

1 **ENROLLED**

2 **Senate Bill No. 454**

3 (BY SENATORS MILLER, COOKMAN, D. HALL, LAIRD, TUCKER, WILLIAMS AND SNYDER)

4 _____
5 [Passed March 8, 2014; in effect ninety days from passage.]
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9 AN ACT to amend and reenact §22-14-3 of the Code of West Virginia,
10 1931, as amended, relating to dams; and defining the owner of
11 a dam for purposes of the Dam Control Act.

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

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

15 **ARTICLE 14. DAM CONTROL ACT.**

16 **§22-14-3. Definition of terms used in article.**

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

19 (a) "Alterations" or "repairs" means only those changes in the
20 structure or integrity of a dam that may affect its safety to be
21 determined by the secretary.

22 (b) "Application for a certificate of approval" means the
23 written application provided to the secretary requesting that a
24 person be issued a certificate of approval.

1 (c) "Appurtenant works" means any structure or facility that
2 is an adjunct of, or connected, appended or annexed to, a dam,
3 including, but not limited to, spillways, a reservoir and its rim,
4 low-level outlet works or water conduits such as tunnels, pipelines
5 and penstocks either through the dam or its abutments.

6 (d) "Authority" means the Water Development Authority provided
7 in section four, article one, chapter twenty-two-c of this code.

8 (e) "Certificate of approval" means the written approval
9 issued by the secretary to a person who has applied to the
10 secretary for a certificate of approval that authorizes the person
11 to place, construct, enlarge, alter, repair or remove a dam and
12 specifies the conditions or limitations under which the work is to
13 be performed by that person.

14 (f) (1) "Dam" means an artificial barrier or obstruction,
15 including any works appurtenant to it and any reservoir created by
16 it, which is or will be placed, constructed, enlarged, altered or
17 repaired so that it does or will impound or divert water and:

18 (A) Is or will be twenty-five feet or more in height from the
19 natural bed of the stream or watercourse measured at the downstream
20 toe of the barrier and which does or can impound fifteen acrefeet
21 or more of water; or

22 (B) Is or will be six feet or more in height from the natural
23 bed of the stream or watercourse measured at the downstream toe of
24 the barrier and which does or can impound fifty acrefeet or more of

1 water;

2 (2) "Dam" does not mean:

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

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

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

11 (D) Roadfill or other transportation structures that do not or
12 will not impound water under normal conditions and that have a
13 designed culvert or similar conveyance or capacity that would be
14 used under a state-designed highway at the same location: *Provided,*
15 That the secretary may apply the provisions of section ten of this
16 article for roadfill or other transportation structures that become
17 a hazard to human life or property through the frequent or
18 continuous impoundment of water.

19 (g) "Deficient dam" means a noncoal-related dam that exhibits
20 one or more design, maintenance or operational problems that may
21 adversely affect the performance of the dam over a period of time
22 or during a major storm or other inclement weather that may cause
23 loss of life or property; or a noncoal-related dam that otherwise
24 fails to meet the requirements of this article.

1 (h) "Department" means the Department of Environmental
2 Protection.

3 (i) "Enlargement" means any change in or addition to an
4 existing dam which: (1) Raises the height of the dam; (2) raises or
5 may raise the water storage elevation of the water impounded by the
6 dam; (3) increases or may increase the amount of water impounded by
7 the dam; or (4) increases or may increase the watershed area from
8 which water is impounded by the dam.

9 (j) "Noncompliant dam owner" means an owner who has received
10 two or more orders to repair or remove a deficient dam without
11 completion of the repairs or removal within time frames established
12 by the secretary.

13 (k) "Owner" means any person who:

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

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

19 (3) Is a sponsoring organization with existing or prior
20 agreement with the Natural Resources Conservation Service for a dam
21 or its appurtenant works constructed with assistance from Public
22 Law 78-534, Section 13 of the Flood Control Act of 1944; Public Law
23 83-566, the Watershed Protection and Flood Prevention Act of 1954;
24 the pilot watershed program authorized under the heading "Flood

1 Prevention" of the Department of Agriculture Appropriation Act of
2 1954, Public Law 156, 67 Stat. 214; or Subtitle H of Title XV of
3 the Agriculture and Flood Act of 1981, commonly known as the
4 Resource Conservation and Development Program, 16 U. S. C. § 3451:
5 *Provided*, That an owner is not responsible for or liable for
6 repairs, maintenance or damage arising from the regular operation,
7 maintenance, deficiencies or ownership of the dam, nor shall the
8 owner be cited as a noncompliant dam owner for any deficiencies of
9 the dam, so long as the owner does not intentionally cause, damage
10 or interfere with the regular operation and maintenance of the dam.

11 (1) "Person" means any public or private corporation,
12 institution, association, society, firm, organization or company
13 organized or existing under the laws of this or any other state or
14 country; the State of West Virginia; any state governmental agency;
15 any political subdivision of the state or of its counties or
16 municipalities; a sanitary district; a public service district; a
17 drainage district; a conservation district; a watershed improvement
18 district; a partnership, trust or estate; a person or individual;
19 a group of persons or individuals acting individually or as a
20 group; or any other legal entity. The term "person", when used in
21 this article, includes and refers to any authorized agent, lessee
22 or trustee of any of the foregoing or receiver or trustee appointed
23 by any court for any of the foregoing.

24 (m) "Reservoir" means any basin which contains or will contain

1 impounded water.

2 (n) "Secretary" means the Secretary of the Department of
3 Environmental Protection.

4 (o) "Natural Resources Conservation Service" means the Natural
5 Resources Conservation Service of the United States Department of
6 Agriculture or any successor or predecessor agency, including the
7 Soil Conservation Service.

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

11 (q) "Water storage elevation" means the maximum elevation that
12 water can reach behind a dam without encroaching on the freeboard
13 approved for the dam under flood conditions.