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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2983**

(By Delegates Fleischauer, Mahan, Marshall,  
Compton, Smirl and Doyle)



Passed March 9, 2002

In Effect Ninety Days from Passage

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## H. B. 2983

(BY DELEGATES FLEISCHAUER, MAHAN, MARSHALL,  
COMPTON, SMIRL AND DOYLE)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact article fourteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the dam control and safety act; amending definitions; providing that the state is not responsible for damages caused by design or construction defects of certain soil conservation service dams; clarifying rulemaking authority; modifying county venue where an action or injunction may be brought; limiting time period for appealing certain injunctions upon entry of judgement; shorting time period prior to suspension of certificates of approval for failure to pay fees; and correcting certain terms.

*Be it enacted by the Legislature of West Virginia:*

That article fourteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted to read as follows:

**ARTICLE 14. DAM CONTROL AND SAFETY ACT.**

**§22-14-1. Short title.**

1 This article shall be known and cited as the “Dam Control  
2 and Safety Act.”

**§22-14-2. Legislative findings; intent and purpose of article.**

1 The Legislature finds that dams may constitute a potential  
2 hazard to people and property; therefore, dams in this state must  
3 be properly regulated and controlled to protect the health, safety  
4 and welfare of people and property in this state. It is the intent  
5 of the Legislature by this article to provide for the regulation  
6 and supervision of dams in this state to the extent necessary to  
7 protect the public health, safety and welfare. The Legislature  
8 has ordained this article to fulfill its responsibilities to the  
9 people of this state and to protect their lives and private and  
10 public property from the danger of a potential or actual dam  
11 failure. The Legislature finds and declares that in light of the  
12 limited state resources available for the purposes of this article,  
13 and in view of the high standards to which the United States  
14 natural resources conservation service designs dams, independ-  
15 ent state review of the plans and specifications for dams  
16 designed by the natural resources conservation service and  
17 construction oversight should not be required. The Legislature  
18 further finds and declares that dams designed and constructed  
19 by the natural resources conservation service but not owned or  
20 operated by it should be subject to the same provisions of  
21 inspection, after construction and certification by the natural  
22 resources conservation service, as other dams covered by this  
23 article, so long as any dam under the natural resources conser-

24 vation service program is designed with standards equal to or  
25 exceeding state requirements under this article.

**§22-14-3. Definition of terms used in article.**

1 As used in this article, unless used in a context that clearly  
2 requires a different meaning, the term:

3 (a) “Alterations” or “repairs” means only those changes in  
4 the structure or integrity of a dam which may affect its safety,  
5 which determination shall be made by the secretary.

6 (b) “Application for a certificate of approval” means the  
7 request in writing by a person to the secretary requesting that  
8 person be issued a certificate of approval.

9 (c) “Appurtenant works” means any structure or facility  
10 which is an adjunct of, or connected, appended or annexed to a  
11 dam, including, but not limited to, spillways, a reservoir and its  
12 rim, low level outlet works or water conduits such as tunnels,  
13 pipelines and penstocks either through the dam or its abutments.

14 (d) “Certificate of approval” means the approval in writing  
15 issued by the secretary to a person who has applied to the  
16 secretary for a certificate of approval which authorizes the  
17 person to place, construct, enlarge, alter, repair or remove a  
18 dam and specifies the conditions or limitations under which the  
19 work is to be performed by that person.

20 (e) “Dam” means an artificial barrier or obstruction,  
21 including any works appurtenant to it and any reservoir created  
22 by it, which is or will be placed, constructed, enlarged, altered  
23 or repaired so that it does or will impound or divert water and:  
24 (1) Is or will be twenty-five feet or more in height from the  
25 natural bed of the stream or watercourse measured at the  
26 downstream toe of the barrier and which does or can impound  
27 fifteen acre-feet or more of water; or (2) is or will be six feet or

28 more in height from the natural bed of the stream or water-  
29 course measured at the downstream toe of the barrier and which  
30 does or can impound fifty acre-feet or more of water: *Provided*,  
31 That the term “dam” does not include: (A) Any dam owned by  
32 the federal government; (B) any dam for which the operation  
33 and maintenance thereof is the responsibility of the federal  
34 government; (C) farm ponds constructed and used primarily for  
35 agricultural purposes, including, but not limited to, livestock  
36 watering, irrigation, retention of animal wastes and fish culture,  
37 and which have no potential to cause loss of human life in the  
38 event of embankment failure; or (D) roadfill or other transporta-  
39 tion structures which do not or will not impound water under  
40 normal conditions and which have a designed culvert or similar  
41 conveyance or such capacity as would be used under a state  
42 designed highway at the same location: *Provided, however*,  
43 That the secretary may apply the provisions of section ten of  
44 this article for roadfill or other transportation structures that  
45 become a hazard to human life or property through the frequent  
46 or continuous impoundment of water.

47 (f) “Department” means the department of environmental  
48 protection.

49 (g) “Enlargement” means any change in or addition to an  
50 existing dam which: (1) raises the height of the dam; (2) raises  
51 or may raise the water storage elevation of the water impounded  
52 by the dam; (3) increases or may increase the amount of water  
53 impounded by the dam; or (4) increases or may increase the  
54 watershed area from which water is impounded by the dam.

55 (h) “Person” means any public or private corporation,  
56 institution, association, society, firm, organization or company  
57 organized or existing under the laws of this or any other state or  
58 country; the state of West Virginia; any state governmental  
59 agency; any political subdivision of the state or of its counties  
60 or municipalities; sanitary district; public service district;

61 drainage district; conservation district; watershed improvement  
62 district; partnership; trust; estate; person or individual; group of  
63 persons or individuals acting individually or as a group; or any  
64 other legal entity whatever. The term “person”, when used in  
65 this article, includes and refers to any authorized agent, lessee  
66 or trustee of any of the foregoing or receiver or trustee ap-  
67 pointed by any court for any of the foregoing.

68 (i) “Reservoir” means any basin which contains or will  
69 contain impounded water.

70 (j) “Secretary” means the secretary of the department of  
71 environmental protection.

72 (k) “Natural resources conservation service” means the  
73 natural resource conservation service of the United States  
74 department of agriculture or any successor or predecessor  
75 agency, including the soil conservation service.

76 (l) “Water” means any liquid, including any solids or other  
77 matter which may be contained therein, which is or may be  
78 impounded by a dam.

79 (m) “Water storage elevation” means the maximum  
80 elevation that water can reach behind a dam without encroach-  
81 ing on the freeboard approved for the dam under flood condi-  
82 tions.

**§22-14-4. General powers and duties of director; maximum fee  
established for certificates of approval and annual  
registration.**

1 The secretary has the following powers and duties:

2 (a) To control and exercise regulatory jurisdiction over  
3 dams as provided for in this article;

4 (b) To review all applications for a certificate of approval  
5 for the placement, construction, enlargement, alteration, repair  
6 or removal of any dam;

7 (c) To grant, modify, amend, revoke, restrict or refuse to  
8 grant any certificate of approval if proper or necessary to  
9 protect life and property as provided in this article;

10 (d) To propose, modify, repeal and enforce rules and issue  
11 orders, to implement and make effective the powers and duties  
12 vested in the secretary by the provisions of this article;

13 (e) To take any lawful action considered necessary for the  
14 effective enforcement of the provisions of this article;

15 (f) To establish and charge reasonable fees not to exceed  
16 three hundred dollars for the review of applications for certifi-  
17 cates of approval and the issuance thereof and for assessment  
18 of an annual registration fee not to exceed one hundred dollars  
19 for persons holding a certificate of approval for existing dams.  
20 The secretary shall promulgate rules to establish a schedule of  
21 application fees and to establish annual registration fees:  
22 *Provided*, That no fee shall be assessed for dams designed and  
23 constructed by the natural resources conservation service for  
24 soil natural resources conservation districts;

25 (g) To employ qualified consultants or additional persons  
26 as necessary to review applications for certificates of approval  
27 and to recommend whether they should be approved, to inspect  
28 dams and to enforce the provisions of this article;

29 (h) To cooperate and coordinate with agencies of the  
30 federal government, this state and counties and municipalities  
31 of this state to improve, secure, study and enforce dam safety  
32 and dam technology within this state;

33 (i) To investigate and inspect dams as is necessary to  
34 implement or enforce the provisions of this article and when  
35 necessary to enter the public or private property of any dam  
36 owner. The secretary may investigate, inspect or enter private  
37 or public property after notifying the dam owner or other person  
38 in charge of the dam of an intent to investigate, inspect or enter:  
39 *Provided*, That where the owner or person in charge of the dam  
40 is not available, the secretary may investigate, inspect and enter  
41 without notice; and

42 (j) To prepare and publish within a reasonable time, criteria  
43 to govern the design, construction, repair, inspection and  
44 maintenance of proposed dams herein defined, and to review  
45 these criteria annually in order to consider improved technology  
46 for inclusion in such criteria.

**§22-14-5. Unlawful to place, construct, enlarge, alter, repair,  
remove or abandon dam without certificate of  
approval; application required to obtain certifi-  
cate.**

1 It is unlawful for any person to place, construct, enlarge,  
2 alter, repair, remove or abandon any dam under the jurisdiction  
3 of the secretary until he or she has first: (a) Filed an application  
4 for a certificate of approval with the department; and (b)  
5 obtained from the department a certificate of approval: *Pro-*  
6 *vided*, That routine repairs which do not affect the safety of a  
7 dam are not subject to the application and approval require-  
8 ments. A separate application for a certificate of approval must  
9 be submitted by a person for each dam he or she desires to  
10 place, construct, enlarge, alter, repair, remove or abandon. One  
11 application may be valid for more than one dam involved in a  
12 single project or in the formation of a reservoir.

13 Each application for a certificate of approval shall be made  
14 in writing on a form prescribed by the secretary and shall be



15 signed and verified by the applicant. The application shall  
16 contain and provide information which may be reasonably  
17 required by the secretary to administer the provisions of this  
18 article.

19 In the case of dams designed by the natural resources  
20 conservation service for transfer to any political subdivision,  
21 the director shall, within sixty days after receipt of a completed  
22 application therefor, issue a certificate of approval without  
23 review of the plans and specifications: *Provided*, That the state,  
24 its employees and agents are not responsible or liable for errors,  
25 omissions or flaws in the design, construction or modification  
26 of such dams.

**§22-14-6. Plans and specifications for dams to be in charge of  
registered professional engineer.**

1 Plans and specifications for the placement, construction,  
2 enlargement, alteration, repair or removal of dams shall be in  
3 the charge of a registered professional engineer licensed to  
4 practice in West Virginia. Any plans or specifications submitted  
5 to the department shall bear the seal of a registered professional  
6 engineer.

**§22-14-7. Granting or rejecting applications for certificate of  
approval by division; publication of notice of  
application; hearing upon application.**

1 Upon receipt of an application for a certificate of approval  
2 and the fee required under the provisions of this article, the  
3 secretary shall proceed to consider the application for suffi-  
4 ciency. The secretary shall approve or disapprove the applica-  
5 tion within sixty days after receipt.

6 If an application is defective, it shall be returned to the  
7 applicant by certified or registered mail, return receipt re-  
8 quested, in order that the applicant may correct any defect:

9 Provided, That a defective application must be returned to the  
10 department by the applicant within thirty days after it has been  
11 returned to the applicant or it shall be treated as a new applica-  
12 tion: *Provided, however,* That for good cause shown, the  
13 secretary may extend the thirty-day period.

14 Upon approval by the secretary of the sufficiency of the  
15 application, the applicant shall immediately publish the  
16 application as a Class I legal advertisement in compliance with  
17 the provisions of article three, chapter fifty-nine of this code,  
18 the publication area for the publication is the county in which  
19 the proposed dam is to be located or in which the existing dam  
20 is located. The notice shall include, but not be limited to, the  
21 name and address of the owner of the dam and the location of  
22 the dam for which the application was filed.

23 Any person whose life or property may be adversely  
24 affected by the issuance of a certificate of approval has a right  
25 to a hearing before the secretary if the person demands the  
26 hearing in writing within fifteen days of publication of the  
27 certificate of approval. The written request for hearing shall  
28 include specific objections to the certificate of approval.

29 Upon receipt by the secretary of the written request for  
30 hearing, the secretary shall immediately set a date for the  
31 hearing and shall notify the person or persons demanding a  
32 hearing. The hearing shall be held within ten days after receipt  
33 of the written request. The secretary shall hear evidence from  
34 all interested parties and shall either: (1) Refuse to issue a  
35 certificate of approval; or (2) issue a certificate of approval  
36 which shall be subject to terms, conditions and limitations as  
37 the secretary may consider necessary to protect life and  
38 property.

39 Unless otherwise extended by the secretary, a certificate of  
40 approval is valid for a period of not more than one year.

**§22-14-8. Content of certificates of approval for dams; revocation or suspension of certificates.**

1 Each certificate of approval issued by the secretary under  
2 the provisions of this article may contain other terms and  
3 conditions as the secretary may prescribe.

4 The secretary may revoke or suspend any certificate of  
5 approval whenever it is determined that the dam for which the  
6 certificate was issued constitutes a danger to life and property.  
7 If necessary to safeguard life and property, the secretary may  
8 also amend the terms and conditions of any certificate by  
9 issuing a new certificate containing the revised terms and  
10 conditions.

11 Before any certificate of approval is amended or revoked by  
12 the secretary, the secretary shall hold a hearing in accordance  
13 with the provisions of article five, chapter twenty-nine-a of this  
14 code.

15 Any person adversely affected by an order entered follow-  
16 ing the hearing has the right to appeal to the environmental  
17 quality board pursuant to the provisions of article one, chapter  
18 twenty-two-b of this code.

**§22-14-9. Inspections during progress of work on dam.**

1 During the placement, construction, enlargement, repair,  
2 alteration or removal of any dam, the secretary shall, either with  
3 the department's own engineers or by consulting engineers or  
4 engineering organizations, make periodic inspections for the  
5 purpose of ascertaining compliance with the certificate of  
6 approval. The secretary shall require the owner at his or her  
7 expense to perform work or tests as necessary and to provide  
8 adequate supervision during the placement, construction,  
9 enlargement, repair, alteration or removal of a dam: Provided,  
10 That with respect to dams designed by and constructed under

11 the supervision of the natural resources conservation service, as  
12 to such dams no state inspections are required.

13 If at any time during placement, construction, enlargement,  
14 repair, alteration or removal of any dam, the secretary finds that  
15 the work is not being done in accordance with the provisions of  
16 the original or revised certificate of approval, the secretary shall  
17 notify the owner by certified or registered mail, return receipt  
18 requested, to correct the deficiency, cease and desist work or to  
19 show cause as to why the certificate of approval should not be  
20 revoked.

21 The notice shall state the reason or reasons why the work is  
22 not in accordance with the certificate of approval. The secretary  
23 may order that work on the dam cease until the owner has  
24 complied with the notice.

25 If the secretary finds that amendments, modifications or  
26 changes are necessary to ensure the safety of the dam, the  
27 secretary may order the owner to revise his or her plans and  
28 specifications. If conditions are revealed which will not permit  
29 the placement, construction, enlargement, repair, alteration or  
30 removal of the dam in a safe manner, the certificate of approval  
31 may be revoked.

32 Immediately upon completion of a new dam or enlarge-  
33 ment, repair or alteration of a dam, the owner shall notify the  
34 secretary: *Provided*, That immediately upon completion of a  
35 dam constructed under the supervision of the natural resources  
36 conservation service, a certification of completion shall be sent  
37 to the director by the natural resources conservation service,  
38 and a complete set of design documents "as built" plans, and  
39 specifications and safety plan of evacuation shall be provided  
40 to the director within ninety days after completion of the dam.

**§22-14-10. Procedures for handling emergencies involving dams;  
remedial actions to alleviate emergency; payment**

**of costs of remedial actions to be paid by dam owner.**

1 The owner of a dam has the primary responsibility for  
2 determining when an emergency involving a dam exists. When  
3 the owner of a dam determines an emergency does exist, the  
4 owner shall take necessary remedial action and shall notify the  
5 secretary and any persons who may be endangered if the dam  
6 should fail.

7 The secretary shall notify any persons, not otherwise  
8 notified, who may be endangered if the dam should fail. The  
9 secretary may take any remedial action necessary to protect life  
10 and property if: (a) The condition of the dam so endangers life  
11 and property that time is not sufficient to permit the issuance  
12 and enforcement of an order for the owner to correct the  
13 condition; or (b) passing or imminent floods or other conditions  
14 threaten the safety of the dam. Remedial actions may include,  
15 but are not limited to:

16 (1) Taking full charge and control of the dam;

17 (2) Lowering the level of water impounded by the dam by  
18 releasing such impounded water;

19 (3) Completely releasing all water impounded by the dam;

20 (4) Performing any necessary remedial or protective work  
21 at the site of the dam;

22 (5) Taking any other steps necessary to safeguard life and  
23 property.

24 Once the secretary has taken full charge of the dam, the  
25 secretary shall remain in charge and control until in the  
26 secretary's opinion it has been rendered safe or the emergency  
27 occasioning the action has ceased and the secretary concludes

28 that the owner is competent to reassume control of the dam and  
29 its operation. The assumption of control of the dam will not  
30 relieve the owner of a dam of liability for any negligent act or  
31 acts of the owner or the owner's agent or employee.

32 When the secretary declares that making repairs to the dam  
33 or breaching the dam is necessary to safeguard life and prop-  
34 erty, repairs or breaching shall be started immediately by the  
35 owner, or by the secretary at the owner's expense, if the owner  
36 fails to do so. The owner shall notify the secretary at once of  
37 any emergency repairs or breaching the owner proposes to  
38 undertake and of work he or she has under way to alleviate the  
39 emergency. The proposed repairs, breaching and work shall be  
40 made to conform with orders of the director. The secretary may  
41 obtain equipment and personnel for emergency work from any  
42 person as is necessary and expedient to accomplish the required  
43 work. Any person undertaking work at the request of the  
44 department shall be paid by the department and is immune from  
45 civil liability under the provisions of section fifteen, article  
46 seven, chapter fifty-five of this code.

47 The costs reasonably incurred in any remedial action taken  
48 by the secretary shall be paid out of funds appropriated to the  
49 department. All costs incurred by the department shall be  
50 promptly repaid by the owner upon request or, if not repaid, the  
51 department may recover costs and damages from the owner by  
52 appropriate civil action.

**§22-14-11. Requirements for dams completed prior to effective  
date of this section.**

1 The secretary shall give notice to file an application for a  
2 certificate of approval to every owner of a dam which was  
3 completed prior to the effective date of this section: Provided,  
4 That no such notice need be given to a person who has applied  
5 for and obtained a certificate of approval on or after the first

6 day of July, one thousand nine hundred seventy-three, in  
7 accordance with the provisions of the prior enactment of section  
8 five of this article. The notice shall be given by certified or  
9 registered mail, return receipt requested, to the owner at his or  
10 her last address of record in the office of the county assessor of  
11 the county in which the dam is located; mailing constitutes  
12 service. A separate application for each dam a person owns  
13 shall be filed with the director in writing upon forms supplied  
14 by him or her and shall include or be accompanied by appropri-  
15 ate information concerning the dam as the secretary requires.

16 The secretary shall make inspections of such dams or  
17 reservoirs at state expense. The secretary shall require owners  
18 of dams to perform at their expense work or tests as may  
19 reasonably be required to disclose information sufficient to  
20 enable the secretary to determine whether to issue a certificate  
21 of approval or to issue an order directing further work at the  
22 owner's expense necessary to safeguard life and property. For  
23 this purpose, the secretary may require an owner to lower the  
24 water level of, or to empty, water impounded by the dam  
25 adjudged by the secretary to be unsafe. If, upon inspection or  
26 upon completion to the satisfaction of the secretary of all work  
27 that he or she ordered, the secretary finds that the dam is safe to  
28 impound water, a certificate of approval shall be issued.

**§22-14-12. Dam owner not relieved of legal responsibilities by any  
provision of article.**

1 Nothing in this article relieves the owner of a dam of the  
2 legal duties, obligations or liabilities incident to the ownership  
3 or operation of a dam.

**§22-14-13. Offenses and penalties.**

1 (a) Any person who violates any of the provisions of this  
2 article or any certificate of approval, order, rule or requirement

3 of the secretary or department is guilty of a misdemeanor, and,  
4 upon conviction thereof, shall be fined not less than one  
5 hundred dollars nor more than one thousand dollars, or incar-  
6 cerated in a county or regional jail not more than six months, or  
7 both fined and incarcerated.

8 (b) Any person who willfully obstructs, hinders or prevents  
9 the secretary or department or its agents or employees from  
10 performing the duties imposed on them by the provisions of this  
11 article or who willfully resists the exercise of the control and  
12 supervision conferred by the provisions of this article upon the  
13 secretary or department or its agents or employees or any owner  
14 or any person acting as a director, officer, agent or employee of  
15 an owner, or any contractor or agent or employee of a contrac-  
16 tor who engages in the placement, construction, enlargement,  
17 repair, alteration, maintenance or removal of any dam who  
18 knowingly does work or permits work to be executed on the  
19 dam without a certificate of approval or in violation of or  
20 contrary to any approval as provided for by the provisions of  
21 this article; and any inspector, agent or employee of the  
22 department who has knowledge of and who fails to notify the  
23 secretary of unapproved modifications to a dam is guilty of a  
24 misdemeanor, and, upon conviction thereof, shall be fined not  
25 less than one thousand dollars nor more than five thousand  
26 dollars, or incarcerated in county jail not more than one year, or  
27 both fined and incarcerated.

**§22-14-14. Enforcement orders; hearings.**

1 (a) If the secretary , upon inspection, investigation or  
2 through other means observes, discovers or learns of a violation  
3 of the provisions of this article, any certificate of approval,  
4 notice, order or rules issued or promulgated hereunder, he or  
5 she may:



6 (1) Issue an order stating with reasonable specificity the  
7 nature of the violation and requiring compliance immediately  
8 or within a specified time. An order under this section includes,  
9 but is not limited to, any or all of the following: Orders sus-  
10 pending, revoking or amending certificates of approval, orders  
11 requiring a person to take remedial action or cease and desist  
12 orders;

13 (2) Seek an injunction in accordance with subsection (c),  
14 section fifteen of this article;

15 (3) Institute a civil action in accordance with subsection (c),  
16 section fifteen of this article; or

17 (4) Request the attorney general, or the prosecuting attorney  
18 of the county in which the alleged violation occurred, to bring  
19 a criminal action in accordance with section twelve of this  
20 article.

21 (b) Any person issued a cease and desist order may file a  
22 notice of request for reconsideration with the secretary not more  
23 than seven days from the issuance of the order and shall have a  
24 hearing before the secretary contesting the terms and conditions  
25 of the order within ten days of the filing of the notice of a  
26 request for reconsideration. The filing of a notice of request for  
27 reconsideration does not stay or suspend the execution or  
28 enforcement of the cease and desist order.

**§22-14-15. Civil penalties and injunctive relief.**

1 (a) Any person who violates any provision of this article,  
2 any certificate of approval or any rule, notice or order issued  
3 pursuant to this article is subject to a civil administrative  
4 penalty, to be levied by the secretary, of not more than two  
5 hundred dollars for each day the violation continues, not to  
6 exceed a maximum of four hundred dollars. In assessing any  
7 penalty, the secretary shall take into account the seriousness of

8 the violation and any good faith efforts to comply with applica-  
 9 ble requirements as well as any other appropriate factors as may  
 10 be established by rules proposed by the secretary for legislative  
 11 approval pursuant to article three, chapter twenty-nine-a of this  
 12 code. No assessment may be levied pursuant to this subsection  
 13 until after the alleged violator has been notified by certified  
 14 mail or personal service. The notice shall include a reference to  
 15 the section of the statute, rule, notice, order or statement of the  
 16 certificate of approval's terms that was allegedly violated, a  
 17 concise statement of the facts alleged to constitute the violation,  
 18 a statement of the amount of the administrative penalty to be  
 19 imposed and a statement of the alleged violator's right to an  
 20 informal hearing. The alleged violator has twenty calendar days  
 21 from receipt of the notice within which to deliver to the  
 22 secretary a written request for an informal hearing. If no  
 23 hearing is requested, the notice becomes a final order after the  
 24 expiration date of the twenty-day period. If a hearing is  
 25 requested, the <sup>SECRETARY</sup> shall inform the alleged violator of the time and  
 26 place of the hearing. Within thirty days following the informal  
 27 hearing, the secretary shall issue and furnish to the violator a  
 28 written decision, and the reasons therefor, concerning the  
 29 assessment of a civil administrative penalty. The authority to  
 30 levy an administrative penalty is in addition to all other  
 31 enforcement provisions of this article and the payment of any  
 32 assessment does not affect the availability of any other enforce-  
 33 ment provision in connection with the violation for which the  
 34 assessment is levied: Provided, That no combination of  
 35 assessments against a violator shall exceed four hundred dollars  
 36 per day of each violation: Provided, however, That any viola-  
 37 tion for which the violator has paid a civil administrative  
 38 penalty assessed under this subsection is not subject to a  
 39 separate civil penalty action under this article to the extent of  
 40 the amount of the civil administrative penalty paid. Civil  
 41 administrative penalties shall be levied in accordance with the  
 42 rules promulgated under the authority of section four of this

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43 article. The net proceeds of assessments collected pursuant to  
44 this subsection shall be deposited in the dam safety fund  
45 established pursuant to section seventeen of this article. Any  
46 person adversely affected by the assessment of a civil adminis-  
47 trative penalty has the right to appeal to the environmental  
48 quality board pursuant to the provisions of article one, chapter  
49 twenty-two-b of this code.

50 (b) No assessment levied pursuant to subsection (a) of this  
51 section is due and payable until the procedures for review of the  
52 assessment as set out in said subsection have been completed.

53 (c) A civil penalty may be imposed and collected in any  
54 civil action instituted by the secretary in the circuit court of  
55 Kanawha County or in the county in which the violation or  
56 noncompliance exists or is taking place.

57 Upon application by the secretary, the circuit courts of this  
58 state or the judges thereof in vacation may by injunction compel  
59 compliance with and enjoin violations of the provisions of this  
60 article, and rules proposed in accordance with section four of  
61 this article, the terms and conditions of any certificate of  
62 approval granted under the provisions of this article, or any  
63 order of the secretary or environmental quality board and the  
64 venue of any action shall be in the circuit court of Kanawha  
65 County or in the county in which the violation or noncompli-  
66 ance exists or is taking place. The court or the judge thereof in  
67 vacation may issue a temporary or preliminary injunction in any  
68 case pending a decision on the merits of any injunctive applica-  
69 tion filed. In seeking an injunction, it is not necessary for the <sup>secretary</sup> to  
70 post bond or to allege or prove at any stage of the proceeding  
71 that irreparable damage will occur if the injunction is not issued  
72 or that the remedy at law is inadequate. An application for  
73 injunctive relief or a civil penalty action under this section may  
74 be filed and relief granted notwithstanding the fact that all  
75 administrative remedies provided for in this article have not

*a*  
*B. M. G.*  
*3/22/87*

76 been exhausted or invoked against the person or persons against  
77 whom the relief is sought.

78 The judgment of the circuit court upon any application filed  
79 or in any civil action instituted under the provisions of this  
80 section shall be final unless reversed, vacated or modified on  
81 appeal to the supreme court of appeals. An appeal shall be  
82 sought in the manner provided by law for appeals from circuit  
83 courts in other civil cases, except that the petition seeking  
84 review of an order in any injunction proceeding must be filed  
85 with the supreme court of appeals within ninety days from the  
86 date of entry of the judgment of the circuit court.

87 (d) Upon request of the secretary, the attorney general or  
88 the prosecuting attorney of the county in which the violation  
89 occurs, shall assist the secretary in any civil action under this  
90 section.

91 (e) In any action brought pursuant to the provisions of this  
92 section, the state or any agency of the state which prevails, may  
93 be awarded costs and reasonable attorney's fees.

**§22-14-16. Schedule of application fees established.**

1 The secretary shall promulgate rules in accordance with the  
2 provisions of section four of this article, to establish a schedule  
3 of application fees which shall be submitted by the applicant to  
4 the department together with the application for a certificate of  
5 approval filed pursuant to this article. The schedule of applica-  
6 tion fees shall be designed to establish reasonable categories of  
7 certificate application fees based upon the complexity of the  
8 permit application review process required by the secretary  
9 pursuant to the provisions of this article and the rules promul-  
10 gated under this article. The secretary shall not process any  
11 certificate application pursuant to this article until the certificate  
12 application fee has been received.

**§22-14-17. Schedule of annual registration fees established.**

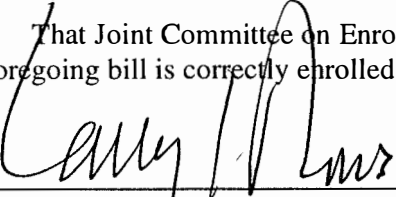
1       The secretary shall promulgate rules in accordance with the  
2 provisions of section four of this article, to establish a schedule  
3 of annual registration fees which shall be assessed annually  
4 upon each person holding a certificate of approval issued  
5 pursuant to this article. Each person holding a certificate of  
6 approval shall pay the prescribed annual registration fee to the  
7 department pursuant to the rules promulgated under this article.  
8 The schedule of annual registration fees shall be designed to  
9 establish reasonable categories of annual registration fees,  
10 including, but not limited to, the size of the dam and its  
11 classification. Any certificate of approval issued pursuant to  
12 this article becomes void without notification to the person  
13 holding a certificate of approval when the annual registration  
14 fee is more than ninety days past due pursuant to the rules  
15 promulgated under this section.

**§22-14-18. Continuation of dam safety fund; components of fund.**

1       (a) The special fund designated “The Dam Safety Fund”  
2 hereinafter referred to as “the fund” shall be continued.

3       (b) All certificate application fees and annual registration  
4 fee assessments, any interest or surcharge assessed and col-  
5 lected by the department, interest accruing on investments and  
6 deposits of the fund, and any other moneys designated by the  
7 department shall be paid into the fund. Accrual of funds shall  
8 not exceed three hundred thousand dollars per year, exclusive  
9 of application fees. The department shall expend the proceeds  
10 of the fund for the review of applications, inspection of dams,  
11 payment of costs of remedial emergency actions and enforce-  
12 ment of the provisions of this article.

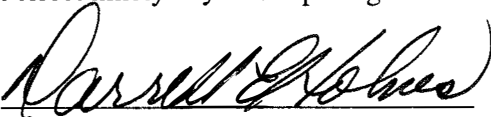
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

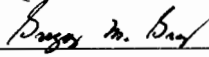
  
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Chairman Senate Committee

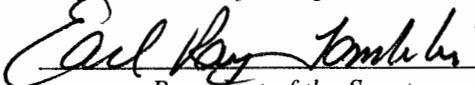
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 3rd  
day of April, 2002.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/02

Time 10:00am