

Requested by Representative HELM

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3166**

1 In line 2 of the printed bill, after “water;” delete the rest of the line and  
2 insert “creating new provisions; and amending ORS 536.021 and 536.900.”.

3 Delete lines 4 through 11 and insert:

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

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

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

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

11 **“(d) Water budgets are critical to effective management of the wa-**  
12 **ter resources of this state.**

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

14 **“(a) Establish and implement policies as necessary to support the**  
15 **development and maintenance of water budgets.**

16 **“(b) Promote the measurement and reporting of water use by**  
17 **appropriators.**

18 **“(c) Require as appropriate the installation of stream gauges, ob-**  
19 **servaion wells and other measurement devices and technologies in**  
20 **order to monitor surface water flows and ground water levels in this**  
21 **state.**

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

5       “SECTION 2. (1) As used in this section:

6       “(a) ‘Priority water basin’ includes but is not limited to a water  
7 basin or subbasin:

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

11       “(B) That the Water Resources Department identifies as a highly  
12 regulated basin;

13       “(C) In which water diversions or appropriations significantly im-  
14 pact stream flows or water quality;

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

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

22       “(b) ‘Water budget’ means an accounting of water existing within  
23 and exchanged among the hydrologic components of a water basin or  
24 subbasin that is developed using information from stream gauges, ob-  
25 servation wells, water use data and other available sources.

26       “(2) In consultation with the State Department of Fish and Wildlife  
27 and the Water Resources Department, and after performing outreach  
28 to stakeholders and members of the public and undertaking the review  
29 described in subsection (3) of this section, the Water Resources Com-  
30 mission shall:

1       “(a) Designate from three to five water basins or subbasins as pri-  
2       ority water basins.

3       “(b) Identify the water use data that is needed to develop water  
4       budgets, including where water use measurement is needed at the level  
5       of the point of diversion or the point of appropriation.

6       “(c) Identify where installation of stream gauges is needed to de-  
7       velop water budgets.

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

11      “(3) The commission shall review:

12      “(a) Where, how and how frequently water measurements are col-  
13      lected and retained;

14      “(b) Under which programs or requirements water measurements  
15      are reported;

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

17      “(d) How water measurement data is used;

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

19      “(f) How often water measurement data is collected;

20      “(g) Which persons are subject to water measurement and reporting  
21      requirements; and

22      “(h) Which, if any, persons that are required to measure water use  
23      and report water use measurements are not complying with the re-  
24      quirements.

25      “(4) The commission shall develop water budgets for priority water  
26      basins based on water use data submitted to the Water Resources De-  
27      partment pursuant to the water use measurement and reporting re-  
28      quirements described in section 7 of this 2021 Act, derived from stream  
29      gauges and derived from any other relevant source.

30      “(5) After developing a water budget for a priority water basin, the

1 commission may designate additional priority water basins for future  
2 development of water budgets.

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

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

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

14 **“SECTION 6.** On or before January 1, 2026, the Water Resources  
15 Commission shall report to a committee or interim committee of the  
16 Legislative Assembly related to water, in the manner provided in ORS  
17 192.245, on the commission’s progress in:

18 **“(1)** Designating priority water basins, as defined in section 2 of this  
19 2021 Act;

20 **“(2)** Developing water budgets, as defined in section 2 of this 2021  
21 Act; and

22 **“(3)** Assessing the questions described in section 2 (2)(d) of this 2021  
23 Act.

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

25 **“(a)** ‘Measurement’ means the use of a technology, or of an in-  
26 stalled device, to determine the duty of diverted, appropriated or  
27 stored water at a point of diversion or appropriation.

28 **“(b)** ‘Priority water basin’ has the meaning given that term in sec-  
29 tion 2 of this 2021 Act.

30 **“(2)** The Water Resources Department shall require a person that

1 holds a water right established by a water right permit, water right  
2 certificate, limited license, decree, adjudication or ground water reg-  
3 istration that authorizes the diversion, appropriation or storage of  
4 water in a priority water basin, as designated by the Water Resources  
5 Commission pursuant to section 2 of this 2021 Act, to conduct meas-  
6 urement and reporting of the duty of water diverted, appropriated or  
7 stored under the water right, unless the department determines that  
8 the water right is subject to other equivalent measurement and re-  
9 porting requirements imposed by the department.

10 “(3) The measurement and reporting requirements described in  
11 subsection (2) of this section:

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

15 “(b) Shall require annual reporting unless:

16 “(A) The person agrees to more frequent reporting;

17 “(B) The person is subject to other more frequent measurement and  
18 reporting requirements imposed by the department; or

19 “(C) The department determines, in consultation with relevant  
20 stakeholders, that more frequent reporting is necessary.

21 “(4) The department shall establish:

22 “(a) Procedures for reporting water use measurements to the de-  
23 partment that provide for electronic reporting.

24 “(b) Requirements for water measurement technologies and devices,  
25 including requirements concerning the accuracy, installation and  
26 maintenance of the technologies and devices.

27 “(c) Processes for temporary exceptions to the measurement and  
28 reporting requirements, or to the electronic reporting requirement, for  
29 a person that makes reasonable efforts to comply with the require-  
30 ments but experiences:

1       **“(A) Technological issues, such as equipment malfunction or**  
2 **breakage, that compromise the person’s ability to conduct the required**  
3 **measurement or reporting; or**

4       **“(B) Significant difficulty with electronic reporting.**

5       **“(d) Alternative methods of complying with the measurement and**  
6 **reporting requirements when measurement is technically infeasible or**  
7 **can be accomplished effectively by a different method.**

8       **“(5) This section does not prohibit a person from voluntarily pro-**  
9 **viding to the department additional data, access to data on a smart**  
10 **phone or computer that could be considered proprietary or continuous**  
11 **access to data.**

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

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

19       **“(a) Shall use moneys in the Water Measurement Cost Share Pro-**  
20 **gram Revolving Fund as described in ORS 536.021 (3)(a).**

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

23       **“SECTION 8. The requirements described in section 7 of this 2021**  
24 **Act apply to water rights established before, on or after the effective**  
25 **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**  
28 **is established, separate and distinct from the General Fund. All moneys in**  
29 **the Water Measurement Cost Share Program Revolving Fund are contin-**  
30 **uously appropriated to the Water Resources Department for the purposes**

1 described in this section.

2 “(2) The fund established in this section consists of moneys appropriated  
3 by the Legislative Assembly and moneys gifted, bequested, donated or  
4 granted from any person for the purpose of installing, substantially repairing  
5 or replacing streamflow gauges, measuring devices or headgates with meas-  
6 uring devices.

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

11 “(4) **If moneys remain in the fund after the expenditures required**  
12 **by subsection (3) of this section, the department** may use the moneys in  
13 the fund to contribute up to 75 percent of the moneys needed to install,  
14 substantially repair or replace a streamflow gauge, measuring device or  
15 headgate with a measuring device on authorized diversions or points of ap-  
16 propriation where the gauge, measuring device or headgate will be used to  
17 protect in-stream flow or existing water rights, measure ground water use  
18 or monitor water rights and streamflow.

19 “[4] (5) The department may receive funds from, and may enter into  
20 agreements or contracts with, any person for the purpose of implementing  
21 the Water Measurement Cost Share Program Revolving Fund.

22 “[5] (6) The department shall prioritize the expenditure of moneys from  
23 the fund **pursuant to subsection (4) of this section** for streamflow gauges,  
24 measuring devices and headgates with measuring devices in the following  
25 descending order:

26 “(a) Installation.

27 “(b) Replacement.

28 “(c) Substantial repair.

29 **“SECTION 10. (1) Notwithstanding any contrary provision in ORS**  
30 **540.610, 540.631 and 540.641, if a person must report water use meas-**

1 **urements pursuant to section 7 of this 2021 Act, the person’s reporting,**  
2 **without other evidence of nonuse or partial nonuse, may not be used:**

3 **“(a) To establish a rebuttable presumption of forfeiture of all or**  
4 **part of a water right under ORS 540.610.**

5 **“(b) As exclusive support for a determination under ORS 540.631**  
6 **that a perfected and developed water right may be canceled.**

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

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

11 **“(2) Subsection (1) of this section does not prohibit consideration**  
12 **of a person’s reporting of water use measurements in combination**  
13 **with other evidence of nonuse or partial nonuse.**

14 **“SECTION 11.** ORS 536.900 is amended to read:

15 **“536.900. (1) In addition to any other liability or penalty provided by law,**  
16 **the Water Resources Commission may impose a civil penalty on a person for**  
17 **any of the following:**

18 **“(a) Violation of any of the terms or conditions of a permit, certificate**  
19 **or license issued under ORS chapters 536 to 543A.**

20 **“(b) Violation of ORS 537.130 or 537.535.**

21 **“(c) Violation of ORS 537.545 (5) or (6) or of a rule described in ORS**  
22 **537.545 (8).**

23 **“(d) Violation of any rule or order of the Water Resources Commission**  
24 **that pertains to well maintenance.**

25 **“(e) Violation of ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330,**  
26 **540.340, 540.435, 540.440, 540.570 (5), 540.710, 540.720 and 540.730 or rules**  
27 **adopted under ORS 540.145.**

28 **“(f) Violation of a water use measurement or reporting requirement**  
29 **described in section 7 of this 2021 Act, unless the violation is tempo-**  
30 **rary and the result of unintentional breakage or malfunction of a**



1 **measurement device.**

2 “(2) A civil penalty may be imposed under this section for each day of  
3 violation of ORS 537.130, 537.535, 540.045, 540.310, 540.330, 540.570 (5), 540.710,  
4 540.720 or 540.730.

5 “(3) In the event the petitioner knowingly misrepresents the map and pe-  
6 tition required in ORS 541.329, the commission may assess a penalty of up  
7 to \$1,000 based upon guidelines to be established by the commission. In ad-  
8 dition, the petition and map shall be amended to correct the error at the  
9 petitioner’s cost. Affected users shall be given notice as provided in ORS  
10 541.329 (5).

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

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

18 **“SECTION 12. Before January 1, 2032, the Water Resources Com-  
19 mission may impose a penalty for a violation described in ORS 536.900  
20 (1)(f) only against a person that has been notified by the Water Re-  
21 sources Department that the person is subject to the measurement  
22 and reporting requirements described in section 7 of this 2021 Act.”.**

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