

A-Engrossed
House Bill 2400

Ordered by the House March 27
Including House Amendments dated March 27

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D.)

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.

Provides that submission of certain task force reports prior to [*January 31, 2015,*] **specified dates in 2015** satisfies requirement to submit reports by July 1, 2014.

Retroactively extends repeal date for task force studying structure established for water development project loans and grants. Ratifies and affirms task force actions since original February 2, 2015, repeal date. Establishes new repeal date of July 1, 2015.

Advances repeal date from February 2, 2016, to January 1, 2016, for task force studying functional needs of watersheds for seasonally varying flows and financial feasibility of new water storage projects.

Extends to January 1, 2016, deadline for effective date of Water Resources Commission rule establishing methodology for determining seasonally varying flows in stream of interest.

[*Replaces, in certain provisions, benchmark based on flows outside official irrigation season with benchmark based on when water is available for storage.*]

Makes seasonally varying flow requirements applicable for certain projects constructed under existing permit or limited license.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to water policies; creating new provisions; amending ORS 541.689 and sections 20, 22 and
3 23, chapter 784, Oregon Laws 2013; and declaring an emergency.

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

5 **SECTION 1. (1) Notwithstanding section 18, chapter 784, Oregon Laws 2013, any report**
6 **that the task force established by section 18, chapter 784, Oregon Laws 2013, submits as**
7 **provided in ORS 192.245 to the Governor, the President of the Senate, the Speaker of the**
8 **House of Representatives and the Water Resources Commission prior to April 1, 2015, is**
9 **deemed to have satisfied the reporting requirement imposed on the task force under section**
10 **18, chapter 784, Oregon Laws 2013.**

11 **(2) Notwithstanding section 19, chapter 784, Oregon Laws 2013, any report that the task**
12 **force established by section 19, chapter 784, Oregon Laws 2013, submits as provided in ORS**
13 **192.245 to the Governor, the President of the Senate, the Speaker of the House of Repre-**
14 **sentatives and the Water Resources Commission prior to January 31, 2015, is deemed to have**
15 **satisfied the reporting requirement imposed on the task force under section 19, chapter 784,**
16 **Oregon Laws 2013.**

17 **SECTION 2. Section 20, chapter 784, Oregon Laws 2013, is amended to read:**

18 **Sec. 20.** (1) On or after the date that the Water Resources Commission receives a copy of the
19 task force report required under section 19 [*of this 2013 Act*], **chapter 784, Oregon Laws 2013**, the
20 commission shall adopt rules to establish a methodology for use in determining the seasonally

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 varying flows for a stream of interest. In adopting the rules, the commission shall give consider-
 2 ation to adoption of the methodology described in the task force report. The commission shall
 3 complete adoption of the rule in time for the rule to take effect on January 1, [2015] **2016**. As used
 4 in this subsection, “seasonally varying flow” has the meaning given that term in [section 1 of this
 5 2013 Act] **ORS 541.651**.

6 (2) The commission shall appoint the task force established in section 19 [of this 2013 Act],
 7 **chapter 784, Oregon Laws 2013**, as provided in ORS 183.333 to act as an advisory committee to
 8 the commission for the consideration of rule adoption under this section.

9 **SECTION 3.** Section 22, chapter 784, Oregon Laws 2013, is amended to read:

10 **Sec. 22.** Section 18 [of this 2013 Act], **chapter 784, Oregon Laws 2013**, is repealed on [the date
 11 of the convening of the 2015 regular session of the Legislative Assembly as specified in ORS 171.010]
 12 **July 1, 2015**.

13 **SECTION 4.** The Legislative Assembly intends that the amendments to section 22, chap-
 14 ter 784, Oregon Laws 2013, by section 3 of this 2015 Act operate retroactively to February 2,
 15 2015, and that the operation and effect of section 18, chapter 784, Oregon Laws 2013, continue
 16 unaffected from February 2, 2015, to June 30, 2015. Any otherwise lawful action of the task
 17 force established under section 18, chapter 784, Oregon Laws 2013, taken on or after Febru-
 18 ary 2, 2015, and on or before the earlier of June 30, 2015, or the effective date of this 2015
 19 Act is ratified and approved.

20 **SECTION 5.** Section 23, chapter 784, Oregon Laws 2013, is amended to read:

21 **Sec. 23.** Section 19 [of this 2013 Act], **chapter 784, Oregon Laws 2013**, is repealed on [the date
 22 of the convening of the 2016 regular session of the Legislative Assembly as specified in ORS 171.010]
 23 **January 1, 2016**.

24 **SECTION 6.** ORS 541.689 is amended to read:

25 541.689. (1) The Water Resources Department shall make a determination as provided under
 26 subsection (2) of this section if an application for a loan or grant from the Water Supply Develop-
 27 ment Account is for a project that requires a [new] water storage or aquifer recharge permit or
 28 limited license for the storage of water outside of the official irrigation season and:

29 (a) Impounds surface water on a perennial stream;

30 (b) Diverts water from a stream that supports state or federally listed sensitive, threatened or
 31 endangered fish species; or

32 (c) Diverts more than 500 acre-feet of surface water annually.

33 (2) The department shall review a completed application for a project described in subsection
 34 (1) of this section to determine whether the applicable seasonally varying flows have been estab-
 35 lished under this section for the stream of interest. If the department determines that the applicable
 36 seasonally varying flows have not **previously** been established, the department shall establish the
 37 seasonally varying flows before issuing a loan or grant from the account. The department may use
 38 account moneys to pay the cost of establishing a seasonally varying flow and to pay other costs
 39 directly related to project development.

40 (3) The **Water Resources** Department shall establish any seasonally varying flows under sub-
 41 section (2) of this section in consultation with the State Department of Fish and Wildlife and any
 42 affected Indian tribes. The **Water Resources** Department may rely upon existing scientific data and
 43 analysis or may fund new data and analysis. The **Water Resources** Department shall establish
 44 seasonally varying flows using a methodology established by Water Resources Commission rules.
 45 [If seasonally varying flows are established for a stream,]

1 **(4) If the department establishes applicable seasonally varying flows for the stream of**
2 **interest, the department shall make the seasonally varying flows a condition of:**

3 **(a) The new or existing water storage or aquifer recharge permit or limited license for**
4 **the storage of water issued for any project described in subsection (1) of this section that**
5 **receives a loan or grant from the account; and**

6 **(b) [A subsequent] The new or existing** water storage or aquifer recharge permit or limited li-
7 cense for the storage of water *[must be conditioned in accordance with the applicable seasonally*
8 *varying flows if the license or permit]* **issued for any subsequent project that:**

9 **[(a)] (A) [Is for a project receiving] Receives** a loan or grant from the account;

10 **[(b)] (B)** Is for the storage of water outside of the official irrigation season; and

11 **[(c)] (C)** Has a diversion point that is subject to seasonally varying flows.

12 **[(4)] (5)** The applicant for **or holder of** a permit or license described in subsection **[(3)] (4)(b)**
13 of this section may request that **the applicable** seasonally varying flows **established under sub-**
14 **section (2) of this section for the stream of interest** be altered based upon new information.
15 There is, however, a rebuttable presumption that existing applicable seasonally varying flows pro-
16 tect and maintain the biological, ecological and physical functions of the stream to the extent re-
17 quired by commission rules.

18 **[(5)] (6)** The department shall condition *[the new]* a water storage permit and resulting certif-
19 icate, *[new]* aquifer recharge permit and resulting certificate or *[new]* limited license *[associated*
20 *with]* **for** a project that receives a grant or loan from the account **and meets the other conditions**
21 **described in subsection (4) of this section** to protect the seasonally varying flow in effect at the
22 time the loan or grant is issued for the project.

23 **[(6)] (7)** For purposes of any project that receives a loan or grant from the account and *[has the*
24 *characteristics described in subsection (1) of this section, or any project]* **meets the other conditions**
25 described in subsection **[(3)] (4)** of this section, the department shall use a seasonally varying flow
26 methodology provided by commission rules in lieu of any other methodologies for determining sea-
27 sonally varying flows or any methodologies for determining peak and ecological flows outside of the
28 official irrigation season.

29 **[(7)] (8)** Subsections (1) to **[(6)] (7)** of this section do not eliminate or alter any applicable
30 standard for department review of an application to determine whether water is available for pur-
31 poses of reviewing an application for a new water storage or aquifer recharge permit or a limited
32 license for the storage of water.

33 **SECTION 7. This 2015 Act being necessary for the immediate preservation of the public**
34 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
35 **on its passage.**

36