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House Committee on Natural Resources
Representative Brad Witt, Chair

Testimony on House Bill 2085
Racquel Rancier, Senior Policy Coordinator
Keith Mills, State Engineer

Thank you for the opportunity to provide testimony in support of House Bill 2085, a bill that would modernize the State of Oregon's dam safety statutes. The Department has been working with stakeholders since early 2018 to discuss proposals to modernize the statutes. The Department is continuing to solicit feedback on the bill and work on amendments.

The Oregon Water Resources Department is the state agency charged with overseeing the safety of more than 950 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. Additional information is provided in the accompanying slide presentation.

At a high-level, House Bill 2085 includes the following changes to the dam safety statutes:

1. In order to improve readability and functionality of the statutes, the current laws are repealed, and many existing components are carried forward appearing as new language. This is important to note, because it makes it appear as if the Department is creating an entirely new program, instead of modernizing an existing one. In order to aid in understanding how the bill compares to existing law, the Department has provided a table comparing existing law to the introduced version of the bill.
2. The Department has traditionally administered the dam safety program for water and wastewater dams that are not regulated under a federal dam safety program, but has no record of oversight of dikes and other hydraulic structures. The existing statutes could provide clearer authority on the regulation of dams that do not require a water right, such as those storing wastewater, and also provide a clear exemption for dams that are already regulated under a federal program. Consistent with current practice, House Bill 2085:
 - Clarifies that the dam safety program's focus is on non-federally regulated dams that store water or wastewater, consistent with current and past practice.
 - Removes dikes and other hydraulic structures from regulatory oversight to a non-regulatory program, where the department can provide technical assistance as resources allow.
3. Existing statutes lack clarity on modifications and approval prior to impoundment.
 - HB 2085 requires plans and specifications for modifications to dams to be approved by the Department and requires 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.

4. Currently, there is no cost recovery for reviewing plans for new dams. Review and approval work takes approximately three days for a low hazard dam, two weeks for a significant hazard dam, and one month for the in-depth review of a high hazard dam, on average. These reviews take away time and resources from other functions of the program.
 - HB 2085 proposes to establish a fee for reviews based on actual time spent on the review, but with a cap to provide certainty on the maximum that may be charged.
5. Owning a dam comes with inherent responsibilities, particularly when that structure can pose a risk to lives, property, and infrastructure. Current statutes do not identify owner responsibilities, such as the obligation to take action during a failure, or the need to maintain the dam.
 - HB 2085 provides clear guidance for owners that they need to maintain their dam, and take specific actions if the structure is at risk of failure and may jeopardize life or property.
6. The Department's general authorities related to administering the program are not expressly stated, such as the ability to enter into agreements, or express authority to obtain a warrant to enter lands. In addition, current laws do not provide authority or guidance regarding what the Department may do to protect life or property in the event of an actual or potential dam failure.
 - HB 2085 clarifies the Department's general authorities to implement the statutes, as well as specifies actions the Department may take when a dam poses an imminent risk to people, property and infrastructure.
7. There is not a process to ensure that appropriate safety precautions will be undertaken to protect lives and property downstream during removal of a dam (except hydroelectric governed by other statutes).
 - HB 2085 establishes a process to ensure that removal of high or significant hazard dams are done safely to protect people, property, and infrastructure.
8. Currently, when the Department finds that a dam is unsafe, the statute provides that the Department must set a hearing, regardless of whether the owner requests one, before requiring any action. This can add additional time and costs to addressing safety issues for both the owner and the Department. In addition, it does not recognize the need for addressing maintenance issues that if left unaddressed could result in a dam becoming unsafe. Nor do current authorities provide for cooperative approaches that may be needed particularly since our knowledge of seismic, flood, and internal erosion risks have greatly increased over time. Current authorities also do not address the potential need for more immediate action to be taken when a dam is unsafe and at risk of failure. HB 2085 would:
 - Allow the Department to work with the owner to develop a plan and timeframe for repair, instead of going directly to enforcement. This will be particularly beneficial in allowing the Department to work with owners of dams that are safe under normal operating conditions, but are now known to be vulnerable to earthquakes or floods.
 - For dams that are unsafe, allow the Department to work with the owners on a plan and timeframes for repair, and also allow the Department the option of issuing a proposed final order and holding a hearing if one is requested by the owner. If the threat is imminent, the timing on the request for hearing, and the scheduling of the hearing may be expedited to try to resolve the issue more timely.
 - In order to prevent the dam from degrading to an unsafe condition, allow the Department to require action on maintenance issues that have been left unaddressed from prior inspections before the dam becomes unsafe.
 - Allow the Department to seek injunctive relief in the event that there is an imminent risk to people, property, or infrastructure.

9. The Department does not have authority to issue civil penalties for dam safety violations, meaning that it can only “ask” for compliance, and there is no way to enforce the laws, except in cases where the dam is deemed unsafe.
 - HB 2085 allows the Department to issue civil penalties for failure to address maintenance issues, and other violations of the statute such as failure to submit required plans and specifications or obtain approval prior to building or modifying a dam.
 - HB 2085 does not authorize civil penalties for failure to address unsafe or potentially unsafe dam: Department would rather owner focus on fix than civil penalties.

The Department has identified the need for additional amendments to the bill will continue to work with interested stakeholders to seek feedback.