

A-Engrossed
Senate Bill 199

Ordered by the Senate February 26
Including Senate Amendments dated February 26

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (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.

[Expands means for temporary or permanent acquisition of all or portion of existing water right for conversion to in-stream water right.]

[Eliminates sunset and continues in effect provision conditionally allowing water right lease to split use of water between existing right and in-stream right within same year. Imposes conditions for split use.]

Changes approval process for lease transferring all or part of existing water right for use as in-stream water right. Limits term of lease or renewal of lease. Allows unlimited number of renewal periods.

Delays expiration of provisions that allow water right lease to split water use between existing right and in-stream water right in same calendar year. Establishes new sunset date of January 2, 2024. Allows completion of split use lease term in effect on sunset date.

Places conditions upon split use of water. Limits total number of years for split use of water.

A BILL FOR AN ACT

1
2 Relating to the transfer of water rights to in-stream use; creating new provisions; amending ORS
3 537.348; and repealing section 3, chapter 205, Oregon Laws 2001.

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

5 **SECTION 1.** ORS 537.348, as amended by section 2, chapter 205, Oregon Laws 2001, is amended
6 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
17 right may lease all or a portion of the existing water right for use as an in-stream water right for
18 a specified period without the loss of the original priority date. During the term of *[such]* **the** lease,
19 the use of the water right as an in-stream water right shall be considered a beneficial use. **The term**
20 **of the lease may not exceed five years. There is no limitation on the number of times that**

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 the lease may be renewed. However, the total period for which a water right may be leased
 2 for split use as described in subsection (3) of this section may not exceed 10 years regardless
 3 of the number of leases or renewals of leases issued for the water right.

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

7 (a) The uses of the existing water right and the in-stream water right are not concu-
 8 rent; and

9 (b) The holders of the water rights measure and report to the Water Resources Depart-
 10 ment the use of the existing water right and the in-stream water right.

11 (4) A person who has an existing water right and wishes to lease the water right as de-
 12 scribed in subsection (2) of this section must file a request and obtain department approval
 13 of the lease. Upon receipt of the request, the department shall provide notice of the request
 14 by inclusion in the weekly notice published by the department. Any allegation of injury must
 15 be delivered to the department no later than 21 days after publication of the request in the
 16 weekly notice.

17 (5) After publishing notice of a request made under subsection (2) of this section and al-
 18 lowing time for the delivery of allegations of injury, the department shall issue an order ap-
 19 proving the request if the department finds that the leasing of the water right for in-stream
 20 use can be effected without injury to other existing water rights or can be conditioned to
 21 prevent injury to other existing water rights. If the lease is for the split use of water be-
 22 tween the existing water right and the in-stream water right during the same calendar year,
 23 the conditions imposed in the order approving the request must include, but need not be
 24 limited to, compliance with subsection (3) of this section.

25 (6) The department at any time may revoke or modify an order issued for a lease under
 26 subsection (2) of this section if the department determines that the use of the water right
 27 for in-stream use under the lease has resulted in or may result in injury to an existing water
 28 right.

29 **SECTION 2.** ORS 537.348, as amended by section 2, chapter 205, Oregon Laws 2001, and section
 30 1 of this 2013 Act, is amended to read:

31 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or
 32 accept a gift of all or a portion of an existing water right for conversion to an in-stream water right.
 33 Any water right converted to an in-stream water right under this section shall retain the priority
 34 date of the water right purchased, leased or received as a gift. At the request of the person the
 35 Water Resources Commission shall issue a new certificate for the in-stream water right showing the
 36 original priority date of the purchased, gifted or leased water right. Except as provided in sub-
 37 sections (2) to [(6)] (5) of this section, a person who transfers a water right by purchase, lease or
 38 gift under this subsection shall comply with the requirements for the transfer of a water right under
 39 ORS 540.505 to 540.585.

40 (2) Subject to subsections (3) to [(6)] (5) of this section, any person who has an existing water
 41 right may lease all or a portion of the existing water right for use as an in-stream water right for
 42 a specified period without the loss of the original priority date. During the term of the lease, the
 43 use of the water right as an in-stream water right shall be considered a beneficial use. The term of
 44 the lease may not exceed five years. There is no limitation on the number of times that the lease
 45 may be renewed. *[However, the total period for which a water right may be leased for split use as*

1 *described in subsection (3) of this section may not exceed 10 years regardless of the number of leases*
2 *or renewals of leases issued for the water right.]*

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

6 *[(a) The uses of the existing water right and the in-stream water right are not concurrent; and]*

7 *[(b) The holders of the water rights measure and report to the Water Resources Department the*
8 *use of the existing water right and the in-stream water right.]*

9 *[(4)]* **(3)** A person who has an existing water right and wishes to lease the water right as de-
10 scribed in subsection (2) of this section must file a request and obtain department approval of the
11 lease. Upon receipt of the request, the department shall provide notice of the request by inclusion
12 in the weekly notice published by the department. Any allegation of injury must be delivered to the
13 department no later than 21 days after publication of the request in the weekly notice.

14 *[(5)]* **(4)** After publishing notice of a request made under subsection (2) of this section and al-
15 lowing time for the delivery of allegations of injury, the department shall issue an order approving
16 the request if the department finds that the leasing of the water right for in-stream use can be ef-
17 fected without injury to other existing water rights or can be conditioned to prevent injury to other
18 existing water rights. *[If the lease is for the split use of water between the existing water right and*
19 *the in-stream water right during the same calendar year, the conditions imposed in the order approving*
20 *the request must include, but need not be limited to, compliance with subsection (3) of this section.]*

21 *[(6)]* **(5)** The department at any time may revoke or modify an order issued for a lease under
22 subsection (2) of this section if the department determines that the use of the water right for in-
23 stream use under the lease has resulted in or may result in injury to an existing water right.

24 **SECTION 3. The amendments to ORS 537.348 by section 2 of this 2013 Act become oper-**
25 **ative on January 2, 2024.**

26 **SECTION 4. Section 3, chapter 205, Oregon Laws 2001, as amended by section 1, chapter**
27 **355, Oregon Laws 2007, is repealed.**

28 **SECTION 5. (1) The amendments to ORS 537.348 by section 1 of this 2013 Act apply to**
29 **leases and lease renewals entered into on or after the effective date of this 2013 Act.**

30 **(2) Notwithstanding the amendments to ORS 537.348 by section 2 of this 2013 Act, any**
31 **lease or lease renewal allowing the split use of water between an existing water right and**
32 **an in-stream water right during the same calendar year and having a term that began before**
33 **the operative date of the amendments to ORS 537.348 by section 2 of this 2013 Act may con-**
34 **tinue in effect until the earlier of the expiration of the term or five years after the operative**
35 **date of the amendments to ORS 537.348 by section 2 of this 2013 Act. This subsection does**
36 **not allow the total period for which a water right may be leased for the split use of water**
37 **during the same calendar year to exceed 10 years.**

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