

Chapter 377

(House Bill 125)

AN ACT concerning

Environment – Emergency Action Plans for Dams

FOR the purpose of requiring owners of certain dams to prepare and submit to the Department of the Environment an emergency action plan that contains certain information in a certain manner; requiring the Department's approval of an emergency action plan; requiring owners of certain dams to provide a copy of a certain emergency action plan to certain agencies; requiring owners of certain dams to update an emergency action plan on an annual basis; requiring owners of certain dams to perform certain tests of an emergency action plan on a certain schedule; requiring the results of certain tests to be reported in a certain annual update that is submitted in the same year; authorizing the Department to adopt regulations; providing for the application of this Act; authorizing, instead of requiring, the Department to charge a certain owner for certain expenses under certain circumstances; establishing the intent of the General Assembly to require the Department to work with certain owners and consider establishing a certain dam safety repair and removal program under certain circumstances; making this Act an emergency measure; and generally relating to emergency action plans for dams.

BY adding to

Article – Environment

Section 5–503.1

Annotated Code of Maryland

(2013 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,Article – EnvironmentSection 5–509Annotated Code of Maryland(2013 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Environment**5–503.1.**

(A) **(1) THIS SECTION APPLIES TO ANY DAM THAT:**

~~(1)~~ (I) HAS THE POTENTIAL TO CAUSE THE LOSS OF HUMAN LIFE OR SUBSTANTIAL PROPERTY DAMAGE IN THE EVENT OF STRUCTURAL FAILURE; AND

~~(2)~~ (II) HAS BEEN DESIGNATED OR VERIFIED BY THE DEPARTMENT AS A HIGH HAZARD OR SIGNIFICANT HAZARD DAM, AS DEFINED IN THE CLASSIFICATION OF DAMS UNDER REGULATIONS ADOPTED BY THE DEPARTMENT.

(2) THIS SECTION DOES NOT APPLY TO A DAM THAT IS LICENSED BY, AND SUBJECT TO THE JURISDICTION OF, THE FEDERAL ENERGY REGULATORY COMMISSION IF THE OWNER OF THE DAM SUBMITS TO THE DEPARTMENT:

(I) ON OR BEFORE AUGUST 1, 2017, A COPY OF THE EXISTING EMERGENCY ACTION PLAN FOR THE DAM; AND

(II) WITHIN 30 DAYS AFTER FILING WITH THE FEDERAL ENERGY REGULATORY COMMISSION ANY UPDATE TO THE EMERGENCY ACTION PLAN, A COPY OF THE UPDATE TO THE EMERGENCY ACTION PLAN.

(B) (1) AN OWNER OF A DAM SUBJECT TO THIS SECTION SHALL PREPARE AND SUBMIT TO THE DEPARTMENT FOR APPROVAL AN EMERGENCY ACTION PLAN IN ACCORDANCE WITH THIS SECTION TO PROTECT DOWNSTREAM HUMAN LIFE AND SAFEGUARD PROPERTY IN THE EVENT OF A STRUCTURAL FAILURE OR ANY OTHER EMERGENCY.

(2) AN OWNER OF AN EXISTING DAM SUBJECT TO THIS SECTION SHALL SUBMIT A PLAN TO THE DEPARTMENT FOR APPROVAL ON OR BEFORE AUGUST 1, 2017.

(3) A PERSON PROPOSING TO CONSTRUCT A DAM SUBJECT TO THIS SECTION SHALL SUBMIT A PLAN WITH AN APPLICATION FOR A PERMIT TO CONSTRUCT THE DAM UNDER § 5-503 OF THIS SUBTITLE.

(C) AN EMERGENCY ACTION PLAN SHALL CONTAIN:

(1) A DESCRIPTION OF THE DAM, INCLUDING ITS HAZARD CLASSIFICATION;

(2) MAPS OR OTHER GRAPHIC REPRESENTATIONS OF AREAS DOWNSTREAM THAT HAVE THE POTENTIAL TO BE AFFECTED BY A STRUCTURAL FAILURE OR ANY OTHER EMERGENCY;

(3) A LIST OF AGENCIES AND INDIVIDUALS RESPONSIBLE FOR MONITORING WEATHER AND OPERATING CONDITIONS AT THE DAM DURING EMERGENCIES;

(4) DETAILED OPERATING PROCEDURES FOR MAKING DECISIONS AND TAKING ACTIONS TO PROTECT LIVES AND PROPERTY IN AREAS DOWNSTREAM FROM THE DAM IN THE EVENT OF AN EMERGENCY;

(5) PROCEDURES FOR NOTIFYING JURISDICTIONS, BUSINESSES, AND PERSONS WHO HAVE THE POTENTIAL TO BE AFFECTED BY A DAM FAILURE OR ANY OTHER EMERGENCY;

(6) A LIST OF EMERGENCY MANAGEMENT RESOURCES AND EQUIPMENT THAT COULD BE NEEDED IN THE EVENT OF AN EMERGENCY; AND

(7) ANY ADDITIONAL INFORMATION REQUIRED BY THE DEPARTMENT.

(D) ON APPROVAL OF THE EMERGENCY ACTION PLAN BY THE DEPARTMENT, THE DAM OWNER SHALL PROVIDE COPIES OF THE PLAN TO APPROPRIATE STATE AND LOCAL EMERGENCY MANAGEMENT AGENCIES.

(E) EMERGENCY ACTION PLANS SHALL BE UPDATED ANNUALLY AND SUBMITTED TO THE DEPARTMENT FOR APPROVAL ON OR BEFORE MAY 1 EACH YEAR.

(F) (1) AN OWNER OF A DAM SUBJECT TO THIS SECTION SHALL CONDUCT A FUNCTIONAL EXERCISE OR TEST OF THE APPROVED EMERGENCY ACTION PLAN AT LEAST ONCE EVERY 5 YEARS.

(2) THE RESULTS OF THE FUNCTIONAL EXERCISE OR TEST REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE REPORTED IN THE ANNUAL UPDATE TO THE EMERGENCY ACTION PLAN THAT IS SUBMITTED IN THE SAME YEAR.

(G) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

5-509.

(a) On complaint or the Department's own initiative, the Department may investigate or examine any reservoir, dam, or similar waterway construction. If the Department determines that the reservoir, dam, or similar waterway construction is unsafe, needs repair, or should be removed because the reservoir, dam, or similar waterway construction is unsafe and not repairable, the Department shall notify the owner in writing

to repair or remove the object, as the situation warrants. The repair or removal work shall be completed within a reasonable time, which time shall be prescribed in the Department's notice.

(b) If the work is not completed in the time prescribed in the notice[.];

(1) [the] THE Department may have the work completed at the expense of the owner[.];

(2) [The] UNLESS THE OWNER DEMONSTRATES AN INABILITY TO PAY, AS DETERMINED BY THE DEPARTMENT, THE Department shall charge the owner for [this] THE expense TO COMPLETE THE WORK[.]; and

(3) [if] IF [the] repayment is not made within 30 days after written demand, the Department may bring an action in the proper court to recover [this] THE expense TO COMPLETE THE WORK.

(c) This section does not apply to farm ponds used for agricultural purposes.

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that, if the Department of the Environment determines that a reservoir, dam, or similar waterway construction is unsafe, needs repair, or should be removed because the reservoir, dam, or similar waterway construction is unsafe and not repairable and the owner of the reservoir, dam, or similar waterway construction demonstrates an inability to pay for the work the Department determines is needed, the Department shall:

(1) work with the owner to pursue cost-effective market-based solutions such as nutrient and sediment credit generation that address the needed work; and

(2) consider establishing a dam safety repair and removal program to assist an owner of a reservoir, dam, or similar waterway construction in funding the needed work.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect July 1, 2017~~ is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, May 4, 2017.