

**SB284 INTRODUCED**



1 RBJGNY-1  
2 By Senator Chambliss  
3 RFD: State Governmental Affairs  
4 First Read: 03-May-23  
5  
6 2023 Regular Session



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SYNOPSIS:

This bill would provide for the inspection of certain dams and reservoirs by an engineer who shall submit an accompanying report to the Alabama Department of Environmental Management. The department would serve as a public repository for dam related documents.

This bill would require certain dam owners to notify the department of any new dam construction or enlargement, as well as require certain dam owners to develop and file emergency action plans with the department.

This bill would also provide for a Dam Rehabilitation Loan Program to be used in assisting dam owners in repairing and rehabilitating their dams.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to dam safety; to provide for the inspection of certain dams and reservoirs by an engineer; to provide for the Alabama Department of Environmental Management to serve as a public repository for dam related documents; to require certain dam owners to develop emergency action plans; to require certain dam owners to notify the department of any new



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30 dam construction or enlargement; and to provide for a Dam  
31 Rehabilitation Loan Program.

32 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

33 Section 1. This act shall apply only to state-owned  
34 dams and reservoirs and dams and reservoirs whose owner or  
35 owners have elected to be subject to this act.

36 Section 2. For the purposes of this act, the following  
37 terms have the following meanings:

38 (1) ABANDON or ABANDONMENT. To render a dam  
39 non-impounding by dewatering and filling the reservoir created  
40 by the dam with solid materials, by diverting the natural  
41 drainway around the site, or by removing a portion of a dam to  
42 allow drainage to occur the same, or nearly the same, as  
43 before the construction of the dam.

44 (2) ADVERSE CONSEQUENCES. Negative impacts that may  
45 occur upstream, downstream, or at locations remote from the  
46 dam. The primary concerns are loss of human life, disruption  
47 of public infrastructure, environmental impact, and economic  
48 loss, including property damage.

49 (3) ALTERATIONS or REPAIRS. Alterations or repairs to  
50 an existing dam and appurtenant structures that affect the  
51 safety of the dam or reservoir.

52 (4) APPURTENANT WORKS. The structures or machinery  
53 incident or annexed to a dam that are built to operate,  
54 assist, and maintain a dam. The term includes spillways,  
55 either in the dam or separate therefrom, the reservoir and its  
56 rim, low level outlet works, and water conduits, including  
57 tunnels, pipelines, or penstocks, either through the dam or



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58 its abutments.

59 (5) BREACH. Partial removal of a dam, creating a  
60 channel through the dam to the original stream bottom  
61 elevation.

62 (6) DAM.

63 a. An artificial barrier, including appurtenant works,  
64 with the ability to impound water, wastewater, or liquid borne  
65 materials and to which either of the following apply:

66 1. Is 25 feet or more in height from the natural bed of  
67 the stream or watercourse measured at the downstream toe of  
68 the barrier, or from the lowest elevation of the outside limit  
69 of the barrier, if it is not across a stream channel or  
70 watercourse, to the maximum water storage elevation.

71 2. Has an impounding capacity at maximum water storage  
72 elevation of 50 acre feet or more.

73 b. The term includes a fill or structure for highway or  
74 railroad use or for any other purpose which impounds water.

75 c. This definition does not apply to any barrier not in  
76 excess of six feet in height regardless of storage capacity or  
77 which has a storage capacity at maximum water storage  
78 elevation not greater than 15 acre feet regardless of height,  
79 unless the barrier, due to its location or other physical  
80 characteristics, is classified as a high hazard potential dam.

81 d. This definition does not apply to any dam subject to  
82 the jurisdiction of any other state or federal agency.

83 e. The term does not include any obstruction in a canal  
84 used to raise or lower water.

85 f. This term does not include privately owned dams,



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86 regardless of the hazard designation, unless the owner has  
87 voluntarily elected to participate in the program in  
88 accordance with this act.

89 (7) DAYS. In establishing deadlines, means all calendar  
90 days, including Sundays and holidays.

91 (8) DEPARTMENT. The Alabama Department of Environmental  
92 Management.

93 (9) DIRECTOR. The Director of the Alabama Department of  
94 Environmental Management.

95 (10) EMERGENCY. Includes all conditions leading to or  
96 causing a breach, overtopping, or any other condition of a dam  
97 and its appurtenant structures that may be construed as unsafe  
98 or threatening to life or property.

99 (11) EMERGENCY ACTION PLAN. A plan that identifies the  
100 area that would likely be inundated by the failure of a dam  
101 and the actions that should be taken in the event of a failure  
102 or threatening condition at the dam.

103 (12) ENGINEER. An engineer who has a background in  
104 civil engineering and:

105 a. Is a licensed professional engineer.

106 b. Is competent in areas related to dam investigation,  
107 design, construction, and operation for the type of dam being  
108 investigated, designed, constructed, or operated.

109 c. Has relevant experience in areas such as  
110 investigation, design, construction, reconstruction,  
111 enlargement, repair, alteration, maintenance, operation,  
112 breach, removal, or abandonment of dams.

113 d. Understands adverse dam incidents, failures, and the



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114 potential causes and consequences of failures.

115 e. Continues with necessary training and continuing  
116 education to keep abreast of the state of the practice in dam  
117 safety engineering.

118 (13) ENLARGEMENT. Any change in or addition to an  
119 existing dam or reservoir that raises or may raise the water  
120 storage elevation of the water impounded by the dam.

121 (14) HAZARD POTENTIAL. The possible adverse incremental  
122 consequences that result from the release of water or stored  
123 contents due to failure of the dam or misoperation of the dam  
124 or appurtenances. The hazard potential classification of a dam  
125 does not reflect in any way on the current condition of the  
126 dam and its appurtenant structures, including safety,  
127 structural integrity, or flood routing capacity.

128 (15) HIGH HAZARD POTENTIAL DAM. A dam assigned the high  
129 hazard potential classification where the dam's failure or  
130 misoperation will likely cause loss of human life.

131 (16) LOW HAZARD POTENTIAL DAM. A dam assigned the low  
132 hazard potential classification where failure or misoperation  
133 results in no probable loss of human life and low economic or  
134 environmental losses with those economic losses that do occur  
135 being principally limited to the owner's property.

136 (17) PARTICIPATING OWNER. The state and its  
137 departments, institutions, or agencies that own a dam or  
138 reservoir. The term may also include all of the following that  
139 elect to be included in this definition by written affidavit  
140 delivered to the department:

141 a. Any municipal or quasi-municipal corporation.



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- 142           b. Any county or quasi-county corporation.
- 143           c. Any public utility.
- 144           d. Any district as defined by Section 11-99A-2, Code of  
145 Alabama 1975.
- 146           e. Any person.
- 147           f. The duly authorized agent, lessee, or trustee of any  
148 of the foregoing.
- 149           g. Receivers or trustees appointed by any court for any  
150 of the foregoing.
- 151           (18) PERSON. Any individual, bankruptcy trustee, firm,  
152 association, organization, partnership, business trust,  
153 corporation, LLC, LLP, or company.
- 154           (19) PROBABLE. More likely than not to occur;  
155 reasonably expected; realistic.
- 156           (20) RECONSTRUCTION. Removal and replacement of an  
157 existing dam or a portion thereof.
- 158           (21) REMOVAL. Complete elimination of the dam  
159 embankment or structure to restore the approximate original  
160 topographic contours of the valley.
- 161           (22) RESERVOIR. Any area that contains or will contain  
162 impounded water, wastewater, or liquid-borne materials by  
163 virtue of its having been impounded by a dam. This term does  
164 not include privately owned reservoirs, regardless of the  
165 hazard designation, unless the owner has elected to  
166 participate in the program in accordance with this act.
- 167           (23) SIGNIFICANT HAZARD POTENTIAL DAM. A dam assigned  
168 the significant hazard potential classification where failure  
169 or misoperation results in no probable loss of human life but



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170 can result in major economic loss, environmental damage,  
171 disruption of lifeline facilities, or other issues impacting  
172 public safety and welfare.

173 (24) WATER STORAGE ELEVATION. The maximum elevation of  
174 water surface which can be obtained by the dam or reservoir.

175 Section 3.(a) The department has neither inspection nor  
176 regulatory duty or responsibility.

177 (b) Records pertaining to dams and reservoirs kept by  
178 and in the possession of the department shall be public  
179 documents. The department shall act as a repository to allow  
180 public access to documents related to dams.

181 (c) Nothing in this act shall be construed to relieve a  
182 participating owner or operator of a dam or reservoir of the  
183 legal duties, obligations, or liabilities incident to the  
184 ownership or operation of the dam or reservoir.

185 Section 4. (a) A participating owner shall ensure plans  
186 and specifications for initial construction, reconstruction,  
187 enlargement, alteration, repair, operation, breach,  
188 abandonment, or removal of dams and reservoirs, and the  
189 supervision of the construction of dams and reservoirs shall  
190 be in the charge of an engineer and assisted by qualified  
191 geologists and other specialists as necessary.

192 (b) A participating owner of any dam or reservoir shall  
193 ensure the dam or reservoir is inspected a minimum of once  
194 every two years by an engineer who shall file with the  
195 department a record of the inspection.

196 (c) A participating owner shall notify the department  
197 in writing of the construction or the enlargement of any dam



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198 or reservoir. Plans and specifications signed and sealed by  
199 the design engineer shall accompany the notification.

200 (d) Prior to the transfer of ownership of any dam or  
201 reservoir, the current participating owner shall notify the  
202 department of any proposed change in ownership. The subsequent  
203 owner may elect to continue participating in the inspection  
204 program but may also elect to cease participation with no  
205 penalty.

206 Section 5. (a) It shall be the duty of the inspecting  
207 engineer to assign a hazard potential classification to dams  
208 and reservoirs.

209 (b) In order to protect life and property,  
210 participating owners of high and significant hazard potential  
211 dams and reservoirs shall develop and file with the department  
212 an emergency action plan prepared by an engineer in  
213 consultation with the director of the local emergency  
214 management organization for the county or municipality in  
215 which the dam or reservoir is located which shall be  
216 implemented in the event of an emergency involving that  
217 participating owner's dam or dams. The participating owners of  
218 such dams shall periodically test and update this emergency  
219 action plan. This plan shall include all of the following  
220 elements:

221 (1) Emergency notification plan with flowchart.

222 (2) Statement of purpose.

223 (3) Project description.

224 (4) Emergency detection, evaluation, and  
225 classification.





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254 (c) The Dam Rehabilitation Loan Program may obtain  
255 funds through partnerships with any private or public bonding  
256 or loaning agency or organization.

257 (d) State funding to the Dam Rehabilitation Loan  
258 Program shall not be reduced because of federal funds provided  
259 for a rehabilitation loan program.

260 (e) Monies in the Dam Rehabilitation Loan Program shall  
261 not revert to the State General Fund. Monies in the fund are  
262 exempt from lapsing.

263 Section 7. (a) If the balance of the Dam Rehabilitation  
264 Loan Program exceeds one million dollars (\$1,000,000), no  
265 single loan shall be made for more than 20 percent of the  
266 monies available in the fund. No loan shall be made to any  
267 participating owner that, at the time of the loan application,  
268 has more than 20 percent of the outstanding loans of the fund.

269 (b) The loans granted by the department shall be for a  
270 term of not more than 20 years and the loans shall bear  
271 interest at rates set by the department in the rules.

272 (c) Each loan shall be evidenced by a contract between  
273 the participating owner and the department acting on behalf of  
274 this state. The contract shall provide for the loan by this  
275 state of a stated amount to defray some or all eligible costs.  
276 The contract shall provide for equal annual payments of  
277 principal and interest for the term of the loan.

278 (d) All of the following costs and fees shall be  
279 eligible costs pursuant to subsection (c):

280 (1) Any costs directly related to rehabilitating safety  
281 deficiencies of a dam.



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282 (2) Fees for analysis, feasibility work, alternative  
283 evaluation, and engineering design after construction has been  
284 initiated, or at the point that analysis has shown a dam to be  
285 in compliance.

286 (3) Up to 100 percent of rehabilitation costs for a  
287 dam. Participating owners may use multiple programs or sources  
288 to fund the rehabilitation costs for a dam.

289 (4) Any costs directly related to compliance with other  
290 laws that are above the state's minimum dam safety  
291 requirements.

292 (5) Any costs for state agency-required fish passage,  
293 if the costs are part of an overall rehabilitation project.

294 (e) The department may take mutually agreeable security  
295 interest in the participating owner's property in exchange for  
296 the loan. If the department chooses to take a security  
297 interest in the participating owner's property, the department  
298 shall perfect that security interest by filing appropriate  
299 documentation with the proper authorities.

300 (f) The Attorney General or the department's legal  
301 counsel, with the consent of the department, may commence  
302 whatever actions are necessary to enforce the contract and  
303 achieve repayment of loans provided by the department pursuant  
304 to this act.

305 Section 8. The participating owner's responsibilities  
306 under the Dam Rehabilitation Loan Program shall include all of  
307 the following:

308 (1) As part of the application process, participating  
309 owners must demonstrate the ability to appropriately operate



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310 and maintain the dam after rehabilitation is complete.

311 (2) Once a loan has been granted, creating an operation  
312 and maintenance plan with written, regularly scheduled reports  
313 so as to maintain and keep the structure and its appurtenant  
314 works in the state of repair and operating condition required  
315 by the exercise of prudence; due regard for life or property;  
316 the application of sound and accepted engineering principles;  
317 and applicable rules, guidelines, and policies.

318 (3) As part of any rehabilitation project utilizing  
319 funds from this program, developing an emergency action plan  
320 if one does not currently exist.

321 (4) Cooperating with the department's agents,  
322 engineers, and other employees in the conduct of the statute.

323 (5) Facilitating access to the structure or  
324 appurtenance.

325 (6) Furnishing, upon request, the plans,  
326 specifications, operating and maintenance data, or other  
327 information that is pertinent to the structure, appurtenance,  
328 and loan.

329 Section 9. The following general loan guidelines apply:

330 (1) Participating owners of dams without taxing  
331 authority shall be allowed to participate in the Dam  
332 Rehabilitation Loan Program.

333 (2) Complete rehabilitations are to be encouraged, but  
334 phased projects can be funded.

335 (3) Removal of dams as a rehabilitation alternative  
336 shall be allowed.

337 (4) Participating owners are allowed to partner with an



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338 individual, local agency, or organization for purposes of the  
339 loan and for purposes of operation and maintenance.

340 (5) Rehabilitation projects that are in compliance with  
341 state statutes and rules, and are permitted, accepted, and  
342 approved by the department are eligible to be funded through  
343 the Dam Rehabilitation Loan Program.

344 (6) Costs for lake enhancement projects such as lake  
345 dredging, sediment removal projects, or boat ramps, which do  
346 not enhance the safety of the dam, are not eligible to be  
347 funded through the Dam Rehabilitation Loan Program.

348 (7) For dams and reservoirs for which a loan has been  
349 applied for, the department and its agents, engineers, and  
350 other employees may enter upon the land on which the dam is  
351 located or water which forms the reservoir without a search  
352 warrant or liability for trespass.

353 (8) This act does not create a liability for damages  
354 against the department, its officers, agents, and employees  
355 caused by or arising out of any of the following:

356 a. The construction, maintenance, operation, or failure  
357 of a dam or appurtenant works.

358 b. The issuance and enforcement of an order or a rule  
359 issued by the department to carry out the department's duties.

360 (9) The state does not assume ownership obligations,  
361 responsibilities, or liabilities if a participating owner  
362 defaults on a loan.

363 Section 10. The department shall adopt rules as  
364 necessary to implement and administer this act.

365 Section 11. This act shall become effective on the



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366 first day of the third month following its passage and  
367 approval by the Governor, or its otherwise becoming law.  
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