

SENATE BILL No. 242

March 9, 1989, Introduced by Senators EHLERS, ARTHURHULTZ, GAST, CHERRY and BINSFELD and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to regulate the construction, reconstruction, repair, alteration, removal, abandonment, and operation of dams; to provide for the inspection of dams; to provide for protection of natural resources and the public trust; to provide the powers and duties of certain state agencies; to prescribe remedies and penalties; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "dam safety act".

3 Sec. 3. For purposes of this act, the words and phrases
4 defined in sections 5 to 11 have the meanings ascribed to them in
5 those sections.

6 Sec. 5. (1) "Abandonment" means an act on the part of an
7 owner to discontinue maintenance or operation of a dam.

1 (2) "Administrative procedures act of 1969" means Act
2 No. 306 of the Public Acts of 1969, being sections 24.201 to
3 24.328 of the Michigan Compiled Laws.

4 (3) "Alteration" means a change in the design of an existing
5 dam that directly affects or may directly affect the structural
6 integrity of a dam.

7 (4) "Appurtenant works" means the structure or machinery
8 incident to or annexed to a dam that is built to operate and
9 maintain a dam, including spillways, either in a dam or separate
10 from the dam; low level outlet works; and water conduits such as
11 tunnels, pipelines, or penstocks, located either through the dam
12 or through the abutments of the dam.

13 (5) "Auxiliary spillway" means a secondary spillway which is
14 operational at all times and does not require stoplog removal or
15 gate manipulation.

16 (6) "Dam" means an artificial barrier, including dikes,
17 embankments, and appurtenant works, that impounds, diverts, or is
18 designed to impound or divert water, or water and any other
19 liquid or material in the water, and that is or will, when com-
20 plete, be 6 feet or more in height and that has or will have an
21 impounding capacity at design flood elevation of 5 surface acres
22 or more. Dam does not include a storage or processing tank or
23 standpipe constructed of steel or concrete, a roadway embankment
24 not designed to impound water, or a dug pond where there is no
25 impoundment of water or waste materials containing water at
26 levels above adjacent natural grade levels.

1 (7) "Days" means calendar days, including Sundays and
2 holidays.

3 (8) "Department" means the department of natural resources.

4 (9) "Design flood" means the design flowrate for spillway
5 capacity and dam height design.

6 (10) "Design flood elevation" means the maximum flood eleva-
7 tion that is considered in the design of the spillway capacity
8 and freeboard for a dam.

9 (11) "Director" means the director of the department of nat-
10 ural resources.

11 (12) "Downstream toe elevation" means the elevation of the
12 lowest point of intersection between the downstream slope of an
13 earthen embankment and the natural ground.

14 Sec. 7. (1) "Emergency action plan" means a plan developed
15 by the owner that establishes procedures for notification of the
16 department, public off-site authorities, and other agencies of
17 the emergency actions to be taken prior to and following an
18 impending or actual failure of a dam.

19 (2) "Enlargement" means any change in or addition to an
20 existing dam which raises or may raise the design flood elevation
21 of the water impounded by the dam.

22 (3) "Failed dam" means a dam not capable of impounding water
23 at its intended level due to a structural deficiency.

24 (4) "Failure" means an incident resulting in an unplanned or
25 uncontrolled release of water from a dam.

1 (5) "Flood of record" means the greatest flow rate
2 determined by the department to have occurred at a particular
3 location.

4 (6) "Freeboard" means the vertical distance between the
5 design flood elevation and the lowest point of the top of the
6 dam.

7 (7) "Half probable maximum flood" means the largest flood
8 which may reasonably occur over a watershed which is derived from
9 the combination of hydrologic runoff parameters and the half
10 probable maximum storm which produces the maximum runoff.

11 (8) "Half probable maximum storm" means the spatial and tem-
12 poral distribution of the probable maximum precipitation, divided
13 by 2, which produces the maximum volume of precipitation over a
14 watershed.

15 (9) "Hazard potential classification" means a reference to
16 the potential for loss of life, property damage, and environmen-
17 tal damage in the area downstream of a dam in the event of fail-
18 ure of the dam or appurtenant works.

19 (10) "Height" means the difference in elevation measured
20 vertically between the natural bed of a stream or watercourse at
21 the downstream toe of the dam, or, if it is not across a stream
22 channel or watercourse, from the lowest elevation of the down-
23 stream toe of the dam to the design flood elevation or to the
24 lowest point of the top of the dam, whichever is less.

25 (11) "High hazard potential dam" means a dam located in an
26 area where a failure may cause serious damage to inhabited homes,
27 agricultural buildings, campgrounds, recreational facilities,

1 industrial or commercial buildings, public utilities, main
2 highways or class I carrier railroads, or where environmental
3 degradation would be significant, or where danger to individuals
4 exists with the potential for loss of life.

5 Sec. 9. (1) "Impoundment" means the water held back by a
6 dam.

7 (2) "Local unit of government" means a city, village, town-
8 ship, or county.

9 (3) "Low hazard potential dam" means a dam located in an
10 area where failure may cause damage limited to agriculture, unin-
11 habited buildings, structures, or township or county roads, where
12 environmental degradation would be minimal and danger to individ-
13 uals is slight or nonexistent.

14 (4) "Maintenance" means the upkeep of a dam and its appurte-
15 nant works but does not include alterations or repairs.

16 (5) "One-hundred year flood" means a flood which has a 1%
17 chance of being equaled or exceeded in any given year.

18 (6) "Owner" means a person who owns, leases, controls, oper-
19 ates, maintains, manages, or proposes to construct a dam.

20 (7) "Person" means an individual, partnership, corporation,
21 association, political subdivision of the state, the department
22 or other instrumentality or agency of the state, or other legal
23 entity.

24 (8) "Probable maximum precipitation" means the theoretically
25 greatest depth of precipitation for a given duration that is
26 physically possible over a given size storm area at a particular
27 geographic location at a certain time of year.

1 Sec. 11. (1) "Removal" means the physical elimination of a
2 dam or impoundment.

3 (2) "Repair" means to substantially restore a dam to its
4 original condition and includes only such restoration as may
5 directly affect the structural integrity of the dam.

6 (3) "Riparian owner" means a person who has riparian
7 rights.

8 (4) "Riparian rights" means rights which accrue by operation
9 of law to a landowner on the banks of an inland lake or stream.

10 (5) "Rule" means a rule promulgated pursuant to the adminis-
11 trative procedures act of 1969.

12 (6) "Significant hazard potential dam" means a dam located
13 in an area where its failure may cause damage limited to isolated
14 inhabited homes, agricultural buildings, structures, secondary
15 highways, short line railroads, or public utilities, where envi-
16 ronmental degradation may be significant, or where danger to
17 individuals exists.

18 (7) "Spillway" means a waterway in or about a dam designed
19 for the discharge of water.

20 (8) "Spillway capacity" means the maximum rate of discharge
21 which will pass through a spillway at design flood elevation.

22 (9) "Two-hundred year flood" means a flood which has a 0.5%
23 chance of being equaled or exceeded in any given year.

24 Sec. 13. (1) Except as otherwise provided in subsections
25 (2) and (3), dams and impoundments in the state are under the
26 jurisdiction of the department.

(2) The following are exempt from this act:

(a) Projects licensed, or projects for which an application for licensure has been filed, under the federal power act, chapter 285, 41 Stat. 1063, 16 U.S.C. 791a to 793, 796 to 797, 798 to 818, 820 to 824a, and 824b to 825r, if federal dam safety inspection provisions apply during the license period and the inspection reports are provided to the department.

(b) Projects located on boundary waters under the jurisdiction and supervision of the United States army corps of engineers.

(c) Impoundments licensed pursuant to the solid waste management act, Act No. 641 of the Public Acts of 1978, being sections 299.401 to 299.437 of the Michigan Compiled Laws, that contain or are designed to contain type III wastes as defined in rules promulgated under that act.

(3) For 3 years commencing December 28, 1988, a permit shall not be required under this act for the repair, reconstruction, or improvement of a dam located in Everett township, Newaygo county, and/or a dam located in the village of Luther, Lake county, which is 75 years old if the dam was damaged or destroyed by an act of God in 1986. However, a person who is performing a project for the repair, reconstruction, or improvement of a dam that is exempt from obtaining a permit under this subsection shall submit to the department and the joint capital outlay committee plans and specifications for the project. These plans and specifications shall be prepared by a licensed professional engineer and shall meet acceptable standards in the industry and must be

1 approved by the joint capital outlay committee in order for a dam
2 to be repaired, reconstructed, or improved. In reviewing for
3 approval plans and specifications for the project, the joint cap-
4 ital outlay committee may require environmental considerations to
5 protect water quality such as underspill devices, minimum flow
6 releases and removal of contaminated sediments that may be resus-
7 pended in the water column upon impoundment. Such contaminated
8 sediments shall be disposed of in accordance with state law.

9 Sec. 15. (1) A person shall not construct, enlarge, repair,
10 reconstruct, alter, remove, or abandon any dam except in a manner
11 provided for in this act.

12 (2) This section does not apply to maintenance performed on
13 a dam that does not affect the structural integrity of the dam.

14 Sec. 17. (1) The department shall employ professional,
15 technical, clerical, and other assistants as are necessary to
16 carry out this act.

17 (2) A licensed professional engineer shall prepare all plans
18 and specifications, except for minor projects undertaken pursuant
19 to section 27.

20 Sec. 19. (1) Except as otherwise provided in this act, a
21 person shall not commence any of the following activities unless
22 that person has a valid permit issued by the department under
23 this act:

24 (a) Construction of a new dam.

25 (b) Enlargement of a dam or an impoundment.

26 (c) Repair of a dam.

1 (d) Alteration of a dam.

2 (e) Removal of a dam.

3 (f) Abandonment of a dam.

4 (g) Reconstruction of a failed dam.

5 (2) A person desiring to perform any of the activities
6 listed in subsection (1) shall apply to the department on a form
7 prescribed by the department and shall provide information that
8 the department determines is necessary for the administration of
9 this act. If a project includes activities at multiple loca-
10 tions, 1 application may be filed for the combined activities.

11 (3) An application for a permit for construction of a new
12 dam, reconstruction of a failed dam, or enlargement of a dam
13 shall be accompanied by the following fees:

14 (a) For a dam with a height of 6 feet or more but less than
15 10 feet, \$250.00.

16 (b) For a dam with a height of 10 feet or more but less than
17 20 feet, \$500.00.

18 (c) For a dam with a height of 20 feet or more, \$1,000.00.

19 (4) A fee for a permit shall be deposited in the state trea-
20 sury to the credit of the general fund and shall be available for
21 appropriation to the department to be used to defray the cost of
22 reviewing plans and specifications and field inspections to
23 determine compliance with permits issued under this act.

24 (5) An application for a permit for the repair, alteration,
25 removal, or abandonment of a dam shall be accompanied by a fee of
26 \$25.00 which shall be deposited in the state treasury and
27 credited to the general fund. If a similar application fee from

1 the department is required under the authority of the inland
2 lakes and streams act of 1972, Act No. 346 of the Public Acts of
3 1972, being sections 281.951 to 281.965 of the Michigan Compiled
4 Laws, or the Goemaere-Anderson wetland protection act, Act
5 No. 203 of the Public Acts of 1979, being sections 281.701 to
6 281.722 of the Michigan Compiled Laws, the fee under this subsec-
7 tion is waived.

8 (6) The department shall waive the fees under this section
9 for applications from federal agencies, state agencies, local
10 units of government, and department sponsored projects located on
11 public lands.

12 Sec. 21. (1) A person who wants to be notified of pending
13 applications for permits issued under this act may make a written
14 request to the department, accompanied by an annual fee of
15 \$25.00. The fee shall be deposited in the state treasury and
16 credited to the general fund.

17 (2) The department shall prepare a biweekly list of the
18 applications made during the previous biweekly period and shall
19 promptly mail copies of the list for the remainder of the calen-
20 dar year to the persons who have requested notice and paid the
21 fee under this section.

22 (3) The biweekly list shall state the name and address of
23 each applicant, the legal description of the lands included in
24 the applicant's project, and a summary statement of the purpose
25 of the project.

26 Sec. 23. (1) Upon receipt of an application for a permit
27 under this act, the department shall submit copies of the

1 application accompanied by a statement indicating that the
2 department may act upon the application without a public hearing
3 unless a written request is filed with the department within 20
4 days after the submission for review. The department shall
5 submit copies of the application to all of the following:

6 (a) The local unit of government where the project is to be
7 located.

8 (b) The adjacent riparian owners.

9 (c) Any person considered appropriate by the department.

10 (d) Any person who requests copies.

11 (e) A watershed council, organized pursuant to the local
12 river management act, Act No. 253 of the Public Acts of 1964,
13 being sections 323.301 to 323.320 of the Michigan Compiled Laws,
14 of the watershed within which the project is located or to be
15 located.

16 (2) The department may hold a public hearing upon the writ-
17 ten request of all of the following:

18 (a) An applicant.

19 (b) A riparian owner.

20 (c) A person or local unit of government that is entitled to
21 receive a copy of the application pursuant to subsection (1).

22 (3) A public hearing held pursuant to this section shall be
23 held in compliance with the open meetings act, Act No. 267 of the
24 Public Acts of 1976, being sections 15.261 to 15.275 of the
25 Michigan Compiled Laws. Public notice of the time, date, and
26 place of the hearing shall be given in the manner provided by
27 that act. Additionally, the department shall mail copies of the

1 public notice to the persons who have requested the biweekly list
2 pursuant to section 21, the person requesting the hearing, and
3 the persons and local units of government which are entitled to
4 receive a copy of the application pursuant to subsection (1).

5 Sec. 25. (1) The department shall grant or deny a permit
6 within 60 days after the submission of a complete application, or
7 within 120 days after the submission of a complete application if
8 a public hearing is held. If a permit is denied, the department
9 shall provide to the applicant a concise written statement of the
10 reasons for the denial of the permit. If it appears that a minor
11 modification of the application would result in the granting of
12 the permit, the nature of the modification shall be included in
13 the written statement.

14 (2) When immediate action is necessary to protect the struc-
15 tural integrity of a dam, the department may issue a permit
16 before the expiration of the 20-day period referred to in section
17 23(1). This subsection does not prohibit an owner from taking
18 action necessary to mitigate emergency conditions if imminent
19 danger of failure exists.

20 Sec. 27. (1) The department shall promulgate rules to
21 establish minor project categories for alterations and repairs
22 that have minimal effect on the structural integrity of a dam.
23 The department may act upon an application and grant a permit for
24 an activity or project within a minor project category after an
25 on-site inspection of the dam without providing public notice.

26 (2) All other provisions of this act shall be applicable to
27 minor projects except that a final inspection by the department

1 or certification of the project by a licensed professional
2 engineer shall not be required for a project completed under a
3 permit granted pursuant to subsection (1).

4 Sec. 29. The department shall not issue a permit under this
5 act unless it determines, after a review of the application sub-
6 mitted, that the proposed activity for which a permit is
7 requested will not have a significant adverse effect on public
8 health, safety, welfare, property, or natural resources or the
9 public trust in those natural resources.

10 Sec. 31. (1) Except as otherwise provided in this section,
11 a permit issued by the department under this act shall require
12 that plans and specifications be approved by the department
13 before construction begins. The permitted activity shall be com-
14 pleted within a specified time not to exceed 2 years after the
15 date of issuance of the permit. Upon the written application of
16 the permittee, and for good cause shown, the department may
17 extend the time for completing construction. The permittee shall
18 notify the department at least 10 days before beginning construc-
19 tion and shall otherwise notify the department as the department
20 may require.

21 (2) A change in plans and specifications shall not be imple-
22 mented unless the department gives its prior approval.

23 (3) A permit is effective for the length of time specified
24 in the permit unless it is revoked pursuant to this act. The
25 department may renew a permit.

26 (4) A permit may specify the terms and conditions including,
27 but not limited to, requirements for minimum flows, fish passage,

1 cold water release, impoundment fluctuations, portage,
2 contingency plans, and conditions under which the work is to be
3 performed. The terms and conditions of a permit shall be effec-
4 tive for the life of the project. The department may consider,
5 in issuing a permit, any mitigating measures in conjunction with
6 the permitted activities.

7 (5) A permit to construct a new dam or reconstruct a failed
8 dam may require a performance bond to assure completion of the
9 project or to provide for complete or partial restoration of the
10 project site, as determined by the department in rules promul-
11 gated by the department.

12 (6) A permit to construct a new dam or reconstruct a failed
13 dam may require the owner to establish an escrow account or per-
14 formance bond that will provide sufficient funds to remove the
15 dam and to remove or stabilize sediments accumulated in the
16 impoundment after the dam has outlived the use for which it was
17 permitted. The department shall promulgate rules relative to the
18 requirements of an escrow account or performance bond as
19 described in this subsection. A dam regulated under Act No. 92
20 of the Public Acts of 1970, being sections 425.181 to 425.188 of
21 the Michigan Compiled Laws, is exempt from the requirements of
22 this subsection.

23 (7) A permit may be suspended, revoked, annulled, withdrawn,
24 recalled, canceled, or amended after a hearing for a violation of
25 any of its provisions, a violation of this act, a violation of a
26 rule promulgated under this act, or any misrepresentation
27 contained in the application. Hearings shall be conducted by the

1 department in accordance with the provisions for contested cases
2 in the administrative procedures act of 1969.

3 Sec. 33. (1) Spillway capacity shall meet the following
4 minimum criteria:

5 (a) Low hazard potential dams shall be capable of passing
6 the 100-year flood, or the flood of record, whichever is
7 greater.

8 (b) Significant hazard potential dams shall be capable of
9 passing the 200-year flood, or the flood of record, whichever is
10 greater.

11 (c) High hazard potential dams, less than 40 feet in height,
12 as measured from the 200-year design flood elevation to the
13 lowest downstream toe elevation, shall be capable of passing the
14 200-year flood, or the flood of record, whichever is greater.

15 (d) High hazard potential dams, 40 feet or greater in
16 height, as measured from the 200-year design flood elevation to
17 the lowest downstream toe elevation, shall be capable of passing
18 the half probable maximum flood. The half probable maximum flood
19 criterion may be reduced to not less than the 200-year flood,
20 with proper documentation evidencing a failure of a dam under
21 half probable maximum flood conditions will not cause additional
22 flood damage or loss of life.

23 (e) Spillway design capacity shall not be less than the
24 flood of record.

25 (2) Freeboard shall be considered when determining spillway
26 capacity.

1 (3) If a dam cannot pass the design flood, an auxiliary
2 spillway must be provided. The owner must document, to the
3 satisfaction of the department, that the dam has sufficient
4 spillway capacity, and that proper means are available to operate
5 the spillway or spillways during the design flood.

6 Sec. 35. (1) Except for minor projects authorized pursuant
7 to section 27, the owner shall do both of the following:

8 (a) Not less than 10 days after the completion of a new,
9 reconstructed, enlarged, repaired, or altered dam, notify the
10 department of its completion.

11 (b) Not less than 20 days after submitting the notice of
12 completion, file with the department as-built plans and a state-
13 ment signed by a licensed professional engineer certifying that
14 the project was constructed in conformance with plans and speci-
15 fications approved by the department.

16 (2) The department may inspect the project and shall provide
17 the owner with written notice of final approval if the project is
18 determined to have been completed in accordance with approved
19 plans, specifications, and permit conditions.

20 (3) If the project is determined not to be completed in
21 accordance with plans and specifications approved by the depart-
22 ment and permit conditions, the department may take enforcement
23 action as provided in this act.

24 Sec. 37. (1) An owner shall submit to the department
25 inspection reports that are prepared by a licensed professional
26 engineer which evaluate the condition of the dam. The inspection
27 report shall be submitted as follows:

1 (a) Not less than once every 3 years for high hazard
2 potential dams.

3 (b) Not less than once every 4 years for significant hazard
4 potential dams.

5 (c) Not less than once every 5 years for low hazard poten-
6 tial dams.

7 (2) The department shall determine the hazard potential
8 classification of all dams and shall establish an inspection
9 schedule. The inspection schedule shall require annual submis-
10 sion of inspection reports for approximately 1/3 of all high
11 hazard potential dams, 1/4 of all significant hazard potential
12 dams, and 1/5 of all low hazard potential dams. The department
13 shall notify owners in writing when inspection reports are due.
14 The department may order additional inspection reports following
15 an event or change in condition that could threaten a dam.

16 (3) An inspection report required by this section shall
17 include, at a minimum, all of the following:

18 (a) An evaluation of the dam's condition, spillway capacity,
19 and operational adequacy.

20 (b) An evaluation of whether the dam is a danger to public
21 health, safety, welfare, property, or natural resources or the
22 public trust in those natural resources.

23 (c) Recommendations for maintenance, repair, and alterations
24 of a dam as are necessary to ensure its safety.

25 (4) Instead of engaging a licensed professional engineer to
26 prepare an inspection report, local units of government may
27 request the department to conduct a visual inspection of a dam

1 owned by that local unit of government and prepare a report on
2 the condition of the dam in accordance with subsection (3).

3 (5) If an inspection report discloses the need for a more
4 detailed investigation or evaluation of certain dam features for
5 the purpose of determining the condition of the dam and the
6 impact on natural resources due to its operation or failure, the
7 department may order the completion and submission of such a
8 detailed investigation or evaluation at the expense of the
9 owner. An investigation or evaluation required under this sub-
10 section shall be conducted under the supervision of a licensed
11 professional engineer.

12 (6) If an owner, other than the state or a local unit of
13 government, does not submit an inspection report as required by
14 subsection (1) or additional investigations if required by
15 subsection (5), the department may cause such a report to be pre-
16 pared and recover the costs of preparing the report in a civil
17 action commenced in a court of competent jurisdiction.

18 (7) If, based on the findings and recommendations of the
19 inspection report and an inspection by the department, the
20 department finds that a condition exists which endangers a dam,
21 it shall order the owner to take actions that the department con-
22 sidered necessary to alleviate the danger and protect public
23 health, safety, welfare, property, or natural resources or the
24 public trust in those natural resources.

25 Sec. 39. (1) Where significant environmental damage, or
26 damage to persons or property occurs or is anticipated to occur
27 due to the operation of a dam, the department may order the dam

1 owner to limit dam operations for the purpose of protecting the
2 public health, safety, welfare, property, and natural resources
3 or the public trust in those natural resources. These orders may
4 include, but are not limited to, minimum flow releases from dams,
5 impoundment fluctuation restrictions, or requirements for
6 run-of-the-river operation. In issuing these orders, the depart-
7 ment shall take into account social, economic, and public trust
8 values.

9 (2) Where significant adverse environmental impacts, or
10 damage to persons or property, or both, occur as a result of the
11 operation, condition, or existence of a dam, the department may
12 order the removal of the dam following a determination by the
13 department, that, due to the continued operation, condition, or
14 existence of the dam, the dam is likely to continue to cause sig-
15 nificant adverse effects to the environment or damage to persons
16 or property, or both. In issuing a removal order, the department
17 shall take into account social, economic, and public trust
18 values. The department shall not issue a removal order involving
19 a dam subject to the regulatory authority of the Michigan public
20 service commission or the federal energy regulatory commission
21 unless that commission has concurred in writing with the order.

22 (3) Prior to finalizing such an order under this section,
23 the department shall provide an owner an opportunity for a hear-
24 ing pursuant to the administrative procedures act of 1969.

25 Sec. 41. (1) The owner, or his or her agent, shall advise
26 the department and the affected off-site public authorities and
27 safety agencies of any sudden or unprecedented flood or unusual

1 or alarming circumstance or occurrence existing or anticipated
2 that may affect the safety of the dam within 24 hours of the
3 flood, circumstance, or occurrence.

4 (2) The owner shall notify the department as soon as possi-
5 ble of any necessary emergency drawdowns, repairs, breaching, or
6 other action being taken in response to an emergency condition.

7 Sec. 43. (1) The director may issue emergency orders as
8 provided in this section. The director may, by written notice,
9 order an owner to immediately repair, draw down, breach, or cease
10 operation of a dam where a dam is in imminent danger of failure
11 and is causing or threatening to cause harm to public health,
12 safety, welfare, property, or the natural resources or the public
13 trust in those natural resources. If an owner fails to comply
14 with an order, or is unavailable or unable to be contacted, then
15 the department may undertake immediate repair, drawdown, breach-
16 ing, or cessation of operation, as may be necessary to alleviate
17 the danger, and may recover the costs incurred from the owner in
18 a civil action commenced in a court of competent jurisdiction.
19 The director may terminate an emergency order upon a determina-
20 tion in writing that all necessary emergency actions have been
21 complied with by the owner and that an emergency no longer
22 exists.

23 (2) When ordering emergency actions under subsection (1),
24 the department may specify maximum drawdown level and discharge
25 rates and require sediment surveys, water quality sampling, moni-
26 toring, or any other action determined necessary by the
27 department to insure adequate protection of the public health,

1 safety, welfare, property, or natural resources or the public
2 trust in those natural resources. The department may modify the
3 requirements of an emergency order if, during the conduct of
4 ordered actions, it determines that the modification is necessary
5 to protect the public health, safety, welfare, property, or natu-
6 ral resources or the public trust in those natural resources.

7 (3) Upon the issuance of an emergency order, the department
8 shall provide the owner with an opportunity for a hearing pursu-
9 ant to the administrative procedures act of 1969 within 15 days
10 of the date of its issuance. At the hearing, the department
11 shall determine, based on information and fact, if the emergency
12 order shall be continued, modified, or suspended as necessary to
13 protect public health, safety, welfare, property, or natural
14 resources or the public trust in those natural resources.

15 Sec. 45. The department may make, or cause to be made,
16 hydrologic or other investigations and studies as may be required
17 to facilitate its decisions regarding the structural integrity
18 and operation of a dam.

19 Sec. 47. (1) An owner shall prepare, and keep current,
20 emergency action plans for all high and significant hazard poten-
21 tial dams owned by that person.

22 (2) Emergency action plans shall be in a form prescribed and
23 approved by the department.

24 (3) The applicable county or local emergency management
25 coordinators shall review for consistency emergency action plans
26 with the county or local emergency operations plan prior to
27 submission of those plans for approval by the department.

1 (4) An emergency action plan shall be consistent with the
2 applicable provisions of the affected county or local emergency
3 operations plans and the Michigan emergency preparedness plan as
4 developed pursuant to the emergency preparedness act, Act No. 390
5 of the Public Acts of 1976, being sections 30.401 to 30.420 of
6 the Michigan Compiled Laws.

7 Sec. 49. (1) If the department determines that a person is
8 in violation of this act, a rule promulgated under this act, or a
9 condition set forth in a permit issued under this act, the
10 department may issue an order requiring the person to comply with
11 the conditions or to restore the site affected by the violation
12 as nearly as practicable to its original condition. Restoration
13 may include, but is not limited to, removing fill material depos-
14 ited, or replacement of soil, sand, or minerals.

15 (2) An order shall state the nature of the violation, the
16 required remedial action, and shall specify a time for compliance
17 which the department determines is reasonable, taking into
18 account the seriousness of the violation and the nature of any
19 threat to public health, safety, welfare, property, or natural
20 resources, or the public trust in those natural resources that
21 may be involved.

22 (3) If the department determines that a person is in viola-
23 tion of this act, a rule promulgated under this act, an order
24 issued by the director, or a permit, the department, after notice
25 and opportunity for hearing pursuant to the administrative proce-
26 dures act of 1969, may suspend, modify, or revoke a permit. The
27 remedies under this section and section 51 are cumulative and do

1 not prevent the department from imposing other penalties
2 available under this act, a rule promulgated under this act, or
3 an order of the director.

4 (4) If the department determines that a person is in viola-
5 tion of this act, a rule promulgated under this act, an order
6 issued by the director pursuant to this act, or a permit issued
7 pursuant to this act, the department may bring a civil action in
8 the circuit court.

9 Sec. 51. (1) The attorney general may commence a civil
10 action for appropriate relief, including injunctive relief, upon
11 request of the department under section 49.

12 (2) Any civil action under this section may be brought in
13 the circuit court for the county of Ingham or for the county in
14 which the dam is located.

15 (3) In addition to any other relief granted under this sec-
16 tion, the court may impose a civil fine of not more than
17 \$10,000.00 for each day of violation of this act, a rule promul-
18 gated under this act, or a permit issued under this act.

19 (4) A person found guilty of contempt of court for the vio-
20 lation of an order of the court shall be subject to a civil fine
21 not to exceed \$10,000.00 for each day of violation.

22 (5) A person who willfully or recklessly violates this act,
23 a rule promulgated under this act, an order issued by the direc-
24 tor, or a condition in a permit issued under this act that places
25 or may place a person in imminent danger of death or serious
26 bodily injury, or which may cause serious property damage or
27 serious damage to natural resources, or a person who has

1 knowledge of or is responsible for such a violation, is guilty of
2 a misdemeanor, punishable by imprisonment for not more than
3 1 year or a fine of not less than \$2,500.00 nor more than
4 \$25,000.00 for each day of violation, or both. A person who vio-
5 lates this section a second or subsequent time is guilty of a
6 felony, punishable by imprisonment for not more than 2 years or a
7 fine of not less than \$10,000.00 for each day of violation, or
8 both.

9 (6) In addition to the orders of compliance and penalties
10 provided under this act, the court may order a person who vio-
11 lates this act, a rule promulgated under this act, or a permit
12 issued under this act to restore the site affected by the viola-
13 tion as nearly as practicable to its original condition.
14 Restoration may include, but is not limited to, removing fill
15 material deposited or replacing soil, sand, or minerals.

16 (7) The department may establish, by rule, a schedule of
17 administrative monetary penalties for minor violations of this
18 act, a rule promulgated under this act, a permit issued pursuant
19 to this act, or an order issued by the director pursuant to this
20 act.

21 Sec. 53. (1) A person aggrieved by any action or inaction
22 of the department under this act or rules promulgated under this
23 act, may request a hearing on the matter involved. The hearing
24 shall be conducted by the department in accordance with the pro-
25 visions for contested cases in the administrative procedures act
26 of 1969.

1 (2) A determination of action or inaction by the department
2 following the hearing may be subject to judicial review as
3 provided in the administrative procedures act of 1969.

4 Sec. 55. The director or his or her authorized representa-
5 tive may enter in or upon any private or public property anytime
6 where the public safety may be in danger and at all reasonable
7 times, after having shown proper identification, for the purpose
8 of inspecting or investigating conditions relating to the con-
9 struction, operation, or safety of a dam and for the purpose of
10 determining compliance with the terms, conditions, and require-
11 ments of permits, orders, or notices of approval issued under
12 this act and rules promulgated under this act.

13 Sec. 57. The department shall promulgate rules as are nec-
14 essary to implement and enforce this act pursuant to the adminis-
15 trative procedures act of 1969.

16 Sec. 59. An action shall not be brought against the state
17 or the department or its agents or employees for the recovery of
18 damages caused by the partial or total failure of any dam or
19 through the operation of any dam upon the ground that the state
20 or the department or its agents or employees are liable by virtue
21 of the performance of duties required by this act.

22 Sec. 61. (1) This act shall not be construed to abrogate
23 requirements of the inland lakes and streams act of 1972, Act
24 No. 346 of the Public Acts of 1972, being sections 281.951 to
25 281.965 of the Michigan Compiled Laws; the Goemaere-Anderson wet-
26 land protection act, Act No. 203 of the Public Acts of 1979,
27 being sections 281.701 to 281.722 of the Michigan Compiled Laws;

1 the inland lake level act of 1961, Act No. 146 of the Public Acts
2 of 1961, being sections 281.61 to 281.86 of the Michigan Compiled
3 Laws; the natural river act of 1970, Act No. 231 of the Public
4 Acts of 1970, being sections 281.761 to 281.776 of the Michigan
5 Compiled Laws; the soil erosion and sedimentation control act of
6 1972, Act No. 347 of the Public Acts of 1972, being sections
7 282.101 to 282.125 of the Michigan Compiled Laws; Act No. 123 of
8 the Public Acts of 1929, being sections 307.1 to 307.7 of the
9 Michigan Compiled Laws; Act No. 245 of the Public Acts of 1929,
10 being sections 323.1 to 323.13 of the Michigan Compiled Laws; or
11 other applicable law.

12 (2) This act shall not be construed to relieve an owner of
13 any legal duty, obligation, or liability incident to the owner-
14 ship or operation of a dam or impoundment.

15 (3) Except as provided in section 59, this act shall not be
16 construed to deprive an owner of any legal remedy to which he or
17 she may be entitled under the laws of this state.

18 Sec. 63. This act shall take effect January 1, 1990.

19 Sec. 65. Act No. 184 of the Public Acts of 1963, being sec-
20 tions 281.131 to 281.135 of the Michigan Compiled Laws, is
21 repealed.