
OLR Bill Analysis

sHB 6441

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 many changes to the dam safety laws, including reducing the commissioner's inspection responsibilities. Among other things, it:

1. requires owners of unregistered dams or similar structures to register them by October 1, 2015 (§ 4);
2. generally shifts, from the commissioner to the owners of dams or similar structures, regularly scheduled inspection and reporting requirements (§ 4);
3. creates an audit and independent inspection procedure the commissioner can invoke for materially inaccurate, incomplete, or misleading regularly scheduled inspection reports (§ 4);
4. makes owners generally responsible for supervising and inspecting construction work and establishes new reporting requirements for owners when the work is completed (§ 3);
5. requires the commissioner to consider the impact on tidal wetlands when deciding to issue a construction permit (§ 2);
6. exempts construction permit applicants from additional permitting requirements (§ 2);
7. allows the commissioner to issue a general permit for dam removal projects that provide certain ecological benefits (§ 6);
8. allows, rather than mandates, a dam activity general permit to

require notice of the proposed activity and eliminates a provision that allows written comments on the activity to be submitted to the commissioner (§ 6); and

9. requires owners of high or significant hazard dams or similar structures to develop and implement an emergency action plan (§ 5).

The bill requires the commissioner to adopt regulations that include requirements for (1) regularly scheduled dam inspections, (2) independent inspections conducted during audits, and (3) emergency action plans.

By law, the commissioner may issue a warning notice for certain violations of the dam safety laws and bring an enforcement action to correct them (CGS § 22a-6s). Violating the dam safety laws or an order or permit issued under them also subjects a violator to a fine of up to \$1,000 for each offense, as determined by the court. The attorney general may bring an action to enjoin the violation, require its correction, and collect the fine, if the commissioner requests it (CGS § 22a-407).

It also makes minor and technical changes.

EFFECTIVE DATE: October 1, 2013

§§ 1 & 4 — DAM REGISTRATION AND TRANSFER NOTIFICATION

The bill gives owners of unregistered dams or similar structures until October 1, 2015 to register them. Current law imposes no registration requirements on those that were not registered by July 1, 1984.

The bill also removes a requirement that a dike (an embankment for controlling floodwaters or erosion) owner notify the DEEP commissioner within 10 days after a transfer in ownership.

§§ 3 & 4 — DAM INSPECTION

Regularly Scheduled Inspection

Current law requires the DEEP commissioner to periodically inspect registered dams. The bill instead requires that an owner of a registered dam or similar structure (1) have it inspected by a Connecticut-licensed registered professional engineer and (2) submit the inspection results to the commissioner on a form he prescribes.

The bill requires the commissioner to conduct inspections (1) for quality assurance when an owner fails to undertake a regularly scheduled inspection or (2) that are necessary after a flood. Until superseding regulations are adopted, the fee for such an inspection is \$660, the fee specified under current law.

Current law requires the DEEP commissioner to set in regulations, among other things, an inspection frequency schedule and fees for regularly scheduled inspections. The bill requires him to adopt regulations that (1) include dam inspection procedures and (2) set the fees for the inspections DEEP conducts, instead of fees for regularly scheduled inspections.

Regular Inspection Audit Procedure

The bill allows the DEEP commissioner to audit any regularly scheduled inspection report submitted by the owner of a dam or similar structure. He may request, in writing, any information necessary to perform the audit, including field inspections.

If the commissioner determines the inspection report is materially inaccurate, incomplete, or misleading, he can require the owner to pay for an independent inspection performed by a disinterested, Connecticut-licensed registered professional engineer. 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) does not work for the same employer as the owner or the owner’s engineer who performed the inspection under audit.

The bill requires the DEEP commissioner to adopt regulations establishing procedures for (1) notifying owners about independent

inspections and (2) owners to appeal the cost of inspections.

Construction Inspection

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. Current law specifies that the DEEP commissioner or his representative supervises the work and requires him or his representative to inspect or have the dam or similar structure inspected.

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

The bill requires a dam owner to submit a sworn statement from the inspecting engineer to the commissioner within 30 days after work is completed. 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 commissioner under a permit or order. It must bear the engineer's professional seal.

§§ 2 & 6 — DAM PERMITS

Individual Permit Requirements

By law, anyone seeking to construct, alter, rebuild, substantially repair, add to, replace, or remove a dam or similar structure must obtain a permit from the DEEP commissioner.

The bill requires the 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 (1) the environment, (2) the safety of people and property, and (3) inland wetlands and watercourses, as current law requires.

Exemptions

Under the bill, a permit applicant seeking to alter, rebuild, repair, or remove an existing dam no longer needs to obtain separate permits for (1) conducting a regulated activity in tidal wetlands or (2) dredging, erecting structures, or placing fill, obstructions, or encroachments in tidal, coastal, or navigable waters. The law already exempts such permit applicants from obtaining a stream channel encroachment, diversion, or inland wetland and watercourse regulated activity permit.

The bill also grants an additional exemption for new dam construction applicants. Existing law exempts them from obtaining a permit to conduct a regulated activity in an inland wetland or watercourse. Under the bill, they no longer need a permit to conduct a regulated activity in a tidal wetland.

Additionally, if an applicant is a state agency, it no longer needs to obtain DEEP's permission or a waiver to engage in certain activities within or affecting a floodplain.

General Permit for Dam Removal

By law, the DEEP commissioner can issue a general permit for any minor dam activity if he determines that the activity would have minimal environmental effects, unless it is covered by an individual permit (see BACKGROUND). The bill expands the activities that may be covered under general permits to include dam removal that (1) improves fish passage or (2) provides other ecological benefits. Existing law allows them to cover routine maintenance and repairs.

The law generally exempts people conducting minor dam activity under a general permit from obtaining an individual permit for (1) inland wetland or watercourse regulated activity, (2) stream channel encroachment, (3) diversion, and (4) dam construction. The bill extends this exemption to dam removal for improving fish passage or

providing other ecological benefits.

Under current law, people intending to do work under a minor dam activity general permit must provide 60 days' written notice to the (1) inland wetlands agency, zoning commission, planning commission or combined planning and zoning commission, and conservation commission of any municipality that will or may be impacted by the activity and (2) departments that makes such notices publicly available. The bill instead requires notice only when mandated by the general permit. It also eliminates current law's provision allowing any person or an inland wetlands agency, planning and zoning commission, or conservation commission to submit written comments on an activity covered by such a general permit to the DEEP commissioner at least 25 days before the activity starts.

§ 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 after the DEEP commissioner adopts regulations establishing plan requirements. The requirements must include:

1. criteria and standards for inundation (i.e., flood) 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. notice to alert appropriate local officials responsible for warning and evacuating residents in the inundation zone during an emergency.

The bill requires dam owners to file a copy of their emergency action plan with the (1) DEEP commissioner and (2) chief executive officer of any potentially affected municipality. The plan must be updated biennially.

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)).

General Permit

DEEP uses both individual and general permits to regulate activities. Individual permits are issued directly to an applicant, while general permits authorize similar minor activities by one or more applicants. The authorization of an activity under a general permit is governed by that general permit.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 26 Nay 1 (03/04/2013)