

House Bill 2400

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 **as introduced**.

Provides that submission of certain task force reports prior to January 31, 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.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to water policies; creating new provisions; amending ORS 541.651 and 541.689 and sections
3 20, 22 and 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 January 31, 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. Notwithstanding section 19, chapter 784, Oregon Laws 2013, the task force**
17 **report may include, but need not be limited to, findings and recommendations of the sub-**
18 **group on functional needs for seasonally varying flows that are based on the consideration**
19 **of watershed functional needs during periods when water is available for storage rather than**
20 **watershed functional needs during periods that are outside of the official irrigation season.**

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

22 **Sec. 20.** (1) On or after the date that the Water Resources Commission receives a copy of the
23 task force report required under section 19 [*of this 2013 Act*], **chapter 784, Oregon Laws 2013**, the
24 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 541.651 is amended to read:

25 541.651. As used in ORS 541.651 to 541.696:

26 (1) “Newly developed water” means the new increment of water:

27 (a) Stored for a project providing new or expanded storage;

28 (b) Allocated to a use under a secondary water right for a project involving the allocation of
 29 previously uncontracted water stored by the United States Army Corps of Engineers under an ex-
 30 isting water right; or

31 (c) Conserved for a project to allocate conserved water under the program described in ORS
 32 537.455 to 537.500.

33 (2) “Seasonally varying flows” means the duration, timing, frequency and volume of flows, iden-
 34 tified for the purpose of determining conditions for a new or expanded storage project, that must
 35 remain in-stream [outside of the official irrigation season] **during periods when water is available**
 36 **for storage** in order to protect and maintain the biological, ecological and physical functions of the
 37 watershed downstream of the point of diversion, with due regard given to the need for balancing the
 38 functions against the need to store water for multiple purposes.

39 **SECTION 7.** ORS 541.689 is amended to read:

40 541.689. (1) The Water Resources Department shall make a determination as provided under
 41 subsection (2) of this section if an application for a loan or grant from the Water Supply Develop-
 42 ment Account is for a project that requires a new water storage or aquifer recharge permit or lim-
 43 ited license for the storage of water [outside of the official irrigation season] **during periods when**
 44 **water is available for storage** and:

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

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

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

4 (2) The department shall review a completed application for a project described in subsection
 5 (1) of this section to determine whether the applicable seasonally varying flows have been estab-
 6 lished under this section for the stream of interest. If the department determines that the applicable
 7 seasonally varying flows have not been established, the department shall establish the seasonally
 8 varying flows before issuing a loan or grant from the account. The department may use account
 9 moneys to pay the cost of establishing a seasonally varying flow and to pay other costs directly
 10 related to project development.

11 (3) The department shall establish any seasonally varying flows under subsection (2) of this
 12 section in consultation with the State Department of Fish and Wildlife and any affected Indian
 13 tribes. The department may rely upon existing scientific data and analysis or may fund new data
 14 and analysis. The department shall establish seasonally varying flows using a methodology estab-
 15 lished by Water Resources Commission rules. If seasonally varying flows are established for a
 16 stream, a subsequent water storage or aquifer recharge permit or limited license for the storage of
 17 water must be conditioned in accordance with the applicable seasonally varying flows if the license
 18 or permit:

19 (a) Is for a project receiving a loan or grant from the account;

20 (b) Is for the storage of water [*outside of the official irrigation season*] **during periods when**
 21 **water is available for storage**; and

22 (c) Has a diversion point that is subject to seasonally varying flows.

23 (4) The applicant for a permit or license described in subsection (3) of this section may request
 24 that seasonally varying flows be altered based upon new information. There is, however, a
 25 rebuttable presumption that existing applicable seasonally varying flows protect and maintain the
 26 biological, ecological and physical functions of the stream to the extent required by commission
 27 rules.

28 (5) The department shall condition the new water storage permit and resulting certificate, new
 29 aquifer recharge permit and resulting certificate or new limited license associated with a project
 30 that receives a grant or loan from the account to protect the seasonally varying flow in effect at
 31 the time the loan or grant is issued for the project.

32 (6) For purposes of any project that receives a loan or grant from the account and has the
 33 characteristics described in subsection (1) of this section, or any project described in subsection (3)
 34 of this section, the department shall use a seasonally varying flow methodology provided by com-
 35 mission rules in lieu of any other methodologies for determining seasonally varying flows or any
 36 methodologies for determining peak and ecological flows [*outside of the official irrigation season*]
 37 **during periods when water is available for storage**.

38 (7) Subsections (1) to (6) of this section do not eliminate or alter any applicable standard for
 39 department review of an application to determine whether water is available for purposes of re-
 40 viewing an application for a new water storage or aquifer recharge permit or a limited license for
 41 the storage of water.

42 **SECTION 8. This 2015 Act being necessary for the immediate preservation of the public**
 43 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 44 **on its passage.**