

House Bill 2099

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 **as introduced**.

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

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.

22 (2)(a) **As used in this subsection, "undeveloped portion of the permit" means the portion**
23 **of a water right permit that is the difference between the maximum rate or duty of water**
24 **authorized by the permit and the maximum rate or duty of water diverted for beneficial use**
25 **as of the later of:**

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

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

29 (b) The holder of a permit for municipal use shall commence and complete the construction of
30 any proposed works within 20 years from the date on which a permit for municipal use is issued

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 under ORS 537.211. The construction must proceed with reasonable diligence and be completed
 2 within the time specified in the permit, not to exceed 20 years. However, the department may order
 3 and allow an extension of time to complete construction or to perfect a water right beyond the time
 4 specified in the permit under the following conditions:

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

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

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

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

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

30 (4) Except as provided in subsection (5) of this section and ORS 537.409, upon completion of
 31 beneficial use as required under this section, the [permittee] **permit holder** shall hire a water right
 32 examiner certified under ORS 537.798 to survey the appropriation. Within one year after application
 33 of water to a beneficial use or the beneficial use date allowed in the permit, the [permittee] **permit**
 34 **holder** shall submit a map of the survey as required by the Water Resources Department, which
 35 shall accompany the request for a water right certificate submitted to the department under ORS
 36 537.250. If any property described in the permit is not included in the request for a water right
 37 certificate, the [permittee] **permit holder** shall state the identity of the record owner of that prop-
 38 erty.

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

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

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

45 (6) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under ORS

1 537.250 for a supplemental water right, the [*permittee*] **permit holder** shall have a facility capable
 2 of handling the full rate and duty of water requested from the supplemental source and be otherwise
 3 ready, willing and able to use the amount of water requested, up to the amount of water approved
 4 in the water right permit. To obtain a certificate for a supplemental water right, the [*permittee*]
 5 **permit holder** is not required to have actually used water from the supplemental source if:

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

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

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

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

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

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

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

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

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

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

43 (B) **The extension of time is conditioned to provide that the holder may divert the unde-**
 44 **veloped portion of the permit only upon approval by the department of a water management**
 45 **and conservation plan; and**

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

9 (3) If the construction of any well or other means of developing and securing the ground water
10 is completed after the date of approval of the application for a permit under ORS 537.625, within
11 30 days after the completion, or if the construction is completed before the date of approval, within
12 30 days after the date of approval, the permit holder shall file a certificate of completion with the
13 Water Resources Department, disclosing:

14 (a) The depth to the water table;

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

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

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

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

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

28 (5) After the department has received a certificate of completion and a copy of the survey as
29 required by subsections (3) and (4) of this section that show, to the satisfaction of the department,
30 that an appropriation has been perfected in accordance with the provisions of ORS 537.505 to
31 537.795 and 537.992, the department shall issue a ground water right certificate of the same char-
32 acter as that described in ORS 537.700. The certificate shall be recorded and transmitted to the
33 applicant as provided in ORS 537.700.

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

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

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

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

1 ditions.

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

6 **SECTION 4. This 2017 Act being necessary for the immediate preservation of the public**
7 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
8 **on its passage.**

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