

Requested by HOUSE COMMITTEE ON NATURAL RESOURCES (at the request of the Water Resources Department)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2085**

1 On page 1 of the printed bill, delete lines 6 through 17 and delete pages
2 2 through 14 and insert:

3
4 **“INCORPORATION INTO CHAPTER**

5
6 **“SECTION 1. Sections 2 to 21 of this 2019 Act are added to and made**
7 **a part of ORS chapter 540.**

8
9 **“DEFINITIONS**

10
11 **“SECTION 2. As used in sections 2 to 20 of this 2019 Act:**

12 **“(1) ‘Construct’ means:**

13 **“(a) To build a new dam or a new part of a dam; or**

14 **“(b) To modify dam height or otherwise modify an existing dam:**

15 **“(A) Through actions other than the exercise of routine mainte-**
16 **nance;**

17 **“(B) In a manner that has a potential impact on the safe function-**
18 **ing of the dam; and**

19 **“(C) To an extent that the modified dam structures no longer con-**
20 **form to the original design.**

21 **“(2) ‘Dam’ means:**

1 (a) An artificial barrier designed or constructed for the purpose of
2 storing and controlling water or wastewater; and

3 (b) Any structures appurtenant to the artificial barrier that are
4 designed to control the flow of water or wastewater away from, over
5 or through the barrier or to promote barrier stability.

6 “(3) ‘Dam failure’ means an uncontrolled release of water or
7 wastewater due to movement, erosion, damage or improper operation
8 of a dam.

9 “(4) ‘Emergency action plan’ means a plan that assists a dam
10 owner, other dam personnel, state and local emergency management
11 personnel or others to perform actions to ensure human safety in the
12 event of a potential or actual dam failure.

13 “(5) ‘High hazard rating’ means that the Water Resources Depart-
14 ment expects loss of human life to occur if a dam fails.

15 “(6) ‘Maintenance action’ means measures that the department be-
16 lieves necessary to address a condition that, if left unaddressed, may
17 cause a dam to become unsafe or potentially unsafe.

18 “(7) ‘Potentially unsafe’ means that, based on an inspection or
19 analysis:

20 “(a) It is probable that a dam cannot withstand an extreme flood,
21 earthquake or other catastrophic event; or

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

23 “(8) ‘Significant hazard rating’ means the department does not ex-
24 pect loss of life to occur if a dam fails, but does expect extensive
25 damage to property or public infrastructure.

26 “(9) ‘Unsafe’ means that, based on an inspection or analysis:

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

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

1 "POLICY

2
3 "SECTION 3. It is the policy of this state to protect public health,
4 safety and welfare through the administration of a program to review
5 and evaluate the safety of dams that might pose a risk to life, property
6 or public infrastructure in the event of dam failure.

7
8 "SCOPE OF DEPARTMENT PROGRAM

9
10 "SECTION 4. (1) An exemption from water right requirements does
11 not exempt a dam from sections 2 to 20 of this 2019 Act.

12 "(2) Sections 2 to 20 of this 2019 Act do not apply to:

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

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

16 "(3) Except as provided in this subsection, sections 2 to 20 of this
17 2019 Act do not apply to dams regulated under a federal dam safety
18 program. If there is a potential or actual risk of dam failure at a dam
19 regulated under a federal dam safety program, the Water Resources
20 Department may aid in the inspection of the dam and may provide
21 advice and assistance to prevent, mitigate or respond to a potential
22 or actual dam failure.

23
24 "CONSTRUCTION PLAN APPROVAL

25
26 "SECTION 5. (1) A person may not construct a dam unless the
27 Water Resources Department has examined the site, plans and spec-
28 ifications, features and other supporting information regarding the
29 construction and operation of the dam and has approved them in
30 writing.

1 **“(2) Except as provided in this subsection, a dam may not be used**
2 **to impound water or wastewater until final documentation for the site,**
3 **plans and specifications, features and other supporting information of**
4 **the dam has been submitted to and accepted by the department after**
5 **completion of construction. The Water Resources Commission may**
6 **adopt rules to allow all or a portion of a previously authorized**
7 **impoundment during construction described in section 2 (1)(b) of this**
8 **2019 Act. This subsection does not allow the authorization of an**
9 **impoundment for which a water right permit is required but has not**
10 **been issued.**

11 **“(3) The department may charge a fee for an examination under**
12 **this section. The fee may not exceed the lesser of the costs of provid-**
13 **ing the examination or:**

14 **“(a) \$1,750 for a dam that has a low hazard rating;**

15 **“(b) \$3,500 for a dam that has a significant hazard rating; or**

16 **“(c) \$8,500 for a dam that has a high hazard rating.**

17
18 **“REMOVAL OF DAM**

19
20 **“SECTION 6. (1) An owner seeking to remove a dam that has a**
21 **significant hazard rating or high hazard rating must notify the Water**
22 **Resources Department and follow Water Resources Commission stan-**
23 **dards for safe dam removal. The owner shall provide the department**
24 **with the removal plan. The department may evaluate the removal plan**
25 **to ensure that the plan includes appropriate safety precautions to**
26 **protect life, property and public infrastructure from temporary**
27 **inundation in the area below the dam during dam removal. The de-**
28 **partment may require modification of the removal plan or require that**
29 **the work performed under the plan be supervised by an engineer to the**
30 **extent the department believes necessary to protect life, property or**

1 public infrastructure from temporary inundation during dam removal.

2 “(2) A person may not perform removal work on a dam that has a
3 significant hazard rating or high hazard rating except as provided in
4 a removal plan that the owner has provided to the department.

5
6 “INSPECTIONS

7
8 “SECTION 7. The Water Resources Department or its agents or
9 representatives may enter upon property for the purpose of carrying
10 out actions under sections 2 to 20 of this 2019 Act. The department
11 shall make reasonable efforts to obtain consent prior to the depart-
12 ment or its agents or representatives entering upon property under
13 this section. If the owner or operator does not respond to a request
14 to enter a property or denies entry upon a property, in addition to any
15 other available remedies, the department may apply for a warrant al-
16 lowing the department or its agents or representatives to enter upon
17 the property and conduct an inspection. This section does not prohibit
18 the issuance of an ex parte warrant based on probable cause.

19 “SECTION 8. (1) The Water Resources Department, or agents or
20 representatives of the department, may periodically inspect a dam and
21 the site, plans and specifications, features and other supporting in-
22 formation regarding the construction, maintenance and operation of
23 a dam. If a dam has a high hazard rating, the department shall ensure
24 that the dam is inspected annually unless the department determines
25 that a different inspection schedule is appropriate. The department
26 may, upon a written request from a person residing near a dam, con-
27 duct or order an inspection of a dam at any time during or after
28 completion of construction.

29 “(2) The department shall provide the dam owner with an inspection
30 summary.

1 **“CORRECTIVE ACTION FOR**
2 **UNSAFE OR POTENTIALLY UNSAFE CONDITIONS**

3
4 **“SECTION 9. (1) If, as the result of an inspection or analysis of a**
5 **dam that has a high hazard rating or significant hazard rating, the**
6 **Water Resources Department believes that corrective action is neces-**
7 **sary to address a condition rendering the dam unsafe or potentially**
8 **unsafe, the department shall notify the dam owner regarding:**

9 **“(a) The information and conditions that cause the department to**
10 **believe the dam is unsafe or potentially unsafe;**

11 **“(b) The action the department believes is necessary to address the**
12 **unsafe or potentially unsafe condition; and**

13 **“(c) Whether the dam owner may request a meeting with the de-**
14 **partment prior to the dam owner submitting plans and a proposed**
15 **timeframe for remedying the unsafe or potentially unsafe condition.**

16 **“(2) Except as provided in subsection (3) of this section, the de-**
17 **partment shall notify a dam owner under subsection (1) of this section**
18 **by:**

19 **“(a) Registered mail; or**

20 **“(b) Certified mail with return receipt requested.**

21 **“(3) If the department believes that the dam is unsafe, department**
22 **notification to a dam owner under this section may be accomplished**
23 **by inclusion in a proposed final order issued by the Water Resources**
24 **Director under section 10 (3) of this 2019 Act.**

25 **“SECTION 10. (1) The Water Resources Department may at any**
26 **time use informal or alternative means to resolve a matter for which**
27 **the department has provided a dam owner with notification under**
28 **section 9 of this 2019 Act. Informal or alternative means may include,**
29 **but are not limited to, stipulation, agreed settlement, consent order**
30 **or order of default.**

1 “(2) If the department provides notification to a dam owner under
2 section 9 of this 2019 Act stating that the department believes a dam
3 that has a significant hazard rating or high hazard rating to be unsafe
4 or potentially unsafe, the department may cooperate with dam owner
5 efforts to develop a plan and timeframe for corrective action that is
6 agreeable to the department. When determining whether a plan and
7 timeframe for corrective action developed by a dam owner is agreeable
8 to the department, the department may consider any relevant infor-
9 mation, including, but not limited to, information regarding:

10 “(a) The specific dam;

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

12 “(c) The impacts associated with dam failure.

13 “(3) In addition to any other available remedies, the Water Re-
14 sources Director may issue a proposed final order containing one or
15 more of the provisions described in subsection (4) of this section if:

16 “(a) The department and the dam owner do not agree on a plan and
17 timeframe under subsection (2) of this section for corrective action to
18 resolve a condition identified in a notification that was sent by mail
19 under section 9 of this 2019 Act and have not resolved the matter
20 through informal or alternative means under subsection (1) of this
21 section;

22 “(b) The dam owner has failed to comply with a plan and timeframe
23 agreed to under subsection (2) of this section or with a resolution
24 reached through informal or alternative means under subsection (1)
25 of this section; or

26 “(c) The department believes, based on inspection or analysis, that
27 the dam is unsafe.

28 “(4) If the director issues a proposed final order under subsection
29 (3) of this section, the director shall provide the dam owner with no-
30 tice and opportunity for hearing under ORS 183.413 to 183.470. The

1 proposed final order may include, but need not be limited to, pro-
2 visions:

3 “(a) Notifying the dam owner as described in section 9 of this 2019
4 Act that the department believes the dam is unsafe.

5 “(b) Requiring that the dam owner consult with an engineer to de-
6 termine the nature and extent of any condition indicating that the
7 dam is unsafe or potentially unsafe.

8 “(c) Specifying commencement and completion dates for any cor-
9 rective action the department deems necessary to remedy the unsafe
10 or potentially unsafe condition.

11 “(d) Restricting the maximum reservoir level.

12 “(e) Directing that the gates of the dam be kept open until correc-
13 tive action has been completed to the satisfaction of the department.

14 “(f) Directing that an opening in the dam be made and maintained
15 until corrective action is completed to the satisfaction of the depart-
16 ment.

17 “(g) Directing that the dam may not be used for the storage, re-
18 straint or conveyance of water until corrective action has been com-
19 pleted to the satisfaction of the department.

20 “(h) Requiring the installation of monitoring equipment at a dam.
21 If the department believes that monitoring is necessary to protect life,
22 property or public infrastructure, the proposed final order may require
23 use of the equipment to monitor any unsafe or potentially unsafe
24 condition.

25 “(5) After issuing a proposed final order and allowing an opportu-
26 nity for hearing, the director may issue a final order as provided under
27 ORS chapter 183.

28 “SECTION 11. The Water Resources Department may accept the
29 reports of consulting engineers, geologists or other specialists em-
30 ployed by the dam owner. If the department believes the reports in-

1 sufficient, the department may employ consulting engineers,
2 geologists or other specialists as agents or representatives of the de-
3 partment to make special examinations and inspections and to prepare
4 reports for the department. The cost of such special examinations,
5 inspections and reports shall be paid by the department or, upon mu-
6 tual agreement, may be divided between the department and the dam
7 owner.

8
9 **“MAINTENANCE ACTIONS**

10
11 **“SECTION 12. (1) If, as the result of an inspection under section 8**
12 **of this 2019 Act of a dam that has a significant hazard rating or high**
13 **hazard rating, the Water Resources Department believes that mainte-**
14 **nance actions are needed, the department shall inform the dam owner**
15 **of the need for maintenance actions. The department shall provide the**
16 **information by inclusion in the inspection summary.**

17 **“(2) If the department or its agent or representative conducts a**
18 **periodic inspection and the department determines that the dam owner**
19 **has failed to take needed maintenance actions identified in a prior**
20 **inspection summary, in addition to any other available remedies, the**
21 **Water Resources Director may issue a proposed final order under**
22 **subsection (3) of this section. A proposed final order under subsection**
23 **(3) of this section shall include notice and opportunity for hearing**
24 **under ORS 183.413 to 183.470.**

25 **“(3) Subject to subsection (2) of this section, the director may issue**
26 **a proposed final order that includes, but need not be limited to, pro-**
27 **visions:**

28 **“(a) Requiring the dam owner to perform the needed maintenance**
29 **actions by a specified date; and**

30 **“(b) Imposing a civil penalty under section 21 of this 2019 Act, not**

1 to exceed an amount established by the Water Resources Commission
2 by rule, for failing to address the needed maintenance actions identi-
3 fied in the proposed final order or failing to comply with a resolution
4 reached through informal or alternative means under subsection (5)
5 of this section.

6 “(4) If the dam owner performs needed maintenance actions re-
7 quired by a proposed final order issued under subsection (3) of this
8 section to the satisfaction of the department by the date specified in
9 the proposed final order, the director may not impose any civil penalty
10 that was described in the proposed final order.

11 “(5) The department may at any time use informal or alternative
12 means to resolve a matter involving needed maintenance actions. In-
13 formal or alternative means may include, but are not limited to, stip-
14 ulation, agreed settlement, consent order or order of default.

15 “(6) After issuing a proposed final order and allowing an opportu-
16 nity for hearing, the director may issue a final order as provided under
17 ORS chapter 183.

18

19

“ENFORCEMENT

20

21 “SECTION 13. Except as provided in this section, if the Water Re-
22 sources Director sends a dam owner a notice under ORS 183.415, the
23 director shall require that any request for a contested case hearing
24 be delivered in writing no later than 30 days after the date that the
25 director sends the notice. If the Water Resources Department believes
26 that a dam is unsafe, or poses an imminent risk to life, property or
27 public infrastructure, the director may require that any request for a
28 contested case hearing be delivered in writing to the director no later
29 than 10 days after the director sends the dam owner notice under ORS
30 183.415. If the director requires that a request for a contested case

1 hearing be delivered within 10 days, the Office of Administrative
2 Hearings shall expedite the contested case hearing to the extent the
3 office considers practicable.

4 **“SECTION 14.** In addition to any other available remedies, if the
5 Water Resources Department has reason to believe that a person is
6 violating or intends to violate a final order issued under section 10 (5)
7 of this 2019 Act, or believes that a dam poses an imminent risk to life,
8 property or public infrastructure, the department may apply to the
9 circuit court for Marion County or to the circuit court for any county
10 where all or part of the dam is located for a temporary or permanent
11 injunction requiring the person to:

12 **“(1) Refrain from violation of the order; or**

13 **“(2) Take any actions necessary to remedy an imminent risk to life,**
14 **property or public infrastructure.**

15 **“SECTION 15.** (1) Notwithstanding ORS 536.075 (5), the filing of a
16 petition in circuit court or the Court of Appeals does not stay the
17 enforcement of an order issued by the Water Resources Director under
18 section 10 (5) of this 2019 Act.

19 **“(2) In addition to any other available remedies, if an order issued**
20 **under section 10 (5) of this 2019 Act becomes final by operation of law**
21 **or on appeal, and the dam owner fails to comply with the order, the**
22 **Water Resources Department may request that the Attorney General**
23 **or the district attorney of any county where all or part of the dam is**
24 **located bring an action to have the dam declared a public nuisance**
25 **that must be removed at the dam owner’s expense.**

26

27 **“EMERGENCY PLANNING; EMERGENCIES**

28

29 **“SECTION 16.** (1) The owner of record of a dam shall:

30 **“(a) Provide the Water Resources Department with contact infor-**

1 **mation, in a form acceptable to the department, for:**

2 **“(A) The dam owner;**

3 **“(B) The operator of the dam, if other than the owner; and**

4 **“(C) The individual in immediate charge of the dam;**

5 **“(b) Notify the department of any changes in the contact informa-**
6 **tion provided under this subsection; and**

7 **“(c) Provide the department with notice, in a form acceptable to the**
8 **department, no later than the next business day after completing a**
9 **transfer of title for the dam.**

10 **“(2) The dam owner shall review and evaluate the conditions at the**
11 **dam as necessary to:**

12 **“(a) Keep the dam in good repair and properly maintained; and**

13 **“(b) Address any detected conditions that may pose a risk of dam**
14 **failure.**

15 **“SECTION 17. (1) The Water Resources Department shall require**
16 **the owner of a dam that has a high hazard rating to develop an**
17 **emergency action plan for the dam.**

18 **“(2) An emergency action plan required under this section must**
19 **include, but need not be limited to:**

20 **“(a) Means for emergency condition detection;**

21 **“(b) Means for emergency level determination;**

22 **“(c) Identification of, and information necessary for, notifications**
23 **and communications to be made at each level of emergency condition;**

24 **“(d) A description of actions expected to be undertaken to prevent**
25 **dam failure or reduce the effects of dam failure;**

26 **“(e) A map of dam failure inundation zones for varying conditions,**
27 **including, but not limited to, dry weather conditions and high flood**
28 **conditions; and**

29 **“(f) Procedures to be followed at the termination of an emergency.**

30 **“(3) A dam owner that develops an emergency action plan required**

1 under this section shall file copies of the plan with the department,
2 the Office of Emergency Management and the local emergency ser-
3 vices agency for the county where the dam is located. The depart-
4 ment, in consultation with the office and local emergency services
5 agency, shall periodically review the emergency action plan and may
6 require updates to the plan.

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

11 **“SECTION 18. (1) If a condition threatens the safety of a dam, and**
12 **the potential for dam failure creates an imminent risk to life, property**
13 **or public infrastructure, the dam owner shall immediately:**

14 “(a) If an emergency action plan exists for the dam, implement the
15 actions specified in the plan;

16 “(b) Notify by telephone or other method that ensures immediate
17 notification:

18 “(A) The local emergency services agency for the county where the
19 dam is located;

20 “(B) The Office of Emergency Management;

21 “(C) Any other state and local agencies identified in an emergency
22 action plan for the dam; and

23 “(D) The Water Resources Department;

24 “(c) To the greatest extent practicable, notify persons in areas
25 where the potential for dam failure creates a risk to life, property or
26 public infrastructure; and

27 “(d) Take all practicable actions to prevent dam failure.

28 “(2) If the department is aware of conditions that indicate the need
29 for immediate action to prevent dam failure, the department may ad-
30 vise the owner or operator of the dam or the individual in immediate

1 charge of the dam regarding the actions necessary to prevent the dam
2 failure.

3 “(3) The department may communicate and coordinate actions
4 necessary to reduce the risk of dam failure. If there is a rapidly in-
5 creasing leakage or overtopping at a dam that has a significant hazard
6 rating or high hazard rating, the department may take any practicable
7 actions to reduce the water level in the reservoir or to reduce leakage
8 or overtopping. Activities under this subsection by the department do
9 not relieve the owner, the operator or an individual in immediate
10 charge of a dam from the responsibility to prevent the dam failure.

11 “(4) If a dam that has a significant hazard rating or high hazard
12 rating presents an imminent risk of dam failure, the department or its
13 agent or representative may enter without notice or permission upon
14 any property that affords access to the dam to the extent entry is
15 reasonable or necessary to allow evaluation or addressing of the con-
16 dition or risk.

17

18

“RULES; POWERS

19

20 “SECTION 19. (1) The Water Resources Commission may adopt
21 rules the commission deems necessary or convenient for the adminis-
22 tration and enforcement of sections 2 to 20 of this 2019 Act.

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

25 “(a) A schedule of civil penalty amounts for purposes of section 21
26 of this 2019 Act;

27 “(b) The conditions under which the Water Resources Department
28 may remit a civil penalty; and

29 “(c) Standards for the site, plans, specifications, designs and other
30 engineering requirements for the construction or removal of a dam.

1 **“(3) In addition to any other powers of the department, in carrying**
2 **out department duties, functions and powers under sections 2 to 20 of**
3 **this 2019 Act, the department may:**

4 **“(a) Enter into contracts, memorandums of understanding and**
5 **intergovernmental agreements for:**

6 **“(A) The inspection, evaluation or study of dams; or**

7 **“(B) The response to dam failure or potential dam failure;**

8 **“(b) Accept moneys from any public or private source for the ad-**
9 **ministration and enforcement of sections 2 to 20 of this 2019 Act or for**
10 **enhancing the safety of dams or the protection of life, property or**
11 **public infrastructure in areas below dams;**

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

15 **“(d) Waive or reduce fees for dams inspected by another state**
16 **agency under a memorandum of understanding with the department.**

17
18 **“EFFECT ON RESPONSIBILITIES AND LIABILITY**

19
20 **“SECTION 20. (1) Compliance with sections 2 to 20 of this 2019 Act**
21 **does not relieve the owner or operator of a dam or an individual in**
22 **immediate charge of a dam from any duty, obligation or liability re-**
23 **garding the ownership, maintenance or operation of the dam.**

24 **“(2) Water Resources Department actions and services under**
25 **sections 2 to 20 of this 2019 Act do not relieve the owner or operator**
26 **of a dam or an individual in immediate charge of a dam from any**
27 **duty, obligation or liability regarding the ownership, maintenance or**
28 **operation of the dam.**

29
30 **“CIVIL PENALTIES**

1 **“SECTION 21. (1) The Water Resources Commission may impose a**
2 **civil penalty of not more than \$5,000 per occurrence for a violation of**
3 **sections 5, 6 or 18 of this 2019 Act.**

4 **“(2) The Water Resources Director may impose a civil penalty, not**
5 **to exceed \$5,000, by order as provided under section 12 of this 2019 Act.**
6 **If a violation of an order under section 12 of this 2019 Act is a con-**
7 **tinuing condition, each day that the condition continues is a separate**
8 **violation subject to imposition of a civil penalty.**

9 **“(3) Moneys recovered from civil penalties imposed under this sec-**
10 **tion shall be deposited in the State Treasury and credited to an ac-**
11 **count of the Water Resources Department. Moneys described in this**
12 **section are continuously appropriated to the department for the ad-**
13 **ministration and enforcement of sections 2 to 20 of this 2019 Act.**

14
15 **“HYDRAULIC STRUCTURES**

16
17 **“SECTION 22. ORS 540.355 is amended to read:**

18 **“540.355. (1) [In lieu of the authority granted to the Water Resources Com-**
19 **mission under ORS 540.350 (5),] The Water Resources Department may in-**
20 **spect, evaluate and assess the condition of a levee, dike, ditch or other**
21 **hydraulic structure with the permission of the owner [of the levee].**

22 **“(2) In performing the actions under subsection (1) of this section, the**
23 **department may:**

24 **“(a) Provide recommendations and technical assistance;**

25 **“(b) Advise on necessary maintenance and repairs;**

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

28 **“(d) Undertake activities necessary to identify the owner [of a levee] or**
29 **operator of the hydraulic structure or the individual in immediate**
30 **charge of the hydraulic structure;**

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

2 “(f) Enter into contracts, **memorandums of understanding** and inter-
3 governmental agreements;

4 “(g) Accept and receive moneys **from any public or private source**;

5 “(h) Accept and receive payment for services performed; and

6 “(i) Exchange information and perform other actions as necessary to co-
7 operate with private, local, state and federal entities.

8 “[*3*] *The department’s actions under this section shall not relieve the*
9 *owners of levees of their legal liabilities and responsibilities.*]

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

13 “**(a) Advise the owner or operator of the hydraulic structure or the**
14 **individual in immediate charge of the hydraulic structure regarding**
15 **the actions necessary to prevent the failure; and**

16 “**(b) If the conditions create a risk to life, property or public**
17 **infrastructure, notify emergency managers.**

18 “**(4) The acceptance of department services under this section does**
19 **not relieve the owner or operator of the hydraulic structure or the**
20 **individual in immediate charge of the hydraulic structure from any**
21 **duty, obligation or liability regarding the ownership, maintenance or**
22 **operation of the hydraulic structure.**

23 “**(5) The Water Resources Commission may adopt rules for the ad-**
24 **ministration of this section.**

25

26 “**CONFORMING AMENDMENTS**

27

28 “**SECTION 23.** ORS 517.971 is amended to read:

29 “517.971. Each applicant for a permit to operate a mining operation shall
30 submit a consolidated application to the State Department of Geology and

1 Mineral Industries. The department and the permitting and cooperating
2 agencies shall not begin deliberating on whether to issue a permit until the
3 department receives an application fee and a complete consolidated applica-
4 tion that includes but is not limited to:

5 “(1) Name and location of the proposed facility.

6 “(2) Name, mailing address and phone number of the applicant and a
7 registered agent for the applicant.

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

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

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

15 “(6) Appropriate maps, aerial photos, cross sections, plans and documen-
16 tation.

17 “(7) A proposed:

18 “(a) Mine plan;

19 “(b) Processing plan;

20 “(c) Water budget;

21 “(d) Fish and wildlife protection and mitigation plan;

22 “(e) Operational monitoring and reporting plan;

23 “(f) Reclamation and closure plan;

24 “(g) Plan for controlling water runoff and run on;

25 “(h) Operating plan;

26 “(i) Solid and hazardous waste management plan;

27 “(j) Plan for transporting and storing toxic chemicals;

28 “(k) Employee training plan as required by agency rule;

29 “(L) Seasonal or short term closure plan;

30 “(m) Spill prevention and credible accident contingency plan;

1 “(n) Post-closure monitoring and reporting plan; and
2 “(o) Identification of special natural areas, including but not limited to
3 areas designated as areas of critical environmental concern, research natural
4 areas, outstanding natural areas and areas designated by the Oregon Natural
5 Areas Plan, as defined in state rules and federal regulations.
6 “(8) All information required by the permitting agencies to determine
7 whether to issue or deny the following permits as applicable to the proposed
8 operation:
9 “(a) Surface mining operating permits required under ORS 517.790 and
10 517.915;
11 “(b) Fill and removal permits required under ORS 196.600 to 196.905;
12 “(c) Permits to appropriate surface water or ground water under ORS
13 537.130 and 537.615, to store water under ORS 537.400 and impoundment
14 structure approval under [ORS 540.350 to 540.390] **section 5 of this 2019**
15 **Act**;
16 “(d) National Pollutant Discharge Elimination System permit under ORS
17 468B.050;
18 “(e) Water pollution control facility permit under ORS 468B.050;
19 “(f) Air contaminant discharge permit under ORS 468A.040 to 468A.060;
20 “(g) Solid waste disposal permit under ORS 459.205;
21 “(h) Permit for use of power driven machinery on forestland under ORS
22 477.625;
23 “(i) Permit for placing explosives or harmful substances in waters of the
24 state under ORS 509.140;
25 “(j) Hazardous waste storage permit under ORS 466.005 to 466.385;
26 “(k) Local land use permits; and
27 “(L) Any other state permit required for the mining operation.
28 “(9) All other information required by the department, a permitting
29 agency, a cooperating agency or the technical review team.
30 “**SECTION 24.** ORS 537.010 is amended to read:

1 “537.010. As used in this chapter, ‘Water Rights Act’ means and embraces
2 ORS 536.050, 537.120, 537.130, 537.140 to 537.252, 537.390 to 537.400, 538.420,
3 540.010 to 540.120, 540.210 to 540.230, 540.310 to 540.430, 540.505 to 540.585 and
4 540.710 to 540.750 **and sections 2 to 20 of this 2019 Act.**

5 “**SECTION 25.** ORS 537.400 is amended to read:

6 “537.400. (1) All applications for reservoir permits shall be subject to the
7 provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.240, except that
8 an enumeration of any lands proposed to be irrigated under the Water Rights
9 Act shall not be required in the primary permit. But the party proposing to
10 apply to a beneficial use the water stored in any such reservoir shall file an
11 application for permit, to be known as the secondary permit, in compliance
12 with the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.240.
13 The application shall refer to the reservoir for a supply of water and shall
14 show by documentary evidence that an agreement has been entered into with
15 the owners of the reservoir for a sufficient interest in the reservoir to
16 impound enough water for the purposes set forth in the application, that the
17 applicant has provided notice of the application to the operator of the res-
18 ervoir and, if applicable, that an agreement has been entered into with the
19 entity delivering the stored water. When beneficial use has been completed
20 and perfected under the secondary permit, the Water Resources Department
21 shall take the proof of the water user under the permit. The final certificate
22 of appropriation shall refer to both the ditch described in the secondary
23 permit and the reservoir described in the primary permit.

24 “(2) Whenever application is made for permit to store water in a reservoir
25 or pond for any beneficial use which does not contemplate future diversion
26 of the stored water except by livestock drinking from stock water ponds, the
27 extent of utilization thereof may be included in the reservoir permit and no
28 secondary permit shall be required. However, in cases where water from a
29 stream is required to maintain a reservoir or pond by replacing evaporation
30 and seepage losses, or is required to maintain suitable fresh water conditions

1 for the proposed use and to prevent stagnation, the applicant for permit to
2 store water in such reservoir or pond shall also file an application for permit
3 to appropriate the waters of the stream.

4 “(3) An application submitted to construct a reservoir storing less than
5 9.2 acre-feet of water or with a dam less than 10 feet in height need not be
6 accompanied by a map prepared by a water right examiner certified under
7 ORS 537.798 as required by ORS 537.140 (4). The map submitted with the
8 application shall comply with standards established by the Water Resources
9 Commission. The survey required under ORS 537.230 shall be prepared by a
10 water right examiner certified under ORS 537.798 and shall be submitted to
11 the department before the department issues the water right certificate.

12 “(4) If a dam [*safety review is required under ORS 540.350*] **is subject to**
13 **approval under section 5 of this 2019 Act**, the department may issue a
14 final order approving an application on the basis of preliminary [*plans,*
15 *specifications and*] **examination of the site, plans and specifications,**
16 **features and other** supporting information if the approval includes a con-
17 dition requiring [*the commission’s*] **department** approval of final [*plans,*
18 *specifications and*] **documentation for the site, plans and specifications,**
19 **features and other** supporting information under [*ORS 540.350*] **section 5**
20 **of this 2019 Act** before the permit is issued.

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

29 **“SECTION 26.** ORS 540.990 is amended to read:

30 “540.990. (1) Violation of any provision of ORS 540.440 is a Class C

1 misdemeanor.

2 “(2) Violation of any provision of ORS [540.370 (2),] 540.570 (5), 540.710,
3 540.720 or 540.730 is a Class B misdemeanor.

4 “(3) Failure to comply with an order issued under section 10 (5) of
5 this 2019 Act, or with an order issued by an appellate court on appeal
6 from an order under section 10 (5) of this 2019 Act, is a Class B
7 misdemeanor.

8

9 “TRANSITIONAL PROVISIONS

10

11 “SECTION 27. The repeal of ORS 540.350, 540.353, 540.360, 540.370,
12 540.380, 540.390 and 540.400 by section 29 of this 2019 Act:

13 “(1) Does not excuse any violation of ORS 540.350, 540.353, 540.360,
14 540.370, 540.380, 540.390 or 540.400 prior to the operative date described
15 in section 30 of this 2019 Act. Any such violation is subject to the
16 penalties established for that violation under the provisions of ORS
17 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 or 540.400 in effect at the
18 time of the violation.

19 “(2) Does not affect the validity of any order of the Water Resources
20 Commission, the Water Resources Director, the State Engineer or a
21 circuit or appellate court issued under ORS 540.350, 540.353, 540.360,
22 540.370, 540.380, 540.390 or 540.400 that was in effect immediately prior
23 to the operative date described in section 30 of this 2019 Act. Any such
24 order remains enforceable as provided under the provisions of ORS
25 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 or 540.400 in effect at the
26 time the order was issued.

27

28 “CAPTIONS

29

30 “SECTION 28. The unit captions used in this 2019 Act are provided

1 only for the convenience of the reader and do not become part of the
2 statutory law of this state or express any legislative intent in the
3 enactment of this 2019 Act.

4

5

“REPEALS

6

7 **“SECTION 29. ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390**
8 **and 540.400 are repealed.**

9

10

“OPERATIVE DATE

11

12 **“SECTION 30. Sections 1 to 18, 20 and 21 of this 2019 Act, the**
13 **amendments to ORS 517.971, 537.010, 537.400, 540.355 and 540.990 by**
14 **sections 22 to 26 of this 2019 Act and the repeal of ORS 540.350, 540.353,**
15 **540.360, 540.370, 540.380, 540.390 and 540.400 by section 29 of this 2019 Act**
16 **become operative July 1, 2020.**

17

18

“EFFECTIVE DATE

19

20 **“SECTION 31. This 2019 Act takes effect on the 91st day after the**
21 **date on which the 2019 regular session of the Eightieth Legislative**
22 **Assembly adjourns sine die.”.**

23
