

Senate Bill 319

By: Senators Ginn of the 47th, Hufstetler of the 52nd, Mullis of the 53rd, Tippins of the 37th, Harper of the 7th and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Part 3 of Article 5 of Chapter 5 of Title 12 of the Official Code of Georgia
2 Annotated, relating to rivers and river basins relative to dam safety, so as to prohibit the
3 building of inhabitable structures in the inundation zone of a Category II dam without prior
4 certification from an engineer of record; to provide for an engineer of record to perform and
5 certify a breach analysis where inhabitable structures already exist in the inundation zone of
6 a Category II dam; to provide for filing of the certified breach analysis; to provide for the
7 development of building standards for inhabitable structures in the inundation zone of a
8 Category II dam; to provide for definitions; to provide for related matters; to repeal
9 conflicting laws; and for other purposes.

10 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

11 **SECTION 1.**

12 Part 3 of Article 5 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated,
13 relating to rivers and river basins relative to dam safety, is amended by revising Code Section
14 12-5-372, relating to definitions, as follows:

15 "12-5-372.

16 As used in this part, the term:

17 (1) 'Board' means the Board of Natural Resources.

18 (2) 'Commission' means the State Soil and Water Conservation Commission.

19 (3) 'Construct' or 'construction' means the building of any artificial barrier, together with
20 appurtenant works, for the impoundment or diversion of water or liquid substances and
21 shall include any activity which, other than routinely as part of an approved maintenance
22 program, repairs or restores such artificial barrier, or alters its design, shape, or structural
23 characteristics, and shall also include any enlargement of such artificial barrier.

24 (4)(A) Except as otherwise provided in subparagraph (B) of this paragraph, 'dam'
25 means any artificial barrier, including appurtenant works, which impounds or diverts
26 water and which:

27 (i) Is 25 feet or more in height from the natural bed of the stream or watercourse
 28 measured at the downstream toe of the barrier, or from the lowest elevation of the
 29 outside limit of the barrier, if the barrier is not across a stream channel or watercourse,
 30 to the maximum water storage elevation; or

31 (ii) Has an impounding capacity at maximum water storage elevation of 100 acre-feet
 32 or more.

33 (B) The word 'dam' shall not include:

34 (i) Any dam owned and operated by any department or agency of the United States
 35 government;

36 (ii) Any dam constructed or financially assisted by the United States Soil
 37 Conservation Service or any other department or agency of the United States
 38 government when such department or agency designed or approved plans and
 39 supervised construction and maintains a regular program of inspection of the dam;
 40 provided, however, that this exemption shall cease on November 1, 2000, only if
 41 funds are specifically appropriated on or before November 1, 1995, for purposes of
 42 inspection, reconstruction, and financial assistance with respect to such dams in an
 43 appropriations Act making specific reference to this division; otherwise this
 44 exemption shall cease on November 1, 1995, for all such dams over which the
 45 supervising federal agency has relinquished authority for the operation and
 46 maintenance of such a dam to a person unless the supervising federal agency certifies
 47 by said date and at least biannually thereafter to the director that such dams are in
 48 compliance with requirements of this part, including minimum spillway design, and
 49 with the maintenance standards of the supervising federal agency;

50 (iii) Any dam licensed by the Federal Energy Regulatory Commission, or for which
 51 a license application is pending with the Federal Energy Regulatory Commission;

52 (iv) Any dam classified by the director as a category II dam pursuant to Code Section
 53 12-5-375, except that such category II dams shall be subject to the provisions of this
 54 part for the purposes of said Code Section 12-5-375, ~~and for the purposes of~~
 55 subsection (b) of Code Section 12-5-376, and Code Section 12-5-383.1; or

56 (v) Any artificial barrier which is not in excess of six feet in height regardless of
 57 storage capacity, or which has a storage capacity at maximum water storage elevation
 58 not in excess of 15 acre-feet regardless of height.

59 (5) 'Director' means the director of the Environmental Protection Division of the
 60 Department of Natural Resources, or his designee.

61 (6) 'Division' means the Environmental Protection Division of the Department of Natural
 62 Resources.

63 (7) 'Engineer of record' means an individual who is a licensed engineer registered in the
 64 State of Georgia and who has at least seven years of demonstrated experience related to
 65 the investigation, design, and construction of dams.

66 ~~(7)~~(8) 'Enlargement' means any change in or addition to an existing dam or
 67 impoundment, which change or addition raises or may raise the water storage elevation
 68 of the water impounded by the dam or reservoir.

69 ~~(8)~~(9) 'Impoundment' means the water or liquid substance that is or will be stored by a
 70 dam and which may be commonly referred to as the reservoir.

71 (10) 'Inundation zone' means any area downstream of a dam that would be affected by
 72 flooding from releases from a dam's reservoir in the event of a failure, breach, or
 73 uncontrolled release of water, and is generally much larger than the area for a normal
 74 river or stream flood event.

75 ~~(9)~~(11) 'Local unit of government' means a municipal corporation or county, or any legal
 76 consolidation thereof.

77 ~~(10)~~(12) 'Operate' or 'operation' means the impoundment or diversion of water or liquid
 78 substance by a dam.

79 ~~(11)~~(13) 'Person' means any municipal corporation or county, or legal consolidation
 80 thereof; individual; partnership; corporation; or public or private authority and shall
 81 include the State of Georgia and all its departments, boards, bureaus, commissions,
 82 authorities, and any other agencies or instrumentalities."

83 **SECTION 2.**

84 Said part is further amended by adding a new Code section to read as follows:

85 "12-5-383.1.

86 (a)(1) An engineer of record may be retained to conduct a breach analysis of a
 87 Category II dam prior to any construction in such dam's inundation zone. Any person
 88 may hire such engineer to conduct such analysis.

89 (2) No inhabitable structures may be built below a Category II dam in the division's Safe
 90 Dams approved inundation zone without providing certified documentation completed
 91 by an engineer of record that such structure can withstand a breach of the dam and would
 92 not create a probable loss of life.

93 (b) If an inhabitable structure currently exists within an inundation zone and no breach
 94 analysis is on file with the division, an engineer of record may be retained to determine
 95 the construction modifications of the inhabitable structure necessary to remove the risk
 96 of probable loss of life in the event a breach of the dam occurs. If such modifications are
 97 made, such engineer shall provide certified documentation that such structure no longer
 98 is a risk for probable loss of life.

99 (c) A copy of each certified breach analysis that is conducted by an engineer of record
100 shall be filed with:
101 (1) The clerk of the county superior court;
102 (2) The chief elected official of all cities and counties with any portion of the inundation
103 zones within their respective jurisdiction; and
104 (3) The Safe Dams Project of the division.
105 (d) The Department of Community Affairs, with the approval of the Board of Community
106 Affairs, shall develop building design criteria standards for inhabitable structures to
107 withstand a breach of a dam in an inundation zone. Such standards shall be used by
108 engineers of record when performing each breach analysis. The engineer of record is
109 responsible for determining which standards are necessary to remove the risk for probable
110 loss of life."

111

SECTION 3.

112 All laws and parts of laws in conflict with this Act are repealed.