

# House Bill 4061

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Agriculture, Land Use, and Water for 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 **as introduced**.

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

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

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

## AUTHORITY TO SEEK WARRANT

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

536.037. (1) Subject to policy direction by the Water Resources Commission, the Water Resources Director shall:

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

(b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign and coordinate personnel of the department;

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

(d) Be authorized to participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the citizens of Oregon concerning the water resources of this state;

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

**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.



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

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

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

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

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

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

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

(5) Notwithstanding any term or condition of a permit, certificate or license, the rotation of the use of water under ORS 540.150 may not be considered a violation under subsection (1) of this section.

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

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

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

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

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

536.920. In imposing a penalty pursuant to the schedule adopted pursuant to ORS 536.910, the Water Resources Commission shall consider the following factors:

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

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

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

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

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

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

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

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

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

3 (4) **Each day during which a violation described in this section occurs constitutes a sep-**  
4 **arate offense.**

5 (5) **Notwithstanding ORS 161.635, the maximum fine for a violation described in this sec-**  
6 **tion is \$25,000.**

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8 **APPLICABILITY**

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

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14 **CAPTIONS**

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16 **SECTION 8. The unit captions used in this 2022 Act are provided only for the convenience**  
17 **of the reader and do not become part of the statutory law of this state or express any leg-**  
18 **islative intent in the enactment of this 2022 Act.**