

Requested by SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 2099**

1 On page 1 of the printed A-engrossed bill, delete lines 4 through 15.

2 Delete lines 17 through 21 and delete pages 2 through 6 and insert:

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

4 “537.230. (1) Except for a holder of a permit for municipal use, the holder  
5 of a water right permit shall prosecute the construction of any proposed ir-  
6 rigation or other work with reasonable diligence and complete the con-  
7 struction within a reasonable time, as fixed in the permit by the Water  
8 Resources Department, not to exceed five years from the date of approval.

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

17 “(a) The holder shows good cause. In determining the extension, the de-  
18 partment shall give due weight to the considerations described under ORS  
19 539.010 (5) and to whether other governmental requirements relating to the  
20 project have significantly delayed completion of construction or perfection  
21 of the right;

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

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

15       **“(b) The extension of time is conditioned to require that the holder**  
16 **submit, and obtain department approval of, a water management and**  
17 **conservation plan; and**

18       **“(c) The extension of time is conditioned to provide that the holder**  
19 **may divert the undeveloped portion of the permit only after the de-**  
20 **partment has approved the water management and conservation plan.**  
21 **As used in this paragraph, ‘undeveloped portion of the permit’ means**  
22 **the portion of a water right permit that is the difference between the**  
23 **maximum rate or duty of water authorized by the permit and the**  
24 **maximum rate or duty of water diverted for beneficial use as of the**  
25 **time specified in the permit, or in the last-approved extension of time,**  
26 **to perfect the water right.**

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*] **permit holder** shall hire a water right examiner certified under  
9 ORS 537.798 to survey the appropriation. Within one year after application  
10 of water to a beneficial use or the beneficial use date allowed in the permit,  
11 the [*permittee*] **permit holder** shall submit a map of the survey as required  
12 by the Water Resources Department, which shall accompany the request for  
13 a water right certificate submitted to the department under ORS 537.250. If  
14 any property described in the permit is not included in the request for a  
15 water right certificate, the [*permittee*] **permit holder** shall state the identity  
16 of the record owner of that property.

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

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

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

24 “(6) Notwithstanding ORS 537.410, for purposes of obtaining a water right  
25 certificate under ORS 537.250 for a supplemental water right, the  
26 [*permittee*] **permit holder** shall have a facility capable of handling the full  
27 rate and duty of water requested from the supplemental source and be oth-  
28 erwise ready, willing and able to use the amount of water requested, up to  
29 the amount of water approved in the water right permit. To obtain a certif-  
30 icate for a supplemental water right, the [*permittee*] **permit holder** is not

1 required to have actually used water from the supplemental source if:

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

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

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

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

23 “(2) The holder of a permit for municipal use shall commence and com-  
24 plete the construction of any proposed works within 20 years from the date  
25 on which the permit for municipal use is issued under ORS 537.625. The  
26 construction must proceed with reasonable diligence and be completed within  
27 the time specified in the permit, not to exceed 20 years. However, the de-  
28 partment may order and allow an extension of time to complete construction  
29 or to perfect a water right beyond the time specified in the permit under the  
30 following conditions:

1       “(a) The holder shows good cause. In determining the extension, the de-  
2 partment shall give due weight to the considerations described under ORS  
3 539.010 (5) and to whether other governmental requirements relating to the  
4 project have significantly delayed completion of construction or perfection  
5 of the right;

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

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

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

23       “(c) **The extension of time is conditioned to provide that the holder**  
24 **may divert the undeveloped portion of the permit only after the de-**  
25 **partment has approved the water management and conservation plan.**  
26 **As used in this paragraph, ‘undeveloped portion of the permit’ means**  
27 **the portion of a water right permit that is the difference between the**  
28 **maximum rate or duty of water authorized by the permit and the**  
29 **maximum rate or duty of water diverted for beneficial use as of the**  
30 **time specified in the permit, or in the last-approved extension of time,**

1 **to perfect the water right.**

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

8 “(a) The depth to the water table;

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

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

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

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

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

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

1 537.992, the department shall issue a ground water right certificate of the  
2 same character as that described in ORS 537.700. The certificate shall be  
3 recorded and transmitted to the applicant as provided in ORS 537.700.

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

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

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

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

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

21 **“(a) ‘Additional water under the permit’ means the portion of a**  
22 **water right permit that is the difference between the maximum rate**  
23 **or duty of water authorized by the permit and the maximum rate or**  
24 **duty of water diverted as of the later of:**

25 **“(A) December 11, 2013; or**

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

28 **“(b) ‘Undeveloped portion of the permit’ means the portion of a**  
29 **water right permit that is the difference between the maximum rate**  
30 **or duty of water authorized by the permit and the maximum rate or**

1 duty of water diverted as of the later of the time specified in the per-  
2 mit, or in the last-approved extension of time, to perfect the water  
3 right.

4 “(2) Notwithstanding ORS 537.230 and 537.630, for the first extension  
5 of time issued after June 29, 2005, for a permit for municipal use issued  
6 before November 2, 1998, the Water Resources Department may order  
7 and allow an extension of time to complete construction or to perfect  
8 a water right beyond the time specified in the permit under the fol-  
9 lowing conditions:

10 “(a) The holder shows good cause. In determining the extension, the  
11 department shall give due weight to the considerations described under  
12 ORS 539.010 (5) and to whether other governmental requirements re-  
13 lating to the project have significantly delayed completion of con-  
14 struction or perfection of the right;

15 “(b) The extension of time is conditioned to require that the holder  
16 submit a water management and conservation plan within one year  
17 after the date of the final order issuing the extension and obtain de-  
18 partment approval of the plan;

19 “(c) The extension of time is conditioned to provide that the holder  
20 may divert additional water under the permit only after the depart-  
21 ment has approved the water management and conservation plan; and

22 “(d) Except as provided in subsection (3) of this section, the de-  
23 partment finds that the undeveloped portion of the permit is condi-  
24 tioned to maintain, in the portions of waterways affected by water use  
25 under the permit, the persistence of fish species listed as sensitive,  
26 threatened or endangered under state or federal law. The department  
27 shall base its finding on existing data and upon the advice of the State  
28 Department of Fish and Wildlife. An existing fish protection agree-  
29 ment between the permit holder and a state or federal agency that  
30 includes conditions to maintain the persistence of any listed fish spe-

1 cies in the affected portion of the waterway is conclusive for purposes  
2 of the finding.

3 “(3) If the holder diverted water under the permit after the time  
4 specified in the permit or in the last-approved extension of time to  
5 perfect the water right, and before December 11, 2013:

6 “(a) The use of water diverted under the permit developed on or  
7 after December 11, 2013, is subject to subsection (2)(d) of this section;  
8 and

9 “(b) Upon request of the permit holder, for water diverted after the  
10 time specified in the permit or in the last-approved extension of time  
11 to perfect the water right, and before December 11, 2013, the depart-  
12 ment shall waive the finding under subsection (2)(d) of this section and  
13 condition the permit to require that:

14 “(A) The holder contact the State Department of Fish and Wildlife  
15 and obtain information identifying the potential effects on fish of wa-  
16 ter use under the permit;

17 “(B) No later than one year after the date of the final order ap-  
18 proving the extension of time, the holder provide the Water Resources  
19 Department and the State Department of Fish and Wildlife with a de-  
20 scription of strategies that the holder plans to implement to avoid or  
21 minimize the potential effects on fish of water use under the permit;  
22 and

23 “(C) The holder biennially report to the departments regarding the  
24 strategies implemented, the date that the strategies were implemented  
25 and any effect that the implemented strategies have had on municipal  
26 water consumption, increases in water quantity or improvements in  
27 water quality.

28 “(4) A permit holder making a request under subsection (3)(b) may  
29 consult with the departments to develop strategies for implementation  
30 by the permit holder. The strategies must give consideration to the

1 use of other withdrawals of water, existing water quality impairment  
2 and existing habitat degradation and to natural causes beyond the  
3 control of the permit holder.

4 “(5) The departments shall jointly develop a report form for use by  
5 permit holders making biennial reports as described in subsection  
6 (3)(b) of this section.

7 “(6) Except as provided in subsection (7) of this section, the Water  
8 Resources Department shall issue a proposed order under subsection  
9 (8) of this section if, three years after the date of the final order ap-  
10 proving the extension of time:

11 “(a) The permit holder has failed to implement the strategies as  
12 planned; or

13 “(b) The implemented strategies have not resulted in an overall re-  
14 duction in consumption of the water for municipal use, increased wa-  
15 ter quantity or improved water quality during a time of year that  
16 those results are relevant for reducing potential effects of the water  
17 use on fish.

18 “(7)(a) The departments may jointly agree to allow a permit holder  
19 described in subsection (6) of this section an opportunity to implement  
20 new strategies to reduce the effects of water use on fish. No more than  
21 one opportunity to implement new strategies may be allowed under  
22 this subsection for a permit. If the permit holder does not receive ap-  
23 proval from both departments to implement new strategies, the Water  
24 Resources Department shall issue a proposed order under subsection  
25 (8) of this section.

26 “(b) If both departments allow the permit holder an opportunity  
27 under this subsection to implement new strategies, the Water Re-  
28 sources Department shall issue a proposed order under subsection (8)  
29 of this section if, three years after the date both departments have  
30 approved the new strategies:

1       **“(A) The permit holder has failed to implement the new strategies**  
2 **as planned; or**

3       **“(B) The implemented new strategies have not resulted in an over-**  
4 **all reduction in consumption of the water for municipal use, increased**  
5 **water quantity or improved water quality during a time of year that**  
6 **those results are relevant for reducing potential effects of the water**  
7 **use on fish.**

8       **“(8) The Water Resources Department shall issue a proposed order**  
9 **as provided under subsections (6) and (7) of this section modifying the**  
10 **extension of time to make all diverted water described in subsection**  
11 **(3) of this section under the permit subject to the condition described**  
12 **in subsection (2)(d) of this section. A proposed order under this sub-**  
13 **section is subject to ORS chapter 183. If a contested case is conducted**  
14 **regarding the proposed order, the permit holder shall be allowed an**  
15 **opportunity to show good cause why the condition in subsection (2)(d)**  
16 **of this section should not be imposed for water diverted after the time**  
17 **specified in the permit or in the last-approved extension of time to**  
18 **perfect the water right, and before December 11, 2013.**

19       **“SECTION 4. Section 3 of this 2017 Act and the amendments to ORS**  
20 **537.230 and 537.630 by sections 1 and 2 of this 2017 Act do not exempt**  
21 **a permit holder from any obligation of the holder under the federal**  
22 **Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as**  
23 **amended, or under other federal law.**

24       **“SECTION 5. Section 3 of this 2017 Act and the amendments to ORS**  
25 **537.230 and 537.630 by sections 1 and 2 of this 2017 Act apply to exten-**  
26 **sions of time that the Water Resources Department approves on or**  
27 **after the effective date of this 2017 Act.**

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

