

HB 2085 -1, -4 STAFF MEASURE SUMMARY

House Committee On Natural Resources

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Meeting Dates: 3/5, 4/4, 4/9

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

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-4 Replaces measure.

Defines key terms.

Exempts dams less than 10 feet in height or dams that impound less than three million gallons of water or wastewater from this regulation. Exempts dams regulated under federal dam safety program from this regulation. Establishes that Water Resources Department (WRD) must examine and approve in writing the site, plans and specifications, features, and other information prior to person constructing dam. Establishes dam may not be used to impound water or waste water until final documentation has been submitted and accepted by WRD after completed construction. Authorizes Water Resources Commission (Commission) to adopt rules allowing all or portion of previous impoundment during modification. Authorizes WRD to charge a fee for examination of new or modified dam information. Establishes that fee may not exceed \$1,750 for low hazard rating; \$3,500 for significant hazard rating; or \$8,500 for high hazard rating. Authorizes WRD to waive approval and final documentation approval as necessary to address actual or potential dam failure that poses imminent risk to life, property, or public infrastructure.

Requires owner of dam with significant or high hazard rating notify WRD and follow Commission standards for safe dam removal. Requires dam owner provide WRD with removal plan allowing WRD reasonable time to evaluate plan. Reauthorizes WRD to evaluate removal plan to ensure plan includes appropriate safety precautions from temporary inundation below dam. Authorizes WRD to require modification of removal plan or require work be supervised by an engineer to extent necessary to protect life, property, or public infrastructure from temporary inundation. Requires WRD provide dam owner with opportunity to meet if they require modification of removal plan or supervision of engineer.

Authorizes WRD or agents or representative to inspect dam and site, plans and specifications, features and other information regarding construction, maintenance, and operation of dam. Requires WRD inspect high hazard dams annually unless different inspection schedule determined. Authorizes WRD, with consent of person residing near dam, conduct or order inspection of dam at any time. Requires WRD provide dam owner with inspection document describing conditions of dam and specific maintenance actions recommended.

Requires WRD notify dam owners if inspection results in significant or high hazard dam rating and specify: why inspection caused WRD to conclude dam is unsafe or potentially unsafe; action WRD concludes necessary to address alleged unsafe or potentially unsafe conditions; opportunity for dam owner to meet with WRD; and opportunity for dam owner to provide information to challenge WRD conclusion. Requires WRD notify dam owner by registered mail or certified mail with return receipt requested.

Authorizes WRD to cooperate with significant or high hazard dam owner efforts to develop plan and time frame for corrective action. Authorizes WRD to consider relevant information when determining plan and time frame for corrective action is agreeable.

Authorizes Water Resources Director to issue proposed final order if: WRD and dam owner do not agree on plan and time frame for corrective action; dam owner failed to comply with plan or timeframe; or WRD concludes dam is unsafe. Requires Water Resources Director provide opportunity for hearing if proposed final order issued.

Requires proposed final order include specific information that caused WRD to conclude dam is unsafe or potentially unsafe. Allows proposed final order to provide provisions including: specific information and conditions which caused WRD to determine dam is unsafe; requiring dam owner consult with engineer to assess conditions and to identify specific corrective action; specifying commencement and completion dates for corrective actions; restricting maximum reservoir level until correction action completed; directing dam may not be sued for storage, restraint, or conveyance until corrective action completed; use of monitoring equipment. Authorizes Water Resources Director to issue final order after proposed final order. Authorizes WRD and dam owner to use informal or alternative means to resolve matter.

Authorizes WRD to accept reports of consulting engineers, geologists, or other specialists employed by dam

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owner. Allows WRD to employ consulting engineers, geologists, or other specialists at cost of WRD or divided between WRD and dam owner.

Requires WRD inform significant or high hazard dam owner of maintenance actions. Requires WRD include maintenance actions in inspection document and provide opportunity for dam owner to meet with WRD. Authorizes Water Resources Director to issue proposed final order if dam owner fails to take needed maintenance actions. Authorizes proposed final order to include: requiring dam owner to perform needed maintenance actions by specified date. Imposing civil penalty not to exceed amount established by Commission rule for failing to address needed maintenance actions. Establishes that Water Resources Director may not impose civil penalties if dam owner performs needed maintenance by date specified in proposed final order. Authorizes Water Resources Director to issue final order after proposed final order. Authorizes WRD and dam owner to use informal or alternative means to resolve matter.

Requires Office of Administrative Hearings expedited date of contested case hearing, to extent practicable, giving time for dam owner to prepare if WRD concludes dam is unsafe and Director request contested case hearing. Authorizes WRD to apply to circuit court for any county where dam is located for temporary or permanent injunction if dam poses imminent risk. Authorizes WRD to request Attorney General or district attorney bring action to have dam declared public nuisance if dam owner fails to comply with order.

Requires owner of record of dam provide WRD with contact information in emergency action plan, notify department of changes in contact information, and provide department with notify of transfer of dam title. Requires Dam owner review and evaluate condition of dam to keep dam in good repair, and address detected conditions that pose risk.

Requires WRD to require high hazard dam owner develop emergency action plan including: means for emergency detection; means for emergency level determination; identification of and information for notification and communications at each level of emergency condition; description of actions expected to be undertaken to reduce effects of failure; map of dam failure inundation zones; and procedures to follow at termination of emergency. Requires dam owner file copies of plan with WRD, Office of Emergency Management, and local emergency services. Requires WRD periodically review emergency action plan and require updates. Requires WRD determine appropriate frequency of conducting emergency exercises. Requires dam owner immediately implement actions of plan in case of emergency.

Requires dam owner, in emergency, with no emergency action plan, immediately: notify by telephone local emergency services, WRD, and, to extent practicable, persons in area, and take all practicable action to prevent dam failure. Authorizes WRD to advise dam owner of actions to prevent dam failure in case of immediate action. Authorizes WRD to communicate and coordinate necessary actions to reduce risk of dam failure. Authorizes WRD to enter property without notice or permission if dam presents imminent risk of failure.

Authorizes Commission to adopt rules necessary for administration and enforcement of regulation including: schedule of civil penalty amounts; conditions WRD may remit civil penalty; and standards for site, plans, specifications, designs and other engineering requirements. Authorizes WRD to enter into contracts, memorandums of understanding, and intergovernmental agreements for inspection and dam failure response. Allows WRD to accept moneys from public or private sources to administer and enforce regulation. Allows WRD to coordinate with federal, tribal, state, local, and private entities to enhance dam safety. Allows WRD to waive or reduce fee for dams inspected by another state agency.

Establishes that compliance with regulation does not relieve owner of dam from duty, obligation, or liability regarding ownership, maintenance, or operation of dam.

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Authorizes WRD to impose civil penalty of no more than \$2,000 per occurrence for violation of construction, removal, or emergency plan regulations. Authorizes WRD to impose civil penalty no more than \$5,00 for violation of maintenance action regulations. Establishes that moneys recovered from civil penalties credited to WRD and continuously appropriated to WRD for administration and enforcement of regulation.

Authorizes WRD to advise owner or operator of hydraulic structure in need of immediate action if conditions create risk.

Effective on 91st day following adjournment sine die.

FISCAL: Minimal fiscal impact

REVENUE: No revenue impact

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.