



**House  
Legislative  
Analysis  
Section**

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**DAM REPAIR**

**RECEIVED**  
Senate Bills 1038 and 1039 with House  
committee amendments  
First Analysis (12-7-88)  
JAN 18 1989

Sponsor: Sen. Phil Arthurhultz  
Senate Committee: Natural Resources & Environmental  
Affairs  
House Committee: Conservation & Environment  
Mich. State Law Library

**THE APPARENT PROBLEM:**

In the autumn of 1986, heavy rains fell on much of Michigan and caused severe flooding in many parts of the state. As a result of the flooding, dams in White Cloud (located in Newaygo County) and Luther (located in Lake County) that had stood for over 100 years were destroyed. Residents of the two communities enjoyed many recreational benefits as a result of the dams, such as fishing and swimming in lakes created as a result of the dams. It has also been suggested that the dams were a part of the natural heritage of the communities. Citizens of the two communities reportedly would like to rebuild the dams to return waterways to pre-1986 conditions. However, state law requires the Department of Natural Resources (DNR) to issue permits before the reconstruction or repair of dams, fills, or structures can proceed. It has been suggested that the reconstruction permit requirement should be waived for older dams that are destroyed by nature, so that long-standing damaged dams can be replaced.

**THE CONTENT OF THE BILL:**

Senate Bills 1038 and 1039 would amend Public Act 184 of 1963 and the Inland Lakes and Streams Act, respectively, to provide that the permit requirements of the acts would not apply to the repair, reconstruction or improvement of a dam located in Everett Township in Newaygo County and/or a dam located in the Village of Luther in Lake County which was 75 years old when the dam was damaged or destroyed by an act of God in 1986. The requirements would be waived for three years. However, a person who was performing a project for the repair, reconstruction, or improvement of a dam exempted from the permitting requirements of the acts would be required to submit plans and specifications for the project to the DNR and the Joint Capital Outlay Committee. The bills would require the plans and specifications to be prepared by a licensed professional engineer and to meet acceptable standards in the dam industry. A dam could not be repaired, reconstructed, or improved without committee approval. When the committee reviewed plans for approval and specifications for projects, it could require the following environmental considerations to protect water quality:

- underspill devices;
- minimum flow releases; and
- removal of contaminated sediments that could be resuspended in the column upon impoundment.

MCL 281.132 (Senate Bill 1038) and 281.954 (Senate Bill 1039)

**HOUSE COMMITTEE ACTION:**

As passed by the Senate, the bills contained provisions to address the repair, reconstruction, or improvement of all dams, fills, or structures that were 75 years old and

damaged or destroyed by an act of God. The House Conservation and Environment Committee amended the bills to ensure that the bills only addressed the dams in White Cloud and the Village of Luther.

**FISCAL IMPLICATIONS:**

According to the Senate Fiscal Agency, Senate Bill 1038 would have minimal fiscal impact on state and local government by allowing an exemption from the \$0-\$600 dam construction approval permit fee, and Senate Bill 1039 would have minimal fiscal impact on state and local government by allowing an exemption from the \$25 inland lakes and streams permit fee. (11-23-88)

**ARGUMENTS:**

**For:**

Only two dams, the dams located in White Cloud and Luther, were denied dam repair or reconstruction permits by the DNR after the 1986 floods. Each of these dams was erected over 100 years ago; the White Cloud dam was erected in 1866, and the Luther dam was erected in 1881. Both dams had become integral parts of their communities. The waterways impeded by the dams provided recreational opportunities for many residents in the communities and valuable lakefront property for some of the residents. The communities of White Cloud and Luther should be permitted to maintain the natural heritage of their communities and to return to the type of lifestyle afforded them by the dams for over 100 years.

**Against:**

The permits requested for the reconstruction of the dams were denied after extensive hearings and deliberations by the DNR as required by law. The legislature would set a bad precedent if it circumvented the DNR permit process for these two communities.

**Response:** Although some legislators have expressed misgivings about circumventing the permitting process for specific communities, some have also expressed the firm belief that the DNR should be more responsive to the citizens of the state. Because 96 percent of the citizens of the two communities reportedly voted to increase taxes to pay for construction of the dams, some legislators feel that the DNR should acknowledge the commitment of the communities to the repair and reconstruction of the dams.

**Against:**

Although there is recreational value to a lake that has been lost due to the destruction of one of the dams, there is also certain recreational value to the return of the natural stream. For example, the river that was blocked by the White Cloud dam has become a spawning area for some

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species of fish, trout in particular. Replacing that dam would block those fish from their seasonal spawning grounds and ruin a cold-water fishery. Further, it has been estimated that there are 8,000 acres of warm water fisheries within the radius of the former White Cloud dam, but cold water fisheries in that area of the state are reportedly rare. In addition, the brook trout was just recently designated the state fish, and many find it ridiculous that the state would reduce an excellent habitat for that fish. Proponents of the natural stream also note that restoration of a swimming area, by diking an overflow area of the former lake, has been offered to some residents in order to replace some of their lost recreational activities.

**Response:** The DNR and the legislature should concentrate on the general recreational needs of all of the citizens of the state, instead of the needs of sport fishers with powerful lobbyists. Some have suggested that the river below the White Cloud dam was an excellent trout stream. If the dams are repaired or reconstructed, fishers, swimmers, boaters and lakefront owners will be able to enjoy the recreational resources provided by the dams.

### **POSITIONS:**

The Village of Luther supports the bill. (12-6-88)

A representative of the DNR testified at the House Conservation and Environment Committee meeting that the department did not support the bills. (12-6-88)

A representative of the Federation of Fly Fishers testified in opposition to the bills. (12-6-88)

A representative of the Michigan Council of Trout Unlimited testified in opposition to the bills. (12-6-88)

A representative of the Michigan Environmental Council testified in opposition to the bills. (12-6-88)

A representative of the Michigan United Conservation Clubs testified in opposition to the bills. (12-6-88)