

A-Engrossed
House Bill 3166

Ordered by the House April 19
Including House Amendments dated April 19

Sponsored by Representatives HELM, OWENS

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.

[Requires Legislative Policy and Research Committee to study and make recommendations to interim committee of Legislative Assembly regarding water measurement program.]

[Sunsets January 2, 2023.]

[Takes effect on 91st day following adjournment sine die.]

Makes certain findings and declarations concerning water budgets and water use data.

Directs Water Resources Commission to designate certain number of water basins or subbasins as priority basins and take certain other actions concerning water use data and water budgets. Directs commission to undertake review concerning water measurements. Directs commission to develop water budgets for priority water basins.

Directs commission to report to committee or interim committee of Legislative Assembly related to water on or before September 15, 2022, concerning water measurements review.

Directs commission to report to committee or interim committee of Legislative Assembly related to water on or before January 1, 2026, on progress in designating priority water basins, developing water budgets and assessing certain questions.

Directs Water Resources Department to require persons that hold water rights to conduct measurement and reporting of duty of water diverted, appropriated or stored under water right, subject to certain exceptions.

Directs department to use moneys in Water Measurement Cost Share Program Revolving Fund to offset costs of complying with requirements.

Provides that person's reporting, without other evidence of nonuse or partial nonuse, may not be used for certain legal or administrative purposes.

Authorizes commission to impose civil penalty for violation of water use measurement or reporting requirements, subject to certain exceptions.

A BILL FOR AN ACT

1
2 Relating to water; creating new provisions; and amending ORS 536.021 and 536.900.

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

4 **SECTION 1. (1) The Legislative Assembly finds and declares that:**

5 **(a) Water budgets are a fundamental tool to promote efficient water management, ensure**
6 **effective water distribution and help plan for future water needs.**

7 **(b) Collection of water use data is necessary in order to develop and maintain accurate**
8 **water budgets.**

9 **(c) Water budgets benefit water appropriators and the public.**

10 **(d) Water budgets are critical to effective management of the water resources of this**
11 **state.**

12 **(2) It is the policy of this state to:**

13 **(a) Establish and implement policies as necessary to support the development and main-**
14 **tenance of water budgets.**

15 **(b) Promote the measurement and reporting of water use by appropriators.**

16 **(c) Require as appropriate the installation of stream gauges, observation wells and other**

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 measurement devices and technologies in order to monitor surface water flows and ground
2 water levels in this state.

3 (d) Encourage coordination and cooperation among federal, state and local governments
4 in providing financial and technical support to assist water appropriators with water use
5 measurement and reporting to develop water budgets.

6 **SECTION 2. (1) As used in this section:**

7 (a) "Priority water basin" includes but is not limited to a water basin or subbasin:

8 (A) That the Water Resources Department and the State Department of Fish and Wildlife
9 identify as a stream flow restoration priority area;

10 (B) That the Water Resources Department identifies as a highly regulated basin;

11 (C) In which water diversions or appropriations significantly impact stream flows or wa-
12 ter quality;

13 (D) That has declines in ground water levels, negatively impacted ground water-related
14 ecosystems or other water issues; or

15 (E) That contains habitat for aquatic species listed as threatened or endangered pursuant
16 to ORS 496.172 or the federal Endangered Species Act of 1973 (16 U.S.C. 1531), as amended,
17 or a species designated as sensitive by rules adopted by the State Department of Fish and
18 Wildlife.

19 (b) "Water budget" means an accounting of water existing within and exchanged among
20 the hydrologic components of a water basin or subbasin that is developed using information
21 from stream gauges, observation wells, water use data and other available sources.

22 (2) In consultation with the State Department of Fish and Wildlife and the Water Re-
23 sources Department, and after performing outreach to stakeholders and members of the
24 public and undertaking the review described in subsection (3) of this section, the Water Re-
25 sources Commission shall:

26 (a) Designate from three to five water basins or subbasins as priority water basins.

27 (b) Identify the water use data that is needed to develop water budgets, including where
28 water use measurement is needed at the level of the point of diversion or the point of ap-
29 propriation.

30 (c) Identify where installation of stream gauges is needed to develop water budgets.

31 (d) Initiate assessment of where to house an online platform that contains water data,
32 how the platform will be structured and to what extent the public will have access to the
33 platform.

34 (3) The commission shall review:

35 (a) Where, how and how frequently water measurements are collected and retained;

36 (b) Under which programs or requirements water measurements are reported;

37 (c) Who has access to collected data about water measurements;

38 (d) How water measurement data is used;

39 (e) Who pays for the collection of water measurement data;

40 (f) How often water measurement data is collected;

41 (g) Which persons are subject to water measurement and reporting requirements; and

42 (h) Which, if any, persons that are required to measure water use and report water use
43 measurements are not complying with the requirements.

44 (4) The commission shall develop water budgets for priority water basins based on water
45 use data submitted to the Water Resources Department pursuant to the water use meas-

1 urement and reporting requirements described in section 7 of this 2021 Act, derived from
2 stream gauges and derived from any other relevant source.

3 (5) After developing a water budget for a priority water basin, the commission may des-
4 ignate additional priority water basins for future development of water budgets.

5 **SECTION 3.** The Water Resources Commission make take the actions described in sec-
6 tion 2 (5) of this 2021 Act only after making the report required by section 6 of this 2021 Act.

7 **SECTION 4.** On or before September 15, 2022, the Water Resources Commission shall
8 undertake the review described in section 2 (3) of this 2021 Act and provide the review in a
9 report to a committee or interim committee of the Legislative Assembly related to water,
10 in the manner provided in ORS 192.245.

11 **SECTION 5.** On or before January 1, 2024, the Water Resources Commission shall take
12 the actions required by section 2 (2) of this 2021 Act.

13 **SECTION 6.** On or before January 1, 2026, the Water Resources Commission shall report
14 to a committee or interim committee of the Legislative Assembly related to water, in the
15 manner provided in ORS 192.245, on the commission’s progress in:

- 16 (1) Designating priority water basins, as defined in section 2 of this 2021 Act;
- 17 (2) Developing water budgets, as defined in section 2 of this 2021 Act; and
- 18 (3) Assessing the questions described in section 2 (2)(d) of this 2021 Act.

19 **SECTION 7.** (1) As used in this section:

20 (a) “Measurement” means the use of a technology, or of an installed device, to determine
21 the duty of diverted, appropriated or stored water at a point of diversion or appropriation.

22 (b) “Priority water basin” has the meaning given that term in section 2 of this 2021 Act.

23 (2) The Water Resources Department shall require a person that holds a water right es-
24 tablished by a water right permit, water right certificate, limited license, decree, adjudication
25 or ground water registration that authorizes the diversion, appropriation or storage of water
26 in a priority water basin, as designated by the Water Resources Commission pursuant to
27 section 2 of this 2021 Act, to conduct measurement and reporting of the duty of water di-
28 verted, appropriated or stored under the water right, unless the department determines that
29 the water right is subject to other equivalent measurement and reporting requirements im-
30 posed by the department.

31 (3) The measurement and reporting requirements described in subsection (2) of this sec-
32 tion:

33 (a) May not require the person to provide access to water use data on a smart phone or
34 computer that could be considered proprietary or continuous access to water use data.

35 (b) Shall require annual reporting unless:

36 (A) The person agrees to more frequent reporting;

37 (B) The person is subject to other more frequent measurement and reporting require-
38 ments imposed by the department; or

39 (C) The department determines, in consultation with relevant stakeholders, that more
40 frequent reporting is necessary.

41 (4) The department shall establish:

42 (a) Procedures for reporting water use measurements to the department that provide for
43 electronic reporting.

44 (b) Requirements for water measurement technologies and devices, including require-
45 ments concerning the accuracy, installation and maintenance of the technologies and de-

1 vices.

2 (c) Processes for temporary exceptions to the measurement and reporting requirements,
3 or to the electronic reporting requirement, for a person that makes reasonable efforts to
4 comply with the requirements but experiences:

5 (A) Technological issues, such as equipment malfunction or breakage, that compromise
6 the person's ability to conduct the required measurement or reporting; or

7 (B) Significant difficulty with electronic reporting.

8 (d) Alternative methods of complying with the measurement and reporting requirements
9 when measurement is technically infeasible or can be accomplished effectively by a different
10 method.

11 (5) This section does not prohibit a person from voluntarily providing to the department
12 additional data, access to data on a smart phone or computer that could be considered pro-
13 prietary or continuous access to data.

14 (6) A person required by the department to conduct measurement and reporting shall use
15 a measuring technology or device acceptable to the department and maintain the technology
16 or device in good working order, unless the person does not have access to, or cannot con-
17 trol, the maintenance of the technology.

18 (7) To offset the costs of complying with the measurement and reporting requirements,
19 the department:

20 (a) Shall use moneys in the Water Measurement Cost Share Program Revolving Fund as
21 described in ORS 536.021 (3)(a).

22 (b) May not use moneys in the fund to contribute to the costs of maintaining a device
23 that is used to comply with the requirements.

24 **SECTION 8.** The requirements described in section 7 of this 2021 Act apply to water
25 rights established before, on or after the effective date of this 2021 Act.

26 **SECTION 9.** ORS 536.021 is amended to read:

27 536.021. (1) The Water Measurement Cost Share Program Revolving Fund is established, sepa-
28 rate and distinct from the General Fund. All moneys in the Water Measurement Cost Share Program
29 Revolving Fund are continuously appropriated to the Water Resources Department for the purposes
30 described in this section.

31 (2) The fund established in this section consists of moneys appropriated by the Legislative As-
32 sembly and moneys gifted, bequested, donated or granted from any person for the purpose of in-
33 stall, substantially repairing or replacing streamflow gauges, measuring devices or headgates
34 with measuring devices.

35 (3) The department shall use the moneys in the fund to contribute up to 75 percent of the
36 moneys needed to purchase, install or replace a measurement device that is used to comply
37 with the measurement and reporting requirements described in section 7 of this 2021 Act.

38 (4) If moneys remain in the fund after the expenditures required by subsection (3) of this
39 section, the department may use the moneys in the fund to contribute up to 75 percent of the
40 moneys needed to install, substantially repair or replace a streamflow gauge, measuring device or
41 headgate with a measuring device on authorized diversions or points of appropriation where the
42 gauge, measuring device or headgate will be used to protect in-stream flow or existing water rights,
43 measure ground water use or monitor water rights and streamflow.

44 [(4)] (5) The department may receive funds from, and may enter into agreements or contracts
45 with, any person for the purpose of implementing the Water Measurement Cost Share Program Re-

1 volving Fund.

2 [(5)] **(6)** The department shall prioritize the expenditure of moneys from the fund **pursuant to**
3 **subsection (4) of this section** for streamflow gauges, measuring devices and headgates with meas-
4 uring devices in the following descending order:

5 (a) Installation.

6 (b) Replacement.

7 (c) Substantial repair.

8 **SECTION 10. (1) Notwithstanding any contrary provision in ORS 540.610, 540.631 and**
9 **540.641, if a person must report water use measurements pursuant to section 7 of this 2021**
10 **Act, the person's reporting, without other evidence of nonuse or partial nonuse, may not be**
11 **used:**

12 **(a) To establish a rebuttable presumption of forfeiture of all or part of a water right**
13 **under ORS 540.610.**

14 **(b) As exclusive support for a determination under ORS 540.631 that a perfected and de-**
15 **veloped water right may be canceled.**

16 **(c) As exclusive justification for initiation of proceedings under ORS 540.631 to cancel a**
17 **perfected and developed water right.**

18 **(d) As the basis for an order issued pursuant to ORS 540.641 that cancels, cancels in part**
19 **or modifies a water right.**

20 **(2) Subsection (1) of this section does not prohibit consideration of a person's reporting**
21 **of water use measurements in combination with other evidence of nonuse or partial nonuse.**

22 **SECTION 11.** ORS 536.900 is amended to read:

23 536.900. (1) In addition to any other liability or penalty provided by law, the Water Resources
24 Commission may impose a civil penalty on a person for any of the following:

25 (a) Violation of any of the terms or conditions of a permit, certificate or license issued under
26 ORS chapters 536 to 543A.

27 (b) Violation of ORS 537.130 or 537.535.

28 (c) Violation of ORS 537.545 (5) or (6) or of a rule described in ORS 537.545 (8).

29 (d) Violation of any rule or order of the Water Resources Commission that pertains to well
30 maintenance.

31 (e) Violation of ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435, 540.440,
32 540.570 (5), 540.710, 540.720 and 540.730 or rules adopted under ORS 540.145.

33 **(f) Violation of a water use measurement or reporting requirement described in section**
34 **7 of this 2021 Act, unless the violation is temporary and the result of unintentional breakage**
35 **or malfunction of a measurement device.**

36 (2) A civil penalty may be imposed under this section for each day of violation of ORS 537.130,
37 537.535, 540.045, 540.310, 540.330, 540.570 (5), 540.710, 540.720 or 540.730.

38 (3) In the event the petitioner knowingly misrepresents the map and petition required in ORS
39 541.329, the commission may assess a penalty of up to \$1,000 based upon guidelines to be established
40 by the commission. In addition, the petition and map shall be amended to correct the error at the
41 petitioner's cost. Affected users shall be given notice as provided in ORS 541.329 (5).

42 (4) A civil penalty may not be imposed until the commission prescribes a reasonable time to
43 eliminate the violation. The commission shall notify the violator of the time allowed to correct a
44 violation within five days after the commission first becomes aware of the violation.

45 (5) Notwithstanding any term or condition of a permit, certificate or license, the rotation of the

1 use of water under ORS 540.150 may not be considered a violation under subsection (1) of this sec-
2 tion.

3 **SECTION 12. Before January 1, 2032, the Water Resources Commission may impose a**
4 **penalty for a violation described in ORS 536.900 (1)(f) only against a person that has been**
5 **notified by the Water Resources Department that the person is subject to the measurement**
6 **and reporting requirements described in section 7 of this 2021 Act.**

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