

A-Engrossed House Bill 2085

Ordered by the House April 16
Including House Amendments dated April 16

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.

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*] **department concludes** that dam having significant hazard rating or high hazard rating[, *or appurtenant structure to dam, is*] **has condition allegedly rendering dam** unsafe or potentially unsafe. Requires informing dam owner of maintenance action need disclosed by inspection. Establishes processes for [*stimulating*] **dam owner response, cooperative development of corrective action plan or use of proposed or final order to ensure** 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 **if dam lacks emergency action plan**. 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*] **action plan** and emergency response **exercises at dam having high hazard rating**.

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*] **director** to impose civil penalty for certain violations under dam regulation program, not to exceed [*\$5,000*] **\$2,000 per occurrence**. Authorizes director to impose civil penalty for violation of certain orders related to dam regulatory program, not to exceed \$5,000 per [*day*] **month**.

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 19 of this 2019 Act are added to and made a part of ORS chapter 540.

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.

DEFINITIONS

SECTION 2. As used in sections 2 to 18 of this 2019 Act:

(1) “Construct” means:

(a) To build a new dam;

(b) To modify dam height; or

(c) To make modifications to a dam that:

(A) Do not include modifying dam height, performing maintenance actions or removing a dam;

(B) Have a potential impact on the safe functioning of the dam; and

(C) Are to an extent that the modified dam structures no longer conform to the original design.

(2) “Dam” means:

(a) A hydraulic structure built above the natural ground gradeline that is used to impound water or wastewater; and

(b) Appurtenant structures on or adjacent to hydraulic structures described in paragraph (a) of this subsection that affect the stability of, or the control of water through or away from, the hydraulic structure.

(3) “Dam failure” means a rapid, sudden and uncontrolled release of water or wastewater.

(4) “Emergency action plan” means a plan that assists a dam owner or operator, and local emergency management personnel, to perform actions to ensure human safety in the event of a potential or actual dam failure.

(5) “High hazard rating” means that the department expects loss of human life to occur if a dam fails.

(6) “Maintenance action” means measures that are necessary to address a condition that, if left unaddressed, may cause a dam to become unsafe or potentially unsafe.

(7) “Potentially unsafe” means that, based on an inspection or analysis:

(a) It is probable that a dam cannot withstand an extreme flood or earthquake; or

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

(8) “Significant hazard rating” means the department does not expect loss of life to occur if a dam fails, but does expect extensive damage to property or public infrastructure.

(9) “Unsafe” means that, based on an inspection or analysis:

(a) It is probable that a dam cannot be depended upon to retain or pass water or wastewater as designed or operated; and

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

SCOPE OF DEPARTMENT PROGRAM

SECTION 3. (1) Sections 2 to 18 of this 2019 Act do not apply to:

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

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

(2) Except as provided in this subsection, sections 2 to 18 of this 2019 Act do not apply to dams regulated under a federal dam safety program. If there is a potential or actual risk of dam failure at a dam regulated under a federal dam safety program, the Water Resources

1 Department may aid in the inspection of the dam and may provide advice and assistance to
2 prevent, mitigate or respond to a potential or actual dam failure.

3
4 **CONSTRUCTION PLAN APPROVAL**

5
6 **SECTION 4.** (1) A person may not construct a dam unless the Water Resources Depart-
7 ment has examined the site, plans and specifications, features and other supporting infor-
8 mation regarding the construction and operation of the dam and has approved them in
9 writing.

10 (2) Except as provided in this subsection, a dam may not be used to impound water or
11 wastewater until final documentation for the site, plans and specifications, features and
12 other supporting information of the dam has been submitted to and accepted by the depart-
13 ment after completion of construction. The Water Resources Commission may adopt rules
14 to allow all or a portion of a previously authorized impoundment during construction work
15 on a dam that is undergoing modification.

16 (3) The department may charge a fee for an examination under subsection (1) of this
17 section of information regarding construction of a new dam or modification of a dam. The
18 fee may not exceed the lesser of the costs of providing the examination or:

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

22 (4) The department may waive the requirements in subsections (1) and (2) of this section
23 as necessary to address an actual or potential dam failure that poses an imminent risk to
24 life, property or public infrastructure, including but not limited to waiving the requirements
25 for actions identified in an emergency action plan.

26
27 **REMOVAL OF DAM**

28
29 **SECTION 5.** (1) An owner seeking to remove a dam that has a significant hazard rating
30 or high hazard rating must notify the Water Resources Department and follow Water Re-
31 sources Commission standards for safe dam removal. The owner shall provide the depart-
32 ment with a removal plan sufficiently in advance of the removal to allow the department
33 reasonable time for evaluating the plan. The department may evaluate the removal plan to
34 ensure that the plan includes appropriate safety precautions to protect life, property and
35 public infrastructure from temporary inundation in the area below the dam during dam re-
36 moval. The department may require modification of the removal plan or require that the
37 work performed under the plan be supervised by an engineer to the extent the department
38 concludes is necessary to protect life, property or public infrastructure from temporary
39 inundation during dam removal. If the department requires modification of a dam removal
40 plan or requires that the work be supervised by an engineer, the department shall provide
41 the owner with an opportunity to meet with the department.

42 (2) A person may not perform removal work on a dam that has a significant hazard rat-
43 ing or high hazard rating except as provided in subsection (1) of this section.

44
45 **INSPECTIONS**

1 **SECTION 6.** (1) The Water Resources Department, or agents or representatives of the
2 department, may inspect a dam and the site, plans and specifications, features and other
3 supporting information regarding the construction, maintenance and operation of a dam. If
4 a dam has a high hazard rating, the department shall ensure that the dam is inspected an-
5 nually unless the department determines that a different inspection schedule is appropriate.

6 (2) In addition to inspections described in subsection (1) of this section, the department
7 may, upon a written request from a person residing near a dam, conduct or order an in-
8 spection of a dam at any time during or after completion of construction.

9 (3) The department shall provide the dam owner with an inspection document describing
10 the condition of the dam and specific maintenance actions recommended by the department.

11
12 **CORRECTIVE ACTION FOR**
13 **UNSAFE OR POTENTIALLY UNSAFE CONDITIONS**
14

15 **SECTION 7.** (1) If, as the result of an inspection or analysis of a dam that has a high
16 hazard rating or significant hazard rating, the Water Resources Department concludes that
17 corrective action is necessary to address a condition allegedly rendering the dam unsafe or
18 potentially unsafe, the department shall notify the dam owner regarding:

19 (a) Why the inspection or analysis of information and conditions causes the department
20 to conclude that the dam is unsafe or potentially unsafe;

21 (b) The action the department concludes is necessary to address the alleged unsafe or
22 potentially unsafe condition;

23 (c) The opportunity for the dam owner to meet with the department; and

24 (d) The opportunity for the dam owner to provide information to challenge the
25 department's conclusion alleging that the dam is unsafe or potentially unsafe.

26 (2) The department shall notify a dam owner under subsection (1) of this section by:

27 (a) Registered mail; or

28 (b) Certified mail with return receipt requested.

29 **SECTION 8.** (1) If the Water Resources Department provides notification to a dam owner
30 under section 7 of this 2019 Act stating that the department has concluded that a dam having
31 a significant hazard rating or high hazard rating is unsafe or potentially unsafe, the depart-
32 ment may cooperate with dam owner efforts to develop a plan and time frame for corrective
33 action that is agreeable to the department. When determining whether a plan and time
34 frame for corrective action developed by a dam owner is agreeable to the department, the
35 department may consider any relevant information, including, but not limited to, information
36 regarding:

37 (a) The specific dam;

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

39 (c) The impacts associated with dam failure.

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

43 (a) The department and the dam owner do not agree on a plan and time frame under
44 subsection (1) of this section for corrective action to resolve a condition identified in a no-
45 tification that was sent by mail under section 7 of this 2019 Act;

1 (b) The dam owner has failed to comply with a plan or time frame agreed to under sub-
2 section (1) of this section; or

3 (c) The department concludes, based on inspection or analysis, that the dam is unsafe.

4 (3) If the director issues a proposed final order under subsection (2) of this section, the
5 director shall provide the dam owner with notice and opportunity for hearing under ORS
6 183.413 to 183.470. If the notice is provided by mail, the director shall use a form of mail de-
7 scribed in section 7 of this 2019 Act. The proposed final order shall include the specific in-
8 formation and conditions that have caused the department to conclude that the dam is
9 unsafe or potentially unsafe. The proposed final order may also include, but need not be
10 limited to, provisions:

11 (a) Notifying the dam owner as described in section 7 of this 2019 Act why specific in-
12 formation and conditions have caused the department to conclude that the dam is unsafe, if
13 that notification has not been provided.

14 (b) Requiring that the dam owner consult with an engineer to assess the nature and ex-
15 tent of the conditions specified by the department allegedly indicating that the dam is unsafe
16 or potentially unsafe and, as necessary, to identify specific corrective action.

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

19 (d) Restricting the maximum reservoir level until corrective action has been completed
20 to the satisfaction of the department.

21 (e) Directing that the dam may not be used for the storage, restraint or conveyance of
22 water until corrective action has been completed to the satisfaction of the department.

23 (f) If the department concludes that monitoring is necessary to protect life, property or
24 public infrastructure, requiring the installation and use of monitoring equipment at a dam
25 to monitor unsafe or potentially unsafe conditions. If the department requires monitoring,
26 the department shall allow the use of the most economical monitoring equipment sufficient
27 to protect life, property and public infrastructure.

28 (4) After issuing a proposed final order and allowing an opportunity for hearing, the di-
29 rector may issue a final order as provided under ORS chapter 183.

30 (5) The department and a dam owner may at any time use informal or alternative means,
31 including but not limited to stipulation, agreed settlement or consent orders, to resolve a
32 matter for which the department has notified the dam owner as described in section 7 of this
33 2019 Act.

34 **SECTION 9.** The Water Resources Department may accept the reports of consulting en-
35 gineers, geologists or other specialists employed by the dam owner. If the department con-
36 cludes that the reports are insufficient, the department may employ consulting engineers,
37 geologists or other specialists as agents or representatives of the department to make special
38 examinations and inspections and to prepare reports for the department. The cost of such
39 special examinations, inspections and reports shall be paid by the department or, upon mu-
40 tual agreement, may be divided between the department and the dam owner.

41
42 **MAINTENANCE ACTIONS**
43

44 **SECTION 10.** (1) If, as the result of an inspection under section 6 of this 2019 Act of a
45 dam that has a significant hazard rating or high hazard rating, the Water Resources De-

1 department concludes that maintenance actions are needed, the department shall inform the
2 dam owner of the need for maintenance actions. The department shall provide the infor-
3 mation by inclusion in the inspection document and provide the dam owner with the oppor-
4 tunity to meet with the department concerning the information.

5 (2) If the department or its agent or representative conducts an inspection and the de-
6 partment determines that the dam owner has failed to take needed maintenance actions
7 identified in a prior inspection document, in addition to any other available remedies, the
8 Water Resources Director may issue a proposed final order under subsection (3) of this
9 section. A proposed final order under subsection (3) of this section shall include notice and
10 opportunity for hearing under ORS 183.413 to 183.470.

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

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

15 (b) Imposing a civil penalty under section 19 of this 2019 Act, not to exceed an amount
16 established by the Water Resources Commission by rule, for failing to address the needed
17 maintenance actions identified in the proposed final order or failing to comply with a resolu-
18 tion reached through informal or alternative means.

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

23 (5) After issuing a proposed final order and allowing an opportunity for hearing, the di-
24 rector may issue a final order as provided under ORS chapter 183.

25 (6) The department and a dam owner may at any time use informal or alternative means,
26 including but not limited to stipulation, agreed settlement or consent orders, to resolve a
27 matter for which the department has notified the dam owner as described in this section.

28
29 **ENFORCEMENT**

30
31 **SECTION 11.** If the Water Resources Director issues a proposed final order under section
32 8 of this 2019 Act, regarding a dam that the Water Resources Department has concluded is
33 unsafe, and the director requests that the scheduling of any contested case hearing on the
34 proposed final order be expedited, the Office of Administrative Hearings shall expedite the
35 date of the contested case hearing to the extent that the office considers is practicable and
36 will give the dam owner reasonable time to prepare.

37 **SECTION 12.** In addition to any other available remedies, if the Water Resources De-
38 partment has information that a person is violating or intends to violate a final order issued
39 under section 8 of this 2019 Act, or concludes that a dam poses an imminent risk to life,
40 property or public infrastructure, the department may apply to the circuit court for Marion
41 County or to the circuit court for any county where all or part of the dam is located for a
42 temporary or permanent injunction requiring the person to:

43 (1) Refrain from violation of the order; or

44 (2) Take any actions necessary to remedy an imminent risk to life, property or public
45 infrastructure.

1 **SECTION 13.** In addition to any other available remedies, if an order issued under section
2 8 (4) of this 2019 Act becomes final by operation of law or on appeal, and the dam owner fails
3 to comply with the order, the Water Resources Department may request that the Attorney
4 General or the district attorney of any county where all or part of the dam is located bring
5 an action to have the dam declared a public nuisance that must be removed at the dam
6 owner's expense.
7

8 **EMERGENCY PLANNING; EMERGENCIES**
9

10 **SECTION 14.** (1) The owner of record of a dam shall:

11 (a) Provide the Water Resources Department with contact information in an emergency
12 action plan, or in writing if no emergency action plan exists, for:

- 13 (A) The dam owner;
14 (B) The operator of the dam, if other than the owner; and
15 (C) The individual in immediate charge of the dam;

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

18 (c) Provide the department with notice, in a form acceptable to the department, after
19 completing a transfer of title for the dam.

20 (2) The dam owner shall review and evaluate the conditions at the dam as necessary to:

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

23 **SECTION 15.** (1) The Water Resources Department shall require the owner of a dam that
24 has a high hazard rating to develop an emergency action plan for the dam.

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

- 27 (a) Means for emergency condition detection;
28 (b) Means for emergency level determination;
29 (c) Identification of, and information necessary for, notifications and communications to
30 be made at each level of emergency condition;

31 (d) A description of actions expected to be undertaken to prevent dam failure or reduce
32 the effects of dam failure;

33 (e) A map of dam failure inundation zones for varying conditions, including, but not
34 limited to, dry weather conditions and high flood conditions; and

35 (f) Procedures to be followed at the termination of an emergency.

36 (3) A dam owner that develops an emergency action plan required under this section shall
37 file copies of the plan with the department, the Office of Emergency Management and the
38 local emergency services agency for the county where the dam is located. The department,
39 in consultation with the office and local emergency services agency, shall periodically review
40 the emergency action plan and may require updates to the plan.

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

44 **SECTION 16.** (1) If an actual or potential dam failure creates an imminent risk to life,
45 property or public infrastructure, and an emergency action plan exists for the dam, the dam

1 owner shall immediately implement the actions specified in the plan.

2 (2) If an actual or potential dam failure creates an imminent risk to life, property or
3 public infrastructure, and no emergency action plan exists for the dam, the dam owner shall
4 immediately:

5 (a) Notify by telephone or other method that ensures immediate notification:

6 (A) If the dam has a significant hazard rating, the local emergency services agency for
7 the county where the dam is located;

8 (B) The Water Resources Department; and

9 (C) To the extent practicable, persons in areas where the potential for dam failure cre-
10 ates a risk to life, property or public infrastructure; and

11 (b) Take all practicable actions to prevent dam failure.

12 (3) If the department is aware of conditions that indicate the need for immediate action
13 to prevent dam failure, the department may advise the owner or operator of the dam or the
14 individual in immediate charge of the dam regarding the actions necessary to prevent the
15 dam failure.

16 (4) The department may communicate and coordinate actions necessary to reduce the
17 risk of dam failure. If there is a rapidly increasing leakage or risk of overtopping at a dam
18 that has a significant hazard rating or high hazard rating, the department may open gates
19 or valves and may siphon or pump water to reduce the water level in the reservoir. Activities
20 under this subsection by the department do not relieve the owner, the operator or an indi-
21 vidual in immediate charge of a dam from the responsibility to prevent the dam failure.

22 (5) If a dam that has a significant hazard rating or high hazard rating presents an im-
23 minent risk of dam failure, the department or its agent or representative may enter without
24 notice or permission upon any property that affords access to the dam to the extent entry
25 is reasonable or necessary to allow evaluation of the condition or risk or to undertake
26 actions described in subsection (4) of this section.

27
28 **RULES; POWERS**

29
30 **SECTION 17.** (1) The Water Resources Commission may adopt rules the commission
31 deems necessary or convenient for the administration and enforcement of sections 2 to 18
32 of this 2019 Act.

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

35 (a) A schedule of civil penalty amounts for purposes of section 19 of this 2019 Act;

36 (b) The conditions under which the Water Resources Department may remit a civil pen-
37 alty; and

38 (c) Standards for the site, plans, specifications, designs and other engineering require-
39 ments for the construction or removal of a dam.

40 (3) In addition to any other powers of the department, in carrying out department duties,
41 functions and powers under sections 2 to 18 of this 2019 Act, the department may:

42 (a) Enter into contracts, memorandums of understanding and intergovernmental agree-
43 ments for:

44 (A) The inspection, evaluation or study of dams; or

45 (B) The response to dam failure or potential dam failure;

1 (b) Accept moneys from any public or private source for the administration and
2 enforcement of sections 2 to 18 of this 2019 Act or for enhancing the safety of dams or the
3 protection of life, property or public infrastructure in areas below dams;

4 (c) Coordinate with federal, tribal, state, local and private entities to enhance the safety
5 of dams or the protection of life, property or public infrastructure in areas below dams; and

6 (d) Waive or reduce fees for dams inspected by another state agency under a memoran-
7 dum of understanding with the department.

8
9 **EFFECT ON RESPONSIBILITIES AND LIABILITY**

10
11 **SECTION 18.** (1) Compliance with sections 2 to 18 of this 2019 Act does not relieve the
12 owner or operator of a dam or an individual in immediate charge of a dam from any duty,
13 obligation or liability regarding the ownership, maintenance or operation of the dam.

14 (2) Water Resources Department actions and services under sections 2 to 18 of this 2019
15 Act do not relieve the owner or operator of a dam or an individual in immediate charge of
16 a dam from any duty, obligation or liability regarding the ownership, maintenance or opera-
17 tion of the dam.

18
19 **CIVIL PENALTIES**

20
21 **SECTION 19.** (1) The Water Resources Director may impose a civil penalty of not more
22 than \$2,000 per occurrence for a violation of sections 4, 5 or 15 of this 2019 Act.

23 (2) The Water Resources Director may impose a civil penalty, not to exceed \$5,000, by
24 order as provided under section 10 of this 2019 Act. If a violation of an order under section
25 10 of this 2019 Act is a continuing condition, each month that the condition continues is a
26 separate violation subject to imposition of a civil penalty.

27 (3) Moneys recovered from civil penalties imposed under this section shall be deposited
28 in the State Treasury and credited to an account of the Water Resources Department.
29 Moneys described in this section are continuously appropriated to the department for the
30 administration and enforcement of sections 2 to 18 of this 2019 Act.

31
32 **HYDRAULIC STRUCTURES**

33
34 **SECTION 20.** ORS 540.355 is amended to read:

35 540.355. (1) *[In lieu of the authority granted to the Water Resources Commission under ORS*
36 *540.350 (5),]* The Water Resources Department may inspect, evaluate and assess the condition of a
37 levee, **dike, ditch or other hydraulic structure** with the permission of the owner *[of the levee]*.

38 (2) In performing the actions under subsection (1) of this section, the department may:

39 (a) Provide recommendations and technical assistance;

40 (b) Advise on necessary maintenance and repairs;

41 (c) *[Require or]* Assist with the development of emergency action plans to ensure the safety of
42 life, *[and]* property **or public infrastructure**;

43 (d) Undertake activities necessary to identify the owner *[of a levee]* **or operator of the hy-**
44 **draulic structure or the individual in immediate charge of the hydraulic structure**;

45 (e) Assist with mapping the locations of *[levees]* **hydraulic structures**;

- 1 (f) Enter into contracts, **memorandums of understanding** and intergovernmental agreements;
- 2 (g) Accept and receive moneys **from any public or private source**;
- 3 (h) Accept and receive payment for services performed; and
- 4 (i) Exchange information and perform other actions as necessary to cooperate with private, lo-
- 5 cal, state and federal entities.

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

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

10 **(a) Advise the owner or operator of the hydraulic structure or the individual in immedi-**
11 **ate charge of the hydraulic structure regarding the actions necessary to prevent the failure;**
12 **and**

13 **(b) If the conditions create a risk to life, property or public infrastructure, notify emer-**
14 **gency managers.**

15 **(4) The acceptance of department services under this section does not relieve the owner**
16 **or operator of the hydraulic structure or the individual in immediate charge of the hydraulic**
17 **structure from any duty, obligation or liability regarding the ownership, maintenance or op-**
18 **eration of the hydraulic structure.**

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

21
22 **CONFORMING AMENDMENTS**
23

24 **SECTION 21.** ORS 517.971 is amended to read:

25 517.971. Each applicant for a permit to operate a mining operation shall submit a consolidated
26 application to the State Department of Geology and Mineral Industries. The department and the
27 permitting and cooperating agencies shall not begin deliberating on whether to issue a permit until
28 the department receives an application fee and a complete consolidated application that includes but
29 is not limited to:

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

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

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

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

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

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

40 (7) A proposed:

41 (a) Mine plan;

42 (b) Processing plan;

43 (c) Water budget;

44 (d) Fish and wildlife protection and mitigation plan;

45 (e) Operational monitoring and reporting plan;

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

31 **SECTION 22.** ORS 537.010 is amended to read:

32 537.010. As used in this chapter, "Water Rights Act" means and embraces ORS 536.050, 537.120,
33 537.130, 537.140 to 537.252, 537.390 to 537.400, 538.420, 540.010 to 540.120, 540.210 to 540.230, 540.310
34 to 540.430, 540.505 to 540.585 and 540.710 to 540.750 **and sections 2 to 18 of this 2019 Act.**

35 **SECTION 23.** ORS 537.400 is amended to read:

36 537.400. (1) All applications for reservoir permits shall be subject to the provisions of ORS
37 537.130, 537.140, 537.142 and 537.145 to 537.240, except that an enumeration of any lands proposed
38 to be irrigated under the Water Rights Act shall not be required in the primary permit. But the
39 party proposing to apply to a beneficial use the water stored in any such reservoir shall file an
40 application for permit, to be known as the secondary permit, in compliance with the provisions of
41 ORS 537.130, 537.140, 537.142 and 537.145 to 537.240. The application shall refer to the reservoir for
42 a supply of water and shall show by documentary evidence that an agreement has been entered into
43 with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water
44 for the purposes set forth in the application, that the applicant has provided notice of the applica-
45 tion to the operator of the reservoir and, if applicable, that an agreement has been entered into with

1 the entity delivering the stored water. When beneficial use has been completed and perfected under
 2 the secondary permit, the Water Resources Department shall take the proof of the water user under
 3 the permit. The final certificate of appropriation shall refer to both the ditch described in the sec-
 4 ondary permit and the reservoir described in the primary permit.

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

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

19 (4) If a dam [*safety review is required under ORS 540.350*] **is subject to approval under section**
 20 **4 of this 2019 Act**, the department may issue a final order approving an application on the basis
 21 of preliminary [*plans, specifications and*] **examination of the site, plans and specifications, fea-**
 22 **tures and other** supporting information if the approval includes a condition requiring [*the*
 23 *commission's*] **department** approval of final [*plans, specifications and*] **documentation for the site,**
 24 **plans and specifications, features and other** supporting information under [*ORS 540.350*] **section**
 25 **4 of this 2019 Act** before the permit is issued.

26 (5) Notwithstanding the provisions of ORS 537.211 (2), the department may approve an applica-
 27 tion for a reservoir permit for [*which a dam safety review is required under ORS 540.350*] **a dam**
 28 **that is subject to construction plan approval under section 4 of this 2019 Act** and issue a
 29 permit, subject to the condition that before the reservoir may be filled, the permittee shall submit
 30 to the department evidence that the permittee owns, or has written authorization or an easement
 31 permitting access to, all lands to be inundated by the reservoir.

32 **SECTION 24.** ORS 540.990 is amended to read:

33 540.990. (1) Violation of any provision of ORS 540.440 is a Class C misdemeanor.

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

36 (3) **Failure to comply with a final order issued under section 8 (4) of this 2019 Act, or with**
 37 **an order issued by an appellate court on appeal from a final order under section 8 (4) of this**
 38 **2019 Act, is a Class B misdemeanor.**

40 TRANSITIONAL PROVISIONS

41
 42 **SECTION 25.** The repeal of ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 and
 43 540.400 by section 27 of this 2019 Act:

44 (1) **Does not excuse any violation of ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390**
 45 **or 540.400 prior to the operative date described in section 28 of this 2019 Act. Any such vio-**

1 lation is subject to the penalties established for that violation under the provisions of ORS
2 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 or 540.400 in effect at the time of the vio-
3 lation.

4 (2) Does not affect the validity of any order of the Water Resources Commission, the
5 Water Resources Director, the State Engineer or a circuit or appellate court issued under
6 ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 or 540.400 that was in effect immediately
7 prior to the operative date described in section 28 of this 2019 Act. Any such order remains
8 enforceable as provided under the provisions of ORS 540.350, 540.353, 540.360, 540.370, 540.380,
9 540.390 or 540.400 in effect at the time the order was issued.

10
11 **CAPTIONS**

12
13 **SECTION 26.** The unit captions used in this 2019 Act are provided only for the conven-
14 ience of the reader and do not become part of the statutory law of this state or express any
15 legislative intent in the enactment of this 2019 Act.

16
17 **REPEALS**

18
19 **SECTION 27.** ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 and 540.400 are re-
20 pealed.

21
22 **OPERATIVE DATE**

23
24 **SECTION 28.** Sections 1 to 16, 18 and 19 of this 2019 Act, the amendments to ORS 517.971,
25 537.010, 537.400, 540.355 and 540.990 by sections 20 to 24 of this 2019 Act and the repeal of ORS
26 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 and 540.400 by section 27 of this 2019 Act be-
27 come operative on July 1, 2020.

28
29 **EFFECTIVE DATE**

30
31 **SECTION 29.** This 2019 Act takes effect on the 91st day after the date on which the 2019
32 regular session of the Eightieth Legislative Assembly adjourns sine die.
33