

# D R A F T

## SUMMARY

Authorizes Water Resources Director to petition for warrant authorizing entry onto land or inspection.

Requires person that owns or operates place of use at which hauled water is used for irrigation, nursery or agricultural purposes, or that hauls water to be used for irrigation, nursery or agricultural purposes, to maintain records for at least 12 months and provide records to Water Resources Department upon request. Prohibits person that owns or operates place of use at which hauled water is used for irrigation, nursery or agricultural purposes from soliciting or accepting hauled water from illegal source. Prohibits person from making false verbal or written statement or representation to department regarding hauled water or hauling of water. Authorizes imposition of civil penalties for violation of requirements or prohibitions. Provides that violation of false statement or representation prohibition is subject to maximum penalty of 364 days' imprisonment, \$25,000 fine, or both.

Instructs Water Resources Commission to notify certain violators of time allowed to correct violation within 10 business days after commission becomes aware of violation.

Provides that civil penalty for certain violations related to water resources may not exceed \$5,000 per day for each day of violation. Establishes exception for violation related to crop of plants in plant Cannabis family Cannabaceae, for which civil penalty may not exceed \$20,000 per day for each day of violation or economic value of crop, whichever is greater.

Instructs commission to consider value of any crop of plants in plant Cannabis family Cannabaceae to which certain violations may relate when imposing civil penalty for violation.

Provides that certain violations related to water resources are Class A misdemeanors, that each day of violation constitutes separate offense and that maximum fine is \$25,000.

## A BILL FOR AN ACT

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Relating to water resources; creating new provisions; and amending ORS  
536.037, 536.900, 536.910, 536.920 and 537.990.

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

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3 **AUTHORITY TO SEEK WARRANT**

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5 **SECTION 1.** ORS 536.037 is amended to read:

6 536.037. (1) Subject to policy direction by the Water Resources Commis-  
7 sion, the Water Resources Director shall:

8 (a) Be administrative head of the Water Resources Department;

9 (b) Have power, within applicable budgetary limitations, and in accord-  
10 ance with ORS chapter 240, to hire, assign, reassign and coordinate person-  
11 nel of the department;

12 (c) Administer and enforce the laws of the state concerning the water  
13 resources of this state;

14 (d) Be authorized to participate in any proceeding before any public offi-  
15 cer, commission or body of the United States or any state for the purpose  
16 of representing the citizens of Oregon concerning the water resources of this  
17 state;

18 (e) Have power to enter upon any private property in the performance of  
19 the duties of the director, doing no unnecessary injury to the private prop-  
20 erty; *[and]*

21 **(f) Have power to petition the circuit court of this state having ju-**  
22 **risdiction over land for a warrant authorizing the director to enter**  
23 **onto the land or conduct an inspection, as necessary to carry out the**  
24 **duties of the director; and**

25 *[(f)]* **(g)** Coordinate any activities of the department related to a  
26 watershed enhancement project approved by the Oregon Watershed En-  
27 hancement Board under ORS 541.932 with activities of other cooperating  
28 state and federal agencies participating in the project.

29 (2) In addition to duties otherwise required by law, the director shall  
30 prescribe internal policies and procedures for the government of the depart-  
31 ment, the conduct of its employees, the assignment and performance of its

1 business and the custody, use and preservation of its records, papers and  
2 property in a manner consistent with applicable law.

3 (3) The director may delegate to any employee of the department the ex-  
4 ercise or discharge in the director's name of any power, duty or function of  
5 whatever character, vested in or imposed by law upon the director. The of-  
6 ficial act of a person so acting in the director's name and by the director's  
7 authority shall be considered to be an official act of the director.

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## HAULED WATER

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11 **SECTION 2.** (1) **A person that owns or operates a place of use at**  
12 **which hauled water is used for irrigation, nursery or agricultural**  
13 **purposes:**

14 (a) **Shall, for at least 12 months after the hauled water arrives at**  
15 **the place of use, maintain records at the place of use demonstrating**  
16 **that the hauled water was obtained from a legal source.**

17 (b) **Shall, upon request by the Water Resources Department, pro-**  
18 **vide records described in paragraph (a) of this subsection, as soon as**  
19 **possible and not more than one hour after the request is made, for all**  
20 **hauled water that arrived at the place of use within the 12 months**  
21 **preceding the request.**

22 (c) **May not solicit or accept hauled water from an illegal source.**

23 (2) **A person that hauls water to a place of use to be used for irri-**  
24 **gation, nursery or agricultural purposes shall:**

25 (a) **For at least 12 months after hauling the water to the place of**  
26 **use, maintain records of hauling the water.**

27 (b) **Provide records described in paragraph (a) of this subsection to**  
28 **the department upon request.**

29 (3) **A person may not make a false verbal or written statement or**  
30 **representation to the department regarding hauled water or the haul-**  
31 **ing of water.**

1 **(4) The department shall adopt rules to implement this section.**

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3 **PENALTIES**

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5 **SECTION 3.** ORS 536.900 is amended to read:

6 536.900. (1) In addition to any other liability or penalty provided by law,  
7 the Water Resources Commission may impose a civil penalty on a person for  
8 *[any of the following]* **violation of:**

9 (a) *[Violation of any of the terms or conditions]* **A term or condition** of  
10 a permit, certificate or license issued under ORS chapters 536 to 543A.

11 (b) *[Violation of]* ORS 537.130 or 537.535.

12 **(c) Section 2 (1), (2) or (3) of this 2022 Act.**

13 *[(c)] (d) [Violation of]* ORS 537.545 (5) or *[of]* a rule described in ORS  
14 537.545 (7).

15 *[(d)] (e) [Violation of any]* **A commission** rule or order *[of the Water*  
16 *Resources Commission]* that pertains to well maintenance.

17 *[(e)] (f) [Violation of]* ORS 540.045, 540.145, 540.210, 540.310, 540.320,  
18 540.330, 540.340, 540.435, 540.440, 540.570 (5), 540.710, 540.720 and 540.730 or  
19 rules adopted under ORS 540.145.

20 (2) A civil penalty may be imposed under this section for each day of vi-  
21 olation of ORS 537.130, 537.535, 540.045, 540.310, 540.330, 540.570 (5), 540.710,  
22 540.720 or 540.730.

23 (3) In the event the petitioner knowingly misrepresents the map and pe-  
24 tition required in ORS 541.329, the commission may assess a penalty of up  
25 to \$1,000 based upon guidelines to be established by the commission. In ad-  
26 dition, the petition and map shall be amended to correct the error at the  
27 petitioner's cost. Affected users shall be given notice as provided in ORS  
28 541.329 (5).

29 (4) A civil penalty may not be imposed until the commission prescribes  
30 a reasonable time to eliminate the violation. The commission shall notify the  
31 violator of the time allowed to correct a violation within *[five]* **10 business**

1 days after the commission first becomes aware of the violation.

2 (5) Notwithstanding any term or condition of a permit, certificate or li-  
3 cense, the rotation of the use of water under ORS 540.150 may not be con-  
4 sidered a violation under subsection (1) of this section.

5 **SECTION 4.** ORS 536.910 is amended to read:

6 536.910. (1) After public hearing, the Water Resources Commission by rule  
7 shall adopt a schedule establishing the civil penalty that may be imposed  
8 under ORS 536.900 and the time allowed to correct each violation.

9 (2) [*However,*] The civil penalty may not exceed \$5,000 **per day** for each  
10 **day of a violation.**

11 (3) **Notwithstanding subsection (2) of this section, for a violation**  
12 **arising from action or inaction related to a crop of plants in the plant**  
13 **Cannabis family Cannabaceae, the civil penalty may not exceed \$20,000**  
14 **per day for each day of the violation or the economic value of the crop,**  
15 **whichever is greater.**

16 **SECTION 5.** ORS 536.920 is amended to read:

17 536.920. In imposing a penalty pursuant to the schedule adopted pursuant  
18 to ORS 536.910, the Water Resources Commission shall consider the follow-  
19 ing factors:

20 (1) The past history of the person incurring a penalty in taking all fea-  
21 sible steps or procedures necessary or appropriate to correct any violation.

22 (2) Any prior violations of statutes, rules or orders pertaining to water  
23 use.

24 (3) The economic and financial conditions of the person incurring the  
25 penalty, including any financial gains resulting from the violation.

26 (4) The immediacy and extent to which the violation threatens other  
27 rights to the use of water or the public health or safety or the public interest  
28 in the waters of this state.

29 (5) **For a violation of ORS 537.130 (2) or 537.535 (1), the value of any**  
30 **crop of plants in the plant Cannabis family Cannabaceae to which the**  
31 **violation relates.**

1     **SECTION 6.** ORS 537.990 is amended to read:

2     537.990. (1) Violation of ORS 537.130 (2) is a Class [B] A misdemeanor.

3     (2) Any person who willfully diverts or uses water to the detriment of  
4 others without compliance with law shall be punished as provided in sub-  
5 section (1) of this section. The possession or use of water, except when a  
6 right of use is acquired in accordance with law, shall be prima facie evidence  
7 of the guilt of the person using it.

8     (3) Violation of ORS 537.535 (1) or 537.747 **or section 2 (3) of this 2022**  
9 **Act** is a Class [B] A misdemeanor.

10    (4) **Each day during which a violation described in this section oc-**  
11 **curs constitutes a separate offense.**

12    (5) **Notwithstanding ORS 161.635, the maximum fine for a violation**  
13 **described in this section is \$25,000.**

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#### APPLICABILITY

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17    **SECTION 7.** The amendments to ORS 536.900, 536.910, 536.920 and  
18 **537.990** by sections 3 to 6 of this 2022 Act apply to offenses committed  
19 **on or after the effective date of this 2022 Act.**

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#### CAPTIONS

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23    **SECTION 8.** The unit captions used in this 2022 Act are provided  
24 **only for the convenience of the reader and do not become part of the**  
25 **statutory law of this state or express any legislative intent in the**  
26 **enactment of this 2022 Act.**

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