

House Bill 3105

Sponsored by Representatives OWENS, HELM (Pre-session filed.)

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act allows a person to assign a water right certificate to someone else. The Act makes a person who sells property that has a water right tell an agency about the sale. (Flesch Readability Score: 64.4).

Provides that a certificate to appropriate water may be assigned.

Requires a seller of real estate that includes a water right to notify the Water Resources Department of the real estate transaction and the water right that is involved.

A BILL FOR AN ACT

1
2 Relating to water; amending ORS 536.050, 537.220 and 537.330.

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

4 **SECTION 1.** ORS 537.220 is amended to read:

5 537.220. (1) Any application, permit [*or*], license **or certificate** to appropriate water may be as-
6 signed, subject to the conditions of the application [*or*], permit, **license or certificate**, but no such
7 assignment shall be binding, except upon the parties to the assignment, unless filed for record in the
8 Water Resources Department.

9 (2) An assignment of an application, permit [*or*], license **or certificate** to appropriate water filed
10 for record with the [*Water Resources*] department shall identify the current record owners of all
11 property described in the application, permit [*or*], license **or certificate**. The assignor shall furnish
12 proof acceptable to the department that notice of the assignment has been given or attempted for
13 each identified property owner not a party to the assignment.

14 **SECTION 2.** ORS 537.330 is amended to read:

15 537.330. (1) In any transaction for the conveyance of real estate that includes a water right, the
16 seller of the real estate shall, upon accepting an offer to purchase that real estate, [*also*] inform the
17 purchaser in writing:

18 (a) Whether any permit, transfer approval order or certificate evidencing the water right is
19 available [*and*].

20 (b) That the seller will deliver any permit, transfer approval order or certificate to the pur-
21 chaser at closing, if the permit, transfer approval order or certificate is available.

22 (2) Upon closing and delivery of the instrument of conveyance in a real estate transaction in-
23 volving the transfer of a water right, the seller shall [*also*]:

24 (a) Deliver to the purchaser evidence of any permit, transfer approval order or certificate of
25 water rights if the permit, transfer approval order or certificate is available.

26 (b) **Notify the Water Resources Department, on a form prescribed by the department,**
27 **of:**

28 (A) **The real estate transaction.**

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 **(B) The water right involved in the transaction.**

2 (3) The failure of a seller to comply with the provisions of this section does not invalidate an
3 instrument of conveyance executed in the transaction.

4 (4) This section does not apply to any transaction for the conveyance of real estate that includes
5 a water right when the permit, transfer approval order or certificate evidencing the water right is
6 held in the name of a district or corporation formed pursuant to ORS chapter 545, 547, 552, 553 or
7 554.

8 (5) As used in this section:

9 (a) "Certificate" means a certificate or registration issued under ORS 537.250 (1), 537.585,
10 539.140 or 539.240.

11 (b) "Permit" means a permit issued under ORS 537.211, 537.240 or 537.625.

12 (c) "Transfer approval order" means an order of the Water Resources Commission issued under
13 ORS 540.530.

14 **SECTION 3.** ORS 536.050 is amended to read:

15 536.050. (1) The Water Resources Department may collect the following fees in advance:

16 (a) For examining an application for a permit:

17 (A) To appropriate water, except as provided under ORS 543.280 for an application for a hy-
18 droelectric project:

19 (i) A base fee of \$1,090 for an appropriation of water through a single use, point of diversion
20 or point of appropriation;

21 (ii) \$410 for the first second-foot or fraction thereof appropriated under the permit;

22 (iii) \$410 for each additional second-foot or fraction thereof appropriated under the permit;

23 (iv) \$410 for each additional use, point of diversion or point of appropriation included in the
24 application;

25 (v) If appropriating stored water, \$41 for the first acre-foot or fraction thereof up to 20 acre-feet,
26 plus \$1.40 for each additional acre-foot or fraction thereof; and

27 (vi) If appropriating ground water, in addition to any other fees, \$480 for each application filed.

28 (B) To store water under ORS 537.400 or 537.534 (4):

29 (i) A base fee of \$1,090;

30 (ii) \$41 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1.40 for each additional
31 acre-foot or fraction thereof; and

32 (iii) \$160 for each additional storage location.

33 (C) To exclusively appropriate stored water:

34 (i) A base fee of \$610; and

35 (ii) \$41 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1.40 for each additional
36 acre-foot or fraction thereof.

37 (b) For a permit issued under ORS 537.147, 537.211, 537.409 or 537.625 to appropriate or store
38 water:

39 (A) A base fee of \$610 for recording the permit; and

40 (B) An additional fee of \$790 if the permit is issued pursuant to a final order that contains
41 provisions requested by the applicant for mitigating impacts to the proposed water source.

42 (c) For filing and recording the assignment or partial assignment of a water right application,
43 permit [*or*], license **or certificate** under ORS 537.220 or 537.635, \$120.

44 (d) For copying records in the department, \$2.70 for the first page and 70 cents for each addi-
45 tional page.

- 1 (e) For certifying copies, documents, records or maps, \$14 for each certificate.
- 2 (f) For a blueprint copy of any map or drawing, the actual cost of the work.
- 3 (g) For a computer-generated map, the actual cost of the work.
- 4 (h) For examining an application for approval of a change to an existing water right or permit:
- 5 (A) A base fee of \$1,360 for a change to a single water right or permit;
- 6 (B) \$1,090 for each additional type of change requested;
- 7 (C) For a request for a change in place of use or type of use or for a water exchange under ORS
- 8 540.533, \$410 for each second-foot or fraction thereof requested beyond the first second-foot;
- 9 (D) \$610 for each additional water right or permit included in the application;
- 10 (E) An additional fee of \$480 per application, if the application is for an additional point of ap-
- 11 propriation, a change in a point of appropriation or a change from surface water to ground water
- 12 or for substitution as described in ORS 540.524; and
- 13 (F) \$410 for each additional point of appropriation included in the application.
- 14 (i) For examining an application for a temporary change in place of use under ORS 540.523, for
- 15 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the
- 16 point of diversion to allow for the appropriation of ground water or a change of a primary right to
- 17 a supplemental right under ORS 540.570, a base fee of \$950 for the first water right or permit, plus
- 18 \$310 for each additional water right or permit included in the application and:
- 19 (A) For nonirrigation uses, \$230 for each second-foot or fraction thereof requested beyond the
- 20 first second-foot; or
- 21 (B) For irrigation uses, \$2.70 per acre of land irrigated or, if the application and required map
- 22 are submitted to the department in a department-approved digital format, 70 cents per acre of land
- 23 irrigated.
- 24 (j) For submitting a protest to the department:
- 25 (A) \$950 if the protest is by a nonapplicant; and
- 26 (B) \$480 if the protest is by an applicant.
- 27 (k) For filing an application for extension of time within which irrigation or other works shall
- 28 be completed or a water right perfected, \$780.
- 29 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the
- 30 Water Resources Commission.
- 31 (m) For filing, examining and certifying a petition under ORS 541.329, \$480 plus 10 cents per
- 32 acre of water involved in the application. For purposes of computing this fee, when any acreage
- 33 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in
- 34 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a
- 35 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining
- 36 and certifying the petition.
- 37 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$270.
- 38 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,
- 39 \$680.
- 40 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order
- 41 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to
- 42 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$35.
- 43 (q) For examining an application to store water under ORS 537.409:
- 44 (A) A base fee of \$480; and
- 45 (B) \$41 for each acre-foot or fraction thereof.

- 1 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established
 2 by the Water Resources Director under ORS 543A.410.
- 3 (s) For examining an application for a substitution made under ORS 540.524:
- 4 (A) A base fee of \$990 for the first well substitution; and
 5 (B) A fee of \$480 for each additional well substitution.
- 6 (t) For examining an application for an allocation of conserved water under ORS 537.455 to
 7 537.500:
- 8 (A) A base fee of \$1,360 for the first water right that is part of the allocation; and
 9 (B) An additional fee of \$480 for each water right that is part of the allocation beyond the first
 10 water right.
- 11 (u) For submitting a water management and conservation plan pursuant to rules of the com-
 12 mission:
- 13 (A) \$680, if the plan is submitted by an agricultural water supplier;
 14 (B) \$1,220, if the plan is submitted by a municipal water supplier serving a population of 1,000
 15 or fewer persons; or
 16 (C) \$2,450, if the plan is submitted by a municipal water supplier serving a population of more
 17 than 1,000 persons.
- 18 (v) For examining a new application for an in-stream water right lease under ORS 537.348:
- 19 (A) \$610 for an application for a lease with four or more landowners or four or more water
 20 rights; or
 21 (B) \$410 for all other applications.
- 22 (w) For examining an application for an in-stream water right lease renewal, \$150.
- 23 (x) For submitting a claim of beneficial use under a permit or transfer having a priority date
 24 of July 9, 1987, or later, \$230.
- 25 (y) For submitting a request no later than 60 days after cancellation of a permit under ORS
 26 537.260 to reinstate the permit, \$610.
- 27 (z) For submitting a request for a basin program exception under ORS 536.295, \$780.
- 28 (aa) For processing an application under ORS 537.225 for an assignment of water right to one
 29 or more landowners and issuance of replacement water right permits, the actual cost of the work.
- 30 (2)(a) The department may charge a dam owner an annual fee based upon the dam's hazard
 31 rating as determined by the department. The fees the department may charge the dam owner are:
- 32 (A) \$120 for a dam with a low hazard rating.
 33 (B) \$230 for a dam with a significant hazard rating.
 34 (C) \$790 for a dam with a high hazard rating.
 35 (D) If the dam owner fails to pay an annual fee on or before six months after the billing date,
 36 a late fee of \$140.
- 37 (b) If a dam owner fails to pay an annual fee or a late fee charged by the department, the de-
 38 partment may, after giving the dam owner notice by certified mail, place a lien on the real property
 39 where the dam is located for the fees owed by the dam owner.
- 40 (3) Notwithstanding the fees established under subsection (1) of this section, the commission may
 41 establish lower examination and permit fees by rule for:
- 42 (a) The right to appropriate water for a storage project of five acre-feet or less; or
 43 (b) The right to appropriate water for the purpose of allowing the applicant to water livestock
 44 outside of a riparian area, as that term is defined in ORS 541.890.
- 45 (4)(a) The director may refund all or part of a fee paid to the department under this section if

1 the director determines that a refund of the fee is appropriate in the interests of fairness to the
2 public or necessary to correct an error of the department.

3 (b) The director may refund all or part of the protest fee described in subsection (1)(j) of this
4 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the
5 Water Resources Commission establishes that all or part of a water right has not been canceled or
6 modified under ORS 540.610 to 540.650.

7 (5) The director may waive all or part of a fee for a change to a water right permit under ORS
8 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-
9 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

10 (a) Made pursuant to ORS 537.348;

11 (b) Necessary to complete a project funded under ORS 541.932; or

12 (c) Approved by the State Department of Fish and Wildlife as a change or allocation of con-
13 served water that will result in a net benefit to fish and wildlife habitat.

14 (6) Notwithstanding the fees established pursuant to this section, the commission may adopt by
15 rule reduced fees for persons submitting materials to the department in a digital format approved
16 by the department.

17 (7) All moneys received under this section, less any amounts refunded under subsection (4) of
18 this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

19 (8) Notwithstanding subsection (7) of this section, all fees received by the department for power
20 purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric
21 Fund established by ORS 536.015.

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