

HB 3166 -1 STAFF MEASURE SUMMARY

House Committee On Water

Prepared By: Allison Daniel, LPRO Analyst

Meeting Dates: 2/25, 3/25, 3/30, 4/6

WHAT THE MEASURE DOES:

Requires Legislative Policy and Research Office (LPRO) to study and make recommendations on establishment of a new water measurement program. Requires LPRO to report results to interim committee related to water no later than September 15, 2022. Repeals study requirements on January 2, 2023.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Replaces measure. Makes findings and policy statements. Defines ‘**priority water basin**’ as a water basin or sub-basin that: Water Resources Department (WRD) and Oregon Department of Fish and Wildlife (ODFW) identify as a stream flow restoration priority area; WRD identifies as a highly regulated basin; in which water diversions or appropriations significantly impact stream flows or water quality; has declines in ground water levels, negatively impacted ground water-related ecosystems, or other water issues; or contains habitat for aquatic species listed as threatened or endangered. Defines ‘**water budget**’ as an accounting of water existing within and exchanged among hydrologic components of a water basin or sub-basin developed using information from stream gauges, observation wells, water use data, or other available sources. Defines ‘**measurement**’ as the use of a technology or installed device to determine the duty of diverted, appropriated, or stored water as a point of diversion or appropriation.

Directs Water Resources Commission (Commission), in consultation with WRD and ODFW and on or before January 1, 2024, to: designate three to five water basins or sub-basins as priority water basin, identify water use data and stream gauge installation locations needed to develop water budgets, and determine where and how to house online platform containing water data and the extent to which the public will have access to the platform. Directs Commission to review the following: where, how, and how frequently water measurements are collected and retained; under which programs or requirements water measurements are reported; who pays for and who has access to collected water measurement data; how often water measurement data is collected and how it is used; which persons are subject to water measurement and reporting requirements; and which persons who are subject to these requirements are not complying with requirements. Requires Commission to report on review to legislative committee on water on or before September 15, 2022.

Directs Commission to **develop water budgets** for priority basins based on water use data submitted to WRD. Requires Commission, on or before January 1, 2026, to report to legislative committee on water on the Commission’s progress in designating priority water basins, developing water budgets, and assessing the structure of an online water data platform. Requires person holding water right that authorizes diversion, appropriation, or storage of water in a priority basin to conduct measurement and reporting of water diverted, appropriated, or stored under the water right, unless WRD determines water right is subject to other measurement and reporting requirements. Requires measurement and reporting occur annually unless person agrees to more frequent reporting, person is subject to more frequent reporting requirements, or WRD determines more frequent reporting is necessary.

Directs WRD to establish procedures for reporting water use measurements, requirements for water measurement technologies and devices, and processes for temporary exceptions to measurement and reporting

HB 3166 -1 STAFF MEASURE SUMMARY

requirements. Authorizes WRD to use moneys in Water Measurement Cost Share Program Revolving Fund to offset costs of complying with measurement and reporting requirements, including up to 75 percent of moneys needed to purchase, install, or replace measurement device used to comply with measurement and reporting requirements. Applies to water rights established before, on, or after effective date of this Act.

Prohibits person's reporting from being used to establish rebuttable presumptions of forfeiture of all or part of a water right, as support for a determination that a water right may be canceled, as justification for initiation of proceedings to cancel a water right, or as the basis for an order that cancels or modifies a water right. Authorizes Commission, before January 1, 2032 and only against a person notified of measurement and reporting requirements by WRD, to impose civil penalty on a person for violating a water use measurement or reporting requirement, unless violation is temporary and the result of an unintentional breakage or malfunction of a measurement device.

FISCAL: May have fiscal impact, but no statement yet issued.

REVENUE: May have revenue impact, but no statement yet issued.

BACKGROUND:

Under Oregon law, all water belongs to the public and is to be used for a beneficial purpose without waste. With some exceptions, water users must obtain a water right to use water from any source. When water is scarce, water users are allocated water based on the date of their water right, with holders of the oldest water rights allocated water first, and holders of newer water rights receiving their allocation according to the availability of water. Many water rights include conditions that require the water user to submit data to the Oregon Water Resources Department.

In 2000, the Water Resources Commission developed a strategic plan for improving surface water measurement in areas with the greatest impact on streamflows. Recently, the Department identified a need to revisit the 2000 Strategic Measurement Plan to better address high-priority water management and policy needs for both surface and groundwater.

House Bill 3166 would require the Legislative Policy and Research Office to study and make recommendations to an interim committee regarding the establishment of a new water measurement program no later than September 15, 2022.