

Enrolled
House Bill 2082

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CHAPTER

AN ACT

Relating to conservation districts; creating new provisions; amending ORS 568.225, 568.300, 568.310, 568.320, 568.330, 568.340, 568.400, 568.410, 568.420, 568.440, 568.450, 568.500, 568.510, 568.520, 568.530, 568.545, 568.550, 568.555, 568.560, 568.565, 568.590, 568.610, 568.730 and 568.790; and repealing ORS 568.350, 568.360, 568.390, 568.430, 568.470, 568.480, 568.490, 568.515, 568.540, 568.630, 568.640, 568.650, 568.660, 568.670, 568.680, 568.690, 568.700, 568.710, 568.720, 568.740, 568.750, 568.760 and 568.770.

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

SECTION 1. Sections 8, 9, 14, 15 and 17 to 20 of this 2009 Act are added to and made a part of ORS 568.300 to 568.790.

DISTRICTS GENERALLY

SECTION 2. ORS 568.225 is amended to read:

568.225. (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**, [other] natural resource users, [other] local governments as defined in ORS 174.116[,] and with agencies of the government of this state and of the United States[,] in projects, programs and activities calculated to accelerate such policies. In effectuating the policy set forth in subsection (1) of this section, the soil and water conservation districts also shall strive to achieve the goal set forth in ORS 468B.155.

FORMATION OF A DISTRICT

SECTION 3. ORS 568.300 is amended to read:

568.300. (1) Any 25 or more landowners or the owners of more than 70 percent of the acres of land lying within the limits of the territory proposed to be organized into a district may file a petition with the State Department of Agriculture asking that a soil and water conservation district be *[organized]* **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, *[which description is not required to]*. **A description is sufficient if generally accurate and need not** be given by metes and bounds or by legal subdivision *[but is sufficient if generally accurate]*.
- (d) A request that the department duly define the boundaries for the district, that a referendum be held within the territory so defined on the question of the *[creation]* **formation** of a district in such territory, and that the department determine that a district be *[created]* **formed**.

(2) *[When]* **If** more than one petition is filed covering parts of the same territory, the department may consolidate all or any such petitions.

SECTION 4. ORS 568.310 is amended to read:

568.310. Within 60 days after *[the petition has been]* **a petition described in ORS 568.300 is** filed with the State Department of Agriculture, *[it shall cause due notice to be given of a proposed]* **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.

SECTION 5. ORS 568.320 is amended to read:

568.320. (1) All owners of land **and electors** within the limits of the territory described in the petition *[and]* **for formation of a district, owners of lands and electors** within any territory considered for addition to *[such]* **the** described territory, and all other interested parties, shall have the right to attend *[such hearings]* **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.

SECTION 6. ORS 568.330 is amended to read:

568.330. (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, *[it]* **the department** shall make and record *[such]* **the** determination and *[shall]* define the boundaries of the district.

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

- (a) The topography of the area considered and of the state.
- (b) The composition of the soils.
- (c) The distribution of erosion.
- (d) The prevailing land-use practices.

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

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

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

(3) The territory to be included within *[such]* **district** boundaries need not be contiguous.

SECTION 7. ORS 568.340 is amended to read:

568.340. (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, *[it]* **the department** shall make and record *[such]* **the** determination and *[shall]* deny the petition.

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

SECTION 8. (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 section 9 of this 2009 Act.**

(3) **If a referendum is not required under subsection (2) of this section, the department shall issue an order of formation for the district. The order must set forth the name of the district and the district boundaries defined by the department.**

SECTION 9. (1) **If a referendum regarding the formation of a district is required under section 8 of this 2009 Act, 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 section 8 of this 2009 Act 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.**

SECTION 10. ORS 568.400 is amended to read:

568.400. If the State Department of Agriculture determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, *[it]* **the department** shall appoint *[not less than two nor more than four directors, as deemed necessary after giving due consideration to the size and population of]* **a board of five directors for the district, to serve terms as provided under ORS 568.560.**

SECTION 11. ORS 568.410 is amended to read:

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

(1) The *[three candidates referred to in]* **board of directors appointed under ORS [568.540] 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 *[a petition was filed, notice issued and hearing held as provided by ORS 568.300 to 568.320; that the department did determine that there is need, in the interest of the general welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of the district, and that the result of the referendum showed the required majority of the electors residing in the district to favor creation of the district.]* **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 *[certify such fact to]* **notify** the department, *[which shall thereupon submit to the Secretary of State a name for the district which is not subject to such defects].* **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 *[free of such defects]*, the Secretary of State shall record the application and statement, with the name so modified.

(6) The formation of the district is final when the application and statement have been made, filed and recorded as provided in this section.

SECTION 12. ORS 568.420 is amended to read:

568.420. (1) The Secretary of State shall make and issue to the *[three candidates referred to in ORS 568.540]* **board of directors appointed under ORS 568.400** a certificate, under the seal of the state, of the *[organization]* **formation of the soil and water conservation** district, and shall record *[such]* **the** certificate with the application and statement.

(2) The boundaries of *[such]* **the** district shall include the territory as determined by the department as provided in ORS 568.330, but *[in no event shall they]* **may not** include any area included within the boundaries of another soil and water conservation district.

SECTION 13. ORS 568.440 is amended to read:

568.440. In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding or action of *[the]* **a soil and water conservation** district, the district shall be deemed to have been *[established]* **formed** in accordance with *[the provisions of]* 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 *[by the Secretary of State]*. A copy of such certificate certified by the Secretary of State shall be admissible in evidence in any such suit, action or proceedings and shall be proof of the filing and contents *[thereof]* **of the certificate.**

DISTRICT INCLUSION OF NEW TERRITORY

SECTION 14. (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.

WITHDRAWAL OF TERRITORY FROM DISTRICT

SECTION 15. (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 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 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.

CONSOLIDATION OF DISTRICTS

SECTION 16. ORS 568.450 is amended to read:

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

(a) Petitions to consolidate filed with the State Department of Agriculture by *[any 25 or more owners of land]* **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.

[(2)] **(3) If consolidation is initiated as provided in this section, *[proceedings on the resolutions or petitions shall be as provided for proceedings to organize a district except as otherwise provided by this section and ORS 568.460, 568.470 and 568.545.]* 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 and 568.545 and section 17 of this 2009 Act and accepting public comment.**

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

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

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

[(4) The department shall prescribe the form for petitions to consolidate which shall contain the information necessary to the proceedings and be similar to the form prescribed in ORS 568.300 for petitions to organize a district.]

(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.

SECTION 17. 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.

DISSOLUTION OF DISTRICT

SECTION 18. (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.

SECTION 19. (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 section 18 of this 2009 Act 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.

SECTION 20. (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 authority 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.

SECTION 21. ORS 568.500 is amended to read:

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

SECTION 22. ORS 568.510 is amended to read:

568.510. The State Department of Agriculture [*shall*] **may** not entertain petitions for [*discontinuance*] **dissolution** of any **soil and water conservation** district [*nor conduct referenda upon such petitions nor make determinations pursuant to such petitions*] **or conduct a referendum or make findings regarding a petition for dissolution of a district** in accordance with [*ORS 568.480 and 568.490*] **section 18 of this 2009 Act** more often than once each year after the first five-year period following formation of the district.

DISTRICT DIRECTORS AND BOARDS

SECTION 23. ORS 568.520 is amended to read:

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

[(2)] (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 [*those*] **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**.

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

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

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

[(6)] (5) To the extent of any conflict between ORS chapter 255 and the provisions of ORS 568.530, [*568.540,*] 568.545 and 568.560 and this section, the provisions of ORS 568.530, [*568.540,*]

568.545 and 568.560 and this section control. Elections officers, as defined in ORS 255.005, are not responsible for delivering, preparing or publishing information concerning district elections.

(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 [department] **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.

SECTION 24. ORS 568.530 is amended to read:

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

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

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

(4) If no nominee for a position qualifies under subsection (1) of this section to have the name of the nominee furnished to the county clerk for placement on the ballot and no person filing a declaration and request for the position qualifies under subsection (3) of this section to have the county clerk count the write-in votes for that person, the county clerk may not count any write-in votes cast for any person for the position. If no nominee for a position qualifies under subsection (1) of this section to have the name of the nominee furnished to the county clerk for placement on the ballot and no person filing a declaration and request for the position qualifies under subsection (3) of this section to have the county clerk count write-in votes for the person, the local governing body of the district shall appoint a person to each position that was not filled at the election.

SECTION 25. ORS 568.545 is amended to read:

568.545. (1) [Notwithstanding ORS 568.470, when] **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 568.470] **section 17 of this 2009 Act**, the boards of the **former** districts [consolidated] shall hold a joint meeting. At the joint meeting, a majority of all the directors of all the **former** districts [affected constitute] **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)(c)] **(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.

SECTION 26. ORS 568.550 is amended to read:

568.550. (1) The **board of** directors of a soil and water conservation district [*have*] **has** the following powers [*subject to the written approval of the State Department of Agriculture*]:

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

(A) The character of soil erosion;

(B) The character of floodwater and sediment damage;

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

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

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

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

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

(A) Carrying on **within the district** soil erosion control and prevention operations [*within the district*], **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 568.993.**

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

(f) To borrow money and to mortgage personal property of the district as security [*therefor, provided that landowners are given an opportunity to be heard at a public hearing in the district, notice of which shall be given according to rules prescribed by the department.*] **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 [*they may deem*] **the board believes** necessary[,] for the protection of directors, officers and employees of the district against claims [*against them incurred by such directors, officers and employees*] **incurred** in the performance of [*their*] official duties. The premiums for such insurance 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 568.993.

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

(3) In order to avoid duplication of activities under subsection (1)(a) of this section, the department may call upon other state and federal agencies for assistance and cooperation in their fields in accordance with memoranda of understanding to be signed by all cooperating agencies.

(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 in-

volving administrative rules, regulations, goals, guidelines, plans or other public body actions that may affect one or more properties within the district.

SECTION 27. ORS 568.555 is amended to read:

568.555. 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 *[organization]* **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.

SECTION 28. ORS 568.560 is amended to read:

568.560. (1) The local governing body of the **soil and water conservation** district shall consist of *[not fewer than five nor more than]* **a board of either five or** seven directors *[who are]* elected or appointed as provided by law. To ensure proper representation of all the people in the district and to facilitate district functions, the State Department of Agriculture shall provide for the zoning of each district, and shall provide each time directors are elected or appointed for the proper and equitable representation for each zone.

(2) *[Not more than two directors may fill]* **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, *[not less than one nor more than]* two shall serve until January first following the first general election following their appointment, and *[not less than one nor more than two]* **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 elected as provided in ORS 568.540, one shall serve until January first following the first general election, and two shall serve from the date of the first annual election until January first following the second general election, as determined by them by lot at the first meeting of directors after creation or consolidation of the district.]

[(c)] **(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).

[(d)] **(c)** Of the directors first elected as provided in ORS *[568.565]* **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]* **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.

SECTION 29. ORS 568.565 is amended to read:

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

SECTION 30. ORS 568.590 is amended to read:

568.590. [*Fifteen days before*] **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 [posted in three**

public places in the district and mailed to each cooperator in the district or published for two successive weeks] **published** in a paper of general circulation in the area, setting forth the time and place of holding the meeting.

SECTION 31. ORS 568.610 is amended to read:

568.610. 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.**

SECTION 32. ORS 568.730 is amended to read:

568.730. The directors or [*state or federal officials*] **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 [*to determine whether land-use regulations adopted under ORS 568.630 to 568.690 are being observed.*] **carrying out the responsibilities with which the directors or representatives are vested by law. The directors or representatives shall take** due precaution [*shall be taken*] at all times to prevent injury to growing crops or livestock.

COUNTY EXTENSION AGENTS

SECTION 33. ORS 568.790 is amended to read:

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

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

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

REPEALS

SECTION 34. ORS 568.350, 568.360, 568.390, 568.430, 568.470, 568.480, 568.490, 568.515, 568.540, 568.630, 568.640, 568.650, 568.660, 568.670, 568.680, 568.690, 568.700, 568.710, 568.720, 568.740, 568.750, 568.760 and 568.770 are repealed.

APPLICABILITY

SECTION 35. (1) Sections 8, 9, 14, 15 and 17 to 20 of this 2009 Act, the amendments to ORS 568.300, 568.310, 568.320, 568.330, 568.340, 568.400, 568.410, 568.420, 568.450, 568.500 and 568.510 by sections 3 to 7, 10 to 12, 16, 21 and 22 of this 2009 Act and the repeal of ORS 568.350, 568.360, 568.390, 568.430, 568.470, 568.480 and 568.490 by section 34 of this 2009 Act apply to the formation, consolidation, dissolution, addition of land to or withdrawal of land

from a district pursuant to a petition filed or resolution passed on or after the effective date of this 2009 Act.

(2) The amendments to ORS 568.520, 568.530, 568.545, 568.560, 568.565 and 568.590 by sections 23 to 25 and 28 to 30 of this 2009 Act apply to directors elected or appointed on or after the effective date of this 2009 Act.

CAPTIONS

SECTION 36. The unit captions used in this 2009 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2009 Act.

Passed by House April 1, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 18, 2009

.....
President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2009

.....
Secretary of State