

A-Engrossed
House Bill 3103

Ordered by the House April 16
Including House Amendments dated April 16

Sponsored by COMMITTEE ON WATER (at the request of Representative Ken Helm)

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.

Authorizes holder of water right certificate that allows storage of water to change **type of** use of water, subject to certain requirements.

Directs Water Resources Commission to hold facilitated meetings for purpose of finding agreement among stakeholders on path forward for transfers of stored water and development of related legislative proposals.

Appropriates moneys from General Fund to commission for purposes related to meetings.

A BILL FOR AN ACT

1
2 Relating to water uses; creating new provision; and amending ORS 540.510 and 540.520.

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

4 **SECTION 1.** ORS 540.510 is amended to read:

5 540.510. (1)(a) Except as provided in subsections (2) to (8) of this section, all water used in this
6 state for any purpose shall remain appurtenant to the premises upon which it is used and no change
7 in use or place of use of any water for any purpose may be made without compliance with the pro-
8 visions of ORS 540.520 and 540.530. However, the holder of any water use subject to transfer may,
9 upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use,
10 the point of diversion or the use [*theretofore made*] of the water [*in all cases*] without losing priority
11 of the right [*theretofore established*]. A district may change the place of use in the manner provided
12 in ORS 540.572 to 540.580 in lieu of the method provided in ORS 540.520 and 540.530. When an ap-
13 plication for change of the use or place of use for a primary water right is submitted in accordance
14 with this section, the applicant also shall indicate whether the land described in the application has
15 an appurtenant supplemental water right or permit. If the applicant also intends to transfer the
16 supplemental water right or permit, the applicant also shall include the information required under
17 ORS 540.520 (2) for the supplemental water right or permit. If the applicant does not include the
18 supplemental water right or permit in the transfer application, the Water Resources Department
19 shall notify the applicant that the supplemental water right or permit will be canceled before the
20 department issues the order approving the transfer of the primary water right, unless within 30 days
21 the applicant modifies the application to include the supplemental water right or permit or with-
22 draws the application. The department may approve the transfer of the supplemental water right or
23 permit in accordance with the provisions of ORS 540.520 and 540.530. The department shall not ap-
24 prove the transfer of a supplemental water right or permit if the transfer would result in enlarge-
25 ment of the original water right or injury to an existing water right. If the department approves the
26 transfer of the primary water right but does not approve the transfer of the supplemental water

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 right or permit, the department shall notify the applicant of the department's intent to cancel that
2 portion of the supplemental water right or permit described in the transfer application before the
3 department issues the primary water right transfer order, unless the applicant withdraws the
4 transfer application within 90 days.

5 **(b) A holder of a water right certificate that authorizes the storage of water may change**
6 **the type of use identified in the water right certificate, as described in subsection (1)(a) of**
7 **this section, without losing priority of the right.**

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

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

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

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

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

21 (b) As used in this subsection, "municipality" means a city, a port formed under ORS 777.005 to
22 777.725, 777.915 to 777.953 and 778.010, a domestic water supply district formed under ORS chapter
23 264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS chapter 450.

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

27 (5) The relocation of a point of diversion as necessary to follow the movements of a naturally
28 changing stream channel does not constitute a change in point of diversion for purposes of ORS
29 540.520 if:

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

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

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

36 (6) In the event that government action results in or creates a reasonable expectation of a
37 change in the surface level of a surface water source that impairs or threatens to impair access to
38 a point of diversion authorized by a water right permit, certificate or decree, the owner of the water
39 right may change the point of diversion or add an additional point of diversion in accordance with
40 the provisions of this section in lieu of complying with the requirements of ORS 540.520 and 540.530.
41 Before changing the point of diversion, the water right owner shall provide written notice of the
42 proposed change to the Water Resources Department. Within 15 days after receipt of such notice,
43 the department shall provide notice by publication in the department's public notice of water right
44 applications. Within 60 days after the department receives notice from the owner, the Water Re-
45 sources Director, by order, shall approve the change unless the director finds the changes will result

1 in injury to other existing water rights. All other terms and conditions of the water right shall re-
2 main in effect.

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

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

8 **SECTION 2.** ORS 540.520 is amended to read:

9 540.520. (1)(a) Except when the application is made under ORS 541.327 or when an application
10 for a temporary transfer is made under ORS 540.523, if the holder of a water use subject to transfer
11 for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires to change
12 the place of use, the point of diversion, or the use made of the water, an application to make such
13 change, as the case may be, shall be filed with the Water Resources Department.

14 **(b) A holder of a water right certificate that authorizes the storage of water may change**
15 **the type of use identified in the water right certificate, as described in this section.**

16 (2) The application required under subsection (1) of this section shall include:

17 (a) The name of the owner;

18 (b) The previous use of the water;

19 (c) A description of the premises upon which the water is used;

20 (d) A description of the premises upon which it is proposed to use the water;

21 (e) The use that is proposed to be made of the water;

22 (f) The reasons for making the proposed change; and

23 (g) Evidence that the water has been used over the past five years according to the terms and
24 conditions of the owner's water right certificate or that the water right is not subject to forfeiture
25 under ORS 540.610.

26 (3) If the application required under subsection (1) of this section is necessary to allow a change
27 in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS
28 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in
29 a net benefit to fish and wildlife habitat, the department, at the discretion of the Water Resources
30 Director, may waive or assist the applicant in satisfying the requirements of subsection (2)(c) and
31 (d) of this section. The assistance provided by the department may include, but need not be limited
32 to, development of an application map.

33 (4) If the application is to change the point of diversion, the transfer shall include a condition
34 that the holder of the water right provide a proper fish screen at the new point of diversion, if re-
35 quested by the State Department of Fish and Wildlife.

36 (5) Upon the filing of the application the department shall give notice by publication in a
37 newspaper having general circulation in the area in which the water rights are located, for a period
38 of at least two weeks and not less than one publication each week. The notice shall include the date
39 on which the last notice by publication will occur. The cost of the publication shall be paid by the
40 applicant in advance to the department. In applications for only a change in place of use or for a
41 change in the point of diversion of less than one-fourth mile, and where there are no intervening
42 diversions between the old diversion of the applicant and the proposed new diversion, no newspaper
43 notice need be published. The department shall include notice of such applications in the weekly
44 notice published by the department.

45 (6) Within 30 days after the last publication of a newspaper notice of the proposed transfer or

1 the mailing of the department's weekly notice, whichever is later, any person may file, jointly or
2 severally, with the department, a protest against approval of the application.

3 (7) If a timely protest is filed, or in the opinion of the Water Resources Director a hearing is
4 necessary to determine whether the proposed changes as described by the application would result
5 in injury to existing water rights, the department shall hold a hearing on the matter. Notice and
6 conduct of the hearing shall be under the provisions of ORS chapter 183, pertaining to contested
7 cases, and shall be held in the area where the rights are located unless all parties and persons who
8 filed a protest under this subsection stipulate otherwise.

9 (8) An application for a change of use under this section is not required if the beneficial use
10 authorized by the water use subject to transfer is irrigation and the owner of the water right uses
11 the water for incidental agricultural, stock watering and other uses related to irrigation use, so long
12 as there is no increase in the rate, duty, total acreage benefited or season of use.

13 (9) A water right transfer under subsection (1) of this section is not required for a general in-
14 dustrial use that was not included in a water right certificate issued for a specific industrial use if:

15 (a) The quantity of water used for the general industrial use is not greater than the rate allowed
16 in the original water right and not greater than the quantity of water diverted to satisfy the au-
17 thorized specific use under the original water right;

18 (b) The location where the water is to be used for general industrial use was owned by the
19 holder of the original water right at the time the water right permit was issued; and

20 (c) The person who makes the change in water use provides the following information to the
21 Water Resources Department:

22 (A) The name and mailing address of the person using water under the water right;

23 (B) The water right certificate number;

24 (C) A description of the location of the industrial facility owned by the holder of the original
25 water right at the time the water right permit was issued; and

26 (D) A description of the general industrial use to be made of the water after the change.

27 **SECTION 3. For the purpose of finding agreement among stakeholders on a path forward**
28 **for transfers of stored water and development of related legislative proposals, the Water**
29 **Resources Commission shall:**

30 (1) **Engage professional facilitation services.**

31 (2) **Seek a facilitator with national renown and subject matter expertise.**

32 (3) **Retain, if possible, a senior lead facilitator and a junior support facilitator.**

33 (4) **Hold six to 12 meetings, in person if practicable, with at least 20 diverse stakeholders,**
34 **including from federal and state agencies, between the effective date of this 2021 Act and**
35 **June 30, 2023.**

36 (5) **Design a process for the meetings and conduct stakeholder interviews and research**
37 **before the meetings.**

38 **SECTION 4. In addition to and not in lieu of any other appropriation, there is appropri-**
39 **ated to the Water Resources Commission, for the biennium beginning July 1, 2021, out of the**
40 **General Fund, the amount of \$485,100 to be used to carry out the provisions of section 3 of**
41 **this 2021 Act.**