

SWCD Statute Potential Improvements

August 20, 2023

The Soil and Water Conservation Commission (SWCC) identified a list of potential improvements to Soil and Water Conservation District (SWCD) statutes. The list has been referred to as the “parking lot.” The statutes are largely contained in ORS 568, however, ORS 561.395 and ORS 561.400 also have relevant language on the role of the SWCC and Oregon Department of Agriculture (ODA). The parking lot was created as a brief list of the issues without much explanation. To address a wider audience, the following information has been prepared to provide a fuller explanation of the issues.

Added Scope to the SWCC

Per ORS 561.395 (5) the SWCC's mission is limited to providing advice to ODA on matters related to SWCDs. Because SWCD work is related to several different natural resource agencies, it may be appropriate to expand the advisory role to agencies such as the Department of Water Resources, Department of Environmental Quality, Oregon Watershed Enhancement Board, Department of Forestry and Department of Land Conservation and Development. If this were done, some logistics would need to be worked out such as who provides administration for the SWCC, and who makes appointments to the SWCC, and what are the obligations of the natural resource agencies to maintain dialogue with the SWCC.

Consideration might also be given to granting certain authorities that go beyond advisory. For example, the SWCC could have some oversight responsibilities for SWCDs or approval authority over certain actions taken by natural resource agencies relative to SWCDs.

Lead Agency for the SWCC and SWCDs

If one natural resource agency is to have lead responsibility for the SWCC and SWCDs, it is questioned whether ODA is the best choice. Perhaps this role could be better filled by OWEB or another natural resource agency.

ODA Authorities Over SWCDs

ORS 561.400(2) specifies what ODA is authorized to do with respect to SWCDs. For example, ODA is authorized to review and approve SWCD projects, practices, and budgets. It is questioned whether some of the authorities should be deleted, amended, made mandatory, or equipped with more enforcement authority. For example it is not clear that ODA has authority to compel SWCD participation in Strategic Implementation Areas (SIAs).

Terminology for District Customers

Throughout ORS 568, several different terms are used to describe the customers of the District including “landowners” and “electorate.” The terms may be relics of the past and not reflective of how SWCDs work today, so there is a need to make sure that the use of the terms are appropriate. Terms like citizens or residents may be more appropriate. Here are some examples:

- ORS 568.300 says that a petition to form a SWCD must be done by landowners.
- ORS 568.550 (1)(f) says that if a District wants to borrow money it must give the opportunity for landowners to be heard.

Petitions for Changing District Boundaries

Several sections in ORS 568 have processes for changing district boundaries and they have different processes and decision makers. These sections should be reviewed to make sure that the requirements are appropriate. The following table summarizes the different sections.

Section and Purpose	Procedure	Concern?
568.431 – Petition to have properties included in a district.	Landowners petition ODA to have their land included. ODA decides with consultation from district. If landowners don't like decision, 10% of electors in the district may call for a referendum.	Right decision makers? Good process
568.433 – Petition to have properties withdrawn from a district.	Landowners petition ODA to have their land withdrawn. ODA decides with consultation from district. If landowners don't like decision, 10% of electors in the district may call for a referendum.	Right decision makers? Good process?
568.445 – Petition to have land included in a district that is currently in another district.	Petition by either: <ul style="list-style-type: none"> • 25 or two-thirds, whichever is the less, of the landowners of the subject territory or • Resolutions of approval by both affected districts. Petitions to receiving district for approval and then subsequent approval by ODA.	Right decision makers? Good process? No opportunity for referendum by electors? No public hearing? Could this process be used for complete consolidation of districts in lieu of 568.450?

<p>568.450 - Petition to consolidate districts.</p>	<p>Petitions by either:</p> <ul style="list-style-type: none"> • 500 or 10 percent, whichever is less of the electors in all districts, or • Resolutions of approval of all districts. <p>ODA holds a public hearing.</p> <p>If all districts are taxing district, referendum required unless no objections from public and both districts approve by 2/3 majority of directors.</p> <p>If no district is a taxing district, referendum required unless no objections from public and both districts approve by 2/3 majority of directors.</p> <p>If one or more district is taxing and one or more is not taxing, referendum required.</p>	<p>Right decision makers? Good process?</p>
<p>568.481 – Dissolution of a district.</p>	<p>Dissolution initiated by:</p> <ul style="list-style-type: none"> • Petition by 500 electors or 10 percent of the electors within the district, whichever is less • Resolution of the district board of directors • District board notification to the department that it can't fulfill its duties, or • Order by ODA <p>If by petition, the petition goes to ODA, then ODA verifies petition signatures, holds public hearing and conducts a referendum.</p> <p>If not by petition, ODA makes the decision.</p>	<p>Right decision makers? Good process?</p> <p>This is the only process that specifies the verification of petition signatures. Should the others have verification?</p>

Board Members for Consolidating Districts

ORS 568.471 says that the terms of the directors for consolidating districts expire upon consolidation of the districts and refers to ORS 568.545 for appointment of new directors. ORS 568.545 however, says that the directors may remain for a period of time and are charged with appointing directors for the consolidated district. Is this conflicting language?

Boundary Commission Notification

ORS 568.481 (5) requires notification of any boundary commission upon dissolution of a district. It is unknown whether this is applicable or necessary.

Public Noticing

ORS 568.520 requires districts to notice general elections and uses the term “newspaper of general circulation.” ORS 568.590 requires noticing of the annual meeting, also with the term “newspaper of general circulation.”

These should be updated to reflect modern noticing practices. It would also be good to search the remainder of ORS 568 to see if noticing requirements are contained in other places.

Filling Board Vacancies

If a board vacancy is not filled during an election ORS 568.530(4) requires the district to make an appointment. Should this be a requirement? What if a suitable person can't be found?

If a board vacancy occurs mid-term ORS 568.560(8) requires the district to make an appointment. Should this be required? What if a suitable person can't be found? What if the remainder the term for the vacant position is short?

In both above cases, should there be time limits for making the appointments or consequences for not making the appointments?

Director Eligibility

The list of issues developed by the SWCC was prior to the 2023 legislating that modified director eligibility requirements in counties with a population over 250,00. It is unknown whether additional changes should be pursued.

Definitions of “Associate Director” and “Manage”

In ORS 568.560, the term “manage” is used in reference to land based requirements for being a director. There is no definition of manage, so ODA has much discretion in determining whether a candidate qualifies. Should this be better defined?

ORS 568.560, uses the term “associate director” in reference to qualifications for being a director. The statute is not clear on how associate directors are appointed, their qualifications, their authorities, and their terms. Some districts have also created the position of “emeritus director.” Is more definition needed?

Use of the Terms “Landowners” and “Occupier”

These terms are used throughout ORS 568 in different ways. The statute should be reviewed to see if changes should be made. Examples include:

- ORS 568.550(1)(f) says that if a district is to borrow money it must hold a public hearing within the district to provide landowners with the opportunity to be heard.
- ORS 568.590 says that the annual meeting is for the landowners.

SWCD Power to Act on Behalf

ORS 568.550(1)(m) gives SWCDs the power to act on behalf of the US government as their agent on projects. It seems like this same power should also include the State of Oregon.

SWCD Powers

ORS 568.550 specifies the powers that are granted to SWCDs. This section needs to be carefully reviewed to make sure it is in alignment of the current types of work that are done by SWCDs. Following are a few examples of the items to consider.

- Are terms like water quantity projects sufficiently defined to cover the types of work done by SWCDs (irrigation efficiency, etc.).
- Is clarification needed on the definition of “conservation” to include sufficient breadth to cover the work done by SWCDs such as wildlife and weeds.
- In ORS 568.550 (2) the term “directors” is used instead of “board of directors.” Is this appropriate?
- ORS 568.550(1)(r) gives SWCDs the power to enter into agreements to get natural resources work done through federal, state and local governments. It would be helpful to include non-governmental organizations.

Annual Meeting Date

ORS 568.580 requires districts to have an annual meeting and implies that the annual meeting can't be held until after the first board meeting in January. The implication is in the statement that the annual meeting shall be held “each year after the creation of the first board of directors....” Many Boards hold their annual meeting prior to this time.

Authority of ODA

ORS 568.600 (3) says “The directors shall make available to the State Department of Agriculture all records and information pertaining to the district and shall assist the department in carrying out its recommendations.”

In one clause the language says “shall assist” which is a mandatory term, but the sentence concludes with “carrying out recommendations” which is more discretionary. This language could be interpreted that SWCDs can be forced to be agents of ODA. Is this appropriate?

There might also be concern with making all records available to ODA. But ODA could always get whatever they need through public records requests.

SWCD Authority to Enter Lands

ORS 568.730 says “The directors or designated representatives of a soil and water conservation district have authority to go upon any lands within the district.....”

There is concern that this may not stand up to a constitutional argument.

It is also questioned whether districts should have or want to have this much broad authority.

Also, this is another example of the term “directors” possibly being misused. This could imply that individual directors have the authority rather than the board of directors.

County Appropriation of Funds

ORS 568.790 says “...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...” The use of the term “county court” instead of “county commission” or “county administration” may be inappropriate.

Reference to funding a county extension agent might be irrelevant.

Stream Bank Erosion Control Projects

ORS 568.801 requires any SWCD who does a stream bank erosion control project to apply to ODA. ODA is then required to designate projects to be implemented on critically eroding stream systems.

It seems that there are already enough agencies involved in riparian corridor project approvals, and this burden on SWCDs and ODA may not be necessary. Currently, it is most likely not being done.

SWCD Authority to Levy Special Assessments

ORS 568.805 gives SWCDs the authority to levy special assessments against property to implement any “district power or function.”

Has any district done this? Would any district want to do this? Is this power contrary to SWCDs desire to implement voluntary conservation?

Term Limits (Not an original Parking Lot Item)

There are no term limits for SWCD Board members. Should there be?