

HB 3544 A -A6 STAFF MEASURE SUMMARY

Joint Committee On Ways and Means

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Meeting Dates: 6/10

WHAT THE MEASURE DOES:

The measure establishes a standard process and timeline for handling all contested case processes on new water right and water right transfer applications.

Detailed Summary

Revises current statutes on contested case procedures related to new water right applications and water right transfer applications (contested cases) and replaces them as follows:

- Authorizes the Water Resources Commission (Commission) and Office of Administrative Hearings (OAH) to establish, through rulemaking, a uniform process for contested case hearings, consistent with applicable provisions of the Administrative Procedures Act except as otherwise provided in this measure and other specified law and rules. Rules must
 - establish one or more default hearing schedules for contested case hearings.
 - provide that the hearing timeline from referral to the end of the hearing not exceed 180 days.
 - authorize OAH to allow an extension of the hearing schedule only under specified circumstances and after consultation with the parties.
 - require an administrative law judge to give preference to oral testimony in lieu of written testimony and to conduct hearings by a remote method.
 - authorize the Water Resources Department (WRD) to, after consultation with the parties, request the assignment of a settlement administrative law judge and specifies that the contested case hearing proceeds if settlement is not reached within 60 days.
 - require, except under certain circumstances, contested case hearings to be completed within 180 days after the end of the 60-day period.
 - direct the commission to establish standard timelines for determining requests for party status.
- **To initiate a contested case proceeding**, authorizes any person to protest a final order and requires the protest to be filed in the following manner:
 - within 45 days, unless otherwise specified, after the notice of the proposed final order has been published by WRD.
 - in writing, containing specified information including (1) personal information of the protester and (2) a description of the protestant's interest in the proposed final order, or a precise statement of the public interest represented and how the proposed action would impair either.
 - raise an issue with sufficient specificity by (1) identifying the recommended fact findings, law conclusions, or approval conditions to which the protestant objects and (2) explain WRD's jurisdiction over the issues raised.
 - include the \$950 protest fee if filed by a nonapplicant, or the \$450 protest fee if filed by an applicant.
- Authorizes any person who supports the proposed final order to file a request of party status in any contested case proceeding or for resulting judicial review in the following manner:
 - within 30 days after the deadline for protest filing.
 - in writing, containing specified information.
 - include the \$950 protest fee if filed by a nonapplicant, or the \$450 protest fee if filed by an applicant.
- Directs the WRD Director to provide an estimate of the referral timeline and notice for submitting settlement proposals to any individual who has timely submitted a protest or requested party status in a contested case.
- Specifies circumstances under which a contested case hearing does not need to occur.

- Precludes issues that are not reasonably ascertainable in a protest or raised without sufficient specificity from judicial review.
- Establishes that a proposed final order becomes a final order 33 days after the protest submission period ends, provided no protest has been received within the designated timeframe unless WRD withdrew the proposed final order for reconsideration and issues of a superseding proposed final order.
- Clarifies how adopted rules regarding contested case proceedings specifically apply to already completed applications. Makes conforming amendments.
- Authorizes the commission to adopt rules for implementation of the Act.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-A6 The amendment provides a General Fund appropriation of \$226,420 to the Water Resources Department to carry out the provisions of the bill.

BACKGROUND:

Under Oregon law, water is regarded as a public resource, and for most uses individuals must secure a water right in order to lawfully utilize it. Water right applications are reviewed and processed by the Water Resources Department (WRD). Once approved, these rights are recorded and serve as a basis for the Department's management and allocation of water for both instream and out-of-stream uses. Prior to the issuance of a water right, individuals can file a protest against a proposed final order (PFO) issued by WRD. Generally, protests are filed because the applicant disagrees with the proposed denial of their application, because an existing water right holder disputes the PFO out of concerns that it will result in injury to their water use, or because a non-applicant that is not a water right holder disputes the PFO for various reasons.