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S.B. 107, S.L. 145, Reg. Sess. 2017 (N.C. 2017)

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S.B. 107, S.L. 145, Reg. Sess. 2017 (N.C. 2017)

opportunity to resolve a property's delinquent payments. During foreclosure proceedings, which sometimes last up to twelve months, the bank as successor in interest is unlikely to make water payments and the rural water district commences shutting down water service. It depends on the individual rural water district's policies, but there are two ways to stop water service to a benefit unit. The first option is to keep the benefit unit meter in place but restrict access with a padlock. The other is to remove the meter completely, which imposes a new meter cost on the next landowner. Therefore, properties can carry with them significant monetary burdens in order to regain water service.

HB 2080 recognizes and mitigates the financial consequences of defaulted water service payments in rural water districts. Hanson noted that any long-term defaults on monthly fees significantly affect rural water districts. These districts are usually run by volunteers and are low on funds, leaving them fragile and debt-ridden. Thus, the board of rural water districts have the important task of incentivizing water users to pay their water bills on time. Without this statutory change, however, it was possible for rural water district boards to abuse their discretion and supplement their income with replacement fees from new landowners. Now, rural water districts cannot charge landowners more than twenty percent of the current cost for the new water unit. Essentially, the bill helps address this issue because it imposes a cap on the amount that rural water districts can charge landowners for new benefit units.

The bill addresses the infrequent but very real financial burden that forfeited benefit units can cause for both landowners and rural water district boards. HB 2080 alleviates these burdens by ensuring that once a landowner pays all water back fees to the rural water district then the cost for the new benefit unit cannot exceed twenty percent of the current price of a benefit unit. Therefore, in effect, HB 2080 saves landowners thousands of dollars. In addition, rural water districts can recover some of their losses from forfeited benefit units and restore water service to the defaulted land.

Camille Agnello

NORTH CAROLINA

S.B. 107, S.L. 2017-145, Reg. Sess. 2017 (N.C. 2017) (easing the requirements for the removal of low-hazard dams).

North Carolina Senate Bill 107 ("SB 107") seeks to streamline dam removal in the state by expediting the removal process under certain conditions. There are roughly 6,250 dams in North Carolina, many of which no longer serve their original purposes—such as powering mills or creating now-obsolete water storage. In addition to changing the removal process, the bill requires the North Carolina Department of Environmental Quality and the Department of Public Safety to study the dam removal process to recommend changes to "reduce regulatory barriers to obsolete dam removal and consolidate permit processes." It must then submit this report to the Environmental Review Commission by March 1, 2020. Many supporters of SB 107 championed its passage for a variety of reasons: to no longer keep fish from their habitat; to remove the public safety hazards posed by old dams; to stop the increased threat of upstream flooding; and to open dammed areas up to recreation based economic growth. The primary sponsors of this bill were State Senators Andy Wells,

Brent Jackson, Rick Gunn, and Mike Woodard, as well as Majority Leader Representative Stephen Ross. The State House and Senate unanimously approved the bill, and North Carolina Governor Roy Cooper signed it into law on July 20, 2017.

During the second reading in the House, testimony by legislators indicated that the bill does exactly what it claims—it streamlines dam removal in the state by allowing professional engineering firms to remove low hazard dams that are now obsolete while also commissioning a study to find more ways to streamline the removal process in order to restore North Carolina’s river resources. The bill passed unanimously and faced little opposition during the legislative process because of bipartisan support.

Under the previous regime, deconstructing a dam required approval by the Department of Environmental Quality via an application that stated the name and address of the applicant and described the proposed removal process with maps, plans, specifications, and other Department required information. In order to streamline the process, SB 107 establishes a new system for dam removal. The new system involves an explicit state review process under the Clean Water Act by focusing resources in North Carolina’s Dam Safety Program towards high-hazard dams where a breach of the structure could lead to loss of life. By doing so, the State Legislature has acknowledged the importance of removing dams to protect the natural river ecosystem and has added extra requirements for floodplain mapping when a dam is going to be removed to ensure that there will be no serious threats to life or property when the dam comes down. Further, the legislature also allowed for consultation between the Department of Environmental Quality and the Department of Public Safety on how to optimize dam removal legislation in the state going forward, once again acknowledging the importance of dam removal for the purposes of natural river ecosystem revival.

Section 1 of SB 107 exempts professionally supervised dam removals from the otherwise required approval of the Department of Environmental Quality. The bill defines a Professionally Supervised Dam Removal as: “the removal of a low or intermediate hazard mill dam or run-of-river dam that is not operated primarily for flood control or hydroelectric power generation purposes and the removal of which is designed and supervised by an engineer licensed under North Carolina law.” This removal must also comply with certain criteria: (i) the engineer must determine that removal of the dam can be accomplished safely; (ii) the engineer must also certify that the dam is a low or intermediate hazard; (iii) the person proposing the removal must notify the Director of the Division of Energy, Mineral, and Land Resources (part of the Department of Environmental Quality) no less than sixty days prior to the requested removal; and (iv) the person proposing the removal must also notify the North Carolina Floodplain Mapping Program of the Department of Public Safety as well as property owners directly adjacent to the dam and reservoir, and all impacted local governments of the dam removal no less than sixty days prior to the proposed removal.

Most critically, the bill removed the requirement that a removal not increase water levels above the site or cause flooding downstream to obtain a dam safety permit from the Department of Environmental Quality. The purpose of the removal of this regulation was to expedite the dam removal process under

these certain circumstances as well as hastening river restoration in the state. However, the bill added the requirement that the Department of the Environmental Quality and the Department of Public Safety study the process in order to recommend changes to reduce other regulations that make removing obsolete dams more difficult while consolidating the permitting process. At the time the bill was passed, the Division of Energy, Mineral, and Land Resources within the Department of Environmental Quality granted one to two applications to remove these kinds of dams every two to three years. As a result of the bill, the Division expects increased interest, but, as noted in the bill's fiscal report, it is unclear how many dams increased interest would actually implicate. Given the current lax interest in the dam removal program, a significant increase in participation would be required to create much of a fiscal impact on the state of North Carolina. However, the Division recognized that SB 107's capping the fee at \$500 could result in less revenue than the current fee structure generates while also encouraging more dam owners to seek removal due to the lowered costs. If demand does increase substantially, then revenue captured by the Division could increase. But, because the Fiscal Research officer could not predict the rate of participation, no fiscal estimate was available to legislators.

Overall, the importance of the bill comes down to how it eases the restrictions that used to accompany the removal of all dams in the state. Now, under SB 107, a mechanism exists to allow for dam owners to employ engineers to oversee the removal of a low or intermediate hazard dam that is not being used for flood control or hydroelectric power generation. Instead of having to seek approval from the Department of Environmental Quality for this as dam owners did in the past, now the dam owner only has to pay \$500—a savings compared to the previous regime that required 2% of the actual costs of the removal. Moreover, SB 107 changes the metric for measuring dams in the state when considering removal to the height of a dam from the lowest point on the crest to the lowest point on the downstream toe. And finally, SB 107 also directs the Department of Environmental Quality and Department of Public Safety to study ways to further reduce regulatory barriers to dam removal and report their findings to the Environmental Review Commission by March 1, 2020.

Gracen Short

