

A-Engrossed
House Bill 2564

Ordered by the House May 11
Including House Amendments dated May 11

Sponsored by COMMITTEE ON ENERGY AND THE ENVIRONMENT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Requires all water users to measure amounts of water withdrawn or stored. Applies to new water users on and after effective date of Act. Applies to existing water users on and after January 1, 2012.] **Directs Water Resources Department to establish requirements for measuring water use of significant diversions.** Allows Water Resources Commission to require water users to report *[water use measurements]* amount of water diverted. **Allows commission to require owner or manager of reservoir to install water measuring devices. Allows commission to require owner of water right to report water level data. Directs Oregon Watershed Enhancement Board to establish grant program to provide funds for water measuring devices and gauging stations. Directs department to issue report on water measurement activities to Seventy-fifth Legislative Assembly.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to measurement of water use; creating new provisions; amending ORS 537.777, 540.310,
3 540.330 and 540.435; and declaring an emergency.

4 Whereas water use measurement is a valuable water management tool, contributing to a variety
5 of water management goals, including water conservation, the restoration of in-stream flows and the
6 protection of out-of-stream water uses and agricultural economies; and

7 Whereas the Water Resources Commission is responsible for establishing coordinated programs
8 for the use and control of all water resources of this state; and

9 Whereas in 2000 the Water Resources Commission adopted the "Water Resources Department
10 Strategic Measurement Plan," which implements a sound approach to increasing water use meas-
11 urement; and

12 Whereas the first phase of the plan is focused on increasing measurement of significant diver-
13 sions in high priority watersheds where potential stream flow restoration and fish recovery efforts
14 under the Oregon Plan for Salmon and Watersheds are greatest; and

15 Whereas there are potential costs to water right holders in installing and operating water use
16 measurement devices; and

17 Whereas there is a need for the State of Oregon to establish a program to share in the cost of
18 installing measurement devices; now, therefore,

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

20 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 536.**

21 **SECTION 2. The Water Resources Department may implement the Strategic Measure-**
22 **ment Plan adopted by the Water Resources Commission in 2000. Under the first phase of the**
23 **plan, the department has identified high priority watersheds or basins where there is poten-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **tial for flow restoration as identified by the department or a need for habitat and fish res-**
2 **toration as identified by the department in conjunction with the State Department of Fish**
3 **and Wildlife. Under subsequent phases of the plan:**

4 **(1) The Water Resources Department shall:**

5 **(a) Prioritize and establish requirements for measuring water use of significant diver-**
6 **sions according to:**

7 **(A) The quantity of water diverted; and**

8 **(B) The potential effects of water diversion on stream flows; and**

9 **(b) Utilize a phased approach, and available department staff and resources, to implement**
10 **the plan.**

11 **(2) The Water Resources Department may:**

12 **(a) Encourage water users to participate through collaboration and opportunities to**
13 **share costs;**

14 **(b) Work cooperatively with local watershed councils and local soil and water conserva-**
15 **tion districts;**

16 **(c) Provide technical assistance related to measuring and reporting water use; and**

17 **(d) Pursue available sources of public and private funding to support an increased stream**
18 **gauging network and defray the costs of purchasing water measurement devices.**

19 **SECTION 3.** ORS 537.777 is amended to read:

20 537.777. (1) The Water Resources Commission shall regulate or cause to be regulated the con-
21 trolling works of wells and distribute ground water to secure compliance or equal and fair distrib-
22 ution if the commission finds that:

23 (a) Any person or public agency is using or attempting to use any ground water or is operating
24 or permitting the operation of any well owned or controlled by such person or public agency except
25 upon compliance with ORS 537.505 to 537.795 and 537.992 and any applicable order or rule of the
26 commission under ORS 537.505 to 537.795 and 537.992; or

27 (b) It is necessary in order to secure the equal and fair distribution of ground water in accord-
28 ance with the rights of the various ground water users.

29 (2) The regulation of controlling works and distribution of ground water under subsection (1)
30 of this section shall be, as nearly as possible, in the same manner as provided in ORS 540.010 to
31 540.130, **540.310 and 540.320.**

32 **SECTION 4.** ORS 540.310 is amended to read:

33 540.310. (1) The owner of any ditch, [or] canal **or other conveyance structure** shall maintain
34 to the satisfaction of the Water Resources Commission a substantial headgate at the point where
35 the water is diverted **from a stream**. It shall be of such construction that it can be locked and kept
36 closed by the watermaster.

37 (2) The owner shall construct and maintain, when required by the commission, suitable measur-
38 ing devices at such points along **the conveyance structure** [*the ditch*] as may be necessary to assist
39 the watermaster in determining the amount of water that is to be diverted into **the conveyance**
40 **structure** [*the ditch*] from the stream, or taken from it by the various users.

41 (3) When necessary for the protection of other water users, the commission may require flumes
42 to be installed along the line of any **conveyance structure** [*ditch*].

43 **(4) The commission may require that the owner report the amount of water diverted**
44 **according to a schedule established by the commission.**

45 **SECTION 5.** ORS 540.330 is amended to read:

1 540.330. (1) **When required by the Water Resources Commission**, any owner or manager of
2 a reservoir[,] located across or upon the bed of a natural stream[,] shall construct and maintain[,
3 *when required by the Water Resources Commission*,] a measuring device below, and one above, the
4 reservoir on each stream or source of supply discharging into the reservoir, to assist the
5 watermaster in determining the amount of water to which appropriators are entitled and thereafter
6 diverting it for their use.

7 **(2) Any owner or manager of a reservoir required to install measuring devices under**
8 **subsection (1) of this section may be required to report the amount of water used or diverted**
9 **according to a schedule established by the commission.**

10 [(2)] **(3)** If any owner or manager of a reservoir located across the bed of a natural stream
11 neglects or refuses to put in a measuring device after 10 days' notice by the commission, the
12 watermaster may open the sluiceway or outlet of the reservoir, and it shall not be closed, under
13 penalties of the law for changing or interfering with headgates, until the requirements of the com-
14 mission as to such measuring devices are complied with.

15 **SECTION 6.** ORS 540.435 is amended to read:

16 540.435. (1) In addition to any other authority of the Water Resources Commission to order in-
17 stallation of a measuring device, if the commission finds accurate water use information necessary
18 because of serious water management problems created by ground water decline, unresolved user
19 disputes or frequent water shortages, the commission by rule may require a water right owner using
20 any surface or ground water source within the state to install a totalizing measuring device, **pro-**
21 **vide water level data or** [*and to*] submit [*annually*] a water use report **according to a schedule**
22 **established by the commission.**

23 (2) Before the commission implements any requirements under subsection (1) of this section the
24 commission shall:

25 (a) Cause a hearing to be conducted in the affected area to determine whether a serious man-
26 agement problem exists; and

27 (b) Allow any affected person an opportunity to present alternative methods or devices that
28 could be used to provide the information necessary to manage the water resource or to alleviate the
29 water management problem.

30 (3) The watermaster may prohibit the diversion or use of water by anyone who has failed to
31 comply with a commission rule or order requiring installation of measuring devices or submission
32 of a water use report.

33 **SECTION 7. Notwithstanding the provisions of ORS 541.375, for the biennium beginning**
34 **July 1, 2007, the Oregon Watershed Enhancement Board shall operate a grant program that**
35 **provides funds for water measuring devices and gauging stations. Grants awarded under this**
36 **section shall be prioritized by considering:**

37 **(1) Previous investment in the watershed or basin from funds provided by the board or**
38 **other public funds; or**

39 **(2) High priority watersheds or basins identified under the Strategic Measurement Plan**
40 **for the measurement of water use described in section 2 of this 2007 Act.**

41 **SECTION 8. Not later than February 1, 2009, the Water Resources Department shall re-**
42 **port to the Seventy-fifth Legislative Assembly on the activities of the department related to**
43 **water use measurement and reporting during the 2007-2009 biennium. The report shall in-**
44 **clude, but need not be limited to:**

45 **(1) Information on the progress of the department in fully implementing the Strategic**

1 **Measurement Plan for the measurement of water use described in section 2 of this 2007 Act,**
2 **including the identification of goals and a schedule for completing the first phase of the**
3 **Strategic Measurement Plan.**

4 (2) **An assessment of the success of the grant program operated by the Oregon**
5 **Watershed Enhancement Board under section 7 of this 2007 Act in providing funds for the**
6 **acquisition and installation of measuring devices to water users required to measure water**
7 **use, including a recommendation about whether the grant program should be continued. The**
8 **department shall work with the board to complete the assessment and develop the recom-**
9 **mendation required under this subsection.**

10 **SECTION 9. Sections 7 and 8 of this 2007 Act are repealed on January 2, 2010.**

11 **SECTION 10. This 2007 Act being necessary for the immediate preservation of the public**
12 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
13 **on its passage.**

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