

# Senate Bill 1057

Sponsored by Senator DEVLIN, Representative BRUUN; Senators AVAKIAN, WESTLUND (at the request of Protect Oregon Water Resources)

## 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 **as introduced**.

Requires assured water supply permit in certain cases. Allows issuance of permit to persons that can show 100-year future supply of ground water or provide either mitigation plan or bond to ensure protection of existing water rights.

Allows Water Resources Department to collect fees for examination and processing of applications for use of ground water in certain cases.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to ground water; and declaring an emergency.

3       Whereas ground water levels in areas designated as critical ground water areas or classified  
4 as ground water limited areas are experiencing, or are highly threatened by, declining ground water  
5 levels; and

6       Whereas the increase in demand to develop ground water is threatening existing water rights  
7 and the value of property to which such water rights are appurtenant; and

8       Whereas current requirements governing future development of ground water in areas desig-  
9 nated as a critical ground water area or classified as a ground water limited area are inadequate  
10 to protect the public health, safety and welfare; and

11       Whereas deprivation of these existing water rights will result in excessive damage to the public  
12 health, safety and welfare; and

13       Whereas it is in the public interest to enact provisions that will limit the increasing threat of  
14 injury to existing water rights in critical ground water areas and ground water limited areas; now,  
15 therefore,

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

17       **SECTION 1.** **Sections 2 to 5 of this 2007 Act are added to and made a part of ORS chapter**  
18 **537.**

19       **SECTION 2.** **As used in sections 2 to 5 of this 2007 Act:**

20       (1) **"Assured water supply" means a water supply approved by the Water Resources De-**  
21 **partment as sufficient to supply a proposed use for 100 years while avoiding injury to existing**  
22 **water rights.**

23       (2) **"Assured water supply permit" means a permit granted by the department that con-**  
24 **firms the availability of an assured water supply.**

25       (3) **"Best management practices" means methods determined to achieve the greatest**  
26 **water use efficiencies in order to conserve and maximize the beneficial use of ground water.**

27       (4) **"Critical ground water area" means an area designated by the Water Resources**  
28 **Commission as a critical ground water area pursuant to ORS 537.730.**

**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 (5) "Existing water right" means a right to the use of water to the fullest extent that the  
2 right is recognized, defined or declared by the commission, the department, the Water Re-  
3 sources Director or any court in this state.

4 (6) "Ground water limited area" means an area classified or reclassified by the commis-  
5 sion, pursuant to its authority under ORS 536.340, as a ground water limited area.

6 (7) "Ground water restricted area" means an area designated by the commission as a  
7 critical ground water area or as a ground water limited area.

8 (8) "Mitigation" means compensating for the impact of injury to existing water rights by  
9 replacing or providing water in a comparable time, place and amount.

10 **SECTION 3.** (1) Notwithstanding ORS 537.545 and in addition to ORS 537.211, 537.615 and  
11 540.510, any person intending to acquire a wholly new right to appropriate ground water, to  
12 enlarge any existing right to appropriate ground water, to complete an appropriation of  
13 ground water, to transfer an existing ground water right or to amend any existing ground  
14 water permit within a ground water restricted area shall be required to apply to the Water  
15 Resources Department for, and be in possession of, an assured water supply permit before  
16 withdrawing or using the ground water to avoid injury to existing water rights.

17 (2) A person intending to use ground water in a manner provided in subsection (1) of this  
18 section shall submit with the permit application substantial evidence of an assured water  
19 supply, consisting of a statement from the permit applicant that the nature of the proposed  
20 use of ground water is permitted within the particular ground water restricted area and ei-  
21 ther:

22 (a) A water supply study, to be prepared pursuant to subsection (3) of this section, that  
23 shows an assured water supply is available beginning from the priority date of the permit;

24 (b) A mitigation plan, as described in subsection (5) of this section, evidencing the permit  
25 applicant's ability to offset the potential injury to existing water rights posed by the appli-  
26 cant's proposed use of ground water; or

27 (c) A bond in an amount determined by the department as sufficient to protect existing  
28 water rights.

29 (3)(a) A water supply study that shows an assured water supply shall include substantial  
30 evidence that:

31 (A) The aquifer in which the permit applicant intends to complete its ground water ap-  
32 propriation provides an assured water supply;

33 (B) The permit applicant has the financial capability to successfully construct and oper-  
34 ate any necessary water storage, treatment and delivery facilities or systems for the pro-  
35 posed use of ground water and can confirm that adequate water system capacity is available  
36 in source, supply, treatment, transmission, storage and distribution;

37 (C) The permit applicant has completed a sufficient number of pump tests from wells  
38 completed within the aquifer in which the applicant intends to appropriate ground water;

39 (D) If a designated person serves the area in question, the permit applicant has obtained  
40 a written commitment from the person that the person possesses an assured water supply  
41 sufficient to meet the needs of the permit applicant's proposed use; and

42 (E) Best management practices will be used as part of any proposed use to conserve and  
43 maximize the beneficial use of ground water; and

44 (b) The water supply study shall also include any other information as may be required  
45 by the department.

1 (4) Notwithstanding subsection (3) of this section, an applicant for an assured water  
2 supply permit may rely on a water supply study conducted by the department that shows an  
3 assured water supply is available beginning from the priority date of the applicant's permit  
4 if the department conducted or updated its study of the specific ground water resources  
5 proposed for development under the applicant's permit within the five years preceding the  
6 date the application was submitted to the department.

7 (5)(a) Pursuant to subsection (2)(b) of this section, an applicant for an assured water  
8 supply permit may submit a mitigation plan evidencing the permit applicant's ability to offset  
9 the potential injury to existing water rights posed by the applicant's proposed use of ground  
10 water.

11 (b) The permit applicant's mitigation plan shall include substantial evidence that:

12 (A) The permit applicant has the financial capability to successfully construct and oper-  
13 ate any necessary water storage, treatment and delivery facilities or systems for the pro-  
14 posed use of ground water as is necessary to fulfill the mitigation plan;

15 (B) Best management practices will be used as part of any proposed use to conserve and  
16 maximize the beneficial use of ground water; and

17 (C) The permit applicant is able to supply water, either directly or by means of a ground  
18 water storage or recharge project, to an adversely affected owner of an existing water right.

19 (c) The mitigation plan shall also include any other information as may be required by  
20 the department.

21 (6) An application for an assured water supply permit shall be accompanied by an exam-  
22 ination fee as provided in section 4 of this 2007 Act.

23 (7) An assured water supply permit issued by the department pursuant to this section  
24 shall be subject to any subsequent rules adopted by the department that curtail the permit  
25 holder's use of ground water within a ground water restricted area in order to protect ex-  
26 isting water rights.

27 (8) Any ground water uses approved pursuant to this section shall comply with all other  
28 applicable provisions of law and may not result in injury to existing water rights.

29 (9) If, after an applicant receives an assured water supply permit, the department sub-  
30 sequently determines that the water supply study submitted with the permit holder's appli-  
31 cation is inaccurate for reasons including, but not limited to, physical changes in the aquifer  
32 or because remaining water supplies are insufficient to meet existing water rights, the per-  
33 mit holder shall submit a mitigation plan to the department as described in subsection (5)  
34 of this section or a bond in an amount determined by the department as sufficient to offset  
35 any injury that may occur to existing water rights.

36 (10) Upon receiving an assured water supply permit from the department, the permit  
37 holder shall have five years from the date the permit was issued to complete irrigation or  
38 other works. A permit holder may apply for a single five-year extension within which irri-  
39 gation or other works shall be completed. The department may approve an extension only for  
40 good cause related to an extraordinary circumstance that is beyond the control of the permit  
41 holder.

42 (11)(a) Notwithstanding subsection (1) of this section, any person that applies to the de-  
43 partment for an assured water supply permit for a ground water use that will not be devel-  
44 oped for profit and that does not exceed 500 gallons per day for a single use, or 2,000 gallons  
45 per day for a group use, shall include with the permit application:

1 (A) A mitigation plan, as described in subsection (5) of this section; or

2 (B) A bond in an amount determined by the department as sufficient to protect existing  
3 water rights.

4 (b) For the purposes of paragraph (a) of this subsection, any subdivision of property that  
5 is the site of a proposed ground water use is considered a group use for profit regardless of  
6 when and by whom the ground water may be ultimately developed or the purpose of the  
7 proposed water use.

8 **SECTION 4.** In addition to fees collected pursuant to ORS 536.050, the Water Resources  
9 Department may collect in advance the following examination fees for examining an appli-  
10 cation for an assured water supply permit:

11 (1) To appropriate ground water based on an assured water supply permit issued by the  
12 department upon receipt of an application containing a water supply study, as described in  
13 section 3 (2)(a) of this 2007 Act, an amount not to exceed \$15,000.

14 (2) To appropriate ground water based on an assured water supply permit issued by the  
15 department upon receipt of an application containing either a mitigation plan or a bond, as  
16 described in section 3 (2)(b) or (c) of this 2007 Act, an amount not to exceed \$5,000.

17 (3) Upon receipt of a mitigation plan or bond submitted pursuant to section 3 (9) of this  
18 2007 Act, after the department has determined that a previously submitted water supply  
19 study is inaccurate, an amount not to exceed \$2,500.

20 (4) To receive water from an applicant that has previously provided evidence that the  
21 applicant possesses an assured water supply to meet the applicant's water needs, \$250.

22 (5) To appropriate ground water in an amount not exceeding 500 gallons per day for a  
23 single use pursuant to section 3 (11) of this 2007 Act, \$750.

24 (6) To appropriate ground water in an amount not exceeding 2,000 gallons per day for a  
25 group use pursuant to section 3 (11) of this 2007 Act, \$2,000.

26 **SECTION 5.** Sections 2 to 4 of this 2007 Act apply to:

27 (1) All pending applications for appropriation of water submitted under ORS 537.211 and  
28 537.615 and pending applications for change of use or place of use submitted under ORS  
29 540.510 before the effective date of this 2007 Act.

30 (2) Any exempt uses of ground water under ORS 537.545 for which a log has not been filed  
31 with the Water Resources Department under ORS 537.765, as specified in ORS 537.545 (3)  
32 before the effective date of this 2007 Act.

33 (3) All new applications for appropriation of water submitted under ORS 537.211 and  
34 537.615 and new applications for change of use or place of use submitted in accordance with  
35 ORS 540.510 on or after the effective date of this 2007 Act.

36 **SECTION 6.** In accordance with applicable provisions of ORS chapter 183, the Water Re-  
37 sources Director may adopt rules necessary for the administration of sections 2 to 5 of this  
38 2007 Act.

39 **SECTION 7.** This 2007 Act being necessary for the immediate preservation of the public  
40 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect  
41 on its passage.