

Requested by Representative WILDE

**PROPOSED AMENDMENTS TO  
HOUSE BILL 4086**

1 On page 1 of the printed bill, line 2, after “536.075” insert “and 539.180”.

2 Delete lines 4 through 26 and delete pages 2 and 3 and insert:

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

4 “536.075. (1) Any party affected by a final order other than contested case  
5 issued by the Water Resources Commission or Water Resources Department  
6 may appeal the order to the Circuit Court of Marion County or to the circuit  
7 court of the county in which all or part of the property affected by the order  
8 is situated. The review shall be conducted according to the provisions of ORS  
9 183.484, 183.486, 183.497 and 183.500. A final order other than contested case  
10 issued by the Water Resources Commission or the Water Resources Depart-  
11 ment must state on the first page of the order that the order is a final order  
12 other than contested case, that the order is subject to judicial review under  
13 ORS 183.484 and that any petition for judicial review of the order must be  
14 filed within the time specified by ORS 183.484 (2). Any order other than  
15 contested case issued by the Water Resources Commission or by the Water  
16 Resources Department that does not comply with the requirements of this  
17 section is not a final order.

18 “(2) Any party affected by a final order in a contested case issued by the  
19 Water Resources Commission or the Water Resources Department may ap-  
20 peal the order to the Court of Appeals.

21 “(3) An appeal under subsection (2) of this section shall be conducted as

1 provided in ORS 183.482 except as specifically provided in [subsections (4),  
2 (5) and (6) of] this section.

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

6 “(5) The filing of a petition in either the circuit court or the Court of  
7 Appeals shall stay enforcement of the order of the commission or the de-  
8 partment unless:

9 **“(a) The order enforces the terms and conditions of a use of water  
10 or the priority of a use of water; or**

11 **“(b) The commission or the department determines that substantial public  
12 harm will result if the order is stayed. If the commission or the department  
13 denies the stay **under this paragraph**, the denial shall be in writing and  
14 shall specifically state the substantial public harm that will result from al-  
15 lowing the stay.**

16 **“(6) Except as provided in ORS 537.445, the filing of a petition in the  
17 circuit court or the Court of Appeals does not stay a commission or  
18 department order that enforces the terms and conditions of a use of  
19 water or the priority of a use of water. However, subject to subsection  
20 (7) of this section, the court may grant a motion by the petitioner to  
21 stay an order described in this subsection if the petitioner shows that:**

22 **“(a) The petitioner will suffer irreparable injury if the stay is not  
23 granted;**

24 **“(b) The injury described in paragraph (a) of this subsection out-  
25 weighs any harm that will result if the order is stayed; and**

26 **“(c) There is a colorable claim of error in the order.**

27 **“(7) Each party whose use of water or priority of a use of water is  
28 enforced under an order may participate in the hearing on a motion  
29 to stay the order.**

30 **“(8) If a court grants a motion under subsection (6) of this section**

1 **to stay an order, the court may impose reasonable conditions for the**  
2 **stay, including but not limited to requiring the petitioner to file a**  
3 **bond, irrevocable letter of credit or other undertaking or to file within**  
4 **a specified time all documents necessary to bring before the court all**  
5 **issues raised by the petition.**

6 “[6] (9) The review by the Court of Appeals under subsection (2) of this  
7 section shall be on the entire record forwarded by the commission or de-  
8 partment. The court may remand the case for further evidence taking, cor-  
9 rection or other necessary action. The court may affirm, reverse, modify or  
10 supplement the order appealed from, and make such disposition of the case  
11 as the court determines to be appropriate.

12 “[7] (10) The provisions of this section [*shall*] **do** not apply to:

13 **“(a) Any proceeding under ORS 537.670 to 537.695[ or ORS chapter 539.];**  
14 **and**

15 **“(b) Proceedings under ORS chapter 539, including but not limited**  
16 **to any proceedings regarding Water Resources Director orders of de-**  
17 **termination under ORS 539.130.**

18 “[8] (11) For the purposes of this section, ‘final order’ and ‘contested  
19 case’ have the meanings given those terms in ORS 183.310.

20 **“SECTION 2.** ORS 539.180 is amended to read:

21 **“539.180. (1) At any time after the determination of the Water Resources**  
22 **Director has been entered of record, the operation thereof may be stayed in**  
23 **whole or in part by any party by filing a bond or an irrevocable letter of**  
24 **credit issued by an insured institution as defined in ORS 706.008 in the cir-**  
25 **cuit court wherein the determination is pending, in such amount as the judge**  
26 **may prescribe, conditioned that the party will pay all damages that may ac-**  
27 **cruer by reason of the determination not being enforced. Upon the filing and**  
28 **approval of the bond or letter of credit, the clerk of the circuit court shall**  
29 **transmit to the Water Resources Department a certified copy of the bond or**  
30 **letter of credit, which shall be recorded in the department records, and the**

1 department shall give notice thereof to the watermaster of the proper dis-  
2 trict.

3 **“(2) The determination of the director may be stayed by a circuit**  
4 **court only as provided in this section. The determination of the di-**  
5 **rector may be excepted to or otherwise challenged only as provided in**  
6 **ORS 539.150.**

7 **“SECTION 3. The amendments to ORS 536.075 by section 1 of this**  
8 **2020 Act apply to petitions for judicial review filed on or after the ef-**  
9 **fective date of this 2020 Act.**

10 **“SECTION 4. The amendments to ORS 539.180 by section 2 of this**  
11 **2020 Act apply to stays of a determination of the Water Resources Di-**  
12 **rector for which a circuit court enters an order on or after the effec-**  
13 **tive date of this 2020 Act and to exceptions or other challenges to a**  
14 **determination of the director filed on or after the effective date of this**  
15 **2020 Act.**

16 **“SECTION 5. This 2020 Act takes effect on the 91st day after the**  
17 **date on which the 2020 regular session of the Eightieth Legislative**  
18 **Assembly adjourns sine die.”**

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