



**May 16, 2019**  
**Senate Committee on Environment and Natural Resources**  
**Senator Michael Dembrow, Chair**

**Testimony in Support of House Bill 2085A and the –A5 amendment**  
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Thank you for the opportunity to provide testimony in support of House Bill 2085A and the –A5 amendment, which would modernize the State of Oregon’s dam safety statutes.

The Oregon Water Resources Department is the state agency charged with overseeing the safety of dams across the state that store water for agriculture, cities, industry, recreation, fisheries, and other purposes. While dams provide a variety of 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, Oregon and other states have adopted dam safety programs.

The Department is aware of about 55 failures of dams in Oregon since the 1800s, most of which were small. One failure, however, resulted in the death of 7 people in 1896. Some failures resulted in significant property, road and infrastructure damage, or flooded towns and cities. In the last 20 years, one major failure occurred resulting in approximately \$2 million in damage, while there were a few other Low Hazard dam failures. In addition to failures, almost yearly, at least one dam experiences an incident requiring urgent action or repairs.

Our Dam Safety Program oversees more than 950 dams. Of these, 75 dams are rated as High Hazard, meaning loss of human life is expected should the dam fail, while another 149 are Significant Hazard, meaning failure is likely to result in damage to property or infrastructure. The hazard rating reflects the impacts of failure, but not the condition of the dam. Of the dams rated High Hazard, 17 are in poor or unsatisfactory condition.

The Department has been working with stakeholders since early 2018 to discuss proposals to modernize the dam safety statutes, which – with a few exceptions – have not been updated since 1929. Additional information is provided in the accompanying slide presentation and materials provided by the Department.

At a high-level, House Bill 2085A and the –A5 amendment 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 In order to improve readability and functionality of the statutes, the current laws are repealed and many existing components are carried forward appearing as new language.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 bill 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 HB 2085A version of the bill with markup of the –A5 amendments.

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 and past practice, House Bill 2085A:
  - Clarifies that the Dam Safety Program's focus is on non-federally regulated dams that store water or wastewater.
  - 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 2085A requires plans and specifications for modifications of 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 construction or modifications. Review and approval work for new dams 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 2085A 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. The – A5 amendment makes it clear the fee only applies to new construction and raising the height of the dam, not other modifications.
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 2085A 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. 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 2085A 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 from temporary inundation during removal of a dam (except hydroelectric governed by other statutes).
  - HB 2085A requires submittal of a removal plan for high and significant hazard dams, and if necessary hiring of an engineer, to ensure they are removed in a manner that protects people, property, and public 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 2085A 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, but also allow the Department the option of issuing a proposed final order and holding a hearing if one is requested by the owner. If a dam is unsafe, 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 2085A allows the Department to issue civil penalties for failure to address maintenance issues and other violations of the statute.
  - HB 2085A does not authorize civil penalties for failure to address unsafe or potentially unsafe dam: the Department would rather the owner focus on the fix than civil penalties.

The bill and the amendment are the product of significant input from stakeholders. The Department appreciates their time and effort. The –A5 amendment includes issues that were agreed to and supposed to be included in the A-version of the bill, but were inadvertently left out. As a result, those items were outlined in a memo to the House Committee on Natural Resources, before the bill passed out of committee, with a commitment to bring forward the amendment in the Senate. In addition to those changes, the –A5 amendment includes one additional change to the definition of “dam failure,” as requested by a stakeholder.

The Department requests your support of HB 2085A and the proposed –A5 amendment.