

SB 946 A STAFF MEASURE SUMMARY

Carrier: Sen. Dembrow

Senate Committee On Environment and Natural Resources**Action Date:** 04/08/19**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 3-2-0-0**Yeas:** 3 - Dembrow, Prozanski, Roblan**Nays:** 2 - Bentz, Olsen**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Beth Patrino, LPRO Analyst**Meeting Dates:** 4/2, 4/8**WHAT THE MEASURE DOES:**

Defines "secondary water right" as a water right that refers to a reservoir or pond as a source of water, if the supply is stored under a primary water right to store water. Replaces term "water use subject to transfer" with "water right subject to transfer" throughout transfer statutes (ORS Chapter 540). Authorizes holder of water right subject to transfer for storing water in a pond or reservoir to apply for a change in type of use. Directs Water Resources Commission (WRC) to refuse to accept application to change a water right subject to transfer for storing water in a pond or reservoir other than an application to change the type of use. Requires WRC to approve application unless it determines the proposed change results in injury to an existing water right or an enlargement of the water right subject to transfer. Requires application to identify all secondary water rights that refer to water right subject to transfer. Authorizes combined application to change both the water right subject to transfer and the secondary water right. Requires either a joint application with holders of secondary water rights or written consent by holders to cancellation of secondary water rights if holder of water right subject to transfer does not hold all affected secondary water rights. Ratifies and declares valid any change in type of use of a water right in a reservoir or pond that was approved and became final prior to effective date of Act. Applies provisions of Act to applications for changes to water rights made before, on, or after the effective date of Act. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Attorney General opinion concluded no statutory authority exists to transfer rights to store water
- Current water right transfer criteria
- Concerns about fish passage and screening with transfers of place of use

EFFECT OF AMENDMENT:

Replaces the measure.

BACKGROUND:

A water right is connected to the land where it is used. The water right specifies the quantity of water, point of diversion, place of use, type of use, season of use, and priority date. A water right may be transferred from one place to another, the point of diversion may be changed, and the type of use allowed under the right may be changed by applying to the Water Resources Department (WRD). A transfer application will be approved if WRD determines that the change can be made without injury to other water rights or enlargement of the original right. In 2018, the Department of Justice issued a memo concluding that, with some exceptions, state law does not authorize WRD to allow changes to a right to store water.

Senate Bill 946-A would allow the holder of a water right for storing water in a pond or reservoir to apply to transfer the type of use of the water right.