

Chapter 568

2009 EDITION

Soil and Water Conservation; Water Quality Management

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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, promote collaborative conservation efforts to protect and enhance healthy watershed functions, assist in the development of renewable energy and energy efficiency resources, 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, natural resource organizations, natural resource users, 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; 2009 c.220 §2]

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 formed 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. A description is sufficient if generally accurate and need not be given by metes and bounds or by legal subdivision.

(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 formation of a district in such territory, and that the department determine that a district be formed.

(2) If 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; 2009 c.220 §3]

568.310 Notice of hearing; questions considered. Within 60 days after a petition described in ORS 568.300 is filed with the State Department of Agriculture, the department shall give notice of and hold a public 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; 2009 c.220 §4]

568.320 Right to be heard; subsequent notice and hearings. (1) All owners of land and electors within the limits of the territory described in the petition for formation of a district, owners of lands and electors within any territory considered for addition to the described territory, and all other interested parties, shall have the right to attend the public hearing described in ORS 568.310 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. [Amended by 2009 c.220 §5]

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

(1) After the hearing under ORS 568.310, 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 soil and water conservation district to function in the territory considered at the hearing, the department shall make and record the determination and 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

those lands may receive from being included within district boundaries.

(f) The relation of the proposed area to existing watersheds and agricultural regions and to other soil and water conservation districts already formed or proposed for formation.

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

(3) The territory to be included within district boundaries need not be contiguous. [Amended by 1981 c.92 §9; 2009 c.220 §6]

568.340 Determination to not form 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 a soil and water conservation district in the territory is not administratively practicable or that there is no need for a soil and water conservation district to function in the territory considered at the hearing, the department shall make and record the determination and 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. [Amended by 1981 c.92 §10; 2009 c.220 §7]

568.350 [Amended by 1981 c.92 §11; repealed by 2009 c.220 §34]

568.351 Determination of boundaries for proposed district; notice of plan to issue order; publication; request for referendum. (1) If the State Department of Agriculture makes and records a determination that the formation of a soil and water conservation district within a territory is administratively practicable, that there is a need for the district and that formation of the district promotes the public interest and general welfare, the department shall define the boundaries of the proposed district and shall publish notice that the department plans to issue an order of formation for the district. The department shall cause the notice to be published in a newspaper of general circulation within the area of the proposed district. The notice shall include instructions regarding the filing of a request for a referendum.

(2) If 10 percent of the electors within the proposed district file a written request for referendum within 30 days after publication of the notice, the department shall schedule a referendum as described in ORS 568.391.

(3) If a referendum is not required under subsection (2) of this section, the department shall issue an order of formation for the dis-

trict. The order must set forth the name of the district and the district boundaries defined by the department. [2009 c.220 §8]

568.360 [Amended by 1981 c.92 §12; repealed by 2009 c.220 §34]

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 [Amended by 1973 c.656 §3; 1981 c.92 §15; repealed by 2009 c.220 §34]

568.391 Referendum process; ballot contents; results. (1) If a referendum regarding the formation of a district is required under ORS 568.351, the State Department of Agriculture shall:

(a) Prepare appropriate ballots and administer the referendum election process; or

(b) Enter into an agreement with county officials for administration of the referendum election process by the county.

(2) The ballot for a referendum election must include a map or other description of the boundaries of the proposed district, provided by the department, that uses legal descriptions and generally recognized features. The ballots must comply with ORS 250.035.

(3) If the legally required number of ballots approve the formation of the district, the department shall issue an order of formation for the district as provided under ORS 568.351 and appoint directors as provided under ORS 568.400. If the required number of ballots to approve the formation are not cast, the department may not issue an order for formation of the district.

(4) If a referendum does not approve a proposal to form a district, the department

may not accept the filing of a petition covering the same or substantially the same territory as the disapproved proposal until one year after the referendum election date. Upon the filing under ORS 568.300 of a petition covering the same or substantially the same territory as the disapproved proposal, the department shall conduct new hearings and make new determinations regarding the district formation proposed by the petition. [2009 c.220 §9]

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, the department shall appoint a board of five directors for the district, to serve terms as provided under ORS 568.560. [Amended by 1955 c.142 §10; 1981 c.92 §16; 2009 c.220 §10]

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

(1) The board of directors appointed under ORS 568.400 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 legal boundaries of the district and by a statement by the State Department of Agriculture. The statement shall certify that the district was formed in compliance with ORS 568.300 to 568.790.

(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 notify the department. The department shall submit to the Secretary of State a new name for the district that is not identical or substantially similar to the name of any other district.

(5) Upon receipt of the new name, 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; 2009 c.220 §11]

568.420 Certificate of formation; boundaries of district. (1) The Secretary of State shall make and issue to the board of directors appointed under ORS 568.400 a certificate, under the seal of the state, of the formation of the soil and water conservation district, and shall record the certificate with the application and statement.

(2) The boundaries of the district shall include the territory as determined by the department as provided in ORS 568.330, but may not include any area included within the boundaries of another soil and water conservation district. [Amended by 1955 c.142 §12; 1981 c.92 §18; 2009 c.220 §12]

568.430 [Amended by 1955 c.142 §13; 1957 c.603 §3; 1973 c.656 §5; 1981 c.92 §19; repealed by 2009 c.220 §34]

568.431 Petitions for inclusion of territory; conditions; referendum. (1) Except as provided under ORS 568.445, one or more landowners may petition the State Department of Agriculture to include the land of the petitioning landowners in an existing soil and water conservation district. The department shall prescribe the form for the petition. The petition must include, but need not be limited to, a legal description of the property, landowner information and the reasons for the proposed inclusion.

(2) The department shall approve the petition if the department, in consultation with the district board of directors, determines that:

(a) It is or would be feasible for the land described in the petition to receive services from the district; and

(b) The work of the district would benefit the soil, water or natural resource conditions of the land described in the petition.

(3) The department shall deny the petition if the department, in consultation with the district board, determines that:

(a) It is not and would not be feasible for the land described in the petition to receive services from the district; or

(b) The work of the district would not benefit the soil, water or natural resource conditions of the land described in the petition.

(4) If the department approves the petition, the department shall redefine the boundaries of the district and make any adjustments to the district zones necessary to comply with ORS 568.560.

(5) Land that becomes included in a district that has ad valorem tax authority is subject to taxes levied for the district after the inclusion date. The district board shall

provide the notice of boundary change to the Department of Revenue and the county assessor under ORS 568.435.

(6) If a petitioner disagrees with the decision of the department, the petitioner may initiate a referendum on the decision by submitting additional petitions signed by 10 percent or more of the electors residing in the existing district. The referendum election shall be governed by ORS chapter 255. Only electors residing in the existing district are eligible to cast ballots in the referendum election.

(7) If a majority of the ballots cast at the referendum election are in favor of inclusion, the department shall approve the petition, redefine the boundaries of the district and make any adjustments to the district zones necessary to comply with ORS 568.560. [2009 c.220 §14]

568.433 Petitions for withdrawal of territory; conditions; referendum. (1) Except as provided in ORS 568.445, one or more landowners may petition the State Department of Agriculture to withdraw the land of the petitioning landowners from an existing soil and water conservation district. The department shall prescribe the form for the petition. The petition must include, but need not be limited to, a legal description of the property, landowner information and the reasons for the proposed withdrawal.

(2) The department shall approve the petition if the department, in consultation with the district board of directors, determines that:

(a) It is not and would not be feasible for the land described in the petition to receive services from the district; or

(b) The work of the district would not benefit the soil, water or natural resource conditions of the land described in the petition.

(3) The department shall deny the petition if the department, in consultation with the district board, determines that:

(a) It is or would be feasible for the land described in the petition to receive services from the district; and

(b) The work of the district would benefit the soil, water or natural resource conditions of the land described in the petition.

(4) If the department approves the petition, the department shall redefine the boundaries of the district and make any adjustments to the district zones necessary to comply with ORS 568.560.

(5) Land withdrawn from a district with an ad valorem tax is not subject to taxes levied for the district after the withdrawal date. The district board shall provide the no-

tice of boundary change to the Department of Revenue and the county assessor under ORS 568.435.

(6) If a petitioner disagrees with the decision of the department, the petitioner may initiate a referendum on the decision by submitting additional petitions signed by 10 percent or more of the electors residing in the existing district. The referendum election shall be governed by ORS chapter 255. Only electors residing in the existing district are eligible to cast ballots in the referendum election.

(7) If a majority of the ballots cast at the referendum election are in favor of the withdrawal, the department shall approve the petition, redefine the boundaries of the district and make any adjustments to the district zones necessary to comply with ORS 568.560. [2009 c.220 §15]

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 formed; certificate as evidence. In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding or action of a soil and water conservation district, the district shall be deemed to have been formed in accordance with ORS 568.210 to 568.808 and 568.900 to 568.933 upon proof of the issuance by the Secretary of State of the certificate provided for in ORS 568.420 or 568.555. 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 of the certificate. [Amended by 1983 c.740 §219; 2009 c.220 §13]

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 500 electors or 10 percent of the electors, whichever is less, 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) The department shall prescribe the form for the petition. The petition must include, but need not be limited to, a legal description of the districts, name and contact information for the chief petitioner and the reasons for the proposed consolidation.

(3) If consolidation is initiated as provided in this section, the department shall hold a public hearing no later than 60 days

after receipt of the petitions or resolutions. The department shall conduct the public hearing for the purposes of reviewing the petitions or resolutions, discussing procedures and requirements under ORS 568.460, 568.471 and 568.545 and accepting public comment.

(4)(a) If all of the districts involved in a consolidation have tax levies, the districts shall hold a referendum election on the consolidation unless:

(A) No objections to the consolidation are received at the public hearing described in subsection (3) of this section; and

(B) No later than 60 days after the public hearing described in subsection (3) of this section, a two-thirds majority of the board of directors in each of the districts votes to approve the consolidation and the boundaries of the consolidated district.

(b) The permanent tax rate for the consolidated district shall be established as provided under section 11 (3)(d), Article XI of the Oregon Constitution.

(5) If none of the districts involved in a consolidation have tax levies, the districts shall hold a referendum election on the consolidation unless:

(a) No objections to the consolidation are received at the public hearing described in subsection (3) of this section; and

(b) No later than 60 days after the public hearing described in subsection (3) of this section, a two-thirds majority of the board of directors in each of the districts votes to approve the consolidation and the boundaries of the consolidated district.

(6) If a consolidation is between one or more districts having tax levies and one or more districts that do not have tax levies, the districts shall hold a referendum election on the consolidation. The ballot measure shall indicate that a single question is being proposed, consisting of whether the districts should consolidate into a single district for which the permanent rate limit specified in the ballot measure shall be adopted as the permanent rate limit of operating taxes for the consolidated district.

(7) The counties containing the affected districts shall administer the referendum election process as provided under ORS chapter 255. [Amended by 1965 c.155 §1; 1981 c.92 §21; 2005 c.281 §1; 2009 c.220 §16]

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 [Amended by 1961 c.236 §1; repealed by 2009 c.220 §34]

568.471 Effect of consolidating districts. If two or more soil and water conservation districts are consolidated, the corporate existence of the districts and, except as provided in ORS 568.545, the terms of office for the board of directors of the former districts expire upon the Secretary of State issuing and recording a certificate of formation for the consolidated district. Upon consolidation, the consolidated district shall assume and be vested with all rights and liabilities of the former districts. [2009 c.220 §17]

568.480 [Amended by 1973 c.656 §8; 1981 c.92 §22; repealed by 2009 c.220 §34]

568.481 Methods for initiating dissolution of district; notice of process initiation; plan of dissolution and liquidation; public hearings; dissolution order; referendum. (1) The dissolution of a soil and water conservation district may be initiated by any of the following methods:

(a) A petition by 500 electors or 10 percent of the electors within the district, whichever is less, filed with the State Department of Agriculture.

(b) A resolution of the district board of directors filed with the department. The district board may adopt a resolution described in this paragraph only if the board finds that dissolution and liquidation of the district is in the public interest.

(c) District board notification to the department that the board is unable to maintain a quorum of directors or that the district is unable to satisfy the legal obligations and liabilities of the district.

(d) An order of the department, if the department determines that the district is inactive, that the district board is unable to maintain a quorum of directors or that the district is unable to satisfy the legal obligations and liabilities of the district.

(2) The department shall prescribe the form for a petition for dissolution. The petition must include, but need not be limited to, a legal description of the district, name and contact information for the chief petitioner and the reasons for the proposed dissolution. No later than 60 days after receiving the petition, the department shall verify the petition signatures.

(3) Upon the initiation of a dissolution by any method, the department shall provide the district with written notice that the dissolution process has been initiated and shall request information from the district board for use in public meetings and public hearings.

(4) No later than 60 days after receiving a written request for information from the department, the district board shall provide the department with the requested information and a plan of dissolution and liquidation for the district. The information and plan shall include, at a minimum:

(a) The amount of district debt, a general description of the indebtedness and the names and contact information for persons owed, including but not limited to, payroll and other accrued liabilities;

(b) A brief description of the district's real property and interests in real property;

(c) A description of conservation easements held by the district;

(d) A description of the uncollected taxes, assessments and charges levied by the district;

(e) A description of personal property and other assets of the district;

(f) The estimated cost of dissolution; and

(g) A general description of all district contracts, grants and agreements, a description of receivables and payables for each contract, grant and agreement and a description of the work or other obligations remaining on each contract, grant or agreement.

(5) If the district is within the jurisdiction of a local government boundary commission, no later than 10 days after the district board provides the plan of dissolution and liquidation to the department, the district board shall provide a copy of the plan to the boundary commission.

(6) The department shall have full access to district records. If the district is unable to prepare a plan of dissolution and liquidation, the department shall review the district records and prepare the plan.

(7) The department shall conduct public meetings and public hearings as necessary to present the plan of dissolution and liquidation and to aid in the consideration of dissolution.

(8) If the dissolution is initiated by petition, the department may order the district dissolved without a referendum election if:

(a) No later than 60 days after the department receives the petition, the district board adopts a resolution to dissolve the district and the department determines that dissolution of the district is in the public interest; or

(b) No later than 60 days after holding a public hearing regarding dissolution of the district, the department finds that the district board is unable to maintain a quorum of directors or that the district is unable to

satisfy the legal obligations and liabilities of the district.

(9) Except as provided in subsection (8) of this section, if the dissolution is initiated by petition, after holding a public hearing and giving notice of a referendum election, the department shall hold an election. The election shall be for the purpose of submitting to the electors of the district the question of whether the district should be dissolved, the indebtedness of the district liquidated and district assets disposed of, as provided under the plan for dissolution and liquidation. The election shall be held on the next special election date described in ORS 255.345 for which the filing deadline can be met. However, an election may not be held unless the department has:

(a) Made provision for the district to pay to the department, to the extent practicable, the cost of the referendum; and

(b)(A) Obtained assent to the dissolution and liquidation from all known holders of a valid indebtedness against the district; or

(B) Made provision in the plan of dissolution and liquidation for the payment of nonassenting holders.

(10) The notice of election must contain a brief summary of the plan of dissolution and liquidation and state that the plan is available for examination at the office of the county clerk. Only electors residing in the district are eligible to cast ballots in the referendum election. An informality in the conducting of the referendum election, or in matters regarding the election, does not invalidate the election or results if notice of the election was given in substantial compliance with this section and the election was fairly conducted.

(11) If a majority of the ballots cast at the referendum election are in favor of dissolution, the department shall approve the petition and order dissolution of the district. If a majority of the ballots cast disapprove the proposed dissolution, the department may not order dissolution of the district.

(12) If a referendum does not approve a proposal to dissolve a district, the department may not accept the filing of a new petition for dissolution of the district until one year after the referendum election date. Upon the filing of a new petition for dissolution of the district, the department shall make new requests for information from the district board and hold new public meetings and public hearings as provided under this section. [2009 c.220 §18]

568.490 [Amended by 1955 c.142 §14; 1981 c.92 §23; repealed by 2009 c.220 §34]

568.491 Termination of board of directors; appointment of board of trustees; notice of dissolution; certificate of dissolution. (1) If referendum election results favor the dissolution of a soil and water conservation district, or if the State Department of Agriculture orders the dissolution of a district under ORS 568.481 without a referendum election, the department shall declare the member positions of the district board of directors to be vacant and appoint three individuals to serve as a board of trustees for winding up the affairs of the district.

(2) The board of trustees shall consult with the department for the purpose of implementing the plan of dissolution and liquidation and carrying out the following:

(a) Payment of debts, or securing the release of debts, and disposing of district property.

(b) Settling all books and other records of the district and delivering the records to the department.

(c) Executing under oath, and filing with the department, a statement that the district has been dissolved and liquidated.

(d) Transferring conservation easements and other contracts that are to remain in effect.

(3) Upon receiving the statement of dissolution and liquidation from the trustees, the department shall give notice of the dissolution and of the termination of the corporate existence of the district for all purposes to:

(a) The Secretary of State;

(b) Affected county governments;

(c) The Department of Revenue;

(d) Known holders of valid indebtedness of the district; and

(e) Other agencies or entities as the State Department of Agriculture deems appropriate.

(4) Upon receiving notice from the State Department of Agriculture of district dissolution and termination of corporate status, the Secretary of State shall issue and record a certificate of dissolution for the district. [2009 c.220 §19]

568.495 Disposition of district assets; insolvency; rules. (1) If a soil and water conservation district that is being dissolved has tax levying authority, the board of trustees for the district shall turn over to the county treasurer any surplus moneys remaining to the credit of the district after payment of the indebtedness of the district. If the assets of the district are insufficient to pay the indebtedness, the board of trustees shall levy taxes, within the limits of the au-

thority of the district, for the liquidation of the indebtedness.

(2) In each year that the county receives surplus moneys to the credit of a district described in subsection (1) of this section, the county assessor shall certify any moneys in the district account on June 30, except moneys not in excess of \$6,000 that the county retains for administration. The certified moneys shall be disposed of in one of the following manners, as selected by the county assessor:

(a) Notwithstanding ORS 310.105, the moneys may be offset against that portion of the levies of taxing units levied against the property values of property within the dissolved district. The Department of Revenue shall adopt rules further defining the method of offset. If the moneys are offset as provided under this paragraph, the moneys shall be distributed to each taxing unit in the amount of that taxing unit's offset.

(b) The amount may be credited to each property appearing on the tax roll for the year for which the credit applies within the dissolved district on the basis of current assessed value. If the certified moneys are distributed under this paragraph, the moneys shall be deposited in the unsegregated tax collections account established under ORS 311.385 and distributed in the same manner as other moneys in that account. The Department of Revenue shall adopt rules further defining the method to be used to credit the amount.

(3) If a district that is being dissolved does not have tax levying authority, the board of trustees shall turn over to the State Department of Agriculture any surplus moneys remaining to the credit of the district after payment of the indebtedness of the district. If the assets of the district are insufficient to pay the indebtedness, the board of trustees shall determine whether any of the indebtedness is given priority by law over other indebtedness. The board of trustees shall apply the assets of the district first to the payment of indebtedness that is given priority by law over other indebtedness. If any assets remain after the payment of indebtedness that is given priority by law, the board of trustees shall apply the assets to the payment of a uniform percentage of each remaining indebtedness.

(4) The board of trustees may transfer any district assets, other than moneys, available after the payment of all district indebtedness to the State Department of Agriculture or to another soil and water conservation district. [2009 c.220 §20]

568.500 Order of dissolution; effect. Upon issuance of an order of dissolution by the State Department of Agriculture, all ordinances and regulations adopted and in force within the former soil and water conservation district shall be of no further force and effect. [Amended by 1981 c.92 §24; 2009 c.220 §21]

568.510 Proceedings for dissolution limited. The State Department of Agriculture may not entertain petitions for dissolution of any soil and water conservation district or conduct a referendum or make findings regarding a petition for dissolution of a district in accordance with ORS 568.481 more often than once each year after the first five-year period following formation of the district. [Amended by 1981 c.92 §25; 2009 c.220 §22]

568.515 [1955 c.142 §4; 1981 c.92 §26; repealed by 2009 c.220 §34]

568.520 Petitions nominating directors; regular elections; duties of department. (1) A regular election shall be held in each soil and water conservation district on the first Tuesday following the first Monday of November in each even-numbered year for the purpose of electing directors to succeed the directors whose terms expire 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 State Department of Agriculture.

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

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

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

(5) To the extent of any conflict between ORS chapter 255 and the provisions of ORS 568.530, 568.545 and 568.560 and this section, the provisions of ORS 568.530, 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.

(6) 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 district 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; 2009 c.220 §23]

568.530 Ballots; write-in votes; unfilled positions. (1) The State Department of Agriculture shall furnish the names of all nominees for director on behalf of whom nominating petitions have been filed 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; 2009 c.220 §24]

568.540 [Amended by 1955 c.142 §15; 1973 c.656 §11; 2007 c.690 §3; repealed by 2009 c.220 §34]

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) If two or more soil and water conservation districts are consolidated, all directors of the former districts may 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 568.471, the boards of the former districts shall hold a joint meeting. At the joint meeting, a majority of all the directors of all the former districts constitutes 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)(b). 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; 2009 c.220 §25]

568.550 General powers of board of directors; erosion control covenants; inter-agency cooperation; land use regulations; department rules. (1) The board of directors of a soil and water conservation district has the following powers:

(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 those lands.
- (d) To enter into written agreements with and, within the limits of appropriations duly made available to the board by law, to furnish financial or other aid to any governmental or nongovernmental agency or any owner or occupier of lands within the district, for the purpose of:
- (A) Carrying on within the district soil erosion control and prevention operations, water quality improvement, watershed enhancement and improvement, fish and wildlife habitat management activities and other natural resource management activities; or
- (B) Carrying out district responsibilities under ORS 541.405, 568.225, 568.550 and 568.900 to 568.933.
- (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 for the borrowed money, if the district first gives notice of and holds a public hearing within the district to provide landowners with the opportunity to be heard. The State Department of Agriculture shall adopt rules specifying the manner for giving notice of a hearing under this subsection.
- (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 the board believes necessary for the protection of directors, officers and employees of the district against claims incurred in the performance of official duties. The premiums for such in-

surance shall be paid out of moneys available for expenditure by the district.

(q) To place liens on real and personal property.

(r) To enter into written agreements with, coordinate activities with and provide assistance to landowners, managers and residents within the district and federal state and local governments, relating to natural resource issues, including but not limited to issues of:

- (A) Agriculture and forestry;
 - (B) Economic development based on natural resources;
 - (C) Watershed management and ecosystem health;
 - (D) Invasive species;
 - (E) Alternative and renewable energy;
 - (F) Air quality;
 - (G) Animal waste and nutrient management;
 - (H) Carbon sequestration;
 - (I) Access to market-based services and certification;
 - (J) Fuel reduction and wildfire planning and management; and
 - (K) Preservation of agricultural, forestry and other lands.
- (s) To conduct outreach and conservation education activities.
- (t) To provide financial assistance, including but not limited to loans and grants to implement activities and projects authorized under ORS 271.715 to 271.795, 568.210 to 568.808 or 568.900 to 568.933.
- (u) To hold patents, trademarks and copyrights.
- (v) To hold conservation easements under ORS 271.715 to 271.795.

(2) As a condition to the extending of any benefits under ORS 568.210 to 568.808 or 568.900 to 568.933 to lands, or the performance of work upon lands, 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.

(4) A district may not adopt land use regulations under ORS chapter 197, 215 or 227. A district has the standing of an affected property owner to participate in public processes involving administrative rules, regulations, goals, guidelines, plans or other public body actions that may affect one or more properties within the district. [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; 2009 c.220 §26]

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 soil and water conservation 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 formation 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; 2009 c.220 §27]

568.560 Number of directors; director qualifications; officers; election; terms; vacancies. (1) The local governing body of the soil and water conservation district shall consist of a board of either five or seven directors 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) Two director positions shall be 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, two shall serve until January first following the first general election following their appointment, and three 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 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).

(c) Of the directors first elected as provided in ORS 568.565 (1), 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 (1).

(d) Of the zone directors elected as provided under ORS 568.565 (2), 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 lot at the meeting referred to in ORS 568.565 (2).

(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; 2009 c.220 §28]

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)(c).

(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; 2009 c.220 §29]

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. No later than 15 days prior to the annual meeting, the board of directors for a soil and water conservation district shall cause notices to be published 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; 2009 c.220 §30]

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 board of directors for a soil and water conservation district 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 in accordance with ORS 297.210, 297.230 and 297.405 to 297.555. [Amended by 1969 c.345 §18; 2009 c.220 §31]

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 [Amended by 1959 c.48 §1; 1981 c.92 §34; repealed by 2009 c.220 §34]

568.640 [Amended by 1959 c.48 §2; 1973 c.656 §16; 1983 c.83 §106c; 1983 c.238 §3; repealed by 2009 c.220 §34]

568.650 [Amended by 1959 c.48 §3; 1973 c.656 §17; repealed by 2009 c.220 §34]

568.660 [Amended by 1959 c.48 §4; 1973 c.656 §18; 1981 c.92 §35; repealed by 2009 c.220 §34]

568.670 [Amended by 1959 c.48 §5; repealed by 2009 c.220 §34]

568.680 [Amended by 1981 c.92 §36; repealed by 2009 c.220 §34]

568.690 [Amended by 1959 c.48 §6; repealed by 2009 c.220 §34]

568.700 [Repealed by 2009 c.220 §34]

568.710 [Repealed by 2009 c.220 §34]

568.720 [Amended by 1981 c.897 §66; repealed by 2009 c.220 §34]

568.730 Officials may enter private lands. The directors or designated representatives of a soil and water conservation district have authority to go upon any lands within the district after notifying the owner or operator for the purpose of making surveys and carrying out the responsibilities with which the directors or representatives are vested by law. The directors or representatives shall take due precaution at all times to prevent injury to growing crops or livestock. [Amended by 2009 c.220 §32]

568.740 [Amended by 1961 c.236 §2; 1981 c.92 §37; repealed by 2009 c.220 §34]

568.750 [Amended by 1981 c.92 §38; repealed by 2009 c.220 §34]

568.760 [Repealed by 2009 c.220 §34]

568.770 [Amended by 1959 c.48 §7; 1981 c.92 §39; repealed by 2009 c.220 §34]

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. (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. [Amended by 1961 c.641 §4; 1983 c.327 §9; 2009 c.220 §33]

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 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 practi-

cal 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. [1993 c.263 §2; 1997 c.249 §184; 2009 c.11 §78]

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]

