

Senate Bill 94

By: Senators Ginn of the 47th, Mullis of the 53rd, Dugan of the 30th, Butler of the 55th,
Anderson of the 24th and others

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 structures capable of being occupied in the inundation zone of a category II dam
4 or a dam not classified pursuant to Code Section 12-5-375 without prior certification from
5 a licensed engineer; to provide for definitions; to provide for licensed professional to perform
6 and certify a breach of the inundation zone of a category II dam or a dam not classified
7 pursuant to Code Section 12-5-375; to provide for filing of the certified breach analysis; to
8 provide for liability; to provide for related matters; to repeal conflicting laws; and for other
9 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:

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- 1 -

- 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~~ such
52 commission;

53 (iv) Any dam classified by the director as a category II dam pursuant to Code Section
54 12-5-375, except that such category II dams shall be subject to the provisions of this
55 part for the purposes of said Code Section 12-5-375, ~~and for the purposes of~~
56 subsection (b) of Code Section 12-5-376, and Code Section 12-5-378.1; or

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

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

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

64 (7) 'Engineer of record' means an individual who is a licensed engineer registered in the
65 State of Georgia who has:

66 (A) At least seven years of demonstrated experience related to the analyses required
67 by this part; and

68 (B) Submitted his or her qualifications to the division prior to being engaged by any
69 person to conduct such analyses.

70 ~~(7)~~(8) 'Enlargement' means any change in or addition to an existing dam or
 71 impoundment, which change or addition raises or may raise the water storage elevation
 72 of the water impounded by the dam or reservoir.

73 ~~(8)~~(9) 'Impoundment' means the water or liquid substance that is or will be stored by a
 74 dam and which may be commonly referred to as the reservoir.

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

79 ~~(9)~~(11) 'Local unit of government' means a municipal corporation or county, or any legal
 80 consolidation thereof.

81 ~~(10)~~(12) 'Operate' or 'operation' means the impoundment or diversion of water or liquid
 82 substance by a dam.

83 ~~(11)~~(13) 'Person' means any municipal corporation or county, or legal consolidation
 84 thereof; individual; partnership; corporation; or public or private authority and shall
 85 include the State of Georgia and all its departments, boards, bureaus, commissions,
 86 authorities, and any other agencies or instrumentalities."

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SECTION 2.

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

89 "12-5-378.1.

90 (a)(1) If a breach analysis of a category II dam or a dam not classified pursuant to Code
 91 Section 12-5-375 is conducted pursuant to this Code section, such analysis shall be
 92 completed by an engineer of record, shall include a description of the dam's inundation
 93 zone, and submitted to the division for approval. Any person may hire such engineer to
 94 conduct such analysis.

95 (2) It shall be unlawful to build a structure capable of being occupied below a category
96 II dam or a dam not classified pursuant to Code Section 12-5-375 in the inundation zone
97 described in a breach analysis approved by the division unless the division has approved
98 certified documentation completed by a professional engineer licensed in this state that
99 such structure can withstand inundation from a breach of the dam and would not create
100 the risk of probable loss of human life.

101 (3) The construction and occupancy of a structure pursuant to paragraph (2) of this
102 subsection shall not result in classification of the upstream dam as a category I dam.

103 (b)(1) If an inhabitable structure currently exists within an inundation zone described in
104 a breach analysis, a professional engineer licensed in this state may be retained to
105 determine the construction modifications of the inhabitable structure necessary to remove
106 the risk of probable loss of human life in the event a breach of the dam occurs. After
107 such modifications are made, such engineer shall submit certified documentation for
108 approval by the division that such structure is no longer at risk for probable loss of human
109 life.

110 (2) The construction and occupancy of a structure pursuant to paragraph (1) of this
111 subsection shall not result in classification of the upstream dam as a category I dam.

112 (c) A copy of each certified breach analysis conducted pursuant to this Code section shall
113 be filed by the engineer of record with:

114 (1) The clerk of the county superior court; and

115 (2) The chief elected official of each local unit of government with any portion of the
116 inundation zones within its jurisdiction.

117 (d) Any person that complies with this Code section in building in an inundation zone shall
118 be liable only for the civil penalties provided in Code Section 12-5-385 and shall not be
119 subject to any criminal liability or penalties provided in such Code section or to action by
120 the director for injunctive relief provided in Code Section 12-5-381."

121

SECTION 3.

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