

**A-Engrossed**  
**House Bill 2566**

Ordered by the House May 8  
Including House Amendments dated May 8

Sponsored by COMMITTEE ON ENERGY AND THE ENVIRONMENT

**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.

*[Eliminates exemption from requirement for registration, certificate or permit for certain uses of ground water appropriated on or after effective date of Act.]*

**Modifies exemptions from requirement for registration, certificate or permit for use of ground water. Allows Water Resources Department to collect \$250 fee for recording certain uses of ground water. Allows department to require person to apply for permit in certain cases involving use that is exempt. Specifies application of amendments. Creates Task Force on Exempt Uses.**

**Makes conforming amendments.**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

Relating to exempt uses of ground water; creating new provisions; amending ORS 537.545, 540.510 and 540.610; and declaring an emergency.

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

**EXEMPT USES OF GROUND WATER**

**SECTION 1.** ORS 537.545 is amended to read:

537.545. (1)(a) No registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is required for the use of ground water for:

[(a)] **(A)** Stockwatering purposes;

[(b)] *Watering any lawn or noncommercial garden not exceeding one-half acre in area;*

[(c)] **(B)** Watering the lawns, grounds and fields not exceeding 10 acres in area of schools located within a critical ground water area established pursuant to ORS 537.730 to 537.740;

[(d)] **(C)** Single [*or group*] domestic purposes [*in an amount not exceeding 15,000 gallons a day;*], **and watering any lawn or noncommercial garden not exceeding a specific one-half acre total area per well or water system, in an amount not exceeding 5,000 gallons a day;**

**(D)** Group domestic purposes, and watering any lawn or noncommercial garden not exceeding a specific one-half acre total area per well or water system, in an amount not exceeding 15,000 gallons a day;

[(e)] **(E)** Down-hole heat exchange purposes;

[(f)] **(F)** Any single industrial or commercial purpose [*in an amount not exceeding 5,000 gallons a day*], **and watering any lawn or noncommercial garden not exceeding a specific one-half**

**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 total area per well or water system, in an amount not exceeding 5,000 gallons a day; or**

2 [(g)] (G) Land application, so long as the ground water:

3 [(A)] (i) Has first been appropriated and used under a permit or certificate issued under ORS  
4 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use  
5 of water for confined animal feeding purposes;

6 [(B)] (ii) Is reused for irrigation purposes and the period of irrigation is a period during which  
7 the reused water has never been discharged to the waters of the state; and

8 [(C)] (iii) Is applied pursuant to a permit issued by the Department of Environmental Quality  
9 or the State Department of Agriculture under either ORS 468B.050 to construct and operate a dis-  
10 posal system or ORS 468B.215 to operate a confined animal feeding operation.

11 **(b) For purposes of paragraph (a)(C), (D) and (F) of this subsection, “water system”**  
12 **means multiple wells used to irrigate a single lot or parcel, whether or not the wells are**  
13 **physically connected.**

14 (2)(a) The use of ground water for a use exempt under subsection (1) of this section, to the ex-  
15 tent that it is beneficial, constitutes a right to appropriate ground water equal to that established  
16 by a ground water right certificate issued under ORS 537.700. Except for the use of water under  
17 subsection [(1)(g)] (1)(a)(G) of this section, the Water Resources Commission by rule may require  
18 any person or public agency using ground water for any such purpose to furnish information with  
19 regard to such ground water and the use thereof.

20 (b) For a use of water described in subsection [(1)(g)] (1)(a)(G) of this section, the Department  
21 of Environmental Quality or the State Department of Agriculture shall provide to the Water Re-  
22 sources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the  
23 land application of ground water for reuse. The permit shall provide the information regarding the  
24 place of use of such water and the nature of the beneficial reuse.

25 (c) **For uses described in subsection (1)(a)(C), (D) and (F) of this section, the Water Re-**  
26 **sources Department may collect a \$250 fee for recording the use of ground water. Fees col-**  
27 **lected under this paragraph shall be paid into the Water Resources Department Water Right**  
28 **Operating Fund. Notwithstanding ORS 536.009, such moneys shall be used to conduct ground**  
29 **water studies, to carry out ground water monitoring and to implement subsection (4) of this**  
30 **section.**

31 (3) If it is necessary for the Water Resources Department to regulate the use or distribution of  
32 ground water, including uses exempt under subsection (1) of this section, the department shall use  
33 as a priority date for the exempt uses the date indicated in the log for the well filed with the de-  
34 partment under ORS 537.765 or other documentation provided by the well owner showing when  
35 water use began.

36 (4)(a) **After classification or reclassification of ground water as a ground water limited**  
37 **area pursuant to ORS 536.340 or designation of a critical ground water area pursuant to ORS**  
38 **537.730, the Water Resources Commission may require that any person intending to use**  
39 **ground water from a source of ground water that is classified or reclassified or within a**  
40 **designated area, for a use that is exempt under subsection (1) of this section, apply for a**  
41 **permit under ORS 537.615.**

42 (b) **The commission shall adopt rules to implement the provisions of paragraph (a) of this**  
43 **subsection.**

44 **SECTION 2. (1) The amendments to ORS 537.545 by section 1 of this 2007 Act do not apply**  
45 **to any uses of ground water for which a log has been filed prior to the effective date of this**

1 2007 Act with the Water Resources Department under ORS 537.765 as specified in ORS  
2 537.545 (3).

3 (2) ORS 537.545 (4) applies to uses of ground water on or after the effective date of this  
4 2007 Act that are specified in ORS 537.545 (1) and that utilize any source of ground water  
5 classified or reclassified pursuant to ORS 536.340 or within any area designated pursuant to  
6 ORS 537.730 whether classified, reclassified or designated before, on or after the effective  
7 date of this 2007 Act.

8  
9 **TASK FORCE ON EXEMPT USES**

10  
11 **SECTION 3.** (1) There is created the Task Force on Exempt Uses, consisting of six  
12 members appointed by the Governor as follows:

- 13 (a) One member who is an agricultural or irrigation water user.  
14 (b) One member who is an industrial or commercial water user.  
15 (c) One member who is engaged in the construction or sale of houses.  
16 (d) One member who constructs wells.  
17 (e) One member who is a member of an environmental organization.  
18 (f) One member of the Water Resources Commission.

19 (2) The task force shall:

- 20 (a) Identify basins and subbasins where ground water management problems exist;  
21 (b) Study whether restrictions on exempt wells or additional ground water measurement  
22 would improve identified ground water management problems;  
23 (c) Identify available financial resources that may be utilized to support additional  
24 measurement and increased study of Oregon's ground water resources and assess opportu-  
25 nities to leverage financial resources of the State of Oregon with federal funds; and  
26 (d) Review laws regulating the use of water within the State of Oregon.

27 (3) A majority of the members of the task force constitutes a quorum for the transaction  
28 of business.

29 (4) Official action by the task force requires the approval of a majority of the members  
30 of the task force.

31 (5) The task force shall elect one of its members to serve as chairperson.

32 (6) If there is a vacancy for any cause, the Governor shall make an appointment to be-  
33 come immediately effective.

34 (7) The task force shall meet at times and places specified by the call of the chairperson  
35 or of a majority of the members of the task force.

36 (8) The task force may adopt rules necessary for the operation of the task force.

37 (9) The task force shall submit a report, and may include recommendations for legis-  
38 lation, to an interim committee related to water resources as appropriate no later than Oc-  
39 tober 1, 2008.

40 (10) To the greatest extent practicable, the Water Resources Department shall provide  
41 staff support to the task force.

42 (11) Members of the task force are not entitled to compensation or reimbursement for  
43 expenses and serve as volunteers on the task force.

44 (12) All agencies of state government, as defined in ORS 174.111, are directed to assist  
45 the task force in the performance of its duties and, to the extent permitted by laws relating

1 to confidentiality, to furnish such information and advice as the members of the task force  
2 consider necessary to perform their duties.

3 **SECTION 4.** Section 3 of this 2007 Act is repealed on the date of the convening of the next  
4 regular biennial legislative session.

5  
6 **CONFORMING AMENDMENTS**  
7

8 **SECTION 5.** ORS 540.510 is amended to read:

9 540.510. (1) Except as provided in subsections (2) to (8) of this section, all water used in this  
10 state for any purpose shall remain appurtenant to the premises upon which it is used and no change  
11 in use or place of use of any water for any purpose may be made without compliance with the pro-  
12 visions of ORS 540.520 and 540.530. However, the holder of any water use subject to transfer may,  
13 upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use,  
14 the point of diversion or the use theretofore made of the water in all cases without losing priority  
15 of the right theretofore established. A district may change the place of use in the manner provided  
16 in ORS 540.572 to 540.580 in lieu of the method provided in ORS 540.520 and 540.530. When an ap-  
17 plication for change of the use or place of use for a primary water right is submitted in accordance  
18 with this section, the applicant also shall indicate whether the land described in the application has  
19 an appurtenant supplemental water right or permit. If the applicant also intends to transfer the  
20 supplemental water right or permit, the applicant also shall include the information required under  
21 ORS 540.520 (2) for the supplemental water right or permit. If the applicant does not include the  
22 supplemental water right or permit in the transfer application, the Water Resources Department  
23 shall notify the applicant that the supplemental water right or permit will be canceled before the  
24 department issues the order approving the transfer of the primary water right, unless within 30 days  
25 the applicant modifies the application to include the supplemental water right or permit or with-  
26 draws the application. The department may approve the transfer of the supplemental water right or  
27 permit in accordance with the provisions of ORS 540.520 and 540.530. The department shall not ap-  
28 prove the transfer of a supplemental water right or permit if the transfer would result in enlarge-  
29 ment of the original water right or injury to an existing water right. If the department approves the  
30 transfer of the primary water right but does not approve the transfer of the supplemental water  
31 right or permit, the department shall notify the applicant of the department's intent to cancel that  
32 portion of the supplemental water right or permit described in the transfer application before the  
33 department issues the primary water right transfer order, unless the applicant withdraws the  
34 transfer application within 90 days.

35 (2) Subject to the limitations in ORS 537.490, any right to the use of conserved water allocated  
36 by the Water Resources Commission under ORS 537.470 may be severed from the land and trans-  
37 ferred or sold after notice to the commission as required under ORS 537.490.

38 (3)(a) Any water used under a permit or certificate issued to a municipality, or under rights  
39 conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132, may  
40 be applied to beneficial use on lands to which the right is not appurtenant if:

41 (A) The water is applied to lands which are acquired by annexation or through merger, consol-  
42 idation or formation of a water authority, so long as the rate and use of water allowed in the ori-  
43 ginal certificate is not exceeded;

44 (B) The use continues to be for municipal purposes and would not interfere with or impair prior  
45 vested water rights; or

1 (C) The use is authorized under a permit granted under ORS 468B.050 or 468B.053 and for which  
2 a reclaimed water registration form has been filed under ORS 537.132.

3 (b) As used in this subsection, "municipality" means a city, a port formed under ORS 777.005 to  
4 777.725, 777.915 to 777.953 and 778.010, a domestic water supply district formed under ORS chapter  
5 264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS chapter 450.

6 (4) Pursuant to the provisions of ORS 540.570 or 540.585, any water used under a permit or  
7 certificate issued to a district may be applied to beneficial use on lands within the district to which  
8 the right is not appurtenant.

9 (5) The relocation of a point of diversion as necessary to follow the movements of a naturally  
10 changing stream channel does not constitute a change in point of diversion for purposes of ORS  
11 540.520 if:

12 (a) The diversion point stays within 500 feet of the point of diversion on record with the Water  
13 Resources Department;

14 (b) The change does not move the diversion point upstream or downstream beyond the diversion  
15 point of another appropriator; and

16 (c) The diversion is provided with a proper fish screen, if requested by the State Department  
17 of Fish and Wildlife.

18 (6) In the event that government action results in or creates a reasonable expectation of a  
19 change in the surface level of a surface water source that impairs or threatens to impair access to  
20 a point of diversion authorized by a water right permit, certificate or decree, the owner of the water  
21 right may change the point of diversion or add an additional point of diversion in accordance with  
22 the provisions of this section in lieu of complying with the requirements of ORS 540.520 and 540.530.  
23 Before changing the point of diversion, the water right owner shall provide written notice of the  
24 proposed change to the Water Resources Department. Within 15 days after receipt of such notice,  
25 the department shall provide notice by publication in the department's public notice of water right  
26 applications. Within 60 days after the department receives notice from the owner, the Water Re-  
27 sources Director, by order, shall approve the change unless the director finds the changes will result  
28 in injury to other existing water rights. All other terms and conditions of the water right shall re-  
29 main in effect.

30 (7) The sale or lease of the right to the use of conserved water under ORS 537.490 does not  
31 constitute a change of use or a change in the place of use of water for purposes of ORS 540.520.

32 (8) Ground water applied to an exempt use as set forth in ORS 537.141 or 537.545 may be sub-  
33 sequently applied to land for irrigation purposes under ORS 537.141 (1)(i) or 537.545 [(1)(g)] (1)(a)(G)  
34 without application for a change in use or place of use under this section.

35 **SECTION 6.** ORS 540.610 is amended to read:

36 540.610. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use  
37 of water in this state. Whenever the owner of a perfected and developed water right ceases or fails  
38 to use all or part of the water appropriated for a period of five successive years, the failure to use  
39 shall establish a rebuttable presumption of forfeiture of all or part of the water right.

40 (2) Upon a showing of failure to use beneficially for five successive years, the appropriator has  
41 the burden of rebutting the presumption of forfeiture by showing one or more of the following:

42 (a) The water right is for use of water, or rights of use, acquired by cities and towns in this  
43 state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

44 (b) A finding of forfeiture would impair the rights of such cities and towns to the use of water,  
45 whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature,

1 or which may hereafter be acquired.

2 (c) The use of water, or rights of use, are appurtenant to property obtained by the Department  
3 of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of the period  
4 of redemption provided for in ORS 18.964 while the land is held by the Department of Veterans'  
5 Affairs, even if during such time the water is not used for a period of more than five successive  
6 years.

7 (d) The use of water, or rights of use, under a water right, if the owner of the property to which  
8 the right is appurtenant is unable to use the water due to economic hardship as defined by rule by  
9 the Water Resources Commission.

10 (e) The period of nonuse occurred during a period of time within which land was withdrawn  
11 from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814;  
12 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December  
13 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding un-  
14 der this section, the water right holder rebutting the presumption under this paragraph shall provide  
15 documentation that the water right holder's land was withdrawn from use under a federal reserve  
16 program.

17 (f) The end of the alleged period of nonuse occurred more than 15 years before the date upon  
18 which evidence of nonuse was submitted to the commission or the commission initiated cancellation  
19 proceedings under ORS 540.631, whichever occurs first.

20 (g) The owner of the property to which the water right was appurtenant is unable to use the  
21 water because the use of water under the right is discontinued under an order of the commission  
22 under ORS 537.775.

23 (h) The nonuse occurred during a period of time within which the water right holder was using  
24 reclaimed water in lieu of using water under an existing water right.

25 (i) The nonuse occurred during a period of time within which the water right holder was reusing  
26 water through land application as authorized by ORS 537.141 (1)(i) or 537.545 [(1)(g)] **(1)(a)(G)** in lieu  
27 of using water under an existing water right.

28 (j) The owner or occupant of the property to which the water right is appurtenant was unable  
29 to make full beneficial use of the water because water was not available. A water right holder re-  
30 butting the presumption under this paragraph shall provide evidence that the water right holder  
31 was ready, willing and able to use the water had it been available.

32 (k) The holder of a water right is prohibited by law from using the water. If the prohibition is  
33 subject to remedial action that would allow the use of the water, the water right holder shall pro-  
34 vide evidence that the water right holder is conducting the remedial action with reasonable dili-  
35 gence.

36 (L) The nonuse occurred during a period of time within which the exercise of all or part of the  
37 water right was not necessary due to climatic conditions, so long as the water right holder had a  
38 facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able  
39 to use the entire amount of water allowed under the water right.

40 (m) The nonuse occurred during a period of time within which the water was included in a  
41 transfer application pending before the Water Resources Department.

42 (n) The nonuse of a supplemental water right occurred during a period of time when the primary  
43 water right used in conjunction with that supplemental water right was leased as an in-stream water  
44 right pursuant to ORS 537.348.

45 (3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed

1 water right uses less water to accomplish the beneficial use allowed by the right, the right is not  
2 subject to forfeiture so long as:

3 (a) The user has a facility capable of handling the entire rate and duty authorized under the  
4 right; and

5 (b) The user is otherwise ready, willing and able to make full use of the right.

6 (4) The right of all cities and towns in this state to acquire rights to the use of the water of  
7 natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all rea-  
8 sonable and usual municipal purposes, and for such future reasonable and usual municipal purposes  
9 as may reasonably be anticipated by reason of growth of population, or to secure sufficient water  
10 supply in cases of emergency, is expressly confirmed.

11 (5) After a water right is forfeited under subsection (1) of this section, the water that was the  
12 subject of use shall revert to the public and become again the subject of appropriation in the manner  
13 provided by law, subject to existing priorities.

14  
15 **MISCELLANEOUS**

16  
17 **SECTION 7. The unit captions used in this 2007 Act are provided only for the convenience**  
18 **of the reader and do not become part of the statutory law of this state or express any leg-**  
19 **islative intent in the enactment of this 2007 Act.**

20 **SECTION 8. This 2007 Act being necessary for the immediate preservation of the public**  
21 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
22 **on its passage.**