

Time to 'fix the damn dams' or an unfunded mandate? House panel conflicted on Schuette bill

Although House members seemed to be in agreement that Michigan's dam infrastructure was in need of improvement and safety remains a pressing concern for many communities in proximity to dams across the state, they had different responses to testimony given Wednesday in support of a bill that would create a stricter regulatory framework for them.

The [House Natural Resources and Tourism Committee](#) considered [HB 5485](#), sponsored by [Rep. Bill Schuette](#), R-Midland, on Wednesday, made particularly topical by both the ongoing state of emergency in Cheboygan County related to a potential overtopping of a local lock and dam system and the recent resolution of a lawsuit against the state over the catastrophic failure of the Edenville and Sanford Dams, in which the state was cleared of liability for damages to nearby communities.

"I know many people across the state are prone to legacy flooding challenges, as is my district. This is a need in a state like Michigan, as we continue to see dams tested by heavy rainfall events which leave communities on edge. The need has always been there, and we need to ensure we're proactive with dam safety instead of reactive, and I think that it is never too late to act," Schuette told committee members. "We won't be able to predict when the next 100-or 500-year flooding event will be, but we can update our laws and provide the people of the state of Michigan accountability and peace of mind, while lowering the risk of catastrophic fallout due to faulty infrastructure."

The bill would expand state oversight of dams and modernize regulations surrounding them to better protect communities in their vicinity from flooding and infrastructure failure. Dam owners would also be required to register their dams and have contingency plans for comprehensive safety, inspection and asset management. Additionally, the bill increases inspection frequency with the aim of identifying risks earlier and responding in a timely manner; raises design and safety standards to ensure dams better withstand extreme weather and climate conditions and creates a dedicated emergency fund and grant program to address high-risk dams.

Several members of the committee expressed tentative support for the bill but mentioned additions or alterations they'd like to see made before it advances.

[Rep. David Martin](#), R-Davison, who chairs the committee, said he appreciated the bill and hopes to make additions to it, including "adding some teeth" to emergency planning aspects, citing emergency action plans which "sat on the shelf" in New Orleans during Hurricane Katrina instead of being properly implemented and executed.

[Rep. Mike Hoadley](#), R-Au Gres, raised questions about how and when the state determines whether a dam is simply too old to continue maintaining, and what might be done to support rebuilding efforts for dams that need to be dismantled in the interest of risk mitigation.

"A lot of our communities, particularly rural communities, have established their entire economy around these impoundments. And my fear is it's a lot cheaper to remove these dams than it is to replace them," he said. "So somewhere we're going to have to come together, and this is a great start, but to come together because, at the end of the day, what are we going to save? What are we going to replace? What can we rebuild?"

Several Republicans on the committee voiced opposition to what they viewed as legislation that prescribed heavier regulations on private entities while allowing state-operated dams to continue as usual – [Rep. Dave Prestin](#), R-Cedar River, likened it to "the fox guarding the henhouse." Schuette responded that the regulatory framework within the bill would apply to dams overseen by the state as

well as privately owned ones, but it was written to reflect recommendations made after repeated issues that arose specifically with privately owned dams.

"It's clear we need to make changes to best protect residents across our state, not just in the Mid-Michigan area. [HB 5485](#) mirrors recommendations from the Dam Safety Task Force and the independent review by the Association of State Dam Safety Officials. The key provisions that would improve Michigan's dam safety center on transparency for the public and the state, so things quite literally don't fall through the cracks and down the drain," Schuette said. "...Improved oversight of privately held dams is a part of this legislation, but this oversight directly serves the public interest when we consider those loved ones, homes and jobs that are downstream from these structures."

Other members felt the bill's provisions could raise costs for local governments and those near dams or amount to an unfunded mandate.

"How is this not just another unfunded mandate to our locals, to our counties, to our landowners?" Rep. Samantha Wortz, R-Quincy, said. "I have serious concerns about the cost to do this."

[Rep. Regina Weiss](#), D-Oak Park, said she would appreciate any ideas on how to reduce costs the bill might incur for local governments and property owners in proximity to dams, whether via a dedicated revenue stream or another option.

"I appreciate the intention here, and I appreciate the thought that went into this bill. I know that's already been brought up several times. I just want to just echo concerns around the potential cost here and try to understand better the fiscal impact that this could have, both on the state and on local governments and on local property owners," Weiss said. "Just reading through some of the drain commissioner testimony ... that there could be immense additional costs added, both to the locals as well as to local property owners."

Schuette said the creation of the emergency fund, coupled with the provisions to ensure that expenses for increased fees fall on private owners, should cover costs when dam oversight and improvements intersect with local water and sewer systems. He also noted that although the bill does not contain any appropriations measure to fill the emergency fund once it's created, its passage would facilitate discussions about how much state funding is needed to support the fund and other dam safety projects around the state.

A member of the Dam Safety Task Force, Evan Pratt, submitted written testimony to the committee saying the bill "addresses nearly all of the substantive outstanding recommendations" made in the task force's 2021 report, of which there were 86. He also encouraged lawmakers to consider additional procurement or staffing needs the Department of Environment, Great Lakes and Energy will likely require to properly undertake the goals of the legislation.

"While some dam owners are experienced at seeking expert help and advice, many are either inexperienced or even unwilling as in the case of Boyce Hydropower and the 2020 failures," Pratt said in his testimony. "While this legislation would provide more teeth, for 'comprehensive inspections' I suggest staff is best suited to ensuring high quality inspections for the riskiest dams than getting bogged down in legal enforcement action."

Pratt said that while he understands the committee does not have an appropriations role, he urges Martin and other members to advocate for a loan program and funding of the initial preparation of the most critical dam inspections, given the layout of the rest of this year's legislative calendar and the likelihood of a complex budget negotiation process.

– By Lily Guiney