

HB 3091 -1, -4 STAFF MEASURE SUMMARY

House Committee On Water

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 3/18

WHAT THE MEASURE DOES:

Establishes Task Force on Location Transfers of Stored Water (Task Force), consisting of seven voting members and four nonvoting members. Directs Senate President to appoint one nonvoting member from among members of the Senate; the Speaker of the House of Representatives to appoint one nonvoting member from among members of the House of Representatives; and the Governor to appoint one voting member representing agricultural interests, one voting member representing irrigation districts, one voting member representing nursery industry, two voting members representing conservation community, one voting member representing small municipal water providers, one voting member representing large municipal water providers, one nonvoting member from Oregon Department of Fish and Wildlife, and one nonvoting member from Department of State Lands. Requires, of the two voting members representing municipal water providers, that one represents special districts and one represents cities. Directs appointing authority, if member vacancy occurs, to make a new appointment, effective immediately.

Directs Task Force to elect one member to serve as chairperson; review existing regulatory framework of projects seeking to transfer location of stored water and develop recommendations to facilitate location transfers of stored water; and submit report on recommendations to Interim House Committee on Water no later than September 15, 2022. Requires quorum for official action taken by the Task Force. Directs Oregon Water Resources Department to provide staff support to Task Force and all state government agencies to furnish information and advice to Task Force as necessary. Repeals Task Force on December 31, 2022. Takes effect on 91st day after 2021 regular session adjourns sine die.

May have fiscal impact, but no statement yet issued.

May have revenue impact, but no statement yet issued.

Subsequent referral to Joint Ways and Means.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Changes the number of voting members from seven to 10. Changes the number of members representing the conservation community from two to four. Adds one voting member from a federally recognized Indian tribe in the state.

-4 Replaces measure. Authorizes person holding right to store water and intending to apply for transfer of the right to, not more than 30 days after effective date of this Act, petition Oregon Water Resources Department (OWRD) for declaratory ruling on whether the department is authorized to approve an application to transfer a right to store water. Directs OWRD to issue requested declaratory ruling within 60 days of receiving petition. Requires petition and petition review to conform to requirements prescribed by Attorney General. Establishes that declaratory ruling is binding between OWRD and the petitioner on the state of facts alleged, unless declaratory ruling is altered or set aside by court. Authorizes person to petition without exhausting any other administrative remedy. Grants Supreme Court jurisdiction to determine whether OWRD is authorized to approve

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an application to transfer a right to store water. Specifies requirements of petition and directs petitioner to serve copy of petition on OWRD, Attorney General, and Governor by registered or certified mail. Requires Supreme Court to prioritize petition proceedings over all other matters and authorizes Supreme Court to appoint special master to hear evidence and prepare recommended findings of fact if petition presents a question of fact. Prohibits Supreme Court from awarding attorney fees to person petitioning for review. Sunsets January 2, 2023. Declares emergency, effective on passage.

BACKGROUND:

A water right is connected to the land where it is used, specifying the quantity of water, point of diversion, place of use, type of use, season of use, and priority date. A water right may be transferred from one place to another, the point of diversion may be changed, and the type of use allowed under the right may be changed by applying to the Oregon Water Resources Department (OWRD). A transfer application will be approved if OWRD determines that the change can be made without injury to other water rights or enlargement of the original right. In 2018, the Department of Justice issued a memo concluding that, with some exceptions, state law does not authorize OWRD to allow changes to a right to store water.

House Bill 3091 would establish the Task Force on Location Transfers of Stored Water and direct the Task Force to report recommendations to an interim committee related to water by September 15, 2022.