

- SUBJECT:** Dam safety regulation exemptions
- COMMITTEE:** State Affairs —favorable, without amendment
- VOTE:** 9 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Smithee
- 0 nays
- 4 absent — Hilderbran, Menéndez, Oliveira, Sylvester Turner
- WITNESSES:** For —Ralph Duggins; Gary Joiner, Texas Wildlife Association (*Registered, but did not testify*: William Thomas Duggins; Billy Howe, Texas Farm Bureau; Marissa Patton, Texas and Southwestern Cattle Raisers Association; John J. Vay, small dam owners; Josh Winegarner, Texas Cattle Feeders Association.)
- Against — None
- On — (*Registered, but did not testify*: Warren Samuelson, Texas Commission on Environmental Quality)
- BACKGROUND:** Under Water Code, sec. 12.052, subsecs. (e-1) and (e-3), certain dams are exempted from the Texas Commission on Environmental Quality's (TCEQ's) dam safety requirements until August 31, 2015. To qualify for an exemption, a dam must:
- impound 500 acre-feet of water or less;
  - have a low- or significant-hazard classification;
  - be located on private property in a county with a population of 215,000 or less; and
  - not be located within a city.
- TCEQ defines low-hazard dams as those that if breached would result in no loss of life and little economic damage. Significant-hazard dams are defined as those that, if breached, could result in the loss of up to six lives and economic loss, including damage to isolated homes, major roads, and utilities.

According to 2010 U.S. Census data, eight Texas counties have a population between 215,000 and 350,000: Bell, Brazoria, Galveston, Jefferson, Lubbock, McLennan, Nueces, and Webb.

**DIGEST:** HB 677 would change the criteria for exempting a dam from TCEQ dam safety requirements under Water Code, sec. 12.052 (e-1) to include those located in counties with a population of less than 350,000.

The bill would remove the provision establishing that the exemptions expire on August 31, 2015.

The bill would take effect September 1, 2013.

**SUPPORTERS SAY:** HB 677 would increase the number of counties with dams eligible for exemptions from certain TCEQ regulation and remove the expiration date for the exemptions. These common-sense, cost-saving mechanisms would ensure that rural economic interests were not undermined and dam safety protocols in the state's larger urban counties were maintained.

TCEQ regulation of low- and significant-hazard dams in rural areas is burdensome and expensive, costing dam owners upwards of \$100,000 in engineering studies and infrastructure improvements that provide little, if any, additional public protection. TCEQ's dam safety program puts a substantial burden on the financial resources of landowners and ranchers who maintain small impoundments of 500 acre-feet or less to support livestock and agriculture. Both TCEQ and the engineering firms use improbable catastrophic rainfall events in modeling for dam safety.

Although the bill would raise the population exemption for counties to 350,000, most of the dams in these counties are low-risk dams. Only nine of the dams in these counties fall within the significant-risk classification.

If an area had significant downstream development from a dam, TCEQ could reclassify the dam as high hazard, making the dam no longer exempt from TCEQ dam safety regulations.

**OPPONENTS SAY:** HB 677 would exempt from the state's dam safety program nine additional dams classified as significant-hazard dams, which are defined as dams that, if breached, could threaten the lives of up to six people or cause property damage.

The bill also would remove the 2015 expiration date for exemptions, which would result in a total of 216 significant-hazard dams statewide — 57 of which TCEQ has deemed to be in poor condition — being exempted indefinitely from the state's dam safety program.

While the TCEQ dam safety program needs improvements to protect both public safety and the financial interests of dam owners, the Legislature should continue to develop a comprehensive solution, rather than provide a blanket exemption. A comprehensive approach should include studying exempted dams during the next interim to determine whether they pose a risk to downstream interests and working with local officials on issues related to floodplain management, dam safety, and downstream development.

**NOTES:**

The identical companion bill, SB 1271 by Eltife, was scheduled for a public hearing today in the Senate Natural Resources Committee.