

3.4.2019 This draft is provided as a tool to assist in comparison of the bill to existing statute and is subject to further refinement.

HB 2085 Section	HB 2085 INTRO version	Existing Law	Notes
1	Incorporate into Chapter. See bill.		
2 Definitions	See bill. Adds definitions applicable to all dam safety statutes. Modifies definition of Emergency Action Plan. Moves definition of High Hazard Rating and Emergency Action Plan.	No definitions in statute, except Emergency Action Plan and High Hazard Rating defined only for purposes of ORS 540.353.	Definitions are specified in rule.
3 Policy	See bill		
4 Scope of Department Program	(1) An exemption from water right requirements does not exempt a dam from sections 2 to 21 of this 2019 Act. (2) Sections 2 to 21 of this 2019 Act do not apply to: (a) A dam that is less than 10 feet in height; (b) A dam that impounds less than 3 million gallons of water or wastewater; or (c) The appurtenant structures of a dam described in this subsection. (3) Except as provided in this subsection, sections 2 to 21 of this 2019 Act do not apply to dams or appurtenant structures regulated under a federal dam safety program. If there is a potential or actual risk of dam failure at a dam regulated under a federal dam safety program, the Water Resources Department may aid in the inspection of the dam and appurtenant structures and may provide advice and assistance to prevent, mitigate or respond to a potential or actual dam failure.	Current statutes apply to any dam, dike, or other hydraulic structure. ORS 540.400 identifies exceptions to “any dam, dike, or other hydraulic works” that may be regulated under ORS 540.350 to ORS 540.390. Exceptions include: 1) Any dam less than 10 feet in height or impounding less than 3 million gallons of water. (2) Splash dams used for driving logs. (3) Farm dikes constructed by individuals on their own property. (4) Ditches carrying less than five cfs.	Splash dams are illegal under ORS 541.455 See section 23 of the bill related to levees, dikes and other hydraulic works. Current practice: Do oversee wastewater dams. Do not regulate dikes or other hydraulic structures, or dams that are part of federal dam safety program.
5 Construction Plan Approval	(1) A person may not construct a dam unless the Water Resources Department has examined the site, plans and specifications, features and other supporting information regarding the construction and operation of the dam and appurtenant structures and has approved them in writing. (2) Except as provided in this subsection, a dam or appurtenant structure may not be used to impound water or wastewater until final documentation for the site, plans and specifications, features and other supporting information of the dam and appurtenant structure has been submitted to and accepted by the department after completion of construction. The Water Resources Commission may adopt rules to allow all or a portion of a previously authorized impoundment during construction described in section 2(2)(b) of this 2019 Act.	ORS 540.350 (1) No person, firm or private or municipal corporation shall construct any dam, dike, or other hydraulic structure or works, the failure of which the Water Resources Commission finds would result in damage to life or property, unless the commission has made an examination of the site and of the plans and specifications and other features involved in the construction of such works, and has approved them in writing. ORS 537.400 (4) If a dam safety review is required under ORS 540.350, the department may issue a final order approving an application on the basis of preliminary plans, specifications and supporting information if the approval includes a condition requiring the commission’s approval of final plans, specifications and supporting information under ORS 540.350 before the permit is issued. Permit condition on water right.	536.007(6) “Person” includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof. 536.007 applies to ORS 540.

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	<p>(3) The department may charge a fee for an examination under this section. The fee may not exceed the lesser of the costs of providing the examination or:</p> <p>(a) \$1,750 for a dam that has a low hazard rating; (b) \$3,500 for a dam that has a significant hazard rating; or (c) \$8,500 for a dam that has a high hazard rating.</p> <p>Subsection 4 and 5 carried forward from current ORS 540.350(2) and (3)</p>	<p>ORS 540.350(2) and (3) establish provisions related to hydro.</p>	<p><i>Note: Intend to submit amendments that will propose to remove subsection 4 and 5.</i></p>
6 Removal Plan Approval	<p>See bill</p>		<p>Purpose of this section is not to determine whether dam should or should not be removed. Purpose is if owner does remove, they need to do it safely</p>
7 Warrant	<p>The Water Resources Department or its agents or representatives may enter upon property for the purpose of carrying out actions under sections 2 to 21 of this 2019 Act. The department shall make reasonable efforts to obtain consent prior to the department or its agents or representatives entering upon property under this section. If the owner or operator does not respond to a request to enter a property or denies entry upon a property, in addition to any other available remedies, the department may apply for a warrant allowing the department or its agents or representatives to enter upon the property and conduct an inspection. This section does not prohibit the issuance of an ex parte warrant based on probable cause.</p>	<p>ORS 537.037 – General authority to enter property</p> <p>WRD must argue implied authority to obtain warrant: Authority to enter property in performance of duties of the director under 536.037 implies authority to seek a warrant.</p>	<p>Seeks to clarify and make authority express.</p> <p>Currently, no express warrant authority. In regards to entering property, there may be potential exceptions to requiring a warrant (emergency, plain view, etc.).</p>
8 Inspections	<p>(1) The Water Resources Department, or agents or representatives of the department, may periodically inspect a dam and appurtenant structures, and the site, plans and specifications, features and other supporting information regarding the construction, maintenance and operation of a dam and appurtenant structures. If a dam has a high hazard rating, the department shall ensure that the dam and appurtenant structures are inspected annually unless the department determines that a different inspection schedule is appropriate.</p> <p>(2) The department shall provide the owner with an inspection summary.</p>	<p>ORS 540.350 (5) The commission may make inspections of any hydraulic structure, the site thereof, and of the plans and specifications, and any other features involved in the construction, maintenance and operation of the works...</p> <p>ORS 540.353(5) The department shall inspect a dam with a high hazard rating annually, unless the department determines that a different inspection schedule is appropriate.</p>	<p><i>Note: Amendments will propose to add a sentence from Section 16, allowing neighbor to request inspection.</i></p> <p>WRD provides inspection summary today.</p>

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9 Notice: Corrective Action for Unsafe or Potentially Unsafe	<p>(1) If, as the result of an inspection or analysis of a dam that has a significant hazard rating or high hazard rating, or of its appurtenant structures, the Water Resources Department believes that corrective action is necessary to address a condition rendering the dam or appurtenant structure unsafe or potentially unsafe, the department shall notify the dam owner regarding: (a) The information and conditions that cause the department to believe the dam or appurtenant structure is unsafe or potentially unsafe; (b) The action the department believes is necessary to address the unsafe or potentially unsafe condition; and (c) Whether the dam owner may request a meeting with the department to cooperatively develop a plan and timeframe for remedying the unsafe or potentially unsafe condition.</p> <p>(2) Except as provided in subsection (3) of this section, the department shall notify a dam owner under subsection (1) of this section by: (a) Registered mail; or (b) Certified mail with return receipt requested. (3) If the department believes that the dam or appurtenant structure is unsafe, department notification to a dam owner under subsection (1) of this section shall be accomplished by inclusion in a proposed final order issued by the Water Resources Director under section 10 (3) of this 2019 Act.</p>	<p>ORS 540.350 (5)...If, as a result of the inspections, the commission considers any modifications necessary to insure the safety of the works with reference to possible damage to life or property, the commission shall notify the legal owners by registered mail or by certified mail with return receipt, stating why the works are unsafe. The notice shall set forth the modifications necessary to insure the safety of the works in so far as it affects possible damage to life or property. The notice also shall set a hearing at a time and place as will give the owners a reasonable time to prepare for the hearing.</p>	
10 Corrective Action Continued	<p>1) The Water Resources Department may at any time use informal or alternative means to resolve a matter for which the department has provided a dam owner with notification under section 9 of this 2019 Act. Informal or alternative means may include, but are not limited to, stipulation, agreed settlement, consent order or order of default.</p> <p>(2) If the department provides notification to a dam owner under section 9 of this 2019 Act stating that the department believes a dam that has a significant hazard rating or high hazard rating, or its appurtenant structures, to be unsafe or potentially unsafe, the department may act cooperatively with the dam owner to develop and agree to a reasonable plan and timeframe for corrective action. When developing a plan and timeframe under this subsection, the department may consider any relevant information, including, but not limited to, information regarding: (a) The specific dam or its appurtenant</p>		

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	<p>structures; (b) The efforts and resources of the dam owner; and (c) The impacts associated with dam failure.</p> <p>(3) In addition to any other available remedies, the Water Resources Director may issue a proposed final order containing one or more of the provisions described in subsection (4) of this section if: (a) The department and the dam owner do not agree under subsection (2) of this section to a plan and timeframe for corrective action to resolve a condition identified in a notification that was sent by mail under section 9 (2) of this 2019 Act and have not resolved the matter through informal or alternative means; (b) The dam owner has failed to comply with a plan and timeframe developed and agreed to under subsection (2) of this section or with a resolution reached through informal or alternative means under subsection (1) of this section; or (c) The department believes, based on inspection or analysis, that the dam or an appurtenant structure is unsafe. (4) If the director issues a proposed final order under subsection (3) of this section, the director shall provide the dam owner with notice and opportunity for hearing under ORS 183.413 to 183.470. The proposed final order may include, but need not be limited to, provisions: (a) Notifying the dam owner as described in section 9 of this 2019 Act that the department believes the dam or appurtenant structure is unsafe. (b) Requiring that the dam owner consult with an engineer to determine the nature and extent of any condition indicating that the dam or appurtenant structure is unsafe or potentially unsafe. (c) Specifying commencement and completion dates for any corrective action the department deems necessary to remedy the unsafe or potentially unsafe condition. (d) Restricting the maximum reservoir level. (e) Directing that the gates of the dam be kept open until corrective action has been completed to the satisfaction of the department. (f) Directing that an opening in the dam be made and maintained until corrective action is completed to the satisfaction of the department. (g) Directing that the dam and appurtenant structures may not be used for the storage, restraint or conveyance of water until corrective action has been completed to the</p>	<p>See 540.350(5) above...</p> <p>540.360 Order to modify. After the hearing the Water Resources Commission may issue a written order to the owners to make such modifications as the commission considers necessary to insure the safety of the works with reference to possible damage to life or property and shall fix the time within which work shall begin in good faith and the time for completion. The owners, upon receipt of the order, shall make the modifications ordered within the time limit prescribed or shall initiate an appeal as above provided.</p> <p>540.370 Enforcing compliance with order or decree. (1) If the owners fail to make the modifications within the time limits set by the Water Resources Commission, or to institute their appeal or to comply with the decree of the appellate court in case an appeal is taken, the commission shall issue an order in writing to the owners directing that the gates be kept open, or an opening made in the dam if necessary, or that the structure shall not be used for the storage, restraint or conveyance of water until the modifications have been made. (2) No owner shall refuse to comply with the orders of the commission or the decree of an appellate court. (3) In case of noncompliance, the commission shall direct the watermaster or other authorized assistant to carry out the orders, or the commission may file a copy of the commission's order with the Attorney General or with the district attorney of the county within which the works are located. The Attorney General or district attorney shall bring proceedings in the name of the state, in the circuit court of the county within which the works or any part thereof are situated, to abate the offending works. The court, after a full hearing on the matter, may declare the works a nuisance and order their removal, or order any repairs or alterations, and may enforce its orders in the manner provided by law.</p>	

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	satisfaction of the department. (h) Requiring the installation of monitoring equipment at a dam. If the department believes that monitoring is necessary to protect life, property or infrastructure, the proposed final order may require use of the equipment to monitor any unsafe or potentially unsafe condition. (5) If the dam owner does not timely request a hearing regarding the proposed final order, the director may issue a final order.		
11 Reports of Engineers	The Water Resources Department may accept the reports of consulting engineers, geologists or other specialists employed by the dam owner. If the department believes the reports insufficient, the department may employ consulting engineers, geologists or other specialists as agents or representatives of the department to make special examinations and inspections and to prepare reports for the department. The cost of such special examinations, inspections and reports shall be paid by the department or, upon mutual agreement, may be divided between the department and the dam owner.	540.380 The Water Resources Commission may accept the reports of consulting engineers, geologists or other specialists whom the owners of the works in question may have employed. But if, for any reason, the commission considers the reports insufficient, the commission may employ consulting engineers, geologists or other specialists outside the Water Resources Department to make special examinations and inspections and to prepare reports for the commission's guidance. The cost of such special examinations, inspections and reports shall be paid by the commission from any funds at the commission's disposal, or it may be divided by mutual agreement between the state and the owners.	Changes Commission to Department in recognition of appropriate roles. Mostly carries forward existing language.
12 Maintenance Actions of High or Significant Hazard	See Bill		Today, WRD notifies the owner of needed maintenance in an inspection summary, but there is no ability to require they address poor maintenance until the dam actually becomes unsafe and threatens life or property.
13 Contested Case Hearing Process and Timelines	Except as provided in this section, if the Water Resources Director sends a dam owner a notice under ORS 183.415, the director shall require that any request for a contested case hearing be delivered no later than 30 days after the date that the director sends the notice. If the Water Resources Department believes that a dam is unsafe, or poses an imminent risk to life, property or infrastructure, the director may require that any request for a contested case hearing be delivered to the director no later than 10 days after the director sends the dam owner notice under ORS 183.415. If the director requires that a request for a contested case hearing be delivered within 10 days, the Office of Administrative Hearings shall expedite the contested case hearing to the extent the office considers	Some elements in 540.350(5), 540.360– see above.	

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	practicable.		
14 Injunction	See bill		No authority to seek injunction to allow for immediate action to prevent dam failure.
15 Stays / Nuisance	<p>(1) Notwithstanding ORS 536.075 (5), the filing of a petition in circuit court or the Court of Appeals does not stay the enforcement of an order issued by the Water Resources Director under section 10 (5) of this 2019 Act.</p> <p>(2) In addition to any other available remedies, if a director order issued under section 10 (5) of this 2019 Act becomes final by operation of law or on appeal, and the dam owner fails to comply with the order, the Water Resources Department may request that the Attorney General or the district attorney of any county where all or part of the dam or appurtenant structures are located bring an action to have the dam and appurtenant structures declared a public nuisance that must be removed at the dam owner's expense.</p>	<p>ORS 536.075 (5) The filing of a petition in either the circuit court or the Court of Appeals shall stay enforcement of the order of the commission or the department unless the commission or the department determines that substantial public harm will result if the order is stayed. If the commission or the department denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that will result from allowing the stay.</p> <p>540.370... (3) In case of noncompliance, the commission shall direct the watermaster or other authorized assistant to carry out the orders, or the commission may file a copy of the commission's order with the Attorney General or with the district attorney of the county within which the works are located. The Attorney General or district attorney shall bring proceedings in the name of the state, in the circuit court of the county within which the works or any part thereof are situated, to abate the offending works. The court, after a full hearing on the matter, may declare the works a nuisance and order their removal, or order any repairs or alterations, and may enforce its orders in the manner provided by law.</p>	<p>Subsection 1 is intended to make it so that the Oregon Administrative Procedures Act stay provisions under ORS 183.480 that typically apply to all agencies would apply to specified dam safety orders instead of ORS 536.075(5). ORS 183.480(2) states: "Judicial review of final orders of agencies shall be solely as provided by ORS 183.482 ..."</p> <p>For review of orders in contested case: Under ORS 183.482 (3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of: (A) Irreparable injury to the petitioner; and (B) A colorable claim of error in the order. (b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay. (c) When the agency grants a stay, the agency may impose such reasonable conditions as the giving of a bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time. (d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.</p>

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16 Resident Requests for Inspection	SECTION 16. (1) The Water Resources Department may, upon a written request from a person residing near a dam, or upon its own motion, conduct or order an inspection of a dam and appurtenant structures during or after completion of construction. Before conducting an inspection requested by a person, the department may require the person to deposit a sum of money sufficient to pay the cost of the inspection. If, after department inspection of the dam and appurtenant structures, the Water Resources Commission believes that the inspection request was not warranted, the commission may order the whole or part of the cost of the inspection to be paid out of the deposit. If, after department inspection, the commission believes the inspection request was warranted, the commission may order the dam owner to pay the whole or any part of the expenses of the inspection. (2) If an inspection under this section of a dam that has a significant hazard rating or high hazard rating discloses an unsafe or potentially unsafe condition, the department shall give notification to the dam owner under section 9 of this 2019 Act. If an inspection under this section of a dam that has a significant hazard rating or high hazard rating discloses a need for maintenance action, the department shall inform the dam owner as provided under section 12 of this 2019 Act.	540.390 Should any person residing on or owning land in the neighborhood of any dam, dike or other hydraulic structure after completion, or in course of construction, apply to the Water Resources Commission in writing desiring an inspection of the works, the commission may order an inspection, or the commission may make such order commission's own motion. Before doing so the commission may require the applicant for inspection to deposit a sum of money sufficient to pay the expenses of an inspection. If the application appears to the commission not to have been justified the commission may cause the whole or part of the expenses to be paid out of the deposit. If the application appears to have been justified, the commission may require the owner of the works to pay the whole or any part of the expenses of the inspection, and it shall constitute a valid lien against the works, which may be enforced in the same manner as provided for the enforcement of mechanic's liens.	Mostly carries forward existing provisions; changes made are not intended to be substantive, except removes liens for inspections. <i>Note: Amendment will propose to delete and combine with inspection section 8; to allow neighbors to request inspection but deletes payment provisions</i>
17 Owner Responsibilities	See bill		
18 Emergency Action Plan	See definitions section 2 above. (1) The Water Resources Department shall require the owner of a dam that has a high hazard rating to develop an emergency action plan for the dam. (2) An emergency action plan required under this section must include, but need not be limited to: (a) Means for emergency condition detection; (b) Means for emergency level determination; (c) Identification of, and information necessary for, notifications and communications to be made at each level of emergency condition; (d) A description of actions expected to be undertaken to prevent dam failure or reduce the effects of dam failure; (e) A map of dam failure inundation zones for varying conditions, including, but not	540.353 (2) Except as provided in subsection (6) of this section, the department shall require the owner or operator of a dam with a high hazard rating to develop an emergency action plan for the dam. The emergency action plan must include, but need not be limited to: (a) Means for emergency condition detection; (b) Means for emergency level determination; (c) Identification of, and information necessary for, the notifications and communications to be made at each level of emergency condition; (d) A description of actions expected to be undertaken to prevent dam failure or reduce the effects of dam failure; (e) A map of the dam failure inundation zones for varying conditions,	Existing definitions in 540.353 (1) for Emergency Action Plan and High Hazard Dam moved to section 2. See above. Not intending to make substantive changes.

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	<p>limited to, dry weather conditions and high flood conditions; and (f) Procedures to be followed at the termination of an emergency.</p> <p>(3) A dam owner that develops an emergency action plan required under this section shall file copies of the plan with the department, the Office of Emergency Management and the local emergency services agency for the county where the dam is located. The department, in consultation with the office and local emergency services agency, shall periodically review the emergency action plan and may require updates to the plan.</p> <p>(4) The department, in consultation with the office and local emergency services agency, shall determine the appropriate frequency for conducting emergency response exercises at a dam that has a high hazard rating.</p>	<p>including but not limited to dry weather conditions and high flood conditions; and (f) Procedures to be followed at termination of an emergency. (3) An owner or operator of a dam with a high hazard rating shall file copies of the emergency action plan for the dam with the department, the Office of Emergency Management and the local emergency services agency for the county where the dam is located. The department, in consultation with the office and local emergency services agency, shall periodically review and require updates to the emergency action plan.</p> <p>(4) The department, in consultation with the office and local emergency services agency, shall determine the frequency for the conducting of emergency response exercises</p>	<p>540.353(5) of existing law moved to inspections in Section 8 of the bill.</p> <p>540.353(6) of existing provisions related to exclusion of federal dams are deleted and moved to apply to entire Act as specified in section 4 of the bill.</p>
19 Emergency Actions; Emergencies	See Bill		<p>No current authorities to immediately prevent imminent dam failure.</p> <p>In regards to entering property, there may be potential exceptions to requiring a warrant (emergency, plain view, etc.).</p>
20 Rules; Powers	See bill	<p>537.027 – General rulemaking authority</p> <p>536.037 – General authorities of the director</p>	<p>Amounts similar to other current civil penalty authority in ORS 536.900 to 935.</p> <p>General authority provisions similar to Department’s authorities for levees under ORS 540.355</p>
21 Effect on Responsibilities and Liabilities	<p>SECTION 21. (1) Compliance with sections 2 to 21 of this 2019 Act does not relieve the owner or operator of a dam and appurtenant structures or an individual in immediate charge of a dam and appurtenant structures from any duty, obligation or liability regarding the ownership, maintenance or operation of the dam or appurtenant structures. (2) Water Resources Department actions and services under sections 2 to 21 of this 2019 Act do not relieve the owner or operator or individual in immediate charge of a dam from any duty, obligation or liability regarding the ownership or operation of the dam or appurtenant structures.</p>	<p>540.350 (4) The commission’s approval of the site, plans and specifications, or other features involved in the construction, maintenance and operation of any hydraulic works whatsoever shall not relieve the owners of their legal responsibilities.</p>	

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22 Civil Penalties	See bill		Amounts similar to other current civil penalty authority in ORS 536.900 to 935. Section 20(2) above requires rules to be established for civil penalties. <i>Note: This section incorrectly cites section 19 instead of 18 and requires amendment.</i>
23 Hydraulic Structures	See bill for how it amends 540.355	See bill for how it amends ORS 540.355 ORS 540.350 – ORS 540.390 currently reference dams, dikes, and other hydraulic structures. See above for more info on those statutes.	Moves dikes, ditches, and other hydraulic structures out of dam safety statutes and into non-regulatory statutes related to levees.
24	Conforming Amendment. Updates ORS reference in existing law due to bill changes	See bill for existing text.	
25	Conforming Amendment. Updates ORS reference in existing law due to bill changes	See bill for existing text.	
26	Conforming Amendment. Updates ORS reference in existing law due to bill changes and copyedits	See bill for existing text.	
27	Conforming Amendment. Updates dam safety violations based on bill language/bill references	See bill for existing text.	
28	Transitional provisions	N/A	
29	Captions	N/A	
30	Repeals existing dam safety statutes. ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 and 540.400	N/A	
31	Operative date July 1, 2020	N/A	Operative date July 1, 2020 to allow time for rulemaking and updating of program documents.
32	Effective date: 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.	N/A	Effective date to allow rulemaking to begin once session ends.