SB39

RRI4MNM-2

By Senator Chambliss

RFD: State Governmental Affairs

First Read: 06-Feb-24

A BILL

TO BE ENTITLED

AN ACT

Relating to dam safety; to amend Sections 2, 3, and 5 of Act 2023-414, 2023 Regular Session, now appearing as Sections 33-7-71, 33-7-72, and 33-7-74, Code of Alabama 1975, to provide safety procedures for state-owned dams and reservoirs whose owners have elected to be subject to these procedures.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 2, 3, and 5 of Act 2024-414, 2023 Regular Session, now appearing as Sections 33-7-71, 33-7-72, and 33-7-74, Code of Alabama 1975, are amended to read as follows:

"§33-7-71

For the purposes of this article, the following terms have the following meanings:

(1) ABANDON or ABANDONMENT. To render a dam non-impounding by dewatering and filling the reservoir created by the dam with solid materials, by diverting the natural drainway around the site, or by removing a portion of ~~a~~ the dam to allow drainage to occur the same, or nearly the same, as before the construction of the dam.

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

(3) ALTERATIONS or REPAIRS. Alterations or repairs to an existing dam and appurtenant ~~structures~~ works that affect the safety of the dam or reservoir.

(4) APPURTENANT WORKS. The structures or machinery incident or annexed to a dam whose purpose is to operate, assist, and maintain a dam. The term includes spillways, either in the dam or separate therefrom, the reservoir and its rim, low level outlet works, and water conduits, including tunnels, pipelines, or penstocks, either through the dam or its abutments.

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

(6) DAM.

a. An artificial barrier, including appurtenant works, with the ability to impound water, wastewater, or liquid-borne materials and to which either of the following apply:

1. Is 25 feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation.

2. Has an impounding capacity at maximum water storage

elevation of 50 acre feet or more.

b. The term includes a fill or structure for highway or railroad use or for any other purpose which impounds water.

c. This definition does not apply to any barrier not in excess of six feet in height regardless of storage capacity or which has a storage capacity at maximum water storage elevation not greater than 15 acre feet regardless of height, unless the barrier, due to its location or other physical characteristics, is classified as a high hazard potential dam.

d. This definition does not apply to any dam subject to the jurisdiction of any other state or federal agency.

e. The term does not include any obstruction in a canal used to raise or lower water.

f. This term does not include privately owned dams, regardless of the hazard designation, unless the owner has voluntarily elected to participate in the program in accordance with this article.

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

(8) EMERGENCY. ~~Includes all~~ All conditions leading to or causing a breach, overtopping, or any other condition of a dam and its appurtenant ~~structures~~ works that may be construed as unsafe or threatening to life or property.

(9) EMERGENCY ACTION PLAN. A plan that identifies the area that would likely be inundated by the failure of a dam and the actions that should be taken in the event of a failure or threatening condition at the dam.

(10) ENGINEER. An engineer who has a background in

civil engineering and who satisfies all of the following:

a. Is a licensed professional engineer.

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

c. Has relevant experience in areas such as investigation, design, construction, reconstruction, enlargement, repair, alteration, maintenance, operation, breach, removal, or abandonment of dams.

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

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

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

(12) HAZARD POTENTIAL. The possible incremental adverse ~~incremental~~ consequences that result from the release of water or stored contents due to failure of the dam or misoperation of the dam or ~~appurtenances~~ appurtenant works. The hazard potential classification of a dam does not reflect in any way on the current condition of the dam and its appurtenant ~~structures~~ works, including safety, structural integrity, or flood routing capacity.

(13) HIGH HAZARD POTENTIAL DAM. A dam assigned the high hazard potential classification where the dam's failure or misoperation will likely cause loss of human life.

(14) LOCAL EMERGENCY MANAGEMENT AGENCY. The local emergency management organization that has jurisdiction over the area in which a dam or reservoir is located.

(15) LOW HAZARD POTENTIAL DAM. A dam assigned the low hazard potential classification where failure or misoperation results in no probable loss of human life and low economic or environmental losses with those economic losses that do occur being principally limited to the owner's property.

(16) PARTICIPATING OWNER. Any of the following that elect to be included in this definition by written affidavit delivered to the local emergency management agency:

a. Any municipal or quasi-municipal corporation.

b. Any county or quasi-county corporation.

c. Any public utility.

d. Any district as defined by Section 11-99A-2.

e. Any person.

f. The duly authorized agent, lessee, or trustee of any entity described in paragraphs a. through e.

g. Receivers or trustees appointed by any court for any entity described in paragraphs a. through e.

h. This state and any department, board, commission, institution, or agency thereof that voluntarily elects to be subject to this article.

(17) PERSON. Any individual, bankruptcy trustee, firm, association, organization, partnership, business trust, corporation, limited liability corporation, limited liability partnership, or company.

(18) PROBABLE. More likely than not to occur;

reasonably expected; realistic.

(19) RECONSTRUCTION. Removal and replacement of an existing dam or a portion thereof.

(20) REMOVAL. Complete elimination of the dam embankment or structure to restore the approximate original topographic contours of the valley.

(21) RESERVOIR. Any area that contains or will contain impounded water, wastewater, or liquid-borne materials by virtue of its having been impounded by a dam. This term does not include privately owned reservoirs, regardless of the hazard designation, unless the owner has elected to participate in the program in accordance with this article.

(22) SIGNIFICANT HAZARD POTENTIAL DAM. A dam assigned the significant hazard potential classification where failure or misoperation results in no probable loss of human life but can result in major economic loss, environmental damage, disruption of lifeline facilities, or other issues impacting public safety and welfare.

(23) STATE-OWNED DAM OR RESERVOIR. Any dam or reservoir that is owned by this state or a department, board, commission, institution, or agency thereof.

~~(23)~~ (24) WATER STORAGE ELEVATION. The maximum elevation of water surface which can be obtained by the dam or reservoir."

"§33-7-72

(a) A participating owner shall ensure plans and specifications for initial construction, reconstruction, enlargement, alteration, repair, operation, breach,

abandonment, or removal of dams and reservoirs, and the supervision of the construction of dams and reservoirs shall be in the charge of an engineer and assisted by qualified geologists and other specialists as necessary.

(b) A participating owner of any dam or reservoir shall ensure the dam or reservoir is inspected a minimum of once every ~~two~~ four years by an engineer. The engineer shall certify to the local emergency management agency that the inspection has been completed and deliver a record of the inspection to the owner.

(c) A participating owner shall notify the local emergency management agency in writing of the construction or the enlargement of any dam or reservoir. Plans and specifications shall be signed and sealed by the design engineer.

(d) Upon the transfer of ownership of any dam or reservoir, the current participating owner shall notify the local emergency management agency. The subsequent owner may elect to continue participating in the inspection program but may also elect to cease participation with no penalty.

(e) A participating owner of a state-owned dam or reservoir shall submit a written affidavit to the local emergency management agency for each state-owned dam or reservoir elected to be subject to this article.

(f) Notwithstanding any other provision of this article, a state-owned dam or reservoir that is subject to this article shall be inspected a minimum of once every four years by an engineer, so long as sufficient funds have been

appropriated by the Legislature to, or sufficient relevant grant funds have been obtained by, the participating owner of the state-owned dam or reservoir. The engineer shall certify to the local emergency management agency that the inspection has been completed and deliver a record of the inspection to the owner."

"§33-7-74

(a) The local emergency management agency has neither inspection nor regulatory duty or responsibility.

(b) Records pertaining to dams and reservoirs kept by and in the possession of the local emergency management agency shall not be public documents.

(c) Nothing in this article shall be construed to relieve a participating owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities, or to waive any immunity, incident to the ownership or operation of the dam or reservoir."

Section 2. This act shall become effective on October 1, 2024.

Senate

Read for the first time and referred 06-Feb-24
to the Senate committee on State
Governmental Affairs

Read for the second time and placed 07-Feb-24
on the calendar:
1 amendment

Read for the third time and passed 08-Feb-24
as amended
Yeas 32
Nays 0
Abstains 1

Patrick Harris,
Secretary.