

# D R A F T

## SUMMARY

Eliminates routine staying of Water Resources Commission or Water Resources Department final order enforcement upon filing of petition for judicial review of order.

Requires petitioner for judicial review of commission or department order to post undertaking. Orders payment of reasonable attorney fees and costs to commission or department if court finds against petitioner or if petition is voluntarily withdrawn.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to water; creating new provisions; amending ORS 536.075; and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

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

536.075. (1) Any party affected by a final order other than contested case issued by the Water Resources Commission or Water Resources Department may appeal the order to the Circuit Court of Marion County or to the circuit court of the county in which all or part of the property affected by the order is situated. The review shall be conducted according to the provisions of ORS 183.484, 183.486, 183.497 and 183.500. A final order other than contested case issued by the Water Resources Commission or the Water Resources Department must state on the first page of the order that the order is a final order other than contested case, that the order is subject to judicial review under ORS 183.484 and that any petition for judicial review of the order must be filed within the time specified by ORS 183.484 (2). Any order other than contested case issued by the Water Resources Commission or by the Water

Resources Department that does not comply with the requirements of this section is not a final order.

(2) Any party affected by a final order in a contested case issued by the Water Resources Commission or the Water Resources Department may appeal the order to the Court of Appeals.

(3) An appeal under subsection (2) of this section shall be conducted as provided in ORS 183.482 except as specifically provided in subsections (4)[, (5) and (6)] **to (7)** of this section.

(4) The petition [*shall*] **for judicial review must** state the facts showing how the petitioner is adversely affected by the order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded.

*[(5) The filing of a petition in either the circuit court or the Court of Appeals shall stay enforcement of the order of the commission or the department unless the commission or the department determines that substantial public harm will result if the order is stayed. If the commission or the department denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that will result from allowing the stay.]*

**(5) Except as provided in ORS 537.445, the filing of a petition in the circuit court or the Court of Appeals does not stay a commission or department order unless:**

**(a) The petitioner moves the court for a stay of the order;**

**(b) The court determines that the petitioner is likely to prevail on the merits; and**

**(c) The petitioner has filed the undertaking required by the court under subsection (6) of this section.**

**(6) Notwithstanding ORS 183.452, if a petition for judicial review is filed under this section the court shall require the petitioner to give a bond, irrevocable letter of credit or other undertaking regardless of whether the commission or the department grants a stay of the order. If the court finds against the petitioner, or the petitioner voluntarily**

**withdraws the petition, the court shall order the payment of reasonable attorney fees and costs to the commission or the department from the bond, letter or other undertaking.**

[(6)] (7) The review by the Court of Appeals under subsection (2) of this section shall be on the entire record forwarded by the commission or department. The court may remand the case for further evidence taking, correction or other necessary action. The court may affirm, reverse, modify or supplement the order appealed from, and make such disposition of the case as the court determines to be appropriate.

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

[(8)] (9) For the purposes of this section, “final order” and “contested case” have the meanings given those terms in ORS 183.310.

**SECTION 2. The amendments to ORS 536.075 by section 1 of this 2020 Act apply to petitions for judicial review filed on or after the effective date of this 2020 Act.**

**SECTION 3. This 2020 Act takes effect on the 91st day after the date on which the 2020 regular session of the Eightieth Legislative Assembly adjourns sine die.**