

SENATE BILL NO. 468

May 20, 2021, Introduced by Senators OUTMAN, BAYER, HORN, DALEY, WOJNO, ZORN, VICTORY and CHANG and referred to the Committee on Environmental Quality.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 31502, 31503, 31509, 31517, 31518, and 31523 (MCL 324.31502, 324.31503, 324.31509, 324.31517, 324.31518, and 324.31523), sections 31502, 31503, 31517, 31518, and 31523 as added by 1995 PA 59 and section 31509 as amended by 2004 PA 325, and by adding sections 31506a and 31517a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 31502. (1) "Abandonment" means **after the owner**

1 **permanently eliminates all hazards or potential hazards associated**
 2 **with a dam, the owner takes** an affirmative act ~~on the part of an~~
 3 ~~owner~~ to discontinue maintenance or operation of a dam.

4 (2) "Administrative procedures act of 1969" means ~~Act No. 306~~
 5 ~~of the Public Acts of 1969, being sections 24.201 to 24.328 of the~~
 6 ~~Michigan Compiled Laws.~~ **the administrative procedures act of 1969,**
 7 **1969 PA 306, MCL 24.201 to 24.328.**

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

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

17 (5) "Auxiliary spillway" means a secondary spillway ~~which that~~
 18 is operational at all times and does not require stoplog removal or
 19 gate manipulation.

20 (6) "Dam" means an artificial barrier, including dikes,
 21 embankments, and appurtenant works, that ~~impounds,~~ **meets all of the**
 22 **following requirements:**

23 (a) **Impounds**, diverts, or is designed to impound or divert
 24 water or a combination of water and any other liquid or material in
 25 the water. ~~; that is~~

26 (b) **Is** or will be when complete 6 feet or more in height. ~~;~~
 27 ~~and that has~~

28 (c) **Has** or will have ~~an~~ **1 of the following:**

29 (i) **An** impounding capacity at design flood elevation of 5

1 surface acres or more.

2 (ii) **An impounding capacity at design flood elevation of 15**
3 **acre-feet or more.**

4 (7) Dam does not include a storage or processing tank or
5 standpipe constructed of steel or concrete, a roadway embankment
6 not designed to impound water, or a dug pond where there is no
7 impoundment of water or waste materials containing water at levels
8 above adjacent natural grade levels.

9 (8) ~~(7)~~—"Days" means calendar days, including Sundays and
10 holidays.

11 (9) ~~(8)~~—"Design flood" means the design flow rate for spillway
12 capacity and dam height design.

13 (10) ~~(9)~~—"Design flood elevation" means the maximum flood
14 elevation that is considered in the design of the spillway capacity
15 and freeboard for a dam.

16 (11) ~~(10)~~—"Downstream toe elevation" means the elevation of
17 the lowest point of intersection between the downstream slope of an
18 earthen embankment and the natural ground.

19 Sec. 31503. (1) "Emergency action plan" means a plan developed
20 by the owner that establishes procedures for notification of the
21 department, public off-site authorities, and other agencies of the
22 emergency actions to be taken ~~prior to~~ **before** and ~~following~~ **after**
23 an impending or actual failure of a dam.

24 (2) "Enlargement" means any change in or addition to an
25 existing dam ~~which~~ **that** raises or may raise the design flood
26 elevation of the water impounded by the dam.

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

29 (4) "Failure" means an incident resulting in an unplanned or

1 uncontrolled release of water from a dam.

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

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

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

10 (8) "Half probable maximum storm" means the spatial and
11 temporal distribution of the probable maximum precipitation,
12 divided by 2, that produces the maximum volume of precipitation
13 over a watershed.

14 (9) "Hazard potential classification" means a reference to the
15 potential for loss of life, property damage, and environmental
16 damage in the area downstream of a dam in the event of failure of
17 the dam or appurtenant works.

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

24 (11) "High hazard potential dam" means a dam located in an
25 area where a failure may cause serious damage to inhabited homes,
26 agricultural buildings, campgrounds, recreational facilities,
27 industrial or commercial buildings, public utilities, main
28 highways, or class I carrier railroads, or where environmental
29 degradation **or natural resource damage** would be significant, or

1 where danger to individuals exists with the potential for loss of
2 life.

3 **Sec. 31506a. If a dam or impoundment was previously licensed**
4 **under the federal power act, 16 USC 791a to 793, 796 to 797, 798 to**
5 **818, 820 to 824a, and 824b to 825r, and the dam or impoundment**
6 **subsequently comes under the jurisdiction of this state, the owner**
7 **shall provide the department with an inventory of information that**
8 **was previously provided to the Federal Energy Regulatory Commission**
9 **as part of the requirement for licensure under the federal power**
10 **act, 16 USC 791a to 793, 796 to 797, 798 to 818, 820 to 824a, and**
11 **824b to 825r.**

12 Sec. 31509. (1) Except as otherwise provided in this part or
13 as authorized by a permit issued by the department ~~pursuant to~~
14 **under** part 13, a person shall not undertake any of the following
15 activities:

- 16 (a) Construction of a new dam.
17 (b) Enlargement of a dam or an impoundment.
18 (c) Repair of a dam.
19 (d) Alteration of a dam.
20 (e) Removal of a dam.
21 (f) Abandonment of a dam.
22 (g) Reconstruction of a failed dam.

23 (2) An application for a permit ~~shall~~**must** include **proof of**
24 **financial responsibility and any** information that the department
25 determines is necessary for the administration of this part. If a
26 project includes activities at multiple locations, 1 application
27 may be filed for the combined activities.

28 (3) An application for a permit for construction of a new dam,
29 reconstruction of a failed dam, or enlargement of a dam ~~shall~~**must**

1 be accompanied by the following fees:

2 (a) For a dam with a height of 6 feet or more but less than 10
3 feet, \$500.00.

4 (b) For a dam with a height of 10 feet or more but less than
5 20 feet, \$1,000.00.

6 (c) For a dam with a height of 20 feet or more, \$3,000.00.

7 (4) An application for a permit for the repair, alteration,
8 removal, or abandonment of a dam ~~shall~~**must** be accompanied by a fee
9 of \$200.00, and an application for a permit for a minor project
10 ~~pursuant to~~**under** section 31513(1) ~~shall~~**must** be accompanied by a
11 fee of \$100.00.

12 **(5) An application for a permit for the abandonment of a dam**
13 **must be accompanied by an abandonment plan prepared under section**
14 **31517a. The department shall approve the abandonment plan before a**
15 **permit is issued under this section.**

16 **(6) ~~(5)~~**—The department shall waive the fees under this section
17 for applications from state agencies, department sponsored projects
18 located on public lands, and organizations of the type described in
19 section ~~31508(2)(a) through (e)~~**.31508(2)** .

20 **(7) ~~(6)~~**—The department shall forward fees collected under this
21 section to the state treasurer for deposit in the land and water
22 management permit fee fund created in section 30113.

23 Sec. 31517. (1) Except for minor projects authorized ~~pursuant~~
24 ~~to~~**under** section 31513, the owner shall do both of the following:

25 (a) Within 10 days after the completion of a new,
26 reconstructed, enlarged, repaired, or altered dam, notify the
27 department of its completion.

28 (b) Within 20 days after submitting the notice of completion,
29 file with the department as-built plans and a statement signed by a

1 licensed professional engineer certifying that the project was
2 constructed in conformance with plans and specifications approved
3 by the department.

4 (2) The department shall ~~inspect~~ **conduct 2 inspections of** the
5 project. ~~and One inspection must be conducted during construction~~
6 **of the project, and 1 inspection must be conducted after the**
7 **project is completed. The department** shall provide the owner with
8 written notice of final approval **after the project is completed** if
9 the project is determined to have been completed in accordance with
10 approved plans, specifications, and permit conditions.

11 (3) If the project is determined not to be completed in
12 accordance with **approved** plans, ~~and specifications, approved by the~~
13 ~~department~~ **and permit conditions as described under subsection (2),**
14 the department shall provide notice to the permittee as to the
15 specific reasons the department determines the project not to be
16 completed in accordance with ~~these~~ **the approved** plans,
17 specifications, or **permit** conditions. The department may then take
18 enforcement action as provided in this part.

19 **Sec. 31517a. (1) An owner shall prepare and keep current**
20 **operations and maintenance records for each dam owned by the owner.**
21 **The operations and maintenance records must, at minimum, contain**
22 **all of the following:**

- 23 (a) A brief description of the major elements of the dam.
24 (b) Operation procedures during normal and high flows.
25 (c) Emergency action plans.
26 (d) Copies of recent inspection reports submitted to the
27 department under section 31518.
28 (e) Maintenance work order procedures.
29 (f) Sample maintenance and inspections forms.

1 (g) Key contact information.

2 (2) An owner shall prepare a first-filling plan for each dam
3 owned by the owner. A first-filling plan prepared under this
4 subsection must be submitted to the department for approval.

5 (3) An owner shall prepare and keep current a surveillance and
6 monitoring plan for each high hazard or significant hazard dam
7 owned by the owner.

8 (4) If an owner applies for a permit for the abandonment of a
9 dam under section 31509, the owner shall prepare and submit to the
10 department an abandonment plan.

11 (5) An owner shall maintain all of the records described under
12 this section and make the records available to the department on
13 request.

14 Sec. 31518. (1) An owner shall submit to the department
15 inspection reports prepared by a licensed professional engineer
16 that evaluate the condition of the dam. The inspection report ~~shall~~
17 **must** be submitted as follows:

18 (a) Not less than once every ~~3 years~~**year** for high hazard
19 potential dams.

20 (b) Not less than once every ~~4~~**2** years for significant hazard
21 potential dams.

22 (c) Not less than once every 5 years for low hazard potential
23 dams.

24 (2) The department shall determine the hazard potential
25 classification ~~of~~**for** all dams and ~~shall~~ establish an inspection
26 schedule. The **department shall notify the owner of each dam's**
27 **hazard potential classification, the effective date of each hazard**
28 **potential classification, and each dam's hazard potential**
29 **classification history. Within 30 days after the department**

1 provides notice of a dam's hazard potential classification under
2 this subsection, the owner shall provide the department with
3 information regarding how the owner will meet the requirements of
4 the dam's hazard potential classification including, but not
5 limited to, spillway capacity, emergency action plan, inundation
6 mapping requirements, and an inspection schedule. An inspection
7 schedule ~~shall developed~~ under this subsection must require annual
8 submission of inspection reports for approximately ~~1/3~~ of all high
9 hazard potential dams, ~~1/4~~ **1/2** of all significant hazard potential
10 dams, and 1/5 of all low hazard potential dams. The department
11 shall notify owners in writing when inspection reports are due. The
12 department may order additional inspection reports following an
13 event or change in condition that could threaten a dam.

14 (3) An inspection report required by this section ~~shall~~ **must**
15 include, at a ~~minimum~~, all of the following:

16 (a) An evaluation of the dam's condition, spillway capacity,
17 operational adequacy, and structural integrity.

18 (b) A determination of whether deficiencies exist that could
19 lead to the failure of the dam.

20 (c) Recommendations for maintenance, repair, and alterations
21 of a dam as are necessary to eliminate any deficiencies.

22 (d) **A review of any emergency action plan.**

23 (e) **An assessment of the appropriateness of the current hazard**
24 **potential classification established under subsection (1) taking**
25 **into consideration the current conditions that exist downstream of**
26 **the dam. An assessment under this subdivision must consider**
27 **conditions related to damage as identified under a significant**
28 **potential hazard dam classification and serious damage as**
29 **identified under a high potential hazard dam classification that**

1 might have changed since the effective date of the current hazard
2 potential classification established under subsection (1).

3 (f) An assessment of operations and maintenance based on the
4 requirements of the current operations and maintenance records
5 prepared under section 31517a.

6 (g) An evaluation of the risks or changes in risks of
7 significant potential hazard and low potential hazard dams, if
8 applicable.

9 (h) A review of the original design, construction,
10 maintenance, repair, and probable failure of high potential hazard
11 and significant potential hazard dams, if applicable.

12 (4) Instead of engaging a licensed professional engineer to
13 prepare an inspection report, local units of government or an
14 organization of the type described in section ~~31508(2)(a) through~~
15 ~~(e)~~**31508(2)** may request the department to conduct a visual
16 inspection of a dam owned by that local unit of government and
17 prepare a report on the condition of the dam in accordance with
18 subsection (3). The department shall notify a requesting local unit
19 of government as to when the inspection is to occur.

20 (5) If an inspection report discloses the need for a more
21 detailed investigation or evaluation of certain dam features for
22 the purpose of determining the condition of the dam, the department
23 may order the completion and submission of that detailed
24 investigation or evaluation at the expense of the owner. An
25 investigation or evaluation required under this subsection ~~shall~~
26 **must** be conducted under the supervision of a licensed professional
27 engineer.

28 (6) If an owner does not submit an inspection report as
29 required by subsection (1) or conduct additional investigations if

1 required by subsection (5), the department or any person ~~who~~**that**
 2 would have life or property threatened by a breach of the dam may
 3 have a report prepared and recover the costs of preparing the
 4 report in a civil action commenced in ~~a court. of competent~~
 5 ~~jurisdiction.~~ This subsection does not limit the right of any
 6 person to bring a cause of action in ~~a court of proper jurisdiction~~
 7 to compel an owner to comply with the requirements of this part.

8 (7) If, based on the findings and recommendations of the
 9 inspection report and an inspection by the department, the
 10 department finds that a condition exists which endangers a dam, it
 11 shall order the owner to take actions that the department considers
 12 necessary to alleviate the danger.

13 Sec. 31523. (1) An owner shall prepare, ~~and keep current,~~**on a**
 14 **form and in a manner prescribed by the department,** emergency action
 15 plans for all high and significant hazard potential dams owned by
 16 that person. **An owner shall annually review any emergency action**
 17 **plans and prepare and submit, on a form and in a manner prescribed**
 18 **by the department, updated and accurate emergency action plans.**

19 (2) Emergency action plans ~~shall prepared or updated under~~
 20 **this section must** be submitted to the department, **local emergency**
 21 **management, and all local entities with zoning approval authority**
 22 **located within the inundated zone.**

23 (3) The applicable county or local emergency management
 24 coordinators shall review for consistency **any** emergency action
 25 plans **prepared or updated under subsection (1)** with the county or
 26 local emergency operations plan ~~prior to submission of~~**before**
 27 **submitting** those plans to the department.

28 (4) An emergency action plan ~~shall prepared or updated under~~
 29 **this section must** be consistent with the applicable provisions of

1 the affected county or local emergency operations plans and the
 2 Michigan emergency preparedness plan ~~as developed pursuant to under~~
 3 the emergency preparedness act, Act No. 390 of the Public Acts of
 4 1976, being sections 30.401 to 30.420 of the Michigan Compiled
 5 ~~Laws-management act, 1976 PA 390, MCL 30.401 to 30.421.~~

6 (5) ~~Emergency~~ **An emergency** action plans shall ~~plan prepared or~~
 7 **updated under this section must** include, but not be limited to, ~~the~~
 8 **all of the following:**

9 (a) **The** name, address, and telephone number of the person, and
 10 of an alternate person, responsible for operation of the dam. ~~;~~~~the~~

11 (b) **The** name and telephone number of **the** local emergency
 12 management coordinators. ~~;~~~~and a~~

13 (c) **A** listing of occupied facilities, buildings, and
 14 residences that may be threatened with flooding due to a failure of
 15 the dam.

16 (6) **If a high hazard potential or significant hazard potential**
 17 **dam is operating in a river system with multiple water control**
 18 **structures, the owner shall coordinate to prepare or update any**
 19 **emergency action plans under this section.**

20 (7) **An owner shall periodically exercise an emergency action**
 21 **plan prepared or updated under this section.**

22 Enacting section 1. This amendatory act does not take effect
 23 unless Senate Bill No. 470 of the 101st Legislature is enacted into
 24 law.