

# House Bill 4086

Sponsored by Representatives WILDE, SANCHEZ; Representatives BARKER, GREENLICK, HELM, HERNANDEZ, HOLVEY, LIVELY, MEEK, MITCHELL, NOSSE, PILUSO, POWER, PRUSAK, REARDON, SALINAS, SCHOUTEN, WILLIAMS, Senator DEMBROW (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Makes routine staying of Water Resources Commission or Water Resources Department final order upon filing of petition for judicial review inapplicable if order enforces terms and conditions of use of water or priority of use of water. Establishes conditions for court stay of commission or department order that enforces terms and conditions of use of water or priority of use of water. Provides that if petitioner files undertaking, and court rules against petitioner or petitioner voluntarily withdraws petition regarding order enforcing terms and conditions of use of water or priority of use of water, court may award commission or department attorney fees and costs out of undertaking.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to water; creating new provisions; amending ORS 536.075; and prescribing an effective date.

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

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 issued by the Water  
6 Resources Commission or Water Resources Department may appeal the order to the Circuit Court  
7 of Marion County or to the circuit court of the county in which all or part of the property affected  
8 by the order is situated. The review shall be conducted according to the provisions of ORS 183.484,  
9 183.486, 183.497 and 183.500. A final order other than contested case issued by the Water Resources  
10 Commission or the Water Resources Department must state on the first page of the order that the  
11 order is a final order other than contested case, that the order is subject to judicial review under  
12 ORS 183.484 and that any petition for judicial review of the order must be filed within the time  
13 specified by ORS 183.484 (2). Any order other than contested case issued by the Water Resources  
14 Commission or by the Water Resources Department that does not comply with the requirements of  
15 this section is not a final order.

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

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

20 (4) The petition *[shall]* **must** state the facts showing how the petitioner is adversely affected by  
21 the order and the ground or grounds upon which the petitioner contends the order should be re-  
22 versed or remanded.

23 (5) The filing of a petition in either the circuit court or the Court of Appeals shall stay  
24 enforcement of the order of the commission or the department unless:

25 **(a) The order enforces the terms and conditions of a use of water or the priority of a use**  
26 **of water; or**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1       **(b)** The commission or the department determines that substantial public harm will result if the  
 2 order is stayed. If the commission or the department denies the stay **under this paragraph**, the  
 3 denial shall be in writing and shall specifically state the substantial public harm that will result  
 4 from allowing the stay.

5       **(6)** Except as provided in ORS 537.445, the filing of a petition in the circuit court or the  
 6 Court of Appeals does not stay a commission or department order that enforces the terms  
 7 and conditions of a use of water or the priority of a use of water. However, the court may  
 8 stay an order described in this subsection if the petitioner moves the court for a stay of the  
 9 order and:

10       **(a)** The petitioner has filed an undertaking required by the court under subsection (7) of  
 11 this section; or

12       **(b)** The court finds that:

13       **(A)** The petitioner is likely to prevail on the merits;

14       **(B)** The petitioner is indigent; and

15       **(C)** Waiving the filing of an undertaking is just and equitable.

16       **(7)** Except as provided in subsection (6) of this section, a court may not consider a motion  
 17 to stay a commission or department order described in subsection (6) of this section unless  
 18 the petitioner files with the court a bond, irrevocable letter of credit or other undertaking  
 19 in an amount specified by the court. Regardless of whether the court grants a motion to  
 20 stay an order described in subsection (6) of this section, the court shall require the petitioner  
 21 to maintain an undertaking filed under this subsection until the court affirms, reverses or  
 22 remands the order.

23       **(8)** If a petitioner files an undertaking under subsection (7) of this section or ORS 183.482,  
 24 and the court finds against the petitioner or the petitioner voluntarily withdraws a petition  
 25 regarding an order described in subsection (6) of this section, the court may order the pay-  
 26 ment of reasonable attorney fees and costs to the commission or the department from the  
 27 undertaking.

28       **(9)** Subsections (5) to (8) of this section do not prohibit the commission or the department  
 29 from granting a stay under ORS 183.482 (3) of an order to enforce terms and conditions of  
 30 a use of water or priority of a use of water or prevent the commission or the department  
 31 from imposing reasonable conditions under ORS 183.482 (3) on the petitioner of the stayed  
 32 order. However, if the commission or department grants a stay and imposes reasonable  
 33 conditions under ORS 183.482 (3) for an order described in this subsection, subsections (6) to  
 34 (8) of this section do not apply while the commission or department stay and reasonable  
 35 conditions remain in force.

36       **[(6)] (10)** The review by the Court of Appeals under subsection (2) of this section shall be on the  
 37 entire record forwarded by the commission or department. The court may remand the case for fur-  
 38 ther evidence taking, correction or other necessary action. The court may affirm, reverse, modify  
 39 or supplement the order appealed from, and make such disposition of the case as the court deter-  
 40 mines to be appropriate.

41       **[(7)] (11)** The provisions of this section *[shall]* **do** not apply to any proceeding under ORS 537.670  
 42 to 537.695 or ORS chapter 539.

43       **[(8)] (12)** For the purposes of this section, “final order” and “contested case” have the meanings  
 44 given those terms in ORS 183.310.

45       **SECTION 2.** The amendments to ORS 536.075 by section 1 of this 2020 Act apply to pe-

1 **titions for judicial review filed on or after the effective date of this 2020 Act.**

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

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