

WEST VIRGINIA LEGISLATURE
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E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 261

(SENATORS D. HALL, MILLER, SNYDER, BEACH AND
FACEMIRE, *ORIGINAL SPONSORS*)

[PASSED MARCH 14, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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[Passed March 14, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §22-14-3 of the Code of West Virginia, 1931, as amended, relating to dams; and clarifying definition of “owner” of dam.

Be it enacted by the Legislature of West Virginia:

That §22-14-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. DAM CONTROL ACT.

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

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

3 (a) “Alterations” or “repairs” means only those changes
4 in the structure or integrity of a dam that may affect its safety
5 to be determined by the secretary.

6 (b) “Application for a certificate of approval” means the
7 written application provided to the secretary requesting that
8 a person be issued a certificate of approval.

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

15 (d) “Authority” means the Water Development Authority
16 provided in section four, article one, chapter twenty-two-c of
17 this code.

18 (e) “Certificate of approval” means the written approval
19 issued by the secretary to a person who has applied to the
20 secretary for a certificate of approval that authorizes the
21 person to place, construct, enlarge, alter, repair or remove a
22 dam and specifies the conditions or limitations under which
23 the work is to be performed by that person.

24 (f)(1) “Dam” means an artificial barrier or obstruction,
25 including any works appurtenant to it and any reservoir
26 created by it, which is or will be placed, constructed,
27 enlarged, altered or repaired so that it does or will impound
28 or divert water and:

29 (A) Is or will be twenty-five feet or more in height from
30 the natural bed of the stream or watercourse measured at the
31 downstream toe of the barrier and which does or can impound
32 fifteen acre-feet or more of water; or

33 (B) Is or will be six feet or more in height from the
34 natural bed of the stream or watercourse measured at the
35 downstream toe of the barrier and which does or can impound
36 fifty acre-feet or more of water;

37 (2) "Dam" does not mean:

38 (A) Any dam owned by the federal government;

39 (B) Any dam for which the operation and maintenance of
40 the dam is the responsibility of the federal government;

41 (C) Farm ponds constructed and used primarily for
42 agricultural purposes, including, but not limited to, livestock
43 watering, irrigation, retention of animal wastes and fish
44 culture and that have no potential to cause loss of human life
45 in the event of embankment failure; or

46 (D) Road fill or other transportation structures that do not
47 or will not impound water under normal conditions and that
48 have a designed culvert or similar conveyance or capacity
49 that would be used under a state-designed highway at the
50 same location: *Provided*, That the secretary may apply the
51 provisions of section ten of this article for road fill or other
52 transportation structures that become a hazard to human life
53 or property through the frequent or continuous impoundment
54 of water.

55 (g) "Deficient dam" means a noncoal-related dam that
56 exhibits one or more design, maintenance or operational
57 problems that may adversely affect the performance of the
58 dam over a period of time or during a major storm or other
59 inclement weather that may cause loss of life or property; or
60 a noncoal-related dam that otherwise fails to meet the
61 requirements of this article.

62 (h) “Department” means the Department of
63 Environmental Protection.

64 (i) “Enlargement” means any change in or addition to an
65 existing dam which: (1) Raises the height of the dam; (2)
66 raises or may raise the water storage elevation of the water
67 impounded by the dam; (3) increases or may increase the
68 amount of water impounded by the dam; or (4) increases or
69 may increase the watershed area from which water is
70 impounded by the dam.

71 (j) “Noncompliant dam owner” means an owner who has
72 received two or more orders to repair or remove a deficient
73 dam without completion of the repairs or removal within time
74 frames established by the secretary.

75 (k) “Owner” means any person who:

76 (1) Holds legal possession, ownership or partial
77 ownership of an interest in a dam, its appurtenant works or
78 the real property the dam is situated upon;

79 (2) Has a lease, easement or right-of-way to construct,
80 operate or maintain a dam; or

81 (3) Is a sponsoring organization with existing or prior
82 agreement with the Natural Resources Conservation Service for
83 a dam or its appurtenant works constructed with assistance from
84 Public Law 78-534, Section 13 of the Flood Control Act of
85 1944; Public Law 83-566, the Watershed Protection and Flood
86 Prevention Act of 1954; the pilot watershed program authorized
87 under the heading “Flood Prevention” of the Department of
88 Agriculture Appropriation Act of 1954, Public Law 156, 67
89 Stat. 214; or Subtitle H of Title XV of the Agriculture and
90 Flood Act of 1981, commonly known as the Resource
91 Conservation and Development Program, 16 U. S. C. §3451:

92 *Provided*, That the owner of the land upon which a dam is
93 owned, maintained or operated by a sponsoring agency, such as
94 a conservation district or other political subdivision of the state,
95 is not responsible for or liable for repairs, maintenance or
96 damage arising from the regular operation, maintenance,
97 deficiencies or ownership of the dam. The owner of the land
98 shall not be cited as a noncompliant dam owner for any
99 deficiencies of the dam, so long as the owner of the land does
100 not intentionally damage or interfere with the regular operation
101 and maintenance of the dam.

102 (l) “Person” means any public or private corporation,
103 institution, association, society, firm, organization or
104 company organized or existing under the laws of this or any
105 other state or country; the State of West Virginia; any state
106 governmental agency; any political subdivision of the state or
107 of its counties or municipalities; a sanitary district; a public
108 service district; a drainage district; a conservation district; a
109 watershed improvement district; a partnership, trust or estate;
110 a person or individual; a group of persons or individuals
111 acting individually or as a group; or any other legal entity.
112 The term “person”, when used in this article, includes and
113 refers to any authorized agent, lessee or trustee of any of the
114 foregoing or receiver or trustee appointed by any court for
115 any of the foregoing.

116 (m) “Reservoir” means any basin which contains or will
117 contain impounded water.

118 (n) “Secretary” means the Secretary of the Department of
119 Environmental Protection.

120 (o) “Natural Resources Conservation Service” means the
121 Natural Resources Conservation Service of the United States
122 Department of Agriculture or any successor or predecessor
123 agency, including the Soil Conservation Service.

124 (p) "Water" means any liquid, including any solids or
125 other matter that may be contained in the liquid, which is or
126 may be impounded by a dam.

127 (q) "Water storage elevation" means the maximum
128 elevation that water can reach behind a dam without
129 encroaching on the freeboard approved for the dam under
130 flood conditions.

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2015.

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Governor