



Oregon

Kate Brown, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Racquel Rancier, Senior Policy Coordinator 

SUBJECT: Agenda Item H, February 22, 2019
Water Resources Commission Meeting

Legislative Update

I. Introduction

The 80th Legislative Assembly convened for the 2019 Legislative Session on January 22, 2019. During this informational report, staff will provide an overview of the 2019 Session.

II. Overview of 2019 Session

Water bills are currently being referred to three policy committees in the House: Natural Resources, Energy and Environment, and Agriculture and Land Use. In regards to the Senate, water-related measures have been sent to the Senate Environment and Natural Resources. The Department's budget will be heard in the Joint Ways and Means (JWM) Natural Resources Subcommittee; however, bonding bills are traditionally handled by the Capital Construction Subcommittee.

Information about the Legislative Session, including committee appointments, can be viewed online at www.oregonlegislature.com by clicking on the OLIS icon.

Legislative deadlines are as follows:

- February 26 – Deadline to file measures without counting towards limits.
- March 29 – Deadline for chairs to post work sessions for first chamber measures.
- April 9 – Measures must be out of the first chamber committee.
- May 10 – Deadline for chairs to post work sessions for second chamber measures.
- May 24 – Last day for measures to move out of second chamber committees.
- June 21 – Target adjournment of session *sine die*.
- June 30 – Constitutional *sine die*.

Deadlines generally do not apply to measures in the Ways & Means, Revenue, and Rules committees.

III. Recap of Department's and Governor's 2019 Legislation

The Department's 2019 bills are as follows:

- HB 2084 (LC 507): Extending Place-Based Planning
- HB 2085 (LC 508): Modernizing the Dam Safety Statutes
- SB 51 (LC 509): Transfers in the Type of Stored Water.

One-pagers describing the measures are attached.

Department staff will brief the Commission on these and other measures during the meeting.

IV. Conclusion

The Constitutional Sine Die deadline for adjournment is June 30. Staff will continue to keep the Commission apprised of important developments through the end of the 2019 Legislative Session.

Attachments:

1. HB 2084 One-pager
2. HB 2085 One-pager
3. SB 51 One-pager

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HB 2084: Extending Place-Based Planning

Background

Water is essential for economic growth and development, job creation, and the livelihoods of many farmers and ranchers across the state. In addition, water is necessary for fish and wildlife, recreation, and other instream purposes that are important to Oregonians. Given the importance of water, in order for a region to achieve their vision for the future, they must consider how their water resources needs will be met. Planning is essential to being able to formulate solutions to water challenges that may affect communities, ecosystems, and economic development.

In 2015, the Oregon Legislature authorized the Water Resources Department to pilot the place-based approach to integrated water resources planning. Place-based integrated water resources planning provides an opportunity for communities to work collaboratively, in partnership with the state, to understand their water resources challenges and needs, and identify potential solutions to meet those needs. Building trust and developing long-term relationships are additional benefits that can be realized through place-based strategies; these are important foundations for successful implementation of tangible water resources projects.

The authority for the state to assist groups with place-based planning sunsets in 2019. The Department has been working with four places to pilot place-based planning. At least two of the four groups are not likely to complete plans before the legislation sunsets, and all have expressed a need for assistance in developing a strategy for implementation. Continuing to undertake place-based planning is Recommended Action 9.A of Oregon's Integrated Water Resources Strategy.

What the bill does

This bill proposes to extend the sunset date to 2023 to allow the state to continue to pilot the place-based approach to water planning. This would allow the Department to provide financial and technical assistance to the communities currently using this approach and allow them to finish their work, completing the pilot phase.

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HB 2085: Modernizing Dam Safety Statutes

Background

The Oregon Water Resources Department is the state agency charged with overseeing the safety of more than 960 dams across the state that are authorized to store water for agriculture, cities, industry, recreation, fisheries, and other purposes. While dams provide benefits, the consequences of failure of a dam can be significant, potentially resulting in loss of lives and damage to property and infrastructure. As a result, states have adopted dam safety programs. With a few exceptions, Oregon's dam safety statutes have not been updated since 1929, and there is a need to modernize the statutes.

What the bill does

The bill proposes to:

1. Consistent with current and past practice, clarify that the State's focus is on non-federally regulated dams that store water or wastewater. Remove dikes and other hydraulic structures from regulatory oversight to a non-regulatory, technical assistance program.
2. Require plans and specifications for modifications to dams to be approved by the Department and require the Department to receive final engineering documentation that the dam was built as specified before water or wastewater can be impounded for a new or modified structure.
3. Establish a fee for reviews of plans for dams based on actual time spent on the review, but with a cap to provide certainty on the maximum that may be charged.
4. Provide clear guidance for owners that they are responsible for maintaining their dam, and taking specific actions if the structure is at risk of failure and may jeopardize life or property.
5. Clarify the Department's general authorities to implement the statutes, as well as specify actions the Department may take during a dam failure.
6. Establish a process to ensure that removal of high or significant hazard dams are done safely to protect people and property.
7. Improve the process for addressing maintenance and safety issues. Provide additional tools to work with landowners and get compliance, and to address seismic and flood risk. This includes: (a) allowing the Department to work with the owner to develop a plan and timeframe for repair, instead of having to go directly to enforcement; (b) during enforcement, requiring a hearing only if requested by the owner; (c) authorizing the Department to require action on maintenance issues if they are left unaddressed; and (d) in the event that there is an immediate risk to people or property, allowing the Department to obtain a court injunction.
8. Allow the Department to issue civil penalties for failure to address maintenance issues, failure to submit emergency action plans on high-hazard dams, and other violations of the dam safety statutes.
9. In order to improve readability and functionality of the statutes, repeals the current laws; as a result many existing authorities appear as new language.

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SB 51: Transfers in the Type of Stored Water

Background

A water right is necessary to use or store water in Oregon. Rights to use water specify the place where the water is used, the type of use of the water, and the point that the water is diverted from a water source, such as a stream, reservoir, or well. If there is a desire to change one of these three components of a water use right, one must apply for a “transfer.”

Similarly, rights to *store* water specify the location of the reservoir, the location of the dam (if applicable), the point where water is diverted (if applicable), and the purpose/use for which the water is stored. The Water Resources Department has long debated about its authority to make changes to storage rights. In light of a lack of clarity in its existing laws, prior to 2018, the Department had occasionally allowed changes in the location of reservoirs and, more commonly, processed changes in the purpose of use. Recent proposals to change the location of stored water resulted in the Department taking a closer look at their authorities. In 2018, the Department of Justice issued a memo determining that, with some exceptions, the statutes do not provide the Water Resources Department with the authority to allow changes to storage rights.

The Department has allowed for changes to rights to store water in the past, with changes in the purpose/type of the stored water being more common. Without the ability to change the type of use of stored water, water right holders will not be able to manage water as necessary to meet emerging needs, opportunities, or challenges.

What the bill does

This bill proposes to provide the Department with clear authority to allow for changes in the purpose for which the water is stored under a primary storage right.

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