

# House Bill 2485

Sponsored by Representative BENTZ (at the request of Grant Soil and Water Conservation District)  
(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**.

Establishes water right pilot program to encourage and facilitate point of diversion changes requested by State Department of Fish and Wildlife for purpose of benefitting fish passage. Creates special process for Water Resources Department approval of point of diversion changes.

Requires Water Resources Department and State Department of Fish and Wildlife to biennially submit report regarding pilot program to committee of Legislative Assembly.

Sunsets pilot program January 2, 2028.

## A BILL FOR AN ACT

1  
2 Relating to changes in points of diversion for water rights subject to transfer.

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

4 **SECTION 1. Sections 2 and 3 of this 2017 Act are added to and made a part of ORS 540.505**  
5 **to 540.585.**

6 **SECTION 2. (1) The Water Resources Department, after consultation with the State**  
7 **Department of Fish and Wildlife, shall establish a pilot program area within one or more**  
8 **river basins or subbasins. The Water Resources Department shall conduct the pilot program**  
9 **for the purpose of encouraging and facilitating applications under section 3 of this 2017 Act**  
10 **for point of diversion changes that the State Department of Fish and Wildlife believes will**  
11 **benefit fish passage and for expediting the approval of changes in point of diversion that**  
12 **qualify under section 3 of this 2017 Act.**

13 **(2) The Water Resources Department and the State Department of Fish and Wildlife shall**  
14 **jointly submit a biennial report in the manner provided by ORS 192.245 to a committee of the**  
15 **Legislative Assembly related to natural resources. The report must be delivered no later**  
16 **than September 15 of each odd-numbered year. The report must include, but need not be**  
17 **limited to, information regarding:**

18 **(a) The number of times that the State Department of Fish and Wildlife makes a written**  
19 **request that the holder of a water right subject to transfer file an application under section**  
20 **3 of this 2017 Act to change the point of diversion for the water right;**

21 **(b) The number of applications filed under section 3 of this 2017 Act;**

22 **(c) The number of timely protests to applications filed under section 3 of this 2017 Act;**

23 **(d) The number of applications approved by the Water Resources Department under**  
24 **section 3 of this 2017 Act;**

25 **(e) Any discernible effects on fish passage in locations for which changes in the point of**  
26 **diversion were approved under section 3 of this 2017 Act; and**

27 **(f) Any recommendations by the departments related to the pilot program.**

28 **SECTION 3. (1) Notwithstanding ORS 540.510, 540.520 or 540.580, the Water Resources**

**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 Department may approve an application filed by the holder of a water right subject to  
 2 transfer for a change in the point of diversion for the water right. The Water Resources  
 3 Department may approve a change in the point of diversion under this section if:

4 (a) The State Department of Fish and Wildlife, for the purpose of benefiting fish passage,  
 5 makes a written request that the holder apply for the change;

6 (b) The existing point of diversion and proposed new point of diversion are located within  
 7 a pilot program area established as provided under section 2 of this 2017 Act;

8 (c) The change in the point of diversion will not enlarge the water right or injure any  
 9 existing water right; and

10 (d) The change in the point of diversion is the only transfer sought under the application.

11 (2) Notwithstanding subsection (1)(c) of this section, the Water Resources Department  
 12 may approve an application for a change in a point of diversion that injures an instream  
 13 right held for a public use described in ORS 537.332 (5)(b) if the change is approved by the  
 14 State Department of Fish and Wildlife as a change that will result in a net benefit to fish  
 15 and wildlife habitat. For purposes of this subsection, there is a rebuttable presumption that  
 16 a change in a point of diversion described in a written request under subsection (1)(a) of this  
 17 section is approved as resulting in a net benefit.

18 (3) The holder of a water use subject to transfer that seeks to change a point of diversion  
 19 under this section must file an application for the change with the Water Resources De-  
 20 partment. The application must include:

21 (a) The name of the holder;

22 (b) Information identifying the water right;

23 (c) A description of the existing point of diversion;

24 (d) A description of the proposed new point of diversion; and

25 (e) Any other information required by Water Resources Commission rules.

26 (4) An application filed under this section must be accompanied by:

27 (a) A copy of the State Department of Fish and Wildlife written request for the change  
 28 in the point of diversion; and

29 (b) Except as provided under subsection (5) of this section, the fee required under ORS  
 30 536.050.

31 (5) The Water Resources Director may waive or refund all or part of the fee required  
 32 under ORS 536.050 for a change in the point of diversion requested under this section.

33 (6) Upon the filing of the application, except as provided in this subsection, the Water  
 34 Resources Department shall give notice by publication in a newspaper having general circu-  
 35 lation in the area where the water rights are located, for a period of at least two weeks and  
 36 not less than one publication each week. The notice shall include the date on which the last  
 37 notice by publication will occur. The cost of the publication shall be paid by the applicant in  
 38 advance to the department. Notice by publication in a newspaper is not required if the re-  
 39 quested change in the point of diversion is less than one-fourth mile. The department shall  
 40 include notice of an application under this section in the weekly notice published by the de-  
 41 partment.

42 (7) Within 30 days after the last publication of a newspaper notice of the proposed change  
 43 in the point of diversion or the mailing of the department's weekly notice, whichever is later,  
 44 any person may file, jointly or severally, with the department, a protest against approval of  
 45 the application.

1       **(8) If no timely protest is filed, the department shall approve the application unless the**  
2 **department finds that the change in the point of diversion does not qualify under subsection**  
3 **(1) of this section.**

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

11       **(10) ORS 540.525 applies to a change in the point of diversion subject to this section in**  
12 **the same manner and to the same extent as for a change in the point of diversion applied**  
13 **for under ORS 540.520. An approval under this section for a change in the point of diversion**  
14 **must include a condition that the holder will provide proper fish screening or bypass devices**  
15 **at the new point of diversion if requested by the State Department of Fish and Wildlife.**

16       **(11) A change in a point of diversion approved under this section does not alter any other**  
17 **provisions of the water right or a supplemental water right, including but not limited to the**  
18 **status, priority, amount, rate, duty, number of acres or authorized use.**

19       **(12) A change in a point of diversion approved under this section does not confirm his-**  
20 **toric use of a water right or constitute evidence of a defense against forfeiture.**

21       **SECTION 4.** **Sections 1 to 3 of this 2017 Act are repealed January 2, 2028.**

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