

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 394
HOUSE BILL 483

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- (1) ~~Repealed by Session Laws 1987, c. 827, s. 175.~~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.~~
 - 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.~~
 - c. ~~The exemptions conferred by items a and b of this subdivision shall cease when the supervising federal agency relinquishes authority for the operation and maintenance to a local entity.~~
 - d. ~~Any dam licensed by the Federal Power Commission, or for which a license application is pending with the Federal Power Commission, or for use in connection with electric generating facilities to be constructed pursuant to a certificate of public convenience and necessity from the North Carolina Utilities Commission, provided that small power producers as defined in G.S. 62-3(27a) shall be subject to the provisions of this Part~~

~~even though certified by the North Carolina Utilities Commission.~~

- e. ~~Any dam under a single private ownership, providing protection only to land or other property under such ownership, and posing no threat to life or property below the property under such single ownership.~~
- f. ~~Any dam less than 15 feet in height (measured from original stream bottom to crest of dam) or whose impoundment capacity is less than 10 acre feet.~~
- (3) ~~Repealed by Session Laws 1987, c. 827, s. 175.~~
- (4) ~~'Minimum stream flows' or 'minimum flows' means stream flows of a quantity and quality sufficient in the judgment of the Department to meet and maintain stream classifications and water quality standards established by the Department under G.S. 143-214.1 and applicable to the waters affected by the project under consideration. In order to ensure that such classifications and standards shall be met and maintained, the Department may impose such conditions and requirements in orders and written approvals issued under this Part as, in its judgment, may be necessary to this end, including conditions and requirements relating to the release or discharge of designated flows from impoundments, the location or design of water outlets for impoundments and of water intakes, the amount and timing of withdrawal of water from a reservoir, and the construction of submerged weirs or other devices designed to satisfy minimum stream flow requirements.~~
- (5) ~~Repealed by Session Laws 1987, c. 827, s. 175.~~
- (1) 'Dam' means a structure and appurtenant works erected to impound or divert water.
- (2) 'Minimum stream flow' or 'minimum flow' means a stream flow of a quantity and quality sufficient in the judgment of the Department to meet and maintain stream classifications and water quality standards established by the Department under G.S. 143-214.1 and applicable to the waters affected by the project under consideration, and to maintain aquatic habitat in the length of the stream that is affected."

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

"§ 143-215.25A. Exempt dams.

- (a) Except as otherwise provided in this Part, this Part does not apply to any dam:
 - (1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.

- (2) Constructed with financial assistance from the United States Soil Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.
- (3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.
- (4) For use in connection with electric generating facilities under the jurisdiction of the North Carolina Utilities Commission, except that a dam operated by a small power producer, as defined in G.S. 62-3(27a), shall be subject to the provisions of this Part even though the dam is constructed pursuant to a certificate of public convenience and necessity issues by the North Carolina Utilities Commission.
- (5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.
- (6) That is less than 15 feet in height or that has an impoundment capacity of less than 10 acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.

(b) The exemption from this Part for a dam described in subdivisions (1) and (2) of subsection (a) of this section does not apply after the supervising federal agency relinquishes authority for the operation and maintenance of the dam to a local entity."

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

"§ 143-215.26. Construction of dams.

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

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

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

"§ 143-215.28A. Application fees.

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

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

Sec. 6. G.S. 143-215.31 reads as rewritten:

"§ 143-215.31. Supervision over maintenance and operation of dams.

(a) The Commission shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum streamflow requirements. ~~The Commission is hereby authorized to~~ may adopt ~~such~~ standards for the maintenance and operation of dams as may be necessary for the purposes of this Part. ~~In its discretion the~~ The Commission may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function.

(b) The Department, consistent with rules adopted by the Commission, may impose any condition or requirement in orders and written approvals issued under this Part that is necessary to ensure that stream classifications, water quality standards, and aquatic habitat requirements are met and maintained, including conditions and requirements relating to the release or discharge of designated flows from dams, the location and design of water intakes and outlets, the amount and timing of the withdrawal of water from a reservoir, and the construction of submerged weirs or other devices intended to maintain minimum stream flows.

(c) The Commission shall adopt rules that specify the minimum stream flow in the length of the stream affected. In adopting rules that specify minimum stream flow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural

stream bed and where the water is returned to the same stream, the Commission shall establish a schedule for increasing or decreasing the minimum stream flow above or below the baseline minimum stream flow. The baseline minimum stream flow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural stream bed and where the water is returned to the same stream is the minimum average flow for a period of seven consecutive days that would have an average occurrence of once in 10 years in the absence of the dam."

Sec. 7. G.S. 143-215.32 reads as rewritten:

"§ 143-215.32. Inspection of dams.

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

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

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

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

Sec. 8. G.S. 143-215.33 reads as rewritten:

"§ 143-215.33. Administrative hearing.

A person to whom a decision or a dam safety order is issued under this Part may contest the decision or order by filing a ~~petition for a contested case~~ petition in accordance with G.S. 150B-23. A person to whom a decision is issued must file a

contested case petition within 30 days after the decision is mailed to that person. A person to whom a dam safety order is issued must file a contested case petition within 10 days after receiving notice, by personal service or by registered or certified mail, of the Commission's decision or order. the order is served."

Sec. 9. G.S. 143-215.36(b) reads as rewritten:

"(b) Civil Penalties. –

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

civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. A civil action shall be filed within three years of the date the final agency decision was served on the violator.

- (7) The Secretary may delegate his powers and duties under this section to the Director of the Division of Land Resources of the Department."

Sec. 10. The Department of Environment, Health, and Natural Resources shall not enforce minimum stream flow requirements to protect aquatic habitat until the Environmental Management Commission has adopted rules as required by G.S. 143-215.31(c), as enacted by Section 6 of this act. The Environmental Management Commission shall adopt rules to establish minimum stream flow requirements to protect aquatic habitat by 1 October 1994.

Sec. 11. This act becomes effective 1 October 1993.

In the General Assembly read three times and ratified this the 19th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives