

**PROPOSED AMENDMENTS TO
SENATE BILL 1512**

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest
2 of the line and line 3 and insert “creating new provisions; amending ORS
3 537.348 and 540.523; and declaring an emergency.”.

4 Delete lines 5 through 28 and delete pages 2 through 4 and insert:

5 **“SECTION 1. ORS 537.348 is amended to read:**

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

17 “(2) Subject to subsections (3) to (6) of this section, any person who has
18 an existing water right may lease all or a portion of the existing water right
19 for use as an in-stream water right for a specified period without the loss
20 of the original priority date. During the term of the lease, the use of the
21 water right as an in-stream water right shall be considered a beneficial use.
22 The term of the lease may not exceed five years. There is no limitation on

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

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

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

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

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

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

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

5 **“(7) Except as provided in this subsection, a water right in the
6 Klamath Basin determined and established in an order of determi-
7 nation certified by the Water Resources Director is, during the period
8 that judicial review of the order of determination is pending, an ex-
9 isting water right for purposes of subsections (2) to (6) of this section.
10 This subsection does not apply to a water right determined and es-
11 tablished in an order of determination that has been stayed by the
12 filing of a bond or irrevocable letter of credit under ORS 539.180.**

13 **“SECTION 2.** ORS 537.348, as amended by section 1 of this 2014 Act, is
14 amended to read:

15 “537.348. (1) Any person may purchase or lease all or a portion of an ex-
16 isting water right or accept a gift of all or a portion of an existing water
17 right for conversion to an in-stream water right. Any water right converted
18 to an in-stream water right under this section shall retain the priority date
19 of the water right purchased, leased or received as a gift. At the request of
20 the person the Water Resources Commission shall issue a new certificate for
21 the in-stream water right showing the original priority date of the purchased,
22 gifted or leased water right. Except as provided in subsections (2) to (6) of
23 this section, a person who transfers a water right by purchase, lease or gift
24 under this subsection shall comply with the requirements for the transfer of
25 a water right under ORS 540.505 to 540.585.

26 “(2) Subject to subsections (3) to (6) of this section, any person who has
27 an existing water right may lease all or a portion of the existing water right
28 for use as an in-stream water right for a specified period without the loss
29 of the original priority date. During the term of the lease, the use of the
30 water right as an in-stream water right shall be considered a beneficial use.

1 The term of the lease may not exceed five years. There is no limitation on
2 the number of times that the lease may be renewed. However, the total pe-
3 riod for which a water right may be leased for split use as described in
4 subsection (3) of this section may not exceed 10 years regardless of the
5 number of leases or renewals of leases issued for the water right.

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

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

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

15 “(4) A person who has an existing water right and wishes to lease the
16 water right as described in subsection (2) of this section must file a request
17 and obtain department approval of the lease. Upon receipt of the request, the
18 department shall provide notice of the request by inclusion in the weekly
19 notice published by the department. Any allegation of injury must be deliv-
20 ered to the department no later than 21 days after publication of the request
21 in the weekly notice.

22 “(5) After publishing notice of a request made under subsection (2) of this
23 section and allowing time for the delivery of allegations of injury, the de-
24 partment shall issue an order approving the request if the department finds
25 that the leasing of the water right for in-stream use can be effected without
26 injury to other existing water rights or can be conditioned to prevent injury
27 to other existing water rights. If the lease is for the split use of water be-
28 tween the existing water right and the in-stream water right during the same
29 calendar year, the conditions imposed in the order approving the request
30 must include, but need not be limited to, compliance with subsection (3) of

1 this section.

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

6 “[7] *Except as provided in this subsection, a water right in the Klamath*
7 *Basin determined and established in an order of determination certified by the*
8 *Water Resources Director is, during the period that judicial review of the or-*
9 *der of determination is pending, an existing water right for purposes of sub-*
10 *sections (2) to (6) of this section. This subsection does not apply to a water*
11 *right determined and established in an order of determination that has been*
12 *stayed by the filing of a bond or irrevocable letter of credit under ORS*
13 *539.180.]*

14 **“SECTION 3.** ORS 540.523 is amended to read:

15 “540.523. (1) In accordance with the provisions of this section, any person
16 who holds a water use subject to transfer may request that the Water Re-
17 sources Department approve the temporary transfer of place of use and, if
18 necessary to convey water to the new temporary place of use, temporarily
19 change the point of diversion or point of appropriation for a period not to
20 exceed five years. An application for a temporary transfer shall:

21 “(a) Be submitted in writing to the Water Resources Department;

22 “(b) Be accompanied by the appropriate fee for a change in the place of
23 use as set forth in ORS 536.050;

24 “(c) Include the information required under ORS 540.520 (2); and

25 “(d) Include any other information the Water Resources Commission by
26 rule may require.

27 “(2) Notwithstanding the notice and waiting requirements under ORS
28 540.520, the department shall approve by order a request for a temporary
29 transfer under this section if the department determines that the temporary
30 transfer will not injure any existing water right.

1 “(3) All uses of water for which a temporary transfer is allowed under
2 this section shall revert automatically to the terms and conditions of the
3 water use subject to transfer upon expiration of the temporary transfer pe-
4 riod.

5 “(4) The time during which water is used under an approved temporary
6 transfer order does not apply toward a finding of forfeiture under ORS
7 540.610.

8 “(5) The department may revoke a prior approval of the temporary trans-
9 fer at any time if the department finds that the transfer is causing injury to
10 any existing water right.

11 “(6) Any map that may be required under subsection (1) of this section
12 need not be prepared by a certified water right examiner.

13 “(7) The lands from which the water right is removed during the period
14 of a temporary transfer shall receive no water under the transferred water
15 right.

16 “(8) When an application for a temporary change of the place of use for
17 a primary water right is submitted in accordance with this section, the ap-
18 plicant also shall indicate whether the land described in the application has
19 an appurtenant supplemental water right or permit. If the applicant also in-
20 tends to temporarily transfer the supplemental water right or permit, the
21 applicant also shall include the information required under ORS 540.520 (2)
22 for the supplemental water right or permit. If the applicant does not include
23 the supplemental water right or permit in the temporary transfer application,
24 the Water Resources Department shall notify the applicant that the supple-
25 mental water right or permit will be canceled before the department issues
26 the order approving the temporary transfer of the primary water right, unless
27 within 30 days the applicant modifies the application to include the supple-
28 mental water right or permit or withdraws the application. The department
29 may approve the temporary transfer of the supplemental water right or per-
30 mit in accordance with the provisions of this section. The department may

1 not approve the temporary transfer of a supplemental water right or permit
2 if the temporary transfer would result in enlargement of the original water
3 right or injury to an existing water right. If the department approves the
4 temporary transfer of the primary water right but does not approve the
5 temporary transfer of the supplemental water right or permit, the department
6 shall notify the applicant of the department's intent not to allow the tem-
7 porary transfer of the supplemental water right or permit before the depart-
8 ment issues the order for the temporary transfer of the primary water right.
9 If the department does not allow the temporary transfer of the supplemental
10 right, the supplemental right shall remain appurtenant to the land described
11 in the application, but may not be exercised until the primary right reverts
12 to the original water use. If the primary water right does not revert soon
13 enough to allow use of water under the supplemental right within five years,
14 the supplemental right shall become subject to cancellation for nonuse under
15 ORS 540.610.

16 “(9) In issuing an order under subsection (2) of this section, the depart-
17 ment shall include any condition necessary to protect other water rights.

18 **“(10) Except as provided in this subsection, a water right in the**
19 **Klamath Basin determined and established in an order of determi-**
20 **nation certified by the Water Resources Director is, during the period**
21 **that judicial review of the order of determination is pending, a primary**
22 **water right subject to transfer for purposes of subsections (1) to (9)**
23 **of this section. This subsection does not apply to:**

24 **“(a) A water right transfer that includes moving the point of di-**
25 **version up a stream.**

26 **“(b) A water right determined and established in an order of deter-**
27 **mination that has been stayed by the filing of a bond or irrevocable**
28 **letter of credit under ORS 539.180.**

29 **“SECTION 4.** ORS 540.523, as amended by section 3 of this 2014 Act, is
30 amended to read:

1 “540.523. (1) In accordance with the provisions of this section, any person
2 who holds a water use subject to transfer may request that the Water Re-
3 sources Department approve the temporary transfer of place of use and, if
4 necessary to convey water to the new temporary place of use, temporarily
5 change the point of diversion or point of appropriation for a period not to
6 exceed five years. An application for a temporary transfer shall:

7 “(a) Be submitted in writing to the Water Resources Department;

8 “(b) Be accompanied by the appropriate fee for a change in the place of
9 use as set forth in ORS 536.050;

10 “(c) Include the information required under ORS 540.520 (2); and

11 “(d) Include any other information the Water Resources Commission by
12 rule may require.

13 “(2) Notwithstanding the notice and waiting requirements under ORS
14 540.520, the department shall approve by order a request for a temporary
15 transfer under this section if the department determines that the temporary
16 transfer will not injure any existing water right.

17 “(3) All uses of water for which a temporary transfer is allowed under
18 this section shall revert automatically to the terms and conditions of the
19 water use subject to transfer upon expiration of the temporary transfer pe-
20 riod.

21 “(4) The time during which water is used under an approved temporary
22 transfer order does not apply toward a finding of forfeiture under ORS
23 540.610.

24 “(5) The department may revoke a prior approval of the temporary trans-
25 fer at any time if the department finds that the transfer is causing injury to
26 any existing water right.

27 “(6) Any map that may be required under subsection (1) of this section
28 need not be prepared by a certified water right examiner.

29 “(7) The lands from which the water right is removed during the period
30 of a temporary transfer shall receive no water under the transferred water

1 right.

2 “(8) When an application for a temporary change of the place of use for
3 a primary water right is submitted in accordance with this section, the ap-
4 plicant also shall indicate whether the land described in the application has
5 an appurtenant supplemental water right or permit. If the applicant also in-
6 tends to temporarily transfer the supplemental water right or permit, the
7 applicant also shall include the information required under ORS 540.520 (2)
8 for the supplemental water right or permit. If the applicant does not include
9 the supplemental water right or permit in the temporary transfer application,
10 the Water Resources Department shall notify the applicant that the supple-
11 mental water right or permit will be canceled before the department issues
12 the order approving the temporary transfer of the primary water right, unless
13 within 30 days the applicant modifies the application to include the supple-
14 mental water right or permit or withdraws the application. The department
15 may approve the temporary transfer of the supplemental water right or per-
16 mit in accordance with the provisions of this section. The department may
17 not approve the temporary transfer of a supplemental water right or permit
18 if the temporary transfer would result in enlargement of the original water
19 right or injury to an existing water right. If the department approves the
20 temporary transfer of the primary water right but does not approve the
21 temporary transfer of the supplemental water right or permit, the department
22 shall notify the applicant of the department’s intent not to allow the tem-
23 porary transfer of the supplemental water right or permit before the depart-
24 ment issues the order for the temporary transfer of the primary water right.
25 If the department does not allow the temporary transfer of the supplemental
26 right, the supplemental right shall remain appurtenant to the land described
27 in the application, but may not be exercised until the primary right reverts
28 to the original water use. If the primary water right does not revert soon
29 enough to allow use of water under the supplemental right within five years,
30 the supplemental right shall become subject to cancellation for nonuse under

1 ORS 540.610.

2 “(9) In issuing an order under subsection (2) of this section, the depart-
3 ment shall include any condition necessary to protect other water rights.

4 “[*(10) Except as provided in this subsection, a water right in the Klamath*
5 *Basin determined and established in an order of determination certified by the*
6 *Water Resources Director is, during the period that judicial review of the or-*
7 *der of determination is pending, a primary water right subject to transfer for*
8 *purposes of subsections (1) to (9) of this section. This subsection does not apply*
9 *to:]*

10 “[*(a) A water right transfer that includes moving the point of diversion up*
11 *a stream.*]

12 “[*(b) A water right determined and established in an order of determination*
13 *that has been stayed by the filing of a bond or irrevocable letter of credit under*
14 *ORS 539.180.*]

15 **“SECTION 5. (1) The amendments to ORS 537.348 and 540.523 by**
16 **sections 2 and 4 of this 2014 Act become operative January 2, 2023.**

17 **“(2) Notwithstanding the amendments to ORS 537.348 and 540.523 by**
18 **sections 2 and 4 of this 2014 Act and except as provided in this sub-**
19 **section, any in-stream lease or temporary transfer of a water right in**
20 **the Klamath Basin determined and established in an order of deter-**
21 **mination certified by the Water Resources Director and having a term**
22 **that began prior to January 2, 2023, may continue in effect for the**
23 **term of the lease or transfer. If a court judgment results in a modifi-**
24 **cation of the water right determined and established in the order of**
25 **determination, the parties may continue the in-stream lease or tem-**
26 **porary transfer of all or part of the water right as modified for all or**
27 **part of the original term of the in-stream lease or temporary transfer.**

28 **“SECTION 6. This 2014 Act being necessary for the immediate**
29 **preservation of the public peace, health and safety, an emergency is**
30 **declared to exist, and this 2014 Act takes effect on its passage.”.**

