

# House Bill 2085

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Water Resources Department)

## 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 **as introduced**.

Regulates construction and removal of dams.

Provides for Water Resources Department inspection of dams, appurtenant structures and related information.

Requires department to notify dam owner if inspection or analysis finds that dam having significant hazard rating or high hazard rating, or appurtenant structure to dam, is unsafe or potentially unsafe. Requires informing dam owner of maintenance action need disclosed by inspection. Establishes processes for stimulating corrective action or maintenance action by dam owner.

Sets forth department, Water Resources Commission and Water Resources Director enforcement authority regarding dams.

Allows inspection request by person residing near dam. Assigns responsibility for cost of requested inspection.

Requires dam owner to supply department with certain contact information. Requires dam owner to periodically review and evaluate condition of dam. Establishes duties of dam owner regarding emergency planning and emergency response. Establishes department authority regarding dam emergency planning and emergency response.

Allows department to inspect, evaluate and access additional forms of hydraulic structure with permission of owner. Allows department to provide recommendations, technical assistance, advice and emergency plan assistance regarding hydraulic structure.

Authorizes commission to impose civil penalty for certain violations under dam regulation program, not to exceed \$5,000. Authorizes director to impose civil penalty for violation of certain orders related to dam regulatory program, not to exceed \$5,000 per day.

Makes violation of certain director or appellate court orders misdemeanor punishable by maximum of six months' incarceration, \$2,500 fine, or both.

Becomes operative July 1, 2020.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to water impoundment safety; creating new provisions; amending ORS 517.971, 537.010, 537.400, 540.355 and 540.990; repealing ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 and 540.400; and prescribing an effective date.

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

## INCORPORATION INTO CHAPTER

**SECTION 1. Sections 2 to 22 of this 2019 Act are added to and made a part of ORS chapter 540.**

## DEFINITIONS

**SECTION 2. As used in sections 2 to 21 of this 2019 Act:**

**(1) "Appurtenant structure" means a feature that:**

**(a) Must be functional in order to allow the safe flow of water away from, over or through a dam; or**

**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 (b) Directly affects the stability of a dam.

2 (2) "Construct" means:

3 (a) To build a new dam or appurtenant structures; or

4 (b) To modify dam height or otherwise modify an existing dam or appurtenant structures:

5 (A) Through actions other than the exercise of routine maintenance;

6 (B) In a manner that has a potential impact on the safe functioning of the dam or  
7 appurtenant structures; and

8 (C) To an extent that the modified dam or appurtenant structures no longer conform to  
9 the original design.

10 (3) "Dam failure" means an uncontrolled release of water or wastewater due to move-  
11 ment, erosion, damage or improper operation of a dam or appurtenant structure.

12 (4) "Emergency action plan" means a plan that assists a dam owner, other dam person-  
13 nel, state and local emergency management personnel or others to perform actions to ensure  
14 human safety in the event of a potential or actual dam failure.

15 (5) "High hazard rating" means that the Water Resources Department expects loss of  
16 human life to occur if a dam fails.

17 (6) "Maintenance action" means measures that the department believes necessary to  
18 address a condition that, if left unaddressed, may cause a dam or appurtenant structures of  
19 a dam to become unsafe or potentially unsafe.

20 (7) "Potentially unsafe" means that, based on an inspection or analysis:

21 (a) It is probable that a dam or an appurtenant structure cannot withstand an extreme  
22 flood, earthquake or other catastrophic event; or

23 (b) The dam has a high risk of internal erosion.

24 (8) "Significant hazard rating" means the department does not expect loss of life to occur  
25 if a dam or an appurtenant structure fails, but does expect extensive damage to property or  
26 infrastructure.

27 (9) "Unsafe" means that, based on an inspection or analysis:

28 (a) It is probable that a dam or an appurtenant structure cannot be depended upon to  
29 retain or pass water or wastewater as designed; and

30 (b) Inability of the dam or appurtenant structure to retain or pass water or wastewater  
31 as designed could result in dam failure.

32  
33 **POLICY**  
34

35 **SECTION 3.** It is the policy of this state to protect public health, safety and welfare  
36 through the administration of a program to review and evaluate the safety of dams that  
37 might pose a risk to life, property or infrastructure in the event of dam failure.

38  
39 **SCOPE OF DEPARTMENT PROGRAM**  
40

41 **SECTION 4.** (1) An exemption from water right requirements does not exempt a dam  
42 from sections 2 to 21 of this 2019 Act.

43 (2) Sections 2 to 21 of this 2019 Act do not apply to:

44 (a) A dam that is less than 10 feet in height;

45 (b) A dam that impounds less than 3 million gallons of water or wastewater; or

1 (c) The appurtenant structures of a dam described in this subsection.

2 (3) Except as provided in this subsection, sections 2 to 21 of this 2019 Act do not apply  
 3 to dams or appurtenant structures regulated under a federal dam safety program. If there  
 4 is a potential or actual risk of dam failure at a dam regulated under a federal dam safety  
 5 program, the Water Resources Department may aid in the inspection of the dam and  
 6 appurtenant structures and may provide advice and assistance to prevent, mitigate or re-  
 7 spond to a potential or actual dam failure.

8  
 9 **CONSTRUCTION PLAN APPROVAL**

10  
 11 **SECTION 5.** (1) A person may not construct a dam unless the Water Resources Depart-  
 12 ment has examined the site, plans and specifications, features and other supporting infor-  
 13 mation regarding the construction and operation of the dam and appurtenant structures and  
 14 has approved them in writing.

15 (2) Except as provided in this subsection, a dam or appurtenant structure may not be  
 16 used to impound water or wastewater until final documentation for the site, plans and  
 17 specifications, features and other supporting information of the dam and appurtenant  
 18 structure has been submitted to and accepted by the department after completion of con-  
 19 struction. The Water Resources Commission may adopt rules to allow all or a portion of a  
 20 previously authorized impoundment during construction described in section 2 (2)(b) of this  
 21 2019 Act.

22 (3) The department may charge a fee for an examination under this section. The fee may  
 23 not exceed the lesser of the costs of providing the examination or:

- 24 (a) \$1,750 for a dam that has a low hazard rating;
- 25 (b) \$3,500 for a dam that has a significant hazard rating; or
- 26 (c) \$8,500 for a dam that has a high hazard rating.

27 (4) Except as provided under subsection (5) of this section, if a person seeks department  
 28 approval in writing under subsection (1) of this section for the site, plans and specifications,  
 29 features and other supporting information regarding a new dam more than 25 feet in height  
 30 at a site where there is an average annual flow exceeding two cubic feet per second, the  
 31 person must demonstrate that the dam includes measures that make it readily adaptable to  
 32 hydroelectric generation in a manner meeting statutory requirements for the safe passage  
 33 of fish. The measures must include the installation of a pressure conduit, penstock, drain  
 34 or similar water diversion system at the time the dam is constructed.

35 (5) A person is not required to make the demonstration described under subsection (4)  
 36 of this section if the person demonstrates to the satisfaction of the department that:

- 37 (a) It is not likely that the installation of hydroelectric generating facilities at the pro-  
 38 posed site would be feasible anytime during the life of the proposed dam; or
- 39 (b) It would be more feasible to install hydroelectric facilities after construction of the  
 40 proposed dam.

41  
 42 **REMOVAL PLAN APPROVAL**

43  
 44 **SECTION 6.** (1) An owner seeking to remove a dam that has a significant hazard rating  
 45 or high hazard rating must obtain Water Resources Department approval of a removal plan

1 for the dam. The department shall review the plan to ensure that the plan includes appro-  
 2 priate safety precautions to protect life, property and infrastructure in the area downstream  
 3 from the dam. The department may require that work performed under the plan be super-  
 4 vised by an engineer to the extent the department believes necessary to protect life, property  
 5 or infrastructure.

6 (2) A person may not perform removal work on a dam that has a significant hazard rat-  
 7 ing or high hazard rating, or on appurtenant structures to the dam, except as provided in a  
 8 removal plan approved by the department.

9  
 10 **INSPECTIONS**

11  
 12 **SECTION 7.** The Water Resources Department or its agents or representatives may en-  
 13 ter upon property for the purpose of carrying out actions under sections 2 to 21 of this 2019  
 14 Act. The department shall make reasonable efforts to obtain consent prior to the department  
 15 or its agents or representatives entering upon property under this section. If the owner or  
 16 operator does not respond to a request to enter a property or denies entry upon a property,  
 17 in addition to any other available remedies, the department may apply for a warrant allowing  
 18 the department or its agents or representatives to enter upon the property and conduct an  
 19 inspection. This section does not prohibit the issuance of an ex parte warrant based on  
 20 probable cause.

21 **SECTION 8.** (1) The Water Resources Department, or agents or representatives of the  
 22 department, may periodically inspect a dam and appurtenant structures, and the site, plans  
 23 and specifications, features and other supporting information regarding the construction,  
 24 maintenance and operation of a dam and appurtenant structures. If a dam has a high hazard  
 25 rating, the department shall ensure that the dam and appurtenant structures are inspected  
 26 annually unless the department determines that a different inspection schedule is appropri-  
 27 ate.

28 (2) The department shall provide the owner with an inspection summary.

29  
 30 **CORRECTIVE ACTION FOR**  
 31 **UNSAFE OR POTENTIALLY UNSAFE CONDITIONS**

32  
 33 **SECTION 9.** (1) If, as the result of an inspection or analysis of a dam that has a signif-  
 34 icant hazard rating or high hazard rating, or of its appurtenant structures, the Water Re-  
 35 sources Department believes that corrective action is necessary to address a condition  
 36 rendering the dam or appurtenant structure unsafe or potentially unsafe, the department  
 37 shall notify the dam owner regarding:

38 (a) The information and conditions that cause the department to believe the dam or  
 39 appurtenant structure is unsafe or potentially unsafe;

40 (b) The action the department believes is necessary to address the unsafe or potentially  
 41 unsafe condition; and

42 (c) Whether the dam owner may request a meeting with the department to cooperatively  
 43 develop a plan and timeframe for remedying the unsafe or potentially unsafe condition.

44 (2) Except as provided in subsection (3) of this section, the department shall notify a dam  
 45 owner under subsection (1) of this section by:

1 (a) Registered mail; or

2 (b) Certified mail with return receipt requested.

3 (3) If the department believes that the dam or appurtenant structure is unsafe, depart-  
 4 ment notification to a dam owner under subsection (1) of this section shall be accomplished  
 5 by inclusion in a proposed final order issued by the Water Resources Director under section  
 6 10 (3) of this 2019 Act.

7 **SECTION 10.** (1) The Water Resources Department may at any time use informal or al-  
 8 ternative means to resolve a matter for which the department has provided a dam owner  
 9 with notification under section 9 of this 2019 Act. Informal or alternative means may include,  
 10 but are not limited to, stipulation, agreed settlement, consent order or order of default.

11 (2) If the department provides notification to a dam owner under section 9 of this 2019  
 12 Act stating that the department believes a dam that has a significant hazard rating or high  
 13 hazard rating, or its appurtenant structures, to be unsafe or potentially unsafe, the depart-  
 14 ment may act cooperatively with the dam owner to develop and agree to a reasonable plan  
 15 and timeframe for corrective action. When developing a plan and timeframe under this sub-  
 16 section, the department may consider any relevant information, including, but not limited  
 17 to, information regarding:

18 (a) The specific dam or its appurtenant structures;

19 (b) The efforts and resources of the dam owner; and

20 (c) The impacts associated with dam failure.

21 (3) In addition to any other available remedies, the Water Resources Director may issue  
 22 a proposed final order containing one or more of the provisions described in subsection (4)  
 23 of this section if:

24 (a) The department and the dam owner do not agree under subsection (2) of this section  
 25 to a plan and timeframe for corrective action to resolve a condition identified in a notifica-  
 26 tion that was sent by mail under section 9 (2) of this 2019 Act and have not resolved the  
 27 matter through informal or alternative means;

28 (b) The dam owner has failed to comply with a plan and timeframe developed and agreed  
 29 to under subsection (2) of this section or with a resolution reached through informal or al-  
 30 ternative means under subsection (1) of this section; or

31 (c) The department believes, based on inspection or analysis, that the dam or an  
 32 appurtenant structure is unsafe.

33 (4) If the director issues a proposed final order under subsection (3) of this section, the  
 34 director shall provide the dam owner with notice and opportunity for hearing under ORS  
 35 183.413 to 183.470. The proposed final order may include, but need not be limited to, pro-  
 36 visions:

37 (a) Notifying the dam owner as described in section 9 of this 2019 Act that the depart-  
 38 ment believes the dam or appurtenant structure is unsafe.

39 (b) Requiring that the dam owner consult with an engineer to determine the nature and  
 40 extent of any condition indicating that the dam or appurtenant structure is unsafe or po-  
 41 tentially unsafe.

42 (c) Specifying commencement and completion dates for any corrective action the de-  
 43 partment deems necessary to remedy the unsafe or potentially unsafe condition.

44 (d) Restricting the maximum reservoir level.

45 (e) Directing that the gates of the dam be kept open until corrective action has been

1 completed to the satisfaction of the department.

2 (f) Directing that an opening in the dam be made and maintained until corrective action  
3 is completed to the satisfaction of the department.

4 (g) Directing that the dam and appurtenant structures may not be used for the storage,  
5 restraint or conveyance of water until corrective action has been completed to the satisfac-  
6 tion of the department.

7 (h) Requiring the installation of monitoring equipment at a dam. If the department be-  
8 lieves that monitoring is necessary to protect life, property or infrastructure, the proposed  
9 final order may require use of the equipment to monitor any unsafe or potentially unsafe  
10 condition.

11 (5) If the dam owner does not timely request a hearing regarding the proposed final or-  
12 der, the director may issue a final order.

13 **SECTION 11.** The Water Resources Department may accept the reports of consulting  
14 engineers, geologists or other specialists employed by the dam owner. If the department be-  
15 lieves the reports insufficient, the department may employ consulting engineers, geologists  
16 or other specialists as agents or representatives of the department to make special exam-  
17 inations and inspections and to prepare reports for the department. The cost of such special  
18 examinations, inspections and reports shall be paid by the department or, upon mutual  
19 agreement, may be divided between the department and the dam owner.

20  
21 **MAINTENANCE ACTIONS**

22  
23 **SECTION 12.** (1) If, as the result of an inspection under section 8 of this 2019 Act of a  
24 dam that has a significant hazard rating or high hazard rating, or its appurtenant struc-  
25 tures, the Water Resources Department believes that maintenance actions are needed, the  
26 department shall inform the dam owner of the need for maintenance actions. The depart-  
27 ment shall provide the information by inclusion in the inspection summary.

28 (2) If the department or its agent or representative conducts a periodic inspection and  
29 the department determines that the dam owner has failed to take needed maintenance  
30 actions identified in a prior inspection summary, in addition to any other available remedies,  
31 the Water Resources Director may issue a proposed final order under subsection (3) of this  
32 section. If the director issues a proposed final order under this subsection, the director shall  
33 provide the dam owner with notice and opportunity for hearing under ORS 183.413 to 183.470.

34 (3) Subject to subsection (2) of this section, the director may issue a proposed final order  
35 that includes, but need not be limited to, provisions:

36 (a) Requiring the dam owner to perform the needed maintenance actions by a specified  
37 date; and

38 (b) Imposing a civil penalty under section 22 of this 2019 Act, not to exceed an amount  
39 established by the Water Resources Commission by rule, for failing to address the needed  
40 maintenance condition identified in the proposed final order or failing to comply with a re-  
41 solution reached through informal or alternative means under subsection (5) of this section.

42 (4) If the dam owner performs needed maintenance actions required by a proposed final  
43 order issued under subsection (3) of this section to the satisfaction of the department by the  
44 date specified in the proposed final order, the director may not impose any civil penalty that  
45 was described in the proposed final order.

1 (5) The department may at any time use informal or alternative means to resolve a  
 2 matter involving needed maintenance actions. Informal or alternative means may include,  
 3 but are not limited to, stipulation, agreed settlement, consent order or order of default.

4 (6) If the dam owner does not timely request a hearing regarding the proposed final or-  
 5 der, the director may issue a final order.

6  
 7 **ENFORCEMENT**

8  
 9 **SECTION 13.** Except as provided in this section, if the Water Resources Director sends  
 10 a dam owner a notice under ORS 183.415, the director shall require that any request for a  
 11 contested case hearing be delivered no later than 30 days after the date that the director  
 12 sends the notice. If the Water Resources Department believes that a dam is unsafe, or poses  
 13 an imminent risk to life, property or infrastructure, the director may require that any re-  
 14 quest for a contested case hearing be delivered to the director no later than 10 days after  
 15 the director sends the dam owner notice under ORS 183.415. If the director requires that a  
 16 request for a contested case hearing be delivered within 10 days, the Office of Administrative  
 17 Hearings shall expedite the contested case hearing to the extent the office considers practi-  
 18 cable.

19 **SECTION 14.** In addition to any other available remedies, if the Water Resources De-  
 20 partment has reason to believe that a person is violating or intends to violate a final order  
 21 issued under section 10 of this 2019 Act, or believes that a dam or appurtenant structure  
 22 poses an imminent risk to life, property or infrastructure, the department may apply to the  
 23 circuit court for Marion County or to the circuit court for any county where all or part of  
 24 the dam or appurtenant structures are located for a temporary or permanent injunction re-  
 25 quiring the person to:

- 26 (1) Refrain from violation of the order; or
- 27 (2) Take any actions necessary to remedy an imminent risk to life, property or
- 28 infrastructure.

29 **SECTION 15.** (1) Notwithstanding ORS 536.075 (5), the filing of a petition in circuit court  
 30 or the Court of Appeals does not stay the enforcement of an order issued by the Water Re-  
 31 sources Director under section 10 (5) of this 2019 Act.

32 (2) In addition to any other available remedies, if a director order issued under section  
 33 10 (5) of this 2019 Act becomes final by operation of law or on appeal, and the dam owner fails  
 34 to comply with the order, the Water Resources Department may request that the Attorney  
 35 General or the district attorney of any county where all or part of the dam or appurtenant  
 36 structures are located bring an action to have the dam and appurtenant structures declared  
 37 a public nuisance that must be removed at the dam owner's expense.

38  
 39 **RESIDENT REQUESTS FOR INSPECTION**

40  
 41 **SECTION 16.** (1) The Water Resources Department may, upon a written request from a  
 42 person residing near a dam, or upon its own motion, conduct or order an inspection of a dam  
 43 and appurtenant structures during or after completion of construction. Before conducting  
 44 an inspection requested by a person, the department may require the person to deposit a  
 45 sum of money sufficient to pay the cost of the inspection. If, after department inspection of

1 the dam and appurtenant structures, the Water Resources Commission believes that the  
 2 inspection request was not warranted, the commission may order the whole or part of the  
 3 cost of the inspection to be paid out of the deposit. If, after department inspection, the  
 4 commission believes the inspection request was warranted, the commission may order the  
 5 dam owner to pay the whole or any part of the expenses of the inspection.

6 (2) If an inspection under this section of a dam that has a significant hazard rating or  
 7 high hazard rating discloses an unsafe or potentially unsafe condition, the department shall  
 8 give notification to the dam owner under section 9 of this 2019 Act. If an inspection under  
 9 this section of a dam that has a significant hazard rating or high hazard rating discloses a  
 10 need for maintenance action, the department shall inform the dam owner as provided under  
 11 section 12 of this 2019 Act.

12  
 13 **EMERGENCY PLANNING; EMERGENCIES**  
 14

15 **SECTION 17.** (1) The owner of record of a dam that is subject to periodic inspection un-  
 16 der section 8 of this 2019 Act shall:

17 (a) Provide the Water Resources Department with contact information, in a form ac-  
 18 ceptable to the department, for:

- 19 (A) The dam owner;
- 20 (B) The operator of the dam, if other than the owner; and
- 21 (C) The individual in immediate charge of the dam and appurtenant structures;

22 (b) Notify the department of any changes in the contact information provided under this  
 23 subsection; and

24 (c) Provide the department with notice, in a form acceptable to the department, no later  
 25 than the next business day after completing a transfer of title for the dam.

26 (2) The dam owner shall review and evaluate the conditions at the dam on a regular basis  
 27 to:

- 28 (a) Keep the dam and appurtenant structures in good repair and properly maintained; and
- 29 (b) Address any detected conditions that may pose a risk of dam failure.

30 **SECTION 18.** (1) The Water Resources Department shall require the owner of a dam that  
 31 has a high hazard rating to develop an emergency action plan for the dam.

32 (2) An emergency action plan required under this section must include, but need not be  
 33 limited to:

- 34 (a) Means for emergency condition detection;
- 35 (b) Means for emergency level determination;
- 36 (c) Identification of, and information necessary for, notifications and communications to  
 37 be made at each level of emergency condition;
- 38 (d) A description of actions expected to be undertaken to prevent dam failure or reduce  
 39 the effects of dam failure;
- 40 (e) A map of dam failure inundation zones for varying conditions, including, but not  
 41 limited to, dry weather conditions and high flood conditions; and
- 42 (f) Procedures to be followed at the termination of an emergency.

43 (3) A dam owner that develops an emergency action plan required under this section shall  
 44 file copies of the plan with the department, the Office of Emergency Management and the  
 45 local emergency services agency for the county where the dam is located. The department,



1 in consultation with the office and local emergency services agency, shall periodically review  
2 the emergency action plan and may require updates to the plan.

3 (4) The department, in consultation with the office and local emergency services agency,  
4 shall determine the appropriate frequency for conducting emergency response exercises at  
5 a dam that has a high hazard rating.

6 **SECTION 19.** (1) If a condition threatens the safety of a dam or appurtenant structures,  
7 and the potential for dam failure creates an imminent risk to life, property or infrastructure,  
8 the dam owner shall immediately:

9 (a) If an emergency action plan exists for the dam, implement the actions specified in the  
10 plan;

11 (b) Notify by telephone or other method that ensures immediate notification:

12 (A) The local emergency services agency;

13 (B) The Office of Emergency Management;

14 (C) Any other state and local agencies identified in an emergency action plan for the dam;  
15 and

16 (D) The Water Resources Department;

17 (c) To the greatest extent practicable, notify persons in areas where the potential for  
18 dam failure creates a risk to life, property or infrastructure; and

19 (d) Take all practicable actions to prevent dam failure.

20 (2) If the department is aware of conditions that indicate the need for immediate action  
21 to prevent dam failure, the department may advise the owner or operator or individual in  
22 immediate charge of the dam or appurtenant structures regarding the actions necessary to  
23 prevent the dam failure.

24 (3) The department may communicate and coordinate actions necessary to reduce the  
25 risk of dam failure. If there is a rapidly increasing leakage or overtopping at a dam that has  
26 a significant hazard rating or high hazard rating, the department may take any practicable  
27 actions to reduce the water level in the reservoir or to reduce leakage or overtopping. Ac-  
28 tivities under this subsection by the department do not relieve the owner, the operator or  
29 an individual in charge of a dam from the responsibility to prevent the dam failure.

30 (4) If a dam that has a significant hazard rating or high hazard rating presents an im-  
31 minent risk of dam failure, the department or its agent or representative may enter without  
32 notice or permission upon any property that affords access to the dam or to any appurtenant  
33 structure for the dam to the extent entry is reasonable or necessary to allow evaluation or  
34 addressing of the condition or risk.

35  
36 **RULES; POWERS**

37  
38 **SECTION 20.** (1) The Water Resources Commission may adopt rules the commission  
39 deems necessary or convenient for the administration and enforcement of sections 2 to 21  
40 of this 2019 Act.

41 (2) Notwithstanding subsection (1) of this section, the commission shall adopt rules that,  
42 at a minimum, establish:

43 (a) A schedule of civil penalty amounts for purposes of section 22 of this 2019 Act; and

44 (b) The conditions under which the Water Resources Department may remit a civil pen-  
45 alty.



- 1 (a) Provide recommendations and technical assistance;
- 2 (b) Advise on necessary maintenance and repairs;
- 3 (c) *[Require or]* Assist with the development of emergency action plans to ensure the safety of
- 4 life, *[and]* property **or infrastructure**;
- 5 (d) Undertake activities necessary to identify the owner *[of a levee]* **or operator of the hy-**
- 6 **draulic structure or the individual in immediate charge of the hydraulic structure**;
- 7 (e) Assist with mapping the locations of *[levees]* **hydraulic structures**;
- 8 (f) Enter into contracts, **memorandums of understanding** and intergovernmental agreements;
- 9 (g) Accept and receive moneys **from any public or private source**;
- 10 (h) Accept and receive payment for services performed; and
- 11 (i) Exchange information and perform other actions as necessary to cooperate with private, lo-
- 12 cal, state and federal entities.

13 *[(3) The department's actions under this section shall not relieve the owners of levees of their legal*  
14 *liabilities and responsibilities.]*

15 **(3) If the department is aware of conditions that indicate the need for immediate action**  
16 **to prevent the failure of a hydraulic structure, the department may:**

17 **(a) Advise the owner or operator or the individual in immediate charge of the hydraulic**  
18 **structure regarding the actions necessary to prevent the failure; and**

19 **(b) If the conditions create a risk to life, property or infrastructure, notify emergency**  
20 **managers.**

21 **(4) The acceptance of department services under this section does not relieve the owner**  
22 **or operator or individual in immediate charge of a hydraulic structure from any duty, obli-**  
23 **gation or liability regarding the ownership, maintenance or operation of the hydraulic**  
24 **structure.**

25 **(5) The Water Resources Commission may adopt rules for the administration of this**  
26 **section.**

27  
28 **CONFORMING AMENDMENTS**  
29

30 **SECTION 24.** ORS 517.971 is amended to read:

31 517.971. Each applicant for a permit to operate a mining operation shall submit a consolidated  
32 application to the State Department of Geology and Mineral Industries. The department and the  
33 permitting and cooperating agencies shall not begin deliberating on whether to issue a permit until  
34 the department receives an application fee and a complete consolidated application that includes but  
35 is not limited to:

36 (1) Name and location of the proposed facility.

37 (2) Name, mailing address and phone number of the applicant and a registered agent for the  
38 applicant.

39 (3) The legal structure of the applicant as filed in the business registry with the Secretary of  
40 State and the legal residence of the applicant.

41 (4) Mineral and surface ownership status of the proposed facility.

42 (5) Baseline data, including but not limited to environmental, socioeconomic, historical,  
43 archaeological conditions, land use designations and special use designations in the area of the state  
44 in which the proposed mining operation is located.

45 (6) Appropriate maps, aerial photos, cross sections, plans and documentation.

- 1 (7) A proposed:
- 2 (a) Mine plan;
- 3 (b) Processing plan;
- 4 (c) Water budget;
- 5 (d) Fish and wildlife protection and mitigation plan;
- 6 (e) Operational monitoring and reporting plan;
- 7 (f) Reclamation and closure plan;
- 8 (g) Plan for controlling water runoff and run on;
- 9 (h) Operating plan;
- 10 (i) Solid and hazardous waste management plan;
- 11 (j) Plan for transporting and storing toxic chemicals;
- 12 (k) Employee training plan as required by agency rule;
- 13 (L) Seasonal or short term closure plan;
- 14 (m) Spill prevention and credible accident contingency plan;
- 15 (n) Post-closure monitoring and reporting plan; and
- 16 (o) Identification of special natural areas, including but not limited to areas designated as areas
- 17 of critical environmental concern, research natural areas, outstanding natural areas and areas des-
- 18 igned by the Oregon Natural Areas Plan, as defined in state rules and federal regulations.
- 19 (8) All information required by the permitting agencies to determine whether to issue or deny
- 20 the following permits as applicable to the proposed operation:
- 21 (a) Surface mining operating permits required under ORS 517.790 and 517.915;
- 22 (b) Fill and removal permits required under ORS 196.600 to 196.905;
- 23 (c) Permits to appropriate surface water or ground water under ORS 537.130 and 537.615, to
- 24 store water under ORS 537.400 and impoundment structure approval under [ORS 540.350 to
- 25 540.390] **section 5 of this 2019 Act**;
- 26 (d) National Pollutant Discharge Elimination System permit under ORS 468B.050;
- 27 (e) Water pollution control facility permit under ORS 468B.050;
- 28 (f) Air contaminant discharge permit under ORS 468A.040 to 468A.060;
- 29 (g) Solid waste disposal permit under ORS 459.205;
- 30 (h) Permit for use of power driven machinery on forestland under ORS 477.625;
- 31 (i) Permit for placing explosives or harmful substances in waters of the state under ORS 509.140;
- 32 (j) Hazardous waste storage permit under ORS 466.005 to 466.385;
- 33 (k) Local land use permits; and
- 34 (L) Any other state permit required for the mining operation.
- 35 (9) All other information required by the department, a permitting agency, a cooperating agency
- 36 or the technical review team.

37 **SECTION 25.** ORS 537.010 is amended to read:

38 537.010. As used in this chapter, "Water Rights Act" means and embraces ORS 536.050, 537.120,

39 537.130, 537.140 to 537.252, 537.390 to 537.400, 538.420, 540.010 to 540.120, 540.210 to 540.230, 540.310

40 to 540.430, 540.505 to 540.585 and 540.710 to 540.750 **and sections 2 to 21 of this 2019 Act.**

41 **SECTION 26.** ORS 537.400 is amended to read:

42 537.400. (1) All applications for reservoir permits shall be subject to the provisions of ORS

43 537.130, 537.140, 537.142 and 537.145 to 537.240, except that an enumeration of any lands proposed

44 to be irrigated under the Water Rights Act shall not be required in the primary permit. But the

45 party proposing to apply to a beneficial use the water stored in any such reservoir shall file an

1 application for permit, to be known as the secondary permit, in compliance with the provisions of  
2 ORS 537.130, 537.140, 537.142 and 537.145 to 537.240. The application shall refer to the reservoir for  
3 a supply of water and shall show by documentary evidence that an agreement has been entered into  
4 with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water  
5 for the purposes set forth in the application, that the applicant has provided notice of the applica-  
6 tion to the operator of the reservoir and, if applicable, that an agreement has been entered into with  
7 the entity delivering the stored water. When beneficial use has been completed and perfected under  
8 the secondary permit, the Water Resources Department shall take the proof of the water user under  
9 the permit. The final certificate of appropriation shall refer to both the ditch described in the sec-  
10 ondary permit and the reservoir described in the primary permit.

11 (2) Whenever application is made for permit to store water in a reservoir or pond for any ben-  
12 efiticial use which does not contemplate future diversion of the stored water except by livestock  
13 drinking from stock water ponds, the extent of utilization thereof may be included in the reservoir  
14 permit and no secondary permit shall be required. However, in cases where water from a stream is  
15 required to maintain a reservoir or pond by replacing evaporation and seepage losses, or is required  
16 to maintain suitable fresh water conditions for the proposed use and to prevent stagnation, the ap-  
17 plicant for permit to store water in such reservoir or pond shall also file an application for permit  
18 to appropriate the waters of the stream.

19 (3) An application submitted to construct a reservoir storing less than 9.2 acre-feet of water or  
20 with a dam less than 10 feet in height need not be accompanied by a map prepared by a water right  
21 examiner certified under ORS 537.798 as required by ORS 537.140 (4). The map submitted with the  
22 application shall comply with standards established by the Water Resources Commission. The survey  
23 required under ORS 537.230 shall be prepared by a water right examiner certified under ORS 537.798  
24 and shall be submitted to the department before the department issues the water right certificate.

25 (4) If a dam [*safety review is required under ORS 540.350*] **is subject to approval under section**  
26 **5 of this 2019 Act**, the department may issue a final order approving an application on the basis  
27 of preliminary [*plans, specifications and*] **examination of the site, plans and specifications, fea-**  
28 **tures and other** supporting information if the approval includes a condition requiring [*the*  
29 *commission's*] **department** approval of final [*plans, specifications and*] **documentation for the site,**  
30 **plans and specifications, features and other** supporting information under [*ORS 540.350*] **section**  
31 **5 of this 2019 Act** before the permit is issued.

32 (5) Notwithstanding the provisions of ORS 537.211 (2), the department may approve an applica-  
33 tion for a reservoir permit for [*which a dam safety review is required under ORS 540.350*] **a dam**  
34 **that is subject to construction plan approval under section 5 of this 2019 Act** and issue a  
35 permit, subject to the condition that before the reservoir may be filled, the permittee shall submit  
36 to the department evidence that the permittee owns, or has written authorization or an easement  
37 permitting access to, all lands to be inundated by the reservoir.

38 **SECTION 27.** ORS 540.990 is amended to read:

39 540.990. (1) Violation of any provision of ORS 540.440 is a Class C misdemeanor.

40 (2) Violation of any provision of ORS [*540.370 (2),*] 540.570 (5), 540.710, 540.720 or 540.730 is a  
41 Class B misdemeanor.

42 (3) **Failure to comply with an order issued under section 10 (5) of this 2019 Act, or with**  
43 **an order issued by an appellate court on appeal from an order under section 10 (5) of this**  
44 **2019 Act, is a Class B misdemeanor.**

45

TRANSITIONAL PROVISIONS

**SECTION 28.** The repeal of ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 and 540.400 by section 30 of this 2019 Act:

(1) Does not excuse any violation of ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 or 540.400 prior to the operative date described in section 31 of this 2019 Act. Any such violation is subject to the penalties established for that violation under the provisions of ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 or 540.400 in effect at the time of the violation.

(2) Does not affect the validity of any order of the Water Resources Commission, the Water Resources Director, the State Engineer or a circuit or appellate court issued under ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 or 540.400 that was in effect immediately prior to the operative date described in section 31 of this 2019 Act. Any such order remains enforceable as provided under the provisions of ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 or 540.400 in effect at the time the order was issued.

CAPTIONS

**SECTION 29.** The unit captions used in this 2019 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2019 Act.

REPEALS

**SECTION 30.** ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 and 540.400 are repealed.

OPERATIVE DATE

**SECTION 31.** Sections 1 to 19, 21 and 22 of this 2019 Act, the amendments to ORS 517.971, 537.010, 537.400, 540.355 and 540.990 by sections 23 to 27 of this 2019 Act and the repeal of ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 and 540.400 by section 30 of this 2019 Act become operative July 1, 2020.

EFFECTIVE DATE

**SECTION 32.** This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.