

A-Engrossed
House Bill 2135

Ordered by the House February 14
Including House Amendments dated February 14

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for Water Resources Department)

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.

Reduces required number of newspaper publications for certain notices pertaining to water.

A BILL FOR AN ACT

1
2 Relating to reductions in newspaper notice requirements; creating new provisions; and amending
3 ORS 536.340, 537.130, 537.145, 537.252, 537.805, 540.520, 540.535, 541.329 and 543.220.

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

5 **SECTION 1.** ORS 536.340 is amended to read:

6 536.340. (1) Subject at all times to existing rights and priorities to use waters of this state, the
7 Water Resources Commission:

8 (a) May, by a water resources statement referred to in ORS 536.300 (2), classify and reclassify
9 the lakes, streams, underground reservoirs or other sources of water supply in this state as to the
10 highest and best use and quantities of use thereof for the future in aid of an integrated and balanced
11 program for the benefit of the state as a whole. The commission may so classify and reclassify
12 portions of any such sources of water supply separately. Classification or reclassification of sources
13 of water supply as provided in this subsection has the effect of restricting the use and quantities
14 of use thereof to the uses and quantities of uses specified in the classification or reclassification,
15 and no other uses or quantities of uses except as approved by the commission under ORS 536.370
16 to 536.390 or as accepted by the commission under ORS 536.295. Restrictions on use and quantities
17 of use of a source of water supply resulting from a classification or reclassification under this sub-
18 section shall apply to the use of all waters of this state affected by the classification or reclassi-
19 fication, and shall apply to uses listed in ORS 537.545 that are initiated after the classification or
20 reclassification that imposes the restriction.

21 (b) Shall diligently enforce laws concerning cancellation, release and discharge of excessive
22 unused claims to waters of this state to the end that such excessive and unused amounts may be
23 made available for appropriation and beneficial use by the public.

24 (c) May, by a water resources statement referred to in ORS 536.300 (2) and subject to the pref-
25 erential uses named in ORS 536.310 (12), prescribe preferences for the future for particular uses and
26 quantities of uses of the waters of any lake, stream or other source of water supply in this state in
27 aid of the highest and best beneficial use and quantities of use thereof. In prescribing such prefer-
28 ences the commission shall give effect and due regard to the natural characteristics of such sources

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 of water supply, the adjacent topography, the economy of such sources of water supply, the economy
2 of the affected area, seasonal requirements of various users of such waters, the type of proposed use
3 as between consumptive and nonconsumptive uses and other pertinent data.

4 (2) In classifying or reclassifying a source of water supply or prescribing preferences for the
5 future uses of a source of water supply under subsection (1) of this section, the commission shall:

6 (a) Comply with the requirements set forth in the Water Resources Department coordination
7 program developed pursuant to ORS 197.180; and

8 (b) Cause notice of the hearing held under ORS 536.300 (3) to be published in a newspaper of
9 general circulation once each week for ~~four~~ **two** successive weeks in each county:

10 (A) In which waters affected by the action of the commission under subsection (1) of this section
11 are located; or

12 (B) That is located within the basin under consideration.

13 (3) Before beginning any action under subsection (2) of this section that would limit new ground
14 water uses that are exempt under ORS 537.545 from the requirement to obtain a water right, the
15 commission shall:

16 (a) Review the proposed action to determine whether the proposal is consistent with ORS
17 537.780;

18 (b) Provide an opportunity for review by:

19 (A) Any member of the Legislative Assembly who represents a district where the proposed
20 action would apply; and

21 (B) Any interim committee of the Legislative Assembly responsible for water-related issues; and

22 (c) Receive and consider a recommendation on the proposal from the ground water advisory
23 committee appointed under ORS 536.090.

24 **SECTION 2.** ORS 537.130 is amended to read:

25 537.130. (1) Except for a use exempted under ORS 537.040, 537.141, 537.142, 537.143 or 537.800
26 or under the registration system set forth in ORS 537.132, any person intending to acquire the right
27 to the beneficial use of any of the surface waters of this state shall, before beginning construction,
28 enlargement or extension of any ditch, canal or other distributing or controlling works, or per-
29 forming any work in connection with the construction, or proposed appropriation, make an applica-
30 tion to the Water Resources Department for a permit to make the appropriation.

31 (2) Except for a use exempted under ORS 537.040, 537.141, 537.142, 537.143 or 537.800 or under
32 the registration system set forth in ORS 537.132, a person may not use, store or divert any waters
33 until after the department issues a permit to appropriate the waters.

34 (3) The department may not issue a permit without notifying the owner, as identified in the ap-
35 plication, of any land to be crossed by the proposed ditch, canal or other work as set forth in the
36 application filed pursuant to ORS 537.140. The department shall provide the notice even if the ap-
37 plicant has obtained written authorization or an easement from the owner.

38 (4) If more than 25 persons are identified in the application as required under subsection (3) of
39 this section, the department may provide the notice required under subsection (3) of this section by
40 publishing notice of the application in a newspaper having general circulation in the area in which
41 the proposed ditch, canal or other work is located at least once each week for at least ~~three~~ **two**
42 successive weeks. The cost of the publication shall be paid by the applicant in advance to the de-
43 partment.

44 **SECTION 3.** ORS 537.145 is amended to read:

45 537.145. (1) ~~Whenever~~ **If** an application is made for a permit to appropriate water for hydro-

1 electric purposes, the Water Resources Department shall give written notice of the filing of the ap-
2 plication to the owner of any land that is:

3 (a) Adjacent to any portion of the stream in which the quantity of water will be decreased by
4 the project; or

5 (b) Adjacent to the site of the proposed hydroelectric project.

6 (2) The department shall also publish notice of the application once each week for at least
7 ~~four~~ **two** successive weeks and for such further time, if any, as the department shall determine, in
8 a newspaper of general circulation in each county in which the project covered by the application
9 is located.

10 **SECTION 4.** ORS 537.252 is amended to read:

11 537.252. (1) When issuing a water right certificate under ORS 537.250 to a district, or to a gov-
12 ernment agency for a district, the Water Resources Department may issue the water right certificate
13 for land not described in the permit if:

14 (a) Water furnished by the district under the permit has been applied beneficially to the land;

15 (b) The land not described in the permit that is proposed to be included in the certificate is in-
16 cluded within the legally established boundaries of the district and is subject to the charges, as-
17 sessments and liens of the district;

18 (c) The certificate does not authorize a greater rate, duty or acreage than is authorized by the
19 terms of the permit, and all other conditions of the permit are satisfied;

20 (d) The inclusion of land not described in the permit will not result in injury to other existing
21 water rights or in enlargement of the right authorized under the permit; and

22 (e) The impact to the water source of including land not described in the permit will not differ
23 significantly from the impact expected at the time the permit was issued for the lands described in
24 the permit.

25 (2) If a district proposes to use water on lands not described in the permit, the Water Resources
26 Department may issue a certificate that includes such additional lands if all of the conditions of
27 subsection (1) of this section are satisfied and if, no later than 60 days before the district actually
28 applies the water to the lands not described in the permit, the district provides written notice to the
29 department. The notice shall include a copy of the original permit map modified to show the lands
30 to be added and lands to be removed from the description of the place of use of the water. Upon
31 receipt of the notice from the district, the department shall provide public notice of the proposed
32 change by means of publication in the department's weekly notice and by publication once each
33 week for ~~three~~ **two** successive weeks in a newspaper having general circulation in the county or
34 counties in which the affected lands are located. The cost of publication shall be paid by the district.

35 (3) If a district has issued an order of inclusion or exclusion, the boundaries of the irrigation
36 district shall be deemed to have been legally changed in the absence of approval of the Secretary
37 of the Interior.

38 (4) As used in this section:

39 (a) "District" has the meaning given in ORS 540.505.

40 (b) "Legally established boundaries" means the boundaries of a district as established at the
41 time of creation of the district and as the boundaries may have changed after creation of the district
42 by an inclusion, exclusion or merger proceeding according to state law.

43 **SECTION 5.** ORS 537.805 is amended to read:

44 537.805. Notwithstanding any other provision of ORS 537.801 to 537.809, an application governed
45 by ORS 537.803 shall be processed as follows:

1 (1) Upon determination that the application is acceptable, the Water Resources Commission
2 shall conduct a comprehensive review of the application, at the applicant's expense.

3 (2) When the comprehensive review is complete, the commission shall issue a preliminary anal-
4 ysis of the application that addresses the factors under ORS 537.803 and any other information the
5 commission considers relevant. The preliminary analysis, or a reasonable summary, shall be pub-
6 lished at the applicant's expense for [*three*] **two** consecutive weeks in a newspaper of general cir-
7 culation in the basin of origin of the proposed appropriation, diversion or impoundment.

8 (3) Following publication, the commission shall conduct a public hearing at the applicant's ex-
9 pense, in the basin of origin. The hearing shall be for comment on the factors analyzed under ORS
10 537.803 and standards that otherwise apply to the proposed appropriation or transfer.

11 (4) After considering the application, the information generated during the comprehensive re-
12 view of the application, all comments received at the hearing and written comments received within
13 20 days after the date of the public hearing, the commission shall:

14 (a) If the application requires legislative approval under ORS 537.810, submit a report to the
15 Legislative Assembly that addresses all factors analyzed under ORS 537.803 and recommends
16 whether to approve or deny the application for use of water outside the basin of origin; or

17 (b) If the application does not require legislative approval under ORS 537.810, approve or deny
18 the application in accordance with the procedures and standards that otherwise govern the appli-
19 cation, giving due consideration to factors set forth in ORS 537.803.

20 **SECTION 6.** ORS 540.520 is amended to read:

21 540.520. (1) Except when the application is made under ORS 541.327 or when an application for
22 a temporary transfer is made under ORS 540.523, [*whenever*] **if** the holder of a water use subject to
23 transfer for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires
24 to change the place of use, the point of diversion, or the use made of the water, an application to
25 make such change, as the case may be, shall be filed with the Water Resources Department.

26 (2) The application required under subsection (1) of this section shall include:

27 (a) The name of the owner;

28 (b) The previous use of the water;

29 (c) A description of the premises upon which the water is used;

30 (d) A description of the premises upon which it is proposed to use the water;

31 (e) The use [*which*] **that** is proposed to be made of the water;

32 (f) The reasons for making the proposed change; and

33 (g) Evidence that the water has been used over the past five years according to the terms and
34 conditions of the owner's water right certificate or that the water right is not subject to forfeiture
35 under ORS 540.610.

36 (3) If the application required under subsection (1) of this section is necessary to allow a change
37 in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS
38 541.375, or is approved by the State Department of Fish and Wildlife as a change that will result in
39 a net benefit to fish and wildlife habitat, the department, at the discretion of the Water Resources
40 Director, may waive or assist the applicant in satisfying the requirements of subsection (2)(c) and
41 (d) of this section. The assistance provided by the department may include, but need not be limited
42 to, development of an application map.

43 (4) If the application is to change the point of diversion, the transfer shall include a condition
44 that the holder of the water right provide a proper fish screen at the new point of diversion, if re-
45 quested by the State Department of Fish and Wildlife.

1 (5) Upon the filing of the application the department shall give notice by publication in a
2 newspaper having general circulation in the area in which the water rights are located, for a period
3 of at least [*three*] **two** weeks and not less than one publication each week. The notice shall include
4 the date on which the last notice by publication will occur. The cost of the publication shall be paid
5 by the applicant in advance to the department. In applications for only a change in place of use or
6 for a change in the point of diversion of less than one-fourth mile, and where there are no inter-
7 vening diversions between the old diversion of the applicant and the proposed new diversion, no
8 newspaper notice need be published. The department shall include notice of such applications in the
9 weekly notice published by the department.

10 (6) Within 30 days after the last publication of a newspaper notice of the proposed transfer or
11 the mailing of the department's weekly notice, whichever is later, any person may file, jointly or
12 severally, with the department, a protest against approval of the application.

13 (7) [*Whenever*] **If** a timely protest is filed, or in the opinion of the Water Resources Director a
14 hearing is necessary to determine whether the proposed changes as described by the application
15 would result in injury to existing water rights, the department shall hold a hearing on the matter.
16 Notice and conduct of the hearing shall be under the provisions of ORS chapter 183, pertaining to
17 contested cases, and shall be held in the area where the rights are located unless all parties and
18 persons who filed a protest under this subsection stipulate otherwise.

19 (8) An application for a change of use under this section is not required if the beneficial use
20 authorized by the water use subject to transfer is irrigation and the owner of the water right uses
21 the water for incidental agricultural, stock watering and other uses related to irrigation use, so long
22 as there is no increase in the rate, duty, total acreage benefited or season of use.

23 (9) A water right transfer under subsection (1) of this section is not required for a general in-
24 dustrial use that was not included in a water right certificate issued for a specific industrial use if:

25 (a) The quantity of water used for the general industrial use is not greater than the rate allowed
26 in the original water right and not greater than the quantity of water diverted to satisfy the au-
27 thorized specific use under the original water right;

28 (b) The location where the water is to be used for general industrial use was owned by the
29 holder of the original water right at the time the water right permit was issued; and

30 (c) The person who makes the change in water use provides the following information to the
31 Water Resources Department:

32 (A) The name and mailing address of the person using water under the water right;

33 (B) The water right certificate number;

34 (C) A description of the location of the industrial facility owned by the holder of the original
35 water right at the time the water right permit was issued; and

36 (D) A description of the general industrial use to be made of the water after the change.

37 **SECTION 7.** ORS 540.535 is amended to read:

38 540.535. After receipt of an exchange application, the Water Resources Commission shall give
39 notice of the application by publishing notice of the application in a newspaper having general cir-
40 culation in the area in which the water uses are located at least once each week for at least
41 [*three*] **two** successive weeks. The cost of providing the notice by publication shall be paid in ad-
42 vance by the applicant to the commission.

43 **SECTION 8.** ORS 541.329 is amended to read:

44 541.329. (1) Pursuant to the requirements of subsection (2) of this section, a district may petition
45 the Water Resources Commission for approval and acceptance of a district map indicating the lo-

1 cation and use of the water rights within the district or any part thereof. The petition and map shall
2 be in a form satisfactory to the commission and shall be certified by the district rather than a cer-
3 tified water right examiner. For a district that notifies the Water Resources Department under ORS
4 541.327 (4), the map must be submitted in an electronic format meeting the standards set by the
5 department. The petition and map may not expand a water right of the district or its users beyond
6 the total right of record of the district. If the district has met the requirements of ORS 541.325 to
7 541.331 and after the opportunity for hearing under ORS 541.331, the commission shall instruct the
8 director to issue a new certificate to the district listing the requested locations and uses and re-
9 taining the original priority date. If the commission denies the petition, the commission shall hold
10 a hearing on the denial. Notice and conduct of the hearing shall be under the provisions of ORS
11 chapter 183 pertaining to contested cases. The hearing shall be conducted in the area where the
12 right is located unless the parties and the persons who file the protest under this section stipulate
13 otherwise.

14 (2) The petition required under subsection (1) of this section shall be submitted on or before July
15 1, 1994, or before June 30, 2010, for a district notifying the department under ORS 541.327 (4), and
16 shall include:

17 (a) The name of the district and the certificate number of each water right contained in the
18 petition.

19 (b) The names of all users within the district whose lands are included in the petition.

20 (c) A general description of the district boundaries.

21 (d) A general description of the users' land and all water rights per each parcel affected by the
22 petition and the map. If the water right is on a tract of land of five acres or less, a notation of the
23 acres of water right on the assessor's tax map shall be sufficient for identification of the place of
24 use and the extent of use.

25 (e) A description of the use [*which*] **that** is proposed to be made of the water on each parcel.

26 (f) An affirmation by the petitioner that the map and petition are accurate to the best of the
27 petitioner's knowledge.

28 (3) A petition submitted under this section shall contain no more acres of land than the least
29 of the following:

30 (a) The number of acres assessed by the district as of July 1, 1989;

31 (b) The number of acres assessed by the district as of July 1, 1993; or

32 (c) If a district notifies the department under ORS 541.327 (4), the number of acres assessed by
33 the district as of December 31, 2003.

34 (4) Before submitting a petition under subsection (2) of this section, the district shall send a
35 notice to the user of every parcel whose right of record is to be altered, as evidenced by the
36 district's records. This notice shall be sent to the last-known address for the user with a return re-
37 ceipt requested. The notice shall include the number of acre-feet of water or its equivalent, for
38 which the user is being assessed, a general description or tax lot of the land to which the water is
39 assigned, a description of the use and a request for confirmation that the information in the notice
40 is correct. Thirty days after the notice is mailed, the district shall prepare a petition and map as
41 described in subsections (1) and (2) of this section. Payment for water by the user or the user's
42 predecessor for a period of five years before the petition shall create a rebuttable presumption that
43 the number of acres billed and paid by the user or the user's predecessor is equal to the user's water
44 right.

45 (5) Within 30 days after the commission issues a proposed order regarding the petition, the dis-

1 trict shall send notice to the users of the district whose right of record is to be altered by the
2 proposed order. This notice shall be sent to the last-known address of the user with a return receipt
3 requested. The notice shall include the number of acres of land, or its equivalent, for which the user
4 is being assessed, a general description or tax lot number of the land to which the water is assigned
5 and a description of the use. In addition to the notice of the proposed order that the district sends
6 to the users, the district shall publish at the same time notice in a newspaper having general cir-
7 culation in the area in which the water rights are located for a period of at least [*three*] **two** weeks.
8 Not less than one publication in each week shall be made. The notice shall state:

9 (a) The number of acres of water right that each parcel shall receive and the associated priority
10 dates;

11 (b) That the proposed map and order are available for inspection at the office of the district
12 during normal business hours for a period of 60 days from the date of first publication;

13 (c) That not less than 60 days after the date of first publication, the commission shall approve
14 the petition and map and issue a final order unless a protest is filed or the petition does not meet
15 the requirements of subsections (1) and (2) of this section; and

16 (d) That the user has the right to protest the proposed order and map as described in ORS
17 541.331.

18 (6) If the commission returns a petition or map to a district for correction, the commission may
19 prescribe a deadline for the petitioner to provide additional information or correct the petition or
20 map. If the petitioner fails to meet the deadline prescribed by the commission, the commission may
21 deny the petition.

22 **SECTION 9.** ORS 543.220 is amended to read:

23 543.220. (1) [*Whenever*] **If** an application is made for a preliminary permit, [*and*] after said ap-
24 plication has been referred to hearing[,] the Water Resources Commission shall give written notice
25 of the filing of the application to:

26 (a) Any municipality or other person or corporation [*which*] **that**, in the judgment of the com-
27 mission, is likely to be interested in or affected by the proposed project; and

28 (b) The owner of any land that is:

29 (A) Adjacent to any portion of the stream in which the quantity of water will be decreased by
30 the project; or

31 (B) Adjacent to the site of the proposed project.

32 (2) The commission shall also publish notice of the application once each week for at least
33 [*four*] **two** successive weeks and for such further time, if any, as the commission shall determine, in
34 a newspaper of general circulation in each county in which the project covered by the application
35 is located.

36 (3) No application for the appropriation or use of water for the development of 1,000 theoretical
37 horsepower or more shall be granted until at least six months after the application for a preliminary
38 permit has been filed.

39 **SECTION 10.** (1) **The amendments to ORS 536.340 by section 1 of this 2011 Act apply to**
40 **hearings that the Water Resources Commission holds 30 or more days after the effective**
41 **date of this 2011 Act.**

42 (2) **The amendments to ORS 537.130, 537.145, 537.805, 540.520, 540.535 and 543.220 by**
43 **sections 2, 3, 5, 6, 7 and 9 of this 2011 Act apply to applications filed on or after the effective**
44 **date of this 2011 Act.**

45 (3) **The amendments to ORS 537.252 by section 4 of this 2011 Act apply to proposed**

1 **changes for which a district gives the Water Resources Department notice on or after the**
2 **effective date of this 2011 Act.**

3 **(4) The amendments to ORS 541.329 by section 8 of this 2011 Act apply to proposed orders**
4 **that the Water Resources Commission issues 30 or more days after the effective date of this**
5 **2011 Act.**

6
