~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 19, 2019

**S. 107**

Introduced by Senators Campbell and Campsen

S. Printed 3/19/19--S. [SEC 3/21/19 10:30 AM]

Read the first time January 8, 2019.

**THE COMMITTEE ON**

**AGRICULTURE AND NATURAL RESOURCES**

To whom was referred a Bill (S. 107) to amend Section 49-11-120(4) of the 1976 Code, relating to the definition of “dam”, to include the erection of an artificial barrier for, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 3, by striking lines 15 through 17.

Amend the bill further, as and if amended, page 3, by striking lines 27 through 33 and inserting:

/ through (e).

(B) A property owner intending to construct or enlarge a dam or reservoir on his property may submit the proposed location, size, purpose, and impoundment capacity to the department for a determination concerning whether the dam is excluded from the provisions of this article pursuant to Section 49-11-120(4)(a) through (e).

(C) If the department has cause to believe that a dam is no longer exempt due to downstream development, then nothing in this article prevents the department from making a determination that the dam is no longer exempt from the provisions of this article.

(D) The department shall not require any changes to a dam or reservoir due to reclassification unless failure to do so would likely cause loss of human life.”

SECTION \_\_. Section 49-11-140 of the 1976 Code is amended to read:

“Section 49-11-140. (A) The authority for the safe maintenance of the dams and reservoirs of this State and the powers of inspection and certification provided in this article are the responsibility of the department. The department may employ engineers and technicians it considers necessary to implement this article for which appropriations are available.

(B) The department shall inspect dams in the following order of priority:

(1) dams located where failure will likely cause the loss of human life or serious damage to homes, industrial or commercial facilities, important public utilities, or main highways or railroads;

(2) dams located where failure will not likely cause the loss of human life but may damage homes, industrial or commercial facilities, or secondary highways or railroads or may cause interruption of the use of service of relatively important public utilities; and

(3) dams primarily used for irrigation related to the production of food, fiber, or other agricultural products where the failure will not likely cause the loss of human life but may damage homes, industrial or commercial facilities, or secondary highways or railroads or may cause interruption of the use of service of relatively important public utilities.” /

Amend the bill further, as and if amended, page 4, by striking lines 23 through 38 and inserting:

/ (C) The owner of a dam or reservoir ~~whose failure likely would cause loss of life or substantial property damage, a dam or reservoir~~ classified as a high or significant hazard under existing regulations~~,~~ shall provide to the department a current emergency action plan in the format on the schedule the department by regulation requires, including updated contact information for county or local emergency management officials. The owner must notify county or local emergency management officials and the department’s Dams and Reservoirs Safety Program that the owner has reason to believe that the dam or reservoir is near failure or has failed.” /

Amend the bill further, as and if amended, page 6, by striking lines 19-21.

Amend the bill further, as and if amended, page 7, line 3, by adding an appropriately numbered new SECTION to read:

/ SECTION \_\_. Section 49-11-260(A) and (B) is amended to read:

“Section 49-11-260. (A) A person violating this article resulting from the failure to take corrective action necessary to protect human life or the property of others upon receipt of notice by the department is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred nor more than five hundred dollars. Each day the violation continues after notice to take corrective action is a separate offense.

(B) ~~The~~ For all other violations of this article, the department may assess an administrative fine of not less than one hundred nor more than one thousand dollars against a person who violates this article or an order issued or regulation promulgated pursuant to it. In determining the amount of the fine the department shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. Fines assessed under this subsection may be appealed to the department who may reduce them based on information presented at the appeal hearing.” /

Renumber sections to conform.

Amend title to conform.

PAUL G. CAMPBELL, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 8, 2019**

**State Expenditure**

This bill requires DHEC to determine whether an existing, new, or enlarged dam or reservoir is excluded from the provisions of the Dams and Reservoirs Safety Act based on the provisions of Section 49-11-120(4) (a) through (f) as amended by this bill. The bill requires further that dam owners provide DHEC with their name, address, phone number, email address, and a completed owner checklist. DHEC indicates that existing program staff may be able to manage the additional dam inspections and other administrative duties required by the bill within existing appropriations. However, DHEC is not certain of their estimate since existing program responsibilities are approaching current staff’s ability to administer the dam safety program. Therefore, we anticipate that this bill will have no expenditure impact on the general fund, other funds, or federal funds.

**State Reve**n**ue**

This bill would allow a taxpayer to claim a refundable income tax credit for repairs or enhancements required by the Department of Health and Environmental Control (DHEC) for dams and reservoirs due to a reclassification of the dam or reservoir. The credit is equal to the actual cost of the repairs or enhancements, not to exceed $50,000.

The proposed credit is integrated with an existing non-refundable tax credit in Section 12-6-3370. As amended, Subsection (A)(1) is the existing credit for construction installation or restoration of ponds lakes and other water impoundments. Subsection (B) restricts the amount of the existing credit for pass-through entities to $2,500 at the entity level. It further restricts the credit to $2,500 for all taxpayers.

The new refundable tax credit for dams and reservoirs is created in Subsection (A)(2). However, added language in Subsection (B) states that the maximum amount of credit for all taxpayers is limited to $2,500 unless the credit is claimed pursuant to Subsection (A)(2) in which case the credit is equal to the actual cost of the repairs or enhancements, not to exceed $50,000. Since the second sentence provides a higher credit amount for credits pursuant to Subsection (A)(2), we have assumed that the limitation will be $50,000 and is not restricted to $2,500 for pass-through entities or other taxpayers. This interpretation is based upon past case law in which the S.C. Supreme Court determined that when any ambiguity exists, the determination must be made in favor of the taxpayer.

Further, the tax credit is for repairs or enhancements required by DHEC due to a reclassification of a dam. DHEC has informed us that the reclassification itself would not require an action on the part of the owner. If the dam already needs action or requires action in the future, the reclassification may affect the type of repair or enhancement required. Since Subsection (B)(1) provides that the credit is equal to the actual cost of repairs or enhancements, we are interpreting this credit to include any repairs or enhancements for a dam that has been reclassified will qualify for the tax credit, regardless of when they were completed or whether they were needed prior to the reclassification. If the repairs are completed in phases over multiple years, the taxpayer may be allowed to claim a credit up to $50,000 for each year over multiple years.

Since the bill does not specify a period in which the repairs must have been completed, we have asked DHEC for data on all dams since 2015 to capture the impact of the October 2015 floods.

DHEC is responsible for oversight of regulated dams that meet specific criteria. Dams are classified by size and by potential loss of human life or property damage in the event of a failure or improper operation of the dam.

Presently, dams are regulated if they meet one of the following criteria:

25 feet in height

Impounds 50 acre feet or more of water

Potential failure may cause loss of human life

Dam Classifications

Class I High Hazard Failure will likely

cause loss of life

or serious damage to

infrastructure.

Class II Significant Hazard Failure will not likely

cause loss of life but may

damage infrastructure.

Class III Low Hazard Failure may cause

limited property

damage.

(Source: https://scdhec.gov/environment/water-quality/dams-and-reservoirs)

Dam owners are responsible for maintaining the structural integrity of their dams. Dams may be reviewed and reclassified by DHEC. Since 2015, DHEC has reclassified 158 dams of the 2,413 total dams on inventory as of 2018. Further, an additional 770 dams have been identified for review for potential reclassification.

DHEC does not maintain statistics on the scope or extent of repairs to regulated dams. Further, they do not collect information on the cost of repairs. As such, we researched national data to determine the potential range of costs. A report by the Task Committee of the Association of State Dam Safety Officials, The Cost of Rehabilitating Our Nation’s Dams, updated in 2016 indicates that $18.71 billion of rehabilitation is required for the estimated 14,282 non-federal high hazard dams nationwide. This is an average of $1,310,041 per dam. For other non-federal dams, the report estimates a total of $60.70 billion in rehabilitation for 87,199 dams is needed at an average of $696,109. While we expect that these costs may be higher than required for most dams, we do anticipate that the majority of repairs, including engineering costs and labor, will meet or exceed the $50,000 expense limit in the proposed credit.

Of the 158 dams that have been reclassified since 2015, 74 dams (46.8 percent) required repairs. Of those 74 dams, the State owns 2, there are 2 dams listed as owned by local government/private entities, and the remaining 70 are privately owned. As of October 2018, only 21 of the 74 dams (28.4 percent) have had permits issued for repairs, and repairs are completed on 8 of those 21 dams. Of the 8 reclassified dams that have been repaired, 6 are privately owned, 1 is owned by the state, and 1 is owned by local government.

Only those dams owned by private entities or public utilities that pay income taxes would be able to claim the tax credit. Currently, 70 reclassified dams requiring repairs are owned by private entities who could claim the tax credit. Given that the tax credit is refundable, we expect that this may encourage further repairs and have based our analysis on the full 70 reclassified dams that can claim the credit. Multiplying $50,000 times the 70 eligible dams would result in potential tax credits of $3,500,000 beginning in tax year 2019. This will reduce general fund individual income tax revenue by up to $3,500,000 in FY 2019-20.

Further, as mentioned above, DHEC has identified 770 dams for review and potential reclassification. If all of those dams are reclassified and 46.8 percent require repairs as experienced currently, another 360 dams could be eligible for the tax credit. These dams would be eligible for up to $18,000,000 in tax credits in future years.

Given these uncertainties, we expect that the bill will reduce general fund income tax revenue by up to $3,500,000 in FY 2019-20, but the revenue impact may increase substantially in future years.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 49-11-120(4) OF THE 1976 CODE, RELATING TO THE DEFINITION OF “DAM”, TO INCLUDE THE ERECTION OF AN ARTIFICIAL BARRIER FOR THE PURPOSE OF CREATING A RESERVOIR, TO CLARIFY THAT FAILURE OF A DAM MUST CAUSE DANGER TO HUMAN LIFE OR THE PROPERTY OF OTHERS, AND TO ADD NEW EXCEPTIONS TO THE DEFINITION; TO AMEND ARTICLE 3, CHAPTER 11, TITLE 49 OF THE 1976 CODE, RELATING TO THE DAMS AND RESERVOIRS SAFETY ACT, TO PROVIDE THAT OWNERS OF EXISTING DAMS OR PROPERTY OWNERS INTENDING TO CONSTRUCT OR ENLARGE A DAM MAY RECEIVE FROM THE DEPARTMENT A DETERMINATION CONCERNING WHETHER THE DAM IS SUBJECT TO THE PROVISIONS OF ARTICLE 3; TO AMEND SECTION 49-11-150 OF THE 1976 CODE, RELATING TO AN OWNER’S RESPONSIBILITY FOR THE SAFE MAINTENANCE OF A DAM OR RESERVOIR, TO PROVIDE THAT THE OWNER OF A DAM OR RESERVOIR MUST PROVIDE CONTACT INFORMATION AND A COMPLETED DAM OWNER CHECKLIST TO THE DEPARTMENT ON A CERTAIN SCHEDULE, TO PROVIDE FOR A CURRENT EMERGENCY ACTION PLAN, AND TO PROVIDE FOR NOTICE OF POTENTIAL OR ACTUAL FAILURES; TO AMEND SECTION 49-11-160 OF THE 1976 CODE, RELATING TO ORDERS TO MAINTAIN, ALTER, REPAIR, OR REMOVE A DAM OR RESERVOIR, TO CHANGE THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT MAY ISSUE AN ORDER DIRECTING THE OWNER OF A DAM OR RESERVOIR TO UNDERTAKE NECESSARY MAINTENANCE, ALTERATIONS, REPAIRS, OR REMOVAL; TO AMEND SECTION 49-11-170 OF THE 1976 CODE, RELATING TO BRINGING UNSAFE DAMS TO THE ATTENTION OF THE DEPARTMENT, TO PROVIDE THAT THE DEPARTMENT CANNOT REQUIRE CHANGES TO A DAM OR RESERVOIR DUE TO RECLASSIFICATION UNLESS NECESSARY TO PREVENT THE LOSS OF HUMAN LIFE; TO AMEND SECTION 49-11-200 OF THE 1976 CODE, RELATING TO THE DEPARTMENT APPROVAL REQUIRED FOR CONSTRUCTION OR ALTERATION, TO PROVIDE THAT CONSTRUCTION OF A NEW DAM OR RESERVOIR OR THE ENLARGEMENT, REMOVAL, OR REPAIR OF AN EXISTING DAM OR RESERVOIR MAY NOT BEGIN UNLESS APPROVED BY THE DEPARTMENT AND TO PROVIDE FOR EXCEPTIONS; AND TO AMEND SECTION 12-6-3370 OF THE 1976 CODE, RELATING TO TAX CREDITS FOR THE CONSTRUCTION, INSTALLATION, OR RESTORATION OF WATER IMPOUNDMENTS AND WATER CONTROL STRUCTURES, TO PROVIDE THAT A TAXPAYER MAY CLAIM A CREDIT OF UP TO FIFTY THOUSAND DOLLARS FOR REPAIRS REQUIRED AS A RESULT OF THE DEPARTMENT RECLASSIFYING THE DAM.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 49-11-120(4) of the 1976 Code is amended to read:

“(4) ‘Dam’ means an artificial barrier with appurtenant works, including, but not limited to, dams, levees, dikes, or floodwalls, for the impoundment or diversion of waters or other fluids or for the creation of a reservoir, where failure ~~may~~ is likely to cause danger to human life or the property of others. However, this does not include a dam:

(a) less than twenty‑five feet in height from the natural bed of the stream or watercourse measured at the downstream toe of the dam, or less than twenty‑five feet from the lowest elevation of the outside limit of the dam, if it is not across a stream channel or watercourse, to the maximum water storage elevation and has an impounding capacity at maximum water storage elevation of less than fifty‑acre feet unless a situation exists where the hazard potential as determined by the department is such that dam failure or improper reservoir operation ~~may~~ is likely to cause loss of human life;

(b) owned or operated by a department or an agency of the federal government;

(c) owned or licensed by the Federal Energy Regulatory Commission, the South Carolina Public Service Authority, the Nuclear Regulatory Commission, the United States Corps of Engineers, or other responsible federal licensing agencies considered appropriate by the department;

(d) upon which the Department of Transportation or county or municipal governments have accepted maintenance responsibility for a road or highway where that road or highway is the only danger to life or property with respect to failure of the dam;

(e) greater in size than a dam subject to subitem (a) for which failure is not likely to cause danger to human life and may cause only minimal damage to the property of others; or

(f) solely used for irrigation related to the production of food, fiber, or other agricultural products, unless dam failure or improper reservoir operation is likely to cause danger to human life.”

SECTION 2. Article 3, Chapter 11, Title 49 of the 1976 Code is amended by adding:

“Section 49-11-125. (A) An owner of a dam or reservoir constructed in this State may submit the dam’s location, size, purpose, and impoundment capacity to the department for a determination concerning whether the dam is excluded from the provisions of this article pursuant to Section 49-11-120(4)(a) through (f).

(B) A property owner intending to construct or enlarge a dam or reservoir on his property may submit the proposed location, size, purpose, and impoundment capacity to the department for a determination concerning whether the dam is excluded from the provisions of this article pursuant to Section 49-11-120(4)(a) through (f).”

SECTION 3. Section 49-11-150 of the 1976 Code is amended to read:

“Section 49-11-150. (A)(1) The owner of a dam or reservoir constructed in this State solely is responsible for maintaining the dam or reservoir in a safe condition throughout the life of the structure.

(2) The owner of a dam or reservoir constructed in this State must provide the department with his name; home or business address; phone number; email address, if any; and a completed dam owner checklist on a form provided by the department. Any changes in a dam owner’s contact information must be reported to the department within thirty days of the change.

(a) The owner of a dam or reservoir classified as a high hazard dam under existing regulations shall provide to the department a completed dam owner checklist annually no later than July first.

(b) The owner of a dam or reservoir classified as a significant hazard dam under existing regulations shall provide to the department a completed dam owner checklist every five years on a schedule determined by the department.

(3) The department may waive the dam owner checklist filing requirements if the department determines that the requirements impose a significant financial hardship on the owner. A request for a waiver must be submitted by the owner and may not be initiated by the department.

(B) The owner of a dam or reservoir shall inform the department in writing within thirty days after title to the dam or reservoir legally has been transferred from his ownership. The notice must include the name, ~~and~~ home or business address, phone number, and email address, if any, of the new owner.

(C) The owner of a dam or reservoir ~~whose failure likely would cause loss of life or substantial property damage, a dam or reservoir~~ classified as a high or significant hazard under existing regulations~~,~~ shall provide to the department a current emergency action plan in the format on the schedule the department by regulation requires, including updated contact information for county or local emergency management officials. However, nothing in the emergency action plan, nor any provision of the law to the contrary, shall require or impose a responsibility on the owner to identify or notify any downstream residents or business owners located in the inundation zone for that dam or reservoir if the owner has reason to believe that the dam or reservoir is near failure or has failed. The owner must notify county or local emergency management officials and the department’s Dams and Reservoirs Safety Program that the owner has reason to believe that the dam or reservoir is near failure or has failed.”

SECTION 4. Section 49-11-160 of the 1976 Code is amended to read:

“Section 49-11-160. The department may issue an order directing the owner of a dam or reservoir subject to the provisions of this article to make at his expense the necessary maintenance, alteration, repair, or removal upon a finding that the dam or reservoir:

(a) is or has become unsafe and is dangerous to human life or the property of others; and

(b)(1) is not maintained in good repair or operating condition; or

~~(c)~~(2) is not maintained or operated in accordance with the terms and conditions of the certificate of completion and operation issued by the department.”

SECTION 5. Section 49-11-170 of the 1976 Code is amended to read:

“Section 49-11-170. (A) The existence of a dam ~~which~~ that is not maintained in good repair or operating condition or ~~may be unsafe and a~~ that is likely to cause danger to human life or the property of others may be brought to the attention of the department by complaint, staff, or authorized investigation or by other means.

(B) Upon staff or other authorized investigations or upon receipt of a written private complaint alleging that the person or property of the complainant is endangered by the construction, maintenance, operation, or condition of a dam or reservoir, the department shall cause a preliminary inspection of the structure and downstream development to be made by field observations to determine if the complaint is meritorious. The department may require the owner of the dam or reservoir to provide data, records, and design plans of the structure specified by regulations.

(C) If upon the preliminary inspection it is determined that the dam or reservoir is unsafe and is likely to cause danger ~~dangerous~~ to human life or the property of others, then the department may order the owner at his expense to make a detailed inspection of the dam and reservoir and surrounding area and to provide to the department within a time frame specified by the department plans prepared by a qualified registered professional engineer for correction of all deficiencies of the dam or to provide to the department plans and specifications for removal of the dam. In either instance the plans must be approved by the department before implementation and implemented within a time frame specified by the department. If upon inspection it is determined that the dam or reservoir has not been maintained in good repair or operating condition, then the department may order the owner at his expense to accomplish the necessary maintenance or to obtain a permit for removal and to remove the dam within a time frame specified by the department.

(D) The department shall give the owner notice of its action when:

(1) a complaint has been filed alleging that the owners’ dam or reservoir is unsafe and is likely to cause ~~a~~ danger to human life or the property of others, stating the nature of the complaint;

(2) a preliminary inspection has been made with findings.

(E) The owner of a dam or reservoir determined through a preliminary inspection not to be maintained in good repair or operating condition or to be unsafe and a danger to human life or the property of others may request a hearing before the board of the department within thirty days after notice of the findings are delivered. The owner may submit written or present oral evidence which must be considered by the board of the department in the issuance of the order.

(F) The department shall not require any changes to the dam or reservoir due to reclassification unless failure to do so would likely cause loss of human life.”

SECTION 6. Section 49-11-200 of the 1976 Code is amended to read:

“Section 49-11-200. (A) The construction of a new dam or reservoir, or the enlargement, removal, or repair of an existing dam or reservoir may not begin until the owner has applied for and obtained from the department written approval of plans and specifications.

(B)(1) ~~Where~~ If the location and size of ~~the~~ a proposed dam or reservoir ~~renders~~ will pose no significant danger to human life or the property of others in instances including, but not limited to, dams and reservoirs for agricultural, fish or wildlife, or recreational uses on private lands, then the requirements of subsection (A), ~~and~~ Section 49‑11‑210, and Section 49-11-220 do not apply ~~unnecessary, the department may grant approval and waive certain nonessential requirements in instances, including, but not limited to, small dams and reservoirs for agricultural, fish or wildlife, or recreational uses on private lands and of no danger to other life or property downstream~~.

(2) If the enlargement, removal, or repair of an existing dam or reservoir will not cause the dam to pose danger to human life or the property of others, then the requirements of subsection (A), Section 49-11-210, and Section 49-11-220 do not apply.”

SECTION 7. Section 12-6-3370 of the 1976 Code is amended to read:

“Section 12-6-3370. (A)(1) A taxpayer may claim a credit for twenty‑five percent of all expenditures for the construction, installation, or restoration of ponds, lakes, other water impoundments, and water control structures designed for the purposes of water storage for irrigation, water supply, sediment control, erosion control or aquaculture and wildlife management, providing these items are not located in or adjacent to and filled primarily by coastal waters of the State.

(2) A taxpayer may claim a refundable credit for repairs or enhancements that are required by the Department of Health and Environmental Control for a dam, as defined by Section 49-11-120(4), or a reservoir, as defined by Section 49-11-120(11), owned by the taxpayer due to the dam’s or reservoir’s reclassification.

(B) In the case of pass‑through entities, the credit is determined at the entity level and is limited to two thousand five hundred dollars. The maximum amount of credit for all taxpayers, including any credit passed through to the taxpayer from a partnership, ‘S’ Corporation, estate, or trust, is also limited to two thousand five hundred dollars unless the credit is being claimed pursuant to subsection (A)(2), in which case the credit is equal to the actual cost of the repairs or enhancements, not to exceed fifty thousand dollars.

(C) If the credit exceeds the taxpayer’s tax liability for the taxable year, the excess amount may be carried forward for credit against income taxes in the next five succeeding taxable years. A tax credit claimed pursuant to subsection (A)(2) is not eligible to be carried forward pursuant to this subsection.

(D) To qualify for the credit the taxpayer must obtain a construction permit issued by the Department of Health and Environmental Control or proof of exemption from permit requirements issued by the department, the Natural Resources Conservation Service, or a local Soil and Water Conservation District.”

SECTION 8. This act takes effect upon approval by the Governor.

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