

A-Engrossed
House Bill 3091

Ordered by the House April 16
Including House Amendments dated April 16

Sponsored by COMMITTEE ON WATER (at the request of Representative Ken Helm)

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.

[Establishes Task Force on Location Transfers of Stored Water. Directs task force to report to Interim House Committee on Water no later than September 15, 2022.]

[Takes effect on 91st day following adjournment sine die.]

Authorizes certain persons to petition Water Resources Department to issue declaratory ruling concerning department's authority to approve application to transfer right to store water. Directs department to issue declaratory ruling not more than 120 days after receiving petition.

**Confers jurisdiction on Supreme Court to review declaratory ruling.
Declares emergency, effective on passage.**

A BILL FOR AN ACT

1
2 Relating to transfers of stored water; and declaring an emergency.

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

4 **SECTION 1. (1) Not more than 30 days after the effective date of this 2021 Act, a person**
5 **that holds a right to store water and intends to apply for a transfer of the right to store**
6 **water pursuant to ORS 540.510 may petition the Water Resources Department to issue a**
7 **declaratory ruling as to whether ORS 540.510 authorizes the department to approve an ap-**
8 **plication to transfer a right to store water.**

9 **(2) The petition and the department's review of the petition must be generally consistent**
10 **with the requirements prescribed by rule by the Attorney General pursuant to ORS 183.410**
11 **to the extent that the requirements established by the rules are not inconsistent with the**
12 **requirements established by this section and section 3 of this 2021 Act.**

13 **(3) Notwithstanding subsection (2) of this section:**

14 **(a) If the department receives more than one petition described in this section, the de-**
15 **partment may consolidate proceedings on the petitions, or deny the second or subsequent**
16 **petition and invite the second or subsequent petitioner to intervene in the proceedings re-**
17 **lated to the first petition.**

18 **(b) The department may not hold a hearing or provide for oral argument before issuing**
19 **the declaratory ruling.**

20 **(c) The department shall rule on a petition described in this section based only on written**
21 **information provided by the department, any petitioner and any intervening party.**

22 **(d) The department shall issue the declaratory ruling not more than 120 days after first**
23 **receiving a petition described in this section.**

24 **(4) Notwithstanding subsection (2) of this section, the provisions of ORS 183.410 do not**

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 apply to a proceeding described in this section.

2 (5) A declaratory ruling issued pursuant to this section is binding between the depart-
3 ment, any petitioner and any intervening party on the state of facts alleged, unless the
4 declaratory ruling is altered or set aside by a court.

5 **SECTION 2.** Notwithstanding ORS chapter 183 and any contrary principle of common law,
6 a person may petition pursuant to section 3 of this 2021 Act without exhausting any admin-
7 istrative remedy other than the administrative remedy described in section 1 of this 2021
8 Act.

9 **SECTION 3.** (1) Jurisdiction is conferred on the Supreme Court to determine whether
10 ORS 540.510 authorizes the Water Resources Department to approve an application to
11 transfer a right to store water.

12 (2) A person that is adversely affected by a declaratory ruling described in section 1 of
13 this 2021 Act may petition for judicial review under this section. The petition must:

14 (a) Include a statement of the basis of the challenge.

15 (b) Include a statement and supporting affidavit showing how the petitioner is adversely
16 affected.

17 (c) Be filed not more than 30 days after the department issues the declaratory ruling.

18 (3) The petitioner shall serve on the department, the Attorney General and the Governor,
19 by registered or certified mail, a copy of the petition.

20 (4) The Supreme Court must give proceedings for review under this section priority over
21 all other matters.

22 (5) If the Supreme Court determines that the petition presents a question of fact, the
23 Supreme Court may appoint a special master to hear evidence and prepare recommended
24 findings of fact.

25 (6) The Supreme Court may not award attorney fees to a person that petitions for review
26 under this section.

27 **SECTION 4.** Sections 1, 2 and 3 of this 2021 Act are repealed on June 30, 2023.

28 **SECTION 5.** This 2021 Act being necessary for the immediate preservation of the public
29 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
30 on its passage.

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