

## HOUSE AMENDMENTS TO HOUSE BILL 2244

By COMMITTEE ON WATER

April 15

1 On page 1 of the printed bill, line 3, after “provisions;” delete the rest of the line and line 4 and  
2 insert “and amending ORS 536.075.”

3 Delete lines 6 through 28 and delete page 2 and insert:

4 “**SECTION 1.** ORS 536.075 is amended to read:

5 “536.075. (1) Any party affected by a final order other than contested case issued by the Water  
6 Resources Commission or Water Resources Department may appeal the **final** order to the Circuit  
7 Court of Marion County or to the circuit court of the county in which all or part of the property  
8 affected by the **final** order is situated. *[The review shall]* **Review of the final order must** be con-  
9 ducted according to the provisions of ORS 183.484, 183.486, 183.497 and 183.500. *[A]* **The first page**  
10 **of the final order** *[other than contested case issued by the Water Resources Commission or the Water*  
11 *Resources Department]* must state *[on the first page of the order]* that the **final** order is a final order  
12 other than contested case, that the **final** order is subject to judicial review under ORS 183.484 and  
13 that any petition for judicial review of the **final** order must be filed within the time specified by  
14 ORS 183.484 (2). Any order other than contested case issued by *[the Water Resources Commission*  
15 *or by the Water Resources Department]* **the commission or department** that does not comply with  
16 the requirements of this section is not a final order.

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

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

22 “(4) The petition **for review** shall state the facts showing how the petitioner is adversely af-  
23 fected by the **final** order and the ground or grounds upon which the petitioner contends the **final**  
24 order should be reversed or remanded.

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

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

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

1       “(b) The denial shall remain in effect until the hearing has been held and the court has  
2 issued a decision concerning the denial.

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

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

9       “(b) Is not stayed if the commission or department denies the stay under subsection (6)  
10 of this section.

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

15       “[(6)] (9) The review by the Court of Appeals under subsection (2) of this section shall be on the  
16 entire record forwarded by the commission or department. The court may remand the case for fur-  
17 ther evidence taking, correction or other necessary action. The court may affirm, reverse, modify  
18 or supplement the order appealed from, and make such disposition of the case as the court deter-  
19 mines to be appropriate.

20       “[(7)] (10) The provisions of this section [shall] do not apply to any proceeding under ORS  
21 537.670 to 537.695 or ORS chapter 539.

22       “[(8)] (11) For the purposes of this section[, *‘final order’ and ‘contested case’ have the meanings*  
23 *given those terms in ORS 183.310.*]:

24       “(a) ‘Contested case’ has the meaning given that term in ORS 183.310.

25       “(b) ‘Determined claim’ means a water right determined and established in an order of  
26 determination certified by the Water Resources Director under ORS 539.130.

27       “(c) ‘Final order’ has the meaning given that term in ORS 183.310.

28       “(d) ‘In-stream water right’ has the meaning given that term in ORS 537.332.

29       “SECTION 2. The amendments to ORS 536.075 by section 1 of this 2021 Act apply to pe-  
30 titions filed on or after the effective date of this 2021 Act.”.

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