

Requested by Representative POST

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 4012**

1 On page 1 of the printed A-engrossed bill, delete lines 4 through 25 and  
2 delete page 2 and insert:

3 **“SECTION 1. Sections 2 to 4 of this 2016 Act are added to and made  
4 a part of ORS 537.505 to 537.795.**

5 **“SECTION 2. For purposes of determining the probability or exist-  
6 ence of impairment of, or substantial or undue interference with, ex-  
7 isting rights of others to appropriate surface water, any measurement  
8 of the distance between a surface water source and a proposed or ex-  
9 isting well location must be determined using the global positioning  
10 system coordinates of:**

11 **“(1) The proposed or existing well; and**

12 **“(2)(a) The ordinary high water mark, as defined in 33 C.F.R.  
13 328.3(e), for a stream, lake or spring;**

14 **“(b) The edge of the water within the ordinary confines of the  
15 stream, lake or spring; or**

16 **“(c) Any point between the ordinary high water mark and the edge  
17 of the water.**

18 **“SECTION 3. (1) As used in this section:**

19 **“(a) ‘Adversely affecting or aggrieving’ means that a written order  
20 issued by the Water Resources Department or by a watermaster, as-  
21 sistant watermaster or other authorized party acting on behalf of the**

1 **department:**

2 **“(A) Terminates a ground water right; or**

3 **“(B) Conditions, limits, restricts or otherwise impairs a ground**  
4 **water right.**

5 **“(b) ‘Qualified hydrogeologist’ means an individual who:**

6 **“(A) Is registered as a geologist under ORS 672.505 to 672.705; and**

7 **“(B) Has five or more years of professional experience in activities**  
8 **related to hydrology.**

9 **“(2) Except as provided in subsection (8) of this section, a written**  
10 **order adversely affecting or aggrieving the holder of a ground water**  
11 **right must:**

12 **“(a) State all facts, grounds and legal theories relied upon to sup-**  
13 **port the order; and**

14 **“(b) Include detailed findings and holdings that, by a preponderance**  
15 **of the evidence, support the order.**

16 **“(3) If an order under subsection (2) of this section contains**  
17 **findings and holdings that the exercise of a ground water right causes**  
18 **impairment of, or substantial or undue interference with, existing**  
19 **rights of others to appropriate surface water, the facts and grounds**  
20 **relied upon to support the order must include, but need not be limited**  
21 **to, an evaluation of the local hydrogeologic framework. The evaluation**  
22 **information must include, but need not be limited to, the results of**  
23 **an appropriate constant rate pumping test and a determination of the:**

24 **“(a) Estimated aquifer transmissivity;**

25 **“(b) Subsurface cross sections;**

26 **“(c) Comparative ground water and surface water elevation; and**

27 **“(d) Direction of ground water flow.**

28 **“(4) In addition to any other required content, if an order under**  
29 **subsection (2) of this section restricts or conditions the exercise of a**  
30 **ground water right for the purpose of preventing impairment of or**

1 interference with, or to otherwise benefit, any superior water right,  
2 the facts and grounds supporting the order must, by a preponderance  
3 of evidence, establish that there is:

4 “(a) A substantial and quantifiable hydrologic connectivity between  
5 the point of appropriation for the ground water right and the point  
6 of appropriation for the superior water right; or

7 “(b) A rate of ground water flow between the point of appropriation  
8 for the ground water right and the point of appropriation for the su-  
9 perior water right that is likely to result in a substantial and quanti-  
10 fiable amount of additional water reaching the point of appropriation  
11 within 180 days after enforcement of the restriction or condition at the  
12 point of appropriation for the ground water right.

13 “(5)(a) If a local hydrogeologic framework system is evaluated as  
14 described in subsection (3) of this section, the information relied upon  
15 for the evaluation is conclusively presumed to be of continuing valid-  
16 ity.

17 “(b) If evidence establishes hydrologic connectivity or a rate of  
18 ground water flow for a water right under subsection (4) of this sec-  
19 tion, the hydrologic connectivity information and rate of ground water  
20 flow information are conclusively presumed to be of continuing valid-  
21 ity for purposes of supporting restrictions or conditions on the ground  
22 water right.

23 “(6)(a) The department is responsible for all costs associated with  
24 evidence developed by or on behalf of the department related to an  
25 order issued under this section, including but not limited to, costs of  
26 evaluating local hydrogeologic frameworks as described in subsection  
27 (3) of this section, establishing hydrologic connectivity or rate of  
28 ground water flow under subsection (4) of this section or responding  
29 to evidence submitted by a water right holder.

30 “(b) The department shall ensure that copies of any information

1 described in subsection (3) or (4) of this section are provided to the  
2 adversely affected or aggrieved water right holder without charge prior  
3 to issuance of an order under this section.

4 “(7) The department shall enter into personal service contracts with  
5 qualified hydrogeologists for carrying out any testing required for  
6 compliance with subsections (3) and (4) of this section.

7 “(8) Subsection (2) of this section does not apply to written orders  
8 adversely affecting or aggrieving the holder of a ground water right  
9 having a point of appropriation within a Umatilla River Basin alluvial  
10 aquifer.

11 **“SECTION 4. (1) Except as provided in subsection (2) of this section,**  
12 **if a Water Resources Department order is other than a contested case,**  
13 **the department or a court may not require a bond, irrevocable letter**  
14 **of credit or other undertaking as a condition for issuing or maintain-**  
15 **ing a stay of the order while:**

16 “(a) The order is subject to or pending circuit court review under  
17 ORS 183.484; or

18 “(b) The circuit court judgment under ORS 183.484 is subject to or  
19 pending appeal to the Court of Appeals under ORS 183.500.

20 “(2) Subsection (1) of this section does not apply to the filing of a  
21 bond or irrevocable letter of credit as described in ORS 539.180 to stay,  
22 in whole or in part, operation of a determination by the Water Re-  
23 sources Director.

24 **“SECTION 5. (1) Section 2 of this 2016 Act applies to determinations**  
25 **that the Water Resources Department uses in an order issued on or**  
26 **after the effective date of this 2016 Act finding an impairment of, or**  
27 **substantial or undue interference with, existing rights to appropriate**  
28 **surface water.**

29 “(2) Section 3 of this 2016 Act applies to written orders issued by  
30 or on behalf of the department on or after the effective date of this

1 **2016 Act.**

2 **“(3) Section 4 of this 2016 Act applies to written orders for which**  
3 **an appeal to a circuit court is filed on or after the effective date of this**  
4 **2016 Act.**

5 **“SECTION 6. (1) For the biennium beginning July 1, 2015, at the**  
6 **request of the Oregon Watershed Enhancement Board, the State**  
7 **Treasurer is authorized to issue lottery bonds pursuant to ORS**  
8 **286A.560 to 286A.585 in an amount that produces \$\_\_\_\_\_ in net proceeds**  
9 **and interest earnings for the purpose described in subsection (2) of this**  
10 **section, plus an additional amount estimated by the State Treasurer**  
11 **to be necessary to pay bond-related costs.**

12 **“(2) Net proceeds of lottery bonds issued under this section in an**  
13 **amount sufficient to provide \$\_\_\_\_\_ in net proceeds and interest**  
14 **earnings must be transferred to the board for deposit in the Water**  
15 **Quality Monitoring Fund established under section 7 of this 2016 Act**  
16 **to be used for the purpose of reimbursing local governments for ex-**  
17 **penses incurred for water quality monitoring or analysis related to the**  
18 **removal of dams.**

19 **“(3) The Legislative Assembly finds that, as ensuring the quality**  
20 **of water available to residents of this state is essential for maintaining**  
21 **a healthy and active workforce and for preserving wildlife and the**  
22 **natural environment in this state, the use of lottery bonds for the**  
23 **purpose described in subsection (2) of this section will facilitate and**  
24 **encourage economic development and protect Oregon’s native fish and**  
25 **wildlife.**

26 **“SECTION 7. (1) The Water Quality Monitoring Fund is established**  
27 **in the State Treasury, separate and distinct from the General Fund.**  
28 **Interest earned by the Water Quality Monitoring Fund shall be cred-**  
29 **ited to the fund. The fund consists of moneys deposited in the fund**  
30 **under section 6 of this 2016 Act and may include moneys appropriated,**

1 allocated, deposited or transferred to the fund by the Legislative As-  
2 sembly or otherwise and interest earned on moneys in the fund.

3 “(2) Moneys in the fund are continuously appropriated to the  
4 Oregon Watershed Enhancement Board to be used for the purposes  
5 described in section 6 of this 2016 Act.

6 “SECTION 8. This 2016 Act being necessary for the immediate  
7 preservation of the public peace, health and safety, an emergency is  
8 declared to exist, and this 2016 Act takes effect on its passage.”.

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