



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 1040 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Patricia L. Birkholz
Committee: Natural Resources and Environmental Affairs

Date Completed: 2-23-06

RATIONALE

More than 2,500 dams have been built in Michigan over the years according to the Department of Natural Resources. Dams have been built for a variety of purposes, such as hydroelectric power generation, mill operation, flood control, recreational use, water supply and irrigation, and shipping. Some of these dams, particularly the smaller ones, no longer serve the purpose for which they were built and may fall into disrepair or be abandoned. Dams can have a negative impact on a river or stream's hydrology, and, when poorly maintained, can pose threats to public safety. Evidently, repairing and maintaining an obsolete dam often is more costly than removing it would be. There is no statutory mechanism, however, for the removal of small dams, although the construction of dams is governed by the Natural Resources and Environmental Protection Act. In light of the potential environmental, economic, and safety effects, it has been suggested that a small dam removal permit process be established under the Act.

CONTENT

The bill would amend Part 301 (Inland Lakes and Streams) of the Natural Resources and Environmental Protection Act to authorize the Department of Environmental Quality (DEQ) to issue a permit for the removal of small dams that met specified criteria.

Specifically, after notice and an opportunity for a public hearing, the DEQ could issue a general permit on a statewide basis or within a local unit of government for projects for the removal of qualifying small dams that were similar in nature, that would

cause only minimal adverse environmental effects when performed separately, and that would have only minimal cumulative adverse effect on the environment.

A general permit would be valid for up to five years. The DEQ could impose conditions on the authorized removal of a small dam if the conditions were designed to remove an impairment to the lake or stream. The DEQ also could establish a reasonable time when the proposed project was to be completed or terminated.

The bill would prescribe a \$50 fee for authorization under a general permit for the removal of a qualifying small dam. (Like other application fees under Part 301, this fee would apply until October 1, 2008.)

"Dam" would mean an artificial barrier, including dikes, embankments, and appurtenant works, that impounds, diverts, or is designed to impound or divert water. "Qualifying small dam" would mean a dam that meets all of the following conditions:

- The height of the dam is less than two feet.
- The impoundment from the dam covers less than two acres.
- The dam does not serve as the first dam upstream from the Great Lakes or their connecting waterways.
- The dam is not serving as a sea lamprey barrier.
- There are no threatened or endangered species that have been identified in the area that would be affected by the project.
- There are no known areas of contaminated sediments in the area that would be affected by the project.

-- The DEQ has received written permission for the dam's removal from all riparian property owners adjacent to the dam's impoundment.

"Height of the dam" would mean the difference in elevation measured vertically between the natural bed of an inland lake or stream at the downstream toe of the dam, or, if it is not across a stream channel or watercourse, from the lowest elevation of the downstream toe of the dam, to the design flood elevation or to the lowest point of the top of the dam, whichever is less.

In addition, the bill would require the DEQ to post on its website a list of pending applications, public notices, and public hearing schedules under Part 301.

Under Part 301, the DEQ, by rule, may establish minor project categories of activities and projects that are similar in nature and have minimal adverse environmental impact. The DEQ may act upon an application for an activity or project within a minor project category after an on-site inspection of the land and water involved without providing notices or holding a public hearing under Part 301. The bill would delete the reference to an on-site inspection.

MCL 324.30101 et al.

BACKGROUND

Several parts of the Natural Resources and Environmental Protection Act govern the construction of dams. Part 307 (Inland Lake Levels) provides for dams that establish legal lake levels. Part 315 (Dam Safety) regulates dams that are at least six feet high and have an impounding capacity at design flood elevation of five surface acres or more. That part requires a permit for the construction, repair, alteration, removal, or abandonment of such a dam.

Part 301 does not specifically govern dams but requires a permit for various construction-related activities that affect inland lakes and streams. These activities include structurally interfering with the natural flow of an inland lake or stream, and enlarging or diminishing an inland lake or stream.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Dams of any size can have a detrimental effect on the hydrology of streams and rivers. By impeding the free flow of water, the structures can interfere with the flow of nutrients and sediment, as well as the movement of aquatic species. They can disrupt spawning habitat and change water temperatures and dissolved oxygen levels, causing species to become threatened, endangered, or extinct.

Dams that are not properly maintained present significant risks to safety. As development downstream increases, so does the threat to the public in the event that a dam fails. Dam failure can result in death, extensive property damage, the release of contaminated sediment, and the loss to communities of essential services, such as flood control and water supply. Dams inevitably deteriorate, and the costs to maintain and operate them safely and properly mount as they get older. While some dams once generated revenue for their owners, either public or private, that might not be the case today.

Due to the environmental and safety risks, as well as the economic impracticality of continued maintenance and operation, removal of a dam that no longer serves its intended purpose sometimes is the most prudent option. The bill would establish a streamlined permitting process for small dams around which no known contaminated sediment is present. The process would expedite removal where the removal would not cause a significant environmental impact, facilitating the restoration of the State's waterways.

Legislative Analyst: Julie Koval

FISCAL IMPACT

At least 124 dams meet the criteria of head height and impoundment size for removal authorization under the proposed general permit. Another 161 dams could be eligible under the program; however, their height or impoundment size is unknown. If applications for removal authorization were

submitted for all of the 124 dams known to be eligible for authorization, the \$50 fee would generate aggregate revenue of \$6,200. The revenue would be deposited into the Land and Water Fee Fund and used solely for administration of land and water programs. Additional revenue could be collected if any of the 161 dams with unknown data were eligible and subject to an application for removal authorization.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.