

Senate Bill 465

Sponsored by Senator BOQUIST; Senator FERRIOLI (Pre-session filed.)

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**.

Requires nonapplicant to pay Water Resources Department higher fee for submitting protest if nonapplicant has filed nonapplicant protest under certain statutes within prior 12 months. Increases filing fee as number of previous nonapplicant protests filed increases.

A BILL FOR AN ACT

1
2 Relating to fees charged to nonapplicants filing protests in water right matters; creating new pro-
3 visions; and amending ORS 536.050.

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

5 **SECTION 1. If a protest is submitted by a nonapplicant that has filed one or more pre-**
6 **vious nonapplicant protests under ORS 537.153, 537.227, 537.470, 537.621, 540.520, 540.524,**
7 **540.578, 540.580, 543.230 or 543A.120 within the 12 months immediately prior to the sub-**
8 **mission, the Water Resources Department shall charge the nonapplicant a fee for submitting**
9 **the protest in an amount equal to:**

10 (1) **Twice the fee otherwise payable under ORS 536.050 (1)(j), if the nonapplicant has filed**
11 **one previous nonapplicant protest within the 12 months; or**

12 (2) **Twice the fee that the department charged the nonapplicant for the most recent**
13 **nonapplicant protest, if the nonapplicant has filed two or more previous nonapplicant pro-**
14 **tests within the 12 months.**

15 **SECTION 2. ORS 536.050 is amended to read:**

16 536.050. (1) The Water Resources Department may collect the following fees in advance:

17 (a) For examining an application for a permit:

18 (A) To appropriate water, except as provided under ORS 543.280 for an application for a hy-
19 droelectric project:

20 (i) A base fee of \$800 for an appropriation of water through a single use, point of diversion or
21 point of appropriation;

22 (ii) \$300 for the first second-foot or fraction thereof appropriated under the permit;

23 (iii) \$300 for each additional second-foot or fraction thereof appropriated under the permit;

24 (iv) \$300 for each additional use, point of diversion or point of appropriation included in the
25 application;

26 (v) If appropriating stored water, \$30 for the first acre-foot or fraction thereof up to 20 acre-feet,
27 plus \$1 for each additional acre-foot or fraction thereof; and

28 (vi) If appropriating ground water, in addition to any other fees, \$350 for each application filed.

29 (B) To store water under ORS 537.400 or 537.534 (4):

30 (i) A base fee of \$800;

31 (ii) \$30 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional

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 acre-foot or fraction thereof; and
- 2 (iii) \$125 for each additional storage location.
- 3 (C) To exclusively appropriate stored water:
- 4 (i) A base fee of \$450; and
- 5 (ii) \$30 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional
- 6 acre-foot or fraction thereof.
- 7 (b) For a permit issued under ORS 537.147, 537.211, 537.409 or 537.625 to appropriate or store
- 8 water:
- 9 (A) A base fee of \$450 for recording the permit; and
- 10 (B) An additional fee of \$575 if the permit is issued pursuant to a final order that contains
- 11 provisions requested by the applicant for mitigating impacts to the proposed water source.
- 12 (c) For filing and recording the assignment or partial assignment of a water right application,
- 13 permit or license under ORS 537.220 or 537.635, \$85.
- 14 (d) For copying records in the department, \$2 for the first page and 50 cents for each additional
- 15 page.
- 16 (e) For certifying copies, documents, records or maps, \$10 for each certificate.
- 17 (f) For a blueprint copy of any map or drawing, the actual cost of the work.
- 18 (g) For a computer-generated map, the actual cost of the work.
- 19 (h) For examining an application for approval of a change to an existing water right or permit:
- 20 (A) A base fee of \$1,000 for a change to a single water right or permit;
- 21 (B) \$800 for each additional type of change requested;
- 22 (C) For a request for a change in place of use or type of use or for a water exchange under ORS
- 23 540.533, \$300 for each second-foot or fraction thereof requested beyond the first second-foot;
- 24 (D) \$450 for each additional water right or permit included in the application; and
- 25 (E) An additional fee of \$350 per application, if the application is for an additional point of ap-
- 26 propriation, a change in a point of appropriation or a change from surface water to ground water
- 27 or for substitution as described in ORS 540.524.
- 28 (i) For examining an application for a temporary change in place of use under ORS 540.523, for
- 29 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the
- 30 point of diversion to allow for the appropriation of ground water or a change of a primary right to
- 31 a supplemental right under ORS 540.570, a base fee of \$700 for the first water right or permit, plus
- 32 \$225 for each additional water right or permit included in the application and:
- 33 (A) For nonirrigation uses, \$175 for each second-foot or fraction thereof requested beyond the
- 34 first second-foot; or
- 35 (B) For irrigation uses, \$2 per acre of land irrigated or, if the application and required map are
- 36 submitted to the department in a department-approved digital format, 50 cents per acre of land ir-
- 37 rigated.
- 38 (j) For submitting a protest to the department:
- 39 (A) **Except as provided in section 1 of this 2017 Act**, \$700 if the protest is by a nonapplicant;
- 40 and
- 41 (B) \$350 if the protest is by an applicant.
- 42 (k) For filing an application for extension of time within which irrigation or other works shall
- 43 be completed or a water right perfected, \$575.
- 44 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the
- 45 Water Resources Commission.

1 (m) For filing, examining and certifying a petition under ORS 541.329, \$350 plus 10 cents per
2 acre of water involved in the application. For purposes of computing this fee, when any acreage
3 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in
4 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a
5 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining
6 and certifying the petition.

7 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$200.

8 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,
9 \$500.

10 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order
11 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to
12 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$25.

13 (q) For examining an application to store water under ORS 537.409:

14 (A) A base fee of \$350; and

15 (B) \$30 for each acre-foot or fraction thereof.

16 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established
17 by the Water Resources Director under ORS 543A.410.

18 (s) For examining an application for a substitution made under ORS 540.524:

19 (A) A base fee of \$725 for the first well substitution; and

20 (B) A fee of \$350 for each additional well substitution.

21 (t) For examining an application for an allocation of conserved water under ORS 537.455 to
22 537.500:

23 (A) A base fee of \$1,000 for the first water right that is part of the allocation; and

24 (B) An additional fee of \$350 for each water right that is part of the allocation beyond the first
25 water right.

26 (u) For submitting a water management and conservation plan pursuant to rules of the com-
27 mission:

28 (A) \$500, if the plan is submitted by an agricultural water supplier;

29 (B) \$900, if the plan is submitted by a municipal water supplier serving a population of 1,000 or
30 fewer persons; or

31 (C) \$1,800, if the plan is submitted by a municipal water supplier serving a population of more
32 than 1,000 persons.

33 (v) For examining a new application for an in-stream water right lease under ORS 537.348:

34 (A) \$450 for an application for a lease with four or more landowners or four or more water
35 rights; or

36 (B) \$300 for all other applications.

37 (w) For examining an application for an in-stream water right lease renewal, \$110.

38 (x) For submitting a claim of beneficial use under a permit or transfer having a priority date
39 of July 9, 1987, or later, \$175.

40 (y) For submitting a request no later than 60 days after cancellation of a permit under ORS
41 537.260 to reinstate the permit, \$450.

42 (z) For submitting a request for a basin program exception under ORS 536.295, \$575.

43 (aa) For processing an application under ORS 537.225 for an assignment of water right to one
44 or more landowners and issuance of replacement water right permits, the actual cost of the work.

45 (2)(a) The department may charge a dam owner an annual fee based upon the dam's hazard

1 rating as determined by the department. The fees the department may charge the dam owner are:

2 (A) \$85 for a dam with a low hazard rating.

3 (B) \$170 for a dam with a significant hazard rating.

4 (C) \$575 for a dam with a high hazard rating.

5 (D) If the dam owner fails to pay an annual fee on or before six months after the billing date,
6 a late fee of \$100.

7 (b) If a dam owner fails to pay an annual fee or a late fee charged by the department, the de-
8 partment may, after giving the dam owner notice by certified mail, place a lien on the real property
9 where the dam is located for the fees owed by the dam owner.

10 (3) Notwithstanding the fees established under subsection (1) of this section, the commission may
11 establish lower examination and permit fees by rule for:

12 (a) The right to appropriate water for a storage project of five acre-feet or less; or

13 (b) The right to appropriate water for the purpose of allowing the applicant to water livestock
14 outside of a riparian area, as that term is defined in ORS 541.890.

15 (4)(a) The director may refund all or part of a fee paid to the department under this section if
16 the director determines that a refund of the fee is appropriate in the interests of fairness to the
17 public or necessary to correct an error of the department.

18 (b) The director may refund all or part of the protest fee described in subsection (1)(j) of this
19 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the
20 Water Resources Commission establishes that all or part of a water right has not been canceled or
21 modified under ORS 540.610 to 540.650.

22 (5) The director may waive all or part of a fee for a change to a water right permit under ORS
23 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-
24 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

25 (a) Made pursuant to ORS 537.348;

26 (b) Necessary to complete a project funded under ORS 541.932; or

27 (c) Approved by the State Department of Fish and Wildlife as a change or allocation of con-
28 served water that will result in a net benefit to fish and wildlife habitat.

29 (6) Notwithstanding the fees established pursuant to this section, the commission may adopt by
30 rule reduced fees for persons submitting materials to the department in a digital format approved
31 by the department.

32 (7) All moneys received under this section, less any amounts refunded under subsection (4) of
33 this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

34 (8) Notwithstanding subsection (7) of this section, all fees received by the department for power
35 purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric
36 Fund established by ORS 536.015.

37 **SECTION 3.** ORS 536.050, as amended by section 2, chapter 644, Oregon Laws 2013, is amended
38 to read:

39 536.050. (1) The Water Resources Department may collect the following fees in advance:

40 (a) For examining an application for a permit:

41 (A) To appropriate water, except as provided under ORS 543.280 for an application for a hy-
42 droelectric project:

43 (i) A base fee of \$700 for an appropriation of water through a single use, point of diversion or
44 point of appropriation;

45 (ii) \$250 for the first second-foot or fraction thereof appropriated under the permit;

- 1 (iii) \$250 for each additional second-foot or fraction thereof appropriated under the permit;
- 2 (iv) \$250 for each additional use, point of diversion or point of appropriation included in the
3 application;
- 4 (v) If appropriating stored water, \$25 for the first acre-foot or fraction thereof up to 20 acre-feet,
5 plus \$1 for each additional acre-foot or fraction thereof; and
- 6 (vi) If appropriating ground water, in addition to any other fees, \$300 for each application filed.
- 7 (B) To store water under ORS 537.400 or 537.534 (4):
- 8 (i) A base fee of \$700;
- 9 (ii) \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional
10 acre-foot or fraction thereof; and
- 11 (iii) \$100 for each additional storage location.
- 12 (C) To exclusively appropriate stored water:
- 13 (i) A base fee of \$400; and
- 14 (ii) \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional
15 acre-foot or fraction thereof.
- 16 (b) For a permit issued under ORS 537.147, 537.211, 537.409 or 537.625 to appropriate or store
17 water:
- 18 (A) A base fee of \$400 for recording the permit; and
- 19 (B) An additional fee of \$500 if the permit is issued pursuant to a final order that contains
20 provisions requested by the applicant for mitigating impacts to the proposed water source.
- 21 (c) For filing and recording the assignment or partial assignment of a water right application,
22 permit or license under ORS 537.220 or 537.635, \$75.
- 23 (d) For copying records in the department, \$2 for the first page and 50 cents for each additional
24 page.
- 25 (e) For certifying copies, documents, records or maps, \$10 for each certificate.
- 26 (f) For a blueprint copy of any map or drawing, the actual cost of the work.
- 27 (g) For a computer-generated map, the actual cost of the work.
- 28 (h) For examining an application for approval of a change to an existing water right or permit:
- 29 (A) A base fee of \$900 for a change to a single water right or permit;
- 30 (B) \$700 for each additional type of change requested;
- 31 (C) For a request for a change in place of use or type of use or for a water exchange under ORS
32 540.533, \$250 for each second-foot or fraction thereof requested beyond the first second-foot;
- 33 (D) \$400 for each additional water right or permit included in the application; and
- 34 (E) An additional fee of \$300 per application, if the application is for an additional point of ap-
35 propriation, a change in a point of appropriation or a change from surface water to ground water
36 or for substitution as described in ORS 540.524.
- 37 (i) For examining an application for a temporary change in place of use under ORS 540.523, for
38 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the
39 point of diversion to allow for the appropriation of ground water or a change of a primary right to
40 a supplemental right under ORS 540.570, a base fee of \$600 for the first water right or permit, plus
41 \$200 for each additional water right or permit included in the application and:
- 42 (A) For nonirrigation uses, \$150 for each second-foot or fraction thereof requested beyond the
43 first second-foot; or
- 44 (B) For irrigation uses, \$2 per acre of land irrigated or, if the application and required map are
45 submitted to the department in a department-approved digital format, 50 cents per acre of land ir-

- 1 rigated.
- 2 (j) For submitting a protest to the department:
- 3 (A) **Except as provided in section 1 of this 2017 Act**, \$600 if the protest is by a nonapplicant;
- 4 and
- 5 (B) \$300 if the protest is by an applicant.
- 6 (k) For filing an application for extension of time within which irrigation or other works shall
- 7 be completed or a water right perfected, \$500.
- 8 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the
- 9 Water Resources Commission.
- 10 (m) For filing, examining and certifying a petition under ORS 541.329, \$300 plus 10 cents per
- 11 acre of water involved in the application. For purposes of computing this fee, when any acreage
- 12 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in
- 13 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a
- 14 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining
- 15 and certifying the petition.
- 16 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$150.
- 17 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,
- 18 \$350.
- 19 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order
- 20 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to
- 21 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$20.
- 22 (q) For examining an application to store water under ORS 537.409:
- 23 (A) A base fee of \$300; and
- 24 (B) \$25 for each acre-foot or fraction thereof.
- 25 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established
- 26 by the Water Resources Director under ORS 543A.410.
- 27 (s) For examining an application for a substitution made under ORS 540.524:
- 28 (A) A base fee of \$630 for the first well substitution; and
- 29 (B) A fee of \$300 for each additional well substitution.
- 30 (t) For examining an application for an allocation of conserved water under ORS 537.455 to
- 31 537.500:
- 32 (A) A base fee of \$850 for the first water right that is part of the allocation; and
- 33 (B) An additional fee of \$300 for each water right that is part of the allocation beyond the first
- 34 water right.
- 35 (u) For submitting a water management and conservation plan pursuant to rules of the com-
- 36 mission:
- 37 (A) \$400, if the plan is submitted by an agricultural water supplier;
- 38 (B) \$800, if the plan is submitted by a municipal water supplier serving a population of 1,000 or
- 39 fewer persons; or
- 40 (C) \$1,600, if the plan is submitted by a municipal water supplier serving a population of more
- 41 than 1,000 persons.
- 42 (v) For examining a new application for an in-stream water right lease under ORS 537.348:
- 43 (A) \$400 for an application for a lease with four or more landowners or four or more water
- 44 rights; or
- 45 (B) \$250 for all other applications.

- 1 (w) For examining an application for an in-stream water right lease renewal, \$100.
- 2 (x) For submitting a claim of beneficial use under a permit or transfer having a priority date
3 of July 9, 1987, or later, \$150.
- 4 (y) For submitting a request no later than 60 days after cancellation of a permit under ORS
5 537.260 to reinstate the permit, \$400.
- 6 (z) For submitting a request for a basin program exception under ORS 536.295, \$500.
- 7 (aa) For processing an application under ORS 537.225 for an assignment of water right to one
8 or more landowners and issuance of replacement water right permits, the actual cost of the work.
- 9 (2)(a) The department may charge a dam owner an annual fee based upon the dam's hazard
10 rating as determined by the department. The fees the department may charge the dam owner are:
- 11 (A) \$75 for a dam with a low hazard rating.
- 12 (B) \$150 for a dam with a significant hazard rating.
- 13 (C) \$500 for a dam with a high hazard rating.
- 14 (D) If the dam owner fails to pay an annual fee on or before six months after the billing date,
15 a late fee of \$100.
- 16 (b) If a dam owner fails to pay an annual fee or a late fee charged by the department, the de-
17 partment may, after giving the dam owner notice by certified mail, place a lien on the real property
18 where the dam is located for the fees owed by the dam owner.
- 19 (3) Notwithstanding the fees established under subsection (1) of this section, the commission may
20 establish lower examination and permit fees by rule for:
- 21 (a) The right to appropriate water for a storage project of five acre-feet or less; or
- 22 (b) The right to appropriate water for the purpose of allowing the applicant to water livestock
23 outside of a riparian area, as that term is defined in ORS 541.890.
- 24 (4)(a) The director may refund all or part of a fee paid to the department under this section if
25 the director determines that a refund of the fee is appropriate in the interests of fairness to the
26 public or necessary to correct an error of the department.
- 27 (b) The director may refund all or part of the protest fee described in subsection (1)(j) of this
28 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the
29 Water Resources Commission establishes that all or part of a water right has not been canceled or
30 modified under ORS 540.610 to 540.650.
- 31 (5) The director may waive all or part of a fee for a change to a water right permit under ORS
32 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-
33 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:
- 34 (a) Made pursuant to ORS 537.348;
- 35 (b) Necessary to complete a project funded under ORS 541.932; or
- 36 (c) Approved by the State Department of Fish and Wildlife as a change or allocation of con-
37 served water that will result in a net benefit to fish and wildlife habitat.
- 38 (6) Notwithstanding the fees established pursuant to this section, the commission may adopt by
39 rule reduced fees for persons submitting materials to the department in a digital format approved
40 by the department.
- 41 (7) All moneys received under this section, less any amounts refunded under subsection (4) of
42 this section, shall be deposited in the Water Resources Department Water Right Operating Fund.
- 43 (8) Notwithstanding subsection (7) of this section, all fees received by the department for power
44 purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric
45 Fund established by ORS 536.015.

1 **SECTION 4. Section 1 of this 2017 Act applies to nonapplicants that submit protests on**
2 **or after the effective date of this 2017 Act and have filed previous nonapplicant protests**
3 **within the 12 months immediately prior to submitting the protest.**

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