

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 177 (Chair, Environment and Transportation Committee)
Environment and Transportation and Appropriations Education, Health, and Environmental Affairs

Environment – Water Infrastructure Assets – Authorization of Emergency Actions

This bill modifies provisions related to the Maryland Department of the Environment’s (MDE) authority to respond to an emergency situation related to a “water infrastructure asset,” defined as a reservoir, dam, or any other waterway construction. A water infrastructure “asset owner” must reimburse MDE for costs incurred, and a lien must be established for nonpayment under specified circumstances. The bill also establishes legal protections for MDE and the State. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: MDE can implement the bill with existing staff. State revenues from reimbursements may increase due to the bill’s reimbursement and lien provisions, but any reimbursements cannot be predicted. To the extent that the bill’s liability provisions result in avoidance of damages awarded against MDE that would otherwise be awarded under existing statute, special fund expenditures from the State Insurance Trust Fund decrease.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: Minimal or none.

Analysis

Bill Summary: An “asset owner” is the owner or person having control of a water infrastructure asset.

Authorized Emergency Action

MDE may take emergency actions necessary to protect life, property, or the environment if (1) MDE determines that a water infrastructure asset is in imminent danger of failure, MDE has issued specified notice to the asset owner, and the owner has not completed the work within the time prescribed in the notice or (2) MDE determines that a water infrastructure asset is failing and the asset owner is not taking adequate actions to protect life, property, or the environment. Authorized emergency actions include (1) taking control of the water infrastructure asset; (2) lowering the level of water or completely releasing all water impounded by the water infrastructure asset, as specified; (3) performing any necessary remedial or protective work onsite; and (4) taking any other steps MDE deems necessary to safeguard life, property, or the environment.

If MDE takes control of a water infrastructure asset, MDE must remain in charge and control of the asset until MDE has determined that the water infrastructure asset is safe or the circumstances requiring the emergency actions have ceased.

MDE or its agents may enter any property without prior notice to the property owner if the entry is necessary to carry out emergency actions. MDE may also obtain equipment, personnel, and other resources for emergency actions taken pursuant to the bill through any appropriate means, including specified emergency procurements.

Required Reimbursements and the Establishment of Liens for Costs Not Reimbursed

Costs incurred by MDE for emergency actions constitute a debt owed to the State; an asset owner, including an association, must reimburse MDE for such costs. The bill repeals an authorization for MDE to not charge an owner for required repair or removal work if the owner demonstrates an inability to pay.

The bill establishes provisions regarding the establishment of a lien in the event that an asset owner does not reimburse MDE for costs incurred within a specified timeframe.

Legal Protections and Related Liability Provisions

The bill establishes protection from liability for damages brought against the State, MDE, and their respective agents or employees for the recovery of damages caused by the partial or total failure of a water infrastructure asset or the control or operation of any water infrastructure asset on specified grounds.

Nothing in the bill and related provisions of law, and no act or omission of MDE, can be construed to relieve an asset owner of (1) the legal duties, obligations, or liabilities incident to the ownership or operation of a water infrastructure asset or (2) any liability for acts or

omissions of the asset owner that cause injury, death, specified damage, or violation of any law, regulation, or permit, even if acts or omissions of MDE could be deemed an intervening cause of such injury, death, damage, or violation.

Current Law/Background: MDE's Dam Safety Program is responsible for regulating the design, construction, operation, and maintenance of dams in Maryland to prevent dam failures and the consequences of failure. MDE conducts inspections based on hazard classes of dams; issues permits for construction, repairs, and modifications; conducts construction inspections; and works with dam owners and emergency management professionals to develop and exercise an emergency action plan in the event of a dam failure.

If MDE determines that a reservoir, dam, or similar waterway construction is unsafe, needs repair, or should be removed because the structure is unsafe and not repairable, MDE must notify the owner and provide a timeframe for completion of the repair or removal. If the work is not completed within this timeframe, MDE has the authority to conduct work, completed at the expense of an owner of a reservoir, dam, or similar waterway construction, for public safety reasons. MDE must charge an owner for this expense (unless MDE determines the owner is unable to pay) and may bring an action in the proper court to recover any expenses if repayment is not made in a timely manner.

MDE has the authority to issue an injunction against a person who violates Title 5, Subtitle 5 of the Environment Article (Appropriation or Use of Waters, Reservoirs, and Dams), and a violator is liable for a civil penalty of up to \$5,000 per violation; each day is a separate violation. Before bringing a civil action against a local government, MDE must meet and consult with the local government to seek an alternative resolution to the contested issue. Criminal penalties also apply. All funds collected by MDE under these enforcement provisions are deposited into the Maryland Clean Water Fund.

According to MDE, Maryland has more than 600 active dams in the State. Of these, 95 are classified as high hazard and 147 are classified as significant hazard. There are 31 high- and significant-hazard dams that are owned by a homeowners or condominiums association. Failure of a high-hazard dam would likely result in loss of human life and extensive property damage to homes and infrastructure or cause flooding of major highways and State roads. Failure of a significant-hazard dam may result in the loss of human life and cause significant flood risks to downstream buildings and roads. Further, MDE notes that the aging of Maryland's dam infrastructure, especially with increasingly volatile weather, will likely result in more dams classified as "unsafe." The majority of dams in Maryland are more than 50 years old, which is beyond the useful life of various components.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of the Environment; Comptroller's Office; Judiciary (Administrative Office of the Courts); Montgomery County; Maryland Association of Counties; cities of Hagerstown and Laurel; Maryland Municipal League; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2020
rh/lgc Third Reader - March 16, 2020
 Revised - Amendment(s) - March 16, 2020
 Revised - Updated Information - March 16, 2020

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