ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 465

(Senators Unger, Jenkins, Prezioso and Plymale, original sponsors)

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

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 465

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

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

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

(e)(1) "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:

(A) Is or will be twenty-five feet or more in height from the natural bed of the 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

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

(2) "Dam" does not mean:

(A) Any dam owned by the federal government;

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

(C) 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 that have no potential to cause loss of human life in the event of embankment
failure; or

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

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

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

(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; a sanitary district; a public service district; a drainage district; a conservation district; a watershed improvement district; a partnership, trust, or estate; a person or individual; a group of persons or individuals acting individually or as a group; or any other legal entity. The term “person”, when used in this article, includes and refers 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) “Secretary” means the Secretary of the Department of Environmental Protection.

(l) “Natural Resources Conservation Service” means the Natural Resources Conservation Service of the United States Department of Agriculture or any successor or predecessor agency, including the Soil Conservation Service.

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

(n) “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.

§22-14-19. Dam Safety Rehabilitation Revolving Fund established; disbursement of fund moneys.
(a) There is created in the State Treasury a special revenue fund known as the Dam Safety Rehabilitation Revolving Fund. The fund shall be comprised of money allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state Dam Safety Rehabilitation Revolving Fund. The fund shall also include all receipts from loans made by the fund, any moneys appropriated by the Legislature, all income from the investment of moneys held in the fund and all other moneys designated for deposit to the fund from any source, public or private. The fund shall operate as a special revenue fund and all deposits and payments into the fund do not expire to the General Revenue Fund, but shall remain in the account and be available for expenditure in succeeding fiscal years.

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

(c) The secretary shall promulgate rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to govern the disbursement of moneys from the fund, establish a state deficient dams rehabilitation assistance program to direct the distribution of loans from the fund, establish criteria for eligibility to receive loans from the fund and establish
the terms and conditions of the loans, including interest rates and repayment terms.

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

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within was passed this the 27th Day of March, 2007.

Governor