

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 571*

Short Title: Dam Safety Law Improvements.

(Public)

Sponsors: Senators Tally; Ward, Gulley, Winner of Mecklenburg, Odom, Blackmon, Cochrane, and Kerr.

Referred to: Environment and Natural Resources.

March 25, 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."

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

"(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.
b. Any dam or flood retarding structure constructed with financial assistance from the United States Soil Conservation Service, when said agency designed or approved plans and supervised construction.

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

22 Sec. 3. G.S. 143-215.25(4) reads as rewritten:

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

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

40 "**§ 143-215.26. Construction of dams.**

41 (a) No person shall begin the construction of any dam until at least 10 days after
42 filing with the Department a statement concerning its height, impoundment capacity,
43 purpose, location and other information required by the Department. Persons proposing
44 construction described in G.S. 143-215.25, ~~subparagraphs~~sub-subdivisions (2)e and f

1 will comply with malaria control requirements of the Department. If on the basis of this
2 information the Department is of the opinion that the proposed dam is not exempt from
3 the provisions of this Part, it shall so notify the applicant, and construction shall not be
4 commenced until a full application is filed by the applicant and approved as provided by
5 G.S. 143-215.29. The Department may also require of applicants so notified the filing
6 of such additional information as it deems necessary, including, but not limited to,
7 streamflow and rainfall data, maps, plans and specifications. Every applicant for
8 approval of a dam subject to the provisions of this Part shall also file with the
9 Department the certificate of an engineer ~~or contractor~~ legally qualified in the State of
10 North Carolina that he is responsible for the design of the dam, and that said design is
11 safe and adequate. Should the applicant have a professional engineering staff the
12 certificate of a registered professional engineer member of that staff legally qualified in
13 the State of North Carolina will constitute compliance.

14 (b) When an application has been completed pursuant to the preceding
15 subsection, the Department shall refer copies of the completed application papers to ~~the~~
16 ~~State Health Director, the Wildlife Resources Commission, the Board of Transportation, and~~
17 ~~such other~~ State and local agencies as it deems appropriate for review and comment."

18 Sec. 5. G.S. 143-214.28A reads as rewritten:

19 "**§ 143-215.28A. Application fees.**

20 (a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a
21 fee schedule for processing applications for approvals of ~~construction, repair, alteration,~~
22 construction or removal of dams issued under this Part. In establishing the fee schedule,
23 the Commission shall consider the administrative and personnel costs incurred by the
24 Department for processing the applications and for related compliance activities. The
25 total amount of fees collected in any fiscal year may not exceed one-third of the total
26 personnel and administrative costs incurred by the Department for processing the
27 applications and for related compliance activities in the prior fiscal year. An approval
28 fee may not exceed the larger of two hundred dollars (\$200.00) or two percent (2%) of
29 the actual cost of construction or removal of the applicable dam. The provisions of G.S.
30 143-215.3(a)(1b) do not apply to these fees.

31 (b) The Dam Safety Account is established. The Dam Safety Account shall be a
32 nonreverting account within the Department and shall be administered by the State
33 Treasurer. The Dam Safety Account shall be treated as a special trust fund and shall be
34 credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
35 69.3. Fees collected under this section shall be credited to the Account and shall be
36 applied to the costs of administering this Part."

37 Sec. 6. G.S. 143-215.33 reads as rewritten:

38 "**§ 143-215.33. Administrative hearing.**

39 A person to whom a ~~decision or dam safety~~ order is issued under this Part may
40 contest the ~~decision or dam safety~~ order by filing a contested case petition ~~for a contested~~
41 ease in accordance with G.S. 150B-23 within 10 days after ~~receiving notice, by personal~~
42 service or by registered or certified mail, of the Commission's decision or order. receipt of the
43 dam safety order."

44 Sec. 7. G.S. 143-215.36(b) reads as rewritten:

1 "(b) Civil Penalties. –

- 2 (1) The Secretary may assess a civil penalty of not less than one hundred
3 dollars (\$100.00) nor more than ~~two five hundred fifty~~ dollars ~~(\$250.00)~~
4 ~~(\$500.00)~~ against any person who violates any provisions of this Part,
5 a rule implementing this Part, or an order issued under this Part.
- 6 (2) If any action or failure to act for which a penalty may be assessed
7 under this Part is willful, the Secretary may assess a penalty not to
8 exceed ~~two five hundred fifty~~ dollars ~~(\$250.00)~~ ~~(\$500.00)~~ per day for
9 each day of violation.
- 10 (3) In determining the amount of the penalty, the Secretary shall consider
11 the factors set out in G.S. 143B-282.1(b). The procedures set out in
12 G.S. 143B-282.1 shall apply to civil penalty assessments that are
13 presented to the Commission for final agency decision.
- 14 (4) The Secretary shall notify any person assessed a civil penalty of the
15 assessment and the specific reasons therefor by registered or certified
16 mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested
17 case petitions shall be filed in accordance with G.S. 150B-23 within 30
18 days of receipt of the notice of assessment.
- 19 ~~(5) Requests for remission of civil penalties shall be filed with the~~
20 ~~Secretary. Remission requests shall not be considered unless made~~
21 ~~within 30 days of receipt of the notice of assessment. Remission~~
22 ~~requests must be accompanied by a waiver of the right to a contested~~
23 ~~case hearing pursuant to Chapter 150B and a stipulation of the facts on~~
24 ~~which the assessment was based. Consistent with the limitations in~~
25 ~~G.S. 143B-282.1(c) and (d), remission requests may be resolved by the~~
26 ~~Secretary and the violator. If the Secretary and the violator are unable~~
27 ~~to resolve the request, the Secretary shall deliver remission requests~~
28 ~~and his recommended action to the Committee on Civil Penalty~~
29 ~~Remissions of the Environmental Management Commission appointed~~
30 ~~pursuant to G.S. 143B-282.1(c).~~
- 31 (6) If any civil penalty has not been paid within 30 days after notice of
32 assessment has been served on the violator, the Secretary shall request
33 the Attorney General to institute a civil action in the Superior Court of
34 any county in which the violator resides or has his or its principal place
35 of business to recover the amount of the assessment, unless the
36 violator contests the assessment as provided in subdivision (4) of this
37 subsection, ~~or requests remission of the assessment in whole or in part as~~
38 ~~provided in subdivision (5) of this subsection.~~ subsection. If any civil
39 penalty has not been paid within 30 days after the final agency
40 decision or court order has been served on the violator, the Secretary
41 shall request the Attorney General to institute a civil action in the
42 Superior Court of any county in which the violator resides or has his or
43 its principal place of business to recover the amount of the assessment.
44 Such civil actions must be filed within three years of the date the final

- 1 agency decision was served on the violator. Any sums recovered shall
2 be used to carry out the purposes and requirements of this Article.
3 (7) The Secretary may delegate his powers and duties under this section to
4 the Director of the Division of Land Resources of the Department."
5 Sec. 8. This act is effective upon ratification.