

SUBJECT: Increasing penalties for violations of TCEQ dam safety rules

COMMITTEE: Natural Resources — committee substitute recommended.

VOTE: 9 ayes — Ritter, Corte, Creighton, Frost, T. King, Lucio, Martinez  
Fischer, D. Miller, Smithee

2 nays — Callegari, Laubenberg

WITNESSES: For — None

Against — None

On — John Sadlier, Texas Commission on Environmental Quality

BACKGROUND: The Texas Commission on Environmental Quality (TCEQ ) operates a dam safety program that oversees the state’s dams. Texas has about 872 high-hazard dams, 817 significant-hazard dams, 5,871 low-hazard dams and 43 other dams. TCEQ employs seven staff members who perform inspections and also contracts out inspection services with third parties.

Under Water Code, sec. 12.052, if the owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with rules or orders for dam safety willfully fails or refuses to comply within 30 days of the order, the person is liable for a penalty of up to \$5,000 a day for each day the person is in violation. The penalty may be recovered by suit brought in the district court of Travis County.

DIGEST: CSHB 2535 would allow TCEQ to impose an administrative penalty of not more than \$10,000 per day against a person violating dam safety rules or orders under Water Code, sec. 12.052. It also would increase to \$10,000 per day the maximum penalty available against an owner of a dam who willfully violated or refused to comply with a TCEQ rule or order on dam safety under sec. 12.052.

The bill also would require TCEQ to prioritize high-risk dams in determining the frequency with which dams were inspected and would add operation and maintenance to the acts necessary to ensure dam safety.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009. The bill would only apply to violations that occurred on or after the effective date.

**SUPPORTERS  
SAY:**

CSHB 2535 would implement two of the proposed changes contained in a recent State Auditor's Report on TCEQ's dam safety program. The May 2008 report determined that TCEQ's dam safety program was not robust enough to meet the state's needs. The report found that TCEQ had inspected only 43 percent of the state's high-risk dams in the past five years, a rate of inspection well below standards established by the Association of Dam Safety Officials and the National Dam Safety Act. CSHB 2535 would improve public safety by allowing the state to better regulate its dams by requiring TCEQ to prioritize inspection of high-risk dams over low-risk dams.

A maximum \$10,000 administrative penalty for violators of TCEQ dam safety rules would discourage dam operators from breaking TCEQ rules. TCEQ can impose \$10,000 administrative penalties for clean air and solid waste violations, and CSHB 2535 simply would add dam safety to TCEQ's standard penalty regimen. Dams were designated as critical infrastructure by the U.S. Department of Homeland Security and require strict regulation. By allowing TCEQ to impose an administrative penalty, the bill would prevent TCEQ from having to complete the lengthy process associated with the assessment of civil penalties through the attorney general.

**OPPONENTS  
SAY:**

The \$10,000 per day administrative penalty made available by the bill would disproportionately affect smaller dams that do not pose a large safety risk to the public. Larger dams, like Mansfield Dam, have a greater capacity to cause loss of life when they fail. The fine in CSHB 2535 would apply equally to massive dams and small dams, and \$10,000 per day would be an excessive penalty to impose on a smaller dam operator.