



Senate

General Assembly

File No. 155

February Session, 2024

Senate Bill No. 192

Senate, March 28, 2024

The Committee on Environment reported through SEN. LOPES of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the 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. Section 22a-401 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 All dams, dikes, reservoirs and other similar structures, with their
4 appurtenances, without exception and without further definition or
5 enumeration herein, which, by breaking away or otherwise, might
6 endanger life or property, shall be subject to the jurisdiction conferred
7 by this chapter. No person shall maintain a dam in a condition that
8 might endanger life or property. The Commissioner of Energy and
9 Environmental Protection shall formulate all rules, definitions and
10 regulations necessary to carry out the provisions of this chapter and not
11 inconsistent therewith. The commissioner or [his] authorized
12 representatives of the commissioner may enter upon private property
13 to make such investigations and gather such data concerning dams,
14 watersheds, sites, structures and general conditions as may be necessary
15 in the public interest for a proper inspection, review and study of the

16 design and construction of such structures and of the environmental
17 impact of such structures on the inland wetlands of the state. The
18 commissioner may, when necessary, employ or make such agreements
19 with geologists, other engineers, expert consultants and such assistants
20 as may be reasonably necessary to carry out the provisions of this
21 chapter.

22 Sec. 2. Section 22a-402 of the general statutes is amended by adding
23 subsections (h) and (i) as follows (*Effective from passage*):

24 (NEW) (h) After an investigation, whenever the commissioner finds
25 that a dam is causing, or is about to cause, any condition that, in the
26 commissioner's judgment, will result in, or is likely to result in, an
27 imminent and substantial threat to public safety or the environment, or
28 whenever the Governor proclaims a civil preparedness state of
29 emergency pursuant to section 28-9 regarding a dam, the commissioner
30 may, without prior hearing, issue an order in writing to the owner or
31 person having care of such dam to discontinue, abate or alleviate such
32 condition or issue. Such written order may indicate that the
33 commissioner will immediately act to discontinue, abate or alleviate
34 such condition. The commissioner may discontinue, abate or alleviate
35 such condition by means that include, but are not limited to, the
36 temporary or permanent stabilization or repair of the dam or any other
37 actions necessary to place the dam in a safe condition and may retain
38 any contractor or consultant necessary to perform such actions. The
39 commissioner shall serve any order issued pursuant to this subsection
40 in accordance with the provisions of section 52-57. The commissioner
41 may cause a copy of such order to be posted upon the property that is
42 the subject of such order and no action for trespass shall lie for such
43 posting. Any order issued pursuant to this subsection shall be binding
44 upon all persons against whom it is issued, their agents and any
45 independent contractor engaged by such persons. Upon receipt of such
46 order, such person shall immediately comply with such order. The
47 commissioner shall, not later than ten days after the date of receipt of
48 such order by all persons served with such order, hold a hearing to
49 provide any such person an opportunity to be heard and show that such

50 condition does not exist. All briefs or legal memoranda to be presented
51 in connection with such hearing shall be filed not later than ten days
52 after such hearing. Such order shall remain in effect until fifteen days
53 after such hearing, during which time the commissioner shall issue a
54 decision based on such hearing.

55 (NEW) (i) Any owner or person having care of a dam who is issued
56 an order pursuant to subsection (h) of this section shall be liable for all
57 costs and expenses incurred by the commissioner to investigate, contain,
58 abate, remove, monitor or mitigate any threat to public safety and the
59 environment caused by such dam. If the dam subject to an order issued
60 pursuant to subsection (h) of this section is not in compliance with the
61 requirements of this chapter, such owner or person having care of the
62 dam shall be liable to the commissioner for damages equal to two times
63 the costs and expenses incurred by the commissioner pursuant to
64 subsection (h) of this section. Upon request of the commissioner, the
65 Attorney General shall bring a civil action to recover all such costs and
66 expenses.

67 Sec. 3. Section 22a-407 of the general statutes is repealed and the
68 following is substituted in lieu thereof (*Effective from passage*):

69 Any person who violates any provision of this chapter, any order or
70 permit issued by the commissioner pursuant to this chapter shall forfeit
71 to the state a sum not exceeding one thousand dollars, to be fixed by the
72 court, for each offense. Each violation shall be a separate and distinct
73 offense and, in case of a continuing violation, each day's continuance
74 thereof shall be deemed to be a separate and distinct offense. The
75 Attorney General, upon complaint of the commissioner, shall institute
76 an action to recover such forfeiture and to enjoin such violation and
77 require its correction. When a dam is causing, or is about to cause, any
78 condition that will result in, or is likely to result in, imminent and
79 substantial damage to public safety or the environment, or whenever
80 the Governor has proclaimed a civil preparedness state of emergency
81 pursuant to section 28-9 regarding a dam, any injunction issued
82 pursuant to this section may authorize the commissioner to

83 immediately act to discontinue, abate or alleviate such condition by
84 means including, but not limited to, temporary or permanent
85 stabilization or repairs to the dam or any other actions necessary to place
86 the dam in a safe condition.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	22a-401
Sec. 2	<i>from passage</i>	22a-402(h) and (i)
Sec. 3	<i>from passage</i>	22a-407

ENV *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which primarily makes clarifying changes regarding Department of Energy and Environmental Protection's (DEEP) role in overseeing dam safety, is not anticipated to result in a fiscal impact to the state or municipalities.

The bill additionally prohibits anyone from maintaining a dam in a dangerous condition; violators may be fined. No fine revenue is anticipated, however, as dam owners historically have made necessary repairs.

The Out Years

State Impact: None

Municipal Impact: None

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)