
OLR Bill Analysis

sHB 5130

AN ACT CONCERNING THE DAM SAFETY PROGRAM.

SUMMARY:

By law, the Department of Energy and Environmental Protection (DEEP) commissioner has jurisdiction over dams, dikes, and similar structures whose failure might endanger life or property. This bill makes several changes to the laws on dams and dam inspections. Specifically, it:

1. requires owners of unregistered dams or similar structures to register them with the DEEP commissioner by October 1, 2014 (§ 4);
2. establishes construction and regular inspection requirements for owners of registered dams or similar structures (§§ 3 & 4);
3. creates an audit procedure and independent inspection process for inspection reports that are materially inaccurate, incomplete, or misleading (§ 4);
4. requires an owner of a high or significant hazard dam or similar structure to develop and implement an emergency action plan (§ 5);
5. requires DEEP to consider the impact on tidal wetlands when issuing a permit for construction work on a dam or similar structure and exempts permittees from needing to secure certain other permits (§ 2); and
6. eliminates a requirement that the owner of a dike (an embankment for controlling floodwaters or erosion) notify the DEEP commissioner within 10 days of a transfer in ownership (§§ 1 & 4).

EFFECTIVE DATE: October 1, 2012

§ 4 — DAM SAFETY PROGRAM

Registrations

The bill gives the owner of any dam or similar structure unregistered with the DEEP commissioner until October 1, 2014 to register it.

Inspection Requirements

The bill requires, with certain exceptions, an owner of a registered dam or similar structure to (1) have it inspected by a Connecticut-licensed registered professional engineer according to regulations and (2) submit the inspection results to the DEEP commissioner on a DEEP form.

Current law requires the DEEP commissioner to periodically inspect certain registered dams but under the bill, he must conduct such inspections for quality assurance (1) when an owner fails to undertake a regularly scheduled inspection and (2) it is necessary after a flood. Until regulations are adopted concerning inspection fees, the fee for such an inspection is \$ 660, the fee under current law.

By law, the DEEP commissioner must adopt regulations establishing (1) a frequency schedule for inspection, (2) fees for regularly scheduled inspections that cover their reasonable cost, (3) registration procedures and criteria for waiving registration and inspection fees, and (4) criteria for determining if a dam has potential for negligible damage. The bill requires that the regulations also address dam inspection procedures and fees for department inspections only, instead of fees for regularly scheduled inspections.

Audit Procedure

The bill allows the DEEP commissioner to audit an inspection report submitted by the owner of a dam or similar structure. He may request, in writing, any information he needs to perform the audit, such as additional information or field inspections.

It permits the DEEP commissioner to require an independent inspection if he determines the inspection report is materially inaccurate, incomplete, or misleading. The independent inspection must be (1) performed by a disinterested registered professional engineer licensed in the state and (2) at the owner's expense. Under the bill, "disinterested" means that the engineer (1) has no financial interest except the expectation of reasonable compensation for services, (2) did not participate in preparing or developing the inspection to be audited, and (3) is not employed by the owner or the engineer who performed the inspection to be audited.

The bill requires the DEEP commissioner to adopt regulations establishing procedures for an owner to (1) receive notice and (2) appeal an independent inspection's cost.

§ 2 & 3 — DAM CONSTRUCTION

Permit Requirement

By law, anyone constructing, altering, rebuilding, substantially repairing, adding to, replacing, or removing a dam or similar structure must obtain a permit from the DEEP commissioner.

The bill requires the DEEP commissioner or his representative, engineer, or consultant to determine the proposed construction's impact on tidal wetlands before issuing a permit, in addition to determining its impact on the (1) environment, (2) safety of people and property, and (3) inland wetlands and watercourses, as required under current law.

Exemptions

Under the bill, an applicant seeking to alter, rebuild, repair, or remove an existing dam need not obtain permits to (1) conduct a regulated activity in tidal wetlands or (2) dredge, erect structures, or place fill, obstructions, or encroachments in tidal, coastal, or navigable waters. Existing law exempts such permit applicants from permit requirements for (1) stream channel encroachment, (2) diversion, and (3) regulated activity in an inland wetland and watercourse.

The bill also exempts permit applicants for new dam construction from the permit required to conduct a regulated activity in a tidal wetland. The law already exempts them from needing a similar permit in inland wetlands and watercourses.

The bill specifies that permit applicants are exempt from needing to obtain flood management certification approval from the DEEP commissioner. By law, a state agency seeking to perform an activity in or affecting a floodplain must obtain his approval or an exemption from approval.

Inspections

The bill requires a dam owner or its representative supervising work on a dam or similar structure under DEEP's jurisdiction, to have it inspected by a Connecticut-licensed registered professional engineer to determine if it will be safe and secure. Under current law, the DEEP commissioner or his representative must have it inspected.

The bill requires a dam owner to submit a sworn statement from the inspecting engineer to the DEEP commissioner within 30 days of completing work. The statement must attest that (1) the engineer inspected the work and determined the dam or similar structure to be safe within its design parameters and (2) all appurtenances were built, repaired, altered, or removed according to the plans, specifications, and drawings approved by the DEEP commissioner under a permit or order. The sworn statement must bear the engineer's professional seal.

The bill allows the DEEP commissioner to place a competent inspector on construction work of a dam or similar structure if it involves (1) a high or significant hazard dam or (2) he determines a sensitive ecological condition exists. Current law allows him to do so when he believes circumstances warrant it. Unchanged by the bill, the law requires that such inspector's compensation is shared equally by the state and the owner.

§ 5 — EMERGENCY ACTION PLAN

The bill requires the owner of a high or significant hazard dam or

similar structure to develop and implement an emergency action plan. The plan must be updated every two years. Copies of it must be filed with the (1) DEEP commissioner and (2) chief executive officer of a municipality that may be affected in an emergency.

It also requires the DEEP commissioner to adopt regulations establishing the content of an emergency action plan, including:

1. criteria and standards for inundation studies and zone mapping,
2. procedures for monitoring the dam or structure during heavy rainfall and runoff periods such as (a) personnel assignments and (b) dam features to be inspected at given intervals, and
3. a formal notification system to alert appropriate local officials responsible for warning and evacuating residents in the inundation zone during an emergency.

BACKGROUND

High or Significant Hazard Dam

State regulations classify dams by the hazards they would pose if they failed. A high hazard dam is one whose failure would result in (1) probable loss of life; (2) major damage to habitable structures, homes, hospitals, convalescent homes, or schools; (3) damage to main highways; or (4) great economic loss. A significant hazard dam is one whose failure would result in (1) possible loss of life; (2) minor damage to habitable structures, homes, hospitals, convalescent homes, or schools; (3) damage to, or interruption of, utility service; (4) damage to primary roadways or railroads; or (5) significant economic loss (Conn. Agencies Reg. § 22a-409-2(d)).

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 29 Nay 0 (03/23/2012)