

HB 2853 STAFF MEASURE SUMMARY

House Committee On Energy and Environment

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Meeting Dates: 2/21

WHAT THE MEASURE DOES:

Directs the Oregon Water Resources Department (WRD) to maintain a registry of historic-use reservoirs. Exempts historic-use reservoirs from water right permit or water right certificate requirements. Establishes guidelines for an owner to register their reservoir as a “historic-use reservoir,” including that the reservoir has been in existence since on or before January 1, 2000, is located in an area withdrawn from appropriation, and either stores less than 9.2 acre feet of water or the dam or impoundment structure on the reservoir is less than 10 feet high. Requires applications to be filed on or before January 31, 2022 and to be approved by WRD for a historic-use reservoir to qualify for exemption. Authorizes WRD to charge an application processing fee. Authorizes WRD to require a survey of the reservoir, as performed by a certified water right examiner or professional engineer, to confirm the amount of water stored or the height of the dam or impoundment structure. Stipulates that historic-use reservoir status may be revoked if storage amount or dam or impoundment height are increased. Requires owner to maintain any headgates, measuring devices, and outlet controls required by WRD in proper working order. Allows WRD to reject incomplete applications, those not timely filed, and those not accompanied by the specified fee. Prohibits WRD from preventing continued use or operation of reservoir once application is accepted, except where reservoir is causing injury to existing water right. Directs WRD to publish notice of accepted application and consider written objections up to 90 days after notice is published. Allows WRD to issue a conditional approval for a reservoir requiring corrections or mitigation to meet historic-use reservoir criteria, including mitigating injuries to an existing water right; installation of headgates, measuring devices, and outlet controls; adjustment of amount of water stored or height of dam or impoundment structure; or modification to correct impacts to existing fishery resources. Establishes process for WRD to hold a contested hearing before issuing a final order approving or denying registration or before issuing a conditional approval. Sunsets registration process effective January 2, 2035.

REVENUE: May have revenue impact, but no statement yet issued

FISCAL: May have fiscal impact, but no statement yet issued

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

By law, all surface and groundwater in Oregon belongs to the public and is to be used for a beneficial purpose without waste. Water users, with some exceptions, must obtain a water right to use water from any source, including rivers, streams, lakes, and groundwater. When water is scarce, water users are allocated water based on the date of their water right, with holders of the oldest water rights allocated water first, and holders of newer water rights receiving their allocation according to the availability of water.

A water right is required to store water in a reservoir, construct a reservoir, or to use water stored in an existing reservoir. Additional permits and approvals from other agencies may be necessary prior to the construction of a water storage facility. An application for a water right may not legally be considered for a reservoir located or

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proposed in areas of the state the legislature has set aside as “withdrawn.” Waters located in withdrawn areas are reserved for specific purposes or otherwise restricted from water right permitting.

House Bill 2853 would establish a temporary process to allow the owner of a historic-use reservoir to register with the Water Resources Department. The measure would exempt historic-use reservoirs from the requirement to have a water right.

PRELIMINARY