

Requested by Representative HELM

**PROPOSED AMENDMENTS TO
HOUSE BILL 2244**

1 On page 1 of the printed bill, line 3, after “provisions;” delete the rest
2 of the line and line 4 and 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
6 issued by the Water Resources Commission or Water Resources Department
7 may appeal the **final** order to the Circuit Court of Marion County or to the
8 circuit court of the county in which all or part of the property affected by
9 the **final** order is situated. [*The review shall*] **Review of the final order**
10 **must** be conducted according to the provisions of ORS 183.484, 183.486,
11 183.497 and 183.500. [A] **The first page of the** final order [*other than con-*
12 *tested case issued by the Water Resources Commission or the Water Resources*
13 *Department*] must state [*on the first page of the order*] that the **final** order
14 is a final order other than contested case, that the **final** order is subject to
15 judicial review under ORS 183.484 and that any petition for judicial review
16 of the **final** order must be filed within the time specified by ORS 183.484 (2).
17 Any order other than contested case issued by [*the Water Resources Com-*
18 *mission or by the Water Resources Department*] **the commission or depart-**
19 **ment** that does not comply with the requirements of this section is not a
20 final order.

21 “(2) Any party affected by a final order in a contested case issued by the

1 [Water Resources Commission or the Water Resources Department] **commis-**
2 **sion or department** may appeal the order to the Court of Appeals.

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

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

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

14 “(6) **If** [unless] the commission or [the] department determines that sub-
15 stantial public harm will result [if] **from staying** the **final** order [is
16 stayed], **the commission or department may deny the stay.** [If the com-
17 mission or the department denies the stay,] The denial shall be in writing and
18 shall specifically state the substantial public harm that will result from [al-
19 lowing the stay] **staying the final order. Notwithstanding any contrary**
20 **provision of law, if the petitioner requests a hearing on the denial:**

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

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

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

30 “(a) **May only be stayed on appeal if the petition for review is served**

1 on the commission or department and proof of the service is filed with
2 the court.

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

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

11 “[6] (9) The review by the Court of Appeals under subsection (2) of this
12 section shall be on the entire record forwarded by the commission or de-
13 partment. The court may remand the case for further evidence taking, cor-
14 rection or other necessary action. The court may affirm, reverse, modify or
15 supplement the order appealed from, and make such disposition of the case
16 as the court determines to be appropriate.

17 “[7] (10) The provisions of this section [*shall*] **do** not apply to any pro-
18 ceeding under ORS 537.670 to 537.695 or ORS chapter 539.

19 “[8] (11) For the purposes of this section[, *‘final order’ and ‘contested*
20 *case’ have the meanings given those terms in ORS 183.310.]:*

21 “(a) ‘Contested case’ has the meaning given that term in ORS
22 183.310.

23 “(b) ‘Determined claim’ means a water right determined and es-
24 tablished in an order of determination certified by the Water Re-
25 sources Director under ORS 539.130.

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

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

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

1 **2021 Act.”**

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