WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1982

ENROLLED
Committee Substitute for
SENATE BILL NO. 4

(By Mr. McPhaul, Mr. President)

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 requires a different meaning, the term:
2 (a) “Alterations” or “repairs” means only those changes in
3 the structure or integrity of a dam which may affect its safety,
which determination shall be made by the director.

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

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

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

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

f) "Department" means the department of natural resources.

g) "Director" means the director of the department of natural resources or his authorized agents.
(h) "Enlargement" means any change in or addition to an existing dam which (1) raises the height of the dam, (2) raises or may raise the water storage elevation of the water impounded by the dam, (3) increases or may increase the amount of water impounded by the dam, or (4) increases or may increase the watershed area from which water is impounded by the dam.

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

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

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

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

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

The director shall have the following powers and duties:

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

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

(c) To grant, modify, amend, revoke, restrict or refuse to grant any certificate of approval based on a determination by him that such action is proper or necessary to protect life and property as provided in this article;
(d) To adopt, modify, repeal and enforce rules, and issue orders, which he shall do in accordance with the provisions of chapter twenty-nine-a of this code as if the provisions of said chapter twenty-nine-a were set forth in extenso herein to implement and make effective the powers and duties vested in him by the provisions of this article;

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

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

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

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

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

(j) To prepare and publish within a reasonable time, criteria to govern the design, construction, repair, inspection and maintenance of proposed dams herein defined, and to review these criteria annually in order to consider improved 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.

On and after the effective date of this section, it shall be unlawful for any person to place, construct, enlarge, alter, repair, remove or abandon any dam under the jurisdiction of
the department until he has first (a) filed an application for a certificate of approval with the department, and (b) obtained from the department a certificate of approval: Provided, That a person who has applied for and obtained a certificate of approval on or after the first day of July, one thousand nine hundred seventy-three, in accordance with the provisions of the prior enactment of this section, shall not be required to re-apply for a new certificate of approval for the plans and specifications which were approved by the original certificate: Provided, however, That a person making routine repairs on a dam which do not affect the safety of the dam shall not be required to submit such application or have such certificate. A separate application for a certificate of approval must be submitted by a person for each dam he desires to place, construct, enlarge, alter, repair, remove or abandon except that, under rules adopted by the director, one application may be valid for more than one dam involved in a single project or formation of a reservoir.

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

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

The director shall, if he determines that an emergency exists involving a dam, notify any persons who may be endangered if the dam should fail and who have not been so notified and immediately take any remedial action necessary to protect life and property if in his judgment (a) the condition of the dam so endangers life and property that time is not sufficient to permit the issuance and enforcement of an order
for the owner to correct the condition or (b) passing or
imminent floods or other conditions threaten the safety of the
dam. Remedial actions the director may take include, but are
not limited to:
(1) Taking full charge and control of the dam.
(2) Lowering the level of water impounded by the dam by
releasing such impounded water.
(3) Completely releasing all water impounded by the dam.
(4) Performing any necessary remedial or protective work
at the site of the dam.
(5) Taking any other steps necessary in the opinion of the
director to safeguard life and property.
Once the director has taken full charge of the dam, the
director shall continue in full charge and control of such dam
until, in the director's opinion, it has been rendered safe or
the emergency occasioning the action has ceased and the
owner is adjudged competent by the director to reassure
control of such dam and its operation. The assumption by the
director of the control of the dam will not relieve the owner of
a dam of liability for any negligent acts the owner commits or
which are committed by his agents.
In case of an emergency where the director declares that
making repairs to the dam or breaching of the dam is
immediately necessary to safeguard life and property, repairs
or breaching shall be started immediately by the owner, or by
the director at the owner's expense, if the owner fails to do so.
The owner shall notify the director at once of any emergency
repairs or breaching the owner proposes to undertake and of
work he has under way to alleviate the emergency. The
proposed repairs, breaching and work shall be made to
conform to such orders as the director may issue. The director
may obtain equipment and personnel for emergency work
from any person as is necessary and expedient to accomplish
the required work. Any person undertaking such work at the
request of the director shall come under the provisions of the
good samaritan law, section fifteen, article seven, chapter
fifty-five of this code: Provided, That a person undertaking
such work shall receive remuneration for his services from
the department of natural resources.
The costs reasonably incurred in any remedial action taken
by the director as provided in this article shall be paid for
initially by funds appropriated to the department of natural
resources for such purposes, and such sums so expended, if
not promptly repaid by the owner upon request of the director, shall be recovered from the owner by appropriate civil action to be initiated by the attorney general upon request of the director.

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

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

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

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

Any dam which the director finds was under construction and based on his findings not fifty percent constructed on the effective date of this section shall, except as provided in the next succeeding paragraph, be subject to the same provisions
of this article as a dam commenced after that date. Every
owner of such a dam shall file an application with the director
for the director's written approval of the plan and
specifications of the dam: Provided, That if the person
constructing such dam has applied for and obtained a
certificate of approval on or after the first day of July, one
thousand nine hundred seventy-three, in accordance with the
provisions of the prior enactment of section five of this
article, such person shall not be required to re-apply for a new
certificate of approval for the plans and specifications which
were approved by the original certificate.

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

Dams which are determined by the director to be fifty
percent or more constructed on the effective date of this
section shall be subject to the same supervision as dams
which were completed prior thereto.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the day of , 1982.

Governor