

HB 3091 -6 STAFF MEASURE SUMMARY

House Committee On Water

Prepared By: Allison Daniel, LPRO Analyst

Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 3/18, 4/8, 4/13

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.

ISSUES DISCUSSED:

- Current water right transfer authority
- History of transferring rights to use and to store water
- Importance of location of use to agricultural water users

EFFECT OF AMENDMENT:

-6 Replaces measure. Authorizes person who holds right to store water and intends to apply for transfer of right to, no later than 30 days after effective date of this Act, petition Water Resources Department (WRD) to issue declaratory ruling on whether WRD is authorized to approve application to transfer a right to store water. Allows WRD, if more than one petition is received, to consolidate proceedings on petitions or deny subsequent petition and invite subsequent petitioner to intervene in proceedings related to first petition. Directs WRD to rule on petition based only on written information provided by WRD, any petitioner, and any intervening party, and to issue declaratory ruling no later than 120 days after petition is received. Prohibits WRD from holding hearing or providing for oral argument before issuing declaratory ruling. Authorizes person adversely affected by declaratory ruling to petition for judicial review and directs petitioner to serve copy of petition on WRD, Attorney General, and Governor. Confers jurisdiction on Supreme Court to determine whether WRD is authorized to approve application to transfer right to store water and requires Supreme Court to prioritize proceedings over all other matters. Prohibits Supreme Court from awarding attorney fees or costs in petition proceeding. Sunsets June 30, 2023. Declares emergency, effective on passage.

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FISCAL: Fiscal statement issued.

REVENUE: No revenue impact.

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 (WRD). A transfer application will be approved if WRD 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 WRD 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.