

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-14-82

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1982

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ENROLLED

Committee Substitute for

SENATE BILL NO. 4

(By Mr. *McGraw*, Mr. President)

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PASSED April 3, 1982

In Effect from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 4

(BY MR. MCGRAW, MR. PRESIDENT, *original sponsor*)

[Passed April 3, 1982; in effect from passage.]

AN ACT to amend and reenact sections three, four, five, ten, eleven and twelve, article five-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the dam control act; defining certain terms; describing the powers and duties of the director; providing for the establishment of fees for certificate of approval; making it unlawful to place, construct, enlarge, alter, repair, remove or abandon certain dams without applying for and obtaining a certificate of approval from the director; procedures for handling emergencies involving dams; requirements for dams completed prior to effective date of section; requirements for dams under construction prior to effective date of section.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, ten, eleven and twelve, article five-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5D. DAM CONTROL ACT.

§20-5D-3. Definition of terms used in article.

- 1 As used in this article, unless used in a context that clearly
- 2 requires a different meaning, the term:
- 3 (a) "Alterations" or "repairs" means only those changes in
- 4 the structure or integrity of a dam which may affect its safety,

5 which determination shall be made by the director.

6 (b) "Application for a certificate of approval" means the
7 request in writing by a person to the director requesting that
8 such person be issued a certificate of approval.

9 (c) "Appurtenant works" means any structure or facility
10 which is an adjunct of, or connected, appended or annexed to
11 a dam, including, but not limited to, spillways, a reservoir and
12 its rim, low level outlet works, or water conduits such as
13 tunnels, pipelines and penstocks either through the dam or
14 its abutments.

15 (d) "Certificate of approval" means the approval in writing
16 issued by the director to a person who has applied to the
17 director for such certificate of approval which authorizes
18 such person to place, construct, enlarge, alter, repair or
19 remove a dam and specifies the conditions or limitations
20 under which such work is to be performed by such person.

21 (e) "Dam" means an artificial barrier or obstruction,
22 including any works appurtenant to it and any reservoir
23 created by it, which is or will be placed, constructed,
24 enlarged, altered or repaired so that it does or will impound or
25 divert water and (1) is or will be twenty-five feet or more in
26 height from the natural bed of such stream or watercourse
27 measured at the downstream toe of the barrier and which
28 does or can impound fifteen acre-feet or more of water or (2) is
29 or will be six feet or more in height from the natural bed of
30 such stream or watercourse measured at the downstream toe
31 of the barrier and which does or can impound fifty acre-feet
32 or more of water: *Provided*, That the term "dam" shall not
33 include (1) any dam owned by the federal government, (2) any
34 dam for which the operation and maintenance thereof is the
35 responsibility of the federal government, (3) slack-water dams
36 constructed and maintained in connection with public
37 highways, streets, bridges, culverts or viaducts, which shall
38 continue to be regulated and controlled as provided in article
39 five of this chapter, or (4) farm ponds constructed and used
40 primarily for agricultural purposes including, but not limited
41 to, livestock watering, irrigation, retention of animal wastes,
42 and fish culture, and which have no potential to cause loss of
43 human life in the event of embankment failure.

44 (f) "Department" means the department of natural
45 resources.

46 (g) "Director" means the director of the department of
47 natural resources or his authorized agents.

48 (h) "Enlargement" means any change in or addition to an
49 existing dam which (1) raises the height of the dam, (2) raises
50 or may raise the water storage elevation of the water
51 impounded by the dam, (3) increases or may increase the
52 amount of water impounded by the dam, or (4) increases or
53 may increase the watershed area from which water is
54 impounded by the dam.

55 (i) "Person" means any public or private corporation,
56 institution, association, society, firm, organization or
57 company organized or existing under the laws of this or any
58 other state or country; the state of West Virginia; any state
59 governmental agency; any political subdivision of the state or
60 of its counties or municipalities; sanitary district; public
61 service district; drainage district; soil conservation district;
62 watershed improvement district; partnership; trust; estate;
63 person or individual; group of persons or individuals acting
64 individually or as a group; or any other legal entity whatever.
65 The term "person," when used in this article, shall be
66 understood to include and refer to any authorized agent,
67 lessee or trustee of any of the foregoing or receiver or trustee
68 appointed by any court for any of the foregoing.

69 (j) "Reservoir" means any basin which contains or will
70 contain impounded water.

71 (k) "Water" means any liquid, including any solids or
72 other matter which may be contained therein, which is or
73 may be impounded by a dam.

74 (l) "Water storage elevation" means the maximum
75 elevation that water can reach behind a dam without
76 encroaching on the freeboard approved for the dam under
77 flood conditions.

**§20-5D-4. General powers and duties of director; maximum fee
established for certificates of approval.**

1 The director shall have the following powers and duties:

2 (a) To control and exercise regulatory jurisdiction over
3 dams as provided for in this article;

4 (b) To review all applications for a certificate of approval
5 for the placement, construction, enlargement, alteration,
6 repair or removal of any dam;

7 (c) To grant, modify, amend, revoke, restrict or refuse to
8 grant any certificate of approval based on a determination by
9 him that such action is proper or necessary to protect life and
10 property as provided in this article;

11 (d) To adopt, modify, repeal and enforce rules, and issue
12 orders, which he shall do in accordance with the provisions of
13 chapter twenty-nine-a of this code as if the provisions of said
14 chapter twenty-nine-a were set forth in extenso herein to
15 implement and make effective the powers and duties vested
16 in him by the provisions of this article;

17 (e) To take any lawful action he deems necessary for the
18 effective enforcement of the provisions of this article;

19 (f) To establish and charge reasonable fees not to exceed
20 twenty-five dollars for the review of applications for
21 certificates of approval and the issuance thereof;

22 (g) To employ qualified consultants or additional persons
23 in the department as necessary to review applications for
24 certificates of approval and to recommend whether they
25 should be approved, to inspect dams and to enforce the
26 provisions of this article;

27 (h) To cooperate and coordinate with agencies of the
28 federal government, this state and counties and
29 municipalities of this state to improve, secure, study and
30 enforce dam safety and dam technology within this state;

31 (i) To make any investigation or inspection necessary to
32 implement or enforce the provisions of this article and to
33 enter upon the public or private property of any dam owner
34 as may be necessary to make such investigations or
35 inspections. The director may make such investigations,
36 inspections or entries after notifying the dam owner or other
37 person in charge of such dam: *Provided*, That where the
38 owner or person in charge of the dam is not available, the
39 director may make such investigations, inspections or entries
40 as are necessary; and

41 (j) To prepare and publish within a reasonable time,
42 criteria to govern the design, construction, repair, inspection
43 and maintenance of proposed dams herein defined, and to
44 review these criteria annually in order to consider improved
45 technology for inclusion in such criteria.

**§20-5D-5. Unlawful to place, construct, enlarge, alter, repair,
remove or abandon dam without certificate of
approval; application required to obtain
certificate.**

1 On and after the effective date of this section, it shall be
2 unlawful for any person to place, construct, enlarge, alter,
3 repair, remove or abandon any dam under the jurisdiction of

4 the department until he has first (a) filed an application for a
 5 certificate of approval with the department, and (b) obtained
 6 from the department a certificate of approval: *Provided*, That
 7 a person who has applied for and obtained a certificate of
 8 approval on or after the first day of July, one thousand nine
 9 hundred seventy-three, in accordance with the provisions of
 10 the prior enactment of this section, shall not be required to
 11 re-apply for a new certificate of approval for the plans and
 12 specifications which were approved by the original
 13 certificate: *Provided, however*, That a person making routine
 14 repairs on a dam which do not affect the safety of the dam
 15 shall not be required to submit such application or have such
 16 certificate. A separate application for a certificate of approval
 17 must be submitted by a person for each dam he desires to
 18 place, construct, enlarge, alter, repair, remove or abandon
 19 except that, under rules adopted by the director, one
 20 application may be valid for more than one dam involved in a
 21 single project or formation of a reservoir.

22 Each application for a certificate of approval shall be made
 23 in writing on a form prescribed by the director and shall be
 24 signed and verified by the applicant. The application shall
 25 contain and provide information which may be reasonably
 26 required by the director to administer the provisions of this
 27 article.

**§20-5D-10. Procedures for handling emergencies involving
 dams; remedial actions to alleviate emergency;
 payment of costs of remedial actions to be paid by
 dam owner.**

1 The owner of a dam shall have primary responsibility for
 2 determining when an emergency involving his dam exists.
 3 When the owner of a dam determines such emergency does
 4 exist, he shall notify the director and shall notify any persons
 5 who may be endangered if the dam should fail. The owner
 6 shall also immediately take any remedial action necessary to
 7 protect life and property.

8 The director shall, if he determines that an emergency
 9 exists involving a dam, notify any persons who may be
 10 endangered if the dam should fail and who have not been so
 11 notified and immediately take any remedial action necessary
 12 to protect life and property if in his judgment (a) the condition
 13 of the dam so endangers life and property that time is not
 14 sufficient to permit the issuance and enforcement of an order

15 for the owner to correct the condition or (b) passing or
16 imminent floods or other conditions threaten the safety of the
17 dam. Remedial actions the director may take include, but are
18 not limited to:

19 (1) Taking full charge and control of the dam.

20 (2) Lowering the level of water impounded by the dam by
21 releasing such impounded water.

22 (3) Completely releasing all water impounded by the dam.

23 (4) Performing any necessary remedial or protective work
24 at the site of the dam.

25 (5) Taking any other steps necessary in the opinion of the
26 director to safeguard life and property.

27 Once the director has taken full charge of the dam, the
28 director shall continue in full charge and control of such dam
29 until, in the director's opinion, it has been rendered safe or
30 the emergency occasioning the action has ceased and the
31 owner is adjudged competent by the director to reassume
32 control of such dam and its operation. The assumption by the
33 director of the control of the dam will not relieve the owner of
34 a dam of liability for any negligent acts the owner commits or
35 which are committed by his agents.

36 In case of an emergency where the director declares that
37 making repairs to the dam or breaching of the dam is
38 immediately necessary to safeguard life and property, repairs
39 or breaching shall be started immediately by the owner, or by
40 the director at the owner's expense, if the owner fails to do so.
41 The owner shall notify the director at once of any emergency
42 repairs or breaching the owner proposes to undertake and of
43 work he has under way to alleviate the emergency. The
44 proposed repairs, breaching and work shall be made to
45 conform to such orders as the director may issue. The director
46 may obtain equipment and personnel for emergency work
47 from any person as is necessary and expedient to accomplish
48 the required work. Any person undertaking such work at the
49 request of the director shall come under the provisions of the
50 good samaritan law, section fifteen, article seven, chapter
51 fifty-five of this code: *Provided*, That a person undertaking
52 such work shall receive remuneration for his services from
53 the department of natural resources.

54 The costs reasonably incurred in any remedial action taken
55 by the director as provided in this article shall be paid for
56 initially by funds appropriated to the department of natural
57 resources for such purposes, and such sums so expended, if

58 not promptly repaid by the owner upon request of the
59 director, shall be recovered from the owner by appropriate
60 civil action to be initiated by the attorney general upon
61 request of the director.

§20-5D-11. Requirements for dams completed prior to effective date of this section.

1 The director shall give notice to file an application for a
2 certificate of approval to every owner of a dam which was
3 completed prior to the effective date of this section: *Provided*,
4 That no such notice need be given to a person who has
5 applied for and obtained a certificate of approval on or after
6 the first day of July, one thousand nine hundred
7 seventy-three, in accordance with the provisions of the prior
8 enactment of section five of this article. Such notice shall be
9 given by certified or registered mail, return receipt requested,
10 to the owner at his last address of record in the office of the
11 county assessor of the county in which the dam is located and
12 such mailing shall constitute service. A separate application
13 for each dam a person owns shall be filed with the director in
14 writing upon forms supplied by him and shall include or be
15 accompanied by appropriate information concerning the dam
16 as the director requires.

17 The director shall make inspections of such dams or
18 reservoirs at state expense. The director shall require owners
19 of such dams to perform at their expense such work or tests
20 as may reasonably be required to disclose information
21 sufficient to enable the director to determine whether to issue
22 a certificate of approval or to issue an order directing further
23 work at the owner's expense necessary to safeguard life and
24 property. For this purpose, the director may require an owner
25 to lower the water level of, or to empty, water impounded by
26 the dam adjudged by the director to be unsafe. If, upon
27 inspection or upon completion to the satisfaction of the
28 director of all work that he ordered, the director finds that the
29 dam is safe to impound water, a certificate of approval shall
30 be issued.

§20-5D-12. Requirements for dams under construction prior to effective date of this section.

1 Any dam which the director finds was under construction
2 and based on his findings not fifty percent constructed on the
3 effective date of this section shall, except as provided in the
4 next succeeding paragraph, be subject to the same provisions

5 of this article as a dam commenced after that date. Every
6 owner of such a dam shall file an application with the director
7 for the director's written approval of the plan and
8 specifications of the dam: *Provided*, That if the person
9 constructing such dam has applied for and obtained a
10 certificate of approval on or after the first day of July, one
11 thousand nine hundred seventy-three, in accordance with the
12 provisions of the prior enactment of section five of this
13 article, such person shall not be required to re-apply for a new
14 certificate of approval for the plans and specifications which
15 were approved by the original certificate.

16 Construction work on such a dam may proceed, provided
17 an application for approval of the plans and specifications
18 therefor is filed, until a certificate of approval is received by
19 the owner from the director approving the dam or an order is
20 received by the owner from the director specifying how the
21 construction must be performed to render the dam safe. After
22 receipt of an order specifying how construction of the dam
23 must be performed, work thereafter must be in accordance
24 with the order.

25 Dams which are determined by the director to be fifty
26 percent or more constructed on the effective date of this
27 section shall be subject to the same supervision as dams
28 which were completed prior thereto.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. D. Bayla
Chairman Senate Committee

Joseph E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Todd C. Nicks
Clerk of the Senate

Ch Blankenship
Clerk of the House of Delegates

Warren R. McInnis
President of the Senate

Walter M. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *14*
day of *April*, 1982.

W. A. R. Ryan
Governor

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