



Senate

General Assembly

File No. 144

February Session, 2006

Substitute Senate Bill No. 414

Senate, March 28, 2006

The Committee on Environment reported through SEN. FINCH of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING DAM SAFETY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2006*) As used in chapter 446j of
2 the general statutes:

3 (1) "Emergency operation plan" means a written plan, approved by
4 the Commissioner of Environmental Protection, that identifies
5 procedures necessary to minimize any threat to life and any damage to
6 property potentially caused by the failure of any dam, dike, reservoir
7 or other similar structure, along with any appurtenances thereto,
8 which plan includes, but is not limited to, a map identifying
9 inundation areas and identifying any structures potentially impacted
10 by dam failure, written monitoring procedures to assess the condition
11 of the dam during an emergency and warning and evacuation
12 protocols to assist local emergency management personnel during an
13 emergency;

14 (2) "High hazard dam" means a dam, dike, reservoir or other similar

15 structure, along with any appurtenances thereto, that the
16 commissioner has determined to be a Class C dam and that if such
17 dam should fail, such failure would result in any of the following: (A)
18 Probable loss of life, (B) major damage to a habitable structure,
19 residence, hospital, convalescent home, school or similar property, (C)
20 damage to a main highway, or (D) significant economic loss;

21 (3) "Routine maintenance" means any work performed on a dam,
22 dike, reservoir or other similar structure, along with any
23 appurtenances thereto, that is undertaken on a periodic basis to ensure
24 continued safe operation and physical integrity of such structure,
25 including, but not limited to, rodent removal, vegetation control,
26 floating debris removal, lubrication, painting, minor embankment
27 regrading, minor riprap or erosion repair, minor masonry or concrete
28 restoration, brush or tree cutting or removal of sediment from spillway
29 structures or discharge channels; and

30 (4) "Significant hazard dam" means any dam, dike, reservoir or
31 other similar structure, along with any appurtenances thereto, that the
32 commissioner has determined to be a Class B dam that if such dam
33 should fail that such failure would result in any of the following: (A)
34 Possible loss of life, (B) minor damage to a habitable structure,
35 residence, hospital, convalescent home, school or similar property, (C)
36 damage to or the interruption of the use of service utilities, (D) damage
37 to primary roads and railroads, or (E) significant economic loss.

38 Sec. 2. Section 22a-403 of the general statutes is repealed and the
39 following is substituted in lieu thereof (*Effective October 1, 2006*):

40 (a) Before any person constructs, alters, rebuilds, substantially
41 repairs, adds to, replaces or removes any such structure, such person
42 shall apply to the commissioner for a permit to undertake such work.
43 The application for such permit shall be in triplicate, the original of
44 which, with necessary drawings, plans, specifications and other data,
45 shall be submitted to the commissioner, in the form and to the extent
46 required by him. If the commissioner finds that an application is
47 complete, [he] the commissioner shall (1) notify the applicant by

48 certified mail, return receipt requested, of [his] the commissioner's
49 intent to grant a permit with or without terms and conditions or to
50 deny a permit for such work, and (2) publish notice of such intention
51 in a newspaper having a general circulation in the area in which the
52 proposed work will take place or have effect. The commissioner shall
53 mail notice of such intent to the chief executive officer, the inland
54 wetland agency, and the planning, zoning and conservation
55 commissions of each town in which the work will take place or have
56 effect. The commissioner may hold a hearing prior to approving or
57 denying any application if, in [his] the commissioner's discretion, the
58 public interest will be best served thereby, and [he] the commissioner
59 shall hold a hearing if, within thirty days after such notice has been
60 published, [he] the commissioner receives a petition requesting such a
61 hearing signed by at least twenty-five persons. Notice of such hearing
62 shall be published at least thirty days before the hearing in a
63 newspaper having a general circulation in the area in which the work
64 will take place or have effect.

65 (b) The commissioner or [his] the commissioner's representative,
66 engineer or consultant shall determine the impact of the construction
67 work on the environment, on the safety of persons and property and
68 on the inland wetlands and watercourses of the state in accordance
69 with the provisions of sections 22a-36 to 22a-45, inclusive, and shall
70 further determine the need for a fishway in accordance with the
71 provisions of section 26-136, and shall examine the documents and
72 inspect the site, and, upon approval thereof, the commissioner shall
73 issue a permit authorizing the proposed construction work under such
74 conditions as the commissioner may direct. No permit shall be
75 required for routine maintenance. The commissioner shall send a copy
76 of the permit to the town clerk in any municipality in which the
77 structure is located or any municipality which will be affected by the
78 structure. An applicant for a permit issued under this section to alter,
79 rebuild, repair or remove an existing dam shall not be required to
80 obtain a permit under sections 22a-36 to 22a-45a, inclusive, or section
81 22a-342 or 22a-368. An applicant for a permit issued under this section
82 to construct a new dam shall not be required to obtain a permit under

83 sections 22a-36 to 22a-45a, inclusive, for such construction.

84 (c) Notwithstanding the provisions of subsections (a) and (b) of this
85 section, the commissioner or the commissioner's representative may
86 construct, alter, rebuild, substantially repair, add to, replace or remove
87 any dam, dike, reservoir or other similar structure, along with any
88 appurtenances thereto, that are owned by the state and that are under
89 the commissioner's control, without issuance of a permit pursuant to
90 this chapter, and without a permit, certification or approval pursuant
91 to part I of chapter 439, or chapters 440, 444, 446i, 476a and 490,
92 provided such action is consistent with the policies contained in part I
93 of chapter 439 and chapters 440, 444, 446i, 476a and 490. Nothing in
94 this subsection shall preclude an action under section 22a-16.

95 Sec. 3. Subsection (a) of section 22a-409 of the general statutes is
96 repealed and the following is substituted in lieu thereof (*Effective*
97 *October 1, 2006*):

98 (a) The commissioner shall cause a survey and maps to be made of
99 each town showing the location of any dams or similar structures
100 within such town, and shall file a copy of such map with the town
101 clerk. After December 31, 2007, if an owner of real property where a
102 high hazard dam or a significant hazard dam is located transfers title
103 of the property to another person or entity, the transferring property
104 owner shall cause to be recorded on the land records in the
105 municipality where the property is located a document that identifies
106 the existence of the dam and whether the dam is categorized as a high
107 hazard dam or a significant hazard dam. The commissioner shall
108 publish a standardized form to be used for such purposes.

109 Sec. 4. Subsection (a) of section 22a-411 of the general statutes is
110 repealed and the following is substituted in lieu thereof (*Effective*
111 *October 1, 2006*):

112 (a) The commissioner may issue a general permit for any minor
113 activity regulated under sections 22a-401 to 22a-410, inclusive, except
114 for any activity covered by an individual permit, if the commissioner

115 determines that such activity would cause minimal environmental
116 effects when conducted separately and would cause only minimal
117 cumulative environmental effects. Such activities may include [routine
118 maintenance and] routine repair of any dam, dike, reservoir or other
119 similar structure, [and the construction if any such structure presents
120 low or negligible safety hazards.] Any person conducting an activity
121 for which a general permit has been issued shall not be required to
122 obtain an individual permit under sections 22a-36 to 22a-45a, inclusive,
123 or section 22a-342, 22a-368 or 22a-403, except as provided in subsection
124 (c) of this section. A general permit shall clearly define the activity
125 covered thereby and may include such conditions and requirements as
126 the commissioner deems appropriate, including but not limited to,
127 management practices and verification and reporting requirements.
128 The general permit may require any person conducting any activity
129 under the general permit to report, on a form prescribed by the
130 commissioner, such activity to the commissioner before it shall be
131 covered by the general permit. The commissioner shall prepare, and
132 shall annually amend, a list of holders of general permits under this
133 section, which list shall be made available to the public.

134 Sec. 5. Section 22a-40 of the general statutes is repealed and the
135 following is substituted in lieu thereof (*Effective October 1, 2006*):

136 (a) The following operations and uses shall be permitted in
137 wetlands and watercourses, as of right:

138 (1) Grazing, farming, nurseries, gardening and harvesting of crops
139 and farm ponds of three acres or less essential to the farming
140 operation, and activities conducted by, or under the authority of, the
141 Department of Environmental Protection for the purposes of wetland
142 or watercourse restoration or enhancement or mosquito control. The
143 provisions of this subdivision shall not be construed to include road
144 construction or the erection of buildings not directly related to the
145 farming operation, relocation of watercourses with continual flow,
146 filling or reclamation of wetlands or watercourses with continual flow,
147 clear cutting of timber except for the expansion of agricultural crop

148 land, the mining of top soil, peat, sand, gravel or similar material from
149 wetlands or watercourses for the purposes of sale;

150 (2) A residential home (i) for which a building permit has been
151 issued or (ii) on a subdivision lot, provided the permit has been issued
152 or the subdivision has been approved by a municipal planning, zoning
153 or planning and zoning commission as of the effective date of
154 promulgation of the municipal regulations pursuant to subsection (b)
155 of section 22a-42a or as of July 1, 1974, whichever is earlier, and further
156 provided no residential home shall be permitted as of right pursuant
157 to this subdivision unless the permit was obtained on or before July 1,
158 1987;

159 (3) Boat anchorage or mooring;

160 (4) Uses incidental to the enjoyment and maintenance of residential
161 property, such property defined as equal to or smaller than the largest
162 minimum residential lot site permitted anywhere in the municipality,
163 provided in any town, where there are no zoning regulations
164 establishing minimum residential lot sites, the largest minimum lot site
165 shall be two acres. Such incidental uses shall include maintenance of
166 existing structures and landscaping but shall not include removal or
167 deposition of significant amounts of material from or onto a wetland
168 or watercourse or diversion or alteration of a watercourse;

169 (5) Construction and operation, by water companies as defined in
170 section 16-1, as amended, or by municipal water supply systems as
171 provided for in chapter 102, of dams, reservoirs and other facilities
172 necessary to the impounding, storage and withdrawal of water in
173 connection with public water supplies except as provided in sections
174 22a-401 and 22a-403; and

175 (6) Maintenance relating to any drainage pipe which existed before
176 the effective date of any municipal regulations adopted pursuant to
177 section 22a-42a or July 1, 1974, whichever is earlier, provided such pipe
178 is on property which is zoned as residential but which does not
179 contain hydrophytic vegetation. For purposes of this subdivision,

180 "maintenance" means the removal of accumulated leaves, soil, and
181 other debris whether by hand or machine, while the pipe remains in
182 place.

183 (b) The following operations and uses shall be permitted, as
184 nonregulated uses in wetlands and watercourses, provided they do not
185 disturb the natural and indigenous character of the wetland or
186 watercourse by removal or deposition of material, alteration or
187 obstruction of water flow or pollution of the wetland or watercourse:

188 (1) Conservation of soil, vegetation, water, fish, shellfish and
189 wildlife; and

190 (2) Outdoor recreation including play and sporting areas, golf
191 courses, field trials, nature study, hiking, horseback riding, swimming,
192 skin diving, camping, boating, water skiing, trapping, hunting, fishing
193 and shellfishing where otherwise legally permitted and regulated.

194 (c) Any dredging or any erection, placement, retention or
195 maintenance of any structure, fill, obstruction or encroachment, or any
196 work incidental to such activities, conducted by a state agency, which
197 activity is regulated under sections 22a-28 to 22a-35, inclusive, or
198 sections 22a-359b to 22a-363f, inclusive, shall not require any permit or
199 approval under sections 22a-36 to 22a-45, inclusive.

200 (d) Routine maintenance performed on a dam, dike, reservoir or
201 other similar structure, along with any appurtenances thereto, that, in
202 the judgment of the commissioner would, by breaking away, cause
203 loss of life or significant property damage shall not require a permit or
204 approval under sections 22a-36 to 22a-45, inclusive, when such routine
205 maintenance is performed under the written authority of the
206 Department of Environmental Protection.

207 Sec. 6. Subsection (d) of section 20-327b of the general statutes is
208 repealed and the following is substituted in lieu thereof (*Effective*
209 *October 1, 2006*):

210 (d) (1) The Commissioner of Consumer Protection, shall, by

211 regulations adopted in accordance with the provisions of chapter 54,
 212 prescribe the form of the written residential disclosure report required
 213 by this section and sections 20-327c to 20-327e, inclusive. The
 214 regulations shall provide that the form include information concerning
 215 municipal assessments, including, but not limited to, sewer or water
 216 charges applicable to the property. Such information shall include: (i)
 217 Whether such assessment is in effect and the amount of the
 218 assessment; (ii) whether there is an assessment on the property that
 219 has not been paid, and if so, the amount of the unpaid assessment; and
 220 (iii) to the extent of the seller's knowledge, whether there is reason to
 221 believe that the municipality may impose an assessment in the future.

222 (2) Such form of the written residential disclosure report shall
 223 contain the following:

224 (A) A certification by the seller in the following form:

225 "To the extent of the seller's knowledge as a property owner, the
 226 seller acknowledges that the information contained above is true and
 227 accurate for those areas of the property listed. In the event a real estate
 228 broker or salesperson is utilized, the seller authorizes the brokers or
 229 salespersons to provide the above information to prospective buyers,
 230 selling agents or buyers' agents.

.... (Date) (Seller)
 (Date) (Seller)"

231 (B) A certification by the buyer in the following form:

232 "The buyer is urged to carefully inspect the property and, if desired,
 233 to have the property inspected by an expert. The buyer understands
 234 that there are areas of the property for which the seller has no
 235 knowledge and that this disclosure statement does not encompass
 236 those areas. The buyer also acknowledges that the buyer has read and
 237 received a signed copy of this statement from the seller or seller's
 238 agent.

.... (Date)

.... (Seller)

.... (Date)

.... (Seller)"

239 (C) A statement concerning the responsibility of real estate brokers
240 in the following form:

241 "This report in no way relieves a real estate broker of the broker's
242 obligation under the provisions of section 20-328-5a of the Regulations
243 of Connecticut State Agencies to disclose any material facts. Failure to
244 do so could result in punitive action taken against the broker, such as
245 fines, suspension or revocation of license."

246 (D) A statement that any representations made by the seller on the
247 written residential disclosure report shall not constitute a warranty to
248 the buyer.

249 (E) A statement that the written residential disclosure report is not a
250 substitute for inspections, tests and other methods of determining the
251 physical condition of property.

252 (F) Information concerning environmental matters such as lead,
253 radon, subsurface sewage disposal, flood hazards, the location and
254 condition of any dam, dike or similar structure, the disclosure of any
255 responsibility for maintenance and repair of a dam, the disclosure of
256 any order or pending request of the Commissioner of Environmental
257 Protection concerning dam repair and such other topics as the
258 Commissioner of Consumer Protection may determine would be of
259 interest to a buyer.

260 (G) A statement that information concerning the residence address
261 of a person convicted of a crime may be available from law
262 enforcement agencies or the Department of Public Safety and that the
263 Department of Public Safety maintains a site on the Internet listing
264 information about the residence address of persons required to register
265 under section 54-251, as amended, 54-252, 54-253 or 54-254, who have
266 so registered.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2006</i>	New section
Sec. 2	<i>October 1, 2006</i>	22a-403
Sec. 3	<i>October 1, 2006</i>	22a-409(a)
Sec. 4	<i>October 1, 2006</i>	22a-411(a)
Sec. 5	<i>October 1, 2006</i>	22a-40
Sec. 6	<i>October 1, 2006</i>	20-327b(d)

ENV *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Department of Environmental Protection	GF - See Below	See Below	See Below

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 07 \$	FY 08 \$
Various Municipalities	Cost	Potential Minimal	Potential Minimal

Explanation

The changes made in the bill regarding dam safety are anticipated to increase the efficiency of the Department of Environmental Protection (DEP) with regard to their administration of the laws regarding dam safety and minimally increase their workload, within resources, due to the monitoring of the land record filings for high and significant hazard dams. It is also anticipated that the legislation will result in a minimal fiscal impact, within resources, to the state and impacted municipalities due to the cost of recording on the land records when transferring state-owned or municipally owned dams. There are currently 702 dams in the state that fall into the high hazard or significant hazard category and it is estimated that 25-30 of these dams are transferred per year.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis
sSB 414

AN ACT CONCERNING DAM SAFETY.

SUMMARY:

This bill makes several changes to laws affecting dam safety. Specifically, it:

1. exempts the Department of Environmental Protection (DEP) commissioner from several environmental laws when she builds, repairs, replaces, or removes dams, dikes, reservoirs, or similar structures on state-owned land under DEP control;
2. permits people to perform routine dam maintenance without a DEP construction permit or general permit;
3. permits people to build dams, dikes, and other structures without a DEP general permit if the structure presents low or negligible safety hazards;
4. gives people the right to perform routine maintenance on dams in inland-wetland area, when authorized in writing by the DEP;
5. requires, starting January 1, 2008, owners transferring property on which a high hazard or significant hazard dam is located to record the dam's location and hazard status in local land records, and authorizes the commissioner to publish a standard form for such purposes; and
6. requires disclosure on prescribed residential sale disclosure forms of (a) the location and condition of any dam; (b) the responsibility for maintaining and repairing it; and (c) any order or pending request from the commissioner concerning dam repair.

The bill defines “emergency operation plan,” but does not otherwise refer to it.

EFFECTIVE DATE: October 1, 2006

Exempting DEP Commissioner from Permit Process

Under current law, any person who builds, alters, rebuilds, substantially repairs, adds to, replaces, or removes any dam, dike, reservoir, or similar structure must obtain a DEP permit.

This bill exempts the commissioner or her representative from this requirement when she seeks to build or make such changes to a dam, dike, reservoir, or similar structure, with its appurtenances, if: (1) the state owns the structure and (2) it is under the commissioner’s control. The bill also exempts the commissioner from the need to obtain any permit, certificate, or approval under the Connecticut Environmental Policy Act and laws governing (1) wetlands and watercourses, (2) coastal management, (3) water resources, (4) flood management and (5) fisheries and game, if her actions are consistent with the policies the act and those laws express. But the bill does not exempt the commissioner from a law authorizing people to sue in Superior Court to protect the public trust in the state’s air, water, or other natural resources from unreasonable pollution, impairment, or destruction.

Dam Construction Permit

Under current law, anyone seeking to build, alter, rebuild, substantially repair, add to, replace or remove a dam, dike, reservoir, or similar structure which, by breaking away, would endanger life or property, must obtain a DEP construction permit. The bill exempts from this requirement routine dam maintenance, which it defines as any work performed on a dam, dike, reservoir, or similar structure, with appurtenances, undertaken periodically to ensure the structure’s safe operation and physical integrity. The definition includes rodent removal, vegetation control, floating debris removal, lubrication, painting, minor embankment regrading, minor riprap or erosion repair, minor masonry or concrete restoration, brush or tree cutting,

and removal of sediment from spillway structures or discharge channels.

Routine Maintenance on Wetlands or Watercourse

Under current law, a person must obtain permission from the commissioner or municipal inland wetlands commission to conduct certain activities, such as removing or depositing material, in a wetlands or watercourse. The bill exempts routine dam maintenance from this requirement.

DEFINITIONS

High Hazard Dam

A high hazard dam is a dam, dike, reservoir or similar structure, with appurtenances, that the commissioner has determined is a class C dam whose failure would cause (1) probable loss of life; (2) major damage to a habitable structure, residence, hospital, convalescent home, school, or similar property; (3) damage to a main highway; or (4) significant economic loss.

Significant Hazard Dam

A significant hazard dam is any dam, dike, reservoir, or similar structure, with appurtenances, that the commissioner has determined is a class B dam whose failure would cause (1) possible loss of life; (2) minor damage to a habitable structure, residence, hospital, convalescent home, school or similar property; (3) damage to or the interruption of the use of service utilities; (4) damage to primary roads and railroads; or (5) significant economic loss.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/10/2006)