

# D R A F T

## SUMMARY

Prohibits district use of expedited process to change place of use for stored surface water from pond, reservoir, lake, impoundment or diversion structure or other surface water storage facility to different pond, reservoir, lake, impoundment or diversion structure or other surface water storage facility. States that expedited process does not create exemption from water permit process.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to district changes in place of use for stored surface water; creating  
3 new provisions; amending ORS 540.510; and declaring an emergency.

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

5 **SECTION 1. (1) Notwithstanding ORS 540.570 and 540.572 to 540.580,**  
6 **if a district wishes to change the place of use for stored surface water**  
7 **from a pond, reservoir, lake, impoundment or diversion structure or**  
8 **other surface water storage facility to a different pond, reservoir, lake,**  
9 **impoundment or diversion structure or other surface water storage**  
10 **facility:**

11 (a) **The change in the place of use must be processed as provided**  
12 **in ORS 540.520 and 540.530 and not under the process provided in ORS**  
13 **540.572 to 540.580.**

14 (b) **Any temporary transfer in the place of use pending approval of**  
15 **the change must be processed as provided in ORS 540.523 and not under**  
16 **the process provided in ORS 540.570.**

17 (2) **The processes provided in ORS 540.520, 540.523, 540.530, 540.570**  
18 **and 540.572 to 540.580 for changes in the place of use for water do not**

**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 **exempt the construction or operation of any pond, reservoir, lake,**  
2 **impoundment or diversion structure or other surface water storage**  
3 **facility by a district from the permit requirements established in ORS**  
4 **537.130.**

5 **SECTION 2.** ORS 540.510 is amended to read:

6 540.510. (1) Except as provided in subsections (2) to (8) of this section, all  
7 water used in this state for any purpose shall remain appurtenant to the  
8 premises upon which it is used and no change in use or place of use of any  
9 water for any purpose may be made without compliance with the provisions  
10 of ORS 540.520 and 540.530. However, the holder of any water use subject to  
11 transfer may, upon compliance with the provisions of ORS 540.520 and  
12 540.530, change the use and place of use, the point of diversion or the use  
13 theretofore made of the water in all cases without losing priority of the right  
14 theretofore established. **Except as provided in section 1 of this 2015 Act,**  
15 a district may change the place of use in the manner provided in ORS 540.572  
16 to 540.580 in lieu of the method provided in ORS 540.520 and 540.530. When  
17 an application for change of the use or place of use for a primary water right  
18 is submitted in accordance with this section, the applicant also shall indicate  
19 whether the land described in the application has an appurtenant supple-  
20 mental water right or permit. If the applicant also intends to transfer the  
21 supplemental water right or permit, the applicant also shall include the in-  
22 formation required under ORS 540.520 (2) for the supplemental water right  
23 or permit. If the applicant does not include the supplemental water right or  
24 permit in the transfer application, the Water Resources Department shall  
25 notify the applicant that the supplemental water right or permit will be  
26 canceled before the department issues the order approving the transfer of the  
27 primary water right, unless within 30 days the applicant modifies the appli-  
28 cation to include the supplemental water right or permit or withdraws the  
29 application. The department may approve the transfer of the supplemental  
30 water right or permit in accordance with the provisions of ORS 540.520 and  
31 540.530. The department shall not approve the transfer of a supplemental

1 water right or permit if the transfer would result in enlargement of the ori-  
2 ginal water right or injury to an existing water right. If the department ap-  
3 proves the transfer of the primary water right but does not approve the  
4 transfer of the supplemental water right or permit, the department shall no-  
5 tify the applicant of the department's intent to cancel that portion of the  
6 supplemental water right or permit described in the transfer application be-  
7 fore the department issues the primary water right transfer order, unless the  
8 applicant withdraws the transfer application within 90 days.

9 (2) Subject to the limitations in ORS 537.490, any right to the use of  
10 conserved water allocated by the Water Resources Commission under ORS  
11 537.470 may be severed from the land and transferred or sold after notice to  
12 the commission as required under ORS 537.490.

13 (3)(a) Any water used under a permit or certificate issued to a munici-  
14 pality, or under rights conferred by ORS 538.410 to 538.450, or under the  
15 registration system set forth in ORS 537.132, may be applied to beneficial use  
16 on lands to which the right is not appurtenant if:

17 (A) The water is applied to lands which are acquired by annexation or  
18 through merger, consolidation or formation of a water authority, so long as  
19 the rate and use of water allowed in the original certificate is not exceeded;

20 (B) The use continues to be for municipal purposes and would not inter-  
21 fere with or impair prior vested water rights; or

22 (C) The use is authorized under a permit granted under ORS 468B.050 or  
23 468B.053 and for which a reclaimed water registration form has been filed  
24 under ORS 537.132.

25 (b) As used in this subsection, "municipality" means a city, a port formed  
26 under ORS 777.005 to 777.725, 777.915 to 777.953 and 778.010, a domestic water  
27 supply district formed under ORS chapter 264, a water supplier as defined in  
28 ORS 448.115 or a water authority formed under ORS chapter 450.

29 (4) Pursuant to the provisions of ORS 540.570 or 540.585, **except as pro-**  
30 **vided in section 1 of this 2015 Act**, any water used under a permit or cer-  
31 tificate issued to a district may be applied to beneficial use on lands within

1 the district to which the right is not appurtenant.

2 (5) The relocation of a point of diversion as necessary to follow the  
3 movements of a naturally changing stream channel does not constitute a  
4 change in point of diversion for purposes of ORS 540.520 if:

5 (a) The diversion point stays within 500 feet of the point of diversion on  
6 record with the Water Resources Department;

7 (b) The change does not move the diversion point upstream or downstream  
8 beyond the diversion point of another appropriator; and

9 (c) The diversion is provided with a proper fish screen, if requested by the  
10 State Department of Fish and Wildlife.

11 (6) In the event that government action results in or creates a reasonable  
12 expectation of a change in the surface level of a surface water source that  
13 impairs or threatens to impair access to a point of diversion authorized by  
14 a water right permit, certificate or decree, the owner of the water right may  
15 change the point of diversion or add an additional point of diversion in ac-  
16 cordance with the provisions of this section in lieu of complying with the  
17 requirements of ORS 540.520 and 540.530. Before changing the point of di-  
18 version, the water right owner shall provide written notice of the proposed  
19 change to the Water Resources Department. Within 15 days after receipt of  
20 such notice, the department shall provide notice by publication in the  
21 department's public notice of water right applications. Within 60 days after  
22 the department receives notice from the owner, the Water Resources Direc-  
23 tor, by order, shall approve the change unless the director finds the changes  
24 will result in injury to other existing water rights. All other terms and  
25 conditions of the water right shall remain in effect.

26 (7) The sale or lease of the right to the use of conserved water under ORS  
27 537.490 does not constitute a change of use or a change in the place of use  
28 of water for purposes of ORS 540.520.

29 (8) Ground water applied to an exempt use as set forth in ORS 537.141  
30 or 537.545 may be subsequently applied to land for irrigation purposes under  
31 ORS 537.141 (1)(i) or 537.545 (1)(g) without application for a change in use

1 or place of use under this section.

2 **SECTION 3. Section 1 of this 2015 Act and the amendments to ORS**  
3 **540.510 by section 2 of this 2015 Act apply to district applications to**  
4 **change the place of use for water that are pending before the Water**  
5 **Resources Department on, or filed with the department on or after,**  
6 **the effective date of this 2015 Act.**

7 **SECTION 4. This 2015 Act being necessary for the immediate pres-**  
8 **ervation of the public peace, health and safety, an emergency is de-**  
9 **clared to exist, and this 2015 Act takes effect on its passage.**

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