

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 483
Committee Substitute Favorable 4/8/93
Committee Substitute #2 Favorable 4/21/93

Short Title: Dam Safety Law Improvements.

(Public)

Sponsors:

Referred to:

March 24, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DAM SAFETY LAW OF 1967 TO MAKE IT MORE EFFECTIVE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.24 reads as rewritten:

"§ 143-215.24. Declaration of purpose.

It is the purpose of this Part to provide for the certification and inspection of dams in the interest of public health, safety, and welfare, in order to reduce the risk of failure of dams; to prevent injuries to persons, damage to downstream property and loss of reservoir storage; and to ensure maintenance of minimum stream flows ~~below such dams~~ of adequate quantity and ~~quality~~ quality below dams."

Sec. 2. G.S. 143-215.25 reads as rewritten:

"§ 143-215.25. Definitions.

~~As used in this Part, unless the context otherwise requires:~~

(1) ~~Repealed by Session Laws 1987, c. 827, s. 175.~~

(2) ~~'Dam' means the dam (and appurtenant works) for the impoundment or diversion of water, except that it shall not include:~~

a. ~~Any dam constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or any other department or agency of the United States government, when such department or agency designed or approved plans and supervised construction.~~

- 1 b. ~~Any dam or flood retarding structure constructed with financial~~
2 ~~assistance from the United States Soil Conservation Service,~~
3 ~~when said agency designed or approved plans and supervised~~
4 ~~construction.~~
- 5 e. ~~The exemptions conferred by items a and b of this subdivision~~
6 ~~shall cease when the supervising federal agency relinquishes~~
7 ~~authority for the operation and maintenance to a local entity.~~
- 8 d. ~~Any dam licensed by the Federal Power Commission, or for~~
9 ~~which a license application is pending with the Federal Power~~
10 ~~Commission, or for use in connection with electric generating~~
11 ~~facilities to be constructed pursuant to a certificate of public~~
12 ~~convenience and necessity from the North Carolina Utilities~~
13 ~~Commission, provided that small power producers as defined in~~
14 ~~G.S. 62-3(27a) shall be subject to the provisions of this Part~~
15 ~~even though certified by the North Carolina Utilities~~
16 ~~Commission.~~
- 17 e. ~~Any dam under a single private ownership, providing protection~~
18 ~~only to land or other property under such ownership, and posing~~
19 ~~no threat to life or property below the property under such~~
20 ~~single ownership.~~
- 21 f. ~~Any dam less than 15 feet in height (measured from original~~
22 ~~stream bottom to crest of dam) or whose impoundment capacity~~
23 ~~is less than 10 acre feet.~~

24 (3) ~~Repealed by Session Laws 1987, c. 827, s. 175.~~

25 (4) ~~'Minimum stream flows' or 'minimum flows' means stream flows of a~~
26 ~~quantity and quality sufficient in the judgment of the Department to~~
27 ~~meet and maintain stream classifications and water quality standards~~
28 ~~established by the Department under G.S. 143-214.1 and applicable to~~
29 ~~the waters affected by the project under consideration. In order to~~
30 ~~ensure that such classifications and standards shall be met and~~
31 ~~maintained, the Department may impose such conditions and~~
32 ~~requirements in orders and written approvals issued under this Part as,~~
33 ~~in its judgment, may be necessary to this end, including conditions and~~
34 ~~requirements relating to the release or discharge of designated flows~~
35 ~~from impoundments, the location or design of water outlets for~~
36 ~~impoundments and of water intakes, the amount and timing of~~
37 ~~withdrawal of water from a reservoir, and the construction of~~
38 ~~submerged weirs or other devices designed to satisfy minimum stream~~
39 ~~flow requirements.~~

40 (5) ~~Repealed by Session Laws 1987, c. 827, s. 175.~~

41 The following definitions apply in this Part:

42 (1) Dam. – A structure and appurtenant works erected to impound or
43 divert water.

1 (2) Minimum stream flows or minimum flows. – Stream flows of a
2 quantity and quality sufficient in the judgment of the Department to
3 meet and maintain stream classifications and water quality standards
4 established by the Department under G.S. 143-214.1 and applicable to
5 the waters affected by the project under consideration, and to maintain
6 aquatic habitat in the length of the stream that is affected. The
7 Department may impose any conditions and requirements in orders
8 and written approvals issued under this Part that are needed to ensure
9 that these classifications, standards, and aquatic habitat requirements
10 are met and maintained, including conditions and requirements relating
11 to the release or discharge of designated flows from impoundments,
12 the location or design of water outlets for impoundments and of water
13 intakes, the amount and timing of withdrawal of water from a
14 reservoir, and the construction of submerged weirs or other devices
15 designed to satisfy minimum stream flow requirements."

16 Sec. 3. Part 3 of Article 21 of Chapter 143 of the General Statutes is
17 amended by adding a new section to read:

18 **"§ 143-215.25A. Exempt dams.**

19 (a) Except as otherwise provided in this Part, this Part does not apply to any of
20 the following dams:

21 (1) A dam constructed by the United States Army Corps of Engineers, the
22 Tennessee Valley Authority, or another agency of the United States
23 government, when the agency designed or approved plans for the dam
24 and supervised its construction.

25 (2) A dam constructed with financial assistance from the United States
26 Soil Conservation Service, when that agency designed or approved
27 plans for the dam and supervised its construction.

28 (3) A dam licensed by the Federal Energy Regulatory Commission or for
29 which a license application is pending with the Federal Energy
30 Regulatory Commission.

31 (4) A dam for use in connection with electric generating facilities to be
32 constructed pursuant to a certificate of public convenience and
33 necessity from the North Carolina Utilities Commission, unless the
34 dam is for a small power producer as defined in G.S. 62-3(27a).

35 (5) A dam that is under a single private ownership, provides protection
36 only to land or other property under the same ownership, and does not
37 pose a threat to life or property below the dam.

38 (6) A dam that is less than 15 feet in height or that has an impoundment
39 capacity of less than 10 acre-feet, unless the Department determines
40 that failure of the dam could result in loss of life, property damage in
41 excess of two hundred thousand dollars (\$200,000), or both.

42 (b) Conditions. – The exemptions for dams in subdivisions (a)(1) and (a)(2) of
43 this section do not apply after the supervising federal agency relinquishes authority for
44 the operation and maintenance of the dam to a local entity."

1 Sec. 4. G.S. 143-215.26 reads as rewritten:

2 **"§ 143-215.26. Construction of dams.**

3 (a) No person shall begin the construction of any dam until at least 10 days after
4 filing with the Department a statement concerning its height, impoundment capacity,
5 purpose, ~~location~~ location, and other information required by the Department. ~~Persons~~
6 ~~proposing construction described in G.S. 143-215.25, subparagraphs (2)e and f.~~ A person who
7 constructs a dam, including a dam that is otherwise exempt from this Part under G.S.
8 143-215.25A(a)(5) or (a)(6) will shall comply with the malaria control requirements of
9 the Department. If on the basis of this information the Department is of the opinion that
10 the proposed dam is not exempt from the provisions of this Part, it shall so notify the
11 applicant, and construction shall not be commenced until a full application is filed by
12 the applicant and approved as provided by G.S. 143-215.29. The Department may also
13 require of applicants so notified the filing of ~~such any~~ additional information as it deems
14 necessary, ~~including, but not limited to,~~ including streamflow and rainfall data, maps,
15 plans and specifications. Every applicant for approval of a dam subject to the
16 provisions of this Part shall also file with the Department the certificate of an engineer
17 or contractor legally qualified in ~~the State of North Carolina that he~~ this State. The
18 certificate shall state that the person who files it is responsible for the design of the ~~dam,~~
19 dam and that ~~said the~~ design is safe and adequate. Should the applicant have a
20 professional engineering staff the certificate of a registered professional engineer
21 member of that staff legally qualified in ~~the State of North Carolina will constitute this~~
22 State constitutes compliance.

23 (b) ~~When an application has been completed pursuant to the preceding~~
24 ~~subsection, the~~ The Department shall refer copies of ~~the completed application papers~~
25 applications filed under subsection (a) of this section to the State ~~Health Director, the~~
26 ~~Wildlife Resources Commission, the Board of Transportation, and such other State and~~
27 ~~local agencies as it deems~~ and local agencies it considers appropriate for review and
28 comment."

29 Sec. 5. G.S. 143-215.28A reads as rewritten:

30 **"§ 143-215.28A. Application fees.**

31 (a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a
32 fee schedule for processing applications for approvals of ~~construction, repair, alteration,~~
33 construction or removal of dams issued under this Part. In establishing the fee schedule,
34 the Commission shall consider the administrative and personnel costs incurred by the
35 Department for processing the applications and for related compliance activities. The
36 total amount of fees collected in any fiscal year may not exceed one-third of the total
37 personnel and administrative costs incurred by the Department for processing the
38 applications and for related compliance activities in the prior fiscal year. An approval
39 fee may not exceed the larger of two hundred dollars (\$200.00) or two percent (2%) of
40 the actual cost of construction or removal of the applicable dam. The provisions of G.S.
41 143-215.3(a)(1b) do not apply to these fees.

42 (b) The Dam Safety Account is established as a nonreverting account within the
43 Department. Fees collected under this section shall be credited to the Account and shall
44 be applied to the costs of administering this Part."

1 Sec. 6. G.S. 143-215.32 reads as rewritten:

2 "**§ 143-215.32. Inspection of dams.**

3 (a) The Department ~~is hereby authorized~~ may at any time ~~to inspect any dam dam,~~
4 including a dam that is otherwise exempt from this Part, upon receipt of a written
5 request of any affected person or agency, or upon a motion of the Environmental
6 Management Commission. Within the limits of available funds the Department shall
7 endeavor to provide for inspection of all dams at intervals of approximately five years.

8 (b) If the Department upon inspection finds that any dam is not sufficiently
9 strong, ~~or is not maintained in good repair or operating condition, or is dangerous to life~~
10 ~~or property, or does not satisfy minimum streamflow requirements,~~ the Department
11 ~~shall cause such evidence to be presented~~ present its findings to the Commission and the
12 Commission may issue an order directing the owner or owners of the dam to make at his
13 or her expense maintenance, alterations, repairs, reconstruction, change in construction
14 or location, or removal as may be deemed necessary by the Commission within a time
15 limited by the order, not less than 90 days from the date of issuance of each order,
16 except in the case of extreme danger to the safety of life or property, as provided by
17 subsection (c) of this section.

18 (c) If at any time the condition of any dam becomes so dangerous to the safety of
19 life or property, in the opinion of the Environmental Management Commission, as not
20 to permit sufficient time for issuance of an order in the manner provided by subsection
21 (b) of this section, the Environmental Management Commission may immediately take
22 such measures as may be essential to provide emergency protection to life and property,
23 including the lowering of the level of a reservoir by releasing water impounded or the
24 destruction in whole or in part of the dam or reservoir. The Environmental Management
25 Commission may recover the costs of ~~such~~ the measures from the owner or owners by
26 appropriate legal action.

27 (d) ~~For the purposes of this section the word 'dam' shall mean any dam posing a~~
28 ~~present threat to human life or property regardless of its size and impoundment capacity,~~
29 ~~but excepting those dams described in G.S. 143-215.25(2)a, b and d.~~ An order issued
30 under this Part shall be served on the owner of the dam as provided in G.S. 1A-1, Rule
31 4."

32 Sec. 7. G.S. 143-215.33 reads as rewritten:

33 "**§ 143-215.33. Administrative hearing.**

34 A person to whom a decision or a dam safety order is issued under this Part may
35 contest the decision or order by filing a ~~petition for a contested case~~ contested case
36 petition in accordance with G.S. 150B-23. A person to whom a decision is issued must
37 file a contested case petition within 30 days after the decision is mailed to that person.
38 A person to whom a dam safety order is issued must file a contested case petition within
39 10 days after receiving notice, by personal service or by registered or certified mail, of the
40 Commission's decision or order. the order is served."

41 Sec. 8. G.S. 143-215.36(b) reads as rewritten:

42 "(b) Civil Penalties. –

43 (1) The Secretary may assess a civil penalty of not less than one hundred
44 dollars (\$100.00) nor more than ~~two~~ five hundred ~~fifty~~ dollars (~~\$250.00~~)

- 1 (\$500.00) against any person who violates any provisions of this Part,
2 a rule implementing this Part, or an order issued under this Part.
- 3 (2) If any action or failure to act for which a penalty may be assessed
4 under this Part is willful, the Secretary may assess a penalty not to
5 exceed ~~two~~ five hundred ~~five~~ dollars ~~(\$250.00)~~ (\$500.00) per day for
6 each day of violation.
- 7 (3) In determining the amount of the penalty, the Secretary shall consider
8 the factors set out in G.S. 143B-282.1(b). The procedures set out in
9 G.S. 143B-282.1 shall apply to civil penalty assessments that are
10 presented to the Commission for final agency decision.
- 11 (4) The Secretary shall notify any person assessed a civil penalty of the
12 assessment and the specific reasons therefor by registered or certified
13 mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested
14 case petitions shall be filed in accordance with G.S. 150B-23 within 30
15 days of receipt of the notice of assessment.
- 16 (5) Requests for remission of civil penalties shall be filed with the
17 Secretary. Remission requests shall not be considered unless made
18 within 30 days of receipt of the notice of assessment. Remission
19 requests must be accompanied by a waiver of the right to a contested
20 case hearing pursuant to Chapter 150B and a stipulation of the facts on
21 which the assessment was based. Consistent with the limitations in
22 G.S. 143B-282.1(c) and (d), remission requests may be resolved by the
23 Secretary and the violator. If the Secretary and the violator are unable
24 to resolve the request, the Secretary shall deliver remission requests
25 and his recommended action to the Committee on Civil Penalty
26 Remissions of the Environmental Management Commission appointed
27 pursuant to G.S. 143B-282.1(c).
- 28 (6) If any civil penalty has not been paid within 30 days after notice of
29 assessment has been served on the violator, the Secretary shall request
30 the Attorney General to institute a civil action in the Superior Court of
31 any county in which the violator resides or has his or its principal place
32 of business to recover the amount of the assessment, unless the
33 violator contests the assessment as provided in subdivision (4) of this
34 subsection, or requests remission of the assessment in whole or in part
35 as provided in subdivision (5) of this subsection. If any civil penalty
36 has not been paid within 30 days after the final agency decision or
37 court order has been served on the violator, the Secretary shall request
38 the Attorney General to institute a civil action in the Superior Court of
39 any county in which the violator resides or has his or its principal place
40 of business to recover the amount of the assessment. A civil action
41 shall be filed within three years of the date the final agency decision
42 was served on the violator.
- 43 (7) The Secretary may delegate his powers and duties under this section to
44 the Director of the Division of Land Resources of the Department."

- 1 Sec. 9. Section 5 of this act and this section are effective upon ratification.
- 2 The remaining sections of this act become effective October 1, 1993.