

**PROPOSED AMENDMENTS TO
SENATE BILL 971**

1 On page 1 of the printed bill, line 2, delete “, 537.250,”.

2 In line 3, delete “537.409”.

3 Delete lines 5 through 30 and delete pages 2 through 6 and insert:

4 **“SECTION 1.** ORS 537.230 is amended to read:

5 “537.230. (1) Except for a holder of a permit for municipal use, the holder
6 of a water right permit shall prosecute the construction of any proposed ir-
7 rigation or other work with reasonable diligence and complete the con-
8 struction within a reasonable time, as fixed in the permit by the Water
9 Resources Department, not to exceed five years from the date of approval.

10 “[2] (2)(a) **As used in this subsection, ‘undeveloped portion of the**
11 **permit’ means the portion of a water right permit that is the differ-**
12 **ence between the maximum rate or duty authorized by the permit and**
13 **the maximum rate or duty of water diverted for beneficial use as of**
14 **the later of:**

15 **“(A) December 11, 2013; or**

16 **“(B) The time specified in the permit, or in the last-approved ex-**
17 **tension of time, to perfect the water right.**

18 **“(b)** The holder of a permit for municipal use shall commence and com-
19 plete the construction of any proposed works within 20 years from the date
20 on which a permit for municipal use is issued under ORS 537.211. The con-
21 struction must proceed with reasonable diligence and be completed within
22 the time specified in the permit, not to exceed 20 years. However, the de-

1 department may order and allow an extension of time to complete construction
2 or to perfect a water right beyond the time specified in the permit under the
3 following conditions:

4 “[*a*] (A) The holder shows good cause. In determining the extension, the
5 department shall give due weight to the considerations described under ORS
6 539.010 (5) and to whether other governmental requirements relating to the
7 project have significantly delayed completion of construction or perfection
8 of the right;

9 “[*b*] *The extension of time is conditioned to provide that the holder may*
10 *divert water beyond the maximum rate diverted for beneficial use before the*
11 *extension only upon approval by the department of a water management and*
12 *conservation plan; and]*

13 **“(B) The extension of time is conditioned to provide that the holder**
14 **may divert the undeveloped portion of the permit only upon approval**
15 **by the department of a water management and conservation plan; and**

16 “[*c*] (C) For the first extension **of time** issued after June 29, 2005, for
17 a permit for municipal use issued before November 2, 1998, the department
18 finds that the undeveloped portion of the permit is conditioned to maintain,
19 in the portions of waterways affected by water use under the permit, the
20 persistence of fish species listed as sensitive, threatened or endangered under
21 state or federal law. The department shall base its finding on existing data
22 and upon the advice of the State Department of Fish and Wildlife. An ex-
23 isting fish protection agreement between the permit holder and a state or
24 federal agency that includes conditions to maintain the persistence of any
25 listed fish species in the affected portion of the waterway is conclusive for
26 purposes of the finding.

27 “(3) Except as provided in ORS 537.240 and 537.248 and subsection (2) of
28 this section, the Water Resources Department, for good cause shown, shall
29 order and allow an extension of time, including an extension beyond the
30 five-year limit established in subsection (1) of this section within which ir-

1 rigation or other works shall be completed or the right perfected. In deter-
2 mining the extension, the department shall give due weight to the
3 considerations described under ORS 539.010 (5) and to whether other gov-
4 ernmental requirements relating to the project have significantly delayed
5 completion of construction or perfection of the right.

6 “(4) Except as provided in subsection (5) of this section and ORS 537.409,
7 upon completion of beneficial use as required under this section, the
8 permittee shall hire a water right examiner certified under ORS 537.798 to
9 survey the appropriation. Within one year after application of water to a
10 beneficial use or the beneficial use date allowed in the permit, the permittee
11 shall submit a map of the survey as required by the Water Resources De-
12 partment, which shall accompany the request for a water right certificate
13 submitted to the department under ORS 537.250. If any property described in
14 the permit is not included in the request for a water right certificate, the
15 permittee shall state the identity of the record owner of that property.

16 “(5) The Water Resources Director may waive the requirement under
17 subsection (4) of this section that a permittee hire a water right examiner
18 certified under ORS 537.798 if:

19 “(a) The permit is a supplemental water right that shares the same dis-
20 tribution system and same place of use as the primary water right; and

21 “(b) The department determines that there is sufficient information in the
22 records of the department to determine proof of beneficial use.

23 “(6) Notwithstanding ORS 537.410, for purposes of obtaining a water right
24 certificate under ORS 537.250 for a supplemental water right, the permittee
25 shall have a facility capable of handling the full rate and duty of water re-
26 quested from the supplemental source and be otherwise ready, willing and
27 able to use the amount of water requested, up to the amount of water ap-
28 proved in the water right permit. To obtain a certificate for a supplemental
29 water right, the permittee is not required to have actually used water from
30 the supplemental source if:

1 “(a) Water was available from the source of the primary water right and
2 the primary water right was used pursuant to the terms of the primary water
3 right; or

4 “(b) The nonuse of water from the supplemental source occurred during
5 a period of time within which the exercise of the supplemental water right
6 permit was not necessary due to climatic conditions.

7 **“SECTION 2.** ORS 537.630 is amended to read:

8 “537.630. (1) Except for the holder of a permit for municipal use, the
9 holder of a permit issued pursuant to ORS 537.625 shall prosecute the con-
10 struction of a well or other means of developing and securing the ground
11 water with reasonable diligence and complete the construction within a
12 reasonable time fixed in the permit by the Water Resources Department, not
13 to exceed five years after the date of approval of the application. However,
14 the department, for good cause shown, shall order and allow an extension
15 of time, including an extension beyond the five-year period, for the com-
16 pletion of the well or other means of developing and securing the ground
17 water or for complete application of water to beneficial use. In determining
18 the extension, the department shall give due weight to the considerations
19 described under ORS 539.010 (5) and to whether other governmental require-
20 ments relating to the project have significantly delayed completion of con-
21 struction or perfection of the right.

22 “[~~(2)~~] **(2)(a) As used in this subsection, ‘undeveloped portion of the**
23 **permit’ means the portion of a water right permit that is the differ-**
24 **ence between the maximum rate or duty authorized by the permit and**
25 **the maximum rate or duty of water diverted for beneficial use as of**
26 **the later of:**

27 **“(A) December 11, 2013; or**

28 **“(B) The time specified in the permit, or in the last-approved ex-**
29 **tension of time, to perfect the water right.**

30 **“(b) The holder of a permit for municipal use shall commence and com-**

1 plete the construction of any proposed works within 20 years from the date
2 on which the permit for municipal use is issued under ORS 537.625. The
3 construction must proceed with reasonable diligence and be completed within
4 the time specified in the permit, not to exceed 20 years. However, the de-
5 partment may order and allow an extension of time to complete construction
6 or to perfect a water right beyond the time specified in the permit under the
7 following conditions:

8 “[a)] (A) The holder shows good cause. In determining the extension, the
9 department shall give due weight to the considerations described under ORS
10 539.010 (5) and to whether other governmental requirements relating to the
11 project have significantly delayed completion of construction or perfection
12 of the right;

13 “[b) *The extension of time is conditioned to provide that the holder may*
14 *divert water beyond the maximum rate diverted for beneficial use before the*
15 *extension only upon approval by the department of a water management and*
16 *conservation plan; and]*

17 “(B) **The extension of time is conditioned to provide that the holder**
18 **may divert the undeveloped portion of the permit only upon approval**
19 **by the department of a water management and conservation plan; and**

20 “[c)] (C) For the first extension **of time** issued after June 29, 2005, for
21 a permit for municipal use issued before November 2, 1998, the department
22 finds that the undeveloped portion of the permit is conditioned to maintain,
23 in the portions of waterways affected by water use under the permit, the
24 persistence of fish species listed as sensitive, threatened or endangered under
25 state or federal law. The department shall base its finding on existing data
26 and upon the advice of the State Department of Fish and Wildlife. An ex-
27 isting fish protection agreement between the permit holder and a state or
28 federal agency that includes conditions to maintain the persistence of any
29 listed fish species in the affected portion of the waterway is conclusive for
30 purposes of the finding.

1 “(3) If the construction of any well or other means of developing and se-
2 curing the ground water is completed after the date of approval of the ap-
3 plication for a permit under ORS 537.625, within 30 days after the
4 completion, or if the construction is completed before the date of approval,
5 within 30 days after the date of approval, the permit holder shall file a cer-
6 tificate of completion with the Water Resources Department, disclosing:

7 “(a) The depth to the water table;

8 “(b) The depth, diameter and type of each well, and the kind and amount
9 of the casing;

10 “(c) The capacity of the well pump in gallons per minute and the
11 drawdown thereof;

12 “(d) The identity of the record owner of any property that was described
13 in the application for a permit under ORS 537.625 but is not included in the
14 certificate of completion; and

15 “(e) Any other information the department considers necessary.

16 “(4) Upon completion of beneficial use necessary to secure the ground
17 water as required under this section, the permit holder shall hire a water
18 right examiner certified under ORS 537.798 to survey the appropriation.
19 Within one year after applying the water to beneficial use or the beneficial
20 use date allowed in the permit, the permit holder shall submit the survey as
21 required by the Water Resources Department to the department along with
22 the certificate of completion required under subsection (3) of this section. If
23 any property described in the permit is not included in the request for a
24 water right certificate, the permittee shall state the identity of the record
25 owner of that property.

26 “(5) After the department has received a certificate of completion and a
27 copy of the survey as required by subsections (3) and (4) of this section that
28 show, to the satisfaction of the department, that an appropriation has been
29 perfected in accordance with the provisions of ORS 537.505 to 537.795 and
30 537.992, the department shall issue a ground water right certificate of the

1 same character as that described in ORS 537.700. The certificate shall be
2 recorded and transmitted to the applicant as provided in ORS 537.700.

3 “(6) The procedure for cancellation of a permit shall be as provided in
4 ORS 537.260.

5 “(7) Notwithstanding ORS 537.410, for purposes of obtaining a water right
6 certificate under subsection (5) of this section for a supplemental water
7 right, the permittee shall have a facility capable of handling the full rate
8 and duty of water requested from the supplemental source and be otherwise
9 ready, willing and able to use the amount of water requested, up to the
10 amount of water approved in the water right permit. To obtain a certificate
11 for a supplemental water right, the permittee is not required to have actually
12 used water from the supplemental source if:

13 “(a) Water was available from the source of the primary water right and
14 the primary water right was used pursuant to the terms of the primary water
15 right; or

16 “(b) The nonuse of water from the supplemental source occurred during
17 a period of time within which the exercise of the supplemental water right
18 permit was not necessary due to climatic conditions.”.

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