

House Bill 2983

Sponsored by Representatives CLEM, HANNA (Pre-session filed.)

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**.

Reduces fee charged by Water Resources Department for examining certain new applications for in-stream water right lease.

Prohibits collection of fee to renew in-stream water right lease except upon occurrence of certain events. Requires person having in-stream water right lease that is exempt from fee collection to give notice to Water Resources Department no later than one year before permanent or temporary change in lease.

A BILL FOR AN ACT

1
2 Relating to in-stream water right leases; creating new provisions; and amending ORS 536.050 and
3 537.348.

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

5 **SECTION 1.** ORS 536.050 is amended to read:

6 536.050. (1) The Water Resources Department may collect the following fees in advance:

7 (a) For examining an application for a permit:

8 (A) To appropriate water, except as provided under ORS 543.280 for an application for a hy-
9 droelectric project:

10 (i) A base fee of \$700 for an appropriation of water through a single use, point of diversion or
11 point of appropriation;

12 (ii) \$250 for the first second-foot or fraction thereof appropriated under the permit;

13 (iii) \$250 for each additional second-foot or fraction thereof appropriated under the permit;

14 (iv) \$250 for each additional use, point of diversion or point of appropriation included in the
15 application;

16 (v) If appropriating stored water, \$25 for the first acre-foot or fraction thereof up to 20 acre-feet,
17 plus \$1 for each additional acre-foot or fraction thereof; and

18 (vi) If appropriating ground water, in addition to any other fees, \$300 for each application filed.

19 (B) To store water under ORS 537.400 or 537.534 (4):

20 (i) A base fee of \$700;

21 (ii) \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional
22 acre-foot or fraction thereof; and

23 (iii) \$100 for each additional storage location.

24 (C) To exclusively appropriate stored water:

25 (i) A base fee of \$400; and

26 (ii) \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional
27 acre-foot or fraction thereof.

28 (b) For a permit issued under ORS 537.147, 537.211, 537.409 or 537.625 to appropriate or store
29 water:

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 (A) A base fee of \$400 for recording the permit; and
- 2 (B) An additional fee of \$500 if the permit is issued pursuant to a final order that contains
- 3 provisions requested by the applicant for mitigating impacts to the proposed water source.
- 4 (c) For filing and recording the assignment or partial assignment of a water right application,
- 5 permit or license under ORS 537.220 or 537.635, \$75.
- 6 (d) For copying records in the department, \$2 for the first page and 50 cents for each additional
- 7 page.
- 8 (e) For certifying copies, documents, records or maps, \$10 for each certificate.
- 9 (f) For a blueprint copy of any map or drawing, the actual cost of the work.
- 10 (g) For a computer-generated map, the actual cost of the work.
- 11 (h) For examining an application for approval of a change to an existing water right or permit:
- 12 (A) A base fee of \$900 for a change to a single water right or permit;
- 13 (B) \$700 for each additional type of change requested;
- 14 (C) For a request for a change in place of use or type of use or for a water exchange under ORS
- 15 540.533, \$250 for each second-foot or fraction thereof requested beyond the first second-foot;
- 16 (D) \$400 for each additional water right or permit included in the application; and
- 17 (E) An additional fee of \$300 per application, if the application is for an additional point of ap-
- 18 propriation, a change in a point of appropriation or a change from surface water to ground water
- 19 or for substitution as described in ORS 540.524.
- 20 (i) For examining an application for a temporary change in place of use under ORS 540.523, for
- 21 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the
- 22 point of diversion to allow for the appropriation of ground water or a change of a primary right to
- 23 a supplemental right under ORS 540.570, a base fee of \$600 for the first water right or permit, plus
- 24 \$200 for each additional water right or permit included in the application and:
- 25 (A) For nonirrigation uses, \$150 for each second-foot or fraction thereof requested beyond the
- 26 first second-foot; or
- 27 (B) For irrigation uses, \$2 per acre of land irrigated or, if the application and required map are
- 28 submitted to the department in a department-approved digital format, 50 cents per acre of land ir-
- 29 rigated.
- 30 (j) For submitting a protest to the department:
- 31 (A) \$600 if the protest is by a nonapplicant; and
- 32 (B) \$300 if the protest is by an applicant.
- 33 (k) For filing an application for extension of time within which irrigation or other works shall
- 34 be completed or a water right perfected, \$500.
- 35 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the
- 36 Water Resources Commission.
- 37 (m) For filing, examining and certifying a petition under ORS 541.329, \$300 plus 10 cents per
- 38 acre of water involved in the application. For purposes of computing this fee, when any acreage
- 39 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in
- 40 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a
- 41 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining
- 42 and certifying the petition.
- 43 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$150.
- 44 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,
- 45 \$350.

- 1 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order
 2 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to
 3 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$20.
- 4 (q) For examining an application to store water under ORS 537.409:
 5 (A) A base fee of \$300; and
 6 (B) \$25 for each acre-foot or fraction thereof.
- 7 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established
 8 by the Water Resources Director under ORS 543A.410.
- 9 (s) For examining an application for a substitution made under ORS 540.524:
 10 (A) A base fee of \$630 for the first well substitution; and
 11 (B) A fee of \$300 for each additional well substitution.
- 12 (t) For examining an application for an allocation of conserved water under ORS 537.455 to
 13 537.500:
 14 (A) A base fee of \$850 for the first water right that is part of the allocation; and
 15 (B) An additional fee of \$300 for each water right that is part of the allocation beyond the first
 16 water right.
- 17 (u) For submitting a water management and conservation plan pursuant to rules of the com-
 18 mission:
 19 (A) \$400, if the plan is submitted by an agricultural water supplier;
 20 (B) \$800, if the plan is submitted by a municipal water supplier serving a population of 1,000 or
 21 fewer persons; or
 22 (C) \$1,600, if the plan is submitted by a municipal water supplier serving a population of more
 23 than 1,000 persons.
- 24 (v) For examining a new application for an in-stream water right lease under ORS 537.348:
 25 (A) \$400 for an application for a lease with four or more landowners or four or more water
 26 rights; or
 27 (B) [~~\$250~~] **\$50** for all other applications.
- 28 (w) For examining an application for an in-stream water right lease renewal, \$100, **except as**
 29 **provided in subsection (3)(b) of this section.**
- 30 (x) For submitting a claim of beneficial use under a permit having a priority date of July 9, 1987,
 31 or later, \$150.
- 32 (y) For submitting a request no later than 60 days after cancellation of a permit under ORS
 33 537.260 to reinstate the permit, \$400.
- 34 (z) For submitting a request for a basin program exception under ORS 536.295, \$500.
- 35 (2)(a) The department may charge a dam owner an annual fee based upon the dam's hazard
 36 rating as determined by the department. The fees the department may charge the dam owner are:
 37 (A) \$75 for a dam with a low hazard rating.
 38 (B) \$150 for a dam with a significant hazard rating.
 39 (C) \$500 for a dam with a high hazard rating.
 40 (D) If the dam owner fails to pay an annual fee on or before six months after the billing date,
 41 a late fee of \$100.
- 42 (b) If a dam owner fails to pay an annual fee or a late fee charged by the department, the de-
 43 partment may, after giving the dam owner notice by certified mail, place a lien on the real property
 44 where the dam is located for the fees owed by the dam owner.
- 45 (3) Notwithstanding the fees established under subsection (1) of this section[,];

1 (a) The commission may establish lower examination and permit fees by rule for:

2 [(a)] (A) The right to appropriate water for a storage project of five acre-feet or less; or

3 [(b)] (B) The right to appropriate water for the purpose of allowing the applicant to water
4 livestock outside of a riparian area, as that term is defined in ORS 541.351.

5 (b) **The department may not collect the fee for an application described under subsection
6 (1)(w) of this section unless, before the end of the lease renewal period covered by the ap-
7 plication:**

8 (A) **The applicant permanently withdraws from all activities by which the applicant
9 makes beneficial use of the existing water right, as determined under rules of the commis-
10 sion; or**

11 (B) **The ownership of the property appurtenant to the in-stream water right lease
12 transfers by sale, devise or other means to a person other than the applicant.**

13 (4)(a) The director may refund all or part of a fee paid to the department under this section if
14 the director determines that a refund of the fee is appropriate in the interests of fairness to the
15 public or necessary to correct an error of the department.

16 (b) The director may refund all or part of the protest fee described in subsection (1)(j) of this
17 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the
18 Water Resources Commission establishes that all or part of a water right has not been canceled or
19 modified under ORS 540.610 to 540.650.

20 (5) The director may waive all or part of a fee for a change to a water right permit under ORS
21 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-
22 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

23 (a) Made pursuant to ORS 537.348;

24 (b) Necessary to complete a project funded under ORS 541.375; or

25 (c) Approved by the State Department of Fish and Wildlife as a change or allocation of con-
26 served water that will result in a net benefit to fish and wildlife habitat.

27 (6) Notwithstanding the fees established pursuant to this section, the commission may adopt by
28 rule reduced fees for persons submitting materials to the department in a digital format approved
29 by the department.

30 (7) All moneys received under this section, less any amounts refunded under subsection (4) of
31 this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

32 (8) Notwithstanding subsection (7) of this section, all fees received by the department for power
33 purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric
34 Fund established by ORS 536.015.

35 **SECTION 2.** ORS 536.050, as amended by section 12, chapter 819, Oregon Laws 2009, is
36 amended to read:

37 536.050. (1) The Water Resources Department may collect the following fees in advance:

38 (a) For examining an application for a permit:

39 (A) To appropriate water, except as provided under ORS 543.280 for an application for a hy-
40 droelectric project:

41 (i) A base fee of \$500 for an appropriation of water through a single use, point of diversion or
42 point of appropriation;

43 (ii) \$200 for the first second-foot or fraction thereof appropriated under the permit;

44 (iii) \$100 for each additional second-foot or fraction thereof appropriated under the permit;

45 (iv) \$200 for each additional use, point of diversion or point of appropriation included in the

- 1 application; and
- 2 (v) If appropriating stored water, \$20 for the first acre-foot or fraction thereof up to 20 acre-feet,
- 3 plus \$1 for each additional acre-foot or fraction thereof.
- 4 (B) To store water under ORS 537.400 or 537.534 (4):
- 5 (i) A base fee of \$500; and
- 6 (ii) \$20 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional
- 7 acre-foot or fraction thereof.
- 8 (C) To exclusively appropriate stored water:
- 9 (i) A base fee of \$250; and
- 10 (ii) \$15 for the first acre-foot or fraction thereof up to 10 acre-feet, plus \$1 for each additional
- 11 acre-foot or fraction thereof.
- 12 (b) For recording a permit to appropriate or store water, \$300.
- 13 (c) For filing and recording the assignment or partial assignment of a water right application,
- 14 permit or license under ORS 537.220 or 537.635, \$50.
- 15 (d) For copying records in the department, \$2 for the first page and 50 cents for each additional
- 16 page.
- 17 (e) For certifying copies, documents, records or maps, \$10 for each certificate.
- 18 (f) For a blueprint copy of any map or drawing, the actual cost of the work.
- 19 (g) For a computer-generated map, the actual cost of the work.
- 20 (h) For examining an application for approval of a change to an existing water right or permit:
- 21 (A) A base fee of \$400 for a change to a single water right or permit;
- 22 (B) \$400 for each additional type of change requested;
- 23 (C) For a request for a change in place of use or type of use or for a water exchange under ORS
- 24 540.533, \$200 for each second-foot or fraction thereof requested beyond the first second-foot; and
- 25 (D) \$200 for each additional water right or permit included in the application.
- 26 (i) For examining an application for a temporary change in place of use under ORS 540.523, for
- 27 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the
- 28 point of diversion to allow for the appropriation of ground water or a change of a primary right to
- 29 a supplemental right under ORS 540.570, a base fee of \$200 for the first water right or permit, plus
- 30 \$50 for each additional water right or permit included in the application and:
- 31 (A) For nonirrigation uses, \$80 for each second-foot or fraction thereof requested beyond the
- 32 first second-foot; or
- 33 (B) For irrigation uses, \$1 per acre of land irrigated or, if the application and required map are
- 34 submitted to the department in a department-approved digital format, 25 cents per acre of land ir-
- 35 rigated.
- 36 (j) For submitting a protest to the department, \$350.
- 37 (k) For filing an application for extension of time within which irrigation or other works shall
- 38 be completed or a water right perfected, \$350.
- 39 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the
- 40 Water Resources Commission.
- 41 (m) For filing, examining and certifying a petition under ORS 541.329, \$250 plus 10 cents per
- 42 acre of water involved in the application. For purposes of computing this fee, when any acreage
- 43 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in
- 44 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a
- 45 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining

1 and certifying the petition.

2 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$100.

3 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,
4 \$250.

5 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order
6 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to
7 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$10.

8 (q) For examining an application to store water under ORS 537.409:

9 (A) A base fee of \$80; and

10 (B) \$20 for each acre-foot or fraction thereof.

11 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established
12 by the Water Resources Director under ORS 543A.410.

13 (s) For examining an application for a substitution made under ORS 540.524, \$280.

14 (t) For examining an application for an allocation of conserved water under ORS 537.455 to
15 537.500, \$700.

16 (u) For submitting a water management and conservation plan pursuant to rules of the com-
17 mission:

18 (A) \$250, if the plan is submitted by an agricultural water supplier;

19 (B) \$500, if the plan is submitted by a municipal water supplier serving a population of 1,000 or
20 fewer persons; or

21 (C) \$1,000, if the plan is submitted by a municipal water supplier serving a population of more
22 than 1,000 persons.

23 (v) For examining a new application for an in-stream water right lease under ORS 537.348:

24 (A) \$200 for an application for a lease with four or more landowners or four or more water
25 rights; or

26 (B) [~~\$100~~] **\$50** for all other applications.

27 (w) For examining an application for an in-stream water right lease renewal, \$50, **except as**
28 **provided in subsection (2)(b) of this section.**

29 (2) Notwithstanding the fees established under subsection (1) of this section[,]:

30 (a) The commission may establish lower examination and permit fees by rule for:

31 [(a)] (A) The right to appropriate water for a storage project of five acre-feet or less; or

32 [(b)] (B) The right to appropriate water for the purpose of allowing the applicant to water
33 livestock outside of a riparian area, as that term is defined in ORS 541.351.

34 (b) **The department may not collect the fee for an application described under subsection**
35 **(1)(w) of this section unless, before the end of the lease renewal period covered by the ap-**
36 **plication:**

37 (A) **The applicant permanently withdraws from all activities by which the applicant**
38 **makes beneficial use of the existing water right, as determined under rules of the commis-**
39 **sion; or**

40 (B) **The ownership of the property appurtenant to the in-stream water right lease**
41 **transfers by sale, devise or other means to a person other than the applicant.**

42 (3)(a) The director may refund all or part of a fee paid to the department under this section if
43 the director determines that a refund of the fee is appropriate in the interests of fairness to the
44 public or necessary to correct an error of the department.

45 (b) The director may refund all or part of the protest fee described in subsection (1)(j) of this

1 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the
2 Water Resources Commission establishes that all or part of a water right has not been canceled or
3 modified under ORS 540.610 to 540.650.

4 (4) The director may waive all or part of a fee for a change to a water right permit under ORS
5 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-
6 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

7 (a) Made pursuant to ORS 537.348;

8 (b) Necessary to complete a project funded under ORS 541.375; or

9 (c) Approved by the State Department of Fish and Wildlife as a change or allocation of con-
10 served water that will result in a net benefit to fish and wildlife habitat.

11 (5) Notwithstanding the fees established pursuant to this section, the commission may adopt by
12 rule reduced fees for persons submitting materials to the department in a digital format approved
13 by the department.

14 (6) All moneys received under this section, less any amounts refunded under subsection (3) of
15 this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

16 (7) Notwithstanding subsection (6) of this section, all fees received by the department for power
17 purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric
18 Fund established by ORS 536.015.

19 **SECTION 3.** ORS 537.348 is amended to read:

20 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or
21 accept a gift of all or a portion of an existing water right for conversion to an in-stream water right.
22 Any water right converted to an in-stream water right under this section shall retain the priority
23 date of the water right purchased, leased or received as a gift. At the request of the person the
24 Water Resources Commission shall issue a new certificate for the in-stream water right showing the
25 original priority date of the purchased, gifted or leased water right. A person who transfers a water
26 right by purchase, lease or gift under this subsection shall comply with the requirements for the
27 transfer of a water right under ORS 540.505 to 540.585.

28 (2) Any person who has an existing water right may lease all or a portion of the existing water
29 right for use as an in-stream water right for a specified period without the loss of the original pri-
30 ority date. During the term of such lease, the use of the water right as an in-stream water right
31 shall be considered a beneficial use.

32 (3) A lease of all or a portion of an existing water right for use as an in-stream water right
33 under subsection (2) of this section may allow the split use of the water between the existing water
34 right and the in-stream right during the same water or calendar year provided:

35 (a) The uses are not concurrent; and

36 (b) The holders of the water rights measure and report to the Water Resources Department the
37 use of the existing water right and the in-stream water right.

38 **(4) A person who has an in-stream water right lease described in ORS 536.050 (3)(b) must**
39 **notify the department of any temporary or permanent change to the water right lease no**
40 **later than one year before the change occurs.**

41 **SECTION 4.** ORS 537.348, as amended by section 3 of this 2011 Act, is amended to read:

42 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or
43 accept a gift of all or a portion of an existing water right for conversion to an in-stream water right.
44 Any water right converted to an in-stream water right under this section shall retain the priority
45 date of the water right purchased, leased or received as a gift. At the request of the person the

1 Water Resources Commission shall issue a new certificate for the in-stream water right showing the
 2 original priority date of the purchased, gifted or leased water right. A person who transfers a water
 3 right by purchase, lease or gift under this subsection shall comply with the requirements for the
 4 transfer of a water right under ORS 540.505 to 540.585.

5 (2) Any person who has an existing water right may lease all or a portion of the existing water
 6 right for use as an in-stream water right for a specified period without the loss of the original pri-
 7 ority date. During the term of such lease, the use of the water right as an in-stream water right
 8 shall be considered a beneficial use.

9 (3) A lease of all or a portion of an existing water right for use as an in-stream water right
 10 under subsection (2) of this section may allow the split use of the water between the existing water
 11 right and the in-stream right during the same water or calendar year provided:

12 (a) The uses are not concurrent; and

13 (b) The holders of the water rights measure and report to the Water Resources Department the
 14 use of the existing water right and the in-stream water right.

15 (4) A person who has an in-stream water right lease described in ORS 536.050 [(3)(b)] **(2)(b)** must
 16 notify the department of any temporary or permanent change to the water right lease no later than
 17 one year before the change occurs.

18 **SECTION 5.** ORS 537.348, as amended by section 2, chapter 205, Oregon Laws 2001, is amended
 19 to read:

20 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or
 21 accept a gift of all or a portion of an existing water right for conversion to an in-stream water right.
 22 Any water right converted to an in-stream water right under this section shall retain the priority
 23 date of the water right purchased, leased or received as a gift. At the request of the person the
 24 Water Resources Commission shall issue a new certificate for the in-stream water right showing the
 25 original priority date of the purchased, gifted or leased water right. A person who transfers a water
 26 right by purchase, lease or gift under this subsection shall comply with the requirements for the
 27 transfer of a water right under ORS 540.505 to 540.585.

28 (2) Any person who has an existing water right may lease all or a portion of the existing water
 29 right for use as an in-stream water right for a specified period without the loss of the original pri-
 30 ority date. During the term of such lease, the use of the water right as an in-stream water right
 31 shall be considered a beneficial use.

32 **(3) A person who has an in-stream water right lease described in ORS 536.050 (2)(b) must**
 33 **notify the department of any temporary or permanent change to the water right lease no**
 34 **later than one year before the change occurs.**

35 **SECTION 6.** The amendments to ORS 536.050 and 537.348 by sections 1 to 5 of this 2011
 36 Act apply to water right leases for which a renewal application is filed with the Water Re-
 37 sources Department on or after the effective date of this 2011 Act.

38 **SECTION 7.** The amendments to ORS 537.348 by section 4 of this 2011 Act become oper-
 39 **ative July 1, 2013.**