

## **SB 1154 A -A3 STAFF MEASURE SUMMARY**

### **Senate Committee On Rules**

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**Meeting Dates:** 6/9, 6/10

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#### **WHAT THE MEASURE DOES:**

The measure modifies processes for managing ground water quality contamination concerns, including the declaration of ground water quality concern areas and ground water quality management areas and related responsibilities. It requires coordination among state agencies and local entities to address these areas, including monitoring, action planning, and remediation strategies. It authorizes the Governor to appoint agencies to develop an agency assessment, prepare an action plan, implement regulations, and take necessary actions to address ground water quality, while allowing for increased monitoring, reporting, and coordination to protect public health and water resources.

Fiscal impact: Has minimal fiscal impact.

Revenue impact: No revenue impact.

Detailed Summary:

#### **Definitions:**

Replaces the term “an area of ground water concern,” with “ground water quality concern area.” Replaces the term “ground water management area,” with “ground water quality management area.” Defines “contaminant of concern.”

#### **Ground Water Quality Concern Areas (GWQCA)**

1. Directs the Department of Environmental Quality (DEQ) to recommend that the Environmental Quality Commission (EQC) declare a GWQCA under specified conditions, adding elements that the department must find before recommending a declaration.
2. Directs Governor to establish an interagency team and designate a lead agency.
3. Directs that interagency team include DEQ and the Water Resources Department (WRD) and may include the Department of Agriculture (ODA), the Oregon Health Authority (OHA), and the Department of Geology and Mineral Industries (DOGAMI).
4. Directs agencies to develop an agency assessment and outreach plan addressing specific objectives and report each quarter to the lead agencies' respective board or commission.
5. Requires the appointment of a ground water management committee by lead agency in consultation with the interagency team after completion of draft agency assessment and outreach plan.
  - a. Adds one homeowner or tenant who relies on a domestic well for drinking water to committee membership.
  - b. Requires that the committee shall develop and promote a local voluntary implementation plan for the GWQCA upon completion of the final agency assessment.
6. After a groundwater quality concern area is declared and the agency assessment and outreach plan is developed, specific actions must be taken by DEQ, ODA, and OHA, in coordination with the interagency team under specific circumstances.
  - If the identified contaminant of concern directly contributes to ground water quality deterioration and is associated with permitted or onsite activity, **DEQ** must
    - review active permits allowing discharge of contaminants of concern in ground water quality concern areas to identify the need for enhanced monitoring. Requires DEQ to prioritize permit modifications and new permit requests to address contaminants of concern.

- coordinate with counties to compile information on alternative sewage systems and subsurface sewage systems, including their age and location.
- encourage voluntary inspections of alternative sewage disposal systems, nonwater-carried sewage disposal facilities and subsurface sewage disposal systems.
- prioritize funding for repairing or replacing on-site septic systems in the affected area.
- If the declaration is relevant to agricultural activity, the **ODA** must
  - review ground water quality management plans to identify voluntary practices, documentation or actions needed for source control, and stewardship agreements.
  - review active permits to identify opportunities for permit modifications or revisions.
- Requires **OHA** to
  - prepare a preliminary assessment identifying risks to domestic well users and public water systems from contamination.
  - evaluate possible response strategies and estimate public health response costs.
  - prepare and distribute accessible and language appropriate outreach and education materials identifying public health risks to the local public health authority for distribution to community members.

Authorizes **WRD**, in coordination with DEQ, to consider which new uses of water may increase the presence of a contaminant of concern, as well as ground water quality when deciding to approve a new ground water right within an area after a declaration is issued.

Requires final agency assessment and outreach plan be submitted to Governor and Joint Committee on Ways and Means (JWM), with biennial progress reports due by December 15 of each even numbered year.

**Ground Water Quality Management Areas (GWQMA):**

1. Directs DEQ to recommend that EQC declare a GWQMA under specified conditions.
2. Directs Governor to establish an interagency team and designate a lead agency.
3. Directs that interagency team include DEQ and WRD and may include ODA, OHA, and DOGAMI.
4. Changes timeline for preparation of draft action plan.
5. Requires action plan to include informing well owners of ground water contamination.
6. Specifies that the action plan must identify, not recommend, mandatory actions, and includes those actions identified in specified sections of the measure and adds actions included in agency assessment and outreach plan developed under GWQCA declaration.
7. Removes existing law giving ODA responsibility for developing certain plans to address farming practices.
8. If groundwater pumping is identified as a cause of, or contributing to, water quality degradation in the area, authorizes WRD to classify or reclassify an aquifer or designate an aquifer as a critical ground water area.
9. Provides agencies 90 days to complete the final action plan after close of public comment period.
10. Authorizes EQC to repeal a designation upon recommendation and findings by DEQ.
11. Authorizes ODA to take the following actions as necessary to address a relevant contaminant of concern, including
  - a. adopt rules to restrict manner and use of application of contaminant of concern; develop and implement management plans for source control; requirements for testing, transport mechanism, measuring efficacy of mitigation practices, recordkeeping; and individual exemptions.
  - b. review active permits issued by DEQ within area to identify opportunities for modifications or revisions during renewal or issuance to address sources of contaminants of concern. Establishes review elements.
  - c. make available stewardship agreement opportunities.
12. Requires OHA to submit health remediation and response plan to Governor and JWMs.
13. Authorizes DEQ to enter onto private property at reasonable times to inspect sewage disposal systems only with prior notice and arrangement with the resident of the property.
14. Establishes cap of 5,000 gallons per day on WRD approval of application to appropriate ground water in a declared area for community public water wells. Requires impact of proposed well on hydraulically connected surface water to be similar to or less than cumulative impact of abandoned domestic wells.

**Changes to Agency Authorities**

1. Authorizes DEQ to modify, instead of require renewal, of water quality permits under ORS 468B.050 if it is determined necessary to address urgent groundwater contamination issue.
2. Authorizes Water Resources Commission (WRC) to order the withdrawal an underground reservoir in a ground water quality concern or management area to protect public health.
3. Finds that the use of community or public wells located in declared ground water management areas ensure the preservation of the public welfare, safety, and health under specified conditions.
4. Adds conditions to WRD authority to issue a permit to appropriate ground water for community or public wells for an amount of water equivalent to amount provided by abandoned domestic wells; sets cap and condition regarding impact on hydraulically connected surface water.
5. Directs WRD to presume that groundwater application will ensure preservation of the public welfare, safety, and health under specific conditions in lieu of conditions established in ORS 537.621 (a). Makes conforming amendment to required findings of fact.
6. Directs WRD to assess water wells and require compliance with backflow prevention rules.
7. Revises WRC authority to require a water right owner using an underground reservoir to install a measuring device and submit an annual report in ground water quality concern or management area.

Specifies that an area subject to declaration as a ground water quality critical or management area as of the day immediately preceding the effective date of Act is deemed a declared area on that effective date.

**ISSUES DISCUSSED:**

- -A3 amendment changes
- Peer reviewed hydrogeological data
- Abandoned well provisions
- Water quality in the Lower Umatilla Basin Groundwater Management Area

**EFFECT OF AMENDMENT:**

-A3 The amendment replaces the measure. It modifies processes for managing ground water quality contamination concerns, including the declaration of ground water quality concern areas and ground water quality management areas. It modifies criteria, timelines, agency roles, responsibilities and authorities to protect public health and water resources.

Detailed Summary:

Removes the following provisions from the measure:

- ORS 536.340: Classification of water as to highest and best use and quantity of use; enforcement of laws concerning loss of water rights; prescribing preferences for future uses
- ORS 536.410: Withdrawal of unappropriated waters from appropriation by commission order
- ORS 537.775: Wasteful or defective wells; permanent abandonment of old well
- ORS 540.520: Application for change of use, place of use or point of diversion; public notice; protest; hearing; exemptions

Adds the following provisions to the measure:

- ORS 454.779: (On-Site Septic System Low Interest Loan Programs) Program development and administration grants; rules; requirements; grant preferences
- ORS 561.191: Program and rules relating to water quality

**Ground Water Quality Concern Areas (GWQCA)**

1. Modifies conditions under which the Department of Environmental Quality (DEQ) can recommend that the Environmental Quality Commission (EQC) declare a GWQCA, adding the following elements that the department must find before recommending a declaration:

- A significant number of wells or other sensitive water sources, including domestic wells, are or could be impacted by the contamination.
- Nonpoint sources have been identified as potential causes but require more investigation to determine how to address them effectively.
- Deterioration of water quality in the area, without intervention, is likely to exceed legal contamination thresholds within the next 20 years.
- In addition to finding contamination, DEQ must:
  - Use lab results from an accredited laboratory;
  - Ensure all data was collected following a quality assurance plan;
  - Provide evaluation methodology to the Commission and make it publicly available.
- 2. Modifies that EQC's declaration must identify each contaminant of concern that is confirmed to be present in the ground water, and ground water aquifers that may be affected.
- 3. Includes the Oregon health Authority (OHA) as a lead agency. Revises lead agency reporting from every quarter to routinely reporting to the agency's respective board or commission.
- 4. Revises agency assessment and outreach plan objectives, requiring the plan to identify the following:
  - Possible sources of groundwater contamination.
  - Relevant programs and authorities from agencies on the interagency team and rationale for their involvement.
  - Strategies for how to inform, coordinate with, and educate likely pollution sources about best management practices.
- 5. Requires the interagency team to create publicly accessible information to help people understand the scope and extent of groundwater contamination, including a **visual map** of the affected area. Revises draft review requirements, requiring the interagency team to share the draft with the Groundwater Management Committee (GWMC) and relevant county officials for feedback, using their input to produce a final version of the plan.
- 6. Modifies timeline for the GWMC to provide comments on the draft agency assessment and outreach plan from within 90 to 120 days of receiving the draft.
- 7. Modifies criteria for the voluntary implementation plan, stating that it must include voluntary actions that will be promoted and prioritized for implementation by the local community to address sources of contamination.
- 8. Revises specific actions that must be taken by DEQ, the Department of Agriculture (ODA), and OHA, in coordination with the interagency team after a groundwater quality concern area is declared and the agency assessment and outreach plan is developed:
  - **DEQ** shall
    - Collect information—in coordination with contract agents—about alternative and subsurface sewage disposal systems, including their age and location.
    - Promote voluntary inspections of these sewage systems.
  - **ODA** shall
    - Prioritize watersheds within concern areas for outreach and compliance efforts.
    - Collaborate with local partners (like conservation districts or OSU Extension) to support education, technical help, and implementation.
  - **OHA** shall:
    - Prepare a preliminary assessment identifying public health risks to domestic well users and public water systems from contamination.

Removes provision authorizing the Water Resources Department (**OWRD**), in coordination with DEQ, to consider which new uses of water may increase the presence of a contaminant of concern, as well as ground water quality when deciding to approve a new ground water right within an area after a declaration is issued.

#### **Ground Water Quality Management Areas (GWQMA):**

1. Requires that the declaration of a GWQMA by the EQC shall identify **each contaminant of concern** detected in the ground water.
2. Revises criteria for DEQ to recommend the declaration of a groundwater quality management area, stating that before a recommendation is made, the **DEQ** shall:
  - Use data verified by an accredited lab;
  - Ensure data was collected under a quality assurance plan or equivalent;
  - Submit to the commission and publish the evaluation methods used to support the recommendation.
3. Adds that the interagency team's action plan also must include a list of existing programs, legal authorities, or actions that the agencies on the interagency team already have and that are relevant to the specific contaminant in the groundwater.
4. Removes WRD authority to classify or reclassify an aquifer or designate an aquifer as a critical groundwater area if ground water pumping is an identified cause or contributor to water quality degradation in the GWQMA.
5. Requires the lead agency to provide copies of the draft action plan to appropriate county officials for comment, and requires that the lead agency consider all suggestions and information by the public or county officials during the 60 day public comment period.
6. Revises timeline for agency to begin plan implementation from **120 to 180 days** within completion of the final action plan.
7. Revises ODA authority to address a relevant contaminant of concern, requiring ODA to:
  - Adopt and enforce area-specific rules to regulate the contaminant of concern, and
  - Make available stewardship agreement opportunities.
8. Removes county authority to prohibit new residential buildings within a GWQMA and DLCD rulemaking authority regarding this provision.
9. **Revises DEQ's authority to enter onto private property to inspect sewage disposal systems.** DEQ must first:
  - Notify the property owner and tenant to arrange a convenient inspection time and provide information on available resources and technical help for fixing issues.

Adds that if entry is refused after proper notice to the property owner and attempts to schedule, DEQ can ask the Attorney General to seek a court order to allow entry. If a system is found to be operated or maintained in violation of any rule adopted to manage a GWQMA, DEQ must give written notice of the violation. The time allowed for fixing the violation must be reasonable and consider available assistance. Civil penalties can only be imposed if the correction deadline passes without action and proper notice was given.

- Extensions for remedial action shall be granted if the property owner:
  - Qualifies as a low-income household,
  - Has applied for financial aid to fix the problem, but the aid is denied due to lack of funds or is still pending.

Establishes cap of 5,000 gallons per day on OWRD approval of an application for a **public water system** to appropriate ground water in a declared area for community public water wells.

#### **Changes to Agency Authorities**

1. Modifies OHA's authority to recommend that the EQC declare a GWQCA, requiring that before recommendation, OHA shall:
  - Use data verified by an accredited lab;
  - Ensure data was collected under a quality assurance plan or equivalent;
  - Submit to the commission and publish the evaluation methods used to support the recommendation.
2. Removes authority for DEQ to modify water quality permits under ORS 468B.050.
3. Finds that allowing a public water system in a groundwater quality management area to expand group domestic use—using the same amount of water as previously supplied by abandoned wells—is necessary to protect public health, safety, and welfare.

4. Modifies conditions of OWRD authority to issue a permit to appropriate ground water for **expanded group domestic use for a public water system** for an amount of water equivalent to amount provided by abandoned domestic wells.
5. Modifies direction that OWRD is to presume that groundwater application will ensure preservation of the public welfare, safety, and health if the application is for an **expanded group domestic use for a public water system** for an amount of water equivalent to amount provided by abandoned domestic wells.
6. Replaces term “back-siphoning” with “backflow.”
7. **Finds that WRC or OWRD may not require the installation of a measuring device to measure ground water used for an exempt use.**
8. Adds conditions for DEQ’s financial assistance programs for on-site septic systems.

Specifies that if a lead agency finds that any new requirements added to certain groundwater laws are duplicative or unnecessary—because similar actions were already taken in the area before the law took effect—it can consider those requirements already fulfilled.

#### **BACKGROUND:**

Current law directs ground water concern areas to be declared by the Department of Environmental Quality (DEQ) if they confirm the presence of ground water contaminants suspected to originate from nonpoint source activities. The declaration must confirm substances within ground water, as well as ground water aquifers that may be affected. (ORS 468B.175: Declaration of an area of ground water concern.) After a ground water concern area is declared, DEQ, in collaboration with other state agencies, must

- appoint a ground water management committee within 90 days for the affected area.
- focus on research and public education regarding the ground water concern.
- ensure necessary monitoring of the area.
- support the management committee in developing a local action plan to address the concerns.
- if the committee doesn't create the plan, the Department will develop it themselves.

Current law directs ground water management areas to be declared by DEQ if, based on information from monitoring activities, the agency confirms that ground water contains contaminants from suspected nonpoint source activities, specifically, if nitrate levels exceed 70 percent of established limits, or if other contaminants exceed 50 percent of their established limits. The declaration must specify the substances detected and the affected ground water aquifers. Before declaring the area, DEQ must confirm the results with a second laboratory. (ORS 468B.180: Declaration of ground water management area.) Furthermore, DEQ, in consultation with appropriate state agencies, must appoint a ground water management committee to develop and promote a local action plan for the affected area. After a ground water management area is declared, the ground water management committee must:

- evaluate portions of the local action plan that reduced contaminant levels.
- advise state agencies on local aspects of the action plan.
- analyze the local action plan to understand why it failed to improve or prevent further deterioration of ground water in the management area.