

House Bill 3530

Sponsored by Representatives BENTZ, HOYLE; Representative CLEM

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 revocation or modification of order issued for split use water lease mandatory if in-stream use of water under lease has resulted in injury to existing water right.

A BILL FOR AN ACT

1
2 Relating to the transfer of water rights to in-stream use; amending ORS 537.348.

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

4 **SECTION 1.** If Enrolled Senate Bill 199 becomes law, ORS 537.348, as amended by section 2,
5 chapter 205, Oregon Laws 2001, and section 1, chapter _____, Oregon Laws 2013 (Enrolled Senate
6 Bill 199), is amended to read:

7 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or
8 accept a gift of all or a portion of an existing water right for conversion to an in-stream water right.
9 Any water right converted to an in-stream water right under this section shall retain the priority
10 date of the water right purchased, leased or received as a gift. At the request of the person the
11 Water Resources Commission shall issue a new certificate for the in-stream water right showing the
12 original priority date of the purchased, gifted or leased water right. Except as provided in sub-
13 sections (2) to (6) of this section, a person who transfers a water right by purchase, lease or gift
14 under this subsection shall comply with the requirements for the transfer of a water right under
15 ORS 540.505 to 540.585.

16 (2) Subject to subsections (3) to (6) of this section, any person who has an existing water right
17 may lease all or a portion of the existing water right for use as an in-stream water right for a
18 specified period without the loss of the original priority date. During the term of the lease, the use
19 of the water right as an in-stream water right shall be considered a beneficial use. The term of the
20 lease may not exceed five years. There is no limitation on the number of times that the lease may
21 be renewed. However, the total period for which a water right may be leased for split use as de-
22 scribed in subsection (3) of this section may not exceed 10 years regardless of the number of leases
23 or renewals of leases issued for the water right.

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

27 (a) The uses of the existing water right and the in-stream water right are not concurrent; and

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

30 (4) A person who has an existing water right and wishes to lease the water right as described
31 in subsection (2) of this section must file a request and obtain department approval of the lease.

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 Upon receipt of the request, the department shall provide notice of the request by inclusion in the
 2 weekly notice published by the department. Any allegation of injury must be delivered to the de-
 3 partment no later than 21 days after publication of the request in the weekly notice.

4 (5) After publishing notice of a request made under subsection (2) of this section and allowing
 5 time for the delivery of allegations of injury, the department shall issue an order approving the re-
 6 quest if the department finds that the leasing of the water right for in-stream use can be effected
 7 without injury to other existing water rights or can be conditioned to prevent injury to other ex-
 8 isting water rights. If the lease is for the split use of water between the existing water right and
 9 the in-stream water right during the same calendar year, the conditions imposed in the order ap-
 10 proving the request must include, but need not be limited to, compliance with subsection (3) of this
 11 section.

12 (6) The department at any time [*may*] **shall** revoke or modify an order issued for a lease under
 13 subsection (2) of this section if the department determines that the use of the water right for in-
 14 stream use under the lease has resulted in [*or may result in*] injury to an existing water right.

15 **SECTION 2.** If Enrolled Senate Bill 199 becomes law, ORS 537.348, as amended by section 2,
 16 chapter 205, Oregon Laws 2001, and sections 1 and 2, chapter _____, Oregon Laws 2013 (Enrolled
 17 Senate Bill 199), is amended to read:

18 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or
 19 accept a gift of all or a portion of an existing water right for conversion to an in-stream water right.
 20 Any water right converted to an in-stream water right under this section shall retain the priority
 21 date of the water right purchased, leased or received as a gift. At the request of the person the
 22 Water Resources Commission shall issue a new certificate for the in-stream water right showing the
 23 original priority date of the purchased, gifted or leased water right. Except as provided in sub-
 24 sections (2) to (5) of this section, a person who transfers a water right by purchase, lease or gift
 25 under this subsection shall comply with the requirements for the transfer of a water right under
 26 ORS 540.505 to 540.585.

27 (2) Subject to subsections (3) to (5) of this section, any person who has an existing water right
 28 may lease all or a portion of the existing water right for use as an in-stream water right for a
 29 specified period without the loss of the original priority date. During the term of the lease, the use
 30 of the water right as an in-stream water right shall be considered a beneficial use. The term of the
 31 lease may not exceed five years. There is no limitation on the number of times that the lease may
 32 be renewed.

33 (3) A person who has an existing water right and wishes to lease the water right as described
 34 in subsection (2) of this section must file a request and obtain department approval of the lease.
 35 Upon receipt of the request, the department shall provide notice of the request by inclusion in the
 36 weekly notice published by the department. Any allegation of injury must be delivered to the de-
 37 partment no later than 21 days after publication of the request in the weekly notice.

38 (4) After publishing notice of a request made under subsection (2) of this section and allowing
 39 time for the delivery of allegations of injury, the department shall issue an order approving the re-
 40 quest if the department finds that the leasing of the water right for in-stream use can be effected
 41 without injury to other existing water rights or can be conditioned to prevent injury to other ex-
 42 isting water rights.

43 (5) The department at any time [*may*] **shall** revoke or modify an order issued for a lease under
 44 subsection (2) of this section if the department determines that the use of the water right for in-
 45 stream use under the lease has resulted in [*or may result in*] injury to an existing water right.

