

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 675

BY: ROZELL

AS INTRODUCED

AN ACT RELATING TO THE SAFETY OF DAMS; CREATING THE OKLAHOMA DAM SAFETY ACT; PROVIDING SHORT TITLE; STATING LEGISLATIVE INTENT; PROVIDING DEFINITIONS; SPECIFYING TYPES OF DAMS REGULATED; STATING POWERS AND DUTIES OF BOARD; CLARIFYING SOVEREIGN IMMUNITY AND OWNER LIABILITY; REQUIRING REGISTERED ENGINEER TO MANAGE PROGRAM; PROVIDING FOR ISSUANCE OF CERTIFICATE OF COMPLETION; REQUIRING OWNERS TO KEEP RECORDS AND NOTIFY BOARD OF CERTAIN EVENTS; PROVIDING ENFORCEMENT AUTHORITY INCLUDING ADMINISTRATIVE PENALTIES; STATING PROVISIONS OF ACT ARE SUPPLEMENTARY; STATING PRIOR RULES OF BOARD SHALL REMAIN EFFECTIVE; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.1 of Title 82, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Dam Safety Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.2 of Title 82, unless there is created a duplication in numbering, reads as follows:

It is recognized by the Oklahoma State Legislature that properly constructed, operated and maintained dams used to impound water and create reservoirs for the purposes of public and private water supply, irrigation, industrial use, recreation, fish and wildlife, water quality control, flood prevention and control, sediment control, and other beneficial uses constitute vital parts of the State of Oklahoma's water resources, and that reasonable regulation of such construction, operation and maintenance is beneficial and necessary for the public health and welfare and to protect lives and property. It is the intent of the Legislature that the provisions of this act shall reaffirm and clarify such regulation and the dam safety program of the Oklahoma Water Resources Board already established and shall further provide sufficient basis for communities in the National Flood Insurance Program to obtain favorable consideration of rate decreases for their citizens offered through the Community Rating System administered by the Federal Emergency Management Agency.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.3 of Title 82, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Board" means the Oklahoma Water Resources Board;
2. "Dam" means any artificial barrier, together with appurtenant works, which does or may impound or divert water;
3. "Gully plug" means any grade stabilization structure that has less than five (5) acre-feet of water storage available below the principal spillway elevation and less than fifty (50) acre-feet of storage volume below the emergency spillway elevation;

4. "Owner" means any person who, jointly or severally, owns, controls, maintains, manages, or proposes to construct a dam or reservoir, and includes but is not limited to those persons shown by records of the county registrar of deeds in the county where the dam or reservoir lies to have some interest, by fee, easement, mortgage or otherwise, in the land on which the dam and lake lie, and may also include but is not limited to those persons who may derive a direct pecuniary benefit from the existence of the lake; and

5. "Person" means any individual, firm, partnership, association, corporation, any trust formed for the benefit of an individual, business or any public entity, federal agency, the State of Oklahoma and any political subdivision thereof, municipalities, and any other legal entity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.4 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Dams, together with appurtenant works, which meet the following alternative criterion are subject to the provisions of this act and rules promulgated by the Oklahoma Water Resources Board pursuant to this act:

1. Dams which are or will be twenty-five feet (25') or more in height measured from the natural stream channel to the top of the dam; or

2. Dams which have or will have an impounding capacity of fifty (50) acre-feet or more; provided, that any barrier to the flow of water which does or may impound water and which is or will be six feet (6') or less in height, regardless of storage capacity, or which has or will have a storage capacity of fifteen (15) acre-feet or less, regardless of height, shall not be subject to regulation under this act unless it is determined to have a high hazard potential classification as established by the Board.

B. No barrier to the flow of water determined by the Board to be designated primarily for roadfill shall be subject to regulation under this act.

C. Gully plugs are not subject to regulation under this act.

D. Dams constructed by any agency of the United States Government shall not be subject to regulation under this act during or after construction while such dams remain under the supervision of any officer or agency of the United States.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.5 of Title 82, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Water Resources Board, in addition to other powers and duties as provided by law, shall have the following powers and duties:

1. To promulgate rules necessary to carry out the provisions of this act, including but not limited to rules relating to hazard and size classifications, minimum standards for design, operation and maintenance of dams, and fee schedules for inspections and other services provided to carry out the dam safety program authorized by this act;

2. To review and grant or deny applications to approve plans and specifications for construction of new dams and modifications of existing dams, based on the applicable minimum standards adopted;

3. To supervise and oversee construction of new dams and modifications of existing dams;

4. To inspect existing dams and dams under construction in accordance with the following requirements:

a. dams classified as having a high hazard potential shall be inspected at least once annually,

b. dams classified as having a significant hazard potential shall be inspected at least once every three (3) years, and

c. dams classified as having a low hazard potential shall be inspected at least once every five (5) years; provided, that the Board may accept an inspection report of a registered professional engineer having five (5) years' experience in the analysis, design and construction of dams and employed or retained by the owner for dams classified as high or significant hazard potential, and provided further, for dams classified as low hazard potential, the Board may accept an inspection report of a person trained in inspecting dams and who is employed or retained by the owner. Fees for such inspections conducted by the Board and for reviewing inspection reports prepared by others shall be as set forth in rules promulgated by the Board;

5. To require maintenance, repairs and modifications of existing dams as necessary, including compliance schedules, so that minimum standards can be met;

6. To have reasonable access to public and private property for the purpose of inspecting and investigating conditions related to dams and to require that records of owners of dams be inspected and copied;

7. To cooperate with agencies of federal, state and local governments and private persons, including but not limited to the Oklahoma Conservation Commission and local conservation districts, in carrying out its duties under this act;

8. To disseminate information about the dam safety program; and

9. To exercise all incidental powers which are necessary and proper to carry out the purposes of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.6 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Water Resources Board, its officers and employees, are specifically exempt from liability for a loss or claim resulting from any actions taken pursuant to this act,

including but not limited to rulemaking, orders issued in individual proceedings, the grant or denial of applications to approve plans and specifications, and inspections or the failure to inspect any dams.

B. Nothing in this act shall relieve an owner of a dam from any liability related to the construction and maintenance of such dam.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.7 of Title 82, unless there is created a duplication in numbering, reads as follows:

The dam safety program authorized by this act shall be supervised within the Oklahoma Water Resources Board by an engineer registered with the State Board of Registration for Professional Engineers and Land Surveyors or successor agency and who shall have at least ten (10) years' training or experience concerning the analysis, design, and construction of dams and reservoirs.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.8 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Certificates of completion of works from the Oklahoma Water Resources Board shall be required before any water may be impounded by a new dam or before water may be impounded at an elevation higher than that previously authorized by the Board at an existing dam which has been modified. Said certificate shall contain the date of approval of plans and specifications for the dam, date construction was completed on said dam, and any other conditions as may be required by the Board.

B. The owner must give notice of completion of construction of the new dam or of modifications to an existing dam to the Board, and the Board shall inspect such dam before issuing a certificate of completion.

C. The Board may modify, revoke or amend any said certificate as necessary to assure the safety of the dam.

D. Fees for the inspections and for the issuance of certificates required by this section shall be set forth in rules promulgated by the Board.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.9 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Owners of dams are responsible for keeping accurate records pertaining to the design, construction, operation and maintenance of their dams and to make the same available upon request of the Oklahoma Water Resources Board.

B. Owners of dams must give timely notice to the Board of flood events or other circumstances that may affect the integrity or safety of the dam. Said notice must be given as required by rules of the Board.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.10 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. When an owner fails, neglects or refuses to comply with this act, rules promulgated pursuant to this act, or orders of the Oklahoma Water Resources Board, and there is no imminent peril to the public health or welfare shown, the Board may, after notice and opportunity for hearing, issue an order requiring such owner to take whatever action the Board deems necessary to place the dam in a safe condition, meet the requirements of this act, rules of the Board, or the previous orders of the Board. Such action may include but is not limited to lowering the level of or removing all water in the reservoir, providing an adequate warning to the public downstream, repair or modification of the existing dam after having the appropriate application for approval of plans and specifications granted, cease all construction work on a dam, and implementation of an appropriate operation and maintenance plan.

B. When an owner fails, neglects or refuses to comply with this act, rules promulgated pursuant to this act, or orders of the Board, and there is an imminent peril to the public health or welfare shown, the Executive Director of the Board, or Assistant Director in the absence of the Executive Director, may, without notice or opportunity for hearing, issue an emergency order requiring such owner to take actions the Board deems necessary to place the dam in a safe condition. Said emergency order shall indicate the finding of imminent peril and shall specify the actions that are to be taken immediately. The order shall also specify a time and place for hearing to be held after such actions are taken.

C. The Board may impose administrative penalties against owners of dams who fail, refuse or neglect to comply with the provisions of this act, rules of the Board promulgated pursuant to this act, or orders of the Board. Such administrative penalties shall be imposed only after notice and opportunity for hearing on the proposed imposition of such penalties. The notice and opportunity for hearing required by this paragraph may be combined with the notice and hearing required in paragraph A of this section. Said penalties shall not exceed Five Hundred Dollars (\$500.00) per day for each violation. Each day a violation continues shall constitute a separate violation.

D. The Board may seek judicial relief to enforce provisions of this act, rules promulgated pursuant to this act, and orders of the Board by instituting action in the district court where the dam or a major portion thereof is located.

E. If records and information available to the Board show that there may be more than one owner of the dam subject to administrative or judicial relief authorized by this section, the Board is not required to give all such owners notice of proceedings involving the dam, and such owners who do not receive notice or enter their appearance in the proceedings shall not be deemed

indispensable parties, provided however, the Board shall use its best efforts to provide notice to all known owners, considering the number and type of interest of such owners, amount of control exercised over the operation and maintenance of the dam by such owners, the need to expeditiously proceed to hearing, and possible harm by not providing such notice.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.11 of Title 82, unless there is created a duplication in numbering, reads as follows:

Appeals of orders issued by the Oklahoma Water Resources Board pursuant to this act, except emergency orders issued under subsection B of Section 10 of this act, shall be taken pursuant to Article II of the Administrative Procedures Act, Sections 205 et seq. and 301 et seq. of Title 75 of the Oklahoma Statutes.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.12 of Title 82, unless there is created a duplication in numbering, reads as follows:

The provisions of this act shall be supplementary to other provisions of law. Rules of the Oklahoma Water Resources Board relating to dams which were promulgated prior to the effective date of this act shall remain effective until amended.

SECTION 13. This act shall become effective July 1, 1992.

SECTION 14. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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