

SB 465 S

FILED

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

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SECRETARY OF STATE

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FOR

Senate Bill No. 465

(SENATORS UNGER, JENKINS, PREZIOSO AND
PLYMALE, *original sponsors*)

[Passed March 9, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §22-14-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-14-19, all relating to deficient dams; establishing the Dam Safety

Rehabilitation Revolving Fund for deficient dams; and providing for promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That §22-14-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §22-14-19, all to read as follows:

ARTICLE 14. DAM CONTROL ACT.

§22-14-3. Definition of terms used in article.

1 As used in this article, unless used in a context that
2 clearly requires a different meaning, the term:

3 (a) "Alterations" or "repairs" means only those
4 changes in the structure or integrity of a dam that may
5 affect its safety to be determined by the secretary.

6 (b) "Application for a certificate of approval" means
7 the written application provided to the secretary
8 requesting that a person be issued a certificate of
9 approval.

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

16 (d) "Certificate of approval" means the written
17 approval issued by the secretary to a person who has
18 applied to the secretary for a certificate of approval that

19 authorizes the person to place, construct, enlarge, alter,
20 repair or remove a dam and specifies the conditions or
21 limitations under which the work is to be performed by
22 that person.

23 (e)(1) "Dam" means an artificial barrier or
24 obstruction, including any works appurtenant to it and
25 any reservoir created by it, which is or will be placed,
26 constructed, enlarged, altered or repaired so that it does
27 or will impound or divert water and:

28 (A) Is or will be twenty-five feet or more in height
29 from the natural bed of the stream or watercourse
30 measured at the downstream toe of the barrier and
31 which does or can impound fifteen acre-feet or more of
32 water; or

33 (B) Is or will be six feet or more in height from the
34 natural bed of the stream or watercourse measured at
35 the downstream toe of the barrier and which does or
36 can impound fifty acre-feet or more of water;

37 (2) "Dam" does not mean:

38 (A) Any dam owned by the federal government;

39 (B) Any dam for which the operation and maintenance
40 of the dam is the responsibility of the federal
41 government;

42 (C) Farm ponds constructed and used primarily for
43 agricultural purposes, including, but not limited to,
44 livestock watering, irrigation, retention of animal
45 wastes and fish culture, and that have no potential to
46 cause loss of human life in the event of embankment

47 failure; or

48 (D) Roadfill or other transportation structures that do
49 not or will not impound water under normal conditions
50 and that have a designed culvert or similar conveyance
51 or capacity that would be used under a state designed
52 highway at the same location: *Provided*, That the
53 secretary may apply the provisions of section ten of this
54 article for roadfill or other transportation structures
55 that become a hazard to human life or property through
56 the frequent or continuous impoundment of water.

57 (f) "Deficient dam" means a noncoal-related dam that
58 exhibits one or more design, maintenance or operational
59 problems that may adversely affect the performance of
60 the dam over a period of time or during a major storm
61 or other inclement weather that may cause loss of life or
62 property; or a noncoal-related dam that otherwise fails
63 to meet the requirements of this article.

64 (g) "Department" means the Department of
65 Environmental Protection.

66 (h) "Enlargement" means any change in or addition to
67 an existing dam which: (1) Raises the height of the dam;
68 (2) raises or may raise the water storage elevation of the
69 water impounded by the dam; (3) increases or may
70 increase the amount of water impounded by the dam; or
71 (4) increases or may increase the watershed area from
72 which water is impounded by the dam.

73 (i) "Person" means any public or private corporation,
74 institution, association, society, firm, organization or
75 company organized or existing under the laws of this or
76 any other state or country; the State of West Virginia;

77 any state governmental agency; any political
78 subdivision of the state or of its counties or
79 municipalities; a sanitary district; a public service
80 district; a drainage district; a conservation district; a
81 watershed improvement district; a partnership, trust, or
82 estate; a person or individual; a group of persons or
83 individuals acting individually or as a group; or any
84 other legal entity. The term "person", when used in this
85 article, includes and refers to any authorized agent,
86 lessee or trustee of any of the foregoing, or receiver or
87 trustee appointed by any court for any of the foregoing.

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

90 (k) "Secretary" means the Secretary of the
91 Department of Environmental Protection.

92 (l) "Natural Resources Conservation Service" means
93 the Natural Resources Conservation Service of the
94 United States Department of Agriculture or any
95 successor or predecessor agency, including the Soil
96 Conservation Service.

97 (m) "Water" means any liquid, including any solids or
98 other matter that may be contained in the liquid, which
99 is or may be impounded by a dam.

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

**§22-14-19. Dam Safety Rehabilitation Revolving Fund
established; disbursement of fund moneys.**

1 (a) There is created in the State Treasury a special
2 revenue fund known as the Dam Safety Rehabilitation
3 Revolving Fund. The fund shall be comprised of money
4 allocated to the state by the federal government
5 expressly for the purposes of establishing and
6 maintaining a state Dam Safety Rehabilitation
7 Revolving Fund. The fund shall also include all receipts
8 from loans made by the fund, any moneys appropriated
9 by the Legislature, all income from the investment of
10 moneys held in the fund and all other moneys
11 designated for deposit to the fund from any source,
12 public or private. The fund shall operate as a special
13 revenue fund and all deposits and payments into the
14 fund do not expire to the General Revenue Fund, but
15 shall remain in the account and be available for
16 expenditure in succeeding fiscal years.

17 (b) The fund, to the extent that money is available,
18 shall be used solely to make loans to persons who own
19 an interest in a deficient dam to finance the
20 engineering, design, alteration, improvement, repair,
21 breaching or removal of the deficient dam necessary to
22 correct or remove the deficiencies and other activities as
23 authorized by a federal grant or a legislative
24 appropriation. Further, the fund may be used to defray
25 costs incurred by the department in administering the
26 provisions of this subsection.

27 (c) The secretary shall promulgate rules, in accordance
28 with the provisions of article three, chapter twenty-
29 nine-a of this code, to govern the disbursement of
30 moneys from the fund, establish a state deficient dams
31 rehabilitation assistance program to direct the
32 distribution of loans from the fund, establish criteria for
33 eligibility to receive loans from the fund and establish

34 the terms and conditions of the loans, including interest
35 rates and repayment terms.

36 (d) The secretary may employ qualified officers,
37 agents, advisors and consultants and other persons
38 necessary to carry out the administration and
39 management of the fund.

Enr. Com. Sub. for Com. Sub. for S. B. No. 465] 8

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.

In effect ninety days from passage.


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Clerk of the Senate


.....
Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within is approved this
the 27th Day of March, 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 20 2007

Time 4:15