

Chapter 573

1961 REPLACEMENT PART

Control of Application of Agricultural Chemicals

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LICENSING; GENERAL PROVISIONS

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

(1) "Custom applicator" means any person who is engaged in applying pesticides for hire, or any person who applies pesticides as an employe of a person engaged in applying pesticides for hire for any purpose except the control or eradication of structural pests, or pests within a public or private place where food is served, prepared, or processed or where persons are regularly housed.

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

(3) "Herbicide" means any substance used to destroy, repel or mitigate any weed or to prevent or retard any undesirable plant growth.

(4) "Pesticide equipment" means any device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(5) "Insecticide" means any substance used to destroy, repel or mitigate any insect.

(6) "Landowner" means a person owning three acres or more within a proposed protected area; and in the case of multiple ownership of land, the owner is only a person whose interest is greater than an undivided one-half interest therein or who holds an authorization in writing from one or more of the other owners whose interests, when added to his interest, are greater than an undivided one-half interest in the land.

(7) "Pesticide" includes herbicides, pesticides and any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, man, animals, or be present in any environment thereof.

(8) "Protected area" means an area created as set forth in ORS 573.405 to 573.525 to regulate the application of herbicides or to regulate the application of insecticides, or both.

(9) "Restricted area" means an area created as set forth in ORS 573.535 to regulate the application of herbicides or to regulate the application of insecticides, or both.

(10) "Weed" means any plant which grows where not wanted.
[1953 c.496 §1; 1955 c.559 §1; 1957 c.557 §1; 1959 c.464 §1; 1961 c.642 §1]

573.010 [Repealed by 1953 c.496 §42]

573.015 Application of chapter limited.

(1) This chapter does not apply to:

(a) Manufacturers of materials engaged in research or experimental work on pesticides.

(b) Persons engaged in the application of any pollenicide or spray used to retard fruit drop.

(2) Except as otherwise provided in ORS 573.220 to 573.260, this chapter does not apply to:

(a) Agencies and instrumentalities of the United States or the State of Oregon and their officers, agents or employes acting within the scope of their authority in the conduct of research of pesticides.

(b) The State of Oregon, counties or cities, their agencies or instrumentalities and their officers, agents or employes engaged in the application of pesticides on highways or any other place except that such officers, agents or employes are required to take applicable courses of instruction conducted by the department.

(c) A farmer applying pesticides by use of equipment under his control, on land which he owns, leases or controls.

(d) A farmer applying insecticides by use of his own equipment for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold himself out as an insecticide applicator and if the insecticides that are applied are furnished by the owner of the land on which such insecticides are applied.

(3) Nothing in this chapter shall be construed to require a person helping or assisting in the application of pesticides through the performance of manual labor to obtain a license if the actual application of such pesticide is made by:

(a) A licensed custom applicator, or

(b) A person applying pesticides upon his owned or leased land.

[1953 c.496 §18; 1955 c.559 §2; 1957 c.101 §6; 1961 c.642 §2]

573.020 [Repealed by 1953 c.496 §42]

573.025 License necessary to engage in application of pesticides as a custom applicator. No person shall engage in the application of pesticides in this state as a custom

applicant without a license so to do from the department.

[1953 c.496 §2; 1955 c.559 §3; 1961 c.642 §3]

573.030 [Repealed by 1953 c.496 §42]

573.035 [1953 c.496 §3; repealed by 1955 c.559 §17]

573.040 [Repealed by 1953 c.496 §42]

573.045 [1953 c.496 §4; repealed by 1955 c.559 §17]

573.050 [Repealed by 1953 c.496 §42]

573.055 Written examination for applicants for custom applicator's license. Each applicant for a custom applicator's license shall be required to demonstrate satisfactorily by written examination given by the department an adequate knowledge of:

(1) The characteristics of all pesticides, and the effect of their application to particular crops.

(2) The practices of application of pesticides.

(3) The conditions and time of application of pesticides and the precautions to be taken in connection therewith.

(4) The applicable laws, rules and regulations relating to the application of pesticides in this state.

[1953 c.496 §5; 1955 c.559 §4; 1961 c.642 §4]

573.060 [Repealed by 1953 c.496 §42]

573.065 When and where examinations are to be held. Examinations for licenses shall be given by the department at least once annually in Salem, and at such other times and places as appears by the volume of applications to be necessary and practicable.

[1953 c.496 §8]

573.070 [Repealed by 1953 c.496 §42]

573.075 [1953 c.496 §7; repealed by 1955 c.559 §17]

573.080 [Repealed by 1953 c.496 §42]

573.085 Issuance of licenses; expiration date. The department shall issue licenses to the applicants it finds to be qualified. Each license shall be valid for the license year in which issued and shall expire at 12 midnight of December 31 of each year.

[1953 c.496 §9; 1959 c.13 §1]

573.090 [Repealed by 1953 c.496 §42]

573.095 Registration of equipment before using to apply pesticides; registration certificate; renewal; displaying on equipment.

(1) Pesticide equipment used by custom ap-

plicators shall be registered with the department.

(2) Applications for registration or for renewal of registration shall be made on forms provided by the department and shall contain such pertinent data and information with relation thereto as required by the department.

(3) All registrations under this section shall expire on December 31 of each year, but may be renewed, during the month of December, for the next year, by making application and paying the fee provided in subsection (2) of ORS 573.105.

(4) The registration certificate may be in the form of a license plate or tag, which shall be attached to and prominently displayed on the pesticide equipment.

(5) The registration required by this section is in addition to any other registration required by law to operate pesticide equipment in this state.

[1953 c.496 §11; 1955 c.559 §5; 1961 c.642 §5]

573.100 [Repealed by 1953 c.496 §42]

573.105 License and registration fees.

(1) The fee for each license mentioned in ORS 573.025 is \$10. Payment of the license fee shall accompany each application for a license or, if the license has been suspended, each application for reinstatement thereof.

(2) The fee for the registration of each piece of pesticide equipment under ORS 573.095 is \$2. Payment of the registration fee shall accompany each application for registration.

(3) In the event any application for issuance or reinstatement of a license is not granted, no refund of the fee shall be made.

[1953 c.496 §12; 1955 c.559 §6; 1961 c.642 §6]

573.110 [Repealed by 1953 c.496 §42]

573.115 Refusal, suspension or revocation of licenses. (1) The department may in accordance with the procedure provided in ORS chapter 183 suspend or revoke any license if it finds that the licensee has made any application of pesticides in a faulty or negligent manner, or has violated any provision of this chapter or regulation promulgated thereunder.

(2) The department may reinstate suspended licenses upon such terms and conditions as the department may by regulation provide.

[1953 c.496 §10; 1955 c.559 §7; 1961 c.425 §4; 1961 c.642 §7]

573.120 [Repealed by 1953 c.496 §42]

573.125 [1953 c.496 §17; repealed by 1955 c.559 §8 (ORS 573.147 to 573.157 enacted in lieu of ORS 573.125)]

573.130 [Repealed by 1953 c.496 §42]

573.135 Prohibitions regarding application of pesticides. (1) No person shall hire any other person as a custom applicator of pesticides unless the latter is licensed as such by the department.

(2) No person shall make application of insecticides or herbicides, by aircraft or otherwise, within a protected or restricted area, without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made.

(3) No person shall make application of insecticides or herbicides, by aircraft or otherwise, within a protected or restricted area, contrary to the conditions or terms of the permit issued authorizing the application of such herbicides within the protected or restricted areas.

(4) No custom applicator shall employ any person to apply pesticides unless the latter is licensed as a custom applicator by the department.

[1953 c.496 §13; 1955 c.559 §14; 1961 c.642 §8]

573.140 [Repealed by 1953 c.496 §42]

573.145 [1953 c.496 §16; 1955 c.559 §15; renumbered 573.210]

573.147 Proof of financial responsibility required of negligent custom applicator. Whenever judgment is entered against a custom applicator for damages arising from the negligent application of pesticides to any lands other than those to which pesticides are to be applied, the custom applicator forthwith shall submit to the department proof of his financial responsibility to pay the judgment as provided in ORS 573.149.

[1955 c.559 §9 (enacted in lieu of ORS 573.125); 1961 c.642 §9]

573.149 Proof of financial responsibility, how established. Financial responsibility under ORS 573.147 may be established by proof to the satisfaction of the department that the custom applicator has:

(1) A liability insurance policy from an insurance company qualified and authorized to do business in this state which insures the custom applicator against loss arising from the judgment for which financial responsibility must be proven in the amount of at least \$25,000; or

(2) A surety bond from a surety company qualified and authorized to do business

in this state in favor of the person or persons holding the judgment for which financial responsibility must be proven in the amount of the judgment or of \$25,000, whichever is lesser; or

(3) A certificate of deposit from the State Treasurer as provided in ORS 573.152. [1955 c.559 §10 (enacted in lieu of ORS 573.125)]

573.150 [Repealed by 1953 c.496 §42]

573.152 Certificate of deposit; requirements for obtaining; handling of deposit by State Treasurer. (1) Where proof of financial responsibility is made by a certificate of deposit from the State Treasurer, the custom applicator shall furnish the department with a certificate of the State Treasurer that the custom applicator has deposited with the State Treasurer cash in the amount of the judgment or of \$25,000, whichever is lesser, or securities such as may legally be purchased by savings banks or trust funds of a market value equal to the amount of the judgment or of \$25,000, whichever is lesser.

(2) The deposit of money or securities shall be held by the State Treasurer to satisfy the judgment for which financial responsibility must be proven.

(3) Moneys or securities so deposited shall not be subject to any attachment or execution other than an execution on such judgment.

(4) The deposit, or any remaining balance thereof, shall be returned to the custom applicator when the judgment, or \$25,000 of such judgment if the judgment is in excess of \$25,000, has been satisfied or has been set aside.

[1955 c.559 §11 (enacted in lieu of ORS 573.125)]

573.154 Furnishing of financial responsibility when custom applicator was employee of another custom applicator. Where judgment is entered against a custom applicator who was, at the time the cause of action arose, an employee of another custom applicator and against the employer, financial responsibility under ORS 573.147, 573.149 and 573.152 need be furnished only by the employer.

[1955 c.559 §12 (enacted in lieu of ORS 573.125)]

573.155 [1953 c.496 §14; renumbered 573.163]

573.157 Custom applicator required to furnish financial responsibility not to engage in business until certain conditions are met. From the time the judgment is entered, a

custom applicator who is required to furnish proof of financial responsibility under ORS 573.147, 573.149, 573.152 and 573.154 shall not apply pesticides or engage in the business of applying pesticides until:

(1) Such financial responsibility has been furnished; or

(2) The judgment for which financial responsibility must be proved has been paid or satisfied; or

(3) The judgment has been set aside.

[1955 c.559 §13 (enacted in lieu of ORS 573.125); 1961 c.642 §10]

573.160 [Repealed by 1953 c.496 §42]

573.163 Publication of manual on pesticide application by department. The department may prepare a manual containing such information as may be helpful to persons engaged in custom application of pesticides or in the application of any materials by aircraft. The department may charge for copies of the manual an amount necessary to defray the costs of publication.

[Formerly 573.155; 1961 c.642 §11]

573.165 Course of instruction in the application of pesticides conducted by department; examination of applicants for license. The department shall, as often and at such time and place as it determines necessary, conduct courses of instruction in the application of pesticides. County agents of any county may, on behalf of the department, conduct examinations necessary for an applicant to obtain a license.

[1953 c.496 §6; 1955 c.559 §16; 1961 c.642 §12]

573.170 [Repealed by 1953 c.496 §42]

573.175 Disposition of moneys received by department as fees. All fees provided for under this chapter to be paid to the department shall be paid into the State Treasury and shall be placed by the State Treasurer to the credit of the Department of Agriculture Account and, notwithstanding the provisions of ORS 291.238, hereby is continuously appropriated and shall be used only in the administration of this chapter; provided that from the moneys paid into the State Treasury there shall be transferred to the General Fund, in the same manner, under the same terms and conditions, and for the same purposes as prescribed in ORS 291.368 to 291.372, the same percentage as is transferred under those sections from the gross receipts of the agencies named in ORS 291.374.

[1953 c.496 §15]

573.180 [Repealed by 1953 c.496 §42]

573.190 [Repealed by 1953 c.496 §42]

573.200 [Repealed by 1953 c.496 §42]

573.210 Report of loss to be filed before bringing action arising out of pesticide application. No action against a custom applicator, arising out of the use or application of any pesticide, shall be commenced unless the claimant has filed a report of the loss with the department, and mailed or personally delivered a true copy of such report of loss to the custom applicator allegedly responsible and a true copy of such report to the person for whom such work was done, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested. [Formerly 573.145; 1961 c.642 §13]

573.220 Report where state agency, county or municipality causes loss. Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

[1957 c.101 §2; 1961 c.642 §14]

573.230 Department to investigate report of loss and determine extent and nature of damage; department as mediator. Upon receiving a report of loss as provided by ORS 573.210 or 573.220:

(1) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(2) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

[1957 c.101 §3; 1961 c.642 §15]

573.240 Investigation and determination of extent and nature of damage by department upon request. Upon receiving a request therefor from any person, other than a person who may file a report of loss as provided by ORS 573.210 or 573.220, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person or any state agency, county or municipality, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

[1957 c.101 §4; 1961 c 642 §16]

573.250 Cooperation in carrying out ORS 573.230 and 573.240. In carrying out the provisions of ORS 573.230 and 573.240, the department may cooperate with and request the assistance of employes of Oregon State University, governmental agencies or other persons experienced in and familiar with the problems.

[1957 c.101 §5]

573.260 No waiver of immunity against suit. Nothing in ORS 573.220 to 573.250 shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit which otherwise may exist.

[1957 c.101 §2]

Note: Chapter 528, Oregon Laws 1961, authorizes a research program to determine the effects of herbicides. Chapter 528 has not been compiled because it is temporary, but it is set out below for the convenience of the user:

Sec. 1. As used in this Act, unless the context requires otherwise:

(1) "Board" means the State Board of Higher Education.

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

(3) "Herbicide" means those herbicide chemicals

which are systemic in action and whose activity is primarily against or through that part of the plant which is above ground.

Sec. 2. The board, through Oregon State University, shall cause to be conducted a research program to determine what, if any, damage is caused to agricultural crops, products and property from the use of herbicides in this state.

Sec. 3. For the purpose of administering and enforcing the provisions of this Act, the board:

(1) Is authorized to purchase necessary equipment, materials and supplies.

(2) May receive moneys from any source and expend the same in accordance with the provisions and purposes of this Act.

(3) May, for the purpose of enforcing regulations promulgated by a herbicide district created under the provisions of ORS 573.405 to 573.585 or to help further the research program described by section 2 of this Act, make donations or payments to such district in an amount not to exceed \$3,000 during a 12-month period.

(4) May enter into agreements with counties or cities to use their personnel in carrying out the provisions of this Act and to make reimbursement therefor.

Sec. 4. (1) Each person shall pay to the department a fee of not more than one cent for each pound of herbicide parent acid equivalent, whose principal active constituent is derived from 2,4-D (2,4-Dichlorophenoxyacetic acid) or 2,4,5-T (2,4,5-Trichlorophenoxyacetic acid), sold by such person in Oregon during the period starting on July 1, 1961, and ending on July 1, 1963.

(2) Only one person shall be responsible for payment of the fee described in subsection (1) of this section. When more than one sale is involved in the distribution of a herbicide from the manufacturer to the consumer, then the person who sells to the retailer or ultimate dealer is responsible for reporting the poundage and paying the fees. However, a manufacturer, jobber, broker or wholesaler who sells herbicides directly to the consumer or user of such chemicals shall report and pay the poundage fees.

(3) Subject to the provisions of ORS chapter 183, the department, after public hearing and after consultation with the board, shall, in accordance with the needs of the research program described in section 2 of this Act, establish or change the fees to be paid as required by this section, but in no case shall the fee exceed the maximum provided in subsection (1) of this section.

(4) The term "retailer or ultimate dealer," as used in this section, means a person who sells herbicides directly to the consumer or user.

(5) The department shall deposit all fees paid to it under this Act in the General Fund in the State Treasury to the credit of the Department of Agriculture Account and shall, at least once each two months, transfer or pay to the board the fees so collected, less a reasonable amount necessary to cover the cost of administration and collection of such fees. Such fees are continuously appropriated to the department and to the board for the purposes provided by this section and are not subject at any time to ORS 291.368 to 291.372.

Sec. 5. (1) After the effective date of this Act [July 1, 1961], each person responsible for the payment of the fees required by section 4 of this Act shall file a report with the department on October 1, January 1, April 1 and July 1 of each year in which payment of the fees is required of the number of pounds of such herbicides sold during the three calendar months immediately preceding the date the report is due. The proper poundage fee shall be remitted with the report. The person required to file the report and pay the fee shall have a 15-day period of grace, immediately following the day the report and payment are due, to file the report and pay the fee.

(2) The report required by this section shall not be a public record; however, the board or the department may prepare and publish from its records such statistics and information as it deems advisable and which will not reveal any confidential information.

Sec. 6. (1) The department shall have the authority to audit or to cause an audit to be made during business hours of the books and records of any person required to report and make payment of fees as required by sections 4 and 5 of this Act, to determine whether proper records relating to the sale of herbicides are being kept and if proper reports and fees have been made.

(2) The department is authorized to file an action at law for the recovery of fees against any person who fails to pay such fees as required by the provisions of this Act.

Sec. 7. (1) The board shall deposit all fees paid to it under section 4 of this Act in the General Fund in the State Treasury to the credit of the State Board of Higher Education Current Expense Account. Notwithstanding any limitations which may by law be placed upon the disbursement of moneys from the State Board of Higher Education Current Expense Account, such fees are continuously appropriated to the board to be expended under its direction, acting through Oregon State University, for carrying out and enforcing the provisions of this Act, until December 31, 1963.

(2) Any moneys received under the provisions of this Act which are unexpended and unobligated on December 31, 1963, shall revert to the General Fund.

Sec. 8. Violation of section 5 of this Act, is punishable, upon conviction, by a fine of not more than \$200.

Sec. 9. This Act shall expire and stand repealed on December 31, 1963.

573.270 to 573.400 [Reserved for expansion]

PROTECTED AND RESTRICTED AREAS

573.402 New areas succeed to and replace abolished areas. (1) There hereby is created a protected area territorially identical respectively with each protected area existing on January 1, 1958, if such existing protected area was established pursuant to ORS 573.405 to 573.525 and would have been a validly established district but for the fact that its electorate was restricted to property owners within the area. The boundaries of each such existing protected area shall be deemed those in being on April 19, 1961, resulting from all its annexations, withdrawals and consolidations made in conformance with ORS 573.405 to 573.991 and other laws authorizing or purporting to authorize territorial changes.

(2) Each protected area hereby created shall bear the name of the formerly designated area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated area and shall function as authorized by ORS 573.405 to 573.991. Each protected area existing on January 1, 1958, is abolished. Members of the governing committee of an abolished protected area on

April 19, 1961, shall comprise the governing committee of the territorially identical protected area hereby created, until the end of their respective terms as provided by ORS 573.485.

[1961 c.273 §§1, 2]

573.405 Petition for organization of protected area. (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 protected area, may file a petition with the department asking that a protected area to regulate the application of herbicides or to regulate the application of insecticides, or both, be organized to function in the territory described in the petition. Such petition shall set forth:

(a) The proposed name of the area.

(b) That there is need in the interest of the general welfare for the organization of a protected area to function in the territory described in the petition.

(c) A generally accurate description of the territory proposed to be organized as a protected area.

(d) A request that the department define the boundaries for such area and that a referendum be held within the territory so defined on the question of the creation of a protected area.

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

[1953 c.496 §19; 1957 c.557 §2; 1959 c.464 §2]

573.410 [Repealed by 1953 c.496 §42]

573.415 Petition filing fee; advancing moneys to pay cost of proposed hearing and referendum. (1) All petitions for the creation of a protected area shall be accompanied by a filing fee of \$125.

(2) The department shall prepare a budget estimate, which shall include the cost of preparation of the estimate, the cost of the proposed hearing and the cost of the proposed referendum. The petitioners, upon receipt of the budget estimate, shall remit to the department the difference between the filing fee of \$125 and the total budget estimate. Should the petitioners fail to remit the difference, or for any other reason proceedings for the creation of the area be terminated, any unexpended balance of the \$125 filing fee shall be retained by the department. If the petition results, after the proper

proceedings, in the creation of a protected area, the balance of the fee remaining unexpended after defraying the cost of creation of the protected area shall be transferred into a general fund of such area and may be used with any other funds available for the administration of the area.
[1953 c.496 §20]

573.420 [Repealed by 1953 c.496 §42]

573.425 Hearing on organization of protected area; notice of hearing. (1) Within 60 days after such a petition has been filed with the department and upon payment of the total budget estimate required, the department shall cause at least 10 days' written notice to be given of the proposed hearing upon the question of the desirability and necessity of creating such an area, upon the question of the appropriate boundaries to be assigned to the area, upon the propriety of the petition and other proceedings taken under this chapter, and upon all other relevant questions. All legal voters within the limits of the territory described in the petition, and within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearing and to be heard.

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

(3) Notice of any hearing required by this chapter shall be given by publication in a newspaper published in the county in which the property affected is situated. If the property is situated in more than one county, such publication shall be made in a newspaper in the county wherein the greater portion of the property is situated. Such notice shall be published once each week for two consecutive and successive weeks and shall state the date and place of hearing, a description of the area sought to be affected and generally the purposes of the hearing.
[1953 c.496 §21; 1957 c.557 §3]

573.430 [Repealed by 1953 c.496 §42]

573.435 Determination by department regarding need for protected area. (1) After the hearing, if the department determines upon the facts presented and upon such

other relevant facts and information as is available, that there is need in the interest of the general welfare for a protected area to function in the territory considered at the hearing, it shall make and record such determination and define the boundaries of the area. In making the determination and in defining the boundaries, the department shall give due weight and consideration to such factors as crops, topography, climate and prevailing use of chemicals. The territory to be included within the boundaries shall be contiguous.

(2) If the department determines, after such hearing and after due consideration of the relevant facts, that there is no need for a protected area to function in the territory considered at the hearing, it shall make and record such determination, deny the petition and refund any unexpended balance of the sum paid by the petitioners, but not including the original filing fee.

(3) After one year has expired from the date of the denial of any petition, subsequent petitions covering the same or substantially the same territory may be filed, new hearings may be held and determinations may be made thereon.

[1953 c.496 §22]

573.440 [Repealed by 1953 c.496 §42]

573.445 Referendum upon organization of protected area after determination of need by department. (1) After the department has made and recorded the determination that there is need for the organization of an area and has defined the boundaries thereof, it shall consider the question of whether the operation of an area having the proposed boundaries and having the powers conferred by this chapter is administratively feasible. In order to facilitate the determination of this question, it is the duty of the department within a reasonable time after entry of the determination that there is need for an organization of the proposed area, to hold a referendum within the proposed area upon the proposition of the creation of the area, and to cause notice in substantially the same manner as notice is given relating to school district elections of such referendum to be given.

(2) The question shall be submitted by ballots upon which the words "For creation of a protected area within the limits of the land below described and lying in the county(ies) of _____ and _____"

and "Against creation of a protected area within the limits of the lands above described" are printed, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of such an area. The ballot shall set forth the boundaries of the proposed area as determined by the department.

(3) All legal voters within the boundaries of the territory as determined by the department are eligible to vote in the referendum. This same referendum may include the ballot to elect three members of the committee as provided for in ORS 573.475.

[1953 c.496 §23; 1957 c.557 §4]

573.450 [Repealed by 1953 c.496 §42]

573.455 Supervision of hearing and referendum by department; expenses; informalities do not invalidate. (1) The department shall pay, from the amounts paid to it under ORS 573.415, all the expenses resulting from giving the notices mentioned in ORS 573.425 to 573.445 and from conducting the hearings and referenda. It shall supervise the conduct of the hearings and referenda. It shall issue appropriate regulations governing the conduct of the hearings and referenda and providing for the registration of legal voters prior to the date of any referendum or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum.

(2) No informalities in the conduct of a referendum, or in any matters relating thereto, shall invalidate the referendum or the result thereof, if notice thereof was given substantially as provided in this chapter and if the referendum was fairly conducted.

[1953 c.496 §24; 1957 c.557 §5]

573.460 [Repealed by 1953 c.496 §42]

573.465 Declaration of creation of protected area; establishing area as a political subdivision of state. (1) The department shall declare an area created if the creation of the area was favored by a two-thirds majority of the votes cast.

(2) If the department determines that the operation of the proposed area within the defined boundaries is administratively feasible, it shall appoint two members to act, with the three elected members, as provided in ORS 573.485, as the local governing body

of the area. Such area shall be a governmental subdivision of this state and a public body corporate and politic upon fulfillment of the following requirements:

(a) The two appointed members 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 area. The application shall be accompanied by a map of a scale of at least one inch per mile, showing the location and boundaries of the area. The application also shall be accompanied by a certificate of the department that a petition was filed, notice issued, and hearing held; that the department did determine that there is need for a protected area to be created in the proposed territory and did define the boundaries thereof; and that notice was given and a referendum held on the question of the creation of such area, at which referendum the required two-thirds majority of the legal voters voted in favor of the creation of the area.

(b) The Secretary of State shall examine the application and certificate and shall record them in an appropriate book in his office, unless he finds that the name proposed for the area is identical with that of another area of this state or so nearly similar as to lead to confusion and uncertainty, in which case he shall certify such fact to the committee, which shall thereupon submit to the Secretary of State a new name not subject to such defect. Upon receipt of the new name, the Secretary of State shall record the application and certificate with the new name. The Secretary of State shall make and issue to the committee a certificate, under the seal of the state, of the organization of the area, and shall record the certificate with the application and the department's certificate. The boundaries of the area shall include the territory as determined by the department, but in no event shall they include any area included within the boundaries of another protected area organized under the provisions of this chapter.

[1953 c.496 §25; 1957 c.557 §6]

573.470 [Repealed by 1953 c.496 §42]

573.475 Nomination and election of three members of first governing committee of area. (1) Within 30 days after the hearing on creation of an area, or on consolidation of areas as provided in ORS 573.575, nominating petitions may be filed with the department to nominate candidates for committee

membership. The department shall have authority to extend the time within which nominating petitions may be filed.

(2) No nominating petition shall be accepted by the department unless it is subscribed by 25 or more legal voters, or by two-thirds of such voters if there are less than 25, within the boundaries of the area. Legal voters may sign the nominating petition of more than one candidate for committee membership.

(3) The names of all nominees on behalf of whom nominating petitions have been filed within the required time shall be printed, arranged in the alphabetical order of the surnames, upon the ballots for the referendum on creation of the proposed area or on proposed consolidation of areas, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the voter's preference. The three candidates who receive the largest number of the votes cast in the referendum shall be the elected members for the area.

(4) At the first meeting of the committee after the creation of the area or consolidation of the areas, the three members first elected shall draw lots to determine their respective terms of office, one for one year, one for two years and one for three years. [1953 c.496 §26; 1957 c.557 §7]

573.480 [Repealed by 1953 c.496 §42]

573.485 Appointment of two members of committee by department; qualifications; terms. The department shall appoint two additional members to the committee whose appointments shall be approved by the three elected members. The appointees shall have greater than average knowledge of the herbicides or insecticides being used and of the prevailing local conditions. One shall be a resident of the protected area and, if a restricted area is contemplated, the other a resident of the area that may later be proposed as a restricted area. If no restricted area is contemplated, both appointees shall be residents of the protected area. One shall be appointed for a term of one year and the other for a term of two years, from the date of appointment. Thereafter as the terms of the appointive members expire, the department shall appoint their successors for two years.

[1953 c.496 §27; 1959 c.464 §3]

573.490 [Repealed by 1953 c.496 §42]

573.495 Committee organization; terms; vacancies; quorum; compensation; dealing in herbicides or insecticides prohibited. (1) The committee shall designate a chairman, secretary and treasurer and may, from time to time, change such designation.

(2) Except as provided in ORS 573.475 and 573.485, the term of office of each committee member shall be three years.

(3) A member shall hold office until his successor has been elected or appointed and has qualified. Any vacancy occurring in the office of elected members shall be filled by appointment by the remaining members until the next regular election, when a successor shall be elected to serve the unexpired term. Any vacancy in the office of appointed members shall be filled by appointment of a successor for the unexpired term by the committee.

(4) A majority of the committee constitutes a quorum and the concurrence of a majority in any matter within its duties is required for its determination. A committee member shall receive no compensation for his services, but he is entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

(5) The committee shall not engage in the business of purchasing or selling herbicides or insecticides.

[1953 c.496 §28; 1959 c.464 §4]

573.500 [Repealed by 1953 c.496 §42]

573.505 Annual meeting; notice; selection of candidates to fill committee vacancies.

(1) Each year after the creation of the first committee, at a time fixed by resolution of the committee, the committee, by giving notice, shall call an annual meeting of the legal voters in the area and present an annual report and audit.

(2) Fifteen days before the annual meeting and election, the committee shall cause notices to be posted in three public places in the area and published for two successive weeks in a paper of general circulation in the area, setting forth the time and place of holding the election. Candidates to fill pending vacancies on the committee shall be nominated and the election shall be conducted as nearly as practicable in accordance with the general election laws of the state; provided that no particular form of ballot is required, and the nomination of members may be made by petition signed by at least 10 legal voters in the area, or, in any area

having less than 10 legal voters, by a majority of them. The secretary of the committee shall cause the names of the persons nominated to be placed on the ballot as candidates and shall provide a blank line thereon wherein may be written in the name of any person for whom the voter desires to vote. The persons receiving the highest number of votes shall be elected.

[1953 c.496 §29; 1957 c.557 §8]

573.510 [Repealed by 1953 c.496 §42]

573.515 Committee to provide for bonds, records and annual audit. The committee shall provide:

(1) For the execution of surety bonds for all officers who are entrusted with funds or property.

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

(3) For an annual audit of the accounts of receipts and disbursements.

[1953 c.496 §30]

573.520 [Repealed by 1953 c.496 §42]

573.525 Committee may hire assistant. The committee may hire, if necessary, a person of responsibility and integrity to receive applications for permits, to assist applicators of herbicides or insecticides and to see that they fulfill the requirements and conditions of permits issued by the protected area control committee in the protected area and in the restricted area.

[1953 c.496 §31; 1959 c.464 §5]

573.530 [Repealed by 1953 c.496 §42]

573.535 Procedure for creation of restricted area. After a protected area has been organized, as evidenced by the certificate of the Secretary of State, and all the members of the committee of such area have taken office, a restricted area may be created as follows:

(1) The committee of the protected area shall cause a notice to be published of proposed hearings on the creation of a restricted area. The notice shall set forth a generally accurate description of the territory proposed to be organized as a restricted area. The restricted area outer boundary shall not be in excess of 10 airline miles beyond the outer boundaries of the protected area for herbicides and shall not be in excess of one airline mile beyond the outer boundaries of the protected area for insecticides. In the

event of a dispute, the department may appoint a resident of the protected area and a resident of the restricted area. The two appointees shall select a third member to complete a temporary arbitration committee of three which shall arbitrate disputes in order to determine the outer boundary of the restricted area. The notice shall also set forth the general purpose and nature of any regulations which are proposed to be applicable within a restricted area. Notice shall be published in a newspaper of general circulation within the proposed area at least 10 days prior to the date set for the hearing. At such hearing all persons having an interest in, or affected by, the creation of the restricted area shall have an opportunity to appear and be heard concerning its creation. The committee of the protected area shall call such witnesses as may be necessary to testify concerning the desirability and necessity for the creation of the restricted area, or any part of the restricted area.

(2) The committee shall make findings of fact as to the desirability and necessity of creating a restricted area and, in accordance with such findings, publish notice of the creation of the restricted area and of such regulations as may apply to the application of herbicides or insecticides, by aircraft or otherwise, within the protected and restricted area.

[1953 c.496 §32; 1959 c.464 §6]

573.540 [Repealed by 1953 c.496 §42]

573.545 Regulations governing application of herbicides and insecticides. (1) After the creation of a protected area and a restricted area, or if no restricted area is created, after the creation of a protected area, the committee of the protected area, in consultation with the department, shall issue regulations governing the application of herbicides or insecticides, by aircraft or otherwise.

(2) The regulations promulgated by the committee shall relate to the time, place, manner and method of the application of herbicides or insecticides and shall encompass any matters which are reasonably necessary to prevent damage or injury to susceptible crops or insects within a protected or restricted area. Among the factors which the committee shall consider in the formulation of regulations are:

- (a) Topography.
- (b) Climate.
- (c) Temperature.

- (d) Humidity.
- (e) Prevailing winds.
- (f) Characteristics of herbicide or insecticide.
- (g) Location of susceptible crops.
- (h) Location and characteristics of susceptible insects.

(3) A copy of such regulations shall be filed in the office of the county clerk of each county in which a part of such areas is situated. No regulation shall have any force and effect against any person affected thereby until such regulations have been approved by the department and have been so filed.

[1953 c.496 §33; 1959 c.464 §7]

573.550 [Repealed by 1953 c.496 §42]

573.551 Petition procedure to grant or take away power to regulate application of insecticides or herbicides. Petitions to include within or exclude from the powers of an existing protected area the power to regulate the application of insecticides or the application of herbicides may be filed with the department. The procedure provided by this chapter for organizing a protected area shall be followed in the case of such petitions.

[1959 c.464 §9]

573.555 Committee may levy tax. (1) The committee of a protected area may levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area incurred in the administration of this chapter.

(2) The levy in any one year shall not exceed one mill per dollar of assessed valuation. The levy shall be made on all property within the boundaries of the protected area that by law is taxable for state or county purposes. In the event that any area lies within two or more counties, the levy shall be prorated between the respective counties on the basis of the latest assessed valuation of the area raised to the true cash value. The taxes shall be levied and collected at the time and in the manner provided for the levy and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area.

[1953 c.496 §34; 1957 c.557 §9]

573.560 [Repealed by 1953 c.496 §42]

573.565 Procedure for inclusion of additional territory or withdrawal of territory. Petitions for including additional territory

within an existing protected area or for withdrawing territory from a protected area may be filed with the department, and the proceedings provided for by this chapter in the case of petitions to organize a protected area shall be observed in the case of such petitions. The department shall prescribe the form for the petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a protected area. Where the total number of landowners in the area proposed for inclusion or withdrawal is less than 100, the petition may be filed when signed by two-thirds of the landowners and in such case no referendum need be held. In referendum upon petitions for such inclusion or withdrawal, all legal voters lying within the area proposed to be included or withdrawn are eligible to vote.

[1953 c.496 §35; 1957 c.557 §10]

573.570 [Repealed by 1953 c.496 §42]

573.575 Procedure for consolidating protected areas. (1) Petitions for consolidating two or more protected areas may be filed with the department by any 25 or more landowners within the areas affected. In such event, all of the proceedings provided for by this chapter in the case of petitions to organize a protected area shall be followed in so far as they are applicable. The department shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a protected area.

(2) In the referendum for consolidation, all legal voters within the affected areas shall be eligible to vote, and unless the votes cast in favor of the proposal constitute a two-thirds majority of those voting, the areas shall not be consolidated.

(3) In case of consolidation of areas, the corporate existence and terms of office of the officers of the old areas shall expire upon issuance and recording by the Secretary of State of a certificate of the organization of the consolidated area. Upon consolidation, all of the rights and liabilities of the several consolidated areas shall be vested in, and assumed by, the consolidated area.

[1953 c.496 §36; 1957 c.557 §11]

573.580 [Repealed by 1953 c.496 §42]

573.585 Area deemed validly organized upon proof of issuance of certificate of organization. In any suit, action or proceeding involving the validity or enforcement of any proceeding or action of a protected area, the

area shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the certificate by the Secretary of State as provided in ORS 573.465. A copy of such certificate of the Secretary of State shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

[1953 c.496 §37]

573.590 [Repealed by 1953 c.496 §42]

573.595 to 573.985 [Reserved for expansion]

PENALTIES

573.990 [Repealed by 1953 c.496 §42]

573.991 Penalties. Violation of any provision of this chapter or of any regulation promulgated under this chapter is punishable, upon conviction, by a fine of not less than \$25 nor more than \$500, or by imprisonment in the county jail for a period not exceeding six months, or both.

[1953 c.496 §39]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on December 1, 1961.

Sam R. Haley
Legislative Counsel

CHAPTERS 574 AND 575

[Reserved for expansion]