

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, line 2, after the first semicolon
2 delete the rest of the line and line 3 and insert “amending ORS 537.230,
3 537.250, 537.409 and 537.630.”.

4 Delete lines 4 through 21 and delete pages 2 through 6 and insert:

5 **“SECTION 1.** ORS 537.230 is amended to read:

6 **“537.230. (1) As used in this section, ‘undeveloped portion’ means the**
7 **difference between the maximum rate or duty specified in a water**
8 **right permit and the maximum rate or duty diverted as of the later**
9 **of:**

10 **“(a) June 29, 2005;**

11 **“(b) The time specified in the permit to perfect the water right; or**

12 **“(c) The time specified in the last-approved extension of time to**
13 **perfect the water right.**

14 **“(2)** Except for a holder of a permit for municipal use, the holder of a
15 water right permit shall prosecute the construction of any proposed irri-
16 gation or other work with reasonable diligence and complete the con-
17 struction within a reasonable time, as fixed in the permit by the Water
18 Resources Department, not to exceed five years from the date of approval.

19 **“[(2)] (3)** The holder of a permit for municipal use shall commence and
20 complete the construction of any proposed works within 20 years from the
21 date on which a permit for municipal use is issued under ORS 537.211. The

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

6 “(a) The holder shows good cause. In determining the extension, the de-
7 partment shall give due weight to the considerations described under ORS
8 539.010 (5) and to whether other governmental requirements relating to the
9 project have significantly delayed completion of construction or perfection
10 of the right;

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

14 “[*b*] (c) The extension of time is conditioned to provide that the holder
15 may divert [*water beyond the maximum rate diverted for beneficial use before*
16 *the extension*] **the undeveloped portion of the permit** only upon approval
17 by the department of [*a*] **the** water management and conservation plan; and

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

29 “[*3*] (4) Except as provided in ORS 537.240 and 537.248 and subsection
30 [*2*] (3) of this section, the Water Resources Department, for good cause

1 shown, shall order and allow an extension of time, including an extension
2 beyond the five-year limit established in subsection [(1)] (2) of this section
3 within which irrigation or other works shall be completed or the right per-
4 fected. In determining the extension, the department shall give due weight
5 to the considerations described under ORS 539.010 (5) and to whether other
6 governmental requirements relating to the project have significantly delayed
7 completion of construction or perfection of the right.

8 “[4)] (5) Except as provided in subsection [(5)] (6) of this section and ORS
9 537.409, upon completion of beneficial use as required under this section, the
10 [permittee] **holder of a permit** shall hire a water right examiner certified
11 under ORS 537.798 to survey the appropriation. Within one year after appli-
12 cation of water to a beneficial use or the beneficial use date allowed in the
13 permit, the [permittee] **holder** shall submit a map of the survey as required
14 by the Water Resources Department, [which] **that** shall accompany the re-
15 quest for a water right certificate submitted to the department under ORS
16 537.250. If any property described in the permit is not included in the request
17 for a water right certificate, the [permittee] **holder** shall state the identity
18 of the record owner of that property.

19 “[5)] (6) The Water Resources Director may waive the requirement under
20 subsection [(4)] (5) of this section that a [permittee] **holder of a permit** hire
21 a water right examiner certified under ORS 537.798 if:

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

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

26 “[6)] (7) Notwithstanding ORS 537.410, for purposes of obtaining a water
27 right certificate under ORS 537.250 for a supplemental water right, the
28 [permittee] **holder of a permit** shall have a facility capable of handling the
29 full rate and duty of water requested from the supplemental source and be
30 otherwise ready, willing and able to use the amount of water requested, up

1 to the amount of water approved in the water right permit. To obtain a
2 certificate for a supplemental water right, the [*permittee*] **holder** is not re-
3 quired to have actually used water from the supplemental source if:

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

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

10 **“SECTION 2.** ORS 537.250 is amended to read:

11 “537.250. (1) After the Water Resources Department has received a request
12 for issuance of a water right certificate accompanied by the survey required
13 under ORS 537.230 [(4)] that shows, to the satisfaction of the department,
14 that an appropriation has been perfected in accordance with the provisions
15 of the Water Rights Act, **except as provided in subsection (4) of this**
16 **section**, the department shall issue to the applicant a certificate of the same
17 character as that described in ORS 539.140. The certificate shall be recorded
18 and transmitted to the applicant as provided in that section.

19 “(2) When issuing a water right certificate under [*subsection (1) of*] this
20 section in the name of a district as defined in ORS 540.505, or in the name
21 of a government agency for a district, the department may issue the water
22 right certificate for land not described in the permit in accordance with ORS
23 537.252.

24 “(3) Rights to the use of water acquired under the provisions of the Water
25 Rights Act, as set forth in a certificate issued under [*subsection (1) of*] this
26 section, shall continue in the owner thereof so long as the water shall be
27 applied to a beneficial use under and in accordance with the terms of the
28 certificate, subject only to loss:

29 “(a) By nonuse as specified and provided in ORS 540.610; or

30 “(b) As provided in ORS 537.297.

1 **“(4) The department may not issue a water right certificate for**
2 **municipal use under this section if:**

3 **“(a) An extension of time is required; and**

4 **“(b) The order approving the extension of time has not become final**
5 **by operation of law or on appeal.**

6 **“SECTION 3.** ORS 537.409 is amended to read:

7 **“537.409. (1)** In lieu of the process set forth in ORS 537.140 to 537.211 for
8 applying for a water right permit, an owner of a reservoir may submit an
9 application to the Water Resources Department to issue a water right permit
10 under ORS 537.211 or a certificate under ORS 537.250 according to the pro-
11 cess set forth in this section if the reservoir:

12 **“(a)** Has a storage capacity of less than 9.2 acre-feet or a dam or
13 impoundment structure less than 10 feet in height;

14 **“(b)** Does not injure any existing water right;

15 **“(c)** Does not pose a significant detrimental impact to existing fishery
16 resources as determined on the basis of information submitted by the State
17 Department of Fish and Wildlife; and

18 **“(d)** Is not prohibited under ORS 390.835.

19 **“(2)** An application for a water right permit for a reservoir under sub-
20 section (1) of this section shall provide sufficient information to demonstrate
21 compliance with the criteria set forth in subsection (1) of this section. The
22 application shall:

23 **“(a)** Include the quantity of water to be stored by the reservoir, a map
24 indicating the location of the reservoir and the source of the water used to
25 fill the reservoir; and

26 **“(b)** Be accompanied by the fee established in ORS 536.050 (1)(q).

27 **“(3)** The map required under subsection (2) of this section need not be
28 prepared by a water right examiner certified under ORS 537.798. The map
29 submitted with the application shall comply with standards established by
30 the Water Resources Commission.

1 “(4) Within 60 days after receiving an application under subsection (1) of
2 this section, the Water Resources Department shall provide public notice of
3 the application in the manner the department determines to be the most ap-
4 propriate.

5 “(5) Within 60 days after the department provides public notice under
6 subsection (4) of this section, any person may submit detailed, legally ob-
7 tained information in writing, requesting the department to deny the appli-
8 cation for a permit on the basis that the reservoir:

9 “(a) Would result in injury to an existing water right; or

10 “(b) Would pose a significant detrimental impact to existing fishery re-
11 sources.

12 “(6) In accordance with rules established by the Water Resources Com-
13 mission for an expedited public interest review process for applications sub-
14 mitted under this section or in response to a request under subsection (5)
15 of this section, the department shall conduct a public interest review of the
16 reservoir application. The review shall be limited to issues pertaining to:

17 “(a) Water availability;

18 “(b) Potential detrimental impact to existing fishery resources; and

19 “(c) Potential injury to existing water rights.

20 “(7) Within 180 days after the department receives an application for a
21 permit under subsection (1) of this section, the department shall issue a final
22 order granting or denying the permit or granting the permit with conditions.

23 “(8) If the department issues an order under subsection (7) of this section
24 denying the permit, the applicant may request a contested case hearing,
25 which shall be conducted in accordance with applicable provisions of ORS
26 chapter 183.

27 “(9) If the department does not find injury or impact under subsection (6)
28 of this section and the department issues a final order under subsection (7)
29 of this section allowing the issuance of a permit, the order shall be subject
30 to judicial review of orders in other than contested cases as provided in ORS

1 chapter 183.

2 “(10) Notwithstanding the requirement for a survey under ORS 537.230
3 [(4)], a survey of the appropriation is not required for a reservoir that has
4 a storage capacity of less than 9.2 acre-feet of water. For a reservoir quali-
5 fying under this subsection, a permittee shall submit to the department a
6 claim of beneficial use within one year after the date of completion of con-
7 struction. A claim of beneficial use for a reservoir qualifying under this
8 subsection shall require only a written affidavit signed by the permittee that
9 includes the following:

10 “(a) The dimensions of the reservoir.

11 “(b) The maximum capacity of the reservoir in acre-feet.

12 “(c) A map identifying the location of the reservoir. The map shall comply
13 with standards established by the Water Resources Commission. The map
14 required under this subsection need not be prepared by a water right exam-
15 iner certified under ORS 537.798.

16 “(11) Any person applying for a secondary permit for the use of stored
17 water from a reservoir qualifying under subsection (10) of this section shall
18 submit a survey prepared by a water right examiner certified under ORS
19 537.798. The survey required under this subsection shall apply to the storage
20 reservoir and to the secondary use of the water in the reservoir.

21 **“SECTION 4.** ORS 537.630 is amended to read:

22 **“537.630. (1) As used in this section, ‘undeveloped portion’ means the**
23 **difference between the maximum rate or duty specified in a water**
24 **right permit and the maximum rate or duty appropriated as of the**
25 **later of:**

26 **“(a) June 29, 2005;**

27 **“(b) The time specified in the permit to perfect the water right; or**

28 **“(c) The time specified in the last-approved extension of time to**
29 **perfect the water right.**

30 **“(2) Except for the holder of a permit for municipal use, the holder of a**

1 permit issued pursuant to ORS 537.625 shall prosecute the construction of a
2 well or other means of developing and securing the ground water with rea-
3 sonable diligence and complete the construction within a reasonable time
4 fixed in the permit by the Water Resources Department, not to exceed five
5 years after the date of approval of the application. However, the department,
6 for good cause shown, shall order and allow an extension of time, including
7 an extension beyond the five-year period, for the completion of the well or
8 other means of developing and securing the ground water or for complete
9 application of water to beneficial use. In determining the extension, the de-
10 partment shall give due weight to the considerations described under ORS
11 539.010 (5) and to whether other governmental requirements relating to the
12 project have significantly delayed completion of construction or perfection
13 of the right.

14 “[2)] (3) The holder of a permit for municipal use shall commence and
15 complete the construction of any proposed works within 20 years from the
16 date on which the permit for municipal use is issued under ORS 537.625. The
17 construction must proceed with reasonable diligence and be completed within
18 the time specified in the permit, not to exceed 20 years. However, the de-
19 partment may order and allow an extension of time to complete construction
20 or to perfect a water right beyond the time specified in the permit under the
21 following conditions:

22 “(a) The holder shows good cause. In determining the extension, the de-
23 partment shall give due weight to the considerations described under ORS
24 539.010 (5) and to whether other governmental requirements relating to the
25 project have significantly delayed completion of construction or perfection
26 of the right;

27 “(b) **The extension of time is conditioned to require that the holder**
28 **submit and obtain department approval of a water management and**
29 **conservation plan;**

30 “[b)] (c) The extension of time is conditioned to provide that the holder

1 may [*divert water beyond the maximum rate diverted for beneficial use before*
2 *the extension*] **appropriate the undeveloped portion of the permit** only
3 upon approval by the department of a water management and conservation
4 plan; and

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

16 “[*(3)*] **(4)** If the construction of any well or other means of developing and
17 securing the ground water is completed after the date of approval of the
18 application for a permit under ORS 537.625, within 30 days after the com-
19 pletion, or if the construction is completed before the date of approval,
20 within 30 days after the date of approval, the permit holder shall file a cer-
21 tificate of completion with the Water Resources Department, disclosing:

22 “(a) The depth to the water table;

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

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

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

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

1 “~~[(4)]~~ **(5)** Upon completion of beneficial use necessary to secure the
2 ground water as required under this section, the permit holder shall hire a
3 water right examiner certified under ORS 537.798 to survey the appropri-
4 ation. Within one year after applying the water to beneficial use or the
5 beneficial use date allowed in the permit, the permit holder shall submit the
6 survey as required by the Water Resources Department to the department
7 along with the certificate of completion required under subsection ~~[(3)]~~ **(4)**
8 of this section. If any property described in the permit is not included in the
9 request for a water right certificate, the *[permittee]* **holder of the permit**
10 shall state the identity of the record owner of that property.

11 “~~[(5)]~~ **(6)** After the department has received a certificate of completion
12 and a copy of the survey as required by subsections ~~[(3) and]~~ **(4) and (5)** of
13 this section that show, to the satisfaction of the department, that an appro-
14 priation has been perfected in accordance with the provisions of ORS 537.505
15 to 537.795 and 537.992, **except as provided in subsection (7) of this sec-**
16 **tion**, the department shall issue a ground water right certificate of the same
17 character as that described in ORS 537.700. The certificate shall be recorded
18 and transmitted to the applicant as provided in ORS 537.700.

19 “**(7) The department may not issue a water right certificate for**
20 **municipal use under this section if:**

21 “**(a) An extension of time is required; and**

22 “**(b) The order approving the extension of time has not become final**
23 **by operation of law or on appeal.**

24 “~~[(6)]~~ **(8)** The procedure for cancellation of a permit shall be as provided
25 in ORS 537.260.

26 “~~[(7)]~~ **(9)** Notwithstanding ORS 537.410, for purposes of obtaining a water
27 right certificate under subsection ~~[(5)]~~ **(6)** of this section for a supplemental
28 water right, the *[permittee]* **holder of a permit** shall have a facility capable
29 of handling the full rate and duty of water requested from the supplemental
30 source and be otherwise ready, willing and able to use the amount of water

1 requested, up to the amount of water approved in the water right permit.
2 To obtain a certificate for a supplemental water right, the [*permittee*] **holder**
3 is not required to have actually used water from the supplemental source if:

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

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

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