

Economic Impact Statement

LSA Document #06-92

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses**Estimated Number of Small Businesses Subject to This Rule**

Approximately 1,100 existing dams are subject to [IC 14-27-7.5](#). This legislation became effective in 2002, but before its enactment, the Department of Natural Resources (DNR) already regulated the existing dams under the authority of [IC 14-27-7](#), the "Dams, Dikes, and Levees; Regulation", and [IC 14-28-1](#) (sometimes referred to as the "Flood Control Act").

In the regulation of dams for downstream public safety, even ownership of a particular dam can be a threshold challenge. The individuals or neighborhoods that benefit from a lake formed by a dam may not have the legal responsibility or even legal opportunity to provide maintenance. Although not always with success, the DNR now seeks to obtain the owner or owners' name, address, and telephone number. Definitive information is not available as to how many dams are owned by a "small business", as the term is defined in [IC 4-22-2.1-4](#), but some reasonable inferences may be drawn.

Of the 1,100 regulated dams, approximately 400 are owned by governmental or quasi-governmental entities. These include 144 owned by state government, 19 owned by the federal government, 106 owned by local government, and 126 owned by conservancy districts.

The approximate number of small businesses subject to [IC 14-27-7.5](#) was estimated by considering any business reference in an owner's name. An example would be B & B Brake Sales, Inc. Based on this analysis, the DNR estimates that approximately 50 small businesses may be subject to this rule.

No differentiation could be made between owners whose business operations might or might not be dependent upon the existence of the dam. Given the limited available data, no differentiation could be made between small or large businesses.

The remaining dams are held in a variety of ownerships. Examples include individuals, families, homeowner associations, lake resident associations, housing developments, and not-for-profit corporations. Most nongovernmental entities own only one dam, but a few nongovernmental entities may own more than one dam.

Estimated Average Annual Administrative Costs That Small Businesses Will Incur

The primary purpose for rule adoption was to achieve compliance with [IC 14-27-7.5-8\(b\)](#). This subsection requires the DNR to "establish by rule the criteria for assigning a hazard classification to a structure that is based on the potential consequences resulting from the uncontrolled release of the structure's contents due to a failure of the structure." The hazard classification system must include the classifications of "high hazard", "significant hazard", and "low hazard" as set forth in the statute.

The DNR applied criteria using these classifications under the authority of [IC 14-27-7](#) and [IC 14-28-1](#) but the criteria were not memorialized by rule. With the mandate of [IC 14-27-7.5-8](#), the DNR is seeking to adopt rules.

For these reasons, the DNR anticipates that no additional annual administrative costs will be incurred by small business in order to comply with the proposed rule. The proposed rules do not impose any additional requirements on small business owners beyond those set forth in [IC 14-27-7.5](#) (particularly [IC 14-27-7.5-9](#)).

The proposed rule includes the statutorily required classifications of high hazard, significant hazard, and low hazard and mirrors current practice of terms used in the statute.

Estimated Total Annual Economic Impact on Small Businesses:

The DNR anticipates that no additional annual economic impact will be incurred by small business in order to comply with the proposed rule, as it mirrors ongoing practice and does not impose any additional requirements on small businesses beyond those already statutorily established. No assumptions were made and no data was used to determine the total annual economic impact of the proposed rule, as the proposed rule mirrors ongoing practice.

Justification Statement of Requirement or Cost:

No requirement or cost is imposed on small business by the rule beyond those already statutorily established, and nothing is imposed that was not expressly required by the authorizing statute.

Regulatory Flexibility Analysis of Alternative Methods:

Alternative methods of possible hazard classification determination were considered as the proposed rule was developed.

Ongoing practice determines hazard classification based upon existing technical information and visual site observations conducted by DNR's dam safety staff. This practice is consistent with typical practice in other states' dam safety programs.

Alternative methods of determination of the hazard classification would include extensive collection of detailed downstream topographic information, surveying of current construction details of the dams, detailed downstream survey documentation of existing homes and structures, and extensive flood wave computer model simulation and analysis of breach conditions. For a small dam, each of these individual studies would be anticipated to cost in the range of \$10,000 or more. The typical minimum cost of \$10,000 is based on an average \$130 dollar hourly billing rate common for consulting engineers. This hourly rate equates to about \$1,000 dollars per man-day. At least four man-days of fieldwork, four man-days of office computer failure scenario modeling and analysis, and two man-days of report development can be anticipated. These 10 man-days would create the minimum average cost of \$10,000. Costs would greatly escalate for larger dams depending on the size of the impoundment and the extent of downstream development. Further these detailed studies would need to be revised and updated at an additional cost as downstream development occurs.

If the costs of alternative hazard determination methods were to be completed by the state, the fiscal impact to the state could run into millions of dollars. If the cost of alternative methods were to be imposed upon the individual owners (similar to how high hazard inspection report costs are by statute paid by the owners), their fiscal impact could far exceed what they are already paying for biannual inspections by engineering firms.

To have no anticipated adverse economic impact on the state, private owners, or small businesses as a result of compliance with the proposed rule, it was determined to craft the proposed rule consistent with ongoing practice. Development of detailed surveying and engineering studies was not mandated for the determination of hazard classification.

Posted: 08/30/2006 by Legislative Services Agency

An [html](#) version of this document.