

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: H.37 Name of Bill: An act relating to the safety and regulation of dams

Agency/ Dept: ANR/DEC Authors of Bill Review: Stephen Bushman, P.E., Dam Safety Engineer and Eric Blatt

Date of Bill Review: 1/30/2015 Related Bills and Key Players: _____

Status of Bill: (check one): ☐ Upon Introduction ☐ As passed by 1st body ☐ As passed by both

Recommended Position:

☐ Support ☐ 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 also establishes a process for the Department to designate a dam as abandoned based on non-reporting or the inability of the Department to identify an owner of a dam. The bill requires the adoption of rules for design and operation of dams by July 1, 2017.

2. **Is there a need for this bill?** Yes and No. **Yes:** 1. The Bill would make owners and buyers more aware of responsibilities of dam ownership and provide additional means and mechanisms for (and obligations on) the Department to administer 10 V.S.A. 43. 2. Registration of dams in the state would allow buyers to be aware of dams on property they are considering purchasing and would allow the state program to be updated when ownership changes. **No:** 1. The bill language changes the definition of dams and would require the owners of thousands of small ponds, some stormwater ponds, and hundreds of breached dams to register their dam and pay an annual fee. 2. The sections pertaining to abandoned dams require the Department to consider designating dams that have an owner as abandoned. This could lead to legal liability implications for the Department and State of Vermont. 3. 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?

A. The bill language requires all dams on perennial streams be registered and pay an annual operating fee regardless of the volume of the impoundment created. Currently, there is no definition of perennial stream in statute. The closest definition is for watercourse found in Chapter 41, Regulation of Stream Flow. Staff from the Rivers Program within the Watershed Management Division would be needed to identify and catalog all perennial streams, identify and record those dams not currently in the Vermont Inventory of Dams database, and administer registration and collection of fees for those dams. It is estimated from the Vermont Resources Atlas that there could be thousands of small, un-inventoried dams on perennial streams throughout Vermont.

The Department would also be obligated to inspect these small on-stream impoundments, small stormwater ponds and breached dams (dams not capable of impounding water). These additional dams would require FTE hours that are necessary for the oversight of the 450 large dams in the State. There is also a requirement to file inspection and registration reports with Town Clerks.

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- B. The sections pertaining to abandoned dams require the Department to consider designating dams as abandoned even if they have an owner. This could lead to legal liability implications for the Department and State of Vermont.
- C. These numerous requirements imposed by the bill cannot be fulfilled with current staffing levels; it is estimated that 3 additional FTE engineering staff would be needed plus 1 FTE of administrative staff to implement the bill fully. In addition, legal services from existing staff would be needed and possibly more.

From the current Vermont Dams Inventory data, the estimated fee revenue that could be generated is as follows:

1. From all dams capable of impounding more than 500,000 cubic feet of water (current Dam Safety Program jurisdiction): \$135,000 estimated fee revenue
Note: The \$135,000 that would be collected from the larger dams will only cover costs to run the existing Dam Safety Program which includes no new FTEs.
2. From all dams capable of impounding more than 500,000 cubic feet plus all known (inventoried) dams on perennial streams currently in the Department's Dam Inventory (expanded jurisdiction): An additional estimated \$64,350 of fee revenue would be generated for a total of \$199,350.
3. Since there are additional dams (likely in the hundreds) that exist that are not currently in the Dam Inventory and that would be subject to the registration requirements under this bill, it is estimated that for each additional 200+/- new dams added to the inventory, fees generated would be: \$40,000

It is also estimated that one (1) new engineering FTE would be needed for each additional 200+/- group of new dams subject to Department jurisdiction beyond the current jurisdiction threshold.

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 registration fees, annual operating 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 dam 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?** 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. The provisions in Section 1104a, Abandoned Dams, could lead to lawsuits and the need for legal involvement if a dam is determined abandoned by the Department based on non-reporting. The inspection of an "abandoned" dam could be problematic if access orders are needed to complete the field portion of the inspection. There is also uncertainty pertaining to responsibility for a dam between the time it is determined to be abandoned by the Department and a new party assumes ownership.
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 increasing removal of dams not serving a purpose.

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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:

- Registration and fee collection for all dams capable of impounding more than 500,000 cubic feet of water is supported since this size dam is required to obtain authorization for construction, alteration or removals. These are also the dams the program prioritizes for inspections.
However:
- Fee revenue is not sufficient to support the FTEs required to perform the additional requirements in the bill as detailed in the answer to question #3 earlier.
- Bill expands jurisdiction to smaller dams and impoundments, further stretching the already limited program staff.
- The abandoned dam section would require significant legal and administrative effort and would be onerous to the program and Department.
- Rulemaking for design and operation standards is not needed since adequate guidance already exists.

8. Specific modifications that would be needed to recommend support of this bill:

- Remove definition §1080 6(B)- Breached dams and 6(C)(iii) – stormwater ponds
- Delete §1104(b)(1)(B) – the requirement to register dams and collect annual fees for dams capable of impounding 500,000 cubic feet or less
- Delete §1104 (h) – designation of a dam as abandoned and (i) – requirement of inspect a non-complying dam and collecting fees
- Delete § 1104a, Abandoned Dams
- Change §1105(b) to clarify that it is the responsibility of the dam owner to file the inspection report, not the person required to complete the inspection
- Delete §1108, Rulemaking
- Modify Sec. 4 DAM REGISTRATION PROGRAM REPORT to change report date to January 1, 2018; and add a requirement to estimate the number and size of dams not currently on the Natural Resources Atlas and to determine the FTEs needed to update the State of Vermont Inventory of Dams and Natural Resources Atlas. The remainder of the report is adequate to discuss if these additional dams should be registered and assessed a fee in the future.

While we agree in principle with the overall objective in this bill of increasing public safety through expanded jurisdiction, the fees generated will not be sufficient to cover the required staffing for full implementation as detailed in #3. Therefore, we recommend a scaled down approach whereby a registration program is established but limited to those dams we currently regulate under 10 VSA Chapter 43 §1082 (i.e., dams capable of impounding greater than 500,000 cubic feet of water). We also support the requirement for the Department to submit a dam registration program report, provided the due date is changed as noted above.

9. Gubernatorial appointments to board or commission?

Commissioner has reviewed this document:

Date: 2/12/15

Secretary has reviewed this document:

Date: 2-17-15

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