

A-Engrossed
House Bill 2244

Ordered by the House April 15
Including House Amendments dated April 15

Sponsored by Representatives WILDE, SANCHEZ; Representatives ALONSO LEON, BYNUM, CAMPOS, GRAYBER, MEEK, PHAM, REYNOLDS, RUIZ, SALINAS (Presession 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.

Provides that, if Water Resources Commission or Water Resources Department denies stay of final order under certain circumstances and petitioner requests hearing on denial, court must hold hearing not more than 21 days after request is made and denial shall remain in effect until hearing has been held and court has issued decision concerning denial.

Provides that *[filing of petition appealing final order in other than contested case issued by Water Resources Commission or Water Resources Department in either circuit court or Court of Appeals may not stay enforcement of order of commission or department]* **enforcement of final order** that regulated off use of water in favor of determined claim, in-stream water right held by state agency or water right held by, or held in trust for, federally recognized Indian tribe **may only be stayed on appeal if petition for review is served on commission or department and proof of service is filed with court.**

Provides that, if commission or department receives service of petition that relates to water right or determined claim held by, or held in trust for, federally recognized Indian tribe, commission or department must send petition to tribe not more than five business days after receiving service.

[Repeals sunset of authorization to lease or temporarily transfer water right in Upper Klamath Basin during period that judicial review of water right order of determination is pending, making authorization permanent.]

A BILL FOR AN ACT

1
2 Relating to orders issued by the Water Resources Commission or Water Resources Department for
3 which judicial review is pending; creating new provisions; and amending ORS 536.075.

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

5 **SECTION 1.** ORS 536.075 is amended to read:

6 536.075. (1) Any party affected by a final order other than contested case issued by the Water
7 Resources Commission or Water Resources Department may appeal the **final** order to the Circuit
8 Court of Marion County or to the circuit court of the county in which all or part of the property
9 affected by the **final** order is situated. *[The review shall]* **Review of the final order must** be con-
10 ducted according to the provisions of ORS 183.484, 183.486, 183.497 and 183.500. **[A] The first page**
11 **of the final order** *[other than contested case issued by the Water Resources Commission or the Water*
12 *Resources Department]* must state *[on the first page of the order]* that the **final** order is a final order
13 other than contested case, that the **final** order is subject to judicial review under ORS 183.484 and
14 that any petition for judicial review of the **final** order must be filed within the time specified by
15 ORS 183.484 (2). Any order other than contested case issued by *[the Water Resources Commission*
16 *or by the Water Resources Department]* **the commission or department** that does not comply with
17 the requirements of this section is not a final order.

18 (2) Any party affected by a final order in a contested case issued by 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 *Commission or the Water Resources Department*] **commission or department** may appeal the order
2 to the Court of Appeals.

3 (3) An appeal under subsection (2) of this section shall be conducted as provided in ORS 183.482
4 except as specifically provided in [*subsections (4), (5) and (6) of*] this section.

5 (4) The petition **for review** shall state the facts showing how the petitioner is adversely affected
6 by the **final** order and the ground or grounds upon which the petitioner contends the **final** order
7 should be reversed or remanded.

8 (5) **Except as provided in subsections (6) and (7) of this section**, the filing of a petition **for**
9 **review** in either the circuit court or the Court of Appeals shall stay enforcement of the **final** order
10 [*of the commission or the department*].

11 (6) **If** [*unless*] the commission or [*the*] department determines that substantial public harm will
12 result [*if*] **from staying** the **final** order [*is stayed*], **the commission or department may deny the**
13 **stay**. [*If the commission or the department denies the stay,*] The denial shall be in writing and shall
14 specifically state the substantial public harm that will result from [*allowing the stay*] **staying the**
15 **final order. Notwithstanding any contrary provision of law, if the petitioner requests a**
16 **hearing on the denial:**

17 (a) **The court shall hold the hearing not more than 21 days after the request is made; and**

18 (b) **The denial shall remain in effect until the hearing has been held and the court has**
19 **issued a decision concerning the denial.**

20 (7) **Enforcement of a final order that regulated off a diversion, appropriation or other use**
21 **of surface or ground water in favor of a determined claim, an in-stream water right that is**
22 **held by a state agency or a water right or determined claim that is held by, or held in trust**
23 **for, a federally recognized Indian tribe:**

24 (a) **May only be stayed on appeal if the petition for review is served on the commission**
25 **or department and proof of the service is filed with the court.**

26 (b) **Is not stayed if the commission or department denies the stay under subsection (6)**
27 **of this section.**

28 (8) **If the commission or department receives service of a petition for review pursuant**
29 **to subsection (7) of this section that relates to a water right or determined claim that is held**
30 **by, or held in trust for, a federally recognized Indian tribe, not more than five business days**
31 **after receiving the service the commission or department shall send the petition to the tribe.**

32 [(6)] (9) The review by the Court of Appeals under subsection (2) of this section shall be on the
33 entire record forwarded by the commission or department. The court may remand the case for fur-
34 ther evidence taking, correction or other necessary action. The court may affirm, reverse, modify
35 or supplement the order appealed from, and make such disposition of the case as the court deter-
36 mines to be appropriate.

37 [(7)] (10) The provisions of this section [*shall*] **do** not apply to any proceeding under ORS 537.670
38 to 537.695 or ORS chapter 539.

39 [(8)] (11) For the purposes of this section[, "*final order*" and "*contested case*" have the meanings
40 given those terms in ORS 183.310.]:

41 (a) **"Contested case" has the meaning given that term in ORS 183.310.**

42 (b) **"Determined claim" means a water right determined and established in an order of**
43 **determination certified by the Water Resources Director under ORS 539.130.**

44 (c) **"Final order" has the meaning given that term in ORS 183.310.**

45 (d) **"In-stream water right" has the meaning given that term in ORS 537.332.**

