

1 HB610
2 159319-1
3 By Representatives McClurkin, Hill and Wallace
4 RFD: Commerce and Small Business
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SYNOPSIS: This bill would comprehensively regulate dam safety in Alabama by the Office of Water Resources of the Alabama Department of Economic and Community Affairs. The bill would establish statewide procedures for the construction, alteration, repair, operation, abandonment, and removal of dams. The bill would require this act to be administered by a licensed engineer.

A BILL
TO BE ENTITLED
AN ACT

Relating to dam safety in Alabama; to provide for the regulation of the construction, alteration, repair, operation, abandonment, and removal of dams; to provide defined terms; to provide for administrative provisions and powers of the Office of Water Resources of the Alabama Department of Economic and Community Affairs (the office); to provide for investigations and reviews of facilities; to

1 provide for the adoption of standards for dams and reservoirs;
2 to provide for the application process, fees, inspections,
3 certificates of approval, emergency actions, funding of the
4 program for dam regulation, and civil penalties for violators
5 by the office.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. As used in this act, the following terms
8 shall have the following meanings:

9 (1) ABANDON or ABANDONMENT. To render a dam
10 non-impounding by dewatering and filling the reservoir created
11 by that dam with solid materials and by diverting the natural
12 drainway around the site.

13 (2) ADVERSE CONSEQUENCES. Negative impacts that may
14 occur upstream, downstream, or at locations remote from the
15 dam. The primary concerns are loss of human life, economic
16 loss, including property damage, disruption of public
17 utilities, and environmental impact.

18 (3) ALTERATIONS or REPAIRS. Alterations or repairs
19 to existing dam and appurtenant structures that affect the
20 safety of the dam or reservoir, as determined by the office.

21 (4) APPLICATION APPROVAL. Authorization in writing
22 issued by the office to an owner who has applied to the office
23 for permission to construct, reconstruct, enlarge, repair,
24 alter, remove, maintain, operate, or abandon a dam and which
25 specifies the conditions or limitations under which work is to
26 be performed by the owner or under which approval is granted.

1 (5) APPURTENANT WORKS. The term includes, but is not
2 limited to, such structures as spillways, either in the dam or
3 separate therefrom; the reservoir and its rim; low level
4 outlet works; and water conduits such as tunnels, pipelines,
5 or penstocks, either through the dam or its abutments.

6 (6) BREACH. Partial removal of a dam, creating a
7 channel through the dam to the original stream bottom
8 elevation.

9 (7) CERTIFICATE OF APPROVAL TO IMPOUND.
10 Authorization in writing issued by the office to an owner who
11 has completed construction, reconstruction, enlargement,
12 repair, or alteration of a dam and which specifies the
13 conditions, or limitations under which the dam and reservoir
14 are to be maintained and operated.

15 (8)a. DAM. Any artificial barrier, including
16 appurtenant works, with the ability to impound water,
17 wastewater, or liquid borne materials and which 1. is 25 feet
18 or more in height from the natural bed of the stream or
19 watercourse measured at the downstream toe of the barrier, or
20 from the lowest elevation of the outside limit of the barrier,
21 if it is not across a stream channel or watercourse, to the
22 maximum water storage elevation; or 2. has an impounding
23 capacity at maximum water storage elevation of 50 acre feet or
24 more.

25 b. This definition does not apply to any such
26 barrier which is not in excess of six feet in height
27 regardless of storage capacity or which has a storage capacity

1 at maximum water storage elevation not greater than 15 acre
2 feet regardless of height, unless such a barrier, due to its
3 location or other physical characteristics, is classified as a
4 high hazard potential dam.

5 c. No obstruction in a canal used to raise or lower
6 water shall be considered a dam.

7 d. A fill or structure for highway or railroad use
8 or for any other purpose, which impounds water, shall be
9 subject to review by the office. Such fill or structure shall
10 be considered a dam if the criteria of this subdivision are
11 applicable.

12 (9) DAM REHABILITATION LOAN PROGRAM. A low interest
13 revolving dam rehabilitation loan program, created through
14 this act.

15 (10) DAYS. In establishing deadlines, means all
16 calendar days including Sundays and holidays.

17 (11) DIRECTOR. The Director of the Office of Water
18 Resources.

19 (12) EMERGENCY. The term includes, but is not
20 limited to, breaches and all conditions leading to or causing
21 a breach, overtopping, or any other condition in a dam and its
22 appurtenant structures that may be construed as unsafe or
23 threatening to life or property.

24 (13) EMERGENCY ACTION PLAN. A plan that identifies
25 the area that would likely be inundated by the failure of a
26 dam and the actions that should be taken in the event of a
27 failure or threatening condition at the dam. The plan is

1 usually implemented in conjunction with the local and regional
2 emergency government personnel.

3 (14) ENGINEER. A licensed professional engineer. The
4 term licensed professional engineer as used in this act is
5 intended to mean an individual who has a background in civil
6 engineering and meets the following requirements that he or
7 she:

8 a. Is a licensed professional engineer.

9 b. Is competent in areas related to dam
10 investigation, design, construction, and operation for the
11 type of dam being investigated, designed, constructed, or
12 operated.

13 c. Has at least 10 years of relevant experience in
14 areas such as investigation, design, construction,
15 reconstruction, enlargement, repair, alteration, maintenance,
16 operation, breach, removal, or abandonment of dams.

17 d. Understands adverse dam incidents, failures, and
18 the potential causes and consequences of failures.

19 e. Continues with necessary training and continuing
20 education to keep abreast of the state of the practice in dam
21 safety engineering.

22 (15) ENLARGEMENT. Any change in or addition to an
23 existing dam or reservoir that raises or may raise the water
24 storage elevation of the water impounded by the dam.

25 (16) HAZARD POTENTIAL. The possible adverse
26 incremental consequences that result from the release of water
27 or stored contents due to failure of the dam or misoperation

1 of the dam or appurtenances. The hazard potential
2 classification of a dam does not reflect in any way on the
3 current condition of the dam and its appurtenant structures
4 including, but not limited to, safety, structural, integrity,
5 or flood routing capacity.

6 (17) HIGH HAZARD POTENTIAL DAM. A dam assigned the
7 high hazard potential classification where the dam's failure
8 or misoperation will probably cause loss of human life.

9 (18) INCREMENTAL IMPACT. Under the same conditions
10 such as flood, earthquake, or other event, the difference in
11 impacts that would occur due to failure or misoperation of the
12 dam over those that would have occurred without failure or
13 misoperation of the dam and appurtenances.

14 (19) LOW HAZARD POTENTIAL DAM. A dam assigned the
15 low hazard potential classification where failure or
16 misoperation results in no probable loss of human life and low
17 economic and/or environmental losses. Economic losses are
18 principally limited to the owner's property.

19 (20) OFFICE. The Office of Water Resources, a
20 division of the Alabama Department of Economic and Community
21 Affairs, or its successor office.

22 (21) OWNER. The term includes any of the following
23 who own, control, operate, maintain, manage, or propose to
24 construct, reconstruct, enlarge, repair, alter, remove, or
25 abandon a dam or reservoir:

26 a. The state and its departments, institutions,
27 agencies, and political subdivisions.

1 b. Every municipal or quasi-municipal corporation.

2 c. Every public utility.

3 d. Every district.

4 e. Every person.

5 f. The duly authorized agents, lessees, or trustees
6 of any of the foregoing.

7 g. Receivers or trustees appointed by any court for
8 any of the foregoing.

9 (22) PERSON. Any person, bankruptcy trustee, firm,
10 association, organization, partnership, business trust,
11 corporation, LLC, LLP, or company.

12 (23) PROBABLE. More likely than not to occur;
13 reasonably expected; realistic.

14 (24) RECONSTRUCTION. Removal and replacement of an
15 existing dam, or a portion thereof.

16 (25) REMOVAL. Complete elimination of a dam
17 embankment or structure to restore the approximate original
18 topographic contours of the valley.

19 (26) RESERVOIR. Any area which contains or will
20 contain impounded water, wastewater, or liquid-borne materials
21 by virtue of its having been impounded by a dam.

22 (27) SIGNIFICANT HAZARD POTENTIAL DAM. A dam
23 assigned the significant hazard potential classification where
24 failure or misoperation results in no probable loss of human
25 life but can cause major economic loss, environmental damage,
26 disruption of lifeline facilities, or impact other concerns.
27 Significant hazard potential classification dams are often

1 located in predominantly rural or agricultural areas but could
2 be located in areas with population and significant
3 infrastructure.

4 (28) WATER STORAGE ELEVATION. The maximum elevation
5 of water surface which can be obtained by the dam or
6 reservoir.

7 Section 2. It is the intent of the Legislature to
8 provide for the regulation of all dams and reservoirs
9 exclusively by the state for the protection of public safety.

10 Section 3. (a) No political subdivision of this
11 state may enact a rule, ordinance, or law which conflicts with
12 the regulatory authority established by this act.

13 Additionally, no political subdivision of this state may enact
14 a rule, ordinance, or other such law which results in a dam or
15 reservoir being regulated less stringently than it would
16 otherwise be regulated under this act. Notwithstanding the
17 preceding, this act shall not prevent a city or county from
18 adopting ordinances regulating, supervising, or providing for
19 the regulation or supervision of dams and reservoirs that (1)
20 are not within this act's jurisdiction; and (2) are not
21 subject to regulation by another public agency or body, or
22 apply only to appurtenances such as roads and fences not
23 germane to the safety of the structure.

24 (b) All plans and specifications for initial
25 construction, reconstruction, enlargement, alteration, repair,
26 operation, breach, abandonment, or removal of dams and
27 supervision of construction shall be in the charge of an

1 engineer, assisted by qualified engineering geologists and
2 other specialists as necessary.

3 (c) No action may be brought against the state or
4 the agency or its agents or employees for the recovery of
5 damages caused by the partial or total failure of any dam or
6 reservoir as a result of the agency's inspection or regulation
7 of such dam or reservoir.

8 (d) Nothing in this act shall be construed to
9 relieve an owner or operator of a dam or reservoir of the
10 legal duties, obligations, or liabilities incident to the
11 ownership or operation of the dam or reservoir.

12 (e) The findings and orders of the office, an
13 approval of an application, and the certificate of approval to
14 impound of any dam or reservoir issued by the state are final,
15 conclusive, and binding upon all owners, state agencies, and
16 other governmental agencies, regulatory or otherwise, as to
17 the safety of design, construction, reconstruction,
18 enlargement, repair, alteration, breach, removal, abandonment,
19 maintenance, and operation of any dam or reservoir. The
20 office's approval of an application or a certificate of
21 approval to impound shall not be considered final if it can be
22 demonstrated to the office that the office's approval of the
23 relevant application or certificate of approval was based on
24 one or more misrepresentations.

25 (f) Nothing in this act shall be construed to
26 deprive any owner of any available administrative or judicial

1 recourse to the courts as he or she may be entitled to under
2 the laws of this state.

3 (g) Records of official actions of the office
4 pertaining to the supervision of dams and reservoirs are
5 public documents.

6 (h) Current owners shall notify the office of any
7 proposed change in ownership of any dam subject to this act
8 prior to the transfer of ownership.

9 Section 4. (a) The requirements of this act shall be
10 administered and directed through the office by an engineer,
11 licensed by this state, and clearly qualified by training and
12 experienced in the design, construction, reconstruction,
13 enlargement, repair, alteration, breach, removal, maintenance,
14 operation, and abandonment of dams and reservoirs, and the
15 office shall employ such clerical, engineering, and other
16 assistants as are necessary for carrying on the work of dam
17 and reservoir supervision in accordance with this act.

18 (b) The office may require additional independent
19 specialists or consulting boards for technical considerations
20 pertaining to an application, approval for plans and
21 specifications or certificate of approval to impound water.
22 Any contract for these specialists or consulting boards must
23 be approved in writing by the office prior to the provision of
24 services.

25 Section 5. (a) Under the public safety power of the
26 state, the office shall review and approve the design,
27 construction, reconstruction, enlargement, alteration, repair,

1 maintenance, operation, breach, abandonment, and removal of
2 dams and reservoirs for the protection of life and property as
3 provided in this act.

4 (b) The regulation of all dams and reservoirs in the
5 state shall be under the jurisdiction of the office.

6 (c) It is unlawful to construct, reconstruct,
7 enlarge, repair, alter, remove, maintain, operate, or abandon
8 any dam or reservoir coming within the purview of this act
9 except upon application approval of the office, provided that
10 this section shall not be deemed to apply to routine
11 maintenance and operation not affecting the safety of the
12 structure, provided that emergency actions shall not require
13 an application.

14 (d) In order to protect life and property, owners of
15 high and significant hazard potential dams shall develop, and
16 periodically test and update, an emergency action plan that
17 shall be implemented in the event of an emergency involving
18 that owner's dam or dams. This plan shall include, but not
19 limited to, the following elements:

20 (1) Emergency notification plan with flowchart.

21 (2) Statement of purpose.

22 (3) Project description.

23 (4) Emergency detection, evaluation, and
24 classification.

25 (5) General responsibilities.

26 (6) Preparedness.

1 (7) Inundation maps or other acceptable description
2 of the inundated area.

3 (8) Appendices.

4 (e) For the purposes of evaluating the adequacy of a
5 dam owner's emergency action plan, the office shall review and
6 approve each emergency action plan submitted pursuant to this
7 act.

8 (f) In making any investigation or inspection
9 necessary to enforce or implement this act, the office or its
10 representatives may enter upon private property of the dam
11 owner as may be necessary.

12 (g) When the office determines that a dam and
13 reservoir constitute a risk to life or property, the office
14 shall order the owner to take such action as necessary to
15 remove the resultant risk to life and property.

16 Section 6. (a) The office shall investigate and
17 gather or cause the owner to gather such data including
18 advances made in safety practices elsewhere, as may be needed
19 for a property review and study of the various features of the
20 design, construction, reconstruction, repair, enlargement,
21 alteration, breach, removal, maintenance, operation, or
22 abandonment of dams, reservoirs, and appurtenances.

23 (b) The office shall make or cause the owner to make
24 such watershed investigations and studies as shall be
25 necessary to keep abreast of development affecting run-off and
26 peak storm discharges from the dam.

1 (c) The office shall make or cause the owner to make
2 seismic investigations and studies as shall be necessary to
3 keep abreast of developments affecting seismic stability of
4 dams.

5 Section 7. (a) The office may take any
6 administrative or legal action necessary for the enforcement
7 of this act.

8 (b) An action or proceeding under this act may be
9 initiated whenever any owner or any person acting as an agent
10 of any owner is either:

11 (1) Failing to comply with the requirements imposed
12 by this act or by any application approval, certificate of
13 approval to impound, order, rule, regulation, or requirement
14 of the office under the authority of this act.

15 (2) Committing or allowing the commission of
16 violations of this act or any application approval,
17 certificate of approval to impound, order, rule, regulation,
18 or requirement of the office under this act.

19 (c) Any action or proceeding under this act shall be
20 initiated either administratively or by appropriate legal
21 filing in a court of appropriate jurisdiction in any of the
22 following locations:

23 (1) The location in which the dam, area of hazard
24 potential, or some part thereof exists.

25 (2) The residence or principal place of business of
26 the owner or person complained of.

1 Section 8. (a) The office shall adopt such
2 regulations and standards for the design, construction,
3 reconstruction, enlargement, alteration, operation,
4 monitoring, maintenance, modification, repair, breach,
5 abandonment, and removal of dams and reservoirs to carry out
6 the purposes of this act. The regulations shall include, but
7 are not limited to, rules establishing:

8 (1) Standards and criteria for the siting and design
9 of dams considering both existing and projected conditions
10 which may affect the safety of a project during its
11 construction and operational life.

12 (2) Requirements for operation of dams including
13 operational plans to be prepared and implemented by owners.

14 (3) Requirements for monitoring, inspection, and
15 reporting of conditions affecting the safety of dams.

16 (4) Requirements for emergency action plans to be
17 prepared and implemented by owners, in cooperation with civil
18 authorities.

19 (5) Reasonable fees for the processing of
20 applications and periodic inspections, for the purpose of
21 reimbursing the state for the costs of administration of this
22 act.

23 (6) Requirements that the owner of an approved dam
24 be financially responsible.

25 (b) In promulgating regulations pursuant to this act
26 applicable to dams regulated by this act which may present a
27 risk to life or property, the office shall consider:

1 (1) The inclusion of the best available preventive
2 measures necessary to assure protection of life, health,
3 property, and the environment with an adequate factor of
4 safety.

5 (2) Water management and the impacts of development
6 in watersheds.

7 (3) The state of scientific and technological
8 knowledge at the time the regulations are adopted.

9 Section 9. (a) Construction of any new dam or the
10 enlargement of any dam shall not be commenced until the owner
11 has applied for and obtained from the office written
12 application approval of plans and specifications.

13 (b) A separate application for each dam shall be
14 filed with the office upon forms provided by the office. Plans
15 and specifications signed and sealed by the design engineer
16 must accompany the application.

17 (c) The application shall provide the following
18 information:

19 (1) The name and address of the owner.

20 (2) The location, type, size, purpose, and height of
21 the proposed dam and reservoir and appurtenant works.

22 (3) The storage capacity and reservoir surface areas
23 for normal pool and maximum water storage elevation.

24 (4) Plans for proposed permanent instrument
25 installations in the dam.

1 (5) As accurately as may be readily obtained, the
2 area of the drainage basin, rainfall and streamflow records,
3 flood-flow records, and estimates.

4 (6) Maps and design drawings showing plans,
5 elevations, and sections of all principal structures and
6 appurtenant works with other features of the project in
7 sufficient detail, including design analyses, to determine
8 safety, adequacy, and suitability of design.

9 (7) Proof of financial responsibility.

10 (8) Such other pertinent information as the office
11 requires.

12 (d) The office, when in its judgment it is
13 necessary, shall also require the following:

14 (1) Data concerning subsoil and rock foundation
15 conditions and the materials involved in the construction, or
16 enlargement of the dam or reservoir.

17 (2) Investigations of, and reports on, subsurface
18 conditions, exploratory pits, trenches and adits, drilling,
19 coring, geophysical tests to measure in place and in the
20 laboratory the properties and behavior of foundation materials
21 at the dam and reservoir site.

22 (3) Investigations and reports on the geology of the
23 dam or reservoir site, possible geologic hazards, seismic
24 activity, faults, weak seams and joints, availability and
25 quality of construction materials, and other pertinent
26 features.

1 (4) Separate emergency action plans (EAP) for
2 construction and post-construction periods.

3 (5) Such other appropriate information as may be
4 necessary.

5 (e) Before commencing the reconstruction, repair, or
6 alteration of a dam, or the abandonment, breach, or removal of
7 a dam so that it no longer constitutes a dam as defined in
8 this act, the owner shall file an application and secure the
9 written approval of that application by the office. Repairs
10 shall not be deemed to apply to routine maintenance and
11 operation not affecting the safety of the dam. The application
12 shall give such pertinent information or data concerning the
13 dam, as may be required by the office including:

14 (1) The name and address of the applicant, with
15 detail and appropriate references to the existing dam, the
16 proposed reconstruction, repair, alteration, abandonment,
17 breach, or removal of the dam.

18 (2) Plans and specifications signed and sealed by
19 the design engineer.

20 (f) The office may waive any of the requirements of
21 the application process outlined in this section if: (1) the
22 requirements are unnecessary for the application approval, or
23 (2) an emergency is declared by the office.

24 (g) In case of an emergency where the office
25 declares that repairs or breaching of the dam are necessary to
26 safeguard life and property, repairs or breaching shall be
27 started immediately by the owner or by the office at the

1 owner's expense. The office shall be notified at once of
2 emergency repairs or breaching when instituted by the owner
3 and the proposed repairs, breaching, and work shall conform to
4 such orders as the office issues.

5 Section 10. (a) Upon receipt of an application, the
6 office shall approve or disapprove the application within the
7 time provided in subsection (c).

8 (b) If an application is incomplete or defective,
9 the office shall return the application to the applicant to
10 correct the defects. If the applicant wishes to pursue
11 approval of the application, the applicant must correct the
12 defects in the application and resubmit the application within
13 30 days, or such additional time as may be granted, after the
14 office returns the application to the applicant. If the
15 application is not returned to the office within the
16 appropriate time period, the office shall reject the
17 application.

18 (c) No applications shall be approved in fewer than
19 10 days after the receipt of the fee required by Section 11,
20 but all applications shall be approved or disapproved as soon
21 as practicable thereafter. At the discretion of the office,
22 public hearings may be held on each application.

23 (d) Application approval shall be granted with
24 terms, conditions, and limitations necessary to safeguard life
25 and property.

26 (e) Actual construction, reconstruction,
27 enlargement, repair, alteration, breach, removal, or

1 abandonment shall be commenced within the time frame set by
2 the office; otherwise, the application approval becomes void.

3 (f) The office, upon written application and for
4 good cause shown, may extend an owner's time for commencing
5 construction, reconstruction, repair, alteration, breach,
6 removal, or abandonment of a dam or reservoir.

7 (g) Written notice shall be provided to the office
8 at least 10 days before construction, reconstruction, repair,
9 alteration, breach, removal, or abandonment is to begin and
10 such other notices shall be given to the office as it may
11 require.

12 Section 11. (a) The application for construction,
13 reconstruction, enlargement, repair, alteration, breach,
14 removal, or abandonment of a dam shall set forth the estimated
15 cost of the project and shall be accompanied by a filing fee
16 as established in the rules and regulations.

17 (b) Only one filing fee shall be collected for an
18 enlargement of a dam by flashboards, sandbags, earthen levees,
19 gates, or other works, devices, or obstructions, which, from
20 time to time, shall be removed and replaced or opened and shut
21 and thereby operated so as to vary the surface elevation of
22 the reservoir.

23 (c) For the purposes of this act, the estimated cost
24 of the dam construction, reconstruction, enlargement, repair,
25 alteration, breach, removal, or abandonment involved shall
26 include the following:

1 (1) The cost of all labor and materials for the dam,
2 appurtenant works, and reservoir.

3 (2) The cost of preliminary investigations and
4 surveys.

5 (3) The cost of the construction plant properly
6 chargeable to the cost of the dam and reservoir.

7 (4) Any and all other items entering directly into
8 the cost of the dam and reservoir.

9 (d) The cost listed in subsection (c) shall not be
10 included in estimated costs.

11 (1) The costs of right-of-way, detached powerhouse,
12 electrical generating machinery, and roads and railroads
13 affording access to the dam and reservoir.

14 (2) Any and all other items not entering directly
15 into the cost of the dam and reservoir.

16 (e) Dams and reservoirs that are 90 percent or more
17 constructed, reconstructed, enlarged, repaired, altered,
18 removed, or abandoned on the effective date of this act as
19 determined by the office and that are subject to this act
20 shall not be required to pay a fee but shall submit an
21 application for approval and issuance of an application
22 approval. Application approvals of dams and reservoirs that
23 are made subject to this act that are found to have been less
24 than 90 percent constructed, reconstructed, enlarged,
25 repaired, altered, removed, or abandoned on the effective date
26 of this act shall be accompanied by fees reduced by the
27 percentage of construction, reconstruction, enlargement,

1 repair, alteration, breach, removal, or abandonment found by
2 the office to have been completed on that date.

3 (f) An application approval shall not be considered
4 by the office until the filing fee is received. All or part of
5 the filing fee may be returned to the applicant only if he or
6 she withdraws or cancels the application any time prior to the
7 start of construction, reconstruction, enlargement, repair,
8 alteration, breach, removal, or abandonment. The amount of the
9 refund shall be determined by the office with due regard to
10 funds actually expended by the office in review of the
11 application.

12 (g) Within 30 days after giving the notice of
13 completion required for new, constructed, or enlarged dams and
14 reservoirs, and for repaired or altered dams and reservoirs,
15 the owner shall file a sworn affidavit with the office stating
16 the actual cost of the dam and reservoir or enlargement
17 thereof to determine whether a further fee is due. In the
18 event the owner of a new or enlarged dam, because of loss of
19 records, recent change of ownership, or other causes beyond
20 his or her control, is unable to report the actual cost of
21 construction, reconstruction, enlargement, repair, alteration,
22 breach, removal, or abandonment, he or she shall file an
23 affidavit, stating the reasons why. The office shall then make
24 its own appraisal of the cost of construction, reconstruction,
25 enlargement, repair, alteration, breach, removal, or
26 abandonment, and determine what further fee, if any, is
27 required.

1 (h) All filing fees and other charges collected
2 under this act shall be paid into a special fund in the State
3 Treasury to be available to the office for expenditure for the
4 purposes authorized by this act.

5 (i) The fees provided for in this act shall be
6 required of all owners.

7 (j) Owners of existing dams holding certificates of
8 approval to impound shall be assessed an annual registration
9 fee as established in the regulations. Existing certificates
10 of approval to impound shall be extended for one year upon
11 receipt of the annual registration fee. Any certificate of
12 approval to impound is void without notification to the person
13 holding the certificate of approval to impound when the annual
14 registration fee is more than 45 days past due. Resubmission
15 of an application is required where a certificate of approval
16 to impound has become void due to failure to pay the
17 appropriate annual registration fee within 45 days of the date
18 due.

19 (k) Dam owners shall pay a fee following state
20 inspections conducted in accordance with this act.

21 Section 12. (a) The design engineer shall be
22 represented during construction. Immediately upon completion
23 of a new or reconstructed dam and reservoir, or enlargement of
24 a dam and reservoir, the owner shall give a notice of
25 completion to the office. The owner shall file with the office
26 a statement signed by the design engineer certifying that the
27 project was constructed, reconstructed, or enlarged in

1 conformance with approved plans and specifications accompanied
2 by supplementary drawings or descriptive matter signed and
3 sealed by the design engineer showing or describing the dam
4 and reservoir as actually constructed, reconstructed, or
5 enlarged. Such supplementary materials shall include, but not
6 be limited to, the following:

7 (1) A record of all geological boreholes and grout
8 holes and grouting.

9 (2) A record of permanent location points,
10 benchmarks, and instruments embedded in the structure.

11 (3) A record of tests of concrete or other material
12 used in the construction, reconstruction, or enlargement of
13 the dam and reservoir.

14 (4) A record of initial seepage flows and embedded
15 instrument readings.

16 (b) Each dam owner must hold a valid certificate of
17 approval to impound in order to legally impound water under
18 the laws of this state.

19 (c) A certificate of approval to impound shall be
20 issued by the office upon a finding that the dam and reservoir
21 are safe to impound water within the limitations prescribed in
22 the application approval. No water may be impounded by a dam
23 or reservoir prior to issuance of a valid certificate to
24 impound.

25 (d) Each certificate of approval to impound issued
26 under this act shall contain such terms and conditions as the
27 office may prescribe.

1 (e) The office shall revoke, suspend, or amend any
2 certificate of approval to impound whenever it determines that
3 the dam or reservoir constitutes a danger to life and
4 property. Upon the revocation of a certificate to impound, the
5 owner of the dam shall take action within time limits
6 specified to alleviate the hazard associated with the dam.

7 (f) Before any certificate of approval to impound is
8 revoked by the office, it shall hold a public hearing. Written
9 notice of the time and place of the hearing shall be mailed,
10 at least 10 days prior to the date set for the hearing, to the
11 holder of the certificate to impound. Any interested persons
12 may appear at the hearing and present their views and
13 objections to the proposed action. Any petition to a court of
14 appropriate jurisdiction to inquire into the validity of the
15 revoking of a certificate of approval to impound shall be
16 commenced within 30 days after the date the decision to revoke
17 the owner's certificate to impound. An appeal of the decision
18 shall not constitute an automatic stay of the action of the
19 office.

20 Section 13. (a) Immediately upon completion of the
21 repair or alteration of any dam or reservoir, the owner shall
22 give written notice of completion to the office. The design
23 engineer shall file with the office a written statement
24 certifying that the repairs or alterations were completed in
25 accordance with the approved plans and specifications. The
26 statement shall be accompanied by supplementary drawings and
27 descriptive matter signed and sealed by the design engineer

1 describing the dam and reservoir as repaired or altered
2 together with such maps, data, records, and information
3 pertaining to the dam and reservoir as repaired or altered.

4 (b) A certificate of approval to impound shall be
5 issued upon a finding by the office that the dam and reservoir
6 are safe to impound water within the limitations and
7 conditions prescribed in the application approval. Pending
8 issuance of a new or revised certificate of approval to
9 impound, the owner of the dam or reservoir shall not cause the
10 dam or reservoir to impound water beyond the limitations or
11 conditions prescribed in the existing application approval.

12 Section 14. (a) Upon completion of the removal,
13 breach, or abandonment of a dam, the design engineer shall
14 file with the office a written statement certifying that the
15 breach, removal, or abandonment was completed in accordance
16 with the approved plans and specifications.

17 (b) Before final approval of the removal of a dam or
18 reservoir is issued, the office shall inspect the site of the
19 work and determine that all work was accomplished in
20 substantial conformance with the approved application.

21 (c) Following the removal of a dam or reservoir, the
22 office may report this event in a timely manner to the
23 National Inventory of Dams.

24 Section 15. (a) Upon receipt of a written complaint
25 alleging that the person or property of the complainant is
26 endangered by the construction, reconstruction, enlargement,
27 repairs, alterations, maintenance, or operation of any dam and

1 reservoir, the office shall cause an inspection and
2 investigation to be made unless the data, records, and
3 inspection reports on file are found adequate to make a
4 determination whether the complaint is valid. The complainant
5 shall be provided with a copy of the official report of the
6 inspection and investigation.

7 (b) If the office finds that an unsafe condition
8 exists, the office shall notify the owner to take such action
9 as is necessary to render or cause the condition to be
10 corrected, including breaching or removal of any dam found
11 beyond repair. If the owner is unavailable or unresponsive,
12 the office may commence action under Section 18.

13 Section 16. (a) During the construction,
14 reconstruction, enlargement, repair, alteration, breach,
15 abandonment, or removal of any dam or reservoir, the office
16 shall make periodic inspections for the purpose of
17 ascertaining compliance with the approved plans and
18 specifications. The office shall require the owner to provide
19 adequate supervision by an engineer during construction,
20 reconstruction, enlargement, repair, alteration, breach,
21 removal, or abandonment and to provide sufficient information
22 to enable the office to determine that conformity with the
23 approved plans and specifications is being attained. The
24 design engineer shall be continuously represented on-site
25 during construction.

26 (b) If, after any inspection or investigation,
27 during the construction, reconstruction, enlargement, repair,

1 alteration, breach, removal, or abandonment, or at any time
2 prior to issuance of a certificate of approval to impound, it
3 is found by the office that modifications or changes are
4 necessary to ensure the safety of the dam, the office shall
5 order the owner to revise his or her plans and specifications.

6 (c) If at any time during construction,
7 reconstruction, enlargement, repair, alterations, breach,
8 removal, or abandonment of any dam and reservoir, the office
9 finds that the work is not being done in accordance with the
10 provisions of the approved plans and specifications, it shall
11 deliver a written notice of noncompliance to the owner. The
12 notice shall be delivered by registered mail or by personal
13 service to the owner.

14 (d) (1) The notice of noncompliance shall state the
15 particulars in which the approved plans and specifications are
16 not being or have not been complied with and shall order the
17 immediate compliance with the approved plans and
18 specifications.

19 (2) The office may order that no further work be
20 done until such compliance has been effected and approved by
21 the office.

22 (e) A failure to comply with the application
23 approval may cause revocation of application approval by the
24 office. If compliance with notice is not forthcoming in 60
25 days, the office shall order the incomplete structure removed
26 sufficiently to eliminate any safety hazard to life or
27 property.

1 Section 17. (a) The office shall regulate the
2 maintenance and operation of dams and reservoirs as necessary
3 to safeguard life and property from a dam failure.

4 (b) The office shall require owners to keep
5 available and in good order records of original and any
6 modification construction. The owner shall report at least
7 annually with respect to maintenance, operation, and
8 engineering, including horizontal and vertical controls,
9 seepage measurements, piezometric data and geologic
10 investigations. The office shall require engineering and
11 geologic investigations to safeguard life and property. The
12 office may accept reports of equivalent inspections prepared
13 by governmental agencies. In addition, the owner of a dam and
14 reservoir shall immediately advise the office of any flood or
15 unusual circumstances which may affect the safety of the dam
16 and reservoir.

17 Section 18. (a) Owners of dams and reservoirs have
18 the primary responsibility for determining when an emergency
19 involving a dam or reservoir exists. When the owner of a dam
20 or reservoir determines an emergency exists, the owner shall
21 immediately implement the emergency action plan, notify any
22 persons who may be endangered if the dam should fail, notify
23 emergency management organizations, and take additional
24 actions necessary to safeguard life, health, and property.

25 (b) If necessary actions are not being taken by the
26 owner in the judgment of the office, the office shall take any

1 action necessary to protect life and property if, in the
2 judgment of the office, because either:

3 (1) The condition of any dam or reservoir is so
4 dangerous to the safety of life or property as not to permit
5 time for the issuance and enforcement of an order relative to
6 maintenance or operation.

7 (2) Passing or imminent floods or any other
8 condition threatens the safety of any dam or reservoir.

9 (c) In applying the remedial means provided for in
10 this act, the office, in an emergency with its own forces, or
11 by other means at its disposal, may do any or all of the
12 following:

13 (1) Take full charge and control of any dam or
14 reservoir.

15 (2) Lower the water level by releasing water from
16 the reservoir.

17 (3) Completely drain the reservoir.

18 (4) Perform any necessary remedial or protective
19 work at the site.

20 (5) Take such other steps as may be essential to
21 safeguard life and property.

22 (d) The office shall continue in full charge and
23 control of such dam and reservoir and its appurtenances until
24 they are rendered safe or the emergency occasioning the action
25 has ceased and the owner is able to take back such operations.
26 The office's take over of the dam, the reservoir, or their
27 appurtenances, shall not relieve the owner of a dam or

1 reservoir of legal liability to the office or third parties
2 for those items which are causing an emergency situation. The
3 office's assumption of control over the dam shall not
4 constitute a takings and the office shall not be liable to the
5 dam owner or others for diminution in value that may be caused
6 by the office's work.

7 Section 19. (a) The cost and expense of the remedial
8 means provided in this act, including cost of any work done to
9 render a dam and reservoir or its appurtenances safe, shall be
10 collected by presentation of bills to owners in the same
11 manner as other debts to the state are recoverable. If such
12 bills are not promptly paid by the owners, the cost shall be
13 recovered by the state from the owner by action brought by the
14 office in a court of appropriate jurisdiction.

15 (b) The emergency dam repair fund shall be funded
16 through monies appropriated by the Legislature and monies
17 collected by the office in full or partial satisfaction of
18 liens. Monies in the fund shall be used to employ remedial
19 measures necessary to protect life and property in accordance
20 with provisions of Section (18)(c) and (d). The office shall
21 administer the fund. On notice from the office, the State
22 Treasurer shall invest and divest monies in the fund and
23 monies earned from investment shall be credited to the fund.
24 Monies in the emergency dam repair fund are exempt from
25 lapsing. The office may spend monies from the emergency dam
26 repair fund as follows:

1 (1) If monies in the emergency dam repair fund are
2 insufficient to pay for such remedial measures, the office may
3 transfer monies from the non-emergency dam repair fund to meet
4 necessary costs of employing remedial measures.

5 (2) The office shall remain in full charge and
6 control of the dam, reservoir, and appurtenances until they
7 have been rendered safe or the emergency has terminated.

8 (3) The costs and expenses of the control,
9 regulation, and abatement provided by this section, including
10 costs of construction, reconstruction, enlargement, repair,
11 alteration, breach, removal, or abandonment work done to
12 render the dam, reservoir, or appurtenances safe, shall
13 constitute a statutory lien against all property of the owner.
14 The lien shall be considered prior and superior to all other
15 mortgages, liens, or encumbrances of record even if those
16 other mortgages, liens, or encumbrances were filed before the
17 lien becomes due.

18 (4) The lien referred to in subdivision (3) may be
19 perfected and foreclosed in advance of construction,
20 reconstruction, enlargement, repair, alteration, breach,
21 removal, or abandonment or after completion of the
22 construction, reconstruction, enlargement, repair, alteration,
23 breach, removal, or abandonment. If perfected in advance, the
24 lien shall be perfected by the filing of an affidavit of the
25 office setting forth the estimate of the costs of
26 construction, reconstruction, enlargement, repair, alteration,
27 breach, removal, or abandonment within the county in which the

1 dam is located in the same manner as prescribed for mechanic's
2 liens. When the affidavit is filed, the amount set forth in
3 the affidavit shall be a lien in such amount against all
4 property of the owner. If the actual cost of construction,
5 reconstruction, enlargement, repair, alteration, breach,
6 removal, or abandonment exceeds the estimated cost, the office
7 may amend the affidavit setting forth the additional estimated
8 cost. If the estimated cost exceeds the actual costs of
9 construction, reconstruction, enlargement, repair, alteration,
10 breach, removal, or abandonment at completion, the office
11 shall file an amended affidavit at completion. If a lien is
12 perfected in advance and the construction, reconstruction,
13 enlargement, repair, alteration, breach, removal, or
14 abandonment is not commenced within two years from the date of
15 perfection, the lien shall be void. The office shall file a
16 satisfaction of lien upon payment of the costs of
17 construction, reconstruction, enlargement, repair, alteration,
18 breach, removal, or abandonment by the owner.

19 (5) Monies collected in full or partial satisfaction
20 of a lien created pursuant to subdivision (4) shall be
21 deposited in the emergency dam repair fund established by
22 subsection (a).

23 (c) The office shall create a Dam Rehabilitation
24 Loan Program or may partner with other public or private
25 agencies or organizations to create a Dam Rehabilitation Loan
26 Program. The program shall initially be funded with monies
27 appropriated by the Legislature as follows:

1 (1) The Legislature may authorize required funding
2 to expand the financial size of the Dam Rehabilitation Loan
3 Program.

4 (2) The Dam Rehabilitation Loan Program is a
5 revolving fund to be used exclusively for the purposes of this
6 act. The program shall be initially funded through monies
7 appropriated by the Legislature.

8 (3) The program shall be subsequently funded through
9 additional monies appropriated by the Legislature or office
10 inspection fees collected, filing fees, payments of principal
11 and interest collected by the office, civil penalties, monies
12 paid to the fund pursuant to directive of the Legislature, and
13 all interest earned on the investment of monies in the fund by
14 the State Treasurer.

15 (4) The Dam Rehabilitation Loan Program may obtain
16 funds through partnerships with any private or public bonding
17 or loaning office or organization.

18 (5) State funding to the Dam Rehabilitation Loan
19 Program cannot be reduced because of federal funds provided
20 for a rehabilitation loan program.

21 (6) Monies in the Dam Rehabilitation Loan Program do
22 not revert to the State General Fund. Monies in the fund are
23 exempt from lapsing.

24 (d) The following Dam Rehabilitation Loan Program
25 provisions apply:

26 (1) Monies in the fund shall be used for loans as
27 provided in subsection (c). The office may transfer monies in

1 the fund to the emergency dam repair fund established by
2 subsection (b) to pay necessary costs of remedial measures as
3 authorized in subsection (c) and this subsection.

4 (2) The office may grant loans from the
5 non-emergency dam repair fund to dam owners to defray the
6 costs of repairing dams which the office determines to be
7 dangerous to the safety of life and property but which are not
8 in an emergency condition. Loans shall be granted on such
9 terms and conditions as may be imposed by the office. The
10 following provisions apply:

11 a. The office shall adopt administrative rules that
12 are required to administer this act.

13 b. The office may take any administrative or legal
14 action necessary for the administration of this statute.

15 (3) If the balance of the non-emergency dam repair
16 fund exceeds one million dollars (\$1,000,000), no single loan
17 shall be made for more than 20 percent of the monies available
18 in the fund. No loan shall be made to any dam owner that, at
19 the time of the loan application, has more than 20 percent of
20 the outstanding loans of the fund.

21 (4) The loans granted by the office shall be for a
22 term of not more than 20 years and the loans shall bear
23 interest at rates set by the office in the rules.

24 (5) Each loan shall be evidenced by a contract
25 between the dam owner and the office, acting on behalf of this
26 state. The contract shall provide for the loan by this state
27 of a stated amount to defray some or all of the costs of

1 repairing the dam. The contract shall provide for equal annual
2 payments of principal and interest for the term of the loan.

3 Eligible cost provisions include:

4 a. Any costs directly related to rehabilitating
5 safety deficiencies of a dam shall be eligible to be funded
6 through the Dam Rehabilitation Loan Program.

7 b. Fees for analysis, feasibility work, alternative
8 evaluation, and engineering design, are only eligible
9 retroactively after construction has been initiated, or at the
10 point that analysis has shown a dam to be in compliance.

11 c. Up to 100 percent of rehabilitation costs for a
12 dam may be loaned.

13 d. Dam owners may use multiple programs or sources
14 to fund the rehabilitation costs for a dam, up to 100 percent
15 of rehabilitation costs.

16 e. Rehabilitation cost for any dam is eligible,
17 except for dams owned by the federal government.

18 f. Any costs directly related to compliance with
19 other laws and regulations, above the state's minimum dam
20 safety requirements are eligible as part of an overall
21 rehabilitation project.

22 g. Any costs for state agency required fish passage
23 is eligible if it is part of an overall rehabilitation project
24 but such costs are not eligible if they are not part of an
25 overall rehabilitation project.

26 (6) The office may take whatever security interest
27 it deems necessary in the dam owner's property in exchange for

1 the loan. If the office chooses to take a security interest in
2 the dam owner's property, the office shall perfect that
3 security interest by filing appropriate documentation with the
4 proper authorities.

5 (7) The Attorney General or the office's legal
6 counsel, with the consent of the office, may commence whatever
7 actions are necessary to enforce the contract and achieve
8 repayment of loans provided by the office pursuant to this
9 section.

10 (e) The owner's responsibilities include the
11 following:

12 (1) Once a loan has been granted, the owner of a dam
13 shall have an operation and maintenance plan with written,
14 regularly scheduled reports, so as to maintain and keep the
15 structure and its appurtenant works in the state of repair and
16 operating condition required by the exercise of prudence; due
17 regard for life or property; the application of sound and
18 accepted engineering principles; and the provisions of rules,
19 guidelines, or policies.

20 (2) As part of any rehabilitation project utilizing
21 funds from this program, the owner must have an emergency
22 action plan developed if one does not currently exist.

23 (3) Cooperating with the office's agents, engineers,
24 and other employees in the conduct of the statute.

25 (4) Facilitating access to the structure or
26 appurtenance.

1 (5) Furnishing, upon request, the plans,
2 specifications, operating, and maintenance data, or other
3 information that is pertinent to the structure, appurtenance,
4 and loan.

5 (f) The following general loan guidelines apply:

6 (1) Owners of dams without taxing authority should
7 be allowed to participate in the Dam Rehabilitation Loan
8 Program.

9 (2) Complete rehabilitations are to be encouraged,
10 but phased projects can be funded.

11 (3) Removal of dams as a rehabilitation alternative
12 should be allowed.

13 (4) As part of the application process, owners must
14 demonstrate the ability to appropriately operate and maintain
15 the dam after rehabilitation is complete.

16 (5) Owners are allowed to partner with an
17 individual, local agency, or organization for purposes of the
18 loan and for purposes of operation and maintenance.

19 (6) Rehabilitation projects that are in compliance
20 with state statutes and rules, and are permitted, accepted,
21 and approved by the office are eligible to be funded through
22 the Dam Rehabilitation Loan Program.

23 (7) If a dam is exempt from state regulation, to
24 obtain funding through the Dam Rehabilitation Loan Program,
25 the project must adhere to state standards that relate to
26 design, construction, and provisions of this act.

1 (8) Costs for lake enhancement projects such as lake
2 dredging, sediment removal projects, or boat ramps, which do
3 not enhance the safety of the dam, are not eligible to be
4 funded through the Dam Rehabilitation Loan Program.

5 (9) The office and its agents, engineers, and other
6 employees, for the purposes of this act, may enter upon any
7 land or water in the state without a search warrant or
8 liability for trespass.

9 (10) The Legislature may provide for staff
10 positions, required funding, and organizational structure to
11 administer the Dam Rehabilitation Loan Program.

12 (11) This act does not create a liability for
13 damages against the office, its officers, agents, and
14 employees caused by or arising out of any of the following:

15 a. The construction, maintenance, operation, or
16 failure of a dam, or appurtenant works.

17 b. The issuance and enforcement of an order or a
18 rule issued by the office to carry out the office duties.

19 (12) The state does not assume ownership
20 obligations, responsibilities, or liabilities if an owner
21 defaults on a loan.

22 Section 20. (a) Whenever the office finds that any
23 owner or any person has violated any provision of this act or
24 any rule, regulation, or order issued pursuant thereto, the
25 office may:

26 (1) Issue an order requiring any such person to
27 comply in accordance with subsection (b).

1 (2) Bring a civil action accordance with subsection
2 (c).

3 (3) Levy a civil administrative penalty in
4 accordance with subsection (d).

5 (4) Bring an action for a civil penalty in
6 accordance with subsection (e).

7 (5) Petition the Attorney General to bring a
8 criminal action in accordance with subsection (f).

9 Recourse to any of the remedies available under this
10 section shall not preclude recourse to any of the other
11 remedies prescribed in this section or by any other applicable
12 law.

13 (b) Whenever, on the basis of available information,
14 the office finds a person in violation of any provision of
15 this act or any rule, regulation, or order issued pursuant
16 thereto, the office may issue an administrative order:

17 (1) Specifying the provision or provisions of the
18 law, rule, regulation, or order, of which the person is in
19 violation.

20 (2) Citing the action which constituted the
21 violation.

22 (3) Requiring compliance with the provision or
23 provisions violated.

24 (4) Requiring the restoration of the area which is
25 the site of the violation.

26 (5) Providing notice to the person of the right to a
27 hearing on the matters contained in the order.

1 (c) The office is authorized to institute a civil
2 action for appropriate relief from any violation of this act
3 or any rule, regulation, or order issued pursuant thereto.
4 Such relief may include, singly or in combination:

5 (1) A temporary or permanent injunction, including
6 an order or judgment as will effectually secure the persons
7 interested from danger of loss from the breaking of a dam. The
8 court may proceed in the action in a summary manner or
9 otherwise.

10 (2) Assessment of the violator for the costs of any
11 investigation, inspection, or monitoring survey which led to
12 the establishment of the violation, and for the reasonable
13 costs of preparing and bringing legal action under this
14 subsection.

15 (3) Assessment of the violator for any costs
16 incurred by the state in removing, correcting, or terminating
17 the adverse effects resulting from any violation for which
18 legal action under this subsection may have been brought.

19 (4) Assessment against the violator for compensatory
20 damages for any loss or destruction of wildlife, fish, or
21 aquatic life, and for any other actual damages caused by a
22 violation.

23 (5) A requirement that the violator restore the site
24 of the violation to the maximum extent practicable and
25 feasible.

26 (d) The office may assess a civil administrative
27 penalty of up to twenty-five thousand dollars (\$25,000) for

1 each violation of this act or any rule, regulation, or order
2 issued pursuant thereto, and each day during which each
3 violation continues shall constitute an additional, separate,
4 and distinct offense. Any amount assessed under this
5 subsection shall fall within a range established by regulation
6 by the office for violations of similar type, seriousness, and
7 duration. In adopting rules and regulations establishing the
8 amount of any penalty to be assessed, the office may take into
9 account the economic benefits from the violation gained by the
10 violator. No assessment may be levied pursuant to this
11 subsection until after the party has been notified by
12 certified mail or personal service. The notice shall include
13 the following:

14 (1) Identify the section of the law, rule,
15 regulation, or order violated.

16 (2) Recite the facts alleged to constitute a
17 violation.

18 (3) State the amount of the civil penalties to be
19 imposed.

20 (4) Affirm the rights of the alleged violator to a
21 hearing. The ordered party shall have 20 days from receipt of
22 the notice within which to deliver to the office a written
23 request for a hearing. After the hearing and upon finding that
24 a violation has occurred, the office may issue a final order
25 specifying the amount of the fine imposed. If no hearing is
26 requested, the notice shall become final after the expiration
27 of the 20-day period. Payment of the assessment is due when a

1 final order is issued or the notice becomes a final order. The
2 authority to levy an administrative penalty is in addition to
3 all other enforcement provisions in this act and in any other
4 applicable law, rule, or regulation, and the payment of any
5 assessment shall not be deemed to affect the availability of
6 any other enforcement provisions in connection with the
7 violation for which the assessment is levied. Any civil
8 administrative penalty assessed under this section may be
9 compromised by the office upon the posting of a performance
10 bond by the violator, or upon such terms and conditions as the
11 office may establish by regulation.

12 (e) A person who violates any provision of this act
13 or any rule, regulation, or order issued pursuant thereto, an
14 administrative order issued pursuant to subsection (b), or a
15 court order issued pursuant to subsection (c), or who fails to
16 pay a civil administrative penalty in full pursuant to
17 subsection (d), shall be subject, upon order of a court, to a
18 civil penalty not to exceed ten thousand dollars (\$10,000) per
19 day of such violation, and each day during which the violation
20 continues shall constitute an additional, separate, and
21 distinct offense. In addition to any penalties, costs, or
22 interest charges, the court may assess against the violator
23 the amount of actual economic benefit accruing to the
24 violator.

25 (f) A person who purposely, knowingly, or recklessly
26 violates any provision of this act, or any rule, regulation,
27 or order issued pursuant thereto, shall be guilty, upon

1 conviction, of violation and shall be subject to a fine of not
2 less than two thousand five hundred dollars (\$2,500) nor more
3 than twenty-five thousand dollars (\$25,000) per day of
4 violation. A second or subsequent violation under this
5 subsection shall subject the violator to a fine to the
6 contrary, of not less than five thousand dollars (\$5,000) nor
7 more than fifty thousand dollars (\$50,000) per day of
8 violation. A person who knowingly makes a false statement,
9 representation, or certification in any application, record,
10 or other document filed or required to be maintained under the
11 provisions of this act shall be guilty, upon conviction, of
12 violation and shall be subject to a fine of not more than ten
13 thousand dollars (\$10,000).

14 (g) In addition to the penalties prescribed in this
15 section, a notice of violation of any provision of this act or
16 any rule, regulation, or order issued pursuant thereto, shall
17 be recorded on the deed of the property wherein the violation
18 occurred, on order of the office, by the clerk or register of
19 deeds and mortgages of the county wherein the affected
20 property is located and with the clerk of the court and shall
21 remain attached thereto until such time as the violation has
22 been remedied and the office orders the notice of violation
23 removed.

24 (h) The office may require an owner or person having
25 control of a reservoir or dam to provide any information the
26 office requires to determine compliance with any provision of

1 this act or any rule, regulation, or order issued pursuant
2 thereto.

3 (i) Any person who knowingly, recklessly, or
4 negligently makes a false statement, representation, or
5 certification in any application, record, or other document
6 filed or required to be maintained under this act shall be in
7 violation of the act and shall be subject to the penalties
8 assessed pursuant to subsections (d) and (e).

9 (j) All penalties collected pursuant to this section
10 or sums collected pursuant to this act shall be deposited in
11 the Non-emergency/Emergency Dam Repair Fund established
12 pursuant to this act.

13 (k) The office may enter any property, facility,
14 premises, or site for the purpose of conducting inspections to
15 determine the condition of any dam, or to conduct inspections
16 of ordered repairs or to otherwise determine compliance with
17 the provisions of this act.

18 Section 21. (a) Except as provided by subsection
19 (b), if the office has reason to believe that an owner or
20 person is violating or has violated this act, application
21 approval, certificate of approval to impound, rule,
22 regulation, order, or requirement of the office issued or
23 adopted pursuant to this act, the office shall give the owner
24 or person written notice by certified mail that the owner or
25 person may appear and show cause at a hearing before the
26 office not less than 30 days from the date of mailing of the
27 notice why the owner or person should not be ordered to cease

1 and desist from the violation. The notice shall inform the
2 owner or person of how to request a hearing and the
3 consequences of failure to request a hearing.

4 (b) If the office finds that an owner or person is
5 constructing, reconstructing, enlarging, repairing, altering,
6 operating, removing, or abandoning a dam without having first
7 obtained the required application approval of the office, the
8 office shall issue a temporary order for the owner or person
9 to cease and desist the construction, reconstruction,
10 enlargement, repair, alteration, operation, breach, removal,
11 or abandonment pending final action by the office pursuant to
12 subsection (c). The temporary order shall include written
13 notice by certified mail to the owner or person of a hearing
14 before the office to show cause why the temporary order should
15 be vacated.

16 (c) After a hearing pursuant to subsection (a) or
17 (b), or after the expiration of the time to request a hearing,
18 the office shall issue a decision and final order. The
19 decision and final order may take such form as the office
20 determines to be reasonable and appropriate and may include a
21 determination of violation, a cease and desist order, the
22 recommendation of a civil penalty and an order directing that
23 positive steps be taken to abate or ameliorate any harm or
24 damage arising from the violation. The owner or person
25 affected may appeal the hearing decision to a court of
26 appropriate jurisdiction in which the violation is alleged to
27 have occurred.

1 (d) If the owner or person continues the violation
2 after the office has issued a final decision and order or a
3 temporary order, the office may apply for a temporary
4 restraining order or preliminary or permanent injunction from
5 a court of appropriate jurisdiction according to the Alabama
6 Rules of Civil Procedure. A decision to seek injunctive relief
7 does not preclude other forms of relief or enforcement against
8 the violator.

9 Section 22. (a) Every owner of a dam that falls
10 within the definition of a dam in this act that was completed
11 prior to the effective date of this act shall file with the
12 office a separate application and any other supporting
13 information as required by the office for each of these dams.
14 Each application shall also be accompanied by appropriate
15 application fees.

16 (b) The office shall give notice to file an
17 application to impound to owners of such dams or reservoirs
18 who have failed to file such applications as required by this
19 act.

20 (c) The notice provided for in this act shall be
21 delivered by certified mail to the owner at his or her last
22 address of record in the office of the county tax assessor in
23 which the dam is located. Such mailing shall constitute
24 service.

25 (d) The office shall make inspections of such dams
26 and reservoirs.

1 (e) The office shall require owners of dams and
2 reservoirs to perform at their expense such work or tests as
3 may reasonably be required to disclose information sufficient
4 to enable the office to determine whether to issue
5 certificates of approval to impound, or to issue orders
6 directing further work at the owner's expense necessary to
7 safeguard life and property. For this purpose, the office may
8 require an owner to lower the water level of, or to drain, the
9 reservoir.

10 (f) If, upon inspection or upon completion to the
11 satisfaction of the office of all work that may be ordered,
12 the office finds that the dam and reservoir are safe to
13 impound water, a certificate of approval to impound shall be
14 issued. The office may find that the dam or reservoir will not
15 safely impound water and may refuse to issue a certificate of
16 approval to impound. Upon finding the dam and reservoir are
17 unsafe to impound water, the office shall issue a written
18 notice to the owner, whereupon the owner shall cause the dam
19 and reservoir to no longer impound water after receipt of the
20 notice.

21 Section 23. (a) Any dam or reservoir that falls
22 within the definition of a dam and reservoir in this act and
23 which the office finds was under construction, reconstruction,
24 enlargement, repair, alteration, breach, removal, or
25 abandonment and based on its findings not 90 percent
26 constructed, reconstructed, enlarged, repaired, altered,
27 removed, or abandoned on the effective date of this act,

1 except as provided in subsection (b), shall be subject to the
2 same provisions in this act as a dam or reservoir commenced
3 after that date. Every owner of such a dam and reservoir shall
4 file an application with the office for the office's written
5 application approval of the plans and specifications.

6 (b) Construction, reconstruction, enlargement,
7 repair, alteration, breach, removal, or abandonment work on
8 such a dam and reservoir may proceed, provided an application
9 for approval of the plans and specifications is filed, until
10 an application approval is received by the owner approving the
11 dam and reservoir or an order is received by the owner
12 specifying how the construction, reconstruction, enlargement,
13 repair, alteration, breach, removal, or abandonment must be
14 performed to render the dam or reservoir safe. After receipt
15 of an application approval or order specifying how
16 construction, reconstruction, enlargement, repair, alteration,
17 breach, removal, or abandonment of the dam or reservoir must
18 be performed, work thereafter must be in accordance with the
19 application approval or order.

20 Section 24. All laws or parts of laws which conflict
21 with this act are repealed.

22 Section 25. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.