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## OLR Bill Analysis

### SB 192

#### ***AN ACT CONCERNING DAM SAFETY.***

#### **SUMMARY**

This bill (1) explicitly prohibits anyone from maintaining a dam in a condition that might endanger life or property and (2) expands the Department of Energy and Environmental Protection (DEEP) commissioner's authority under the state's dam safety law to respond to conditions that threaten public safety or the environment.

Existing law requires the DEEP commissioner to investigate and inspect dams or other structures that, in her judgement, would cause loss of life or property damage if they broke away. The bill sets out a process for her, without prior hearing, to order a dam's owner or caretaker to remedy a problem with a dam when (1) it is causing, or about to cause, a condition that will threaten public safety or the environment or (2) the governor proclaims a civil preparedness state of emergency about a dam. A hearing must be held after she issues the order.

In these circumstances, the bill also authorizes the DEEP commissioner to correct a problem with a dam and makes a person who owns or is responsible for the dam liable for the department's costs and expenses. It subjects the owner or responsible person to damages that are twice the department's costs and expenses if the dam is noncompliant with the dam safety law.

EFFECTIVE DATE: Upon passage

#### **CORRECTING THREATENING DAM CONDITIONS**

##### ***Correction Order***

Under the bill, if the DEEP commissioner investigates a dam and

finds that it is causing, or about to cause, a condition that she thinks will result in, or is likely to result in, an imminent and substantial threat to public safety or the environment, she may issue a written order, without a hearing, to the dam's owner or caretaker to discontinue, abate, or alleviate the problem. The bill allows her to also do this when the governor proclaims a civil preparedness state of emergency about a dam.

The order may state that the commissioner will immediately act to discontinue the condition or make the dam safe (e.g., repair or temporarily or permanently stabilize it) and the bill authorizes her to do this, including by hiring contractors or consultants (see *Liability for Costs and Expenses* below).

**Service.** The bill requires the order to be served using the existing legal process for serving civil orders (for individuals, generally in person or by leaving it at their residence). It also allows the commissioner to have a copy of the order posted on the property involved without it being a trespass.

The bill requires immediate compliance with the order when it is received. The order is binding on all persons against whom it is issued, including their agents and contractors.

**Public Hearing.** The bill requires the DEEP commissioner to hold a hearing within 10 days of the date that all persons served with the order received it. The purpose of the hearing is to give an opportunity for a served person to show that the threatening dam condition does not exist.

The bill requires all legal briefs or memoranda for the hearing to be filed within 10 days after the hearing. DEEP's original order remains in effect until 15 days after the hearing and, during that time, the DEEP commissioner must issue a decision based on the hearing.

**Court Action.** Existing law, unchanged by the bill, makes a violation of the state's dam safety law, including an order issued under it, punishable by a fine of up to \$1,000 per offense, which a court sets. Each

day a violation continues is a separate offense. A court may also issue an injunction on a problem with a dam and require that it be fixed. The bill correspondingly allows, when a dam is unsafe and threatening public safety or the environment or there is a gubernatorial civil preparedness emergency proclamation about a dam, the court-issued injunction to authorize DEEP to immediately act to fix a dam's condition and make it safe.

***Liability for Costs and Expenses***

Under the bill, dam owners or caretakers who receive DEEP orders to remedy a problem with a dam are liable for the costs and expenses DEEP incurs to investigate, contain, abate, remove, monitor, or mitigate the threat the dam causes. If the dam that is the subject of the order is noncompliant with the state's dam safety law, the owner or caretaker is liable for damages that are twice DEEP's costs and expenses.

The bill requires the attorney general to bring a civil action to recover the costs, expenses, and damages, if the DEEP commissioner requests it.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable

Yea 34    Nay 0    (03/15/2024)