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**STATUS INFORMATION**

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Introduced in the House on January 12, 2016

Currently residing in the House Committee on **Agriculture, Natural Resources and Environmental Affairs**

Summary: Dams and Reservoirs Safety Act

**HISTORY OF LEGISLATIVE ACTIONS**

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12/10/2015 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs**

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**VERSIONS OF THIS BILL**

[12/10/2015](file:///p:\pprever\2015-16\4565_20151210.docx)

**A** **BILL**

TO AMEND ARTICLE 3, CHAPTER 11, TITLE 49, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DAMS AND RESERVOIRS SAFETY ACT, SO AS TO FURTHER PROVIDE FOR THE REQUIREMENTS, REGULATORY PROVISIONS, AND PROCEDURES APPLICABLE TO DAM AND RESERVOIR SAFETY TO INCLUDE DAM CLASSIFICATION, PERMITTING, REGISTRATION, INSPECTION, EMERGENCY ACTION AND MAINTENANCE PLANS, FINANCIAL ASSURANCE REQUIREMENTS, AND OTHER RELATED MEASURES, AND TO REVISE CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 3, Chapter 11, Title 49 of the 1976 Code is amended to read:

“Article 3

Dams and Reservoirs Safety Act

Section 49‑11‑110. This article shall be cited as the ‘Dams and Reservoirs Safety Act’.

Section 49‑11‑120. Unless the context otherwise requires, as used in this article:

(1) ~~‘Alterations’ and ‘repairs’ mean only the alterations or repairs which may affect the safety of a dam or reservoir.~~

~~(2)~~ ‘Appurtenant works’ include, but are not limited to, structures such as spillways, either in the dam or separate from it, low‑level outlet works, and water conduits.

~~(3)~~(2) ‘Auxiliary spillway’ means a secondary spillway designed to operate only during large floods to pass flows, and is in addition to a service spillway.

(3) ‘Department’ means the South Carolina Department of Health and Environmental Control or its staff or agents.

(4) ‘Dam’ means an artificial barrier with appurtenant works, including, but not limited to, dams, levees, dikes, or floodwalls for the impoundment or diversion of waters or other fluids where failure may cause danger to life or property. However, this article does not ~~include~~ apply to a dam:

(a) less than twenty‑five feet in height from the natural bed of the stream or watercourse measured at the downstream toe of the dam, or less than twenty‑five feet from the lowest elevation of the outside limit of the dam, if it is not across a stream channel or watercourse, to the maximum water storage elevation and has an impounding capacity at maximum water storage elevation of less than fifty‑acre feet unless a situation exists where the hazard potential ~~as determined by the department~~ is such that dam failure or improper reservoir operation may cause loss of human life, damage to highways or railroads, cause interruption of use or service of public utilities, cause damage to homes, commercial and industrial buildings, or may cause the failure of one or more downstream dams which could cause any of the above-listed consequences;

(b) owned or operated by a department or an agency of the federal government;

(c) owned or licensed by the Federal Energy Regulatory Commission, the South Carolina Public Service Authority, the Nuclear Regulatory Commission, the United States Corps of Engineers, or other responsible federal licensing agencies considered appropriate by the department;

(d) upon which the Department of Transportation or county or municipal governments have accepted maintenance responsibility for a road or highway where that road or highway is the only danger to life or property with respect to failure of the dam. (5) ‘Dam-size classification’ means the classification for dam size utilized for all purposes under this article, calculated by height of the dam and storage capacity of the reservoir, in accordance with the table below. Size classification may be determined by either storage or height, whichever gives the larger size capacity.

CATEGORY IMPOUNDMENT HEIGHT

STORAGE (Feet)

(Acre Feet)

Very Small Less than 50 and Less than 25

Small Equal to or Greater than or Equal to or Greater than

50 and Less than 1000 25 and Less than 40

Intermediate Equal to or Greater than or Equal to or Greater than

1000 and Less than 50,000 40 and Less than 100

Large Equal to or Greater than 50,000 or Equal to or Greater than 100

(6) ‘Dam hazard-potential classification’ is the classification for dam hazard potential utilized for all purposes under this article, in accordance with the table below. The hazards pertain to potential loss of human life or property damage in the event of failure or improper operation of the dam or appurtenant works. Probable future development of the area downstream from the dam that would be affected by its failure must be considered in determining the classification. Dams are subject to reclassification if the department determines that the hazard has changed.

HAZARD CLASSIFICATION HAZARD POTENTIAL

High Hazard (Class I) Dams located where failure will likely

cause loss of life or serious damage to

a home, industrial and commercial

facility, important public utility,

main highway, or railroad.

Significant Hazard (Class II) Dams located where failure will not likely

cause loss of life, but may damage a home,

industrial and commercial facility,

secondary highway or railroad or cause

interruption of use or service of a relatively

important public utility.

Low Hazard (Class III) Dams located where failure may cause

minimal property damage to others. Loss of

life is not expected.

~~(5)~~(7) ‘Districts’ means the soil and water conservation districts of this State. For the purposes of this article the districts may serve as agents and advisors to the department.

~~(6)~~(8) ‘Danger to life or property’ means a situation exists where the hazard potential as determined by the department is such that dam failure or improper reservoir operation may cause injury to persons, loss of human life, or damage to property.

~~(7)~~(9) ‘Detailed inspection’ means all studies, investigations, and analyses necessary to evaluate conclusively the structural safety and hydraulic capacity of a dam ~~or reservoir~~ and appurtenant works, prepared in accordance with the requirements of Section 49‑11‑150. This inspection includes, but is not limited to, soil analyses, concrete or earth stability analyses, materials testing, foundation explorations, and hydrologic analyses, including basin studies and flood potential. This inspection, investigation, or analyses must be performed by ~~a qualified registered professional~~ an engineer.

(10) ‘Emergency Action Plan’ means a written plan to be provided and periodically updated by owners of high and significant hazard dams including information and specific actions necessary to properly respond to a dam-related emergency. The emergency action plan shall include, at a minimum:

(a) an emergency alert notification plan on a format sheet supplied by the department. All pertinent names and telephone numbers required on the form must be furnished;

(b) full computer‑generated breach analyses with contour maps showing the inundated areas below the dam for the cases of sunny‑day breach with water at normal pool level and breach of the dam during passage of the design storm at the point when water elevation is at its maximum level in the reservoir;

(c) a written listing of the specific actions that must be taken if there is reason to conclude the dam is near failure or has failed. This shall include the responsibility of the dam owner to notify any downstream property owners.

(11) ‘Engineer’ means an individual who is a professional engineer currently licensed and registered to practice engineering in the State of South Carolina.

~~(8)~~(12) ‘Enlargement’ means a change in or an addition to an existing dam or reservoir which raises or may raise the water storage elevation of the water impounded by the dam or reservoir.

(13) ‘Inspection and maintenance plan’ means a written plan of procedures to conduct routine activities involved in the operation and maintenance of a dam and all appurtenant works in safe condition in accordance with all permit or application approval terms and conditions, which is prepared in accordance with Section 49‑11‑150.

~~(9)~~(14) ‘Owner’ means those who own, control, operate, maintain, manage, or propose to construct a dam ~~or reservoir~~.

~~(10)~~ ~~‘Removal’ means destruction or breaching of an existing dam or drainage of water impoundment or reservoir.~~

(15) ‘Preliminary Inspection’ means an inspection by the department, its employees, or agents to assess the condition of a dam or reservoir in response to a complaint or as part of the department’s routine inspection and regulation of dams pursuant to this article.

~~(11)~~(16) ‘Reservoir’ means ~~a reservoir which contains the impoundment of water by a dam or reservoir~~ an area which contains or will contain the water, wastewater, or liquid‑borne materials by virtue of its having been impounded by a dam.

~~(12)~~(17) ‘Order’ means a written document prepared and issued by the department which mandates specific actions to be accomplished by a dam owner within a specified time frame. Failure to comply makes the owner subject to penalties outlined in Section 49‑11‑260.

~~(13)~~ ~~‘Unsafe’ means the condition of the dam is such that repairs or alterations are necessary to reduce the risk of dam failure.~~

Section 49‑11‑130. It is the purpose of this article to provide for the ~~certification~~ permitting and inspection of certain dams in South Carolina in the interest of public health, safety, and welfare in order to reduce the risk of failure of the dams, prevent injuries to persons and damage to property, and confer upon the department the regulatory authority to accomplish the purposes.

Section 49‑11‑140. The authority for the safe maintenance of the dams ~~and reservoirs~~ of this State and the powers of inspection and ~~certification~~ permitting provided in this article are the responsibility of the department. The department may employ engineers and technicians it considers necessary to implement this article for which appropriations are available.

Section 49‑11‑150. (A)(1) The owner of a dam ~~or reservoir~~ constructed in this State ~~solely~~ is the entity solely responsible for maintaining the dam ~~or reservoir~~ in a safe condition throughout the life of the structure.

(2) The owner shall submit a dam registration to the department by October first following the effective date of this item. Annually by October first of each year thereafter the owner shall update the dam registration as required to provide current information to the department.

(B) The owner ~~of a dam or reservoir~~ shall inform the department in writing within thirty days ~~after title to~~ before ownership or control of the dam ~~or reservoir legally has been~~ will be transferred ~~from his ownership~~. The notice must include the name and address of the new owner, and an updated dam registration form signed by the new owner.

(C) The owner of ~~a dam or reservoir whose failure likely would cause loss of life or substantial property damage,~~ a dam ~~or reservoir~~ classified as a high or significant hazard ~~under existing regulations,~~ shall provide ~~the department~~ a current emergency action plan in the format prescribed by the department ~~by regulation requires~~. The owner of a dam classified as a high or significant hazard is responsible for updating and evaluating the emergency action plan annually, and shall provide affirmation on a form provided by the department that the emergency action plan is both current and effective. The emergency action plan and each annual update must be submitted to the department and a copy of each must be provided to the state emergency management official and the county emergency management official of the county in which the dam is located by October first of each year.

(D) The owner shall submit an inspection and maintenance plan to the department with the dam registration, and annually shall submit a dam safety declaration on a form provided by the department on or before October first of each year. An inspection and maintenance plan shall include:

(1) detailed descriptions of all procedures governing the operation, monitoring, and inspection of the dam, including those governing the reading of instruments and the recording of instrument readings, the maintenance of the dam; and the preparation and circulation of notifications of deficiencies and potential deficiencies;

(2) a schedule for inspections and maintenance at least annually; and

(3) other elements as may be required by the department based on its consideration of public safety and the specific characteristics of the dam and its location.

The department may review and require the owner to amend any inspection and maintenance plan at any time to protect life, property, or infrastructure.

(E)(1) The owner of a dam classified as a high or significant hazard is responsible for a ‘detailed inspection’ of the dam, as defined in this article, to be conducted at least every five years. If there has been significant changes in the watershed contributing runoff to the reservoir or changes to the downstream land use by construction of homes or infrastructure that could impact the hazard classification, an inspection and interim evaluation must be conducted and provided to the department for review.

(2) The owner of any other dam regulated by the department is responsible for a detailed inspection of the dam or reservoir to be conducted at least every ten years. If there has been significant changes in the watershed contributing runoff to the reservoir or changes to the downstream land use by construction of homes or infrastructure that could impact the hazard classification, an inspection and interim evaluation must be conducted and provided to the department for review.

(3) A detailed inspection report shall include, but is not limited to:

(a) a review of all relevant documents, studies, plans, hazard classifications, photos, or any other information related to the dam and its appurtenant works, including the inspection and maintenance plan, detailed inspection reports or other inspection reports generated since the last detailed inspection, and the emergency action plan;

(b) the narrative results of a visual inspection of the dam, including the embankment, spillway, outlet, closure dikes, and other appurtenant structures, focusing on initial or progressive signs of the manifestation of potential failure modes. Specific note must be made as to whether any deficiencies reported in previous reports, and any corrective action required by the department, have been fully resolved or implemented. The report shall include dated photographs of the specific observations made and any deficiencies or potential deficiencies identified during the visual inspection;

(c) a review and evaluation of any instrumentation data generated since the completion of the last safety inspection, and any recommendations for addressing gaps or other deficiencies or potential deficiencies in monitoring;

(d) identification of deficiencies or potential deficiencies along with recommendations and a schedule for any corrective actions necessary to fully resolve the deficiencies or potential deficiencies, which recommendations may include additional investigations, such as revised hydrologic and hydraulic analyses, stability analyses, or underwater inspections;

(e) an evaluation of the dam, including its function, structural stability, and spillway capacity, that may utilize calculations or computer modeling of the hydrologic, hydraulic, stability or structural analyses, conclusions as to whether the dam is in a safe condition, and the basis for the conclusions; and

(f) any recommended change in the hazard classification or modification of the emergency action plan due to changes in the dam or inundation area, including, specifically, changes in land use.

(4) All detailed inspection reports must be retained by the dam owner and kept in good order.

(5) The department may review any detailed inspection report at any time to protect life, property or infrastructure, may require additional information or clarification of the report, or may provide comments to be addressed in a revised detailed inspection report upon a finding that it was not prepared in compliance with this article or generally accepted engineering practices in the field of dam design and safety. The owner shall revise the detailed inspection report to fully incorporate or resolve the department’s comments and resubmit it to the department within sixty days of the owner’s receipt of the department’s comments, unless another time frame is either requested by the owner and agreed to by the department, or imposed by the department in the interests of public safety for a dam that has a condition rating of ‘unsafe’ or ‘unsound’.

(F) Within thirty days of any detailed inspection of a dam, the results must be submitted to the department in writing and signed by the engineer who conducted the detailed inspection. Any nonemergency repairs required as a result of a detailed inspection must be submitted to the department for written approval prior to implementation as required in this article.

(G) The owner of a dam classified as a high or significant hazard shall notify the department in writing, on a form provided by the department, within five calendar days of any flow in an erodible auxiliary spillway. The department may require additional information to be submitted in order to protect public safety, property, or infrastructure.

Section 49‑11‑155. (A) The owner of a dam classified as high or significant hazard shall provide to the department evidence of financial assurance in the form of a bond, letter of credit, cash escrow, or other acceptable assurance as prescribed by the department in an amount appropriate to safely remove the dam or reservoir should removal become necessary for the protection of life, property, or infrastructure. The amount of proposed financial assurance required must be submitted to the department by the owner with the dam registration, and shall include a written statement, dated no earlier than one year prior to submission, from an engineer declaring the approximate cost for removal of the dam.

(B) The owner annually shall adjust the financial assurance required under this section for inflation. The adjustment may be made by recalculating the removal cost estimate in current dollars in consultation with an engineer, or by using an inflation factor derived from the most recent Implicit Price Deflator For Gross National Product as published by the United States Department of Commerce in its Survey of Current Business.

(C) The owner annually shall provide proof that the financial assurance instrument required by this section remains valid.

(D) All annual updates under this section must be submitted to the department with the annual registration update, on or before October first of each year.

(E) The department may adjust the amount of financial assurance required if it determines that the proposed amount is insufficient to safely remove the dam, should removal become necessary.

Section 49‑11‑160. The department may issue an order directing the owner ~~of a dam or reservoir~~ to make at ~~his~~ the owner’s expense the necessary maintenance, alteration, repair, or removal upon a finding that the dam ~~or reservoir~~:

(a) is or has become unsafe and is dangerous to life or property;

(b) is not maintained in good repair or operating condition; or

(c) is not maintained or operated in accordance with ~~the terms and conditions of the certificate of completion and operation issued by the department~~ any provision of this article or any regulations promulgated under this article.

Section 49‑11‑170. (A) The existence of a dam which is not maintained in good repair or operating condition or may be unsafe and a danger to life or property may be brought to the attention of the department by complaint, staff, or authorized investigation or by other means.

(B) Upon staff or other authorized investigations or upon receipt of a ~~written private~~ complaint alleging that ~~the person or~~ life, property, or infrastructure ~~of the complainant~~ is endangered by the construction, maintenance, operation, or condition of a dam ~~or reservoir~~, the department shall cause a preliminary inspection of the structure and downstream development to be made by field observations to determine if the complaint is meritorious. The department may require the owner ~~of the dam or reservoir~~ to provide data, records, and design plans of the structure specified by regulations.

(C) Notwithstanding the existence of any complaint or deficient condition of a dam, the department shall endeavor to conduct a preliminary inspection on all dams with the following frequency, within the limits of available funds:

(1) high hazard classification dams annually;

(2) significant hazard classification dams every three years; and

(3) low hazard classification dams every five years.

(D) If upon the preliminary inspection it is determined that the dam ~~or reservoir~~ is unsafe and is dangerous to life or property, the department may order the owner at his expense to make a detailed inspection of the dam ~~and reservoir~~ and surrounding area and to provide to the department within a time frame specified by the department plans prepared by ~~a qualified registered professional~~ an engineer for correction of all deficiencies of the dam or to provide to the department plans and specifications for removal of the dam. In either instance the plans must be approved by the department before implementation and implemented within a time frame specified by the department. If ~~upon~~ results of a preliminary or detailed inspection ~~it is determined~~ determine that the dam ~~or reservoir~~ has not been maintained in good repair or operating condition, the department may order the owner at his expense to accomplish the necessary maintenance or to obtain a permit for removal and to remove the dam within a time frame specified by the department.

~~(D)~~(E) The department shall give the owner notice of its action when:

(1) a complaint has been filed alleging that the owners’ dam ~~or reservoir~~ is unsafe and a danger to life or property stating the nature of the complaint;

(2) a preliminary inspection has been made with findings.

~~(E)~~ ~~The owner of a dam or reservoir determined through a preliminary inspection not to be maintained in good repair or operating condition or to be unsafe and a danger to life or property may request a hearing before the board of the department within thirty days after notice of the findings are delivered. The owner may submit written or present oral evidence which must be considered by the board of the department in the issuance of the order.~~

Section 49‑11‑180. (A) The department may solicit voluntary compliance by the owner of a dam or reservoir found to be unsafe and a danger to life or property to take remedial steps necessary to render the dam safe.

(B) Extension of time to complete work specified in an order may be granted by the department. No extension may be granted when there appears substantial and immediate danger of dam failure.

Section 49‑11‑190. (A) The department immediately shall order remedial measures necessary to protect life or property if the condition of a dam or reservoir ~~is~~ appears so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of a repair order or passing or imminent floods threaten overtopping erosion or destruction of a dam or reservoir capable of danger to life or property.

(B) In applying emergency measures the department has the following limited powers to order the owner to:

(1) lower the water level by releasing water from the reservoir;

(2) empty the reservoir completely;

(3) take other steps essential to safeguard life and property.

(C) For an emergency where the owner finds repairs are necessary to safeguard life or property, ~~he may start the repairs immediately but shall~~ the owner immediately must implement the emergency action plan for the dam or reservoir, and shall take any additional steps essential to safeguard life and property and notify the department ~~at once~~ of the emergency condition and any proposed repair and work underway as soon as possible, but not later than twenty‑four hours after the emergency condition is known by the owner.

(D) When the owner fails to comply with the emergency order or cannot be ascertained or found, the department or its authorized agents may enter and immediately take actions necessary to provide protection to life or property, including removal of the dam. The department may recover from the owner, in the name of the State, the expenses incurred in taking the action in the same manner debts are recoverable by law.

Section 49‑11‑200. ~~(A)~~ The construction of a new dam or reservoir or ~~enlargement, removal, or repair~~ modifications to include reconstruction, enlargement, repair, alteration, breach, or removal of an existing dam or reservoir may not begin until the owner has applied for and obtained from the department written approval of plans and specifications.

~~(B)~~ ~~Where the location and size of the dam or reservoir renders the requirements of subsection (A) and Section 49‑11‑210 unnecessary, the department may grant approval and waive certain nonessential requirements in instances, including, but not limited to, small dams and reservoirs for agricultural, fish or wildlife, or recreational uses on private lands and of no danger to other life or property downstream.~~

Section 49‑11‑210. (A) A separate permit application for each dam or reservoir and all ~~enlargements, removals, or repairs~~ modifications to include reconstruction, enlargement, repair, alteration, breach, or removal to existing dams or reservoirs must be filed with the department upon forms to be provided by it, except only one application need be filed for a dam and the reservoir which will contain the water impounded by the dam. The application must be accompanied by maps and plans and specifications of a character and size and setting forth pertinent details and dimensions required by ~~regulation~~ the department. The application for construction of a new dam ~~or reservoir whose failure likely would cause loss of life or substantial property damage, a dam or reservoir~~ classified as a high or significant hazard ~~under existing regulations,~~ must include ~~a fully‑developed~~ an emergency action plan in a format prescribed by the department ~~by regulation requires. After the dam or reservoir is constructed, this emergency action plan must be updated by the owner of the dam or reservoir each time it becomes noncurrent~~.

(B) The following minimum items must be required and approved prior to the initiation of the construction:

(1) construction plans and specifications prepared by an engineer;

(2) hazard potential identification;

(3) statement of ownership;

(4) hydrologic and hydraulic design computations;

(5) structural design computations;

(6) geotechnical data and design computations;

(7) instrumentation plan;

(8) operation plan during construction and the life of the structure;

(9) maintenance plan;

(10) emergency action plan;

(11) agreement to submit as‑built plans certified by the design engineer; and

(12) statement of financial assurance in accordance with this article.

(C) The modification or repair of existing dams must be coordinated with and approved by the department. Minor maintenance work shall be included in the approval of the original inspection and maintenance plan. All construction plans and specifications must be prepared by an engineer. The department may require any or all of the information required in subsection (B) prior to approving a proposed modification or repair of an existing dam.

(D) The following items are required and must be approved prior to the initiation of the removal or abandonment of a dam:

(1) method of dewatering, including testing for environmentally sensitive discharges;

(2) method of breaching or abandonment;

(3) means to control erosion at the site during and after the breach;

(4) means to control sediment transport from the reservoir, including testing and control of environmentally sensitive material, means to maintain breach area, upstream and downstream channel, and reservoir bed after the breach;

(5) time schedule and sequence of construction;

(6) submission of as‑built plans; and

(7) hydraulic evaluation and remapping of downstream flood areas, as necessary.

(E) All construction plans and specifications must be prepared by an engineer.

Section 49‑11‑220. An applicant for approval of a dam or reservoir subject to Section 49‑11‑200 also shall file with the department a design approved by ~~a registered professional~~ an engineer ~~legally qualified in the State~~. Dams designed by the USDA‑Soil Conservation Service or other federal agencies do not require certification by ~~a registered professional~~ an engineer.

Section 49‑11‑230. (A) The department may make necessary inspections during construction of new dams and reservoirs, enlargements, removal, and repairs of dams and reservoirs and during work done pursuant to repair orders to assure compliance with the approved plans and specifications or provisions of the order.

(B) If water is to be released during the construction, repair, or removal, the department shall specify the maximum discharge rate allowable to avoid endangering or causing injury to downstream owners.

Section 49‑11‑240. (A) The department or its authorized agents may inspect the dam or reservoir and surrounding area to determine the safety of the structure.

(B) An authorized member, agency, or representative of the department may enter state or private lands and natural or artificial waterways in the State to discharge the duties set forth in this article.

(C) The department ~~shall formulate reasonable~~ may promulgate regulations~~, including, but not limited to, minimum safety design standards for impoundments, safety inspection standards, water discharge, or drawdown rates and levels in unsafe impoundments and for other purposes~~ as necessary to administer this article.

(D) The department shall issue all orders, permits, or ~~licenses~~ registrations set forth in this article.

Section 49‑11‑250. Nothing in this article and no action or failure to act under this article:

(1) imposes liability on the State, the department, districts, or an agency or its officers or employees for the recovery of damages caused by the action or failure to act; or

(2) relieves the owner or operator of a dam or reservoir of the duties, obligations, responsibilities, or liabilities arising from or incident to the ownership or operation of a dam or reservoir.

Section 49‑11‑260. (A) ~~A person violating this article is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred nor more than five hundred dollars. Each day the violation continues after notice to take corrective action is a separate offense.~~ A person who wilfully or with gross negligence or recklessness violates a provision of this article or a regulation, permit, permit condition, or order of the department is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars nor more than twenty‑five thousand dollars for each day’s violation or imprisoned for not more than two years, or both.

(B) The department may assess ~~an administrative fine~~ a civil penalty of not ~~less than one hundred nor~~ more than one thousand dollars per day against a person who violates this article or an order issued or regulation promulgated pursuant to it. In determining the amount of the ~~fine~~ penalty, the department shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. ~~Fines assessed under this subsection may be appealed to the department who may reduce them based on information presented at the appeal hearing.~~

(C) Upon a violation of this article or related regulations the department may institute legal action to obtain injunctive relief in the name of the department.

(D) A person against whom a final order or decision has been made, except for emergencies specified in Section 49‑11‑190, may appeal ~~to the board~~ the decision under the Administrative Procedures Act. The burden of proof is on the party ~~attacking~~ challenging an order or a decision of the department to show that the order is unlawful or unreasonable.

~~(E)~~ ~~Civil fines collected under this article must be deposited in a special account of the department to fund educational activities relating to dams and reservoirs safety, including, but not limited to, workshops, seminars, manuals, and brochures.~~”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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