

A-Engrossed
House Bill 2099

Ordered by the House April 24
Including House Amendments dated April 24

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Rural Communities, Land Use and Water)

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.

Changes water management and conservation plan approval condition for extension of time to construct works or perfect right for municipal use of water.

Requires certain permit holders receiving extension of time to develop water for municipal use under permit issued prior to November 2, 1998, to implement strategies for avoiding or minimizing potential effects on fish or to make monthly payments to State Wildlife Fund.

Requires Water Resources Department to give priority to processing application for extension of time to develop water for municipal use under permit issued prior to November 2, 1998, if priority is requested by permit holder. States that process for granting extension of time to develop water for municipal use does not exempt permit holder from obligations under federal law.

Specifies method for determining undeveloped portion of water for municipal use under permit issued prior to November 2, 1998, to qualifying cities within Hood River County.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to community water supply; creating new provisions; amending ORS 537.230 and 537.630;
3 and declaring an emergency.

4 Whereas municipal water systems provide crucial water supply that supports manufacturing, the
5 food processing, leisure, hospitality and health care industries and other businesses and that can
6 accommodate future economic and job creation opportunities; and

7 Whereas municipalities are responsible for providing services to all businesses and other con-
8 sumers within the service territory and for forecasting future demands for water; and

9 Whereas a stable, ample water supply for municipalities is necessary to meet drinking water,
10 sanitation, fire suppression and other public health and safety needs; and

11 Whereas municipal water systems represent approximately six percent of the out-of-stream water
12 demand in Oregon, but provide drinking water to approximately 3.3 million people making up ap-
13 proximately 88 percent of Oregon's population; and

14 Whereas the population of Oregon according to the 2010 federal decennial census was 3.8
15 million people and is anticipated to approach 5.4 million people by 2040; now, therefore,

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

17 **SECTION 1.** ORS 537.230 is amended to read:

18 537.230. (1) Except for a holder of a permit for municipal use, the holder of a water right permit
19 shall prosecute the construction of any proposed irrigation or other work with reasonable diligence
20 and complete the construction within a reasonable time, as fixed in the permit by the Water Re-
21 sources Department, not to exceed five years from the date of approval.

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 (2)(a) As used in this subsection, “undeveloped portion of the permit” means the portion
2 of a water right permit that is the difference between the maximum rate or duty of water
3 authorized by the permit and the maximum rate or duty of water diverted for beneficial use
4 as of the later of:

5 (A) December 11, 2013; or

6 (B) The time specified in the permit, or in the last-approved extension of time, to perfect
7 the water right.

8 (b) The holder of a permit for municipal use shall commence and complete the construction of
9 any proposed works within 20 years from the date on which a permit for municipal use is issued
10 under ORS 537.211. The construction must proceed with reasonable diligence and be completed
11 within the time specified in the permit, not to exceed 20 years. However, the department may order
12 and allow an extension of time to complete construction or to perfect a water right beyond the time
13 specified in the permit under the following conditions:

14 [(a)] (A) The holder shows good cause. In determining the extension, the department shall give
15 due weight to the considerations described under ORS 539.010 (5) and to whether other govern-
16 mental requirements relating to the project have significantly delayed completion of construction
17 or perfection of the right;

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

21 (B) The extension of time is conditioned to require that the holder submit, and obtain
22 department approval of, a water management and conservation plan;

23 (C) The extension of time is conditioned to provide that the holder may divert the unde-
24 developed portion of the permit only after the department has approved the water management
25 and conservation plan; and

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

34 (3) Except as provided in ORS 537.240 and 537.248 and subsection (2) of this section, the Water
35 Resources Department, for good cause shown, shall order and allow an extension of time, including
36 an extension beyond the five-year limit established in subsection (1) of this section within which ir-
37 rigation or other works shall be completed or the right perfected. In determining the extension, the
38 department shall give due weight to the considerations described under ORS 539.010 (5) and to
39 whether other governmental requirements relating to the project have significantly delayed com-
40 pletion of construction or perfection of the right.

41 (4) Except as provided in subsection (5) of this section and ORS 537.409, upon completion of
42 beneficial use as required under this section, the [permittee] permit holder shall hire a water right
43 examiner certified under ORS 537.798 to survey the appropriation. Within one year after application
44 of water to a beneficial use or the beneficial use date allowed in the permit, the [permittee] permit
45 holder shall submit a map of the survey as required by the Water Resources Department, which

1 shall accompany the request for a water right certificate submitted to the department under ORS
2 537.250. If any property described in the permit is not included in the request for a water right
3 certificate, the [permittee] **permit holder** shall state the identity of the record owner of that prop-
4 erty.

5 (5) The Water Resources Director may waive the requirement under subsection (4) of this sec-
6 tion that a [permittee] **permit holder** hire a water right examiner certified under ORS 537.798 if:

7 (a) The permit is a supplemental water right that shares the same distribution system and same
8 place of use as the primary water right; and

9 (b) The department determines that there is sufficient information in the records of the depart-
10 ment to determine proof of beneficial use.

11 (6) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under ORS
12 537.250 for a supplemental water right, the [permittee] **permit holder** shall have a facility capable
13 of handling the full rate and duty of water requested from the supplemental source and be otherwise
14 ready, willing and able to use the amount of water requested, up to the amount of water approved
15 in the water right permit. To obtain a certificate for a supplemental water right, the [permittee]
16 **permit holder** is not required to have actually used water from the supplemental source if:

17 (a) Water was available from the source of the primary water right and the primary water right
18 was used pursuant to the terms of the primary water right; or

19 (b) The nonuse of water from the supplemental source occurred during a period of time within
20 which the exercise of the supplemental water right permit was not necessary due to climatic con-
21 ditions.

22 **SECTION 2.** ORS 537.630 is amended to read:

23 537.630. (1) Except for the holder of a permit for municipal use, the holder of a permit issued
24 pursuant to ORS 537.625 shall prosecute the construction of a well or other means of developing and
25 securing the ground water with reasonable diligence and complete the construction within a rea-
26 sonable time fixed in the permit by the Water Resources Department, not to exceed five years after
27 the date of approval of the application. However, the department, for good cause shown, shall order
28 and allow an extension of time, including an extension beyond the five-year period, for the com-
29 pletion of the well or other means of developing and securing the ground water or for complete
30 application of water to beneficial use. In determining the extension, the department shall give due
31 weight to the considerations described under ORS 539.010 (5) and to whether other governmental
32 requirements relating to the project have significantly delayed completion of construction or per-
33 fection of the right.

34 (2)(a) **As used in this subsection, “undeveloped portion of the permit” means the portion**
35 **of a water right permit that is the difference between the maximum rate or duty of water**
36 **authorized by the permit and the maximum rate or duty of water diverted for beneficial use**
37 **as of the later of:**

38 (A) **December 11, 2013; or**

39 (B) **The time specified in the permit, or in the last-approved extension of time, to perfect**
40 **the water right.**

41 (b) The holder of a permit for municipal use shall commence and complete the construction of
42 any proposed works within 20 years from the date on which the permit for municipal use is issued
43 under ORS 537.625. The construction must proceed with reasonable diligence and be completed
44 within the time specified in the permit, not to exceed 20 years. However, the department may order
45 and allow an extension of time to complete construction or to perfect a water right beyond the time

1 specified in the permit under the following conditions:

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

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

9 **(B) The extension of time is conditioned to require that the holder submit, and obtain**
10 **department approval of, a water management and conservation plan;**

11 **(C) The extension of time is conditioned to provide that the holder may divert the unde-**
12 **veloped portion of the permit only after the department has approved the water management**
13 **and conservation plan; and**

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

22 (3) If the construction of any well or other means of developing and securing the ground water
23 is completed after the date of approval of the application for a permit under ORS 537.625, within
24 30 days after the completion, or if the construction is completed before the date of approval, within
25 30 days after the date of approval, the permit holder shall file a certificate of completion with the
26 Water Resources Department, disclosing:

27 (a) The depth to the water table;

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

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

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

32 (e) Any other information the department considers necessary.

33 (4) Upon completion of beneficial use necessary to secure the ground water as required under
34 this section, the permit holder shall hire a water right examiner certified under ORS 537.798 to
35 survey the appropriation. Within one year after applying the water to beneficial use or the beneficial
36 use date allowed in the permit, the permit holder shall submit the survey as required by the Water
37 Resources Department to the department along with the certificate of completion required under
38 subsection (3) of this section. If any property described in the permit is not included in the request
39 for a water right certificate, the [permittee] **permit holder** shall state the identity of the record
40 owner of that property.

41 (5) After the department has received a certificate of completion and a copy of the survey as
42 required by subsections (3) and (4) of this section that show, to the satisfaction of the department,
43 that an appropriation has been perfected in accordance with the provisions of ORS 537.505 to
44 537.795 and 537.992, the department shall issue a ground water right certificate of the same char-
45 acter as that described in ORS 537.700. The certificate shall be recorded and transmitted to the

1 applicant as provided in ORS 537.700.

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

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

10 (a) Water was available from the source of the primary water right and the primary water right
11 was used pursuant to the terms of the primary water right; or

12 (b) The nonuse of water from the supplemental source occurred during a period of time within
13 which the exercise of the supplemental water right permit was not necessary due to climatic con-
14 ditions.

15 **SECTION 3. (1) If the Water Resources Department issues a final order approving an**
16 **extension of time to develop water under a permit for municipal use that was issued prior**
17 **to November 2, 1998, and the holder developed beneficial use of the water between the date**
18 **of the last previous extension of time and December 11, 2013, no later than one year after**
19 **the date of the final order the holder shall:**

20 (a) Confer with department and State Department of Fish and Wildlife personnel and
21 provide the Water Resources Department with evidence that the holder has implemented
22 strategies developed as provided in subsection (2) of this section; or

23 (b) Commence monthly payments as provided in subsection (3) of this section.

24 (2) The Water Resources Department and the State Department of Fish and Wildlife shall
25 make personnel available as necessary to confer with a holder under subsection (1)(a) of this
26 section. The personnel and the holder shall identify potential effects on fish from the use
27 of water under the permit and develop strategies for voluntary action by the holder to avoid
28 or minimize those effects. In developing strategies under this subsection, the departments
29 and the holder shall consider the potential effects on fish from the use of water, giving
30 consideration to withdrawals of water by holders of senior water rights, existing water
31 quality impairment and existing habitat degradation and to natural causes that are beyond
32 the control of the holder.

33 (3) A holder that does not comply with subsection (1)(a) of this section shall make
34 monthly payments of \$5,000 for crediting to the State Wildlife Fund established under ORS
35 496.300. The first payment shall become due one year after the date of the final order de-
36 scribed in subsection (1) of this section. The Water Resources Department, in consultation
37 with the State Department of Fish and Wildlife, shall establish a process to ensure that
38 payments under this subsection are timely made and properly credited.

39 **SECTION 4. If a permit for municipal use was issued before November 2, 1998, upon re-**
40 **quest of the holder, the Water Resources Department shall give processing priority to an**
41 **application for extension of time filed before the effective date of this 2017 Act.**

42 **SECTION 5. Sections 3 and 4 of this 2017 Act and the amendments to ORS 537.230 and**
43 **537.630 by sections 1 and 2 of this 2017 Act do not exempt a permit holder from any obligation**
44 **of the holder under the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531),**
45 **as amended, or under other federal law.**

1 **SECTION 6.** Notwithstanding the amount of water actually diverted, for the purposes of
2 determining the undeveloped portion of a permit for purposes of ORS 537.230 (2) or 537.630
3 (2), the capacity of water works constructed prior to the effective date of this 2017 Act is
4 deemed to be the maximum amount of water diverted if:

5 (1) The holder of the permit is a city located in Hood River County;

6 (2) The constructed water works are associated with the development of water under a
7 permit issued prior to November 2, 1998; and

8 (3) Construction of the water works commenced prior to December 11, 2013.

9 **SECTION 7.** Section 3 of this 2017 Act and the amendments to ORS 537.230 and 537.630
10 by sections 1 and 2 of this 2017 Act apply to extensions of time that the Water Resources
11 Department approves on or after the effective date of this 2017 Act to authorize construction
12 or perfection during periods that begin before, on or after the effective date of this 2017 Act.

13 **SECTION 8.** This 2017 Act being necessary for the immediate preservation of the public
14 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
15 on its passage.
16
