate candidates for director.

(13) "Petition" means a petition filed under ORS 568.300 (1) for the creation of a district.

(14) "State" means the State of Oregon.

(15) "United States" or "agencies of the United States" includes the United States of America, the United States Natural Resources Conservation Service, or its successor agency, and any other agency or instrumentality, corporate or otherwise, of the United States of America. [Amended by 1963 c.90 §1; 1969 c.610 §1; 1973 c.656 §1; 1981 c.92 §6; 1981 c.918 §6; 1983 c.83 §105; 1985 c.637 §3; 1997 c.249 §183; 2003 c.802 §144]

**568.220** [Amended by 1961 c.640 §2; repealed by 1971 c.147 §3]

**568.225 Policy.** (1) In recognition of the ever-increasing demands on the renewable natural resources of the state and of the need to conserve, protect and develop such resources, it is hereby declared to be the policy of the Legislative Assembly to provide for the conservation of the renewable natural resources of the state and thereby to conserve and develop natural resources, control and prevent soil erosion, control floods, conserve and develop water resources and water quality, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, conserve natural beauty, promote recreational development, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this state.

(2) It is further the policy of the Legislative Assembly to authorize soil and water conservation districts established under ORS 568.210 to 568.808 and 568.900 to 568.933 to participate in effectuating the policy set forth in subsection (1) of this section and for

such purposes to cooperate with landowners, land occupiers, other natural resource users, other local governments as defined in ORS 174.116, and with agencies of the government of this state and of the United States, in projects, programs and activities calculated to accelerate such policies. In effectuating the policy set forth in subsection (1) of this section, the soil and water conservation districts also shall strive to achieve the goal set forth in ORS 468B.155. [1971 c.147 §2; 1989 c.833 §63; 2003 c.802 §145]

**568.230** [Amended by 1955 c.142 §5; 1963 c.90 §2; 1969 c.610 §2; repealed by 1981 c.92 §4]

**568.240** [Amended by 1953 c.268 §2; 1955 c.142 §6; 1969 c.610 §4; 1971 c.133 §1; 1973 c.792 §26; repealed by 1981 c.92 §4]

**568.250** [Amended by 1955 c.142 §7; repealed by 1981 c.92 §4]

**568.260** [Amended by 1969 c.610 §5; repealed by 1981 c.92 §4]

**568.270** [Amended by 1953 c.268 §2; 1955 c.142 §8; 1969 c.610 §6; 1971 c.133 §2; repealed by 1981 c.92 §4]

**568.280** [Amended by 1969 c.135 §2; 1969 c.314 §67; 1969 c.610 §§7,8; repealed by 1981 c.92 §4]

**568.290** [Amended by 1957 c.603 §1; 1959 c.575 §1; 1961 c.641 §1; 1963 c.377 §1; repealed by 1981 c.92 §4]

**568.300 Petition for formation of district; contents; consolidation of petitions.**

(1) Any 25 or more landowners or the owners of more than 70 percent of the acres of land lying within the limits of the territory proposed to be organized into a district may file a petition with the State Department of Agriculture asking that a soil and water conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(a) The proposed name of the district.

(b) That there is need, in the interest of the general welfare, for a soil and water conservation district to function in the territory described in the petition.

(c) A description of the territory proposed to be organized as a district, which description is not required to be given by metes and bounds or by legal subdivision but is sufficient if generally accurate.

(d) A request that the department duly define the boundaries for the district, that a referendum be held within the territory so defined on the question of the creation of a district in such territory, and that the department determine that a district be created.

(2) When more than one petition is filed covering parts of the same territory, the department may consolidate all or any such petitions. [Amended by 1981 c.92 §7]

**568.310 Notice of hearing; questions considered.** Within 60 days after the petition has been filed with the State Department of Agriculture, it shall cause due notice to be given of a proposed hearing:

(1) Upon the question of the desirability and necessity, in the interest of the general welfare, of the creation of the district.

(2) Upon the question of the appropriate boundaries to be assigned to the district.

(3) Upon the propriety of the petition and other proceedings taken under ORS 568.210 to 568.808 and 568.900 to 568.933.

(4) Upon all questions relevant to such inquiries. [Amended by 1981 c.92 §8]

**568.320 Owner and interested parties have right to be heard; subsequent notice and hearings.** (1) All owners of land within the limits of the territory described in the petition and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard.

(2) If it appears upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned. Due notice of further hearing shall then be given throughout the entire area considered for inclusion in the district and such further hearing held.

**568.330 Determination of need for district; factors considered in determination; territory need not be contiguous.**

(1) After the hearing, if the State Department of Agriculture determines upon the facts presented at the hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the general welfare, for a district to function in the territory considered at the hearing, it shall make and record such determination and shall define the boundaries of the district.

(2) In making the determination and defining the boundaries, the department shall give due weight and consideration to:

(a) The topography of the area considered and of the state.

(b) The composition of the soils.

(c) The distribution of erosion.

(d) The prevailing land-use practices.

(e) The desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries.

(f) The relation of the proposed area to existing water sheds and agricultural regions and to other soil and water conservation districts already organized or proposed for organization.

(g) Such other physical, geographical, and economic factors as are relevant.

(3) The territory to be included within such boundaries need not be contiguous. [Amended by 1981 c.92 §9]

**568.340 Determination of no need for district; subsequent petitions may be filed.** (1) If the State Department of Agriculture determines after the hearing and after due consideration of the relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition.

(2) After one year has expired from the date of the denial of the petition, subsequent petitions covering the same or substantially the same territory may be filed as provided in ORS 568.300 and new hearings be held and determinations made thereon. [Amended by 1981 c.92 §10]

**568.350 Referendum; purpose.** (1) After the State Department of Agriculture has made and recorded a determination that there is need, in the interest of the general welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil and water conservation districts in ORS 568.210 to 568.808 and 568.900 to 568.933 is administratively practicable and feasible.

(2) To assist the department in the determination of such administrative practicability and feasibility, the department, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, shall hold a referendum within the proposed district upon the proposition of the creation of the district, and shall cause due notice of such referendum to be given. [Amended by 1981 c.92 §11]

**568.360 Referendum ballot; contents.** The question shall be submitted by ballots upon which the words "For creation of a soil and water conservation district of the lands below described and lying in the County(ies) of \_\_\_\_\_, and \_\_\_\_\_" and "Against creation of a soil and water conservation district of the lands below described and lying in the County(ies) of \_\_\_\_\_ and \_\_\_\_\_" shall be printed, with a square

before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the elector may favor or oppose creation of the district. The ballot shall set forth the boundaries of the proposed district as determined by the State Department of Agriculture. [Amended by 1981 c.92 §12]

**568.370 Eligible electors.** (1) All electors residing within the boundaries of the territory, as determined by the State Department of Agriculture, shall be eligible to vote in the referendum.

(2) For the purpose of the referendum, the county clerk shall assist the department in obtaining a list of electors residing within the boundaries of the proposed area. [Amended by 1957 c.603 §2; 1973 c.656 §2; 1981 c.92 §13]

**568.380 Department to pay expenses and supervise hearings and referenda; informalities in referendum.** (1) The State Department of Agriculture shall pay all expenses for issuance of the notices and conduct of the hearings and referenda, and shall supervise the conduct of the hearings and referenda. It shall issue appropriate regulations governing the conduct of the hearings and referenda.

(2) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof, if notice thereof was given substantially as provided in ORS 568.310 or 568.320 and the referendum was fairly conducted. [Amended by 1981 c.92 §14; 1983 c.83 §106]

**568.390 Referendum results; majority required for creation of district.** The State Department of Agriculture shall publish the results of the referendum. Unless the creation of the district is favored by a majority of the electors at an election, the district shall not be created. [Amended by 1973 c.656 §3; 1981 c.92 §15]

**568.400 Appointment of first directors of district.** If the State Department of Agriculture determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint not less than two nor more than four directors, as deemed necessary after giving due consideration to the size and population of the district. [Amended by 1955 c.142 §10; 1981 c.92 §16]

**568.410 Formation of district.** A soil and water conservation district may be formed in the following manner:

(1) The three candidates referred to in ORS 568.540 shall present to the Secretary of State an application signed and sworn to by them, which shall set forth the procedure followed in the formation of the district.

(2) The application shall be accompanied by a map of uniform scale showing the location and boundaries of the district and by a statement by the State Department of Agriculture. The statement shall certify that a petition was filed, notice issued and hearing held as provided by ORS 568.300 to 568.320; that the department did determine that there is need, in the interest of the general welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of the district, and that the result of the referendum showed the required majority of the electors residing in the district to favor creation of the district.

(3) The Secretary of State shall examine the application and statement. If the Secretary of State finds that the name proposed for the district is not identical with that of any other district of this state or so nearly similar as to lead to confusion or uncertainty, the Secretary of State shall receive and file them and shall record them in an appropriate book of record in the office of the secretary.

(4) If the Secretary of State finds that the name proposed for the district is identical with that of any other soil and water conservation district of this state or so nearly similar as to lead to confusion and uncertainty, the Secretary of State shall certify such fact to the department, which shall thereupon submit to the Secretary of State a name for the district which is not subject to such defects.

(5) Upon receipt of the new name free of such defects, the Secretary of State shall record the application and statement, with the name so modified.

(6) The formation of the district is final when the application and statement have been made, filed and recorded as provided in this section. [Amended by 1955 c.142 §11; 1973 c.656 §4; 1981 c.92 §17; 1983 c.83 §106a; 2003 c.802 §146]

**568.420 Certificate of organization by Secretary of State; boundaries of district.**

(1) The Secretary of State shall make and issue to the three candidates referred to in ORS 568.540 a certificate, under the seal of the state, of the organization of the district, and shall record such certificate with the application and statement.

(2) The boundaries of such district shall include the territory as determined by the department as provided in ORS 568.330, but in no event shall they include any area included within the boundaries of another soil and water conservation district. [Amended by 1955 c.142 §12; 1981 c.92 §18]

**568.430 Petitions for inclusion or withdrawal of territory; form; eligible electors.** (1) Except as otherwise provided in ORS 568.445, petitions for including additional territory within an existing district or for withdrawing territory already within a district may be filed with the State Department of Agriculture and the proceedings provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion or withdrawal.

(2) The department shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in ORS 568.300 for petitions to organize a district.

(3) When the petition is signed by two-thirds of the landowners in the area proposed for inclusion or withdrawal no referendum need be held. The number of landowners in the area shall be determined by the county assessor, who shall issue a certificate stating the number of landowners of record within the boundaries of the area proposed for inclusion or withdrawal.

(4) In referenda upon petitions for such inclusion or withdrawal all electors residing within the proposed additional area or area to be withdrawn are eligible to vote. [Amended by 1955 c.142 §13; 1957 c.603 §3; 1973 c.656 §5; 1981 c.92 §19]

**568.435 Boundary change notice for taxation purposes.** For purposes of ad valorem taxation, a boundary change must be filed in final approved form with the county assessor and the Department of Revenue as provided in ORS 308.225. [2001 c.138 §50]

**Note:** 568.435 was added to and made a part of 568.210 to 568.808 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**568.440 District legally established; certificate as evidence.** In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of ORS 568.210 to 568.808 and 568.900 to 568.933 upon proof of the issuance of the certificate provided for in ORS 568.420 or 568.555 by the Secretary of State. A copy of such certificate certified by the Secretary of State shall be admissible in evidence in any such suit, action or proceedings and shall be proof of the filing and contents thereof. [Amended by 1983 c.740 §219]

**568.445 Petitions for inclusion of territory wholly within another district; approval or disapproval by directors and department.** (1) Proceedings for inclusion within a district territory adjacent thereto

and located wholly within another district may be initiated by:

(a) A petition for inclusion filed with the directors of the district within which the territory is proposed to be included, signed by 25 or two-thirds, whichever is the lesser, of the landowners of the adjacent territory; or

(b) Resolutions for inclusion adopted by the board of directors of each district to be affected by the inclusion and filed with the State Department of Agriculture.

(2) The department shall prescribe the form for such petitions. The directors of the district within which the territory is proposed to be included shall approve or disapprove such a petition. If they approve the petition, the directors shall forward it to the department.

(3) Upon receipt of a petition forwarded as provided in subsection (2) of this section or a resolution as provided in subsection (1)(b) of this section, the department shall investigate the proposed inclusion of territory, taking into consideration:

(a) The reasons for the proposed inclusion.

(b) The reaction of the landowners of the district within which the territory in question is located to the proposed inclusion.

(c) The effect of the inclusion on the district within which the territory in question is located and the district within which the territory is proposed to be included.

(d) Any other matters deemed pertinent by the department.

(4) After the investigation the department shall approve or disapprove the petition. If the department approves the petition, the inclusion of the territory within the one district and the withdrawal thereof from the other district shall be effective, and the department shall present to the Secretary of State a statement of such approval and a map of each district affected showing the new boundaries thereof. The Secretary of State, upon receipt of the statement and maps, shall make the necessary changes in the appropriate records in the office of the secretary. [1955 c.142 §3; 1973 c.656 §6; 1981 c.92 §20]

**568.450 Procedure for consolidating districts.** (1) Proceedings to consolidate two or more soil and water conservation districts may be initiated by:

(a) Petitions to consolidate filed with the State Department of Agriculture by any 25 or more owners of land within the districts affected; or

(b) Resolutions to consolidate adopted by the board of directors of each district to be

affected by the consolidation and filed with the department.

(2) If consolidation is initiated as provided in this section, proceedings on the resolutions or petitions shall be as provided for proceedings to organize a district except as otherwise provided by this section and ORS 568.460, 568.470 and 568.545.

(3) A referendum on the consolidation shall be called by the department:

(a) If, at the hearing called by the department on the proposed consolidation or within 30 days after the hearing, written objections to the consolidation are filed with the department by 10 percent of the landowners in any one of the consolidating districts.

(b) Even if no objections are filed with the department as provided in this subsection, unless within 60 days following the hearing the board of each consolidated district, by a two-thirds vote, approves the consolidation and the boundaries of the consolidated district as approved by the department.

(4) The department shall prescribe the form for petitions to consolidate which shall contain the information necessary to the proceedings and be similar to the form prescribed in ORS 568.300 for petitions to organize a district. [Amended by 1965 c.155 §1; 1981 c.92 §21; 2005 c.281 §1]

**568.460 Referendum; eligible electors; majority required.** In the holding of the referendum for consolidation all electors residing within the affected districts shall be eligible to vote. Unless a majority of the electors in each of the districts involved votes in favor of the proposal, the districts shall not be consolidated. [Amended by 1973 c.656 §7]

**568.470 Effect of consolidation on several districts.** In case of consolidation of districts, the corporate existence, and terms of office of the officers, of the old districts shall expire upon issuance and recording by the Secretary of State of a certificate of the due organization of the consolidated district. Upon consolidation, all the rights and liabilities of the several consolidating districts shall be vested in and assumed by the consolidated district, and all regulations formulated under ORS 568.630 to 568.770 for the several consolidating districts shall remain in effect until superseded by regulations formulated by the consolidated district. [Amended by 1961 c.236 §1]

**568.480 Petition and referendum for discontinuance of district.** (1) At any time after five years after organization of a district, any 25 or more landowners or the owners of more than 50 percent of the acres

of land lying within the boundaries of such district may file a petition with the State Department of Agriculture praying that the operations of the district be terminated and the existence of the district discontinued. The department may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof.

(2) Within 60 days after such a petition has been received by the department it shall give due notice of the holding of a referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the \_\_\_\_\_ (name of the soil conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of the propositions as the elector may favor or oppose discontinuance of such district.

(3) Only electors residing within the boundaries of the district are eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate the referendum or the result thereof, if notice thereof has been given substantially as provided in this section and the referendum has been fairly conducted. [Amended by 1973 c.656 §8; 1981 c.92 §22]

**568.490 Directors to wind up affairs and dispose of property; application and certificate to Secretary of State.** (1) The State Department of Agriculture shall publish the results of the referendum and shall record and certify such determination to the directors of the district. If a two-thirds majority of those voting votes for terminating the district, the directors shall forthwith proceed to wind up the affairs of the district. The directors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be conveyed into the State Treasury.

(2) The directors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of the district, and shall transmit with the application the certificate of the department setting forth the results of the referendum and stating that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the directors a certificate of dissolution and shall record such certificate in an appropriate book of record in the office of the secretary. [Amended by 1955 c.142 §14; 1981 c.92 §23]

**568.500 Certificate of dissolution; effect.** Upon issuance of the certificate of dissolution, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or directors are parties, shall remain in force and effect for the period provided in such contracts. The State Department of Agriculture shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the directors of the districts would have had. Such dissolution shall not affect the lien of any judgment entered under ORS 568.720 nor the pendency of any action instituted under ORS 568.700 to 568.720. The department shall succeed to all the rights and obligations of the district or directors as to such liens and actions. [Amended by 1981 c.92 §24]

**568.510 Proceedings for discontinuance limited.** The State Department of Agriculture shall not entertain petitions for discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with ORS 568.480 and 568.490 more often than once each year after the first five-year period. [Amended by 1981 c.92 §25]

**568.515 Termination of inactive district's existence.** At any time after five years after organization of a district and not more than once each year, the State Department of Agriculture may make and record a determination that the district is inactive. The department may conduct such public meetings and public hearings as may be necessary to assist it in making the determination. Within 60 days after it makes and records such a determination, the department shall give due notice of the holding of a referendum, and a referendum shall be held and such further proceedings had for terminating the district as provided in ORS 568.480 to 568.500. [1955 c.142 §4; 1981 c.92 §26]

**568.520 Petitions nominating directors; regular elections; duties of department.** (1) Within 30 days after the hearings on creation or consolidation of districts as provided in ORS 568.300 and 568.450, but not later than a date set by the State Department of Agriculture, nominating petitions may be filed with the department to nominate candidates for directors of such district.

(2) A regular election shall be held in each district on the first Tuesday following the first Monday of November in each even-numbered year for the purpose of electing directors to succeed those whose terms ex-



pire the following January. Nominating petitions of candidates for director to be voted for at a general district election shall be filed with the department no later than a date set by the department.

(3) The department may extend the time within which nominating petitions may be filed.

(4) The department may not accept a nominating petition unless it is subscribed by 10 or more electors residing within the boundaries of the district.

(5) Electors residing within the boundaries of the district may sign more than one nominating petition to nominate more than one candidate for director.

(6) To the extent of any conflict between ORS chapter 255 and the provisions of ORS 568.530, 568.540, 568.545 and 568.560 and this section, the provisions of ORS 568.530, 568.540, 568.545 and 568.560 and this section control. Elections officers, as defined in ORS 255.005, are not responsible for delivering, preparing or publishing information concerning district elections. The department shall timely distribute and collect the forms established by the Secretary of State for updating information on members of district boards, including, but not limited to, any forms for information concerning the district offices to be filled or for which candidates are to be nominated or elected, or for information concerning the candidates. The department shall timely prepare and publish notice of the date for filing nominating petitions and the date of the election in a newspaper of general circulation within the district no later than 30 days before the final filing date. The department shall retain the information forms and publication information for not less than four years after the election for which the forms and publication were completed. [Amended by 1973 c.656 §9; 1981 c.92 §27; 1983 c.83 §106b; 1983 c.238 §2; 2007 c.690 §1]

**568.530 Ballots; write-in votes; unfilled positions.** (1) The names of all nominees for director on behalf of whom such nominating petitions have been filed with the State Department of Agriculture within the time designated as provided by ORS 568.520 shall be furnished by the department to the county clerk of the respective counties lying within the district not less than the 61st day before the date of the general election. Ballots shall be printed, voted, counted and canvassed in conformity with the provisions of general law relating to elections, except as otherwise provided by subsections (2) to (4) of this section or ORS 568.210 to 568.808 and 568.900 to 568.933.

(2) If no nominee for a position qualifies under subsection (1) of this section to have the name of the nominee furnished to the

county clerk for placement on the ballot, the position becomes open for write-in votes on the ballot. An elector who meets the qualifications to become a director of the district in a position for which no candidate qualifies under subsection (1) of this section may file with the department a declaration of intent and request for write-in votes to be tallied. The person must file the declaration and request no later than 14 days before the date of the election. The declaration and request must certify that the person is legally qualified to assume the duties of director and desires the position.

(3) Upon receipt of a declaration and request filed under subsection (2) of this section, the department shall take actions the department deems necessary to determine whether the person filing the declaration and request is an elector who meets the qualifications to become a director of the district. If the department determines that the person is an elector who meets the qualifications, the department shall notify the county clerk to count the write-in votes for the person.

(4) If no nominee for a position qualifies under subsection (1) of this section to have the name of the nominee furnished to the county clerk for placement on the ballot and no person filing a declaration and request for the position qualifies under subsection (3) of this section to have the county clerk count the write-in votes for that person, the county clerk may not count any write-in votes cast for any person for the position. If no nominee for a position qualifies under subsection (1) of this section to have the name of the nominee furnished to the county clerk for placement on the ballot and no person filing a declaration and request for the position qualifies under subsection (3) of this section to have the county clerk count write-in votes for the person, the local governing body of the district shall appoint a person to each position that was not filled at the election. [Amended by 1973 c.656 §10; 1981 c.92 §28; 1993 c.493 §86; 2007 c.690 §2]

**568.540 Election of directors.** The three candidates nominated under ORS 568.520 who receive the largest number, respectively, of the votes cast in the election shall be elected directors for the district. [Amended by 1955 c.142 §15; 1973 c.656 §11; 2007 c.690 §3]

**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]

**Note:** 568.542 was added to and made a part of 568.210 to 568.808 by legislative action but was not

added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**568.545 Procedure for selection of directors of consolidated districts; selection of officers.** (1) Notwithstanding ORS 568.470, when districts are consolidated, all directors continue to serve until directors for the consolidated district are elected as provided in this subsection. Not later than 30 days after the date of issuance of the certificate referred to in ORS 568.470, the boards of the districts consolidated shall hold a joint meeting. At the joint meeting, a majority of all the directors of all the districts affected constitute a quorum for the transaction of business. The directors so assembled shall elect seven persons from among their number to serve as directors of the consolidated district. The term of office of the directors elected as provided in this subsection shall be as provided in ORS 568.560 (5)(c). The number of directors of a consolidated district may be reduced to five in the manner provided in ORS 568.565.

(2) The directors elected as provided in subsection (1) of this section shall select a chairperson, secretary and other necessary officers and select a regular date for the annual and other meetings. [1965 c.155 §3; 1969 c.393 §1; 1973 c.656 §12; 2007 c.690 §4]

**568.550 General powers of directors; erosion control covenants; interagency cooperation.** (1) The directors of a soil and water conservation district have the following powers subject to the written approval of the State Department of Agriculture:

(a) To secure surveys and investigations and do research relating to:

(A) The character of soil erosion;

(B) The character of floodwater and sediment damage;

(C) All phases of the conservation, development, utilization and disposal of water; and

(D) The preventive measures, control measures and improvements needed.

(b) To conduct demonstrational projects on lands within the district upon obtaining the consent of the owner and occupier of such lands.

(c) To carry out preventive and control measures on lands within the district upon obtaining the consent of the owner and occupier of such lands.

(d) To enter into written agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier, or both of them, of lands within the district, for the purpose of carrying on soil

erosion control and prevention operations within the district.

(e) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest or devise any property, real or personal or rights or interests therein, to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of ORS 568.210 to 568.808 and 568.900 to 568.933, and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of ORS 568.210 to 568.808 and 568.900 to 568.933.

(f) To borrow money and to mortgage personal property of the district as security therefor, provided that landowners are given an opportunity to be heard at a public hearing in the district, notice of which shall be given according to rules prescribed by the department.

(g) To issue general obligation bonds of the district as provided in ORS 568.803.

(h) To make available, on such terms as the directors shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings and other material or equipment.

(i) To construct, operate and maintain such structures as may be necessary or convenient for performance of any of the operations authorized in ORS 568.210 to 568.808 and 568.900 to 568.933.

(j) To develop comprehensive plans and specifications for the conservation of soil resources and for the continued control and prevention of soil erosion within the district, and to publish such plans, specifications and information and bring them to the attention of owners and occupiers of lands within the district.

(k) To take over, by purchase, lease or otherwise, and to administer, any soil conservation, erosion control or erosion prevention project, or combination thereof, located within district boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies.

(L) To manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil conservation, erosion control or erosion prevention project, or combination thereof, within district boundaries.

(m) To act as agent for the United States or any of its agencies, in connection with the acquisition, construction, operation or administration of any soil conservation, erosion

control or erosion prevention project, or combination thereof, within district boundaries.

(n) To accept donations, gifts and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials or other contributions in carrying on its operations.

(o) To sue and to be sued in the name of the district, to have a seal, which shall be judicially noticed, to have perpetual succession unless terminated as provided by law, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and to make, and from time to time amend or repeal, rules not inconsistent with ORS 568.210 to 568.808 and 568.900 to 568.933 to carry into effect its purposes and powers.

(p) To purchase liability or indemnity insurance, in such amounts and containing such terms and conditions as they may deem necessary, for the protection of directors, officers and employees of the district against claims against them incurred by such directors, officers and employees in the performance of their official duties. The premiums for such insurance shall be paid out of moneys available for expenditure by the district.

(2) As a condition to the extending of any benefits under ORS 568.210 to 568.808 and 568.900 to 568.933 to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the directors may require contributions in money, services, materials or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(3) In order to avoid duplication of activities under subsection (1)(a) of this section, the department may call upon other state and federal agencies for assistance and cooperation in their fields in accordance with memoranda of understanding to be signed by all cooperating agencies. [Amended by 1955 c.142 §16; 1957 c.603 §4; 1961 c.640 §3; 1973 c.656 §13; 1981 c.92 §29; 2005 c.22 §386; 2005 c.282 §1]

**568.552 Power of directors to manage and control water resources and projects; authority of Water Resources Commission.** (1) The members of the local governing body of a soil and water conservation district shall have, in addition to the powers granted to them by ORS 568.550 and within the limits of appropriations and other moneys duly made available to the soil and water conservation district, the power:

(a) To plan, construct, maintain, manage, administer or control any works of improvement for flood prevention or for the conservation, development, utilization or disposal of water upon lands within their respective districts upon obtaining the consent of the landowner as defined in ORS 568.210, and the land occupier as defined in ORS 568.210, of such lands.

(b) To enter into written agreements to furnish financial or other aid to any agency, governmental or otherwise, or any landowner as defined in ORS 568.210, or land occupier as defined in ORS 568.210, or both of them, of lands within the district, for flood prevention or for the conservation, development, utilization or disposal of water within their respective districts.

(c) To manage, as agent, or to take over, by purchase, lease, or otherwise any flood prevention, drainage, irrigation or agricultural water management project or any combination thereof, undertaken by the United States or any of its agencies, or by this state or any of its agencies.

(2) Authority granted under this chapter shall be subject to the authority of the Water Resources Commission to formulate an integrated, coordinated program for the use and control of all water resources of this state and to classify and withdraw water resources of this state under ORS 536.300 to 536.410. [1961 c.640 §1]

**568.554 District to submit program and work plans for department review.** Each conservation district shall submit to the State Department of Agriculture its proposed long-range program and annual work plans for review and comment. [1973 c.656 §20; 1981 c.92 §30]

**568.555 Name of district may be changed.** Upon approval by the State Department of Agriculture, the directors of a district may submit to the Secretary of State a proposed new name for the district. If the proposed new name is not identical with that of any other soil and water conservation district of this state or so nearly similar as to lead to confusion or uncertainty, the Secretary of State shall make the change in names on the appropriate records in the office of the secretary, and shall record and issue to the directors a new certificate of organization for the district containing the new name. If the proposed new name does not satisfy such requirement, the Secretary of State shall so notify the directors, who may submit a new name which does satisfy such requirement. [1955 c.142 §2; 1981 c.92 §31]

**568.560 Number of directors; director qualifications; officers; election; terms; vacancies.** (1) The local governing body of

the district shall consist of not fewer than five nor more than seven directors who are elected or appointed as provided by law. To ensure proper representation of all the people in the district and to facilitate district functions, the State Department of Agriculture shall provide for the zoning of each district, and shall provide each time directors are elected or appointed for the proper and equitable representation for each zone.

(2) Not more than two directors may fill at-large positions. At-large directors must reside within the district and be registered voters.

(3) Zone directors must own or manage 10 or more acres of land in the district, be involved in the active management of the property, reside within the boundaries of the district and be registered voters. Zone directors may either reside within the zone that is represented or own or manage 10 or more acres within the zone that is represented and be involved in the active management of the property. An individual may also serve as a zone director when the individual, in lieu of the other requirements specified in this subsection, resides within the zone that is represented and indicates an interest in natural resource conservation as demonstrated by serving at least one year as a director or associate director of a district and having a conservation plan that is approved by the district. Candidates nominated for director from a specific zone shall be voted on by all electors within the district.

(4) The directors shall designate a chairperson, secretary and other officers as necessary and may, from time to time, change such designation.

(5) The term of office of each director shall be four years, except that:

(a) Of the directors first appointed under ORS 568.400, not less than one nor more than two shall serve until January first following the first general election following their appointment, and not less than one nor more than two shall serve until January first following the second general election following their appointment, as determined by the department, and thereafter, their successors shall be elected as provided by law for other elected directors.

(b) Of the directors elected as provided in ORS 568.540, one shall serve until January first following the first general election, and two shall serve from the date of the first annual election until January first following the second general election, as determined by them by lot at the first meeting of directors after creation or consolidation of the district.

(c) Of the directors first elected as provided in ORS 568.545 (1), three shall serve until January first following the first general election, and four shall serve until January first following the second general election after the date of their election, as determined by them by lot at the meeting referred to in ORS 568.545 (1).

(d) Of the directors first elected as provided in ORS 568.565, three shall serve until January first following the first general election and two shall serve until January first following the second general election, after the date of their election, as determined by them by lot at the meeting referred to in ORS 568.565.

(6) A director shall hold office until a successor has been elected or appointed, has qualified and has taken the oath of office or until the office becomes vacant under subsection (7) of this section. Any vacancy occurring in the office of director shall be filled as provided by subsection (8) of this section.

(7) A director position becomes vacant under the following circumstances:

(a) The department, upon the written recommendation of a majority of the members of the local governing body of a district, may declare vacant the position of a director who is absent from three consecutive meetings of the local governing body of the district. A position becomes vacant under this subsection upon the issuance of the declaration by the department.

(b) No nominee for the position qualifies under ORS 568.530 to have the name of the nominee furnished to the county clerk for placement on the general district election ballot and no person qualifies under ORS 568.530 to have write-in votes counted. A position becomes vacant under this paragraph on January 1.

(c) The department determines that a candidate receiving the most votes at an election does not qualify under this section to hold the position. A position becomes vacant under this paragraph on January 1 next following the election at which the unqualified candidate was elected unless an appointee to the position has been selected under subsection (8) of this section.

(d) A director serving in a position no longer qualifies under this section to hold the position. A position becomes vacant under this paragraph upon the department's declaration that the person no longer qualifies for the position.

(e) A director resigns from a position. A position becomes vacant under this paragraph upon the department's receiving notice of the resignation.

(f) A candidate who received the most votes at an election, or an appointee, refuses to take the oath of office as a director.

(8) A director position that becomes vacant before the scheduled expiration of a term shall be filled by appointment by a majority of the remaining directors. However, if a majority of the director positions are vacant or if the remaining directors cannot agree on an appointee, the department shall make an appointment to fill the position.

(9) An appointment under subsection (8) of this section shall end on January 1 next following the first general district election held after the appointment. If the appointment ends under this subsection before the January 1 that would normally complete the four-year term of office for the position, the position shall be placed on the ballot at the next general election as provided under ORS 568.530 to fill the position for the remainder of the four-year term. [Amended by 1955 c.142 §17; 1957 c.603 §5; 1961 c.641 §2; 1965 c.75 §1; 1969 c.393 §2; 1969 c.669 §§16, 19; 1973 c.656 §14; 1981 c.92 §32; 1993 c.166 §2; 2007 c.690 §5]

**568.565 Procedures for changing number of directors.** (1) Upon the written recommendation of the local governing body of a district having seven directors, the number of directors of such governing body may be reduced from seven to five by holding a meeting of the governing body at which the directors elect five persons from among their number to serve as directors of the district. The term of office of the directors elected pursuant to this section shall be as provided in ORS 568.560 (5)(d).

(2) Upon the written recommendation and majority vote of the local governing body of a district having five directors, the number of directors for the district may be increased to seven. Notwithstanding any unexpired term of office to which a member may have been elected, all five zone positions shall be placed on the ballot at the next following general election. The department shall determine the terms of office for the positions as provided in ORS 568.560 (5)(d). Any vacancy that occurs in a zone position shall be filled as provided under ORS 568.560. [1969 c.393 §4; 2007 c.690 §6]

**568.570 Majority constitutes a quorum.** A majority of the directors constitutes a quorum. The concurrence of a majority in any matter within their duties is required for its determination. [Amended by 1971 c.403 §14]

**568.580 Annual meeting.** Each year after the creation of the first board of directors at a time fixed by resolution of the board, the board, by giving due notice, shall call an annual meeting of the landowners in the district and present an annual report and audit.

**568.590 Notice of annual meeting.** Fifteen days before the annual meeting, the directors shall cause notices to be posted in three public places in the district and mailed to each cooperator in the district or published for two successive weeks in a paper of general circulation in the area, setting forth the time and place of holding the meeting. [Amended by 1961 c.641 §3; 1973 c.656 §15]

**568.600 Legal counsel; delegation of powers; assistance to department.** (1) The directors may call upon the Attorney General for such legal services as they may require, or may employ their own counsel.

(2) The directors may delegate to their chairperson or to one or more directors such powers and duties as they deem proper.

(3) The directors shall make available to the State Department of Agriculture all records and information pertaining to the district and shall assist the department in carrying out its recommendations. [Amended by 1981 c.92 §33]

**568.610 Records; audits.** The directors shall:

(1) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted.

(2) Provide for an annual audit of the accounts of receipts and disbursements. [Amended by 1969 c.345 §18]

**568.620 Consultation with county or municipal representatives.** The directors shall invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the directors of the district on all questions of program and policy which may affect the property, water supply or other interest of such municipality or county.

**568.630 Directors may formulate land-use regulations; public meetings.** The directors of any district have authority to formulate regulations, subject to the written approval of the State Department of Agriculture, governing the use of lands within the district or a part thereof in the interest of conserving soil and soil resources and preventing and controlling soil erosion. The directors may conduct the public meetings upon tentative regulations necessary to assist them in this work. [Amended by 1959 c.48 §1; 1981 c.92 §34]

**568.640 Referendum on land-use regulations; notice; form of regulations; proposed regulations available for inspection.** (1) The directors shall not have authority to enact such land-use regulations into law until after they have caused due

notice to be given of their intention to conduct a referendum for submission of such regulations to the owners of lands to which the proposed regulations apply for their indication of approval or disapproval, and until after the directors have considered the result of such referendum. Notwithstanding the provisions of ORS chapter 255, the provisions of ORS 568.650, 568.660, 568.670 and this section apply to referenda on adoption, amendment, supplementation or repeal of land-use regulations of a district.

(2) The proposed regulations shall be embodied in a proposed ordinance, which shall describe the territory to which it applies. Copies of the proposed ordinance shall be available for the inspection of all electors residing within the district during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. [Amended by 1959 c.48 §2; 1973 c.656 §16; 1983 c.83 §106c; 1983 c.238 §3]

**568.650 Contents of referendum ballot; referendum governed by directors; land-owners eligible to vote.** (1) The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance No. — prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No. — prescribing land-use regulations for conservation of soil and prevention of erosion" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of the propositions.

(2) The directors shall supervise such referendum, shall prescribe appropriate regulations governing its conduct and shall publish the results thereof. Only owners of lands to which the proposed ordinance applies shall be eligible to vote in such referendum. [Amended by 1959 c.48 §3; 1973 c.656 §17]

**568.660 Votes necessary for approval; effect of regulations when adopted.** (1) The directors do not have authority to enact such proposed ordinance into law unless at least two-thirds of all votes cast in the referendum representing a majority of the land to which the proposed ordinance applies have been cast for approval of the proposed ordinance.

(2) Land-use regulations prescribed in ordinances adopted pursuant to ORS 568.630 to 568.690 by the directors of any district when indorsed by the State Department of Agriculture have the force and effect of law in the district or the part thereof to which the ordinance applies and are binding and obligatory upon all owners and occupiers of

land within such district or the part thereof to which the ordinance applies. [Amended by 1959 c.48 §4; 1973 c.656 §18; 1981 c.92 §35]

**568.670 Landowner may petition for amendment or repeal; procedure; referenda limited.** (1) Any owner of land to which an ordinance adopted by the directors under ORS 568.630 to 568.690 applies may at any time file a petition with the directors asking that any or all of the land-use regulations prescribed in the ordinance shall be amended, supplemented or repealed.

(2) Land-use regulations prescribed in any ordinance adopted pursuant to ORS 568.630 to 568.690 shall not be amended, supplemented or repealed except in accordance with the procedure prescribed in ORS 568.630 to 568.690 for adoption of land-use regulations.

(3) Referenda on adoption, amendment, supplementation or repeal of land-use regulations shall not be held more often than once in 12 months. [Amended by 1959 c.48 §5]

**568.680 Scope of regulations; approval by department.** (1) All regulations to be adopted by the directors under ORS 568.630 to 568.690 must be approved in writing by the State Department of Agriculture.

(2) The regulations may include provisions for gully control, cultural and cropping practices and for such other measures and operations as may assist conservation of soil and water resources and prevent or control soil erosion in the district. [Amended by 1981 c.92 §36]

**568.690 Regulations to be uniform; copies to be available to landowners.** (1) The regulations shall be uniform throughout the territory comprised within the district or the part thereof to which they apply except that the directors may approve technical classification of the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use and other relevant factors; and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type.

(2) Copies of land-use regulations adopted under ORS 568.630 to 568.690 shall be printed and made available to all owners and occupiers of lands lying within the district. [Amended by 1959 c.48 §6]

**568.700 Petition to circuit court for enforcement of regulations; contents of petition.** Where the directors of any district find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with ORS 568.630 to 568.690 are not being observed on particular lands, and that such nonobservance tends to

increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the directors may present to the circuit court of the county in which the lands of the defendants lie a petition, duly verified, setting forth:

(1) The adoption of the ordinance prescribing land-use regulations, the failure of the defendant landowner or occupier to observe such regulations and to perform particular work, operations or avoidance as required thereby.

(2) That such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations or avoidances within a reasonable time and to order that if the defendant fails so to perform the directors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof with interest, from the owner or occupier of such land.

**568.710 Hearing and decree; court may appoint referee; joinder of owner and occupant.** (1) Upon the presentation of the petition, the court shall cause process to be issued against the defendant and shall hear the case. If it appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it directs and report the same to the court with findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(2) The court may dismiss the petition; or it may require the defendant to perform the work, operations or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court and to prosecute the same to completion with reasonable diligence, the directors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five percent per annum from the owner or occupier of such lands, or both.

(3) In all cases where the person in possession of lands who fails to perform such work, operations or avoidances is not the owner, the owner of such lands shall be joined as party defendant.

**568.720 Court retains jurisdiction until work completed; statement of expenses; judgment.** The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of the work pursuant to the court order the directors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five percent per annum until paid, together with the costs of suit and a reasonable attorney fee at trial and on appeal to be fixed by the court. [Amended by 1981 c.897 §66]

**568.730 Officials may enter private lands.** The directors or state or federal officials have authority to go upon any lands within the district after notifying the owner or operator for the purpose of making surveys and to determine whether land-use regulations adopted under ORS 568.630 to 568.690 are being observed. Due precaution shall be taken at all times to prevent injury to growing crops or livestock.

**568.740 Board of adjustment established for each district; membership; appointment; term; disqualification.** (1) Where the directors of any district adopt an ordinance prescribing land-use regulations in accordance with the provisions of ORS 568.630 to 568.690, they shall further provide by ordinance for establishment of a board of adjustment consisting of three members.

(2) Each member shall be appointed for a three-year term, except that the members first appointed shall be appointed for terms of one, two and three years, respectively. The members of each such board of adjustment shall be appointed by the State Department of Agriculture, with the advice and approval of the directors of the district for which such board has been established, and shall be removable upon written notice.

(3) Any member of a board of adjustment who, in the judgment of the department, is personally or financially interested in any matter brought before the board on which the member sits shall be disqualified by the department from participation on the board of adjustment in such matter; and the department, with the advice and consent of the governing body of the district, shall appoint a member pro tempore who shall serve on the board of adjustment in its consideration of such matter until such matter is finally disposed of by the board of adjustment. If in the judgment of the department a board of adjustment member's personal or financial interest in matters before the board is of

such a character as to conflict permanently or otherwise interfere with the discharge of such member's duties, the department may declare such member's position vacant. "Personal or financial interest," as used in this subsection, includes, but is not limited to, the ownership of land or of capital or voting stock in any corporation which is the owner of land subject to land-use regulations, which regulations are before the board of adjustment for review under the provisions of ORS 568.770. [Amended by 1961 c.236 §2; 1981 c.92 §37]

**568.750 Vacancies in board of adjustment; compensation of members; administrative expenses.** (1) Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant. Employees of the State Department of Agriculture and the directors of the district are ineligible to appointment as members of the board of adjustment during their tenure of such other office.

(2) The members of the board of adjustment shall receive compensation for their services at the rate of \$5 per diem for time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties.

(3) The directors shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairperson of the board, from funds made available by the department or the federal government. [Amended by 1981 c.92 §38]

**568.760 Rules of board of adjustment; meetings.** (1) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of ORS 568.210 to 568.808 and 568.900 to 568.933 and with the provisions of any ordinance adopted pursuant thereto. The board shall designate a chairperson from among its members, and may from time to time change such designation.

(2) Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Any two members of the board constitute a quorum. The chairperson, or in the absence of the chairperson such other member of the board as the chairperson designates to serve as acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board are open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it and of all orders entered, which shall be filed in the office of the board and shall be public record.

**568.770 Petition for relief from regulations; hearing; procedure; board may order variance of regulations; appeal.** (1) Any landowner or occupier may file a petition with the chairperson of the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of the landowner or occupier carrying out upon the lands of the owner or occupier the strict letter of the land-use regulations prescribed by an ordinance that applies to the lands and asking relief therefrom. Copies of such petition shall be served by the petitioner upon the chairperson of the directors of the district within which the lands of the petitioner are located and upon the State Department of Agriculture.

(2) The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The directors of the district and the department shall have the right to appear and be heard at such hearing. Any owner or occupier of lands to which the same ordinance applies who objects to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent or by attorney. If, upon the facts presented at such hearing, the board determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact in reference thereto.

(3) Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of the land-use regulations in their application to the lands of the petitioner, and such order shall be in accordance with substantial justice.

(4) Any petitioner aggrieved by an order of the board granting or denying in whole or in part the relief sought, or any intervening party, may appeal to the circuit court of the county in which the lands of the petitioner lie. [Amended by 1959 c.48 §7; 1981 c.92 §39]

**568.780 Certain public agencies to be deemed owners.** Agencies of this state which have jurisdiction over, or are charged with the administration of any state owned lands, and of any county, or other governmental subdivision of the state, which have jurisdiction over, or are charged with the administration of any county owned or other publicly owned lands, lying within the boundaries of any district organized under ORS 568.210 to 568.808 and 568.900 to 568.933 are deemed owners within the meaning of



ORS 568.210 to 568.808 and 568.900 to 568.933 and have the same rights and duties as other landowners under the provisions of ORS 568.210 to 568.808 and 568.900 to 568.933.

**568.790 County funds for personnel and other uses; duties of county extension agent.** (1) In any county where one or more soil and water conservation districts have been established as provided by ORS 568.210 to 568.808 and 568.900 to 568.933, the county court of such county may provide and appropriate funds for the use of such district or districts for the employment of necessary personnel including the employment of one county extension agent or for other expenditures required to carry out the provisions of ORS 568.210 to 568.808 and 568.900 to 568.933.

(2) Such funds may be provided either by special provision in the annual tax levy of such county or by appropriation of funds not otherwise appropriated. Funds for the employment of a county extension agent under subsection (1) of this section shall be paid to the treasurer of Oregon State University through the State Board of Higher Education for expenditure within such county under the supervision of the federal cooperative extension service of the university which may be used for payment of a part of the salary and expenses of one or more county extension agents in accordance with a budget mutually agreed upon between the county court of such county and the federal cooperative extension service of the university.

(3) Each county extension agent so employed may serve as secretary of one or more soil and water conservation districts, by and with the consent of the directors of such districts, and the agent's time and attention, in whole or in part, shall be devoted to carrying out and facilitating the approved work program of such districts as provided in ORS 568.210 to 568.808 and 568.900 to 568.933. [Amended by 1961 c.641 §4; 1983 c.327 §9]

**568.800** [1965 c.27 §§2,3,4; repealed by 1977 c.146 §2]

**568.801 Stream control and management projects; application; designation and implementation; rules.** (1) Any district that desires to implement a stream bank erosion control or stream corridor management project shall make application therefor to the State Department of Agriculture. The application shall be in such form and shall contain such information as the department may prescribe.

(2) By utilizing existing inventories and reports, the department shall designate projects to be implemented on critically eroding stream systems of this state.

(3) The department shall utilize the resources and cooperation of other state and

federal agencies to the greatest extent practicable in implementing stream bank erosion control and stream corridor management projects.

(4) In accordance with any applicable provision of ORS chapter 183, the department, by rule, shall adopt procedures to carry out the provisions of subsections (1) to (3) of this section. [1981 c.202 §§2,3; 1983 c.740 §220]

**568.803 General obligation bonds; re-funding bonds; special taxes.** (1) When authorized by a majority of electors voting at an election called for that purpose by the directors of a soil and water conservation district, the directors may issue general obligation bonds of the district, not exceeding in value the amount stated in the notice of election and for the purpose named in the notice as provided in ORS chapter 287A.

(2) The aggregate amount of general obligation bonds issued and outstanding at any one time may not exceed two and one-half percent of the real market value of all taxable property of the district, computed in accordance with ORS 308.207.

(3) General obligation bonds must recite that they are issued under ORS 568.210 to 568.808.

(4) A soil and water conservation district:

(a) Shall issue general obligation bonds authorized under this section as provided in ORS chapter 287A; and

(b) May issue refunding bonds as provided in ORS chapter 287A.

(5) Taxes that are levied by a soil and water conservation district to pay principal, interest and premium, if any, on general obligation bonds issued pursuant to this section are separate from and in addition to taxes levied pursuant to ORS 568.806. [2005 c.282 §3; 2007 c.783 §222]

**568.805 Special assessments; improvement bonds; objections by landowners.** (1) A district may finance the exercise of any district power or function authorized under this chapter by levying special assessments against property directly benefited thereby and by issuing special assessment improvement bonds. As security for the bonds, the district may pledge all or any part of the revenue from special assessments levied against property directly benefited. The rights and duties accorded a city and the owners of property in a city under ORS 223.389 and 223.391 for levying special assessments and issuing special assessment improvement bonds shall apply in the same manner to a district and the owners of property in the district for purposes of levying assessments and issuing special assessment improvement bonds under this section.

(2) In addition to other requirements of ORS 223.389 and 223.391, the directors of a district shall fix a date by which written objections to the amount of proposed assessments levied under this section may be filed with the district. The date so fixed shall be not less than 50 days after notice of the proposed assessment is mailed or delivered to the owner of each lot or parcel of property to be assessed. If written objections to the proposed assessments are filed by that date by at least 50 percent of the owners of property to be assessed who are also liable for at least 60 percent of the total amount of assessments, the directors of the district shall terminate the proposed project and assessments.

(3) Except as provided in this section, a district may not issue bonds or make assessments. [1985 c.637 §2; 1991 c.902 §115; 2003 c.802 §147]

#### (Tax Levying Authority)

**568.806 Ad valorem tax; budget; collection.** (1) When authorized to become a taxing district by the eligible electors of the district as provided in ORS 568.807, a district may assess, levy and collect an ad valorem tax each year on the real market value of all taxable property within the limits of the district. The proceeds of the tax shall be applied in carrying out the purposes of ORS 568.210 to 568.808 and 568.900 to 568.933.

(2) In any year in which the ad valorem tax provided for in subsection (1) of this section is levied, the directors of the district shall prepare a budget in the form, manner and time prescribed in ORS 294.305 to 294.520 (the Local Budget Law), and in accordance therewith shall fix the amount of money to be raised by taxation for the district.

(3) Any taxes levied in any year shall be returned to the county officer, whose duty it is to extend the tax roll in the manner provided in ORS 310.060.

(4) All taxes levied by a district shall become payable at the same time and be collected by the same officer who collects county taxes, and shall be turned over to the district according to law. The county officer whose duty it is to extend the county levy shall extend the levy of the district in the same manner as city taxes are extended.

(5) Property shall be subject to sale for nonpayment of taxes levied by a district in like manner and with like effect as in the case of county and state taxes. [1981 c.918 §2; 1991 c.459 §446]

**568.807 Electors authorizing taxation; election date.** (1) The eligible electors of a district may, by approving a proposition referred to them by the governing body of the

district, authorize the district to become a taxing district with the power to thereafter assess, levy and collect an ad valorem tax each year on the real market value of all taxable property within the limits of the district.

(2) Approval of a proposition authorizing the district to become a taxing district need only be obtained once by a district in order for the district to have the taxing power granted by ORS 568.806.

(3) An election called by the district for the purpose of obtaining approval to become a taxing district shall be held on one of the dates set forth in ORS 255.345. [1981 c.918 §3; 1991 c.459 §447]

**568.808 Taxing district to file legal description and map.** When a district is authorized to become a taxing district as provided in ORS 568.807, the governing body of the district shall file a legal description and accurate map of the district with the Department of Revenue and the county assessor. The description and map shall satisfy the requirements of ORS 308.225, and that section shall thereafter apply to the district. [1981 c.918 §4]

#### WIND EROSION CONTROL

**568.810 Purpose of ORS 568.810 to 568.890; types of wind erosion.** (1) The purpose of ORS 568.810 to 568.890 is to effectuate the control of wind erosion by forming districts in which all land owners affected shall carry out wind erosion control measures whenever serious wind erosion conditions prevail.

(2) Two types of wind erosion conditions shall be recognized:

(a) The actual movement of soil by wind to such a degree that the topsoil is being noticeably destroyed.

(b) Conditions which will result in a noticeable movement of the topsoil by wind action.

**568.820 Designation of areas by county court upon petition; description of boundaries.** (1) The county court of any county east of the summit of the Cascade Mountains may designate areas as wind erosion districts when presented with a duly certified petition adequately describing the boundaries or area included in such districts and when the petition bears the signatures of two-thirds of the landowners or qualified representatives in the described district. Five such signatures shall be a minimum requirement.

(2) Boundaries described by metes and bounds or areas described by quarter sections shall be deemed adequately described.

**568.830 Publication and posting of notices describing districts; when regulations are enforced.** (1) The county court shall within 10 days after declaring a wind erosion district cause to be published an official notice adequately describing the district.

(2) Each notice shall be posted in a prominent place in the county courthouse and shall be published in one or more newspapers serving the district, for two consecutive issues if weekly or two times at an interval of one week if daily or semiweekly.

(3) Ten days after the last publication of the official notice the provisions of ORS 568.810 to 568.890 shall be enforced as set forth in ORS 568.840 to 568.890.

**568.840 Election of advisory board; meetings; members; functions.** (1) Within 30 days after a wind erosion district has been designated by the county court the court shall cause to be posted in three public places in such wind erosion district a written or printed notice notifying the farm operators thereof to assemble at some designated convenient place on the 10th day after the date of notice at 10 a.m. for the purpose of electing four directors who shall be known as the advisory board, to serve until their successors are duly elected or appointed. Two members of the initial board shall be elected to serve for one year and two shall be elected to serve for two years. Vacancies in the advisory board shall be filled by appointment by the board.

(2) As soon as 20 percent or more of the farm operators of the district have assembled pursuant to such notice they shall constitute a quorum to do business. Such meeting shall organize by the election of a chairperson and secretary of the meeting and then may proceed to elect four members of the advisory board. In either January or February in each year following the initial meeting, the chairperson of the advisory board shall call an annual meeting of the farm operators of the wind erosion district. At least five days before the meeting, notice of the meeting shall be given by posting in three public places in the wind erosion district a written or printed notice notifying the farm operators thereof to assemble at some designated convenient place at the appointed time for the annual meeting. At the meeting two members of the advisory board to serve for two years shall be elected. All members of the advisory board shall be farm operators of the district in which they are elected.

(3) Within 10 days after the initial or yearly election, the advisory board shall meet and elect a chairperson and secretary from their members who shall serve until the next election. All other meetings of the advisory

board shall be held as the need arises, at the call of the chairperson. Three members constitute a quorum.

(4) The functions of the advisory board are:

(a) To recommend to the county court a person or persons for the position of wind erosion inspector.

(b) To consult and advise with the inspector as to the most feasible methods of effectuating wind erosion control in the district.

(c) To act as a board of appeal when disputes arise between the wind erosion inspector and the owner or occupant of land within the district, concerning action relating to the enforcement of ORS 568.810 to 568.890. [Amended by 1959 c.278 §1]

**568.850 Wind erosion inspector; appointment; duties; appeal from decision; compensation; expenses.** (1) The county court, upon the recommendation of the advisory board, shall appoint an inspector who shall, within the wind erosion district or districts under the supervision of the inspector:

(a) Determine when serious wind erosion conditions prevail.

(b) Serve notices on landowners or occupants to effectively control wind erosion on their lands or correct conditions which may allow wind erosion to occur.

(c) When necessary, control or supervise control of wind erosion or conditions which may allow wind erosion to occur on lands where the owners or occupants thereof fail or refuse to do so.

(2) The inspector shall be the sole judge of whether serious wind erosion conditions do or do not prevail, except that appeal from the decisions of the inspector may be made to the advisory board as provided in ORS 568.840. In case of appeal to the advisory board, the inspector shall abide by a majority decision of the advisory board.

(3) The persons appointed wind erosion inspectors by the county court may receive for services reasonable wages, as determined by the county court, for the time actually employed in the performance of duty under the provisions of ORS 568.810 to 568.890 and may be reimbursed for actual expenses incurred in carrying out those provisions. All wages and expenses paid wind erosion inspectors shall be paid by the county court from funds set aside for this purpose, as provided in ORS 568.880.

**568.860 Inspector may enter lands in district; service of notice on owner or occupant.** (1) The wind erosion inspector shall have access to all lands within the dis-

district or districts under the supervision of the inspector. If in the judgment of the inspector wind erosion is occurring or is likely to occur because proper control measures are not being practiced, the inspector shall serve a written notice to any such owner or occupant of such land, or where unable to serve such notice personally, shall post the same and two copies thereof in three conspicuous places on the land where the provisions of ORS 568.810 to 568.890 are not being complied with, bearing date of service on posting of same and a statement setting forth that work on the control of wind erosion must be commenced within five days; except that when serious blowing is actually occurring, four hours from the date of service is sufficient notice.

(2) A copy of the notice or notices, each showing the period of grace allowed, together with proof of service indorsed thereon, shall be filed with the county court.

**568.870 County court may authorize inspector to control erosion; expenses of control.** (1) If the owner or occupant of the land fails or refuses to control wind erosion in accordance with ORS 568.810 to 568.890, the wind erosion inspector shall at once notify the county court, and the county court shall authorize the wind erosion inspector or such assistants as the inspector may employ to go upon the land and control the wind erosion, using the most effective and practical methods which will operate with the least injury to the land or the crops thereon.

(2) Verbal authorization by telephone from one or more members of the county court is sufficient authority for commencing wind erosion control work when actual wind erosion is occurring and when an official four-hour notice, as provided in ORS 568.860 has been served on the owner or occupant of the land.

(3) Upon completion of the work the wind erosion inspector shall file with the county clerk an itemized statement of the expenses necessarily incurred in the control of the wind erosion, including the inspector's own wage, if any, verified by the oath of the inspector. When the statement is filed, the county clerk shall cause the same to be entered upon a lien docket prepared for that purpose.

(4) If such charges and expenses are not paid to the county clerk and the lien discharged by the owner or occupant of the lands within 90 days from the date the lien is docketed, the county clerk shall certify the same to the tax collector of the county, who shall extend the amount thereof upon the current tax roll, and when so extended the

same shall constitute a valid lien against the premises and shall be collected by the tax collector in the same manner as taxes are collected.

(5) If within 10 days from the date of filing and docketing the lien no objections have been filed thereto, the county court shall pay the amount thereof out of the general fund of the county to the claimants.

**568.880 Tax levy for wind erosion control.** The county courts of the several counties may levy a tax and create a fund for the control of wind erosion on county land within the wind erosion districts and for expenses of erosion control which cannot fairly be charged to the individual landowners. The amount estimated by the county court as being sufficient for such purposes may be placed in the county budget; and after consideration at the meeting held for the purpose of passing upon the tax levy of the electors of the county, may become one of the items for which expenditure may be made during the ensuing year.

**568.890 District may be dissolved; disposition of district funds; change of district boundaries.** (1) Any wind erosion district may be enlarged, contracted or dissolved by the county court when a petition is filed bearing the signatures of two-thirds of the landowners of the district and stating the changes in the district boundaries that are desired.

(2) All such changes shall be described as provided in ORS 568.820. Any moneys remaining in any fund for the control of wind erosion shall, after the dissolution of all such districts in the county, be credited to the general fund of the county.

## AGRICULTURAL WATER QUALITY MANAGEMENT

**568.900 Definitions for ORS 568.900 to 568.933.** As used in ORS 568.900 to 568.933:

(1) "Board" means the State Board of Agriculture.

(2) "Operator" means any person, including a landowner or land occupier engaged in any commercial activity relating to the growing or harvesting of agricultural crops or the production of agricultural commodities.

(3) "Water" or "the waters of the state" has the meaning given in ORS 468B.005.

(4) "Water pollution" has the meaning given in ORS 468B.005.

(5) "Water quality management plan" or "plan" means a plan developed under ORS 568.909. The plan shall be based upon scientific information. [1993 c.263 §2; 1997 c.249 §184]

**568.903 “Landowner” defined.** Notwithstanding the definition given in ORS 568.210, as used in ORS 568.909 to 568.933 “landowner” includes any landowner, land occupier or operator. [1993 c.263 §4]

**568.906 Plan implementation to involve local agencies.** It is the intention of the Legislative Assembly that plans developed under ORS 568.900 to 568.933 involve soil and water conservation districts as local management agencies to the fullest extent practical, consistent with the timely and effective implementation of these plans. [1993 c.263 §10]

**568.909 Boundaries for land subject to water quality plans; implementation of plan and rules.** (1) The State Department of Agriculture may describe the boundaries of agricultural and rural lands that are subject to a water quality management plan:

(a) Due to a determination by the Environmental Quality Commission to establish a Total Maximum Daily Load for a body of water under the Federal Water Pollution Control Act (33 U.S.C. 1313);

(b) Due to a declaration of a ground water management area under ORS 468B.180; or

(c) When an agricultural water quality management plan is otherwise specifically required by state or federal law.

(2) For an area whose boundaries have been designated under this section, the department shall develop and carry out a water quality management plan for the prevention and control of water pollution from agricultural activities and soil erosion. The department shall base the plan and rules adopted to implement the plan upon scientific information. [1993 c.263 §3; 2001 c.594 §1]

**568.912 Management plan rules; required actions under rules; prohibiting specific practices; landowner appeals.** (1) The State Department of Agriculture in consultation with the State Board of Agriculture may adopt rules necessary to implement a water quality management plan initiated under ORS 568.909. The rules adopted under this subsection shall constitute the only enforceable aspects of a water quality management plan.

(2) Pursuant to rules adopted under subsection (1) of this section, the department may require any landowner whose land is located within an area subject to a water quality management plan to perform those actions on the landowner’s land necessary to prevent and control water pollution from agricultural activities and soil erosion. Such actions may include:

(a) Construction or maintenance of any works or facilities;

(b) Agricultural and cropping practices; or

(c) Any other measure or avoidance necessary for the prevention or control of water pollution of the waters of the state.

(3) No specific practice may be prohibited under this section unless the department has a scientific basis for concluding that the practice is a factor in causing water quality standards to be exceeded.

(4) A landowner subject to the rules adopted to implement a plan may appeal specific actions required of that landowner by the department to carry out a plan. The department shall establish by rule a procedure and criteria for the appeal process. [1993 c.263 §5; 2001 c.442 §1; 2001 c.594 §2]

**568.915 Entry upon land; purpose; consultation with Department of Justice; notice to landowners.** (1) After making a reasonable attempt to notify the landowner, the State Department of Agriculture or a designee of the department may enter any lands within the area subject to a water quality management plan for the purpose of determining:

(a) Those actions that may be required of landowners under ORS 568.900 to 568.933 or rules adopted under ORS 568.912; and

(b) Whether the landowner is carrying out the required actions.

(2) The State Department of Agriculture, or a designee of the State Department of Agriculture, shall periodically, and in no event less than once biennially, consult with the Department of Justice to ensure that the actions of the State Department of Agriculture taken under this section are consistent with section 9, Article I of the Oregon Constitution, and the Fourth Amendment to the United States Constitution.

(3) Prior to general initiation of inspections in an agricultural water quality management area for compliance with rules adopted under ORS 568.912, the department shall implement a process to notify the affected landowners within the boundaries of the area of any requirements that may by rule apply to landowners in the area. [1993 c.263 §6; 1997 c.657 §1; 2001 c.442 §2; 2001 c.594 §3]

**568.918 Notice to landowner of failure to perform requirements.** Upon finding that a landowner in an area subject to a water quality management plan has failed to perform actions required by the rules adopted under ORS 568.912, the State Department of Agriculture shall notify the landowner and direct the landowner to perform the work or take any other actions necessary to bring the condition of the subject lands into compliance with the rules

within a reasonable period of time. In all cases, the legal owner of the property shall also be notified, prior to the assessment of any civil penalty. [1993 c.263 §7; 2001 c.594 §4]

**568.921 Fees from landowners.** The State Department of Agriculture, in consultation with the State Board of Agriculture, may establish and collect fees from landowners subject to a water quality management plan adopted under ORS 568.909. The fees shall not exceed the total cost of developing and carrying out the plan and shall not exceed \$200 annually per landowner. Fees established by the department under this section are subject to the requirements of ORS 291.055. Any fees received by the department pursuant to this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the department for the purpose of implementing ORS 568.900 to 568.933. [1993 c.263 §9; 2001 c.442 §6; 2001 c.594 §5]

**568.924 Interagency agreements.** The State Department of Agriculture may enter into agreements with any agency of this state, including but not limited to a soil and water conservation district, or with any agency of the federal government, for the purposes of carrying out the provisions of ORS 568.900 to 568.933 including the development of a plan. [1993 c.263 §11]

**568.927 Law inapplicable to certain forest practices.** The provisions of ORS 568.900 to 568.933 shall not apply to any forest practice conducted on forestland as defined in ORS 527.620. [1993 c.263 §12]

**568.930 Agricultural activities subject to plan requirements; consultation with Environmental Quality Commission; review and revision of plans.** (1) Landowners shall conduct all agricultural activities on agricultural lands within the boundaries of an area subject to a water quality management plan in full compliance with the rules implementing the plan and with all the rules and standards of the Environmental Quality Commission relating to water pollution control. In addition to any other remedy provided by law, any violation of those rules or standards shall be subject to all remedies and sanctions available to the Department of Environmental Quality or the Environmental Quality Commission.

(2) The State Department of Agriculture and the State Board of Agriculture shall consult with the Department of Environmental Quality or the Environmental Quality Commission in the adoption and review of water quality management plans and in the adoption of rules to implement the plans.

(3)(a) The Environmental Quality Commission may petition the State Department of Agriculture for a review of part or all of any water quality management plan and rules implementing the plan. The petition must allege with reasonable specificity that the plan or the rules are not adequate to achieve compliance with applicable state and federal water quality standards.

(b) The State Department of Agriculture, in consultation with the State Board of Agriculture, shall complete its review of a petition submitted under paragraph (a) of this subsection within 90 days of the date of the filing of the petition for review. The State Department of Agriculture may not terminate the review without the concurrence of the Environmental Quality Commission unless the department initiates revisions to the rules implementing the water quality management plan that address the issues raised by the Environmental Quality Commission. If the State Department of Agriculture adopts any revisions in response to a petition by the Environmental Quality Commission, the department shall adopt the revisions not later than two years from the date the Environmental Quality Commission submits the petition, unless the department, with the concurrence of the Environmental Quality Commission, finds that special circumstances require additional time.

(4) A water quality management plan and rules implementing the plan that pertain to a ground water management area shall be subject to the coordination requirements of ORS 468B.162. [1993 c.263 §13; 1999 c.59 §179; 2001 c.594 §6]

**568.933 Civil penalties; availability; reductions.** (1) In addition to any other liability or penalty provided by law, the State Department of Agriculture may impose a civil penalty on a landowner of lands within an agricultural or rural area subject to a water quality management plan for failure to comply with rules implementing the plan.

(2) The department may not impose a civil penalty on a landowner for a first violation under this section unless the department:

(a) Has notified the landowner of the violation in a writing that describes, with reasonable specificity, the factual basis for the department's determination that a violation has occurred; and

(b) Has prescribed a reasonable time for the landowner to correct the violation that may not exceed 30 days after the first notice of a violation, unless the violation requires more than 30 days to correct, in which case the department shall specify a reasonable period of time to correct the violation in a plan of correction issued to the landowner.

(3) A civil penalty imposed under this section may not exceed:

(a) \$2,500 for a first violation; or

(b) \$10,000 for a second or subsequent violation.

(4) For purposes of this section, each day of a violation continuing after any period of time of correction set by the department is a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.

(5) The landowner to whom a notice of violation or a notice of civil penalty is addressed shall have 30 days from the date of receipt of the notice in which to make written application for a hearing before the department.

(6) In imposing a penalty under this section, the department shall consider the following factors:

(a) The past history of the landowner incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct a violation.

(b) Any prior violations of rules, regulations or statutes pertaining to a water quality management plan.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was repeated or continuous.

(e) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(f) The violator's efforts to correct the violation.

(g) The immediacy and extent to which the violation threatens the public health or safety.

(7) A notice of violation or period to comply shall not be required under subsection (2) of this section if:

(a) The violation is intentional; or

(b) The landowner has received a previous notice of the same or similar violation.

(8) The department shall deposit any civil penalty recovered under this section into a special subaccount in the Department of Agriculture Service Fund. Moneys in the subaccount are continuously appropriated to the department to be used for educational programs on water quality management and to provide funding for water quality management demonstration projects.

(9) The State Department of Agriculture shall reduce the amount of any civil penalty imposed under this section by the amount of any civil penalty imposed by the Environmental Quality Commission or the Department of Environmental Quality for violations of water quality rules or standards, if the latter penalty is imposed on the same person and is based on the same violation. [1993 c.263 §8; 2001 c.442 §4; 2001 c.594 §7]

