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SENATE

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DAM SAFETY ACT OF 2006

—————
JULY 10, 2006.—Ordered to be printed
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Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany S. 2735]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 2735) to amend the National Dam Safety Program Act to reauthorize the national dam safety program, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

In 1972, Congress directed the Secretary of the Army to undertake a national program on the inspection of dams (Public Law 92-367). The Water Resources Development Act of 1996 (Public Law 104-303) amended that Act to establish the National Dam Safety Program as a partnership of the States, Federal agencies and other stakeholders to encourage individual and community responsibility for dam safety. The amended Act is cited as the National Dam Safety Program Act.

The Act includes: 1) a National Dam Inventory to provide to the public periodically updated information on the inventory of dams in the United States; 2) an Interagency Committee on Dam Safety to encourage the establishment and maintenance of effective Federal and State programs, policies and guidelines intended to enhance dam safety; 3) a National Dam Safety Program, including a strategic plan, a National Dam Safety Review Board and grant assistance to the States to provide vital support for the improvement of

the State dam safety programs that regulate most of the 79,500 dams in the United States; 4) a dam safety research effort for technical and archival research; and 5) dam safety training for State dam safety staff and inspectors.

The Dam Safety and Security Act of 2002 (Public Law 107–310), signed into law on December 2, 2002, reauthorized the Act for 4 years and added enhancements designed to safeguard dams against terrorist attacks.

OBJECTIVES OF THE LEGISLATION

S. 2735 provides for the reauthorization and improvement of the National Dam Safety Program Act. The bill strengthens the Act by improving the National Dam Inventory, encouraging States to improve State dam safety programs and increasing the authorization levels of the various components of the Act.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section provides that this Act may be cited as the “Dam Safety Act of 2006”.

Sec. 2. National Dam Inventory.

SUMMARY

This section amends section 6 of the National Dam Safety Program Act to clarify that the National Dam Inventory should include a summary of the results of any inspection completed by either a Federal agency or a State dam safety agency.

DESCRIPTION

Currently, the only information relating to inspections included in the National Dam Inventory is the date of the most recent inspection. This section ensures that a summary of the results of inspections also will be collected and made publicly available by requiring inclusion in the inventory. This section does not require any new or additional inspections, nor does it require any greater level of detail for inspections than is already required for Federal agencies and State dam safety agencies.

Sec. 3. National Dam Safety Program.

SUMMARY

This section amends section 8 of the National Dam Safety Program Act to include performance measures as part of the strategic plan and to add criteria for State dam safety programs to be eligible for assistance under the Act.

DESCRIPTION

To be eligible to receive assistance under the Act, a State must be working toward meeting the criteria for State dam safety programs listed in the Act. One of the criteria is the authority to require or perform inspections, at least once every 5 years, of all high-hazard dams. High-hazard dams are those dams the failure of which would pose a significant threat to human life and property.

Since the hazard level of a dam may change over time—due to changes to the structure or operation of the dam or development of downstream areas—this section adds to the criteria the authority to require or perform periodic evaluations of all dams to determine the hazard level of each dam. The section also adds to the criteria the authority to require owners of dams, when appropriate, to install and monitor instrumentation.

Sec. 4. Authorization of appropriations.

SUMMARY

This section amends section 13 of the National Dam Safety Program Act to authorize appropriations for fiscal years 2007–2011.

DESCRIPTION

This section makes the following increases in authorization levels for the next five fiscal years:

- \$8,000,000 (from \$6,000,000) for the Interagency Committee on Dam Safety and the National Dam Safety Program;
- \$1,000,000 (from \$500,000) for the National Dam Inventory;
- \$2,000,000 (from \$1,500,000) for research;
- \$700,000 (from \$500,000) for dam safety training; and
- \$1,000,000 (from \$600,000) for staff personnel to carry out the National Dam Safety Program and dam safety training.

LEGISLATIVE HISTORY

On May 4, 2006, Senator Bond introduced S. 2735, which was cosponsored by Senator Akaka. The bill was read twice and referred to the Senate Committee on Environment and Public Works. The committee met on May 23, 2006, to consider the bill. During consideration of the bill, an amendment in the nature of a substitute offered by Senators Inhofe and Jeffords was agreed to by voice vote. S. 2735, as amended, was ordered favorably reported by voice vote.

HEARINGS

No committee hearings were held on S. 2735.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 2735 on May 23, 2006. During consideration of the bill, an amendment in the nature of a substitute offered by Senators Inhofe and Jeffords was agreed to by voice vote. The bill, as amended, was ordered favorably reported by voice vote. No roll call votes were taken.

REGULATORY IMPACT STATEMENT

In compliance with Section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 2735 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 2735 would not impose Federal intergovernmental unfunded mandates on State, local or tribal governments. Enacting this bill would benefit States by increasing the amount authorized for State grants. The bill does not impose any private-sector mandates.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

S. 2735, Dam Safety Act of 2006, As ordered reported by the Senate Committee on Environment and Public Works on May 23, 2006

Summary

S. 2735 would reauthorize the national dam safety program through fiscal year 2011. The safety program, administered by the Federal Emergency Management Agency (FEMA), provides grants to State regulatory agencies, funds research projects aimed at improving dam safety, and trains safety officials and dam operators. The bill would authorize the appropriation of \$12.7 million for each year over the 2007–2011 period for the national dam safety program.

Assuming appropriation of the amounts specified in S. 2735, CBO estimates that implementing the bill would cost about \$60 million over the 2007–2011 period. Enacting S. 2735 would not affect direct spending or receipts.

S. 2735 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments. Enacting this bill would benefit States by increasing the amount authorized for State grants.

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 2735 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development). For this estimate, CBO assumes that S. 2735 will be enacted near the beginning of fiscal year 2007 and that the amounts specified in the bill will be appropriated for each fiscal year. Estimates of outlays are based on historical spending patterns for the national dam safety program.

By Fiscal Year, in Millions of Dollars

	2007	2008	2009	2010	2011
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	13	13	13	13	13
Estimated Outlays	10	13	13	13	13

Intergovernmental and Private-Sector Impact

S. 2735 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments. Enacting this bill would benefit States by increasing the amount authorized for State grants.

Under current law, State dam safety programs are required to work toward meeting certain criteria to receive Federal assistance through the national dam safety program. S. 2735 would modify those criteria to require States' dam safety programs to include the authority to require owners of dams, including dams in the private sector, to install and monitor certain instruments.

Estimate Prepared By: Federal Costs: Gregory Waring; Impact on State, Local, and Tribal Governments: Emily Holt and Marjorie Miller; Impact on the Private Sector: Amy Petz.

Estimate Approved By: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

NATIONAL DAM SAFETY PROGRAM ACT

AN ACT To authorize the Secretary of the Army to undertake a national program of inspection of dams.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Dam Safety Program Act".

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[SEC. 6. NATIONAL DAM INVENTORY.

【The Secretary of the Army, acting through the Chief of Engineers, may maintain and periodically publish updated information on the inventory of dams in the United States.】

SEC. 6. NATIONAL DAM INVENTORY.

(a) IN GENERAL.—The Secretary of the Army, acting through the Chief of Engineers, shall maintain and update information on the inventory of dams in the United States.

(b) REQUIREMENT.—The inventory of dams described in subsection (a) shall include a summary of the results of any inspection completed by either a Federal agency or a State dam safety agency.

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SEC. 8. NATIONAL DAM SAFETY PROGRAM.

(a) * * *

* * * * *

(b) DUTIES.—The Director shall prepare a strategic plan—

(1) to establish goals, priorities, [and target dates to] *performance measures, and target dates toward effectively administering this Act in order to* improve the safety of dams in the United States; and

(2) to the extent feasible, to establish cooperation and coordination with, and assistance to, interested governmental entities in all States.

* * * * *

(e) ASSISTANCE FOR STATE DAM SAFETY PROGRAMS.—

(1) IN GENERAL.—To encourage the establishment and maintenance of effective State programs intended to ensure dam safety, to protect human life and property, and to improve State dam safety programs, the Director shall provide assistance with amounts made available under section 13 to assist States in establishing, maintaining, and improving dam safety programs in accordance with the criteria specified in paragraph (2).

(2) CRITERIA AND BUDGETING REQUIREMENT.—For a State to be eligible for assistance under this subsection, a State dam safety program must be working toward meeting the following criteria and budgeting requirement:

(A) CRITERIA.—A State dam safety program must be authorized by State legislation to include [substantially], at a minimum—

(i) the authority to review and approve plans and specifications to construct, enlarge, modify, remove, and abandon dams;

(ii) the authority to perform periodic inspections during dam construction to ensure compliance with approved plans and specifications;

(iii) a requirement that, on completion of dam construction, State approval must be given before operation of the dam;

(iv) *the authority to require or perform periodic evaluations of all dams and reservoirs to determine the extent of the threat to human life and property in case of failure;*

[(iv)] (v)(I) the authority to require or perform the inspection, at least once every 5 years, of all dams and reservoirs that would pose a significant threat to human life and property in case of failure to determine the continued safety of the dams and reservoirs; and

(II) a procedure for more detailed and frequent safety inspections;

[(v)] (vi) a requirement that all inspections be performed under the supervision of a State-registered professional engineer with related experience in dam design and construction;

[(vi)] *(vii)* the authority to issue notices, when appropriate, to require owners of dams to perform necessary maintenance or remedial work, *install and monitor instrumentation*, improve security, revise operating procedures, or take other actions, including breaching dams when necessary;

[(vii)] *(viii)* regulations for carrying out the legislation of the State described in this subparagraph;

[(viii)] *(ix)* provision for necessary funds—

(I) to ensure timely repairs or other changes to, or removal of, a dam in order to protect human life and property; and

(II) if the owner of the dam does not take action described in subclause (I), to take appropriate action as expeditiously as practicable;

[(ix)] *(x)* a system of emergency procedures to be used if a dam fails or if the failure of a dam is imminent; and

[(x)] *(xi)* an identification of—

(I) each dam the failure of which could be reasonably expected to endanger human life;

(II) the maximum area that could be flooded if the dam failed; and

(III) necessary public facilities that would be affected by the flooding.

(B) BUDGETING REQUIREMENT.—For a State to be eligible for assistance under this subsection, State appropriations must be budgeted to carry out the legislation of the State under subparagraph (A).

(3) WORK PLANS.—The Director shall enter into an agreement with each State receiving assistance under paragraph (2) to develop a work plan necessary for the State dam safety program to reach a level of program performance specified in the agreement.

(4) MAINTENANCE OF EFFORT.—Assistance may not be provided to a State under this subsection for a fiscal year unless the State enters into such agreement with the Director as the Director requires to ensure that the State will maintain the aggregate expenditures of the State from all other sources for programs to ensure dam safety for the protection of human life and property at or above a level equal to the average annual level of such expenditures for the 2 fiscal years preceding the fiscal year.

(5) APPROVAL OF PROGRAMS.—

(A) SUBMISSION.—For a State to be eligible for assistance under this subsection, a plan for a State dam safety program shall be submitted to the Director for approval.

(B) APPROVAL.—A State dam safety program shall be deemed to be approved 120 days after the date of receipt by the Director unless the Director determines within the 120-day period that the State dam safety program fails to meet the requirements of paragraphs (1) through (3).

(C) NOTIFICATION OF DISAPPROVAL.—If the Director determines that a State dam safety program does not meet

the requirements for approval, the Director shall immediately notify the State in writing and provide the reasons for the determination and the changes that are necessary for the plan to be approved.

(6) REVIEW OF STATE DAM SAFETY PROGRAMS.—Using the expertise of the Board, the Director shall periodically review State dam safety programs. If the Board finds that a State dam safety program has proven inadequate to reasonably protect human life and property and the Director concurs, the Director shall revoke approval of the State dam safety program, and withhold assistance under this subsection, until the State dam safety program again meets the requirements for approval.

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SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) NATIONAL DAM SAFETY PROGRAM.—

(1) ANNUAL AMOUNTS.—There are authorized to be appropriated to FEMA to carry out sections 7, 8, and 11 (in addition to any amounts made available for similar purposes included in any other Act and amounts made available under subsections (b) through (e)), [~~\$6,000,000 for each of fiscal years 2003 through 2006~~] *\$8,000,000 for each of fiscal years 2007 through 2011*, to remain available until expended.

(2) ALLOCATION.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), for each fiscal year, amounts made available under this subsection to carry out section 8 shall be allocated among the States as follows:

(i) One-third among States that qualify for assistance under section 8(e).

(ii) Two-thirds among States that qualify for assistance under section 8(e), to each such State in proportion to—

(I) the number of dams in the State that are listed as State-regulated dams on the inventory of dams maintained under section 6; as compared to

(II) the number of dams in all States that are listed as State-regulated dams on the inventory of dams maintained under section 6.

(B) MAXIMUM AMOUNT OF ALLOCATION.—The amount of funds allocated to a State under this paragraph may not exceed 50 percent of the reasonable cost of implementing the State dam safety program.

(C) DETERMINATION.—The Director and the Board shall determine the amount allocated to States.

(b) NATIONAL DAM INVENTORY.—There is authorized to be appropriated to carry out section 6 [~~\$500,000 for each fiscal year~~] *\$1,000,000 for each of fiscal years 2007 through 2011*.

(c) RESEARCH.—There is authorized to be appropriated to carry out section 9 [~~\$1,500,000 for each of fiscal years 2003 through 2006~~] *\$2,000,000 for each of fiscal years 2007 through 2011*, to remain until expended.

(d) DAM SAFETY TRAINING.—There is authorized to be appropriated to carry out section 10 **【\$500,000 for each of fiscal years 2003 through 2006】** *\$700,000 for each of fiscal years 2007 through 2011.*

(e) STAFF.—There is authorized to be appropriated to FEMA for the employment of such additional staff personnel as are necessary to carry out sections 8 through 10 **【\$600,000 for each of fiscal years 2003 through 2006】** *\$1,000,000 for each of fiscal years 2007 through 2011.*

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