



# MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

*Rely on us.*

TO: Commissioners Barofsky, Schlossberg, Brown, Carlson, and Morris  
FROM: Jason Heuser, Public Policy and Government Affairs Program Manager  
DATE: March 20, 2025  
SUBJECT: April 2025 State Legislative Update  
OBJECTIVE: Information

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## Issue

EWEB monitors, influences, and strategically plans around legislative and regional policy issues.

## Background

The Board adopts general policy directives for advocacy on legislation and other public policy matters, which guide the work of EWEB's lobbying activities. When political considerations test the applicability of those directives, the General Manager makes a determination as to whether a fundamental shift in direction is required. The Board may be asked to reaffirm policy directives or direct staff to make necessary adjustments.

## Discussion

The Oregon Legislature convened on January 21 for the start of 2025 Oregon Legislative Session and over 3600 bills have been introduced. Upcoming legislative deadlines in late March and early April for bills to be scheduled for a public hearing and work session and advanced out of their committee of origin will soon narrow down greatly the scope of bills being given active consideration in the legislature. Some of the key bills EWEB is advocating in support/opposition or actively monitoring include:

### **SB 427 – Prohibition on water use changes that reduce streamflow – OPPOSE**

This bill would prohibit water transfers and other proposed changes related to the appropriation or use of water that will result in any diminishment of streamflow. This bill has been referred to the Senate Natural Resources and Wildfire Committee. The bill had a public hearing on February 24<sup>th</sup> – it has not been scheduled for a work session as of yet. EWEB staff testified in person at the public hearing and identified impacts from the bill as currently drafted that could produce significant obstacles to EWEB's effort to successfully operate a future Willamette Water Treatment Plant and diversify Eugene's water supply.

EWEB's Permit S-54805 for the use of water from the Willamette River has 4 authorized points-of-delivery (PODs) but in the future will require an additional POD to match the location of the planned new intake. In Oregon a transfer is the only mechanism to change an existing water right. The Oregon Water Resources Department (OWRD) may not approve a transfer if the transfer would (i) enlarge or expand an existing water right in any way, or (ii) cause injury to any other existing water right on the water system. As applied, the injury standard ensures that existing water rights, including instream water rights, are protected. Senate Bill

427 introduces a third and incredibly broad standard that would require OWRD to determine whether a proposed transfer will result in “diminishment of streamflow.”

An additional point-of-delivery established to match the location of the planned new intake on the Willamette would be upstream from the existing authorized PODs and it would not cause injury to other existing water rights – EWEB’s permit is junior in priority to the instream water right, so it would be regulated off if the instream water right is not met. However, SB 427 creates a new test that would prohibit any diminishment of streamflow at all even without injury which would create serious new obstacles to establishing an additional point-of-delivery, jeopardizing EWEB’s efforts to provide a second source of water.

### **SB 1153 – Water Right Transfer Review – OPPOSE**

Provisions of SB 1153, introduced at the request of Governor Tina Kotek, could jeopardize EWEB’s efforts to begin obtaining water from the Willamette River under its existing permit. EWEB’s permit currently authorizes diversion of water from the Willamette River at a location downstream from the location that EWEB’s engineers have determined it should construct the new intake. Accordingly, EWEB will need the Oregon Water Resources Department (OWRD) to approve a permit amendment that moves the authorized point of diversion upstream to the planned intake location. Under the current permit amendment statutes and OWRD requirements, EWEB should be able to amend its permit to move the authorized point of diversion upstream because OWRD would be expected to find that the change would not cause injury to existing water rights.

SB 1153 could, however, preclude the Oregon Water Resources Department from approving EWEB’s permit amendment application. SB 1153 would add two additional review criteria to OWRD’s current review process for permit amendment applications and other processes allowing changes to existing rights. In addition to the existing criteria, the bill would allow OWRD to approve a permit amendment only after determining that the change would not result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right; or contribute to water quality impairment in water quality limited streams. These criteria are vague and create significant uncertainty as to their impact on EWEB’s needed permit amendment. As an example, SB 1153 is unclear as to what constitutes “protection by an existing water right.” At a minimum, the bill should be amended to clarify that the existence of an instream water right in the affected reach is sufficient to eliminate the need for OWRD to review this additional criterion.

In addition to having vague review criteria, the bill would likely exacerbate OWRD’s already slow processing timelines. Although not specified, it appears likely that the determinations for the new criteria would be completed by the Oregon Department of Fish and Wildlife (ODFW) and the Department of Environmental Quality (DEQ). Currently, OWRD’s processing time for transfer applications can exceed two years. Referring transfer applications to ODFW and DEQ for additional analysis will only create further delays. It is important to understand that ODFW is currently required to provide input on certain municipal permit extension applications by recommending “fish persistence” conditions. Many municipal water providers have been waiting well over a decade to receive these reviews from ODFW. EWEB cannot wait more than a decade for ODFW to provide feedback on its permit amendment application.

Further, the proposed review criteria are generally unnecessary for large-scale municipal water provider projects to construct new diversion facilities, such as EWEB’s, because these types of evaluations will be

completed through the U.S. Army Corps of Engineers and Department of State Lands joint removal/fill permit process. Accordingly, this bill would only result in redundant efforts and unnecessary delays and uncertainty. EWEB and other water providers should not be required to expend additional public funds for an unclear process that provides no additional benefit to our water resources.

Finally, SB 1153 adds a process by which federally recognized Indian tribes in the state can review transfer applications “in specific counties.” However, the bill does not identify these counties. The bill should be amended to specify the affected counties.

As currently drafted, SB 1153 adds substantial uncertainty to water right modification processes, and could prevent EWEB from modifying its Willamette River water use permit leaving EWEB without the needed redundant water supply source.

The bill has been referred to the Senate Natural Resources and Wildfire Committee but has not yet had a public hearing. However, as a bill brought forward by the Oregon Governor’s Office this bill could be moved to the Senate Rules Committee and avoid legislative deadlines on the advancement of bills out of their committee of origin.

### **HB 3666 – Wildfire Safety Certification – SUPPORT**

This bill would require investor-owned utilities (IOUs) and allows consumer-owned utilities (COUs) voluntarily to apply to the Public Utility Commission for a Wildfire Safety Certification to:

- Audit and verify that the utility is prudently implementing its PUC or COU Board approved, wildfire protection plan, which is already required by law and outlines wildfire prevention efforts like risk assessment, clearing vegetation, and system hardening, etc.
- Confirm the utility’s commitment to wildfire safety and continuous improvement;

If the PUC issues a safety certificate, the certification establishes that the utility is acting reasonably regarding wildfire safety practices and is materially consistent with its approved wildfire mitigation plan. This action is consistent with the ability of state agencies to establish, implement and enforce safety standards. The certificate can be used in court as one piece of evidence weighed by the judge or jury and does not make a utility immune from lawsuits.

HB 3666 had a public hearing in the House Judiciary Committee on March 18<sup>th</sup> and awaits further action.

### **SB 1192 – Protecting Hydroelectric Water Rights from Conversion – SUPPORT**

This bill has been requested by EWEB and is sponsored by Senator James Manning. SB 1192 specifies that the Oregon Water Resources Department (OWRD) may not forcibly convert a hydroelectric water right whose holder has ceased generating electricity on instruction from the Federal Energy Regulatory Commission.

In December of 2021, the Oregon Supreme Court issued a decision in *WaterWatch of Oregon v. the Water Resources Department (WRD) and Warm Springs Hydro LLC*. The key takeaway from the ruling is that water rights for hydroelectric projects, when not used for electric generation for longer than 5 years, could be at risk of being converted to permanent in-stream rights. Prior to this decision it was common for a hydroelectric project not generating for a period of time to temporarily lease hydroelectric water rights for another beneficial use, typically instream water rights, as an acceptable method of tolling the statute and avoiding potential conversion of the water right (forfeiture). This once proven approach is no longer an

option after the ruling. The 2021 decision does include a footnote describing an administrative process that a hydroelectric water rights holder could avail themselves to avoid conversion because of not generating electricity for 5 years – a time limited transfer changing the character of use of the water right. EWEB has initiated this administrative process with the Oregon Water Resources Department (OWRD) for the Leaburg Power Plant to preserve all future options. EWEB's application is the first of its kind. It is the view of EWEB staff and consultants that it would be advisable for the legislature to address any ambiguity and provide clear clarification on how a FERC licensee and hydroelectric water rights holder may preserve that state water right when ceasing generation under a FERC order or directive.

#### **HB 2064 – Microgrids – NEUTRAL WITH AMENDMENT**

This bill is designed to facilitate Community Microgrids with Islanding Capabilities and provides guidance on updated flexibility on building and safety codes and zoning overlays to put more decision-making power into the hands of local governments to promote microgrids, including configurations that would allow microgrids using front-of-meter generation and energy storage resources.

HB 2064 positions the Oregon Public Utility Commission as the entity with oversight to review and approve a local government's proposal to align building code and zoning with microgrids, even if the local government's political boundaries are primarily or entirely located in the service area of a consumer-owned utility. EWEB and other consumer-owned utilities have requested an amendment to transfer this role to the governing body of a consumer-owned utility providing electrical service to the local government in those instances. This was noted in testimony when the bill had a public hearing on February 6. This amendment is expected to be included if the bill is scheduled for a work session.

#### **HB 3628 – Oregon Transmission Authority – NEUTRAL**

This legislation would establish an Oregon Transmission Authority tasked with the following activity:

- Engage in transmission planning activities that enhance grid reliability
- Identify and establish designated electric transmission corridors in Oregon
- Coordinate, assess, plan, prioritize and negotiate with in-state and out-of-state entities to develop interstate transmission corridors
- Explore options and alternatives that improve the efficiency of the transmission system
- Enter into partnerships with public or private entities to develop transmission

While the intentions of this bill are good, EWEB staff identified some concerns with the bill that should be addressed. 1) the funding source for the authority would be a nonbypassable charge on existing large electric loads over 20 average megawatts, which would include at least one EWEB customer, even if these customers have existed for many years at current load levels and have little or no nexus to drivers of the regional need for new transmission; 2) the makeup of the members of the authority does not have adequate utility sector representation; and 3) the bill does little to address the biggest obstacles to building new transmission – needing siting and permitting reforms – and the authority would likely struggle with the same challenges facing existing entities attempting to build new transmission if these topics are not addressed.

This bill could have some benefit if amended to address some of these concerns and EWEB staff are monitoring possible amendments to HB 3628.

#### **SB 863 – State Fire Marshal Fire Cost Recovery – NEUTRAL WITH AMENDMENT**

This bill establishes cost-recovery processes for suppression of fires caused by willful, malicious, or negligent actions. SB 863 provides the State Fire Marshal the means to seek and secure those funds. The bill purports to model this authority on the existing cost recovery authority provided in state law to the Oregon Department of Forestry (ODF).

Local government associations, including those representing consumer-owned utilities that are public bodies, are seeking an amendment and/or further clarification of legislative intent on the record that the cost recovery authority in SB 863 is no different and no greater than the existing authority for ODF – and also that this new authority for the State Fire Marshal would not circumvent the Oregon Tort Claims Acts as applicable to public bodies and their employees.

#### **LC 3690 – Solar Consumer Protection – SUPPORT**

EWEB initiated the drafting of LC 3690 (modeled after solar consumer protection legislation enacted by the Washington legislature in 2024) under the sponsorship of local Representative John Lively, chair of the House Energy and Environment Committee. Subsequently a stakeholder group formed including Representative Lively and his staff, Oregon Solar Energy Industries Association, EWEB, Oregon Consumer Justice, National Association of Consumer Advocates, Oregon Citizens Utility Board, OSPIRG, Oregon Department of Justice, Energy Trust of Oregon, Oregon Department of Consumer and Business Services and the Oregon Department of Energy.

This group has been meeting almost weekly since December and has worked through policy design choices and viewpoints in a very collaborative and solutions-oriented fashion and in early February presented Rep. Lively with a modified version of LC3690 broadly supported by the stakeholder group. A resulting bill is expected to be introduced soon and be referred to the House Energy and Environment Committee Chaired by Representative Lively.

The modified version of LC 3690 is designed to prohibit deceptive and/or high-pressure sales tactics. It will create a model disclosure for solar installations both in contract language as well as a separate disclosure addendum. The disclosure would provide a clear explanation of system performance, estimated bill savings and consumer rights, including the opportunity to cancel a contract within the first 72 hours. It would also create a private right of action for damages for solar consumers, which will act as a deterrent that would complement provisions of LC 3690 that will lead to enhanced enforcement of the Unlawful Trade Practices Act by the Financial Fraud/Consumer Protection Section at the Oregon Department of Justice with regard to solar installations.

#### **SB 179 – Recreational Immunity (Removes Sunset on 2024 Restoration) – SUPPORT**

SB 1576A was enacted in the 2024 legislative session and included a restoration of recreational immunity, a priority for local governments and recreation enthusiasts. The bill added running, walking and biking to the definition of recreational immunity, but included a sunset date at the end of 2025 to allow for pending court cases to be resolved and a workgroup to craft a more durable solution to be adopted in the 2025 legislative session. Reportedly, the workgroup was able to reach consensus on a permanent solution. In the absence of successful negotiations, SB 179 removes the sunset date included in SB 1576A from the 2024 legislative session.

The bill was approved by the Senate on a 30-0 unanimous vote on March 13 and was referred to the House Judiciary Committee the following day.

## **HB 2256 – Indemnifying for conservation purposes sellers of units of land not lawfully established -- SUPPORT**

This bill exempts the seller and the nonprofit purchaser of property for conservation purposes from civil or criminal liability for selling units of land not lawfully established. HB 2256 was introduced by local Representative Lisa Fragala at the request of the McKenzie River Trust (MRT)

EWEB has provided funding for MRT conservation acquisitions as well as applied for grant funds on behalf of MRT or assisted MRT grant funding applications. In some instances, concerns around legal lot determination have created additional expense and delays that can acquisitions. Strategic conservation properties can become difficult to transact once lot determination issues are identified. Sellers can be reluctant to take on the potential liability or costly delays – which can result in losing purchase opportunities facing obstacles to apply for grant funding due to uncertain timelines around fixing the liability concerns. HB 2256 is a solution to the problem of legal lot determination by waiving the liability of the seller for selling an unlawfully created unit of land if the buyer is both a 501(c)(3) and is clear in its intent to acquire the land for conservation purposes.

HB 2256 was approved by the House 45-12 on March 6 and referred to the Senate Natural Resources and Wildfire Committee on March 11.

## **HB 3179 – Investor-Owned Utility Rate Caps – MONITOR**

This bill would limit private, investor-owned utility rate requests, allowing them only once every 18 months. Exceptions could be granted in the event of a natural disaster or weather emergency. Rate increases would have to go into effect before Nov. 1 or after March 31 so ratepayers would not suddenly be hit with a bigger bill in winter when usage is highest. The bill would also require that the Public Utility Commission (OPUC) that regulates investor-owned utilities would be directed to look at socio-economic data of customers when considering rate increases, including factors such as median customer income, regional unemployment rate and number of customers receiving public services and the PUC would analyze company profits from the 24 months leading up to a rate hike request to determine whether the rate increase is appropriate. This bill had a public hearing on February 20 in the House Commerce and Consumer Protection Committee and awaits further action

## **SB 634 – Expands Hydropower Qualifying for Renewable Portfolio Standard (RPS) – Neutral**

On principle SB 634 makes sense in authorizing legacy hydropower (pre-1995) to qualify for the Oregon Renewable Portfolio Standard (RPS) – hydropower is deserving of the same qualifying renewable status as other clean energy sources. However, the Oregon RPS has numerous components that were negotiated and calibrated to work together in pursuit of specific statewide goals. Changes in the definition of qualifying renewable electricity in the RPS statute (ORS 469A) would necessitate consideration of other changes in the statute to keep intact the goals of the Oregon RPS. SB 634 though is only a standalone change to the qualifying electricity definition in the RPS without consideration for the other components of the Oregon RPS and could have unintended consequences.

The Oregon RPS was enacted to facilitate the development of new additional renewable electricity resources in the region and thus excluded older hydropower resources constructed decades ago from qualifying. However, the RPS distinguishes these resources from resources powered by fossil fuels. Tier One Preference Power provided by the Bonneville Power Administration (BPA) from the Federal Columbia River Power System (FCRPS), along with any non-qualifying non-fossil fuel electricity source – including EWEB's

legacy hydroelectric projects on the McKenzie River – is “exempt from displacement”. These exemptions can reduce an Oregon utility’s compliance obligations immensely and, in many circumstances, completely offset a compliance obligation (when a utility has more annual megawatt hours of exempt electricity in its portfolio than annual megawatt hours of electric load, as EWEB has had in almost every year of RPS compliance).

The bill had a public hearing on March 17 in the Senate Energy and Environment Committee, it is not expected to advance out of committee although it did stimulate a great deal of conversation from committee members.

#### **HB 3527 – Drinking Water and Sewer Ratepayer Assistance Program Reauthorization – SUPPORT**

This bill would be a de facto reauthorization of an existing but defunct temporary program created with federal funding that has run out. Oregon had a Low-Income Household Water Assistance Program in 2022 and 2023 that was established and funded by Congress in the American Rescue Plan Act (ARPA) of 2021 and modeled after the long-standing Low Income Home Energy Assistance Program (LIHEAP) — the inclusion of this funding in ARPA was a special priority for US Senators Jeff Merkley and Ron Wyden. The program was administered by Oregon Housing and Community Services, which received a \$13.8 million allocation for the statewide program. EWEB participated in advisory groups for the rulemaking to establish the statewide program. Although no funds were awarded to EWEB directly, Lane County Human Services (HSD) was authorized to receive and to apply state funds and coordinate with EWEB to directly credit assistance to EWEB customer accounts. It was projected at the start of the program that up to \$600,000 would be credited to assist customers in the EWEB service territory over 2022-2023.

HB 3527 had a public hearing on February 17 in the House Agriculture, Land Use, Natural Resources and Water Committee and awaits a work session. It has a subsequent referral to the Joint Ways and Means Committee.

#### **HB 2410 – Umatilla County Small Modular Nuclear Reactor Demonstration Project – Neutral**

This bill would allow the Oregon Energy Facility Siting Council (EFSC) to issue a site certificate for a small modular reactor energy facility demonstration project in Umatilla County, potentially as part of a microgrid. The bill would require that a site certificate be contingent on approval from Umatilla County voters. HB 2410 had a public hearing on February 28 in the House Energy and Environment Committee and awaits further action.

Note: HB 2410 has been initiated by the Umatilla County Board of Commissioners, without the involvement of Umatilla Electric Cooperative.

#### **HJM 10 – Resolution to Congress on role of Bonneville Power Administration – Neutral, Possible Informational Testimony.**

This bill would request the United States Department of Energy and the United States Congress to support the Bonneville Power Administration in providing cleaner, more affordable and more reliable energy to all consumers in the Pacific Northwest.

The bill was referred to the House Climate and Energy Committee. At the time of this memo, this bill has not received a public hearing and is no longer believed to be under consideration.

#### **Recommendation/Requested Board Action**

These are informational updates, and no action is required at this time.