

**CHAPTER 390**

AN ACT

HB 2085

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.

**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 due to loss of dam integrity.

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

**CONSTRUCTION PLAN APPROVAL**

**SECTION 4.** (1) A person may not construct a dam unless the Water Resources Department has examined the site, plans and specifications, features and other supporting information regarding the construction and operation of the dam and has approved them in writing.

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

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

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

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

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

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

#### REMOVAL OF DAM

**SECTION 5.** (1) An owner seeking to remove a dam that has a significant hazard rating or high hazard rating must notify the Water Resources Department. The owner shall provide the department with a removal plan sufficiently in advance of the removal to allow the department reasonable time for evaluating the plan. The department may evaluate the removal plan to ensure that the plan includes appropriate safety precautions to protect life, property and public infrastructure from temporary inundation in the area below the dam during dam removal. The department may require modification of the removal plan or require that the work performed under the plan be supervised by an engineer to the extent the department concludes is necessary to protect life, property or public infrastructure from temporary inundation during dam removal. If the department requires modification of a dam removal plan or requires that the work be supervised by an engineer, the department shall provide the owner with an opportunity to meet with the department.

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

#### INSPECTIONS

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

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

#### CORRECTIVE ACTION FOR UNSAFE OR POTENTIALLY UNSAFE CONDITIONS

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

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

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

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

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

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

(a) Registered mail; or

(b) Certified mail with return receipt requested.

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

(a) The specific dam;

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

(c) The impacts associated with dam failure.

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

(a) The department and the dam owner do not agree on a plan and time frame under subsection (1) of this section for corrective action to resolve a condition identified in a notification that was sent by mail under section 7 of this 2019 Act;

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

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

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

(a) Notifying the dam owner as described in section 7 of this 2019 Act, if that notification has not been provided.

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

(c) Specifying commencement and completion dates for any corrective action the department deems necessary to remedy the unsafe or potentially unsafe condition.

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

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

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

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

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

**SECTION 9.** The Water Resources Department may accept the reports of consulting engineers, geologists or other specialists employed by the dam owner. If the department concludes that the reports are insufficient, the department

may employ consulting engineers, geologists or other specialists as agents or representatives of the department to make special examinations and inspections and to prepare reports for the department. The cost of such special examinations, inspections and reports shall be paid by the department or, upon mutual agreement, may be divided between the department and the dam owner.

## MAINTENANCE ACTIONS

**SECTION 10.** (1) If, as the result of an inspection under section 6 of this 2019 Act of a dam that has a significant hazard rating or high hazard rating, the Water Resources Department concludes that maintenance actions are needed, the department shall inform the dam owner of the need for maintenance actions. The department shall provide the information by inclusion in the inspection document and provide the dam owner with the opportunity to meet with the department concerning the information.

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

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

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

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

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

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

(6) The department and a dam owner may at any time use informal or alternative means, including but not limited to stipulation, agreed

settlement or consent orders, to resolve a matter for which the department has notified the dam owner as described in this section.

### ENFORCEMENT

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

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

- (1) Refrain from violation of the order; or
- (2) Take any actions necessary to remedy an imminent risk to life, property or public infrastructure.

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

### EMERGENCY PLANNING; EMERGENCIES

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

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

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

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

(c) Provide the department with notice after completing a transfer of title for the dam.

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

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

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

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

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

(a) Means for emergency condition detection;

(b) Means for emergency level determination;

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

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

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

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

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

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

**SECTION 16.** (1) If an actual or potential dam failure creates an imminent risk to life, property or public infrastructure, and an emergency action plan exists for the dam, the dam owner shall immediately implement the actions specified in the plan.

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

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

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

(B) The Water Resources Department; and

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

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

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

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

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

**RULES; POWERS**

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

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

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

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

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

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

(a) Enter into contracts, memorandums of understanding and intergovernmental agreements for:

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

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

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

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

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

**EFFECT ON RESPONSIBILITIES AND LIABILITY**

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

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

**CIVIL PENALTIES**

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

(2) The Water Resources Director may impose a civil penalty, not to exceed \$500, by order as provided under section 10 of this 2019 Act. If a violation of an order under section 10 of this 2019 Act is a continuing condition, each month that the condition continues is a separate violation subject to imposition of a civil penalty.

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

## HYDRAULIC STRUCTURES

### **SECTION 20.** ORS 540.355 is amended to read:

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

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

(a) Provide recommendations and technical assistance;

(b) Advise on necessary maintenance and repairs;

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

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

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

(f) Enter into contracts, **memorandums of understanding** and intergovernmental agreements;

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

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

(i) Exchange information and perform other actions as necessary to cooperate with private, local, state and federal entities.

(3) The department's actions under this section shall not relieve the owners of levees, **dikes, ditches or other hydraulic structures** of their legal liabilities and responsibilities.

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

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

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

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

## CONFORMING AMENDMENTS

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

517.971. Each applicant for a permit to operate a mining operation shall submit a consolidated application to the State Department of Geology and Mineral Industries. The department and the permitting and cooperating agencies shall not begin deliberating on whether to issue a permit until the department receives an application fee and a com-

plete consolidated application that includes but is not limited to:

(1) Name and location of the proposed facility.

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

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

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

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

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

(7) A proposed:

(a) Mine plan;

(b) Processing plan;

(c) Water budget;

(d) Fish and wildlife protection and mitigation plan;

(e) Operational monitoring and reporting plan;

(f) Reclamation and closure plan;

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

(h) Operating plan;

(i) Solid and hazardous waste management plan;

(j) Plan for transporting and storing toxic chemicals;

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

(l) Seasonal or short term closure plan;

(m) Spill prevention and credible accident contingency plan;

(n) Post-closure monitoring and reporting plan; and

(o) Identification of special natural areas, including but not limited to areas designated as areas of critical environmental concern, research natural areas, outstanding natural areas and areas designated by the Oregon Natural Areas Plan, as defined in state rules and federal regulations.

(8) All information required by the permitting agencies to determine whether to issue or deny the following permits as applicable to the proposed operation:

(a) Surface mining operating permits required under ORS 517.790 and 517.915;

(b) Fill and removal permits required under ORS 196.600 to 196.905;

(c) Permits to appropriate surface water or ground water under ORS 537.130 and 537.615, to store water under ORS 537.400 and impoundment structure approval under *[ORS 540.350 to 540.390]* **section 4 of this 2019 Act**;

(d) National Pollutant Discharge Elimination System permit under ORS 468B.050;

(e) Water pollution control facility permit under ORS 468B.050;

(f) Air contaminant discharge permit under ORS 468A.040 to 468A.060;

(g) Solid waste disposal permit under ORS 459.205;

(h) Permit for use of power driven machinery on forestland under ORS 477.625;

(i) Permit for placing explosives or harmful substances in waters of the state under ORS 509.140;

(j) Hazardous waste storage permit under ORS 466.005 to 466.385;

(k) Local land use permits; and

(L) Any other state permit required for the mining operation.

(9) All other information required by the department, a permitting agency, a cooperating agency or the technical review team.

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

537.010. As used in this chapter, "Water Rights Act" means and embraces ORS 536.050, 537.120, 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 to 540.430, 540.505 to 540.585 and 540.710 to 540.750 and sections 2 to 18 of this 2019 Act.

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

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

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

water in such reservoir or pond shall also file an application for permit to appropriate the waters of the stream.

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

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

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

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

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

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

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

## TRANSITIONAL PROVISIONS

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

(1) **Does not excuse any violation of ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 or 540.400 prior to the operative date described in section 28 of this 2019 Act. Any such violation is subject to the penalties established for that**

violation under the provisions of ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 or 540.400 in effect at the time of the violation.

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

#### CAPTIONS

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

#### REPEALS

**SECTION 27.** ORS 540.350, 540.353, 540.360, 540.370, 540.380, 540.390 and 540.400 are repealed.

#### OPERATIVE DATE

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

#### EFFECTIVE DATE

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

Approved by the Governor June 17, 2019  
 Filed in the office of Secretary of State June 18, 2019  
 Effective date September 29, 2019