

**SB39 ENGROSSED**



1 SB39  
2 RRI4MNM-2  
3 By Senator Chambliss  
4 RFD: State Governmental Affairs  
5 First Read: 06-Feb-24



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A BILL  
TO BE ENTITLED  
AN ACT

Relating to dam safety; to amend Sections 2, 3, and 5 of Act 2023-414, 2023 Regular Session, now appearing as Sections 33-7-71, 33-7-72, and 33-7-74, Code of Alabama 1975, to provide safety procedures for state-owned dams and reservoirs whose owners have elected to be subject to these procedures.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 2, 3, and 5 of Act 2024-414, 2023 Regular Session, now appearing as Sections 33-7-71, 33-7-72, and 33-7-74, Code of Alabama 1975, are amended to read as follows:

"§33-7-71

For the purposes of this article, the following terms have the following meanings:

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



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29 (2) ADVERSE CONSEQUENCES. Negative impacts that may  
30 occur upstream, downstream, or at locations remote from the  
31 dam. The primary concerns are loss of human life, disruption  
32 of public infrastructure, environmental impact, and economic  
33 loss, including property damage.

34 (3) ALTERATIONS or REPAIRS. Alterations or repairs to  
35 an existing dam and appurtenant ~~structures~~ works that affect  
36 the safety of the dam or reservoir.

37 (4) APPURTENANT WORKS. The structures or machinery  
38 incident or annexed to a dam whose purpose is to operate,  
39 assist, and maintain a dam. The term includes spillways,  
40 either in the dam or separate therefrom, the reservoir and its  
41 rim, low level outlet works, and water conduits, including  
42 tunnels, pipelines, or penstocks, either through the dam or  
43 its abutments.

44 (5) BREACH. Partial removal of a dam, creating a  
45 channel through the dam to the original stream bottom  
46 elevation.

47 (6) DAM.

48 a. An artificial barrier, including appurtenant works,  
49 with the ability to impound water, wastewater, or liquid-borne  
50 materials and to which either of the following apply:

51 1. Is 25 feet or more in height from the natural bed of  
52 the stream or watercourse measured at the downstream toe of  
53 the barrier, or from the lowest elevation of the outside limit  
54 of the barrier, if it is not across a stream channel or  
55 watercourse, to the maximum water storage elevation.

56 2. Has an impounding capacity at maximum water storage



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57 elevation of 50 acre feet or more.

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

60           c. This definition does not apply to any barrier not in  
61 excess of six feet in height regardless of storage capacity or  
62 which has a storage capacity at maximum water storage  
63 elevation not greater than 15 acre feet regardless of height,  
64 unless the barrier, due to its location or other physical  
65 characteristics, is classified as a high hazard potential dam.

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

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

70           f. This term does not include privately owned dams,  
71 regardless of the hazard designation, unless the owner has  
72 voluntarily elected to participate in the program in  
73 accordance with this article.

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

76           (8) EMERGENCY. ~~Includes all~~ All conditions leading to  
77 or causing a breach, overtopping, or any other condition of a  
78 dam and its appurtenant ~~structures~~ works that may be construed  
79 as unsafe or threatening to life or property.

80           (9) EMERGENCY ACTION PLAN. A plan that identifies the  
81 area that would likely be inundated by the failure of a dam  
82 and the actions that should be taken in the event of a failure  
83 or threatening condition at the dam.

84           (10) ENGINEER. An engineer who has a background in



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85 civil engineering and who satisfies all of the following:

86 a. Is a licensed professional engineer.

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

90 c. Has relevant experience in areas such as  
91 investigation, design, construction, reconstruction,  
92 enlargement, repair, alteration, maintenance, operation,  
93 breach, removal, or abandonment of dams.

94 d. Understands adverse dam incidents, failures, and the  
95 potential causes and consequences of failures.

96 e. Continues with necessary training and continuing  
97 education to keep abreast of the state of the practice in dam  
98 safety engineering.

99 (11) ENLARGEMENT. Any change in or addition to an  
100 existing dam or reservoir that raises or may raise the water  
101 storage elevation of the water impounded by the dam.

102 (12) HAZARD POTENTIAL. The possible incremental adverse  
103 ~~incremental~~ consequences that result from the release of water  
104 or stored contents due to failure of the dam or misoperation  
105 of the dam or ~~appurtenances~~ appurtenant works. The hazard  
106 potential classification of a dam does not reflect in any way  
107 on the current condition of the dam and its appurtenant  
108 ~~structures~~ works, including safety, structural integrity, or  
109 flood routing capacity.

110 (13) HIGH HAZARD POTENTIAL DAM. A dam assigned the high  
111 hazard potential classification where the dam's failure or  
112 misoperation will likely cause loss of human life.



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113 (14) LOCAL EMERGENCY MANAGEMENT AGENCY. The local  
114 emergency management organization that has jurisdiction over  
115 the area in which a dam or reservoir is located.

116 (15) LOW HAZARD POTENTIAL DAM. A dam assigned the low  
117 hazard potential classification where failure or misoperation  
118 results in no probable loss of human life and low economic or  
119 environmental losses with those economic losses that do occur  
120 being principally limited to the owner's property.

121 (16) PARTICIPATING OWNER. Any of the following that  
122 elect to be included in this definition by written affidavit  
123 delivered to the local emergency management agency:

- 124 a. Any municipal or quasi-municipal corporation.
- 125 b. Any county or quasi-county corporation.
- 126 c. Any public utility.
- 127 d. Any district as defined by Section 11-99A-2.
- 128 e. Any person.
- 129 f. The duly authorized agent, lessee, or trustee of any  
130 entity described in paragraphs a. through e.
- 131 g. Receivers or trustees appointed by any court for any  
132 entity described in paragraphs a. through e.

133 h. This state and any department, board, commission,  
134 institution, or agency thereof that voluntarily elects to be  
135 subject to this article.

136 (17) PERSON. Any individual, bankruptcy trustee, firm,  
137 association, organization, partnership, business trust,  
138 corporation, limited liability corporation, limited liability  
139 partnership, or company.

140 (18) PROBABLE. More likely than not to occur;



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141 reasonably expected; realistic.

142 (19) RECONSTRUCTION. Removal and replacement of an  
143 existing dam or a portion thereof.

144 (20) REMOVAL. Complete elimination of the dam  
145 embankment or structure to restore the approximate original  
146 topographic contours of the valley.

147 (21) RESERVOIR. Any area that contains or will contain  
148 impounded water, wastewater, or liquid-borne materials by  
149 virtue of its having been impounded by a dam. This term does  
150 not include privately owned reservoirs, regardless of the  
151 hazard designation, unless the owner has elected to  
152 participate in the program in accordance with this article.

153 (22) SIGNIFICANT HAZARD POTENTIAL DAM. A dam assigned  
154 the significant hazard potential classification where failure  
155 or misoperation results in no probable loss of human life but  
156 can result in major economic loss, environmental damage,  
157 disruption of lifeline facilities, or other issues impacting  
158 public safety and welfare.

159 (23) STATE-OWNED DAM OR RESERVOIR. Any dam or reservoir  
160 that is owned by this state or a department, board,  
161 commission, institution, or agency thereof.

162 ~~(23)~~ (24) WATER STORAGE ELEVATION. The maximum elevation  
163 of water surface which can be obtained by the dam or  
164 reservoir."

165 "§33-7-72

166 (a) A participating owner shall ensure plans and  
167 specifications for initial construction, reconstruction,  
168 enlargement, alteration, repair, operation, breach,



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169 abandonment, or removal of dams and reservoirs, and the  
170 supervision of the construction of dams and reservoirs shall  
171 be in the charge of an engineer and assisted by qualified  
172 geologists and other specialists as necessary.

173 (b) A participating owner of any dam or reservoir shall  
174 ensure the dam or reservoir is inspected a minimum of once  
175 every ~~two~~ four years by an engineer. The engineer shall  
176 certify to the local emergency management agency that the  
177 inspection has been completed and deliver a record of the  
178 inspection to the owner.

179 (c) A participating owner shall notify the local  
180 emergency management agency in writing of the construction or  
181 the enlargement of any dam or reservoir. Plans and  
182 specifications shall be signed and sealed by the design  
183 engineer.

184 (d) Upon the transfer of ownership of any dam or  
185 reservoir, the current participating owner shall notify the  
186 local emergency management agency. The subsequent owner may  
187 elect to continue participating in the inspection program but  
188 may also elect to cease participation with no penalty.

189 (e) A participating owner of a state-owned dam or  
190 reservoir shall submit a written affidavit to the local  
191 emergency management agency for each state-owned dam or  
192 reservoir elected to be subject to this article.

193 (f) Notwithstanding any other provision of this  
194 article, a state-owned dam or reservoir that is subject to  
195 this article shall be inspected a minimum of once every four  
196 years by an engineer, so long as sufficient funds have been





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197 appropriated by the Legislature to, or sufficient relevant  
198 grant funds have been obtained by, the participating owner of  
199 the state-owned dam or reservoir. The engineer shall certify  
200 to the local emergency management agency that the inspection  
201 has been completed and deliver a record of the inspection to  
202 the owner."

203 "§33-7-74

204 (a) The local emergency management agency has neither  
205 inspection nor regulatory duty or responsibility.

206 (b) Records pertaining to dams and reservoirs kept by  
207 and in the possession of the local emergency management agency  
208 shall not be public documents.

209 (c) Nothing in this article shall be construed to  
210 relieve a participating owner or operator of a dam or  
211 reservoir of the legal duties, obligations, or liabilities, or  
212 to waive any immunity, incident to the ownership or operation  
213 of the dam or reservoir."

214 Section 2. This act shall become effective on October  
215 1, 2024.



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218 Senate

219 Read for the first time and referred .....06-Feb-24  
220 to the Senate committee on State  
221 Governmental Affairs  
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223 Read for the second time and placed .....07-Feb-24  
224 on the calendar:  
225 1 amendment  
226  
227 Read for the third time and passed .....08-Feb-24  
228 as amended  
229 Yeas 32  
230 Nays 0  
231 Abstains 1  
232  
233

Patrick Harris,  
Secretary.

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