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Bill Analysis

Legislative Service Commission

H.B. 320

125th General Assembly
(As Introduced)

Reps. Jolivette, Webster, Cates, Jerse, Miller, Hartnett, Harwood, Strahorn

BILL SUMMARY

- Defines "low-level dam."
- Requires the Chief of the Division of Water in the Department of Natural Resources to compile a list of dams that he determines to be low-level dams, to adopt rules establishing requirements governing warning signs and buoys to be installed on or near low-level dams together with any other requirements and procedures that are necessary to implement the bill, and to notify owners of low-level dams of those requirements.
- Authorizes the owner of a dam who has been notified that the Chief has determined it to be a low-level dam to request an adjudication hearing, and requires the Chief to conduct the hearing and issue a final order concerning the correctness of the determination.
- Establishes requirements for the repair or replacement of warning signs or buoys installed in accordance with the bill and rules adopted under it.
- Requires the owner of a low-level dam to comply with the bill and rules adopted under it, and establishes a fine for noncompliance.
- Clarifies that certain current provisions authorizing markers at dams do not apply to warning signs and buoys that are required to be installed and maintained at low-level dams under the bill.

CONTENT AND OPERATION

Background and overview

Current law prohibits the construction of a dam for the purpose of storing, conserving, or retarding water, or for any other purpose, unless the person or

governmental agency desiring the construction first obtains a permit issued by the Chief of the Division of Water in the Department of Natural Resources. Current law also establishes other provisions governing dams. (Sec. 1521.06 et seq., not in the bill.)

However, the following small dams are exempt from the permit requirement and other provisions: (1) a dam that is or will be less than ten feet in height and that has or will have a storage capacity of not more than 50 acre-feet at the elevation of the top of the dam, (2) a dam, regardless of height, that has or will have a storage capacity of not more than 15 acre-feet at the elevation of the top of the dam, and (3) a dam, regardless of storage capacity, that is or will be six feet or less in height (sec. 1521.06, not in the bill). In response to concerns that the hydraulic characteristics of certain small dams at certain flows sometimes cause persons entering the area immediately below the dam to be caught in the backwash, the bill defines "low-level dam" and establishes requirements for warning signs and buoys at such dams (sec. 1521.065).

Definition of "low-level dam"

The bill defines "low-level dam" as a dam that satisfies both of the following criteria: (1) it is built across a river or stream for the purpose of impounding water, provided that the impoundment at normal flow levels is completely within the banks and all flow passes directly over the entire dam structure within the banks, excluding abutments, to a natural channel downstream, and (2) the Chief has determined in accordance with the bill that its hydraulic characteristics, at certain flows, enable persons entering the area immediately below the dam to be caught in the backwash (sec. 1521.065(A)).

Identification of low-level dams

Not later than 60 days after the effective date of the bill, the Chief must examine data concerning all dams in the state and determine which dams are low-level dams. After that determination, the Chief must compile a list of existing dams that he determines are low-level dams. With respect to a dam that is constructed after the initial list is compiled, the Chief must determine if the dam is a low-level dam and, if necessary, add the dam to the list. (Sec. 1521.065(B).)

Rules

Not later than 90 days after the bill's effective date, the Chief must adopt rules in accordance with the Administrative Procedure Act that do both of the following: (1) establish requirements for the content, location, and maintenance of signs and the location and maintenance of buoys to be installed on or near low-level dams for the purpose of warning the public of hazards posed by low-level

dams, and specify the time periods of the year when such signs and buoys are required to be in place, and (2) establish any other requirements and procedures that are necessary to implement the bill (sec. 1521.065(C)).

Notification to owners

Not later than 30 days after the rules become effective, the Chief must notify, by certified mail, the owner of each dam that is determined to be a low-level dam of the requirements of the bill and the rules. Not later than 90 days after receiving the notification, the owner of a low-level dam must comply with those requirements. (Sec. 1521.065(D).)

With respect to a low-level dam that is constructed after the Chief compiles the initial list identifying low-level dams, the Chief must provide notification of the requirements of the bill and rules adopted under it, by certified mail, to the person or governmental entity who is responsible for having the dam constructed and who will, upon completion of the construction, own the dam. The Chief must provide that notification not later than 30 days after adding the dam to the list. The person or governmental entity must comply with the requirements of the bill and rules adopted under it not later than 90 days after completion of the construction of the low-level dam. (Sec. 1521.065(D).)

Opportunity for a hearing

After receiving notification, if the owner of a dam that is determined by the Chief to be a low-level dam disagrees with the determination, the owner may request an adjudication hearing in writing not later than 30 days after receipt of notification. The Chief must conduct the adjudication hearing in accordance with the Administrative Procedure Act. After reviewing the record of the hearing, the Chief must issue a final order maintaining the dam on the list of low-level dams or removing the dam from the list. (Sec. 1521.065(D).)

Repair or replacement of signs or buoys

If the owner of a low-level dam learns that signs or buoys installed pursuant to the bill and rules adopted under it have been removed or that such signs have been defaced so that they no longer comply with the bill and rules adopted under it, the owner must replace or make repairs to the signs or buoys within 30 days unless river conditions during that time make such repair or replacement dangerous or impractical, in which case the owner must repair or replace the signs or buoys as soon as is reasonably practical. However, if the owner of a low-level dam removes any signs or buoys, the owner must replace the signs or buoys within five days. (Sec. 1521.065(F).)

Compliance requirement and penalty

The bill requires the owner of a dam that is determined to be a low-level dam to comply with the bill and rules adopted under it (sec. 1521.065(E)). The owner of a low-level dam who complies with the bill and rules adopted under it is deemed to have met the standard of care for warning the public of hazards posed by the dam (sec. 1521.065(G)). Anyone who fails to comply with the bill and rules adopted under it must be fined not less than \$500 nor more than \$5,000 for each offense (sec. 1521.99(D)).

Federally-required warning signs or buoys

The bill states that warning signs or buoys that are installed and maintained in the areas above or below a low-level dam or on the banks immediately adjacent to such a dam by the owner of the dam in compliance with requirements of the United States Coast Guard, the Federal Energy Regulatory Commission, or any other federal agency having jurisdiction over a low-level dam are deemed to meet the requirements established or imposed under the bill and rules adopted under it regarding the placement of warning signs or buoys (sec. 1521.065(H)).

Clarifications

Current law authorizes the Director of Natural Resources to expend funds and make grants to erect and maintain markers that designate public facilities, points of interest, portages, and all dams, rapids, waterfalls, whirlpools, and other hazards to canoeists and boaters. The bill clarifies that this authority does not apply to markers, including signs and buoys, that are required to be installed and maintained at low-level dams under the bill and rules adopted under it. (Sec. 1501.21.)

Similarly, current law authorizes the Director to erect and maintain suitable markers to warn boaters of dams that are hazardous on all waters of the state that are regularly used by the public, whether seasonally or during all seasons, for canoeing, kayaking, or similar watercraft recreation. The bill clarifies that this authority does not apply to markers, including signs and buoys, that are required to be installed and maintained at low-level dams under the bill and rules adopted under it. (Sec. 1501.22.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced H0320-I-125.doc/jc	10-28-03	pp. 1149-1150

