

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015-2016

Bill Number: H.37 Name of Bill: An Act Relating to the Safety and Regulation of Dams

Agency/ Dept: ANR/DEC Author of Bill Review: Eric Blatt, Facilities Engineering Division Director

Date of Bill Review: January 6, 2016 Related Bills and Key Players: _____

Status of Bill: (check one): _____ Upon Introduction ☒ As passed HFW+WR _____ As passed by 1st body _____ As passed by both

Recommended Position:

_____ Support ☒ XX Oppose _____ Remain Neutral _____ Support with modifications identified in #8 below

Analysis of Bill

1. **Summary of bill and issue it addresses.** The bill would require all owners of dams in the State to register their dam with the Department, pay an annual operation fee, and file records with the Town Clerk. The bill would codify in statute existing hazard class definitions and add a negligible hazard class. The bill would require the adoption of rules for design and operation of dams. The bill adds a definition of a dam to include any artificial barrier that does or was capable of impounding water, no size limitation.
2. **Is there a need for this bill?** No. The Department has already implemented a registration and fee program for dams impounding more than 500,000 cubic feet of water, making owners more aware of their responsibility and obligation. Rules for siting and design, operation, monitoring, inspection of dams are not needed since the existing statute and program already provides adequate guidance.
3. **What are likely to be the fiscal and programmatic implications of this bill for this Department?**
The numerous requirements imposed by the bill cannot be fulfilled with current staffing levels; it is estimated that an additional 2 FTEs of staff would be needed to minimally implement the fee registration and inspection portions of the bill. In addition, legal services would be needed for determining dam ownership and compliance and appeals.
4. **What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?** There would be fiscal impacts from fees and Town recording fees for the sister Departments within ANR. Programmatic impacts will be realized from the recognition of responsibilities of dam ownership. There would be a need for staff time from the other Departments within ANR, including legal, Agency lands (for title searches), and administrative. The Department of Public Service and the Agency of Agricultural, Food, and Markets would be required to submit updated inventory information on a yearly basis to the Department. Although limited in scope, this would require additional staff time. There would most likely be opposition to the bill, however it will create the opportunity for discussion and review of dam condition, associated impacts of dams on water resources, operation and the potential for removal.
5. **What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?** (for example, public, municipalities, organizations, business, regulated entities, etc)

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There would be fiscal impacts from fees and Town record filing fees and programmatic impacts from the recognition of responsibilities of dam ownership. There would most likely be opposition to the bill, however it will create the opportunity for discussion and review of dam condition, operation and the potential for removal.

6. Other Stakeholders:

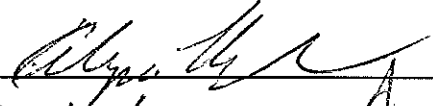
6.1 Who else is likely to support the proposal and why? Environmental advocacy and other groups interested in increasing awareness of dam ownership and associated risk to public safety, impact to water resource of dams, and potential for increasing removal of dams not serving a purpose.

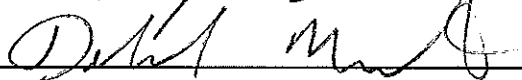
6.2 Who else is likely to oppose the proposal and why? Dam owners due to implementation of a registration fee, filing record requirements and added responsibility of dam ownership and the Vermont Association of Realtors.

7. Rationale for recommendation: The Department cannot support the workload imposed by the bill. The Department has already implemented a registration and fee program for dams impounding more than 500,000 cubic feet of water and is using that funding to replace General Fund money. Assuming a low reasonable FTE cost and an unlikely 100% compliance for fee submittal it would cost \$120,500 to collect \$52,000. This does not account for any dams having a negligible hazard class with a \$0 fee.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

9. Gubernatorial appointments to board or commission?

Commissioner has reviewed this document:  Date: 1/8/16

Secretary has reviewed this document:  Date: 1/20/16

H.37 An Act Relating to the Safety and Regulation of Dams

ANR Blue Sheet Addendum

Preparer: Mike Kline, DEC Rivers Program Manager
January 11, 2016

The Department does agree with public safety goal of H.37 and the objectives of:

- a. Having information about all dams in Vermont that could fail during a flood, endangering public safety and/ damaging public infrastructure, in a functional and accessible Dams Inventory database;
- b. Having a "dam safety rating" for all structures in the Dams Inventory, which rates each dam as having a negligible, low, significant, or high hazard rating explaining the relative risks to life and property if the dam were to fail; and
- c. Having each dam in the Dams Inventory on an inspection schedule commensurate with its hazard rating (i.e., a high hazard dam would require an annual inspection, whereas as a negligible hazard dam may not require any ongoing inspections.

Discussions with H.37 advocates indicate that there may be a willing to support a more incremental approach to these objectives. If a study were confined to looking at those instream structures on perennial streams that are not yet in the Inventory with a hazard rating, then the ANR could partner with DEMHS to complete objectives (a) and (b) above. DEMHS indicated on January 4th that there may be additional funds in the State Hazard Mitigation Planning Grant (recently received from FEMA) to get at least a preliminary hazard rating on those structures not yet inventoried. A completed Dams Inventory would contain information that FEMA would like to see in our 2018 Sate Hazard Mitigation Plan update.

This approach would not require significant staff resources during the year or so while the Inventory is being completed and the report is being prepared, as it would be completed with a contractor using existing FEMA funds (which have already been budgeted for contract work in the development of the State Hazard Mitigation Plan).

With this information in hand the agencies could then report back to the General Assembly on what if any legislation or resources would be needed to address the objective (c), i.e., getting other dams registered and on an inspection schedule. The ANR would then have the opportunity to work with all interested parties to recommend a program that might achieve the public safety goal without putting additional strain on Agency programs that are already challenged to address their dams-related work load.