

Chapter 558

1993 EDITION

Weather Modification

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WATER LAWS

LICENSING

558.010 Definitions for ORS 558.010 to 558.140. As used in ORS 558.010 to 558.140:

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

(2) "Person" includes any public or private corporation. [1953 c.654 §1; 1955 c.61 §4]

558.020 Purpose of ORS 558.010 to 558.140. The purpose of ORS 558.010 to 558.140 is to promote the public health, safety and welfare by providing for the licensing, regulation and control of interference by artificial means with the natural precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere. [1953 c.654 §2]

558.030 Artificial weather modification prohibited without license. No person, without securing a license from the department, shall cause or attempt to cause by artificial means condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere, or shall prevent or attempt to prevent by artificial means the natural condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere. [1953 c.654 §3]

558.040 Application for license; fee. (1) Any person desiring to do any of the acts specified in ORS 558.030 shall file with the department an application for a license on a form to be supplied by the department for such purpose setting forth all of the following:

(a) The name and post-office address of the applicant.

(b) The education, experience and qualifications of the applicant, or if the applicant is not an individual, the education, experience and qualifications of the persons who will be in control and in charge of the operation of the applicant.

(c) The name and post-office address of the person on whose behalf the weather modification operation is to be conducted if other than the applicant.

(d) The nature and object of the weather modification operation which applicant proposes to conduct, including a general description of such operation and the manner in which the production, management or conservation of water or energy resources or agricultural or forest crops could be benefited by the operation.

(e) The method and type of equipment and the type and composition of the materials that the applicant proposes to use.

(f) Such other pertinent information as the department may require.

(2) Each application shall be accompanied by a filing fee in the sum of \$100, and proof of financial responsibility as required by ORS 558.050. [1953 c.654 §4; 1975 c.420 §1]

558.050 Applicant to file proof of financial responsibility. (1) No license shall be issued to any person until the person has filed with the department proof of ability to respond in damages for liability on account of accidents arising out of the weather modification operations to be conducted by the person in the amount of \$100,000 because of bodily injury to or death of one person resulting from any one accident, and, subject to said limit for one person, in the amount of \$300,000 because of bodily injury to or death of two or more persons resulting from any one accident, and in the amount of \$300,000 because of injury to or destruction of property of others resulting from any one accident.

(2) Proof of financial responsibility may be given by filing with the department a certificate of insurance or a bond, an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or a certificate of deposit of money in the same manner and with the same effect as provided by ORS 806.080 to 806.120 and 806.270. [1953 c.654 §13; 1975 c.420 §1a; 1983 c.338 §961; 1991 c.331 §82]

558.055 Hearing on application for license. Upon receipt of an application for a license, the department shall fix the time and place for a public hearing on the application. Such hearing shall be held in the county seat of any county in which the proposed operation will be conducted. The department shall notify the applicant of the time and place of hearing in sufficient time for the applicant to comply with the notice requirements of ORS 558.080 to 558.100. [1975 c.420 §3]

558.060 Issuance of license; conditions; licensee's authority; use of improper materials cause for suspension or revocation; renewal. (1) The department shall act within 30 days, but shall only issue the license upon finding that:

(a) The applicant is qualified to undertake the weather modification operation proposed in the application;

(b) The production, management or conservation of water or energy resources or agricultural or forest crops could be benefited by the proposed weather modification operation; and

(c) The proposed weather modification operation would not be injurious to the public health or safety.

(2) Each such license shall entitle the licensee to conduct the operations described in the license for one year from the date the license is issued unless the license is sooner

revoked or suspended. The conducting of any weather modification operation or the use of any equipment or materials other than those described in the license shall be cause for revocation or suspension of the license.

(3) The license may be renewed annually by payment of a filing fee in the sum of \$50. If the application for renewal proposes any change in the previously licensed operation, or if the department determines that the public health or safety may be adversely affected by continuation of the operation, the department shall conduct a hearing on the application for renewal. The provisions of ORS 558.055 and 558.080 to 558.100 shall apply to such hearing. [1953 c.654 §5; 1975 c.420 §4]

558.065 [1965 c.336 §2; repealed by 1967 c.225 §1 (558.066 enacted in lieu of 558.065)]

558.066 Governmental entities conducting weather modification at airport exempted. The State of Oregon or its agencies, counties, cities, public corporations or political subdivisions thereof or any person engaged by any of them for the purpose of removing or dispersing fog, or carrying out or performing any other weather modification at an airport owned or operated by the State of Oregon or its agencies, counties, cities, public corporations or political subdivisions thereof, are exempt from the provisions of ORS 558.010 to 558.140 in respect to such operations at such airport only. [1967 c.225 §2 (enacted in lieu of 558.065)]

558.070 [1953 c.654 §6; repealed by 1975 c.420 §12]

558.080 Contents of hearing notice. The notice of hearing shall set forth all of the following:

(1) The name and post-office address of the applicant.

(2) The name and post-office address of the person on whose behalf the weather modification operation is to be conducted if other than the applicant.

(3) The nature and object of the weather modification operation which applicant proposes to conduct, including a general description of such operation.

(4) The method and type of equipment and the type and composition of the materials that the applicant proposes to use.

(5) The area in which and the approximate time during which the operation will be conducted.

(6) The area which will be affected by the operation as near as the same may be determined in advance.

(7) The time and place of the public hearing. [1953 c.654 §7; 1975 c.420 §5]

558.090 Publication of notice of hearing. The applicant shall cause the notice of

hearing to be published at least once a week for two consecutive weeks in a newspaper having a general circulation and published within the county wherein the proposed operation is to be conducted and in which the affected area is located, or if the proposed operation is to be conducted in more than one county or if the affected area is located in more than one county or is located in a county other than the one in which the proposed operation is to be conducted, then such notice shall be published in like manner in a newspaper having a general circulation and published within each of such counties. In case there is no newspaper published within the appropriate county, publication shall be made in a newspaper having a general circulation within the county. The date of last publication shall be not less than three nor more than 10 days prior to the date set for hearing. [1953 c.654 §8; 1975 c.420 §6]

558.100 Proof of publication. Proof of publication shall be filed by the applicant with the department at the time of the hearing. Proof of publication shall be by copy of the notice as published, attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the notice. [1953 c.654 §9; 1975 c.420 §7]

558.110 Records and reports of operations; public examination. (1) Each licensee shall keep and maintain a record of all operations conducted by the licensee pursuant to the license showing the method employed, the type of equipment, the type and composition of the materials used, the times and places of operation of the equipment, the name and post-office address of each person participating or assisting in the operation other than the licensee, the estimated precipitation for each licensed project, defining the gain or loss occurring from the operations, together with supporting data therefor, and such other information as may be required by the department, and shall report the same to the department at such times as it may require.

(2) The records of the department and the reports of all licensees shall be available for public examination. [1953 c.654 §10; 1975 c.420 §8]

558.120 Emergency licenses. Notwithstanding any provision of ORS 558.010 to 558.140 to the contrary, the department may grant a license permitting a weather modification operation without compliance by the licensee with the provisions of ORS 558.055 and 558.080 to 558.100, if the operation appears to the department to be necessary or desirable in aid of the extinguishment of fires, dispersal of fog, or other similar emergency. [1953 c.654 §11; 1975 c.420 §9]

558.130 [1953 c.654 §12; repealed by 1975 c.420 §12]

558.135 Revocation, suspension, refusal to issue or renew license; procedure. (1) Where the department proposes to refuse to issue or renew a license, or proposes to revoke or suspend a license, opportunity for hearing shall be accorded as provided in ORS 183.310 to 183.550.

(2) Promulgation of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be in accordance with ORS 183.310 to 183.550. [1975 c.420 §11]

558.140 Appropriation for administration and enforcement. All moneys received by the department under ORS 558.010 to 558.140, in addition to any other appropriation of funds available for the administration of ORS 558.010 to 558.140, hereby are continuously appropriated to the department for the purpose of defraying the costs and expenses incurred in the administration and enforcement of ORS 558.010 to 558.140. [1955 c.61 §3]

WEATHER MODIFICATION DISTRICTS (General Provisions)

558.200 "County court" defined. As used in ORS 558.200 to 558.440, "county court" includes board of county commissioners. [1969 c.698 §1]

558.203 Election laws applicable. (1) ORS chapter 255 governs the following:

(a) The nomination and election of commissioners.

(b) The conduct of district elections.

(2) The electors of a district may exercise the powers of the initiative and referendum regarding a district measure, in accordance with ORS 255.135 to 255.205. [1983 c.350 §314]

558.205 [1969 c.698 §35; 1975 c.647 §47; repealed by 1983 c.350 §331a]

(Incorporation)

558.210 Incorporation for weather modification; limitations as to area. Any designated area within a county bordering the Columbia River and having a population of less than 21,000, according to the latest federal decennial census, or within two or more of such counties, may be incorporated as a weather modification district for the purpose of:

(1) Causing or attempting to cause by artificial means condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere; or

(2) Preventing or attempting to prevent by artificial means the natural condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere. [1969 c.698 §3]

558.215 [1969 c.698 §4; repealed by 1971 c.727 §203]

558.220 [1969 c.698 §17; repealed by 1971 c.727 §203]

558.225 [1969 c.698 §5; repealed by 1971 c.727 §203]

558.230 [1969 c.698 §6a; repealed by 1971 c.727 §203]

558.235 Forestlands not benefited property; not included in district except upon petition. Forestlands within a forest protection district as defined in ORS chapter 477, shall not be considered benefited property and shall not be included in a weather modification district unless the owner of the forestlands petitions the county court having jurisdiction of the formation proceedings to have the lands of the owner included. [1969 c.698 §6; 1971 c.727 §173]

558.240 [1969 c.698 §20; repealed by 1971 c.727 §203]

558.245 [1969 c.698 §7; 1971 c.727 §175; repealed by 1983 c.350 §331a]

558.250 [1969 c.698 §8; repealed by 1971 c.647 §149]

558.255 [1969 c.698 §9; 1971 c.647 §125; repealed by 1983 c.350 §331a]

558.260 [1969 c.698 §§10,11,12,16; repealed by 1971 c.647 §149]

558.265 [1969 c.698 §13; repealed by 1971 c.727 §203]

558.270 [1969 c.698 §14; repealed by 1983 c.350 §331a]

558.275 [1969 c.698 §15; repealed by 1971 c.727 §203]

(Powers of District)

558.300 General powers of district. After the date of formation, a district shall make all contracts, hold and receive and dispose of real and personal property within and without its described boundaries and do all other acts and things which may be requisite, necessary or convenient in carrying out the objects of the district or exercising the powers conferred upon it as in ORS 558.200 to 558.440 set out and expressed, sue and be sued, plead and be impleaded in all actions and suits or other proceedings brought by or against it. [1969 c.698 §18; 1971 c.727 §177]

558.310 Limitation on right to own or operate equipment. No weather modification district shall own or operate airplanes, chemicals or other equipment or appliances for weather modification activities, but must when conducting weather modification activities hire a person licensed under the provisions of ORS 558.010 to 558.140. [1969 c.698 §60]

558.315 Rules concerning district property. Any weather modification district may adopt and promulgate rules and regulations concerning the use of the property of the district. [1969 c.698 §27]

558.320 Duty to carry liability insurance. A weather modification district shall obtain not later than the 60th day after the date of the election forming such district and before beginning any weather modification activities liability insurance coverage of not

less than \$500,000 bodily injury and \$500,000 property damage, to reimburse persons for damages arising from weather modification activities. [1969 c.698 §61]

558.325 Cooperative agreements between districts. Weather modification districts organized under ORS 558.200 to 558.440 may enter into cooperative agreements with each other providing for the joint use or control of facilities for weather modification. [1969 c.698 §28]

558.330 [1969 c.698 §40; repealed by 1971 c.727 §203]

558.340 Tax assessment, levy and collection. (1) The district may assess, levy and collect taxes each year not to exceed one-fourth of one percent (.0025) of the real market value of all taxable property within the limits of the district, computed in accordance with ORS 308.207. The proceeds of the tax shall be applied by it in carrying out the objects and purposes of ORS 558.210, 558.235, 558.300 and 558.345 and for the purpose of financing the employees' retirement system.

(2) Any such taxes needed shall be levied in each year and returned to the county officer whose duty it is to extend the tax roll by the time required by law for city taxes to be levied and returned.

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

(4) Property shall be subject to sale for nonpayment of taxes levied by the district in like manner and with like effect as in the case of county and state taxes. [1969 c.698 §26; 1971 c.727 §178; 1991 c.459 §433]

558.345 Disposal of taxes levied when organization declared invalid. When an attempt has been made to organize a district under the provisions of ORS 558.200 to 558.440 and subsequently by a decree of a court of competent jurisdiction it has been declared that the organization is invalid, but prior to such decree the invalid organization has levied taxes, the funds derived from the levy shall be disposed of as follows:

(1) If the area embraced in the invalid organization is embraced in a subsequently created organization composed of unincorporated or incorporated territory, or combinations thereof, for the purpose of weather modification, the custodian of the taxes collected for the invalid organization shall turn them over to the subsequent organization to be used only for the purpose of weather modification.

(2) If the subsequent organization does not embrace all territory embraced in the invalid organization, such taxes as have been collected from the levy upon property in areas not embraced in the subsequent organization shall be refunded to the payers thereof by the custodian of the taxes before the balance is turned over to the subsequent organization.

(3) If no such subsequent organization is created for weather modification, within a period of two years after the entry of the decree of invalidation, the taxes collected shall be refunded by the custodian of them to the taxpayers who paid them. [1969 c.698 §19]

558.350 Employees' retirement system authorized. (1) A weather modification district organized under ORS 558.200 to 558.440 may establish an employees' retirement system. The commissioners may enter into agreements necessary to establish the system and carry out the plan and may agree to modifications of such agreements from time to time.

(2) The retirement plan may provide for retirement benefits measured on the basis of services rendered or to be rendered by an employee, either before or after the date on which such employee first becomes a member of the retirement plan. The retirement plan may provide for a minimum of years of service and a minimum and maximum age of retirement for the employee. [1969 c.698 §56]

558.355 District to budget for retirement system. The district may budget and provide for payment into the fund of the retirement plan an amount sufficient:

(1) To provide on an actuarial reserve basis the amortized level premium cost of the retirement benefits which, under the provision of the retirement system, are to be provided by the district to its employees who attain the retirement age or retire in accordance with the terms of the retirement plan.

(2) To meet the actuarially computed costs of retirement benefits measured on the basis of services rendered or to be rendered by an employee before or after the date on which such employee becomes a member of the retirement plan. [1969 c.698 §57]

558.360 Employee contribution. The district may collect, as a contribution from any employee, that percentage of the salary received by the employee which is necessary to fund on an actuarial reserve basis the cost of retirement benefits which the employee is required to provide pursuant to the provisions of a retirement plan. [1969 c.698 §58]

558.365 Limitation on membership. Nothing in ORS 558.200 to 558.440 authorizes the district to budget, provide for payments

or collect contributions to fund retirement benefits for an individual who is not in the employment of the district at the time of the creation of a membership status under a retirement plan. [1969 c.698 §59]

(Board of Commissioners)

558.400 Board of commissioners; powers; qualifications and terms of commissioners. (1) The power and authority given to districts organized under ORS 558.200 to 558.440 except as therein otherwise provided is vested in and shall be exercised by a board of commissioners of the number named in the petition for formation, but not more than five. A commissioner shall be an elector registered in the district. Except as provided in subsection (2) of this section, commissioners shall serve for four-year terms.

(2) Within 10 days after issuance of the formation order, the number of commissioners named in the petition for formation who received the highest vote at the election for formation shall meet and organize, first taking and subscribing an oath of office to the effect that they will support the Constitutions of the United States and of this state and the laws thereof, and will discharge faithfully the duties of commissioner to the best of their ability. They shall determine by lot the length of term each shall hold office as follows:

(a) If there is an odd number of commissioners, a majority shall have a term expiring June 30 following the first regular district election after formation of the district and a minority shall have a term expiring June 30 following the second regular district election.

(b) If there is an even number of commissioners, the commissioners shall be divided into two equal groups as to terms. One group shall have a term expiring June 30 following the first regular district election after the formation election and the other group shall have a term expiring June 30 following the second regular district election.

(3) The board of commissioners shall fill any vacancy on the board as provided in ORS 198.320. [1969 c.698 §29; 1971 c.727 §179; 1973 c.796 §71; 1975 c.647 §48; 1983 c.83 §103; 1983 c.350 §312; 1983 c.740 §218]

558.405 [1969 c.698 §33; repealed by 1971 c.23 §12]

558.410 Board meetings; officers; quorum; employing assistance; employee benefits. (1) The commissioners shall hold meetings at such time and place within the district as they may determine upon. Such meetings must be open to the public. They shall hold at least one regular meeting in each month on a day to be fixed by them,

and may hold special meetings under such rules as they may make.

(2) The commissioners shall, at the time of their organization, choose from their number a chairman, a secretary and a treasurer, who shall hold their offices until the first regular meeting in July, or until their successors are elected and qualified. These officers shall have, respectively, the powers and shall perform the duties usual in such cases and shall be known as the president, secretary and treasurer of the district. A majority shall constitute a quorum to do business and, in the absence of the chairman, any other member may preside at any meeting.

(3) The commissioners may employ such engineers, superintendents, mechanics, clerks or other persons as they may find requisite, necessary or convenient in carrying on any work of the district and at such rate of remuneration as they may deem just.

(4) The commissioners may provide life insurance and retirement or pension plans for employees of a weather modification district, provided the insurer issuing such policy is licensed to do business in the State of Oregon. [1969 c.698 §31; 1971 c.23 §11; 1971 c.403 §13; 1973 c.796 §72]

558.415 Procedure to increase number of commissioners. (1) This section establishes the procedure that a district having fewer than five commissioners shall use to decide whether the number of commissioners should be increased to five. The proposition to increase the number shall be decided by election. The proposition shall be submitted at the next regular district election if a petition requesting an election on the proposition is filed as provided in this section. The requirement for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition in ORS 255.135 to 255.205.

(2) If a petition is filed under subsection (1) of this section, electors in the district may be nominated for the proposed additional position or positions under ORS 255.235. The electors of the district voting at the regular district election at which the proposition is submitted shall vote for candidates to fill the proposed additional position or positions.

(3) If the proposition is approved by the electors of the district, the additional commissioner or commissioners, after first taking and subscribing the oath of office, shall be elected to the following terms:

(a) If one additional commissioner is elected under this section, the term of that commissioner shall expire June 30 next following the next regular district election at

which less than one-half of the commissioners, including the additional commissioner, are elected.

(b) If more than one additional commissioner is elected, at the first regular meeting of the board after the newly elected commissioners take office, the newly elected commissioners shall determine by lot the length of term each shall hold office in a manner so as to comply with ORS 558.400 (2). [1969 c.698 §32; 1973 c.796 §73; 1975 c.647 §49; 1983 c.83 §104; 1983 c.350 §315; 1987 c.158 §118]

558.420 [1969 c.698 §34; repealed by 1971 c.23 §12]

558.430 Deposit and withdrawal of moneys; annual reports; records. (1) All moneys of the district shall be deposited in one or more banks, to be designated by the commissioners; and shall be withdrawn or paid out only when previously ordered by vote of the commissioners, and upon checks signed by the treasurer and countersigned by the chairman, or in the absence of the chairman or inability of the chairman to act, by the secretary. A receipt or voucher, showing clearly the nature and items covered by each check drawn, shall be kept on file.

(2) Annual reports shall be made and filed by the chairman, secretary and treasurer, and at least once in each year a full and complete itemized statement of receipts and expenditures shall be published in a newspaper of general circulation, published in the county in which the district is situate.

(3) All the proceedings of the commissioners shall be entered at large in a record book. All books, maps, plans, documents, correspondence, vouchers, reports and other papers and records pertaining to the business of the district shall be carefully preserved and shall be open to inspection as public records in the office of the county clerk of the

county in which the greater part of the district is located. [1969 c.698 §36]

558.440 Calling special elections. The commissioners at any regular meeting of the board of commissioners may call a special election of the electors of the district. [1969 c.698 §30; 1971 c.647 §128; 1983 c.350 §316]

558.445 [1969 c.698 §2; repealed by 1971 c.647 §149]

558.500 [1969 c.698 §37; repealed by 1971 c.727 §203]

558.510 [1969 c.698 §38; repealed by 1971 c.727 §203]

558.520 [1969 c.698 §39; repealed by 1971 c.727 §203]

558.550 [1969 c.698 §48; repealed by 1971 c.727 §203]

558.555 [1969 c.698 §49; repealed by 1971 c.727 §203]

558.560 [1969 c.698 §50; repealed by 1971 c.727 §203]

558.565 [1969 c.698 §51; repealed by 1971 c.727 §203]

558.570 [1969 c.698 §52; repealed by 1971 c.727 §203]

558.575 [1969 c.698 §53; repealed by 1971 c.647 §149]

558.580 [1969 c.698 §54; repealed by 1971 c.727 §203]

558.585 [1969 c.698 §55; repealed by 1971 c.727 §203]

558.600 [1969 c.698 §41; repealed by 1971 c.727 §203]

558.610 [1969 c.698 §42; repealed by 1971 c.727 §203]

558.620 [1969 c.698 §43; repealed by 1971 c.727 §203]

558.630 [1969 c.698 §44; repealed by 1971 c.727 §203]

558.650 [1969 c.698 §45; repealed by 1971 c.727 §203]

558.660 [1969 c.698 §46; repealed by 1971 c.727 §191]

558.670 [1969 c.698 §47; repealed by 1971 c.727 §203]

PENALTIES

558.990 Penalties. Any person who violates any provision of ORS 558.010 to 558.140 shall be guilty of a misdemeanor. [1953 c.654 §14]

CHAPTERS 559 AND 560

[Reserved for expansion]