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Chapter 561

2003 EDITION

State Department of Agriculture

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GENERAL PROVISIONS

561.005 Definitions. As used in this chapter, unless the context requires otherwise:

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

(2) "Department" means the State Department of Agriculture.

(3) "Director" means the Director of Agriculture. [1959 c.639 §2]

ORGANIZATION; GENERAL FUNCTIONS AND ENFORCEMENT PROVISIONS

561.010 Department created; director, appointment, confirmation and term. There is created a department of the government of this state to be known as the State Department of Agriculture. The executive officer of the department shall be the Director of Agriculture who shall execute all matters pertaining to the department, subject to policy direction by the State Board of Agriculture. The director shall be appointed by the Governor, subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, and shall serve during the pleasure of the Governor. [Amended by 1959 c.639 §3; 1973 c.792 §24; 1977 c.198 §1]

561.020 Responsibility of department as to inspectional, regulatory and development work. (1) The State Department of Agriculture shall have full responsibility and authority for all the inspectional, regulatory and market development work provided for under the provisions of all statutes which the department is empowered and directed to enforce.

(2) The department shall encourage and work toward long-range planning to develop and promote the agricultural resources of Oregon that they may contribute as greatly as possible to the future economy of the state.

(3) The Director of Agriculture shall coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

(4) The Director of Agriculture shall conduct any activities of the department in a manner consistent with the goal set forth in ORS 468B.155. [Amended by 1955 c.572 §8; 1959 c.639 §4; 1987 c.734 §15; 1989 c.833 §62]

561.030 Seal; principal office; authority to acquire real property. (1) The State Department of Agriculture shall adopt an official seal. It shall maintain its principal office in the state capital at Salem.

(2) The department may acquire and hold, by purchase, agreement or donation, real property or any rights or interest determined actually necessary by the department for:

(a) The grading and inspection of any horticultural and agricultural products, or of any establishment or device used in the production or processing of horticultural and agricultural products;

(b) The investigation and analysis of horticultural and agricultural products, including laboratories and greenhouse or field growing areas; and

(c) The storage and maintenance of equipment, vehicles and supplies used by the department in carrying out any law under its jurisdiction.

(3) The authority granted in subsection (2) of this section does not extend to real property used or to be used as the principal administrative office of the department.

(4) As used in this section "horticultural and agricultural products" has the meaning for that term provided in ORS 632.900. [Amended by 1959 c.639 §5; 1981 c.63 §1]

561.040 Organization. Subject to policy direction by the State Board of Agriculture, the Director of Agriculture shall organize and reorganize the work of the State Department of Agriculture. [Amended by 1955 c.572 §9; 1959 c.639 §6; 1977 c.198 §2]

561.050 Division chiefs. Subject to any applicable provisions of the State Personnel Relations Law, the chiefs of the divisions shall be appointed by the Director of Agriculture. [Amended by 1959 c.639 §7]

561.060 Salaries and bonds of employees. (1) The Director of Agriculture shall execute bonds to the State of Oregon in the penal sum of $20,000, conditioned upon the faithful performance of the duties of director.

(2) Subject to any applicable provisions of the State Personnel Relations Law, the chiefs of divisions and other employees of the State Department of Agriculture shall receive such salaries and wages as the director determines.

(3) The chiefs of divisions and other employees of the department designated by the director shall execute bonds to the state, conditioned upon the faithful performance of their duties, in such amounts as the director determines. [Amended by 1959 c.639 §8]

561.070 Assistants and employees; appointment, classification and duties. (1) The Director of Agriculture may employ veterinarians, chemists, bacteriologists and other experts, inspectors, accountants, stenographers, clerks or other help necessary to carry out efficiently the work of the State

Department of Agriculture. The director may assign duties and responsibilities to each officer and employee of the department.

(2) The director may at any time designate or appoint any officer or employee of the department to act as assistant director of agriculture and may terminate such designation or appointment at any time, with or without cause. The assistant director of agriculture may perform such duties of the director as may be prescribed by the director.

(3) If the director appoints any research analysts pursuant to subsection (1) of this section, two of such research analysts may be members of unclassified service as provided in ORS chapter 240. [Amended by 1957 c.451 §1; 1967 c.208 §8]

561.080 Activities of Oregon State University. Oregon State University shall have full authority and responsibility:

(1) For resident instruction in all branches of agriculture.

(2) For research and experimentation in all branches and phases of agriculture as set forth in federal and state laws creating, maintaining and defining the work of the agricultural experiment stations.

(3) For educational and demonstrational work in all branches and phases of agriculture under authority of all federal and state laws creating, maintaining and defining the work of the Agricultural Extension Service.

(4) For collection and dissemination of statistical information bearing upon crop and market conditions and trends of agricultural production, including agricultural outlook reports and market news reports.

(5) To conduct educational work in the field of marketing, which includes information, advice and assistance relative to organizing and operating cooperative associations and marketing agencies, in accordance with the division of functions set forth in this chapter.

(6) For coordinating any activities of the agricultural extension service related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project. [Amended by 1987 c.734 §16]

561.090 Cooperation with Oregon State University. (1) In order to eliminate unnecessary duplication of effort and expense, there shall be the fullest cooperation between Oregon State University and the State Department of Agriculture, including the interchange of statistical information between the university and the department.

(2) If, in the interest of economy and efficiency, either temporary or permanent, it appears advisable to have any of the laboratory or statistical work of the department performed by Oregon State University, the Director of Agriculture and the director of the experiment station shall work out a cooperative plan of operation and shall agree upon such a division of the funds available for such work as may meet with the approval of the Governor and the State Board of Higher Education.

561.100 Conferences to coordinate work. The Director of Agriculture, the director of the agricultural experiment station and the director of the agricultural extension service of Oregon State University shall meet in conference at such times as may be necessary to eliminate any causes of overlapping and friction which may arise in connection with the conduct of their work; and they are authorized to invite representatives of collaborating federal agencies to participate in such conferences.

561.110 Conferences between director and division chiefs; action by director. In conference with the chiefs of the divisions there shall be full and free discussion of the agricultural policies of the State Department of Agriculture, the administrative problems of divisions, the coordination of the departmental activities and methods for increasing the efficiency and reducing the cost of operation of the department. On the basis of these conferences the Director of Agriculture may take such steps as in the judgment of the director will increase the economy and efficiency of the department. The director shall give especial attention to the full utilization of stenographic, office and laboratory forces, automobiles and other equipment. The director may require that deputies and other employees do work for more than one division of the department and shall take such measures as may be necessary to avoid duplication of costs of transportation and maintenance.

561.120 [Repealed by 1959 c.639 §14]

561.130 State Board of Agriculture created; appointment and term. (1) In order that there may be the closest contact between the State Department of Agriculture, consumer interests and the practical agricultural problems of the state, there is created the State Board of Agriculture, which shall consist of nine members appointed by the Governor.

(2) The members shall be citizens of Oregon seven of whom are actively engaged in the production of agricultural commodities and two of whom are representative of consumer interests of the state.

(3) The term of each member shall be four years. A member shall continue to serve until a successor is appointed and qualifies. Before a member's term expires, the Governor shall appoint a successor. Vacancies in office shall be filled by appointment for the unexpired term.

(4) At the time of appointment, no two of the seven members actively engaged in the production of agricultural commodities shall have the same main commodity interest.

(5) No person shall be eligible for reappointment to the board until at least one year has elapsed from the expiration of the second consecutive term of the person. A member may be removed only for cause.

(6) Not more than five members shall belong to one political party. Party affiliation shall be determined by the appropriate entry on official election registration cards. [Amended by 1957 c.479 §1; 1959 c.639 §9; 1971 c.281 §1; 1977 c.198 §3]

561.140 Compensation and expenses; functions; organization; ex officio members; meetings; quorum. (1) Each member of the State Board of Agriculture is entitled to compensation and expenses as provided in ORS 292.495, which shall be charged to the Department of Agriculture Account.

(2) It is the function of the board to establish policies for the administration of the State Department of Agriculture in accordance with all applicable provisions of law.

(3) The board shall meet at least four times each year on a quarterly basis. The board shall meet at the call of the chairperson or the Director of Agriculture. The chairperson or director may call a meeting at the pleasure of the chairperson or director, and shall call a meeting at the request of five or more members. The chairperson shall designate the place of each meeting.

(4) The board shall select a chairperson from among its members to serve for a term of one year. The director shall act as secretary and shall be an ex officio member of the board without the right to vote. The Dean of the College of Agricultural Sciences, or an appointed representative of the dean, of Oregon State University shall be an ex officio member of the board without the right to vote.

(5) By arrangement with the chairperson, the director shall review with the board the activities of the department and shall proceed in conference with the board, and subject to policy direction by the board, to outline the methods, policies and program of work for the department.

(6) A majority of the board present at any meeting shall constitute a quorum, and an act by a majority of such quorum at any meeting shall constitute an official act of the board. [Amended by 1957 c.479 §2; 1959 c.639 §10; 1967 c.208 §1; 1969 c.314 §64; 1971 c.281 §2; 1977 c.198 §4; 1995 c.79 §308]

561.144 Department of Agriculture Service Fund; sources. (1) The State Treasurer shall establish a Department of Agriculture Service Fund which shall be a trust fund separate and distinct from the General Fund. The State Department of Agriculture shall deposit all license and service fees paid to it under the provisions of the statutes identified in subsection (3) of this section in the Department of Agriculture Service Fund. The State Treasurer is the custodian of this trust fund which shall be deposited by the treasurer in such depositories as are authorized to receive deposits of the General Fund, and which may be invested by the treasurer in the same manner as authorized by ORS 293.701 to 293.820.

(2) Interest received on deposits credited to the Department of Agriculture Service Fund shall accrue to and become a part of the Department of Agriculture Service Fund.

(3) The license and service fees subject to this section are those described in ORS 561.400, 570.710, 571.057, 571.063, 571.145, 583.004, 583.046, 583.445, 583.510, 583.610, 585.050, 586.270, 586.580, 586.650, 596.030, 596.311, 599.235, 599.269, 599.406, 599.610, 601.040, 602.090, 603.025, 603.075, 616.706, 618.115, 618.136, 619.031, 621.072, 621.166, 621.266, 621.297, 621.335, 621.730, 622.080, 625.180, 628.240, 632.211, 632.425, 632.600, 632.720, 632.730, 632.741, 632.940, 632.945, 633.015, 633.029, 633.318, 633.362, 633.461, 633.471, 633.680, 633.700, 633.720, 634.016, 634.116, 634.122, 634.126, 634.132, 634.136, 634.212 and 635.030. [1979 c.499 §4; 1981 c.248 §21; 1982 s.s.1 c.4 §15; 1985 c.787 §7; 1987 c.905 §36; 1991 c.624 §2; 1993 c.720 §7; 1995 c.450 §6; 1997 c.410 §2; 2001 c.21 §6; 2001 c.914 §27; 2003 c.81 §13]

561.145 [1965 c.276 §1; repealed by 1979 c.499 §1]

561.150 Department of Agriculture Account. (1) All unexpended funds that are available to the State Department of Agriculture for its use in carrying out its duties as prescribed by law and for any other purpose shall be a part of the General Fund of the state and shall be credited to a fund to be known as the Department of Agriculture Account except for:

(a) Funds to be expended for the extermination of predatory animals under the provisions of ORS chapter 610;

(b) Moneys received by the department from the sale of skins of predatory animals as provided in ORS 610.040; and

(c) Moneys received by the department that are subject to ORS 561.144.

(2) All appropriations, fines, fees, penalties and other moneys received by the de-

partment or credited to its use from the State Treasury, except the funds named in subsection (1)(a) and (b) of this section and money required by law to be placed therein, shall be placed in the General Fund and credited to the Department of Agriculture Account.

(3) All fines, fees, penalties and other moneys received by the department shall be turned over to the State Treasurer not later than the 10th day of the calendar month next succeeding their receipt by the department.

(4) All moneys without respect to their sources, credited to either the Department of Agriculture Account or the Department of Agriculture Service Fund shall be available for the payment of any and all the expenses of the department, excepting those incurred in connection with the extermination of predatory animals.

(5) The Director of Agriculture shall keep a record of all moneys deposited in the Department of Agriculture Account and the Department of Agriculture Service Fund. Such record shall indicate the source from which the moneys are derived and name the individual departmental activity against which each withdrawal is charged. [Amended by 1979 c.499 §2; 1999 c.59 §176]

561.155 Cash and revolving fund. The State Department of Agriculture shall establish a cash and revolving fund under ORS 293.180, for the purpose of making immediate cash payments of travel and subsistence advances authorized by ORS 292.280, salary advances authorized by ORS 292.150 and other miscellaneous demand obligations authorized by law, in an amount not to exceed $75,000 from moneys in the Department of Agriculture Service Fund. [1959 c.682 §3; 1967 c.208 §2; 1973 c.275 §1; 1979 c.183 §1; 1985 c.623 §7]

561.160 Approval of vouchers required before withdrawing money from State Treasury. All moneys drawn from the State Treasury by the State Department of Agriculture shall be drawn only after the approval of vouchers by the Director of Agriculture or by some person in the department authorized by the director to approve such vouchers, which authorization shall be in writing and filed with the Secretary of State.

561.161 [1953 c.96 §1; repealed by 1959 c.682 §4]

561.163 [1953 c.96 §4; repealed by 1959 c.682 §4]

561.165 [1953 c.96 §2; repealed by 1959 c.682 §4]

561.167 [1953 c.96 §3; repealed by 1959 c.682 §4]

561.169 [1953 c.96 §5; repealed by 1959 c.682 §4]

561.170 Prohibited financial interests of officers or employees. It shall be unlawful for the Director of Agriculture or any deputy or other employee of the State Department of Agriculture to be interested directly or indirectly as owner, agent or solicitor in the manufacture, purchase or sale of any article, commodity or product over which the director, deputy or employee may have supervision in an official capacity. It shall not be a violation of this section for the director, any deputy or other employee to own, lease or operate a ranch or farm. [Amended by 1959 c.229 §12; 1967 c.208 §9]

561.175 Fees for confined animal feeding operations. (1) The State Department of Agriculture by rule shall establish a schedule of annual fees, not to exceed $25, to be paid under ORS 468B.215 by any persons operating a confined animal feeding operation.

(2) As used in this section, "confined animal feeding operation" has the meaning given that term in rules adopted by the State Department of Agriculture. [1989 c.847 §9; 2001 c.248 §13]

561.180 Reports to director; publications. (1) The Director of Agriculture may call for such reports, statistics and information as the director may desire, from time to time, from any division chief or employee of the State Department of Agriculture.

(2) The director may, from time to time, cause to be published and distributed to the public in pamphlet form, or such other form as the director may deem best, such information as the director may judge to be of assistance in carrying on any of the work or purposes for the administration or for the carrying on of which the department is established.

(3) All printing of such reports, pamphlets or other literature shall be done by the Oregon Department of Administrative Services.

(4) Unless otherwise provided by law, the State Department of Agriculture may establish charges for any publication produced by it as authorized by subsection (2) of this section. Such charges shall be in amounts sufficient to cover the costs of preparation, printing, mailing and handling of each publication. [Amended by 1969 c.131 §3; 1975 c.432 §2; 1975 c.605 §29; 2001 c.539 §14]

561.190 Rules and regulations; publication; effect of violation. The State Department of Agriculture is authorized and directed to make any and all rules and regulations necessary for the administration or enforcement of any law with the administration or enforcement of which the department is charged, and not inconsistent with the authority with which the department is vested or with any such law. Such rules and regulations shall be compiled and printed in pamphlet form for distribution. The violation of any rule or regulation made by the department pursuant to this section shall be a

violation of the law to which such rule or regulation applies and shall be punishable in the manner provided for violations of such law.

561.191 Program and rules relating to water quality. (1) The State Department of Agriculture shall develop and implement any program or rules that directly regulate farming practices, as defined in ORS 30.930, that are for the purpose of protecting water quality and that are applicable to areas of the state designated as exclusive farm use zones under ORS 215.203 or other agricultural lands in Oregon, including but not limited to rules related to:

(a) Protection of the quality of surface or ground water;

(b) Wellhead protection areas;

(c) Coastal zone management areas;

(d) Areas of ground water concern; and

(e) Ground water management areas.

(2) Any program or rules adopted by the State Department of Agriculture under subsection (1) of this section shall be designed to assure achievement and maintenance of water quality standards adopted by the Environmental Quality Commission.

(3) If two or more state agencies are required to adopt rules under ORS 468B.150 to 468B.190, the agencies:

(a) Shall consult with one another and coordinate the rules; and

(b) May consolidate the rulemaking proceedings.

(4) Nothing in this section is intended to change or reduce the authority of the Water Resources Commission or the Water Resources Department under ORS chapters 536 to 543. [1995 c.690 §6a]

Note: 561.191 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 561 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

561.192 Code of regulations; compilation and publication. (1) The State Department of Agriculture may from time to time revise and compile, in a code of regulations, all rules and regulations of a general character promulgated by the department.

(2) No substantive change may be made in revising the rules and regulations unless the department complies with the procedures required by law for the adoption or amendment of the particular rule or regulation. However, changes that are not of a substantive nature may be made without the procedures required by law for the adoption or amendment of rules and regulations by the department.

(3) The department shall print, publish and distribute the code of regulations in a convenient form. The code of regulations as published is prima facie evidence of the current rules and regulations of the department. [1955 c.76 §1; 1971 c.734 §26]

561.194 Distribution of code of regulations. (1) The State Department of Agriculture may distribute the code of regulations published under ORS 561.192 free of charge to such state agencies as are designated by the department.

(2) The department shall sell the other copies at such prices as the department finds sufficient to recover the cost of printing.

(3) All moneys received by the department under this section, in addition to any other appropriation of funds available for the purposes of ORS 561.192 and 561.194, hereby are continuously appropriated to the department for the purpose of paying the cost of publication of the code of regulations. [1955 c.76 §2]

561.200 Prohibitions against the obstruction of officers, agents or employees. (1) No person, firm or corporation shall refuse to allow any authorized officer, agent or employee of the State Department of Agriculture to enter upon the premises of the person, firm or corporation or to inspect any books, records, plant, equipment, apparatus, vehicles or any other thing or place of the person, firm or corporation which it is such officer's, agent's or employee's duty to inspect.

(2) No person, firm or corporation shall refuse to produce books, records, apparatus and equipment for the inspection of such officer, agent or employee upon demand, or refuse to allow samples to be taken by such officer, agent or employee, when they are by law authorized so to do.

(3) No person, firm or corporation shall otherwise interfere with such officer, agent or employee in the lawful exercise of duties, either by active or passive resistance or by refusal to cooperate in every reasonable manner with the officer agent or employee in the carrying out of lawful duties.

561.210 [Repealed by 1971 c.743 §432]

561.220 Prohibitions against altering or removing seal or similar marking used by department and against selling products from used containers bearing such markings. (1) Except as hereafter provided in subsections (2) and (3) of this section, no person shall alter, deface or remove any seal, sign, tag, stamp, placard, mark, brand or similar object used by the State Department of Agriculture pursuant to any law of this state.

(2) Subsection (1) of this section does not apply to:

(a) Employees or agents of the State Department of Agriculture engaged in the regular discharge of their duties.

(b) The alteration, defacement or removal of markings on any type of food or other agricultural product in the normal course of sale and distribution thereof.

(3) No person shall sell food or other agricultural products in or from a used container bearing any of the markings referred to in subsection (1) of this section unless such person first removes or defaces such markings. [1955 c.11 §1]

561.230 Prohibition against reusing, imitating or counterfeiting markings used by department. No person shall reuse, imitate or counterfeit any seal, sign, tag, stamp, placard, mark, brand or similar object used by the State Department of Agriculture pursuant to any law of this state. [1955 c.11 §2]

561.240 Contracts and agreements with other agencies, governmental units and private persons; payment and receipt of funds. (1) The State Department of Agriculture is authorized to enter into contracts and agreements with, and to receive funds from, any department or agency of the United States. The department may enter into agreements with authorized departments and agencies of this state and other states, and with counties, municipal corporations, other public and private corporations and persons of this state, in connection with the administration of laws of this state, including but not limited to legislation relating to the inspection, production, processing, marketing and distribution of agricultural products and to the control or eradication of plant and animal diseases and pests. The department may exchange information and services with any public or private body or person described in this subsection, in order to minimize duplication of public services, investigations, inspections and audits. The department may receive compensation, and make payment, for services rendered in performance of agreements authorized by this subsection.

(2) In the performance of services required by any contract or agreement authorized by subsection (1) of this section, public agencies that are parties to the contract or agreement shall have the authority and powers of the department.

(3) Funds received by the department as provided in subsection (1) of this section shall be deposited with the State Treasurer. Such funds are continuously appropriated for the use of the department in carrying out the purposes of the respective agreements, contracts, state laws and Acts of Congress in relation to which the money is received. [1957 c.478 §2; 1963 c.251 §1; 1967 c.437 §1; 1967 c.637 §§10, 10a; 1993 c.21 §1; 1995 c.79 §309]

561.250 Services by department for commodity commissions, Oregon Beef Council and Oregon Wheat Commission. (1) Notwithstanding the provisions of ORS chapters 577 and 578, upon request of a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council created by ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030, the State Department of Agriculture may, if facilities and services are available:

(a) Provide centralized accounting, data processing, data recording, clerical, secretarial, business management, office and all other similar or related facilities and services. The department may not provide executive secretary services.

(b) Provide and furnish office space, telephone and other similar or related facilities and services.

(c) Provide for the collection and receiving of assessment or other moneys due a commodity commission, the beef council or the wheat commission. Any person authorized or required to pay an assessment or other moneys to a commodity commission, the beef council or the wheat commission shall, after notice, pay the moneys to the department in behalf of and in the name of the commodity commission, beef council or wheat commission. Moneys received by the department under this subsection shall be paid to the appropriate commodity commission, the beef council or the wheat commission.

(2) A person authorized or required to file a report or perform other actions with regard to a commodity commission, the Oregon Beef Council or the Oregon Wheat Commission shall, after notice, file the report or perform the action with regard to the department in behalf of and in the name of the commodity commission, the beef council or the wheat commission.

(3) Commodity commissions, the Oregon Beef Council and the Oregon Wheat Commission shall pay for facilities or services received under subsection (1) of this section. [1957 c.480 §§2,3,4; 1959 c.596 §69; 1959 c.685 §30; 2003 c.604 §103]

561.260 Furnishing lists of names and other information at cost. The State Department of Agriculture may make a reasonable charge to cover the actual cost of accumulating and furnishing a list of names or other similar records which are by law declared to be public writings or records. Moneys collected shall be placed in the Gen-

eral Fund, credited to the Department of Agriculture Account and shall be available for payment of all expenses of the department. [1959 c.229 §8]

561.265 Inspecting records of persons required to pay fees to department. (1) The State Department of Agriculture upon not less than three days' notice in writing is authorized to inspect and audit, during regular business hours, necessary and applicable books and records of any person required by law to report or pay fees or moneys to the department. Such inspection is for the purpose of determining whether proper fees have been paid.

(2) "Fees" as used in this section includes fees due the department by a person, each month, year, or other fixed time or period, the amount of which is based upon the quantity, volume, weight or other measurement of some article, product or commodity and such fees to be used by the department in carrying out or enforcing a law under its jurisdiction. "Fees" does not include a license fee, the exact amount of which is fixed by law. [1961 c.425 §2; 1973 c.794 §26]

561.270 [1959 c.229 §7; repealed by 1965 c.448 §4]

561.275 Inspecting premises and facilities of department licensees. Insofar as it is necessary for the State Department of Agriculture in the enforcement and carrying out of the laws under its supervision or jurisdiction, the department may, during the normal business hours of the business being inspected, inspect premises, machinery, equipment and facilities of the places or businesses subject to or required to be licensed under such laws. [1967 c.437 §5]

561.279 Issuance of subpoenas by department for investigations, audits and hearings. The State Department of Agriculture is authorized to issue subpoenas to compel the attendance of witnesses and to require the production of pertinent books, records and documents in:

(1) Conducting an investigation of a matter with which the department specifically is charged with responsibility and which seriously affects the health of persons or animals;

(2) Making an audit authorized or required by ORS chapter 583; or

(3) Holding a hearing pursuant to the provisions of ORS chapter 183. [1967 c.437 §6; 2003 c.14 §349]

561.280 Enjoining violations of law. In addition to the other remedies provided by law, the State Department of Agriculture may apply to the circuit court for, and such court shall have jurisdiction upon a summary hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of a law under the jurisdiction of the department. [1959 c.229 §9]

561.290 Jurisdiction over prosecutions. Justice courts have concurrent jurisdiction with circuit courts of all prosecutions arising under any law under the jurisdiction of the State Department of Agriculture. [1959 c.229 §10]

561.300 Unpaid license fees; delinquent renewal penalty; notice required; collection procedure. (1) The State Department of Agriculture may collect a delinquent renewal penalty for any license fee required by law under the jurisdiction of the department if the licensee has failed to renew the license before the 60th day after the license expiration date. All delinquent renewal penalties collected under this section shall be deposited in the same account as the corresponding license fee. The department shall collect the following delinquent renewal penalties:

(a) For license fees $100 or less, $30 or the amount of the license fee, whichever amount is less.

(b) For license fees greater than $100, 30 percent of the amount of the license fee or $750, whichever amount is less.

(2) Any unpaid license fee and delinquent renewal penalty required by law under the jurisdiction of the department for a prior licensing period or year continues to be owing to the department. Before taking any action or procedure against a person who should have paid a prior license fee, the department shall forward a written notice to the person by certified mail at the last-known address of the person on the records of the department advising of the amount owing. The notice shall give such person 20 days after the mailing date to pay the amount due or to present written or oral information or argument as to why the person believes the license fee is not owing. If after such period the department is of the opinion the license fee for the prior period is owing, it may then initiate such actions or procedures authorized under the applicable licensing law to collect the amount due.

(3) The provisions of subsection (2) of this section do not apply to a statute under the jurisdiction of the department if specific provisions cover collection of unpaid license fees thereunder. [1967 c.437 §4; 1993 c.536 §1]

561.303 Refund of excess fees or penalties; conditions; refusal to refund. (1) Notwithstanding the provisions of ORS 293.445 (2), the State Department of Agriculture may, upon application therefor, make refunds and determine that moneys received by it are not due or are in excess of amounts due as fees or penalties relating to the issu-

ance or renewal of licenses, permits, registrations, or certificates under its jurisdiction, whenever:

(a) The amount received is in excess of the prescribed fee or penalty;

(b) The applicant has not or will not engage in the activity requiring the license, permit, registration, or certificate or use the same during the time period requiring the same, and has:

(A) Died, or otherwise involuntarily become incapable of engaging in such activity; or

(B) Applied for a license under a mistake of fact as to the need therefor; or

(c) The applicant, as a condition to the issuance of a license, permit, registration, or certificate, is required to meet certain personal qualifications, submit a bond, insurance certificate or other indemnity document to the department, or submit to a departmental examination, and due to causes beyond the control of the applicant cannot do so.

(2) The department may refuse refunds and determine that moneys received by it are due as fees or penalties relating to the issuance or renewal of licenses, permits, registrations, or certificates under its jurisdiction whenever:

(a) The applicant, as a condition to the issuance of a license, permit, registration, or certificate, is required to submit to a departmental examination, analysis or inspection, and fails to voluntarily submit to the same, fails to complete the same, or fails to satisfactorily pass the same;

(b) The applicant voluntarily determines not to engage in the activity requiring the license, permit, registration, or certificate;

(c) The applicant has engaged in the activity requiring a license, permit, registration, or certificate without having obtained the same, whether or not the applicant thereafter qualified with any of the provisions of subsection (1) of this section;

(d) Other than costs of clerical processing of the application, the department has incurred costs for services performed in connection with the license, permit, registration or certificate, or application therefor;

(e) The moneys subject to refund in accordance with the provisions of subsection (1) of this section are less than $5; or

(f) The application for refund is not submitted to the department during the time period of the license, permit, registration, or certificate. [1975 c.758 §2]

561.305 Issuance of licenses; multiple activity license; refusal, revocation, suspension or nonrenewal of license. (1) In order to simplify and expedite the issuance of licenses by the State Department of Agriculture, whenever practical and reasonable the department may accept a single application and issue a single license covering multiple activities of a single applicant that are required to be licensed by the department.

(2) The department may refuse to issue, refuse to renew, revoke or suspend any license or application for license issued or which may be issued pursuant to any law under its jurisdiction where it finds that the licensee has violated any provision of such law or regulations promulgated thereunder. If a single license is issued covering multiple activities, the department may refuse to issue, refuse to renew, revoke or suspend the license for any single activity covered by the license without affecting other activities covered by the license. [1959 c.229 §11; 1985 c.353 §1]

561.310 [Repealed by 1961 c.425 §20]

561.315 Publication of product test reports. (1) For the purpose of this section:

(a) "Product" means any animal, agricultural product or commodity, or any article of human or animal food, chemical or other matter that is under the supervision or jurisdiction of the State Department of Agriculture.

(b) "Test" means an analytical, chemical or microbiological test, or any other similar test or analysis performed by the department laboratories.

(2) Unless otherwise specifically provided by law, the department at least quarterly shall publish or distribute information, statistics, reports or the results of its tests of products, which show a violation of or noncompliance with a law, standard or regulation.

(3) The department shall make available a copy of the results of any test performed on a product to the owner or the person in possession of the tested product. [1969 c.131 §2]

561.320 [Repealed by 1961 c.425 §20]

561.330 [Repealed by 1961 c.425 §20]

561.340 [Repealed by 1961 c.425 §20]

561.350 [Repealed by 1961 c.425 §20]

561.360 [Repealed by 1961 c.425 §20]

561.370 [Repealed by 1961 c.425 §20]

561.380 [Repealed by 1961 c.425 §20]

561.390 [Repealed by 1961 c.425 §20]

561.395 Soil and Water Conservation Commission; membership; compensation and expenses; forfeiture of office; functions. (1) In order that there may be the closest contact between the State Depart-

ment of Agriculture and the various soil and water conservation districts in the state, and in order to keep the department advised as to matters of soil and water conservation in the state, there is created a Soil and Water Conservation Commission which shall consist of seven members appointed by the Director of Agriculture.

(2) Each member shall be a citizen of this state and a director of a soil and water conservation district at the time of appointment. As far as practicable, the Director of Agriculture shall make appointments so that geographic areas of the state are represented on the commission. The term of each member shall be four years. A member shall continue to serve until a successor is appointed and qualified. Vacancies in office shall be filled by appointment for the unexpired term.

(3) The members shall be entitled to compensation as provided in ORS 292.495. At the first meeting after July 1 of each year the commission shall select a chairperson. The commission shall meet at least four times each year on a quarterly basis, and otherwise at the call of the chairperson or the Director of Agriculture. A majority of the members shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the commission.

(4) Any member of the commission who fails to attend three consecutive meetings of the commission, whether regular, adjourned or special, shall forfeit the office unless the member is prevented from attending by the serious illness of the member or the member's family or for any other cause that in the judgment of the director constitutes a valid reason for failing to attend. The director shall immediately appoint a successor.

(5) The function of the commission is to advise and develop policy with the department in the administration of its duties and powers under ORS 561.400 and 568.210 to 568.808 and 568.900 to 568.933. Notwithstanding the provisions of ORS 561.130 concerning qualifications or terms of office or the number of State Board of Agriculture members, the Governor shall appoint the chairperson of the commission to serve on the State Board of Agriculture. The person so appointed shall serve on the board while acting as chairperson of the commission. As each new chairperson of the commission is selected, the Governor shall appoint that person to serve on the board. [1981 c.92 §2]

561.400 Natural Resources Division; duties; insurance for soil and water conservation districts. (1) There is established within the State Department of Agriculture a Natural Resources Division which shall have the duties and powers conferred by subsection (2) of this section, by ORS 568.210 to 568.808 and 568.900 to 568.933 and by the Director of Agriculture. The administrator of the division shall be appointed by the director under ORS 561.050 after consultation with the Soil and Water Conservation Commission.

(2) In addition to other duties and powers, the division is authorized:

(a) To review and approve or disapprove all projects, practices, budgets, contracts or regulations of soil and water conservation districts organized under ORS 568.300 to 568.790;

(b) To keep the directors of the soil and water conservation districts informed of the activities and experiences of other districts, to assist in the interchange of advice and information among the districts, and to promote cooperation among the districts;

(c) To coordinate, as much as possible, the various programs of the soil and water conservation districts;

(d) To solicit the cooperation and assistance of any department or agency of the United States or other department or agency of this state;

(e) To disseminate information concerning the activities and programs of soil and water conservation districts and encourage formation of such districts in areas where they would be desirable and feasible;

(f) To receive, from any source, materials, machinery and equipment and to transfer such to any soil and water conservation district under terms and conditions deemed appropriate, including payment by the district for costs of delivery or use;

(g) To receive from any public or private source, donations, gifts and grants for the furtherance of soil and water conservation, the provisions of ORS 568.225 or the protection of natural resources affecting agriculture, which moneys are continuously appropriated to the department for the administration of the Natural Resources Division and functions related thereto and for furnishing support and financial assistance for the projects and activities of soil and water conservation districts or other projects and activities relating to natural resources affecting agriculture or consistent with ORS 568.225;

(h) To establish the procedures for developing and implementing extended stream bank erosion plans under ORS 561.403;

(i) To review and evaluate documents and proposals of the federal government, agencies of the State of Oregon, counties, cities, other governmental bodies or subdivisions thereof

relating to natural resources affecting agriculture or consistent with ORS 568.225; and

(j) To assist in the development of agricultural management procedures and practices relating to natural resources for the prevention of soil erosion and water contamination or enhancement of water quality and quantity.

(3) The administrator of the division shall coordinate any activities of the Natural Resources Division related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

(4) In addition to or in lieu of the coverage provided pursuant to ORS 30.282 (3), the Oregon Department of Administrative Services may provide to soil and water conservation districts and their officers, employees and agents acting within the scope of their employment or duties, protection against liability as part of the insurance provided to the State Department of Agriculture pursuant to ORS 278.120 to 278.215. The Oregon Department of Administrative Services shall determine any additional contributions to be apportioned to the State Department of Agriculture under ORS 278.110 for extending insurance to soil and water conservation districts, and the State Department of Agriculture shall pay the assessments from such moneys as may be available therefor. [1981 c.92 §3; 1985 c.40 §4; 1985 c.667 §4; 1987 c.158 §119; 1987 c.734 §17; 1989 c.343 §1]

561.401 Disposition of moneys collected by Natural Resources Division. All moneys received by the Natural Resources Division under ORS 561.400 shall be paid to the State Treasurer and credited to the Department of Agriculture Service Fund established by ORS 561.144. All such moneys are continuously appropriated to the State Department of Agriculture to carry out ORS 561.400. [1991 c.624 §4]

561.403 Extended stream bank erosion plans; division to assist in developing plans; requirements. (1) Upon the request of any soil and water conservation district, flood control district or municipality, the Natural Resources Division of the State Department of Agriculture shall cooperate with the requester to develop an extended stream bank erosion plan.

(2) An extended stream bank erosion plan shall provide for the best methods of erosion control for an extended section of stream that affects all the parties that have requested the division's assistance in developing the plan.

(3) In developing an extended stream bank erosion plan, the division shall cooperate extensively with all persons or entities interested in or affected by the erosion of the stream bank, including but not limited to landowners, persons who occupy the land adjacent to the stream, flood control districts, soil and water conservation districts, municipalities and other local government units. [1985 c.667 §2]

561.407 Division responsible for obtaining available financing for plans. After completing an extended stream bank erosion plan under ORS 561.403, the Natural Resources Division, on behalf of the parties that developed the plan, shall be responsible for obtaining all available federal funding and other assistance necessary to implement the extended stream bank erosion plan. [1985 c.667 §3]

Note: Section 3, chapter 549, Oregon Laws 2003, provides:

Sec. 3. Task Force on Game Fowl and Newcastle Disease. (1) There is created the Task Force on Game Fowl and Newcastle Disease consisting of seven members appointed by the Director of Agriculture.

(2) For the purpose of protecting the domestic and wild birds of Oregon from Newcastle disease, the task force shall study and make recommendations on development of a system for the tracking and regulation of businesses and individuals raising game fowl. Matters addressed by the study and recommendations may include, but need not be limited to:

(a) Reporting requirements;

(b) License revocation standards;

(c) License fee structure; and

(d) Disease testing, disease reporting, legal fowl rearing, euthanasia methods, legal fowl training and other standards of practice.

(3) The task force may develop legislative proposals for recommendation to the Seventy-third Legislative Assembly.

(4) The task force is subject to the provisions of ORS 171.605 to 171.635 in the same manner as an interim committee and has the authority contained in ORS 171.505 and 171.510.

(5) The State Department of Agriculture shall provide staff support to the task force.

(6) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties.

(7) A majority of the members of the task force constitutes a quorum for the transaction of business.

(8) Official action by the task force requires the approval of a majority of the members of the task force.

(9) The task force shall elect one of its members to serve as chairperson.

(10) The task force shall submit a report, including any recommendations for legislation, to an interim committee related to natural resources, in the manner provided by ORS 192.245, no later than October 1, 2004.

(11) Members of the task force are not entitled to compensation or to reimbursement of any expenses in-

curred by them in the performance of their official duties. [2003 c.549 §3]

FURNISHING SERVICES AND MATERIALS ON CREDIT

561.410 Department's granting of credit; invoice; payment due date. (1) The State Department of Agriculture may grant credit for services and materials furnished pursuant to the laws administered by the department.

(2) The department shall prepare an itemized invoice of the services and materials furnished by the department and send the invoice to the person responsible for payment. The amount owing by the person is due and payable to the department on or before the 30th day after the date of the invoice. [1959 c.229 §2; 1963 c.373 §1; 2003 c.641 §1]

561.420 [1959 c.229 §3; repealed by 1963 c.373 §2]

561.430 Deposit or bond to secure payment. (1) The State Department of Agriculture may require any person to whom it has furnished or may furnish services or materials on credit to deposit and keep on deposit with the department a sum equal to an amount which the department estimates may be due for services or materials to be rendered for a period of three months.

(2) The department may, in lieu of such deposit, accept a bond to secure payment for services or materials to be furnished. The deposit or posting of the bond shall not relieve the person from making payments as required by law or by ORS 561.410.

(3) If such person files a written statement with the department that services or materials of the department are no longer required, the department, upon receipt of all payments due, shall refund to the person all deposits remaining to the person's credit and shall cancel any bond given under this section. [1959 c.229 §5]

561.440 [1959 c.229 §4; repealed by 1961 c.425 §20]

561.450 Lien. (1) A lien hereby is created in favor of the State Department of Agriculture upon all real and personal property belonging to any person who fails to pay the department for services or materials furnished within 60 days after the due date in a sum equal to the amount due.

(2) The lien, which shall be valid until paid in full, attaches upon the filing of a Notice of Claim of Lien with the county clerk of the county in which the property is located. The notice of lien claim shall contain a true statement of the amount due. The county clerk shall record the claim of lien and shall receive the same fees as are allowed by law for recording other lien instruments.

(3) The lien created by this section may be foreclosed in the circuit court in the same manner provided by law for the foreclosure of other liens on real or personal property.

(4) The lien created by this section is prior to all liens and encumbrances recorded subsequent to the filing of claim of lien, except taxes and labor liens. [1959 c.229 §6; 1961 c.425 §3]

QUARANTINE POWERS

561.510 Quarantines; establishment by Director of Agriculture. Whenever, in the opinion of the Director of Agriculture any animals, fowls, bees, fruits, vegetables, plants, parts of plants or seeds within any area or section are diseased or infected with any infestation, or any area or section is infested with any kind of weed, which disease, infestation or weed is liable to spread and become detrimental to the plant or animal life of this state or is liable to injuriously affect the health of citizens of the state, with reference to any of which the Secretary of Agriculture of the United States has not determined that a quarantine is necessary and established a quarantine, the director is authorized, with the consent of the Governor, to declare a quarantine against the movement of any such animals, fowls, bees, fruits, vegetables, plants, parts of plants or seeds, or against the movement of any articles which may contain such weeds or the seeds thereof, or which may be liable to spread such disease or infestation into the state, if such area or section be outside the boundaries of this state, or against the movement from such area or section of such animals, bees, fowls, fruits, vegetables, plants, parts of plants or seeds, or against the movement within the state of articles liable to spread such weeds or weed seeds, or which may be liable to spread such disease or infestation, if such area or section is within the state.

561.520 Quarantine areas; notice, hearing and orders. (1) Before the Director of Agriculture declares a quarantine relating to any area or section within the state, the director shall, if the quarantine involves the control, eradication or destruction of any disease, infestation or weeds within such area, file a copy of the proposed order of quarantine and a copy of any rules and regulations in connection with such quarantine in the office of the county clerk of the county in which such area is situated, or a copy thereof in the office of the county clerk of each of the several counties included in such area or within which a part of such area is located, and shall publish such order as provided by ORS 561.585 in a newspaper of general circulation in the area sought to be quarantined. The director, in the publica-

tion, shall give notice that a hearing will be held by the State Department of Agriculture for the consideration of remonstrances against the proposed quarantine:

(a) At the courthouse in the county seat in the county in which the area is proposed to be created; or

(b) At a courthouse in one of the counties in each congressional district in which the area is proposed to be created, if such area includes more than one county in such congressional district.

No time of hearing shall be less than 15 nor more than 30 days from the date of publication of the notice.

(2) If no remonstrances are presented at such hearing or hearings, or if the remonstrances presented are deemed by the director to be without merit or insufficient, the director shall make the order of quarantine as proposed; but if the director is of the opinion that any change or changes in the proposed quarantine order, or in the rules and regulations in connection therewith, should be made, the director may, in the discretion of the director, alter, amend or revoke the proposed order of quarantine or any such rule or regulation.

(3) Such order of quarantine shall be filed and published as authorized by ORS 561.585. Proof of publication of the notice of hearing or hearings shall be filed with the county clerk of each county within which the quarantine area or a part thereof is situated.

(4) Orders relating to the quarantine of areas located outside of Oregon or of the movement of animals, fowls, bees, fruits, vegetables, plants, parts of plants or seeds, or of the movement of any article which may contain such weeds or seeds or other materials which may be liable to spread disease or infestation into Oregon, as provided by ORS 561.510 or 561.560, shall not be promulgated until at least one public hearing has been held within the state. If an emergency exists and postponement of the effective date would result in serious prejudice to the public interest, or the interest, health or economy of the parties directly or indirectly affected thereby, the quarantine may be made effective immediately as authorized by ORS 183.355 (2)(b). [Amended by 1961 c.118 §1; 1971 c.734 §27]

561.530 Quarantine order; filing, posting and publication. (1) Whenever a quarantine of any kind or nature is declared pursuant to any law with the administration of which law the State Department of Agriculture is charged, such quarantine shall be declared by written order signed by the Director of Agriculture and containing the approval of the Governor over the Governor's signature. The order shall be filed in the department.

(2) If the quarantine is on area or areas within this state, two copies thereof certified by the director, together with two copies of the rules and regulations governing such quarantine, shall be delivered to the county clerk of each county included in or within which any quarantined area or part thereof is situated.

(3) It shall be the duty of the county clerk immediately to post one each of such copies in a conspicuous place in the county courthouse and to file one each of such copies in the county records. Any such order of quarantine shall give notice of the date that such quarantine takes effect, which shall be not less than 10 nor more than 30 days from the date of the first publication thereof.

(4) The order of quarantine, together with any rules and regulations governing the same, shall be published at least once in some publication of general circulation throughout the state.

561.540 Rules and regulations governing quarantines. (1) A quarantine authorized by ORS 561.510 shall be subject to such rules and regulations as the Director of Agriculture deems necessary for the protection of the public welfare.

(2) The movement of any animals, bees, fruits, vegetables, plants, parts of plants, fowls, seeds or articles liable to contain weeds or weed seeds or to spread disease or infestation, which are subject to quarantine, may be permitted subject to such regulations as the director may prescribe.

(3) Any such diseased or infested animals, fowls, bees, fruits, vegetables, plants, parts of plants, seeds, weeds, weed seeds and any articles, structures or lands within any quarantine area or section within this state shall be subject to such regulations for the eradication of such disease, infestation or weeds as the director may prescribe.

561.550 Removal of quarantine. (1) When in the opinion of the Director of Agriculture any quarantine authorized by ORS 561.510 is no longer necessary to protect the public welfare of the state, the director may by written order, approved in writing by the Governor, declare such quarantine removed.

(2) Whenever a quarantine of any kind or nature, declared pursuant to any law with the administration of which the State Department of Agriculture is charged, is removed, the fact of its removal shall be published and filed in the same manner as the order declaring the quarantine.

561.560 Emergency quarantine; publication of notice; powers of Governor; duration. (1) Notwithstanding ORS chapter 183, whenever the Director of Agriculture determines the fact that a dangerous plant, animal, fowl or bee disease or insect infestation new to, or not theretofore widely prevalent or distributed within and throughout the state, exists in any state, territory, country or locality outside of this state, or in any locality within this state, which disease or infestation is of such nature that it will be impossible to follow the procedure provided for in ORS 561.510 to 561.530 without serious danger of the wide spread within the state of such disease or infestation during the time required by such procedure, the director is authorized and directed to declare, by written order, a quarantine against the movement into or within the state from such state, territory, country or locality, of any plants, animals, fowls, bees or articles which are liable to spread such disease or infestation. A written order may be amended as the director determines is necessary. A written order and any subsequent amendments thereto shall be signed by the director.

(2) The director shall file all quarantine orders and any amendments thereto with the Secretary of State and shall publish a notice of such quarantine and of any amendments to a quarantine order in a newspaper of general circulation throughout the state. The director shall take such other action as the director considers reasonable to insure that persons affected by a quarantine have knowledge thereof. From and after the filing of a quarantine order, or amendment thereto, with the Secretary of State it shall be unlawful for any person, firm or corporation to carry, move or transport any plants, animals, fowls, bees or articles specified in a quarantine order, or amendment thereto, from the quarantined area into or through any part of the state, except as provided in the order, or amendment thereto. Proofs of the publication of the notices provided for in this section shall be filed in the office of the State Department of Agriculture.

(3) No such emergency quarantine, as provided for in this section, shall be effective for more than 90 days after the date of the first publication of notice thereof. However, a quarantine for a longer period may be declared under the provisions of ORS 561.510 to 561.550, to take effect at or before the expiration of such 90-day period.

(4) The Governor by filing an order with the Secretary of State may terminate such department order. Thereafter and relating only to that particular subject matter and emergency, the department shall be required to obtain the approval of the Governor before any additional quarantine or amendments thereto are issued under this statute. [Amended by 1969 c.150 §1; 1971 c.734 §85]

561.570 [Renumbered 561.810]

561.580 Cooperation with United States and other states with respect to quarantines. (1) In order to prevent unnecessary and conflicting regulations on commerce, the State Department of Agriculture shall cooperate with the United States and other states in establishing a uniform system of quarantine and laws and rules and regulations governing quarantines, both as to animals, fowls, plants, weeds, insects and seeds, subject to quarantine, manner of enforcing quarantine and manner of treating diseased or infested animals, fowls, plants, seeds and articles containing weeds and weed seeds.

(2) The Director of Agriculture shall suggest to the Governor, from time to time, any changes in the laws of this state or any additional laws which will tend to unify the quarantine laws of the United States and this and other states of the United States.

(3) Whenever the director deems it to be of advantage toward carrying out the purpose of this section, the director may forward to the United States Department of Agriculture copies of proposed rules and regulations to govern quarantines in this state and request suggestions from the United States Department of Agriculture tending toward uniform provisions governing quarantines throughout the several states.

561.585 Publication of summary of quarantine order or regulations. When the State Department of Agriculture is required to publish an order of quarantine or rules or regulations promulgated thereunder in a newspaper, it may in its discretion publish only a brief concise summary statement of the contents of such order or regulations and notice that complete copies thereof are on file and can be obtained from the department, certain county clerks and the Secretary of State. [1961 c.118 §3]

561.590 Violation of quarantine prohibited. From and after the time that any quarantine order of the Director of Agriculture becomes effective it shall be unlawful for any person, firm or corporation to violate, either in whole or in part, any of the provisions of such order, or of any rule or regulation promulgated in connection therewith.

561.600 Procedure for review of orders and regulations. Judicial review of orders including emergency orders and regulations issued in accordance with ORS 561.510 to 561.590 shall be as provided in ORS chapter 183. [1971 c.734 §87]

SEIZURE, DETENTION AND EMBARGO POWERS

561.605 Detention, seizure or embargo of agricultural products; labeling; notification. (1) In order that the rights of consumers, property owners or other affected persons may be protected and procedures made uniform the State Department of Agriculture, its agents, employees or officials, shall observe the procedure prescribed by ORS 561.605 to 561.620 whenever it becomes necessary for the department to detain, seize or embargo any food, article or product under any law the administration of which is vested in the department.

(2) The department shall cause to be affixed to the products being detained, seized or embargoed, a notice that the products are being detained, seized or embargoed by the department and warning all persons that they may not be removed from the place at which they are being held without written permission from the department.

(3) The department shall notify in writing the owner or person in possession of the products that the products are being detained, seized or embargoed by the department. If the person in possession of the products is not the owner, the department shall make a reasonable effort to notify the owner. Such notice shall state the reason for the department's action, and shall notify the owner or person in possession of the right to be heard before the department in opposition to the action. [Formerly part of 616.095]

561.610 Request for hearing; when held. (1) A request of the State Department of Agriculture for a hearing on the propriety of the detention, seizure or embargo and related matters must be filed with the department in writing within 10 days of receiving actual notice of such action. The request may be filed either by the owner or the person in possession but the time limited for filing such request is to be computed from the time the required notice is first received by either of such persons. When the department receives a request for a hearing, it shall designate the time and place of hearing.

(2) The hearing shall not be held sooner than 10 days after the request for a hearing has been received by the department. However, if the subject matter of the department's action is perishable goods, or if, in the opinion of the department, other good and sufficient reason appears, the hearing may, at the request of the owner or person in possession of such goods, be held at an earlier date. [Formerly part of 616.095]

561.615 Conduct of hearing; action by department. (1) The hearing shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605. The hearing shall be conducted as provided for contested cases under ORS chapter 183.

(2) If it appears that the products are not being stored, sold, kept, offered or exposed for sale in violation of law, the products shall be released to the owner or person in possession. If it appears that all or part of such products may be reconditioned or relabeled or segregated in such a way as to comply with state laws, the owner or person in possession may cause them to be reconditioned, relabeled or segregated at the owner's or person's own expense, after which the department shall release them. If it appears that all or a part of the products may not be reconditioned, relabeled or segregated in such a way as to comply with state laws, that portion of the products which may not be so treated shall be destroyed, unless the owner or person in possession executes and delivers to the department a good and sufficient bond to the effect that the products shall not be sold, disposed of or used contrary to the laws of Oregon and the rules, regulations or orders thereunder promulgated. If any food products are found to be unfit for human consumption but suitable for animal feeding, such food products may be used for animal feeding as permitted by the department. [Formerly part of 616.095; 1971 c.734 §88; 1999 c.849 §§119,120; 2003 c.75 §47]

561.620 Procedure when products disposed of; salvage. (1) In the event that the owner or person in possession does not request a hearing on the propriety of the seizure, detention or embargo within the time limited for making such request, the State Department of Agriculture may summarily destroy or otherwise dispose of the subject matter of the action, or, if the owner or person in possession of such products does not within 30 days after the hearing either comply with the orders of the department as to reconditioning, relabeling or segregating or perfect an appeal to the circuit court, the department may summarily destroy or otherwise dispose of the subject matter of the action.

(2) If it appears to the department that there is a reasonable possibility that a product is capable of salvage and the owner or person in possession does not seek to regain custody within the time and in the manner provided in ORS 561.605 to 561.620, the department may dispose of the product so as to obtain such salvage. Any salvage so recovered shall, after paying the costs of sale or disposition and including storage, if any, be

remitted to the true owner, if known, or if not known, then to the person in possession. A sale or disposition for salvage shall be upon such conditions as to labeling, reconditioning or segregation as the department deems necessary to comply with the law relating to such product. [Formerly part of 616.095]

561.625 When hearing not required. Nothing in ORS 561.605 to 561.630, 616.225, 632.485 and 633.670 shall be construed as requiring that a hearing be held in connection with the seizure or embargoing of illegal or suspected products or as prohibiting the release, destruction or other disposition of such products by agreement between the State Department of Agriculture and the owner or person in possession of such products. [Subsection (1) of 1965 Replacement Part formerly 616.100; subsection (2) of 1965 Replacement Part formerly part of 616.095; 1967 c.437 §2]

561.630 Removing or defacing seizure or embargo notice unlawful. No person shall remove or deface any notice placed upon products seized or embargoed by the State Department of Agriculture, or move any such products from the place designated in the notice without written permission from the department. [Formerly 616.110]

STATE WEED BOARD

561.650 State Weed Board; membership; terms. (1) The State Weed Board is created in the State Department of Agriculture. The board shall consist of seven members appointed by the Director of Agriculture as follows:

(a) At least two members shall be residents of that portion of the state east of the summit of the Cascade Mountains.

(b) At least two members shall be residents of that portion of the state west of the summit of the Cascade Mountains.

(c) Two members shall be selected from among those individuals recommended by the Association of Oregon Counties.

(d) The director or a designee of the director shall serve as a member.

(2) The term of each member is four years, but a member serves at the pleasure of the director. Before the expiration of the term of a member, the director shall appoint a successor. A member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment to become immediately effective for the unexpired term.

(3) As used in subsection (1) of this section, "summit of the Cascade Mountains" means a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Hood River County; thence southerly along the western boundaries of Hood River, Jefferson, Deschutes and Klamath Counties to the southern boundary of the State of Oregon. [1985 c.620 §2]

561.660 Compensation of members. A member of the State Weed Board is entitled to compensation and expenses as provided in ORS 292.495. [1985 c.620 §4]

561.670 Officers; quorum; meetings. (1) The State Weed Board shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of those offices as the board determines appropriate.

(2) A majority of the members of the board constitutes a quorum for the transaction of business.

(3) The board shall meet at such times and places as are specified by the call of the Director of Agriculture or the chairperson. [1985 c.620 §5]

561.680 Duties of board. The State Weed Board shall:

(1) Identify those weeds growing in this state that represent the greatest public menace and establish those weeds as the top priority for action by weed control programs in this state.

(2) Assist the Director of Agriculture in allocating moneys made available to the State Department of Agriculture for the payment of weed control expenses to weed control programs conducted in the various counties on the basis of the control effort required and the amount of money available for weed control from local sources.

(3) Help coordinate the weed control program efforts of the various counties and advise the director in performing weed control duties, functions and powers assigned to the State Department of Agriculture pursuant to ORS chapter 570 or any other provision of law. [1985 c.620 §6]

INVASIVE SPECIES COUNCIL

561.685 Definition of invasive species; Invasive Species Council duties. (1) As used in this section, "invasive species" means nonnative organisms that cause economic or environmental harm and are capable of spreading to new areas of the state. "Invasive species" does not include humans, domestic livestock or nonharmful exotic organisms.

(2) The Invasive Species Council shall:

(a) Create and maintain appropriate Internet sites, toll-free telephone numbers or other means of communication for statewide use in reporting sightings of invasive species.

(b) Encourage the reporting of invasive species sightings by publicizing means of communication made available by the council under paragraph (a) of this subsection.

(c) Forward reports of invasive species sightings to appropriate agencies.

(d) Produce educational materials and press releases concerning invasive species.

(e) Conduct educational meetings and conferences.

(f) Develop a statewide plan for dealing with invasive species. The plan should include, but need not be limited to, a review of state authority to prevent the introduction of invasive species and to eradicate, contain or manage existing invasive species.

(g) Solicit proposals and review applications for grants or loans to further projects providing education about invasive species.

(h) Provide grants or loans to agencies, organizations or individuals for eradicating new invasions.

(3) The council may approve the expenditure of funds by the council, or any member thereof, for the production of educational materials or the presentation of educational materials. [2001 c.413 §6]

Note: 561.685 to 561.695 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 561 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

561.687 Invasive Species Council; membership; terms. (1) There is established the Invasive Species Council. Except as provided in ORS 561.691 (1), the council shall consist of 12 members. The following persons are ex officio members of the council:

(a) The Director of Agriculture or a designated representative.

(b) The president of Portland State University or a designated representative.

(c) The State Fish and Wildlife Director or a designated representative.

(d) The administrative head of the Sea Grant College of Oregon State University or a designated representative.

(2) Each of the ex officio members described in subsection (1) of this section shall appoint two members to the council.

(3) The term of office of each appointed member is two years, but an appointed member serves at the pleasure of the appointing authority. Before the expiration of a term, the appointing authority shall appoint a successor whose term begins on January 1 next following. An appointed member may not serve more than two successive terms on the council. If there is a vacancy in an appointed member position for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

(4) In making appointments to the council, the appointing authorities shall endeavor to appoint persons representative of the geographic, cultural and economic diversity of this state. The appointing authorities may give consideration to nominations submitted by federal and state agencies, local governments, universities, industry and other groups having an interest in invasive species.

(5) An appointed member of the council is not entitled to compensation under ORS 292.495. A member of the council is not entitled to reimbursement for expenses. At the discretion of the council, council members may be reimbursed from funds available to the council for actual and necessary travel and other expenses incurred by members of the council in the performance of their official duties, subject to the limits described in ORS 292.495. [2001 c.413 §1]

Note: See note under 561.685.

561.689 Officers; quorum; schedule. (1) The Invasive Species Council shall select a voting ex officio member of the council as chairperson and another voting ex officio member as vice chairperson. Each voting ex officio member of the council shall serve one year as chairperson and one year as vice chairperson during any four-year period. The chairperson and vice chairperson shall have duties and powers necessary for the performance of the functions of those offices as a majority of the voting ex officio members determines.

(2) A majority of the voting members of the council constitutes a quorum for the transaction of business.

(3) The council shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the council. [2001 c.413 §3]

Note: See note under 561.685.

561.691 Invasive Species Coordinator; administrative expenses of Invasive Species Council. (1) Subject to available funding, the Invasive Species Council may appoint a State Invasive Species Coordinator to serve at the pleasure of the voting members of the council. The appointment of the coordinator must be by written order, filed with the Secretary of State. If the council appoints a coordinator, the coordinator shall serve as a nonvoting ex officio member of the council.

(2) The State Department of Agriculture is responsible for ensuring payment of the administrative expenses of the council. The State Department of Agriculture may enter into interagency agreements under ORS 190.110 with the State Department of Fish

and Wildlife, Portland State University and Oregon State University for sharing the administrative expenses of the council. [2001 c.413 §4]

Note: See note under 561.685.

561.693 Advisory and technical committees. (1) The Invasive Species Council may establish advisory and technical committees that it considers necessary to aid and advise the council in the performance of its functions. The committees may be continuing or temporary committees. The council shall determine the representation, membership, terms and organization of the committees and appoint their members.

(2) Members of the committees are not entitled to compensation, but at the discretion of the council may be reimbursed from funds available to the council for actual and necessary travel and other expenses incurred by members of the committees in the performance of their official duties, subject to ORS 292.495. [2001 c.413 §5]

Note: See note under 561.685.

561.695 Invasive Species Council Account; trust account. (1) The Invasive Species Council Account is established in the General Fund of the State Treasury. Except as provided under subsection (2) of this section, all moneys received by the Invasive Species Council shall be paid into the State Treasury and credited to the account. All moneys in the account are continuously appropriated to the council and may be used by the council for purposes authorized by law, including but not limited to providing grants or loans as described under ORS 561.685.

(2) The Invasive Species Council may accept moneys through gifts, grants and donations from public and private sources. The council shall deposit the gifts, grants and donations with the State Treasurer for credit to a trust account separate and distinct from the General Fund. Interest earned by the trust account shall be credited to the trust account. Except as otherwise provided by the donor, the council may use trust account moneys for any purpose described in ORS 561.685. [2001 c.413 §7]

Note: See note under 561.685.

NEW CROPS DEVELOPMENT BOARD

561.700 New Crops Development Board; membership; terms; compensation and expenses. (1) The New Crops Development Board is created within the State Department of Agriculture. The board shall consist of nine voting members appointed by the Director of Agriculture. In addition to the voting members, the Director of the Oregon State University Experiment Station or the designee of the director and the Director of the Department of Environmental Quality or the designee of the director shall be nonvoting ex officio members of the board.

(2) The term of each voting member is four years, but a member serves at the pleasure of the Director of Agriculture. Before the expiration of the term of a voting member, the director shall appoint a successor. A voting member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment to become immediately effective for the unexpired term.

(3) Each voting member of the board shall be a citizen of this state and actively engaged in some segment of the agricultural crop industry. As far as practicable, the Director of Agriculture shall make appointments so that the various geographic areas of the state and segments of the agricultural crop industry are represented on the board.

(4) To the extent that moneys received pursuant to ORS 561.720 are available therefor in the Department of Agriculture Service Fund, a member of the board is entitled to compensation and expenses as provided in ORS 292.495. [1983 c.501 §2]

561.710 Officers; quorum; meetings. (1) The New Crops Development Board shall select one of its members as chairperson and another as vice chairperson, for such terms and with such duties and powers necessary for the performance of the functions of such offices as the board determines.

(2) A majority of the voting members of the board constitutes a quorum for the transaction of business.

(3) The board shall meet at such times and places as may be specified by the call of the chairperson or of a majority of the voting members of the board. [1983 c.501 §3]

561.720 Duties; authority. In order to facilitate research and development of new or alternative crops in this state and to implement the responsibilities of the State Department of Agriculture under ORS 561.020 (2), the New Crops Development Board:

(1) Shall review new or alternative agricultural crops research or development proposals, and for this purpose may consult with the appropriate persons in universities, research institutions, business enterprises or other public or private bodies.

(2) May accept contributions, gifts or grants from any public or private source.

(3) May make grants and disbursements of funds to, and enter into agreements with, public or private agencies, schools, organizations, institutions or individuals, for the research, study, experimentation or

development of new or alternative crop production, processing or uses.

(4) Shall review and evaluate the results of all grants and agreements.

(5) May act as a clearinghouse for information and reports involving the research, study, experimentation or development of new or alternative crop production, processing, markets or uses.

(6) May act as liaison between those engaged in the research, study, experimentation or development of new or alternative crop production, processing, markets or uses. [1983 c.501 §4; 1985 c.623 §8]

561.730 Disposition of moneys received. All moneys received by the New Crops Development Board shall be deposited in the Department of Agriculture Service Fund created by ORS 561.144 (1). All moneys received and so deposited are continuously appropriated to the board to carry out the provisions of ORS 561.700 to 561.720. [1983 c.501 §5]

561.810 [Formerly 561.570; repealed by 1961 c.425 §20]

PENALTIES

561.990 Penalties. (1) Violation of ORS 561.170 is a Class C violation.

(2) Violation of ORS 561.200 is punishable, upon conviction, by a fine of not to exceed $100 or by imprisonment for not more than 30 days, or both.

(3) Violation of ORS 561.220 or 561.230 is a misdemeanor.

(4) Violation of ORS 561.590 is punishable, upon conviction, by a fine of not less than $500 nor more than $5,000.

(5) Violation of any of the provisions of ORS 561.605 to 561.630 is a Class D violation. [Subsection (3) enacted as 1955 c.11 §3; subsection (5) formerly part of 616.990; 1971 c.743 §399; 1973 c.10 §1; 1999 c.1051 §199]

Note: Sections 2 and 7, chapter 390, Oregon Laws 1999, provide:

Sec. 2. Temporary civil penalties for violation of ORS 561.590. (1) In addition to any fine under ORS 561.990 or other penalty, a person who violates an order, rule or regulation described under ORS 561.590 is subject to a civil penalty imposed by the State Department of Agriculture. The civil penalty shall not exceed $10,000.

(2) Every violation of an order, rule or regulation described under ORS 561.590 is a separate offense subject to a separate civil penalty.

(3) The department shall develop one or more schedules setting the amounts of civil penalties that may be imposed for particular types of violations.

(4) The imposition of a civil penalty under this section is subject to ORS 183.090 [renumbered 183.745].

(5) The State Treasurer shall deposit all moneys from penalties recovered under this section into the Department of Agriculture Account. Moneys deposited under this subsection are continuously appropriated to the department for the administration and enforcement of quarantine laws. [1999 c.390 §2]

Sec. 7. (1) The State Department of Agriculture may not levy a civil penalty under section 2, 4 or 6, chapter 390, Oregon Laws 1999, for any violation occurring after December 31, 2005.

(2) Sections 2, 4 and 6, chapter 390, Oregon Laws 1999, are repealed December 31, 2006. The repeal of sections 2, 4 and 6, chapter 390, Oregon Laws 1999, does not relieve any person of the obligation to pay a civil penalty lawfully imposed by the department prior to December 31, 2006. [1999 c.390 §7; 2001 c.23 §1; 2003 c.236 §1]