

## HOUSE AMENDMENTS TO HOUSE BILL 2566

By COMMITTEE ON ENERGY AND THE ENVIRONMENT

May 8

1 On page 1 of the printed bill, line 2, after “water;” delete the rest of the line and insert “cre-  
2 ating new provisions; amending ORS 537.545, 540.510 and 540.610; and declaring an emergency.”.

3 Delete lines 4 through 31 and delete page 2 and insert:  
4

### “EXEMPT USES OF GROUND WATER

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7 “**SECTION 1.** ORS 537.545 is amended to read:

8 “537.545. (1)(a) No registration, certificate of registration, application for a permit, permit, cer-  
9 tificate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is  
10 required for the use of ground water for:

11 “[a] (A) Stockwatering purposes;

12 “[b] *Watering any lawn or noncommercial garden not exceeding one-half acre in area;*]

13 “[c] (B) Watering the lawns, grounds and fields not exceeding 10 acres in area of schools lo-  
14 cated within a critical ground water area established pursuant to ORS 537.730 to 537.740;

15 “[d] (C) Single [*or group*] domestic purposes [*in an amount not exceeding 15,000 gallons a*  
16 *day;*], **and watering any lawn or noncommercial garden not exceeding a specific one-half acre**  
17 **total area per well or water system, in an amount not exceeding 5,000 gallons a day;**

18 “(D) **Group domestic purposes, and watering any lawn or noncommercial garden not ex-**  
19 **ceeding a specific one-half acre total area per well or water system, in an amount not ex-**  
20 **ceeding 15,000 gallons a day;**

21 “[e] (E) Down-hole heat exchange purposes;

22 “[f] (F) Any single industrial or commercial purpose [*in an amount not exceeding 5,000 gallons*  
23 *a day;*], **and watering any lawn or noncommercial garden not exceeding a specific one-half**  
24 **acre total area per well or water system, in an amount not exceeding 5,000 gallons a day;** or

25 “[g] (G) Land application, so long as the ground water:

26 “[A] (i) Has first been appropriated and used under a permit or certificate issued under ORS  
27 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use  
28 of water for confined animal feeding purposes;

29 “[B] (ii) Is reused for irrigation purposes and the period of irrigation is a period during which  
30 the reused water has never been discharged to the waters of the state; and

31 “[C] (iii) Is applied pursuant to a permit issued by the Department of Environmental Quality  
32 or the State Department of Agriculture under either ORS 468B.050 to construct and operate a dis-  
33 posal system or ORS 468B.215 to operate a confined animal feeding operation.

34 “(b) **For purposes of paragraph (a)(C), (D) and (F) of this subsection, ‘water system’**  
35 **means multiple wells used to irrigate a single lot or parcel, whether or not the wells are**

1 **physically connected.**

2 “(2)(a) The use of ground water for a use exempt under subsection (1) of this section, to the  
3 extent that it is beneficial, constitutes a right to appropriate ground water equal to that established  
4 by a ground water right certificate issued under ORS 537.700. Except for the use of water under  
5 subsection [(1)(g)] (1)(a)(G) of this section, the Water Resources Commission by rule may require  
6 any person or public agency using ground water for any such purpose to furnish information with  
7 regard to such ground water and the use thereof.

8 “(b) For a use of water described in subsection [(1)(g)] (1)(a)(G) of this section, the Department  
9 of Environmental Quality or the State Department of Agriculture shall provide to the Water Re-  
10 sources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the  
11 land application of ground water for reuse. The permit shall provide the information regarding the  
12 place of use of such water and the nature of the beneficial reuse.

13 “(c) **For uses described in subsection (1)(a)(C), (D) and (F) of this section, the Water**  
14 **Resources Department may collect a \$250 fee for recording the use of ground water. Fees**  
15 **collected under this paragraph shall be paid into the Water Resources Department Water**  
16 **Right Operating Fund. Notwithstanding ORS 536.009, such moneys shall be used to conduct**  
17 **ground water studies, to carry out ground water monitoring and to implement subsection (4)**  
18 **of this section.**

19 “(3) If it is necessary for the Water Resources Department to regulate the use or distribution  
20 of ground water, including uses exempt under subsection (1) of this section, the department shall  
21 use as a priority date for the exempt uses the date indicated in the log for the well filed with the  
22 department under ORS 537.765 or other documentation provided by the well owner showing when  
23 water use began.

24 “(4)(a) **After classification or reclassification of ground water as a ground water limited**  
25 **area pursuant to ORS 536.340 or designation of a critical ground water area pursuant to ORS**  
26 **537.730, the Water Resources Commission may require that any person intending to use**  
27 **ground water from a source of ground water that is classified or reclassified or within a**  
28 **designated area, for a use that is exempt under subsection (1) of this section, apply for a**  
29 **permit under ORS 537.615.**

30 “(b) **The commission shall adopt rules to implement the provisions of paragraph (a) of**  
31 **this subsection.**

32 “**SECTION 2. (1) The amendments to ORS 537.545 by section 1 of this 2007 Act do not**  
33 **apply to any uses of ground water for which a log has been filed prior to the effective date**  
34 **of this 2007 Act with the Water Resources Department under ORS 537.765 as specified in ORS**  
35 **537.545 (3).**

36 “(2) **ORS 537.545 (4) applies to uses of ground water on or after the effective date of this**  
37 **2007 Act that are specified in ORS 537.545 (1) and that utilize any source of ground water**  
38 **classified or reclassified pursuant to ORS 536.340 or within any area designated pursuant to**  
39 **ORS 537.730 whether classified, reclassified or designated before, on or after the effective**  
40 **date of this 2007 Act.**

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42 **“TASK FORCE ON EXEMPT USES**

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44 “**SECTION 3. (1) There is created the Task Force on Exempt Uses, consisting of six**  
45 **members appointed by the Governor as follows:**



1 upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use,  
2 the point of diversion or the use theretofore made of the water in all cases without losing priority  
3 of the right theretofore established. A district may change the place of use in the manner provided  
4 in ORS 540.572 to 540.580 in lieu of the method provided in ORS 540.520 and 540.530. When an ap-  
5 plication for change of the use or place of use for a primary water right is submitted in accordance  
6 with this section, the applicant also shall indicate whether the land described in the application has  
7 an appurtenant supplemental water right or permit. If the applicant also intends to transfer the  
8 supplemental water right or permit, the applicant also shall include the information required under  
9 ORS 540.520 (2) for the supplemental water right or permit. If the applicant does not include the  
10 supplemental water right or permit in the transfer application, the Water Resources Department  
11 shall notify the applicant that the supplemental water right or permit will be canceled before the  
12 department issues the order approving the transfer of the primary water right, unless within 30 days  
13 the applicant modifies the application to include the supplemental water right or permit or with-  
14 draws the application. The department may approve the transfer of the supplemental water right or  
15 permit in accordance with the provisions of ORS 540.520 and 540.530. The department shall not ap-  
16 prove the transfer of a supplemental water right or permit if the transfer would result in enlarge-  
17 ment of the original water right or injury to an existing water right. If the department approves the  
18 transfer of the primary water right but does not approve the transfer of the supplemental water  
19 right or permit, the department shall notify the applicant of the department's intent to cancel that  
20 portion of the supplemental water right or permit described in the transfer application before the  
21 department issues the primary water right transfer order, unless the applicant withdraws the  
22 transfer application within 90 days.

23 “(2) Subject to the limitations in ORS 537.490, any right to the use of conserved water allocated  
24 by the Water Resources Commission under ORS 537.470 may be severed from the land and trans-  
25 ferred or sold after notice to the commission as required under ORS 537.490.

26 “(3)(a) Any water used under a permit or certificate issued to a municipality, or under rights  
27 conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132, may  
28 be applied to beneficial use on lands to which the right is not appurtenant if:

29 “(A) The water is applied to lands which are acquired by annexation or through merger, con-  
30 solidation or formation of a water authority, so long as the rate and use of water allowed in the  
31 original certificate is not exceeded;

32 “(B) The use continues to be for municipal purposes and would not interfere with or impair prior  
33 vested water rights; or

34 “(C) The use is authorized under a permit granted under ORS 468B.050 or 468B.053 and for  
35 which a reclaimed water registration form has been filed under ORS 537.132.

36 “(b) As used in this subsection, ‘municipality’ means a city, a port formed under ORS 777.005 to  
37 777.725, 777.915 to 777.953 and 778.010, a domestic water supply district formed under ORS chapter  
38 264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS chapter 450.

39 “(4) Pursuant to the provisions of ORS 540.570 or 540.585, any water used under a permit or  
40 certificate issued to a district may be applied to beneficial use on lands within the district to which  
41 the right is not appurtenant.

42 “(5) The relocation of a point of diversion as necessary to follow the movements of a naturally  
43 changing stream channel does not constitute a change in point of diversion for purposes of ORS  
44 540.520 if:

45 “(a) The diversion point stays within 500 feet of the point of diversion on record with the Water

1 Resources Department;

2 “(b) The change does not move the diversion point upstream or downstream beyond the diver-  
3 sion point of another appropriator; and

4 “(c) The diversion is provided with a proper fish screen, if requested by the State Department  
5 of Fish and Wildlife.

6 “(6) In the event that government action results in or creates a reasonable expectation of a  
7 change in the surface level of a surface water source that impairs or threatens to impair access to  
8 a point of diversion authorized by a water right permit, certificate or decree, the owner of the water  
9 right may change the point of diversion or add an additional point of diversion in accordance with  
10 the provisions of this section in lieu of complying with the requirements of ORS 540.520 and 540.530.  
11 Before changing the point of diversion, the water right owner shall provide written notice of the  
12 proposed change to the Water Resources Department. Within 15 days after receipt of such notice,  
13 the department shall provide notice by publication in the department’s public notice of water right  
14 applications. Within 60 days after the department receives notice from the owner, the Water Re-  
15 sources Director, by order, shall approve the change unless the director finds the changes will result  
16 in injury to other existing water rights. All other terms and conditions of the water right shall re-  
17 main in effect.

18 “(7) The sale or lease of the right to the use of conserved water under ORS 537.490 does not  
19 constitute a change of use or a change in the place of use of water for purposes of ORS 540.520.

20 “(8) Ground water applied to an exempt use as set forth in ORS 537.141 or 537.545 may be sub-  
21 sequently applied to land for irrigation purposes under ORS 537.141 (1)(i) or 537.545 [(1)(g)] (1)(a)(G)  
22 without application for a change in use or place of use under this section.

23 “**SECTION 6.** ORS 540.610 is amended to read:

24 “540.610. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use  
25 of water in this state. Whenever the owner of a perfected and developed water right ceases or fails  
26 to use all or part of the water appropriated for a period of five successive years, the failure to use  
27 shall establish a rebuttable presumption of forfeiture of all or part of the water right.

28 “(2) Upon a showing of failure to use beneficially for five successive years, the appropriator has  
29 the burden of rebutting the presumption of forfeiture by showing one or more of the following:

30 “(a) The water right is for use of water, or rights of use, acquired by cities and towns in this  
31 state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

32 “(b) A finding of forfeiture would impair the rights of such cities and towns to the use of water,  
33 whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature,  
34 or which may hereafter be acquired.

35 “(c) The use of water, or rights of use, are appurtenant to property obtained by the Department  
36 of Veterans’ Affairs under ORS 407.135 or 407.145 for three years after the expiration of the period  
37 of redemption provided for in ORS 18.964 while the land is held by the Department of Veterans’  
38 Affairs, even if during such time the water is not used for a period of more than five successive  
39 years.

40 “(d) The use of water, or rights of use, under a water right, if the owner of the property to  
41 which the right is appurtenant is unable to use the water due to economic hardship as defined by  
42 rule by the Water Resources Commission.

43 “(e) The period of nonuse occurred during a period of time within which land was withdrawn  
44 from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814;  
45 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December

1 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding un-  
2 der this section, the water right holder rebutting the presumption under this paragraph shall provide  
3 documentation that the water right holder's land was withdrawn from use under a federal reserve  
4 program.

5 "(f) The end of the alleged period of nonuse occurred more than 15 years before the date upon  
6 which evidence of nonuse was submitted to the commission or the commission initiated cancellation  
7 proceedings under ORS 540.631, whichever occurs first.

8 "(g) The owner of the property to which the water right was appurtenant is unable to use the  
9 water because the use of water under the right is discontinued under an order of the commission  
10 under ORS 537.775.

11 "(h) The nonuse occurred during a period of time within which the water right holder was using  
12 reclaimed water in lieu of using water under an existing water right.

13 "(i) The nonuse occurred during a period of time within which the water right holder was re-  
14 using water through land application as authorized by ORS 537.141 (1)(i) or 537.545 [(1)(g)] **(1)(a)(G)**  
15 in lieu of using water under an existing water right.

16 "(j) The owner or occupant of the property to which the water right is appurtenant was unable  
17 to make full beneficial use of the water because water was not available. A water right holder re-  
18 butting the presumption under this paragraph shall provide evidence that the water right holder  
19 was ready, willing and able to use the water had it been available.

20 "(k) The holder of a water right is prohibited by law from using the water. If the prohibition is  
21 subject to remedial action that would allow the use of the water, the water right holder shall pro-  
22 vide evidence that the water right holder is conducting the remedial action with reasonable dili-  
23 gence.

24 "(L) The nonuse occurred during a period of time within which the exercise of all or part of the  
25 water right was not necessary due to climatic conditions, so long as the water right holder had a  
26 facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able  
27 to use the entire amount of water allowed under the water right.

28 "(m) The nonuse occurred during a period of time within which the water was included in a  
29 transfer application pending before the Water Resources Department.

30 "(n) The nonuse of a supplemental water right occurred during a period of time when the pri-  
31 mary water right used in conjunction with that supplemental water right was leased as an in-stream  
32 water right pursuant to ORS 537.348.

33 "(3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed  
34 water right uses less water to accomplish the beneficial use allowed by the right, the right is not  
35 subject to forfeiture so long as:

36 "(a) The user has a facility capable of handling the entire rate and duty authorized under the  
37 right; and

38 "(b) The user is otherwise ready, willing and able to make full use of the right.

39 "(4) The right of all cities and towns in this state to acquire rights to the use of the water of  
40 natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all rea-  
41 sonable and usual municipal purposes, and for such future reasonable and usual municipal purposes  
42 as may reasonably be anticipated by reason of growth of population, or to secure sufficient water  
43 supply in cases of emergency, is expressly confirmed.

44 "(5) After a water right is forfeited under subsection (1) of this section, the water that was the  
45 subject of use shall revert to the public and become again the subject of appropriation in the manner

1 provided by law, subject to existing priorities.

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**“MISCELLANEOUS**

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5 **“SECTION 7. The unit captions used in this 2007 Act are provided only for the conven-**  
6 **ience of the reader and do not become part of the statutory law of this state or express any**  
7 **legislative intent in the enactment of this 2007 Act.**

8 **“SECTION 8. This 2007 Act being necessary for the immediate preservation of the public**  
9 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
10 **on its passage.”.**

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