

HB 2085 -1 STAFF MEASURE SUMMARY

House Committee On Natural Resources

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Meeting Dates: 3/5, 4/4

WHAT THE MEASURE DOES:

Regulates construction, modification, and removal of dams for the purpose of protecting public health, safety, and welfare. Provides for Water Resources Department (Department) inspection of dams and appurtenant structures. Clarifies and provides definitions applicable to all dam safety statutes. Defines high hazard rating as Department expects loss of human life to occur if a dam fails. Defines significant hazard rating as Department does not expect loss of life to occur if a dam or an appurtenant structure fails, but does expect extensive damage to property or infrastructure. Exempts dams less than ten-feet high, or dams storing less than 3 million gallons of water or wastewater from this regulation. Exempts dams regulated under federal dam safety program from state regulation. Provides that Department may aid federal dam safety program with inspection and assistance to address a potential or actual failure of a federally regulated dam. Removes dikes, ditches, and other hydraulic structures from dam safety statutes and inserts them into non-regulatory statutes related to levees.

Allows Department to periodically inspect dams. Requires Department to inspect high hazard dams annually. Allows Department to enter private property for inspection or analysis of dam. Requires Department make reasonable effort to obtain consent to enter property from dam owner. Requires Department to provide dam owner with inspection summary.

Requires person to receive written approval from Department prior to constructing dam. Requires Department to examine site, plans and specifications, features, and other supporting information regarding construction and operation of dam and appurtenant structures. Establishes that dam cannot be used to impound water until person has received written approval. Allows Department to charge fee not to exceed \$1,750 for low hazard, \$3,500 for significant hazard, and \$8,500 for high hazard dam inspection. Requires that dams over 25 feet with annual flow exceeding two cubic feet per second must demonstrate adaptability to hydroelectric generation. Requires that owner of dam with significant of high hazard rating obtain Department approval to remove dam. Requires Department to review removal plan to ensure safety downstream. Allows Department to require removal work be supervised by engineer.

Requires Department, as result of inspection, to notify owner of a significant or high hazard dam of need for corrective action. Requires Department to provide dam owner information on conditions that caused rating and corrective actions the Department deems necessary, and to communicate whether dam owner may request meeting to develop corrective plan with Department. Allows Department to act cooperatively with dam owner to develop reasonable plan to remedy unsafe or potentially unsafe conditions. Allows Department to inspect dam at request of person residing near dam. Allows Department to require inspection requester to deposit funds which may be used to cover cost of inspection if Department deems inspection was not warranted.

Allows Water Resources Director (Director) to issue proposed final order if Department and dam owner do not agree on corrective plan and timeframe, if dam owner fails to comply with plan and timeframe, or if Department believes that dam is unsafe. Requires Director to provide dam owner with notice and opportunity for a hearing. Allows Department to accept reports from engineers, geologists, or other specialists employed by dam owner. Allows Department to employ consultants, and assign cost, if dam owner report is insufficient. Allows Director to issue proposed final order to dam owner if Department finds dam owner has not done required maintenance

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during inspection. Establishes that proposed final order may include required dam owner maintenance and impose civil penalties. Requires that no civil penalty be charged if dam owner complies with order. Allows Director to issue final order if dam owner does not comply.

Establishes that owner has 30 days or less to file contested case hearing request after Director sends notice. Establishes that dam owner has ten days or less to file contested case hearing request after Director sends notice if dam poses immediate threat. Allows Department to apply for temporary or permanent injunction if Department believes dam owner is in violation of action plan. Allows Department to request Attorney General or District Attorney declare dam public nuisance if court grants injunction and dam owner does not comply.

Allows Water Resources Commission (Commission) to adopt rules for administration and enforcement. Requires Commission to adopt schedule of civil penalties and conditions that allow Department to remit civil penalty. Establishes that Commission can not impose more than \$5,000 civil penalty for violation of dam construction plan, dam removal plan, or emergency action plan. Establishes that Commission can not impose more than \$5,000 civil penalty each day that dam owner is in violation of required maintenance actions of significant or high hazard dams. Makes violation of certain director or appellate court orders misdemeanor punishable by maximum of six months' incarceration, \$2,500 fine, or both.

Requires owner of dam with high hazard rating, determined by Department inspection or analysis, to develop emergency action plan. Requires Department, Office of Emergency Management, and local emergency services review emergency action plans. Requires dam owner to implement emergency action plan if dam conditions threaten or potentially threaten failure. Allows Department to take practicable action to reduce water level or leakage. Establishes that Department actions do not relieve dam owner of responsibility.

Requires owner of dam to provide Department with contact information. Requires dam owner to notify Department if contact information changes or if dam title transfers. Requires dam owner to review and evaluate dam conditions, keep dam in good repair, and address detection conditions that may pose risk of dam failure.

Becomes operative July 1, 2020. Takes effect on the 91st day following adjournment sine die.

Fiscal: May have fiscal impact, no statement yet issued

Revenue: May have revenue impact, no statement yet issued

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Adds definition for dam that includes appurtenant structure. Changes infrastructure to public infrastructure. Removes requirement that person seeking Water Resources Department (Department) approval for construction of dam more than 25 feet in height, and with annual flow exceeding two cubic feet per second, demonstrate that dam is readily adaptable to hydroelectric generation. Removes requirement that owner removing dam obtain approval from Department. Requires that owner removing dam notify Department. Allows Department to require modification of removal plan. Removes requirement that Water Resources Director (Director) issue proposed final order if Department believes dam is unsafe. Removes requirement that Director issue final order after issuing proposed final order and allowing an opportunity for hearing. Requires that Water Resources Commission adopt rules establishing standards for the construction and removal of dam site, plans, specifications, designs, and other engineering requirements.

Fiscal: May have fiscal impact, no statement yet issued

Revenue: May have revenue impact, no statement yet issued

BACKGROUND:

The Oregon Water Resources Department (Department) is the state agency charged with overseeing the safety of more than 960 dams across the state. These dams store water for agriculture, cities, industry, recreation, fisheries, and other purposes. Many of Oregon's dam safety statutes have not been updated since 1929. According to the Department, dam owner responsibilities, the Department's role during emergencies, and the process for constructing, removing, and maintaining dams are unclear.

House Bill 2085 would: regulate construction, modification, and removal of dams and appurtenant structures; provide for Department inspection of dams; require dam owners to supply information to the Department and to prepare an emergency plan; require Department to notify dam owner if dam has a significant or high hazard rating and is in need of maintenance action; establish dam enforcement authority for Water Resources Commission (Commission) and Department; and authorize the Commission to impose civil penalties for certain violations.