

Requested by Representative WILDE

**PROPOSED AMENDMENTS TO  
HOUSE BILL 4086**

1 On page 1 of the printed bill, delete lines 4 through 26 and delete page  
2 2.

3 On page 3, delete line 1 and insert:

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

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

1 “(3) An appeal under subsection (2) of this section [*shall*] **must** be con-  
2 ducted as provided in ORS 183.482 except as specifically provided in sub-  
3 sections (4), (5) and (6) of this section.

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

7 “(5)(a) The filing of a petition in either the circuit court or the Court of  
8 Appeals [*shall stay*] **stays** enforcement of the order of the commission or the  
9 department unless the commission or the department determines that:

10 “(A) Substantial public harm will result if the order is stayed; **or**

11 “(B) **The petition involves a water right, the petitioner has previ-**  
12 **ously received a stay related to the water right and the stay requested**  
13 **in the petition would act to the detriment of a holder of a water right**  
14 **having an earlier priority date.**

15 “(b) If the commission or the department denies the stay, the denial  
16 [*shall*] **must** be in writing and [*shall*] **must** specifically state the substantial  
17 public harm that will result from allowing the stay.

18 “(6) The review by the Court of Appeals under subsection (2) of this sec-  
19 tion [*shall*] **must** be on the entire record forwarded by the commission or  
20 department. The court may remand the case for further evidence taking,  
21 correction or other necessary action. The court may affirm, reverse, modify  
22 or supplement the order appealed from, and make such disposition of the case  
23 as the court determines to be appropriate.

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

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

28 “**SECTION 2.** ORS 536.075, as amended by section 1 of this 2020 Act, is  
29 amended to read:

30 “536.075. (1) Any party affected by a final order other than contested case

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

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

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

20 “(4) The petition must state the facts showing how the petitioner is ad-  
21 versely affected by the order and the ground or grounds upon which the  
22 petitioner contends the order should be reversed or remanded.

23 “[5)(a) *The filing of a petition in either the circuit court or the Court of*  
24 *Appeals stays enforcement of the order of the commission or the department*  
25 *unless the commission or the department determines that:]*

26 “[A) *Substantial public harm will result if the order is stayed; or]*

27 “[B) *The petition involves a water right, the petitioner has previously re-*  
28 *ceived a stay related to the water right and the stay requested in the petition*  
29 *would act to the detriment of a holder of a water right having an earlier pri-*  
30 *ority date.]*

1       “(b) *If the commission or the department denies the stay, the denial must*  
2 *be in writing and must specifically state the substantial public harm that will*  
3 *result from allowing the stay.*]

4       “(5) **The filing of a petition in either the circuit court or the Court**  
5 **of Appeals stays enforcement of the order of the commission or the**  
6 **department unless the commission or the department determines that**  
7 **substantial public harm will result if the order is stayed. If the com-**  
8 **mission or the department denies the stay, the denial must be in**  
9 **writing and must specifically state the substantial public harm that**  
10 **will result from allowing the stay.**

11       “(6) The review by the Court of Appeals under subsection (2) of this sec-  
12 tion must be on the entire record forwarded by the commission or depart-  
13 ment. The court may remand the case for further evidence taking, correction  
14 or other necessary action. The court may affirm, reverse, modify or supple-  
15 ment the order appealed from, and make such disposition of the case as the  
16 court determines to be appropriate.

17       “(7) The provisions of this section do not apply to any proceeding under  
18 ORS 537.670 to 537.695 or ORS chapter 539.

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

21       “**SECTION 3. The amendments to ORS 536.075 by section 2 of this**  
22 **2020 Act become operative on July 1, 2021.”.**

23       In line 2, delete “3” and insert “4”.

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