

House Bill 2258

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., 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 **as introduced**.

Makes legislative findings regarding need for water supply management and merits of water banking.

Grants Water Resources Department authority for formal and informal agreements with public or private entities for purposes consistent with state water laws. Provides exceptions. Authorizes department to accept moneys for purposes consistent with and related to laws administered and enforced by department. Allows department to issue grants or make other disbursements to public and private entities for public purposes consistent with and related to laws administered and enforced by department. Authorizes department investments and expense payments for proposed or existing in-state or out-of-state projects providing state with water or water supply benefits. Authorizes purchase and sale of water. Authorizes department to sell water from state water resources as consideration for other actions expected to benefit state. Authorizes department to enter into certain agreements for exchanges of services and information. Allows department to accept or pay compensation under agreements. Provides for deposit of gifts, grants, donations, compensation or other moneys.

Authorizes department to purchase water and to acquire whole or partial rights in existing surface water, ground water, stored water and reclaimed water. Requires department to assign permit or issue new certificate for acquired right showing State of Oregon as holder. Directs department to make purchased water or acquired right resource of water supply development program.

Authorizes department to use purchased water or acquired right for water banking purposes. Allows department to make purchased water or acquired right available on temporary or permanent basis and to assign permit or issue new certificate if appropriate.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to Water Resources Department authority; and declaring an emergency.

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

4 **SECTION 1. Sections 2 to 7 of this 2013 Act are added to and made a part of ORS chapter**
5 **536.**

6 **SECTION 2. (1) The Legislative Assembly finds and declares that:**

7 **(a) A key priority for water resource management in this state is the development of new**
8 **water supplies to meet the economic and community development needs of the state and to**
9 **meet scenic waterway needs and in-stream flow needs for fish and wildlife, promoting water**
10 **quality and recreational use.**

11 **(b) It is the role of the Water Resources Department to facilitate the development of**
12 **water supplies wherever possible to benefit in-stream and out-of-stream uses.**

13 **(c) Water banking can provide critical tools to:**

14 **(A) Make water supplies available when and where needed;**

15 **(B) Improve stream flows;**

16 **(C) Reduce water transaction costs, time and risk to purchasers;**

17 **(D) Facilitate fair and efficient reallocation of water from one beneficial use to another;**

18 **(E) Provide mitigation to offset impacts related to future development and the issuance**
19 **of new water rights; and**

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 (F) Provide mitigation for existing water right holders.

2 (2) The Legislative Assembly intends that sections 3 to 7 of this 2013 Act provide the
 3 department with clear authority for a water supply development program that includes, but
 4 need not be limited to, the purchase of water and the acquisition of water rights by the de-
 5 partment for banking purposes consistent with the purposes described in this section and
 6 with the policies of the Water Resources Commission.

7 **SECTION 3.** (1) As used in this section:

8 (a) “Local government” and “local service district” have the meanings given those terms
 9 in ORS 174.116.

10 (b) “Special government body” has the meaning given that term in ORS 174.117.

11 (2) Notwithstanding ORS 536.420 and except as provided in subsection (4) of this section,
 12 the Water Resources Department may:

13 (a) Enter into and carry out any formal or informal agreement with any unit of the fed-
 14 eral government, an Indian tribe, another state, any agency of this state, a local government,
 15 local service district or special government body or a person that is consistent with and re-
 16 lated to the laws administered and enforced by the department;

17 (b) Accept gifts, grants, donations or other moneys from any source for any purpose
 18 consistent with and related to the laws administered and enforced by the department;

19 (c) Issue grants or make other disbursements of moneys to any unit of the federal gov-
 20 ernment, an Indian tribe, another state, any agency of this state, a local government, local
 21 service district or special government body or a person for any public purposes that are
 22 consistent with and related to the laws administered and enforced by the department;

23 (d) Make investments in, pay costs of or make other disbursements of moneys for a
 24 proposed or existing water supply project in this state or another state for the purpose of
 25 increasing the availability of water in this state or to increase, preserve, conserve or allow
 26 the utilization of or otherwise benefit the water resources of this state;

27 (e) Enter into agreements for the department to purchase water from any unit of the
 28 federal government, an Indian tribe, another state, a local government, local service district
 29 or special government body or a person and agreements for the resale of purchased water
 30 to any governmental unit or person;

31 (f) Subject to ORS 537.801 to 537.860, enter into agreements for the sale of water from
 32 the water resources of this state to any unit of the federal government, an Indian tribe,
 33 another state, a local government, local service district or special government body or a
 34 person in full or partial consideration for other actions reasonably expected to increase the
 35 availability of water in this state or to increase, preserve, conserve or allow the utilization
 36 of or otherwise benefit the water resources of this state;

37 (g) Enter into and carry out formal or informal agreements with any unit of the federal
 38 government, an Indian tribe, another state, any agency of this state, a local government,
 39 local service district or special government body or a person for exchanges of services and
 40 information that are consistent with and related to the laws administered and enforced by
 41 the department; and

42 (h) Receive compensation or make payment for services rendered in carrying out formal
 43 or informal agreements described in this subsection.

44 (3) Any gifts, grants, donations, compensation or other moneys that the department re-
 45 ceives from activities described in subsection (2) of this section shall be deposited in the

1 Water Resources Department Water Right Operating Fund and, unless otherwise prescribed
 2 by the source from which the moneys were received, may be used for any purposes author-
 3 ized under ORS 536.009, including but not limited to the carrying out of formal or informal
 4 agreements or issuance of grants as described in this section.

5 (4) Except as provided in subsection (2)(f) of this section, this section does not authorize
 6 the department to enter into any interstate compact or other agreement that by the terms
 7 of its authorizing legislation requires the approval of the Legislative Assembly or the Gov-
 8 ernor. This section does not authorize the department to enter into any interstate compact
 9 or other agreement that requires the approval of the Congress of the United States.

10 **SECTION 4.** (1) The Water Resources Department may purchase water or acquire all or
 11 part of an existing right for surface water, ground water, stored water or reclaimed water.
 12 An acquisition of a right may be by purchase, grant, donation, lease, contract or other
 13 means, but may not be by condemnation.

14 (2) If the department acquires a right under this section, the department shall assign a
 15 permit or issue a new certificate establishing that the right is held in the name of the State
 16 of Oregon. The terms and conditions of the acquired right, including but not limited to the
 17 priority date, shall be identical to the superseded permit, certificate or other document un-
 18 less the terms and conditions are changed under a process described in ORS 540.510 or in
 19 conformance with ORS 540.520 and 540.530.

20 (3) The department shall make the acquired right a resource for the department’s water
 21 supply development program. Subject to section 6 of this 2013 Act, the acquired right shall
 22 be managed by the department or by a third party, as determined by the Water Resources
 23 Commission.

24 **SECTION 5.** (1) The Water Resources Department may use purchased water or use a
 25 water right acquired under section 4 of this 2013 Act for water banking.

26 (2) The purposes for which the department may use water banking include, but are not
 27 limited to, the following:

28 (a) Authorizing the use of the purchased water or acquired right to mitigate water re-
 29 source impacts or future water supply needs.

30 (b) Authorizing the use of the purchased water or acquired right for other beneficial uses
 31 consistent with the terms of a contract or grant or authorized by law.

32 (c) Making a water source available to third parties on a temporary or permanent basis
 33 for any beneficial use.

34 (d) Providing alternatives to ground water uses for agriculture or industry within an
 35 administratively managed groundwater area in this state.

36 (e) Providing water to holders of water rights that cannot be fully exercised due to the
 37 satisfaction of senior water rights.

38 (3) The department may not use water banking if the water banking would:

39 (a) Cause injury to an existing water right; or

40 (b) Enlarge the water right acquired by the department.

41 **SECTION 6.** (1) As used in this section:

42 (a) “Local government” and “local service district” have the meanings given those terms
 43 in ORS 174.116.

44 (b) “Special government body” has the meaning given that term in ORS 174.117.

45 (2) The Water Resources Department may authorize the use of purchased water or a

1 water right acquired under section 4 of this 2013 Act for any beneficial purpose.

2 (3) The department shall maintain a publicly accessible record showing the source of
3 purchased water and of each acquired water right and any beneficial use made of the pur-
4 chased water or acquired right.

5 (4) The department may make purchased water or an acquired water right available for
6 beneficial use by any unit of the federal government, an Indian tribe, another state, any
7 agency of this state, a local government, local service district or special government body
8 or a person. The beneficial use of the purchased water or acquired right may be by contract,
9 purchase, lease or transfer, by acquisition of a permit for the use of stored water or by any
10 other means authorized by law for acquiring water.

11 (5) The department may condition the beneficial use of the purchased water or acquired
12 water right for the purpose of protecting existing water rights or preventing enlargement
13 of a water right and as required for consistency with the contract or agreement terms or
14 state or federal law.

15 (6) The department may assign a permit or issue a new certificate in the name of the
16 acquiring party if any unit of the federal government, an Indian tribe, another state, any
17 agency of this state, a local government, local service district or special government body
18 or a person permanently acquires a water right that was held in the name of the State of
19 Oregon.

20 **SECTION 7.** In accordance with applicable provisions of ORS chapter 183, the Water Re-
21 sources Commission may adopt rules necessary for the administration of sections 2 to 7 of
22 this 2013 Act.

23 **SECTION 8.** This 2013 Act being necessary for the immediate preservation of the public
24 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
25 on its passage.
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