
OLR Bill Analysis

sHB 6441 (as amended by House “A,” “C,” and “D”)*

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 requires owners of certain unregistered dams or similar structures to register them by October 1, 2015. It generally shifts, from the commissioner to the owners of dams or similar structures, regularly scheduled inspection and reporting requirements. The bill also makes owners generally responsible for supervising and inspecting construction work and establishes new reporting requirements for owners when the work is completed.

Under the bill, the commissioner must consider tidal wetland impact when deciding to issue a dam construction permit and exempts these permit applicants from additional permit requirements.

The bill also allows the commissioner to issue a general permit for dam removal projects that provide certain ecological benefits and it eliminates a provision allowing for written comments on a proposed activity to be conducted under a general permit.

It requires owners of high or significant hazard dams or similar structures to develop and implement an emergency action plan. The commissioner must adopt regulations that include requirements for (1) regularly scheduled dam inspections, (2) independent inspections conducted during audits, and (3) emergency action plans.

The bill requires the DEEP commissioner, in consultation with the Department of Agriculture (DoAg) and Department of Public Health (DPH) commissioners and the Connecticut Agricultural Experiment

Station (CAES) director, to (1) establish a plan for using or applying larvicide to control mosquitoes and (2) update the plan by September 1, 2013 to restrict the use or application of methoprene or resmethrin in the state's coastal boundary and for other specified purposes. It allows the introduction of methoprene or resmethrin into certain storm drains, wetlands, or other water bodies if the DEEP commissioner recommends it to prevent an increasing threat of mosquito-borne illness.

The bill requires the DEEP commissioner to take certain steps to prevent West Nile virus, including (1) coordinating with the DPH commissioner and local health departments to survey certain lands for the presence of mosquitoes, (2) enforcing a prohibition on standing water on private property, and (3) encouraging public outreach programs on standing water risks and West Nile virus symptoms.

It also makes minor and technical changes.

*House Amendment "A":

1. specifies that unregistered dams or similar structures that could endanger life or property if they failed must be registered by October 1, 2015, instead of all unregistered dams;
2. prohibits the DEEP commissioner from using information in timely filed registrations that he cannot otherwise independently obtain to order payment of certain penalties;
3. requires the commissioner to provide written notice of dam inspection requirements to dam and similar structure owners; and
4. removes the provision allowing the commissioner to audit dam inspection reports and require independent inspections.

*House Amendment "C" adds the provisions on methoprene and resmethrin.

*House Amendment "D" adds the provisions on West Nile virus

prevention.

EFFECTIVE DATE: October 1, 2013, except the provisions on the use of methoprene and resmethrin and West Nile virus prevention take effect upon passage.

DAM SAFETY

§§ 1 & 4 — Dam Registration and Transfer Notification

The bill gives owners of unregistered dams or similar structures that could endanger life or property if they failed until October 1, 2015 to register them with the DEEP commissioner on a form he prescribes. By law, the owner must report the location and dimensions of the dam or structure and any other information the commissioner requires. Current law specifies that any dam or similar structure had to be registered by July 1, 1984, but it provides no registration requirement for dams established after that date.

Under the bill, as long as the form is submitted to the commissioner by October 1, 2015, he cannot use information it contains that he cannot otherwise independently obtain to order payment of a civil penalty for violating (1) the dam and reservoirs law or (2) a law concerning payment of costs associated with DEEP administrative hearing recordings and transcripts (see BACKGROUND). (Presumably, the bill should refer to the statute authorizing the commissioner to impose civil penalties, CGS § 22a-6b as opposed to CGS § 22a-6d).

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 of ownership.

§§ 3 & 4 — Dam Inspection

Regularly Scheduled Inspection. Current law requires the DEEP commissioner to periodically inspect registered dams. The bill requires instead 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 by March 15 of the year after the inspection.

Under the bill, by January 15 of any year when an inspection is due, the commissioner must provide written notice to the owner of a registered dam or similar structure by certified mail, return receipt requested. The notice must identify the dam's classification and state the frequency for inspection, as provided in regulations. Once the owner receives the notice, he or she must cause the dam or structure to be inspected.

The bill requires the commissioner to periodically conduct inspections (1) for quality assurance when an owner fails to undertake a regularly scheduled inspection or (2) when it is necessary after a flood. It retains the current \$660 inspection fee until superseding regulations are adopted.

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

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 he determines 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 make 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 DEEP commissioner and chief executive officer of any potentially affected municipality. The plan must be updated biennially.

§ 7 — METHOPRENE AND RESMETHRIN

Current law requires the DEEP commissioner, in consultation with the DoAg and DPH commissioners, to establish a contingency plan for spraying larvicide to control mosquitoes if there are outbreaks of mosquito-borne human or animal infectious disease.

The bill requires the DEEP commissioner to also consult with the CAES director and instead develop a plan for using and applying larvicide to control mosquitoes, regardless of a related infectious disease outbreak. As under current law, he must develop the plan within available appropriations.

The plan must be updated by September 1, 2013 to:

1. prohibit the use or application of methoprene or resmethrin in any storm drain or water conveyance in the state's coastal boundary, except in a city with at least 100,000 people and a documented death from West Nile virus (i.e., New Haven, see below) (see BACKGROUND);
2. establish a record-keeping, reporting, and Internet posting

requirement for the state and towns using or applying methoprene or resmethrin for mosquito control in the coastal area (see BACKGROUND); and

3. establish recommendations for a pilot program to evaluate the retail sale and use of methoprene and resmethrin in the coastal area to control mosquitoes in streams, storm drains, storm gutters, and bird baths to ensure their use is consistent with labeling requirements.

Notwithstanding the above prohibition, the bill allows the introduction of methoprene or resmethrin into a storm drain, wetland, or other water body where mosquito larvae is found or suspected if the DEEP commissioner, in consultation with the DPH commissioner and DEEP's mosquito management coordinator, recommends it to prevent an increasing threat of mosquito-borne disease. This recommendation must be based on CAES' surveillance in accordance with the state's mosquito management program.

§ 8 — WEST NILE VIRUS PREVENTION

The bill requires the DEEP commissioner to coordinate with the DPH commissioner and local health departments to survey for the presence of breeding mosquitoes on land, wetlands, and watercourses in any city with a population over 100,000 (i.e., Bridgeport, Hartford, New Haven, Stamford, and Waterbury) where there has been a documented death from West Nile virus. (From 2000 to 2012, there have been three West Nile deaths in Connecticut, including one in New Haven.) The bill allows him to conduct any work needed to eliminate the breeding.

The bill bans on private property in any such city, standing water that the DEEP commissioner determines, in consultation with the DPH commissioner and local health departments, creates a risk of mosquito-borne illness. The DEEP commissioner must enforce the ban and coordinate with the DPH commissioner and local health departments to encourage public outreach programs that instruct residents and private property owners of the (1) risks of standing water and (2) West

Nile virus signs and symptoms.

BACKGROUND

Dam Safety Law Penalties

By law, the DEEP 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).

High or Significant Hazard Dam

State regulations classify dams by the hazards they would pose if they fail. 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.

Methoprene and Resmethrin

Methoprene is a larvicide introduced into still water to combat mosquito larvae. Resmethrin is a broad-spectrum insecticide with

many uses, including controlling adult mosquitoes.

Coastal Boundary

The “coastal boundary,” within the state’s costal area, is the furthest inland of (1) the 100-year-frequency coastal flood zone, (2) a 1,000-foot linear setback from the mean high-water mark, or (3) a 1,000-foot linear setback from the inland boundary of the tidal wetlands (CGS § 22a-94(b)).

Coastal Area

The state’s “coastal area” includes land and water within the area delineated by the westerly, southerly, and easterly limits of the state’s jurisdiction in Long Island Sound and the towns of Branford, Bridgeport, Chester, Clinton, Darien, Deep River, East Haven, East Lyme, Essex, Fairfield, Greenwich, Groton, Guilford, Hamden, Ledyard, Lyme, Madison, Milford, Montville, New Haven, New London, North Haven, Norwalk, Norwich, Old Lyme, Old Saybrook, Orange, Preston, Shelton, Stamford, Stonington, Stratford, Waterford, West Haven, Westbrook, and Westport (CGS § 22a-94(a)).

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 26 Nay 1 (03/04/2013)