

Enrolled House Bill 2212

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for State Department of Agriculture)

CHAPTER

AN ACT

Relating to State Department of Agriculture control methods; creating new provisions; amending ORS 195.308, 452.610, 452.615, 452.620, 452.625, 452.630, 452.990, 561.510, 561.560, 561.680, 561.990, 570.705, 570.990, 570.995, 571.063, 571.145, 634.212, 634.216, 634.232 and 634.236; repealing ORS 452.510, 452.520, 452.530, 452.540, 452.550, 452.560, 452.570, 452.580, 452.590, 561.520, 561.530, 561.550, 570.005, 570.196, 570.200, 570.370, 570.375, 570.407, 570.500 and 571.035; and appropriating money.

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

SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 561.

SECTION 2. The State Department of Agriculture may preapprove and issue permits for shipments of articles that are subject to a quarantine if the department finds that the articles are subject to appropriate mitigation tactics or strategies that can be enforced at the point of origin for the shipment. The department may also permit and preapprove articles that are subject to department control methods adopted by rule under section 5 of this 2009 Act or to product grades, standards or classifications adopted by the department under ORS 632.900 to 632.940, if the department finds that the articles are subject to appropriate inspection programs at the point of origin for the shipment.

SECTION 3. (1) Notwithstanding any other provision of law, ORS 452.610, 452.615, 452.620, 452.625 and 452.630 shall not be considered to have been added to or made a part of ORS chapter 452 for the purpose of statutory compilation or for the application of definitions, penalties or administrative provisions applicable to statute sections in that chapter.

(2) Notwithstanding any other provision of law, ORS 561.650, 561.660, 561.670 and 561.680 shall not be considered to have been added to or made a part of ORS chapter 561 for the purpose of statutory compilation or for the application of definitions, penalties or administrative provisions applicable to statute sections in that chapter.

(3) Notwithstanding any other provisions of law, ORS 570.505, 570.510 and 570.515 to 570.600 shall not be considered to have been added to or made a part of ORS chapter 570 for the purpose of statutory compilation or for the application of definitions, penalties or administrative provisions applicable to statute sections in that chapter.

SECTION 4. As used in sections 5 to 8 of this 2009 Act, "plant pest" means:

(1) A disease, microscopic organism, insect, nematode, arthropod, parasite or a noxious weed as defined in ORS 452.610, capable of having a significant adverse effect on the environmental quality of the state or of causing a significant level of economic damage in this

state, including but not limited to damage to agricultural, horticultural or forest plants, crops, commodities or products; and

(2) Any biotic agent identified in an order or rule of the State Department of Agriculture as capable of having a significant adverse effect on the environmental quality of the state, or of causing a significant level of economic damage in this state, including but not limited to damage to agricultural, horticultural or forest plants, crops, commodities or products.

SECTION 5. The State Department of Agriculture may adopt rules requiring the use of measures to control the spread of a specific plant pest that is not the subject of a quarantine if:

(1) Failure to control the plant pest will have an identifiable effect on plants, with a resulting unacceptable level of economic impact in the state; and

(2) The measures required by the department are of a type proven effective to achieve the control levels determined by the department for the plant pest.

SECTION 6. (1) A person may not possess or knowingly move a plant pest within this state unless the person possesses:

(a) A plant protection and quarantine permit issued by the United States Department of Agriculture's Animal and Plant Health Inspection Service, or by a successor to that service, authorizing the possession or movement; or

(b) A State Department of Agriculture permit authorizing the possession or movement.

(2) The State Department of Agriculture may not issue a permit to possess or move a plant pest unless the department determines that the proposed possession or movement will not create a hazard to agricultural, forest or horticultural interests within the state or to the environmental quality of the state.

(3) If the department issues a permit to move a plant pest, the permittee must ensure that a copy of the permit is affixed to or accompanies the shipping container, box, package or other receptacle containing the plant pest. The department may adopt rules governing the attachment or accompaniment.

SECTION 7. The State Department of Agriculture may conduct research to prevent the introduction or spread of plant pests into or within the state. The department may conduct the research independently or as part of a cooperative effort involving other entities. The research may include, but need not be limited to, researching the feasibility of controlling or eradicating plant pests.

SECTION 8. (1) The Legislative Assembly finds and declares that:

(a) A plant pest, other than a plant pest possessed or moved in compliance with a permit described in section 6 of this 2009 Act, is a public nuisance.

(b) A plant, crop or agricultural, horticultural or forest commodity or product, that is infested with or harbors a plant pest is a public nuisance.

(2) The State Department of Agriculture may abate a public nuisance described in subsection (1) of this section by using the public nuisance abatement processes described in ORS 570.170 and 570.180.

(3) The State Department of Agriculture is not required to compensate a person for any loss incurred from the abatement of a public nuisance under this section or ORS 570.170 or 570.180. This subsection does not apply to compensation for an abatement-related loss that results from the application of a pesticide in a faulty, careless or negligent manner.

SECTION 9. (1) Violation of a provision of ORS 452.610 to 452.630 or a rule adopted under ORS 452.610 to 452.630 is a Class B violation.

(2) Violation of a provision of ORS 561.605 to 561.630 is a Class D violation.

(3) Violation of a provision of ORS 570.515 to 570.600 or section 6 of this 2009 Act is a Class A violation.

SECTION 10. (1) In addition to any applicable fine under section 9 of this 2009 Act or other penalty, a person is subject to imposition by the State Department of Agriculture of a civil penalty, not to exceed \$10,000, if the person:

- (a) Violates a rule adopted under section 5 of this 2009 Act; or
 - (b) Violates the conditions of a permit described in section 6 of this 2009 Act.
- (2) Each violation of a rule adopted under section 5 of this 2009 Act or of a condition of a permit described in section 6 of this 2009 Act is a separate offense subject to a separate civil penalty.

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

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

(5) The State Treasurer shall deposit all moneys from penalties recovered under this section into the Department of Agriculture Account. Moneys deposited under this subsection are continuously appropriated to the State Department of Agriculture for carrying out plant pest prevention and control activities.

SECTION 11. ORS 195.308 is amended to read:

195.308. Notwithstanding the requirement to pay just compensation for certain land use regulations under ORS 195.305 (1), compensation is not due for the enforcement or enactment of a land use regulation established in ORS 30.930 to 30.947, 527.310 to 527.370, 561.685, 561.687, 561.689, 561.691, 561.693, 561.695, 561.995, [570.005 to 570.600,] **570.005 to 570.055, 570.105 to 570.200, 570.305, 570.310, 570.320 to 570.360, 570.405, 570.412, 570.420, 570.425, 570.450, 570.515 to 570.600,** 570.650, 570.700 to 570.710, 570.995, 596.095, 596.100, 596.105, 596.393, 596.990 or 596.995 or in administrative rules or statewide plans implementing these statutes.

SECTION 12. ORS 452.610 is amended to read:

452.610. As used in ORS 452.610 to 452.630 [and 452.990 (2), unless the context requires otherwise]:

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

(1) "Noxious weed" means a terrestrial, aquatic or marine plant designated by the State Weed Board under ORS 561.680 as among those representing the greatest public menace and as a top priority for action by weed control programs.

(2) "Person" means [any individual, partnership, association, corporation] a person as defined in ORS 174.100, the federal government[,], or any of its agencies, the State of Oregon[,], or any of its agencies, or any city, county, district or municipal corporation of this state.

SECTION 13. ORS 452.615 is amended to read:

452.615. In recognition of the imminent and continuous [*menace to*] **threat to natural resources, watershed health,** livestock, wildlife, land and agricultural products of this state, and in recognition of the widespread infestations and potential infestations of [*tansy ragwort*] **noxious weeds** throughout this state, [*and in exercise of the police power of this state for the protection of the health and welfare of the people of this state, tansy ragwort (Senecio jacobaea) is*] **noxious weeds are** declared to be a public nuisance and shall be detected, controlled and, where feasible, eradicated on all lands in this state. [, and in further recognition that known, effective and practical control or eradication measures are presently unavailable and that suppression of this public nuisance is dependent upon determining such measures, the State Department of Agriculture shall undertake studies, investigations and research for the development of control or eradication methods.] It is declared to be the policy of this state that priority shall be given first to the prevention of new infestations of [*tansy ragwort*] **noxious weeds** and then to the control and, **where feasible,** eradication of [*tansy ragwort*] **noxious weeds** in infested areas.

SECTION 14. ORS 452.620 is amended to read:

452.620. The State Department of Agriculture shall administer and enforce [*the provisions of*] ORS 452.610 to 452.630 [*and 452.990 (2), and in furtherance thereof is authorized*]. **The department may:**

(1) [*In accordance with the applicable provisions of ORS chapter 183, to*] Adopt rules to carry out [*the provisions of ORS 452.610 to 452.630 and 452.990 (2)*] **ORS 452.610 to 452.630.** In [*making such*] **adopting the** rules the department shall consider:

[(a) *The existence, availability and practicality of chemical, biological or other means for the control or eradication of tansy ragwort, and the effectiveness thereof;*]

[(b)] (a) The effect on the immediate environment of the use of [*such*] chemical, biological or other means for control or eradication; and

[(c)] (b) The overall benefit to be derived compared to the costs to be incurred.

(2) Implement an integrated weed management approach that focuses on the prevention of noxious weeds through:

(a) A combination of techniques that may include, but need not be limited to, the use of:

(A) Surveillance and monitoring;

(B) Early detection;

(C) Eradication or other rapid response techniques;

(D) Mechanical control;

(E) The selective use of pesticides;

(F) Cultural practices;

(G) Modified land management; and

(H) Biological controls; and

(b) Control practices selected and applied to achieve desired weed management objectives in a manner that minimizes risks to human health, non-target organisms, native fish and wildlife habitat, watersheds and the environment.

[(2)] (3) [*To*] Cooperate with Oregon State University or any other person in the administration and enforcement of ORS 452.610 to 452.630 [*and 452.990 (2)*].

[(3)] (4) [*To*] Collect, publish, disseminate and furnish information, statistics and advice concerning the research, experimentation, control and eradication of [*tansy ragwort*] **noxious weeds** and the land management and cultural practices recommended for such control and eradication.

[(4)] (5) Notwithstanding any provisions of ORS 279.835 to 279.855 and 561.240 and ORS chapters 279A, 279B and 279C to the contrary, [*to*] enter into contracts with Oregon State University or any other person for the purpose of research, experimentation, control or eradication of [*tansy ragwort*] **noxious weeds**, to receive and expend funds pursuant to such contracts and to employ or authorize personnel to act on behalf of the department.

[(5)] (6) [*To*] Rear, propagate and release biological control agents **approved by the United States Department of Agriculture**, including insects or disease organisms, and to construct, purchase, maintain and operate facilities and equipment for such purpose.

[(6)] (7) [*To*] Control, or direct control of, predators and diseases of biological control agents, and to limit or prohibit the movement or use of pesticides or other agriculture chemicals [*which*] **that** reasonably could damage or injure such biological control agents.

[(7)] (8) [*To*] Purchase, use and apply chemical control agents, including pesticides, and [*to*] purchase, maintain and operate any application equipment for such purpose.

[(8)] (9) [*To*] Regulate, restrict or prohibit the movement or sale of hay, **straw**, seed, other agricultural crops or residues thereof, [*which*] **that** are found to contain [*tansy ragwort*] **noxious weeds** or seeds [*thereof*] **or propagules of noxious weeds**.

[(9)] (10) [*To*] Limit or prohibit the collection or taking of any biological control agents from public or private lands within this state.

[(10)] (11) [*To*] Develop appropriate measures for the control or eradication of [*tansy ragwort*] **noxious weeds** on any lands in this state.

[(11)] (12) [*To*] Have access to all lands within this state to carry out [*the provisions of*] ORS 452.610 to 452.630 [*and 452.990 (2)*], including survey, control and eradication activities and the establishment of quarantines [*in accordance with ORS 561.510 to 561.600*].

[(12)] (13) [*To*] Request any person owning or controlling land within this state to control, prevent the spread of, or, when feasible, eradicate [*tansy ragwort*] **noxious weeds**, and to supervise such activities.

(14) If abatement procedures are required of a landowner, recommend that the landowner and the department jointly develop a management strategy or plan that describes a course of action to address the abatement requirement.

[(13)] **(15)** To the extent funds are available for such purpose, [to] employ or use personnel of other agencies of this state, including but not limited to persons acting under work-release, rehabilitation or youth programs or persons employed and paid from federal funds received under the Emergency Job and Unemployment Assistance Act of 1974 (Public Law 93-567) or any other federal or state program intended primarily to alleviate unemployment or to advance research.

[(14)] **(16)** [To] Establish advisory committees to assist the department **and the State Weed Board** in carrying out [the provisions of] ORS 452.610 to 452.630 [and 452.990 (2)].

SECTION 15. ORS 452.625 is amended to read:

452.625. [In addition to the authority of the State Department of Agriculture provided in ORS 452.610 to 452.630 and 452.990 (2),] Oregon State University [is authorized to carry out the activities described in ORS 452.620 (3) and (5).], **acting by itself or in cooperation with the State Department of Agriculture, may:**

(1) Collect, publish, disseminate and furnish information, statistics and advice concerning the research, experimentation, control and eradication of noxious weeds and the land management and cultural practices recommended for such control and eradication.

(2) Rear, propagate and release biological control agents approved by the United States Department of Agriculture, including insects or disease organisms, and construct, purchase, maintain and operate facilities and equipment for such purpose.

SECTION 16. ORS 452.630 is amended to read:

452.630. (1) No person shall fail to cooperate with the State Department of Agriculture in the administration or enforcement of ORS 452.610 to 452.630 [and 452.990 (2)], or rules promulgated pursuant thereto, nor otherwise violate any provision of ORS 452.610 to 452.630 [and 452.990 (2)].

(2) In addition to any other remedy provided by law, the department may bring suit in circuit court to enjoin or restrain any person from violating any provision of ORS 452.610 to 452.630 [and 452.990 (2)] or any rule promulgated thereunder.

SECTION 17. ORS 452.990 is amended to read:

452.990. [(1)] Violation of ORS 452.250 is a Class C misdemeanor.

[(2) Subject to ORS 153.022, failure to comply with any provision of ORS 452.610 to 452.630 and this subsection or any rule promulgated pursuant thereto is a Class B violation.]

SECTION 18. ORS 561.510 is amended to read:

561.510. [Whenever, in the opinion of] **(1) The Director of Agriculture may adopt rules under ORS chapter 183 declaring a quarantine if the director believes that any animals, fowls, bees, fruits, vegetables, plants, parts of plants or seeds within any area or section are diseased or [infected with any infestation] infested with a pest, or that any area or section is infested with [any kind of weed, which] a weed, and that the disease, infestation or weed is [liable] likely to spread and become detrimental to the plant or animal life of this state or [is liable to injuriously affect] to the health of citizens of the state., with reference to any of which] The director may declare the quarantine for any area or section for which the Secretary of Agriculture of the United States has not determined that a quarantine is necessary and established a quarantine., the director is authorized, with the consent of the Governor, to declare a quarantine against] **The quarantine may prohibit:****

(a) The movement of [any such] **diseased or infested** animals, fowls, bees, fruits, vegetables, plants, parts of plants or seeds[, or of weeds or weed seeds; or [against the movement of any articles which may contain such weeds or the seeds thereof, or which may be liable to spread such disease or infestation into the state, if such area or section be outside the boundaries of this state, or against the movement from such area or section of such animals, bees, fowls, fruits, vegetables, plants, parts of plants or seeds, or against the movement within the state of articles liable to spread such weeds or weed seeds, or which may be liable to spread such disease or infestation, if such]

(b) Articles that might contain the disease, infestation, weeds or weed seeds or that might otherwise spread the disease, infestation or weeds into the state from outside the state or from one area or section of the state to another area or section [is] within or outside the state.

(2) Except as provided in subsection (3) of this section, the director shall hold at least one public hearing in this state before adopting a rule that declares a quarantine under this section.

(3) If an emergency exists and postponement of the effective date of the quarantine would result in serious prejudice to the public health, safety or welfare, or to the health, safety or welfare of the affected parties, the director may make the quarantine effective immediately as authorized by ORS 183.355 (2)(b).

SECTION 19. ORS 561.560 is amended to read:

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

(1) **The Director of Agriculture shall issue a written order declaring a quarantine if the director determines that:**

(a) **A disease or an infestation has a significantly adverse effect on plants, animals, fowls or bees;**

(b) **The disease or infestation is not widely prevalent or distributed within this state;**

(c) **The disease or infestation exists in another state, territory or country or in any locality within this state; and**

(d) **Following the procedure for declaring a quarantine by rule under ORS 561.510 would create a serious danger of the disease or infestation spreading within the state during the time required by the procedure.**

(2) **The written order declaring the quarantine shall prohibit the movement into or within the state of any plants, animals, fowls, bees or articles that are likely to spread the disease or infestation. The director may amend the order as the director considers necessary. The director shall sign the written order and any amendments to the order.**

[(2)] (3) **The director shall file all quarantine orders and [any] amendments [thereto] to the orders with the Secretary of State and shall publish a notice of [such] the quarantine and of any amendments to a quarantine order in a newspaper of general circulation throughout the state. The director [shall take such] may take other action [as] the director considers reasonable to [insure that persons affected by a quarantine have knowledge thereof] ensure that the affected persons have knowledge of the quarantine. [From and after the filing of] A quarantine order[,] or amendment [thereto,] to an order is effective upon filing with the Secretary of State. [it shall be unlawful for any person, firm or corporation to] A person may not carry, move or transport any plants, animals, fowls, bees or articles specified in [a quarantine order, or amendment thereto,] a quarantine order or amendment from the quarantined area into or through any part of the state, except as provided in the order[,] or amendment[thereto]. Proofs of the publication of the notices provided for in this section shall be filed in the office of the State Department of Agriculture.**

[(3)] (4) **[No such emergency quarantine, as provided for in this section, shall be effective for more than 90 days after the date of the first publication of notice thereof.] A quarantine created by a written order issued under this section may not remain in effect more than 180 days after**

the first publication of notice under subsection (3) of this section. However, a quarantine for a longer period may be declared under *[the provisions of]* ORS 561.510 *[to 561.550]*, to take effect at or before the expiration of *[such 90-day]* **the 180-day** period.

[(4)] (5) The Governor by filing an order with the Secretary of State may terminate *[such department order]* **a quarantine ordered by the director under this section.** *[Thereafter and relating only to that particular subject matter and emergency, the department shall be required to]* **If the Governor terminates a quarantine under this subsection, the director must** obtain the approval of the Governor before **issuing** any additional quarantine or amendments *[thereto are issued]* under this *[statute]* **section for the same disease or infestation.**

SECTION 20. ORS 561.680 is amended to read:

561.680. The State Weed Board shall:

(1) Act in conjunction with the State Department of Agriculture to identify those weeds growing in this state that represent the greatest public menace and establish those weeds as the top priority for action by weed control programs in this state.

(2) Assist the Director of Agriculture in allocating moneys made available to the State Department of Agriculture for the payment of weed control expenses to weed control programs conducted in the various counties on the basis of the plan implemented under ORS 561.683.

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

SECTION 21. ORS 561.990 is amended to read:

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

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

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

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

[(5) Violation of any of the provisions of ORS 561.605 to 561.630 is a Class D violation.]

SECTION 22. ORS 570.705 is amended to read:

570.705. (1) The Legislative Assembly finds that imported, untreated timber products increase the hazards of introducing and spreading injurious plant pests and diseases in this state and that the State Department of Agriculture is directed to establish and implement an inspection and control program to safeguard the health of trees and plants in this state.

(2) In carrying out the *[provisions of this chapter]* **duties, functions and powers of the department** to prevent the introduction and spread of and to control injurious plant pests and diseases, with regard to imported, untreated timber products, the department *[is authorized to]* **may:**

(a) Inspect such timber products at any facility that receives, handles, transports or processes such products.

(b) Conduct testing and detection activities aimed at plant pests and diseases that may be associated with receiving, handling, transporting or processing such products.

(c) Inspect import permits and bills of lading relating to such products.

(d) Establish regulations controlling the handling, transportation and processing of such products.

(e) Assess and collect from receivers, handlers, transporters and processors of such products fees to recover for the department the cost of conducting the program referred to in this section.

SECTION 23. ORS 570.990 is amended to read:

570.990. Violation of **a provision of** ORS 570.010 to 570.050, 570.105 to 570.200, 570.320 to 570.360[,] **or** 570.410 *[and 570.515 to 570.600]* is a Class A violation.

SECTION 24. ORS 570.995 is amended to read:

570.995. (1) In addition to any applicable fine under ORS 570.990 or other penalty, a person *[who]* **is subject to imposition by the State Department of Agriculture of a civil penalty, not to exceed \$10,000, if the person:**

- (a) Violates a quarantine order issued under ORS 570.115;[.]
 - (b) Violates ORS 570.410; or
 - (c) Fails to timely pay a fee required under ORS 570.710. [*is subject to a civil penalty imposed by the State Department of Agriculture. The civil penalty shall not exceed \$10,000.*]
- (2) [Every] **Each** violation of a quarantine order issued under ORS 570.115, violation of ORS 570.410 or failure to timely pay a fee required under ORS 570.710 is a separate offense subject to a separate civil penalty.
- (3) The department shall develop one or more schedules setting the amounts of civil penalties that may be imposed for particular types of violations.
- (4) The imposition of a civil penalty under this section is subject to ORS 183.745.
- (5) The State Treasurer shall deposit all moneys from penalties recovered under this section into the Department of Agriculture Account.
- (6) Moneys from civil penalties recovered under this section for violation of a quarantine order issued under ORS 570.115 are continuously appropriated to the department for the administration and enforcement of quarantine laws under ORS 570.110 to 570.190[, 570.196 and 570.200].
- (7) Moneys from civil penalties recovered under this section for a violation of ORS 570.410 are continuously appropriated to the department for the administration and enforcement of control area programs.
- (8) Moneys from civil penalties recovered under this section for failure to timely pay a fee under ORS 570.710 are continuously appropriated to the department for the administration of the timber products health program described under ORS 570.705 and 570.710.

SECTION 25. ORS 571.063 is amended to read:

571.063. (1) Upon [*payment*] **receipt** of a fee [*of \$5,*] **established by the State Department of Agriculture, the department may issue** a temporary nursery sale license [*may be issued by the State Department of Agriculture*] for the holding of a nursery stock sale conducted by, or for the benefit of, a duly registered nonprofit organization, where such sale does not exceed seven consecutive days.

(2) Application for a temporary nursery sale license shall be made on a form furnished by the department, and shall be accompanied by the license fee. A separate application and license fee is required for each sale.

(3) The department may prescribe the conditions of such temporary nursery sales license, which conditions shall be stated in the license. Any such license may be revoked or suspended by the department for violation of any of the conditions stated therein. ORS 571.005 to 571.230 and 571.991 shall not be applicable to such temporary nursery sales except as provided in this section.

(4) The department shall establish the fee described in subsection (1) of this section by rule. The department shall establish the fee at a level sufficient to cover the costs to the department associated with issuing the temporary nursery sale license, but not more than \$50.

SECTION 26. ORS 571.145 is amended to read:

571.145. (1) The State Department of Agriculture shall inspect each licensed nursery at least once [*each fiscal year*] **and** as often thereafter as the department considers necessary to determine and control pest, disease and noxious weed conditions.

(2) The department may make additional inspections as necessary for the issuance of phytosanitary and other certificates. Such additional inspections are in addition to normal inspections as provided by subsection (1) of this section. The department may charge for such inspections requested by nurseries in order to issue state or federal phytosanitary certificates and any other certificate that requires inspection prior to issuance of such certificates. Such charge shall not be less than \$10 per requested certificate or greater than \$50 per such certificate. However, for license years after June 30, 1995, the department may establish the certificate fee without regard to the limitations provided in this subsection after consulting with the State Nursery Research and Regulatory Committee and after holding public hearings in accordance with ORS chapter 183.

(3) The department may establish a schedule of fees for nursery stock inspections and special services which may be performed by the department for persons who are not required to obtain a license pursuant to ORS 571.005 to 571.230 and 571.991. The fees shall be established in such amounts as are reasonably necessary to recover all costs incurred by the department in the performance of such inspections and special services. Payment for such inspections and special services shall be made to the department at the time the inspections or special services are performed.

SECTION 27. ORS 634.212 is amended to read:

634.212. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the State Department of Agriculture may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines[, *except the consent of the Governor is not required*].

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of \$125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. If the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) [*In making a determination pursuant to the authority granted under ORS 561.520 (3)*] **When determining whether to amend or revoke a rule or order declaring a protected area**, the Director of Agriculture shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industries to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

SECTION 28. ORS 634.216 is amended to read:

634.216. [*In addition to the filings of an order establishing a protected area as required by ORS 561.530 (1), a certified copy of such order shall be filed*] **If the Director of Agriculture declares a protected area under ORS 634.212, the copy of the rule or order that the director files with the Secretary of State[,] must be accompanied by a map of a scale of at least one inch per mile[,]**

which documents shall be maintained] **The Secretary of State shall maintain a copy of the rule or order, and of the map,** as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate.

SECTION 29. ORS 634.232 is amended to read:

634.232. (1) At any time after the establishment of a protected area, the State Department of Agriculture at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines[, *except the consent of the Governor shall not be required*].

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3)(a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area, and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in ORS 634.212 (5) shall be considered.

(c) ORS 634.216 shall apply to the establishment of a restricted area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in ORS 634.226 (2)(b), and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with ORS 634.226.

SECTION 30. ORS 634.236 is amended to read:

634.236. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within a protected area, the State Department of Agriculture may include additional adjacent territory in a protected area or withdraw territory from a protected area. The procedures to be followed by the department in considering such petition shall be those set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines[, *except that the consent of the Governor shall not be required*].

(2)(a) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee members of the preexisting protected areas shall terminate upon the filing of the order described in ORS 634.216. ORS 634.216 applies to the newly consolidated protected area, and all rights, powers, assets and duties of the several preexisting protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with ORS 634.226.

SECTION 31. ORS **452.510, 452.520, 452.530, 452.540, 452.550, 452.560, 452.570, 452.580, 452.590, 561.520, 561.530, 561.550, 570.005, 570.196, 570.200, 570.370, 570.375, 570.407, 570.500 and 571.035 are repealed.**

SECTION 32. Section 3 of this 2009 Act, the amendments to ORS 195.308, 452.610, 452.615, 452.620, 452.625, 452.630, 452.990, 561.510, 561.560, 561.680, 561.990, 570.705, 570.990, 570.995, 571.063, 571.145, 634.212, 634.216, 634.232 and 634.236 by sections 11 to 30 of this 2009 Act and the repeal of ORS 452.510, 452.520, 452.530, 452.540, 452.550, 452.560, 452.570, 452.580, 452.590, 561.520, 561.530, 561.550, 570.005, 570.196, 570.200, 570.370, 570.375, 570.407, 570.500 and 571.035 by section 31 of this 2009 Act do not affect the validity of any quarantine, control area or protected area established before the effective date of this 2009 Act or relieve a person from any liability with respect to a contribution, tax fine, interest, penalty or other liability, duty or obligation accruing under those statutes before the effective date of this 2009 Act.

Passed by House March 31, 2009

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Chief Clerk of House
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Speaker of House

Passed by Senate May 7, 2009

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President of Senate

Received by Governor:

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

Approved:

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

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Governor

Filed in Office of Secretary of State:

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

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Secretary of State