

# 58:4-5

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2005 **CHAPTER:** 228

**NJSA:** 58:4-5 (Authorizes DEP to assess penalties for violations of the "Safe Dam Act")

**BILL NO:** S1895 (Substituted for A3538/3370/3373)

**SPONSOR(S):** Bryant and others

**DATE INTRODUCED:** October 4, 2004

**COMMITTEE:** **ASSEMBLY:** Environment and Solid Waste

**SENATE:** Environment

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** May 16, 2005

**SENATE:** June 20, 2005

**DATE OF APPROVAL:** September 22, 2005

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) (2<sup>nd</sup> reprint enacted)

### S1895

[SPONSOR'S STATEMENT](#): (Begins on page 7 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** [Yes](#)

**SENATE:** [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

### A3538/3370/3373

[SPONSOR'S STATEMENT \(A3538\)](#): (Begins on page 7 of original bill) [Yes](#)

[SPONSOR'S STATEMENT \(A3370\)](#): (Begins on page 5 of original bill) [Yes](#)

[SPONSOR'S STATEMENT \(A3373\)](#): (Begins on page 2 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** [Yes](#)

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

IS 11/8/07

P.L. 2005, CHAPTER 228, *approved September 22, 2005*  
Senate, No. 1895 (*Second Reprint*)

1 AN ACT concerning dam safety, and amending R.S.58:4-5 and  
2 R.S.58:4-6.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. R.S.58:4-5 is amended to read as follows:

8 58:4-5. a. <sup>1</sup>An owner or person having control of a reservoir or  
9 dam shall:

10 (1) Implement all measures required pursuant to this chapter or the  
11 provisions of P.L.1981, c.249 (C.58:4-8.1 et seq.), or any rule,  
12 regulation, code, permit or order issued pursuant thereto, including  
13 but not limited to, performance of periodic inspections required  
14 pursuant to section 2 of P.L.1981, c.249 (C.58:4-8.2) or development,  
15 updating and implementation of emergency action plans;

16 (2) Provide to the Department of Environmental Protection, upon  
17 request, any reports or information required pursuant to this chapter  
18 or the provisions of P.L.1981, c.249, or any rule or regulation  
19 adopted, or permit or order issued pursuant thereto; and

20 (3) Implement any action ordered by the Commissioner of  
21 Environmental Protection to correct conditions that render the  
22 reservoir or dam to be considered, as determined by the commissioner,  
23 unsafe or improperly maintained or to bring the reservoir or dam into  
24 compliance with standards established pursuant to this chapter, or any  
25 rule or regulation adopted, or permit or order issued pursuant thereto.

26 <sup>2</sup>[Prior to implementing any action ordered by the commissioner  
27 pursuant to this section, an owner or person having control of a  
28 reservoir or high hazard dam or significant hazard dam, as identified  
29 by the department, shall, no later than 60 days of receipt of the order  
30 issued by the commissioner, submit to the department, in writing, an  
31 implementation plan addressing the proposed actions to be taken  
32 regarding the failed or failing reservoir or dam.]<sup>2</sup>

33 b.<sup>1</sup> If, in the judgment of the commissioner, any reservoir or dam  
34 is not sufficiently strong to resist the pressure of water <sup>1</sup>that is or may  
35 be<sup>1</sup> upon it or there is reasonable cause to believe that danger to life  
36 or property may be anticipated from the reservoir or dam, or if for any  
37 other cause the commissioner shall determine the reservoir or dam to  
38 be unsafe or improperly maintained, the commissioner shall <sup>1</sup>take any  
39 action authorized pursuant to this section to compel compliance with

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SEN committee amendments adopted October 18, 2004.

<sup>2</sup> Assembly AEN committee amendments adopted May 5, 2005.

1 the provisions of this chapter, or any rule or regulation adopted, or  
2 permit or order issued pursuant thereto, and shall<sup>1</sup> determine whether  
3 the water in the reservoir or above the dam shall be drawn off in whole  
4 or in part, and what alterations, additions and repairs are necessary to  
5 be made to the reservoir or dam to make it safe and properly  
6 maintained<sup>1</sup> or whether the dam or appurtenant structures located  
7 therein should be removed<sup>1</sup>.<sup>1</sup> The commissioner also may take action  
8 as authorized pursuant to R.S.58:4-6 against the owner or person  
9 having control of the reservoir or dam for such relief as the  
10 commissioner may determine.<sup>1</sup> The commissioner shall forthwith in  
11 writing order the owner or person having control of the reservoir or  
12 dam to cause the alterations, additions and repairs to be made within  
13 the time to be limited in the order.<sup>2</sup> A copy of any order issued by the  
14 commissioner pursuant to this section shall be sent to the clerk of the  
15 municipality and the clerk of the county in which the reservoir or dam  
16 is located.<sup>2</sup> The commissioner also may order the water in the  
17 reservoir or above the dam to be drawn off in whole or in part as the  
18 commissioner may determine. The commissioner shall not approve the  
19 decommissioning of a reservoir or dam until the commissioner has  
20 provided 30 days' prior notice and the commissioner has complied with  
21 the provisions of R.S.58:4-10 as applicable. The notice of the  
22 proposed decommissioning shall be published at least 30 days prior to  
23 the decommissioning of the reservoir or dam in at least one newspaper  
24 of general circulation in the municipality in which the reservoir or dam  
25 is located. The commissioner shall have the right to enter upon any  
26 and all properties for the purpose of obtaining information about the  
27 safety and proper maintenance of any reservoir, dam or appurtenant  
28 structures located therein.

29 <sup>1</sup>[b.] c.<sup>1</sup> Any owner<sup>1</sup> or person having control of a reservoir or  
30 dam<sup>1</sup> who fails to comply with an order issued pursuant to  
31 <sup>1</sup>[subsection a. of]<sup>1</sup> this section <sup>1</sup>[shall] or R.S.58:4-6 may<sup>1</sup> be liable  
32 to the department in an amount equal to <sup>1</sup>[three times]<sup>1</sup> the cost of  
33 <sup>1</sup>[repair] removal<sup>1</sup> of the dam<sup>1</sup> or appurtenant structures located  
34 therein<sup>1</sup> undertaken by the department<sup>1</sup>, including attorney's fees and  
35 court costs,<sup>1</sup> pursuant to subsection <sup>1</sup>[c.] d.<sup>1</sup> of this section.

36 <sup>1</sup>[In instances where] Whenever<sup>1</sup> two or more owners<sup>1</sup> or persons  
37 having control of a reservoir or dam<sup>1</sup> are liable for the cost of  
38 <sup>1</sup>[repairs] removal, including attorney's fees and court costs<sup>1</sup>, the  
39 department may allocate the cost of <sup>1</sup>[repairs] removal<sup>1</sup> among the  
40 liable <sup>1</sup>[owners] parties<sup>1</sup> using such factors as the department  
41 determines are appropriate. Nothing in this subsection shall affect the  
42 right of any party to seek contribution from any other person  
43 responsible for the cost of <sup>1</sup>[repair] removal<sup>1</sup> of the dam pursuant to  
44 any other statute or under common law.

45 <sup>1</sup>[c.] d.<sup>1</sup> (1) Whenever the commissioner determines that a dam is

1 in imminent danger of failure <sup>1</sup> <sup>2</sup>[or] and<sup>2</sup> has reasonable cause to  
2 believe that danger to life or property may be anticipated from the  
3 reservoir, dam or appurtenant structures located therein<sup>1</sup>, and the  
4 owner of the dam <sup>1</sup>or person having control of the reservoir or dam<sup>1</sup>  
5 has failed to comply with an order to repair the dam issued pursuant  
6 to subsection a. of this section <sup>1</sup>or R.S.58:4-6, or to take such interim  
7 measures as the department determines are appropriate, including  
8 reducing the amount of water impounded by the dam or breaching the  
9 dam<sup>1</sup>, the department may <sup>1</sup>[act to make the necessary repairs], in  
10 addition to actions authorized pursuant to R.S.58:4-6, enter upon any  
11 and all properties wherein the reservoir, dam or appurtenant structures  
12 are located and, using resources and personnel available to the  
13 department, remove or cause to be removed the dam or appurtenant  
14 structures located therein, allowing the water to flow freely<sup>1</sup>.

15 <sup>2</sup>Prior to any action by the department pursuant to this subsection,  
16 the owner or person having control of the reservoir or dam, shall, no  
17 later than 60 days after receipt of a notice from the department of a  
18 pending removal action, submit to the department, in writing, an  
19 acceptable implementation plan addressing the proposed actions to be  
20 taken regarding the failed or failing reservoir or dam.<sup>2</sup>

21 (2) Any expenditures made by the department pursuant to this  
22 section shall constitute, in each instance, a debt to the State. The debt  
23 shall constitute a lien on all property owned by the owner <sup>1</sup>or person  
24 having control of the reservoir or dam<sup>1</sup> when a <sup>2</sup>[notice of lien]  
25 certificate of debt<sup>2</sup>, incorporating a description of the property of the  
26 owner <sup>1</sup>or person having control of the reservoir or dam<sup>1</sup> subject to  
27 the repair, and related costs, is duly filed with the clerk of the Superior  
28 Court. The clerk shall promptly enter upon the civil judgment <sup>2</sup>[or]  
29 and<sup>2</sup> order docket the name and address of the owner <sup>1</sup>or person  
30 having control of the reservoir or dam<sup>1</sup> and the amount of the lien as  
31 set forth in the <sup>2</sup>[notice of lien] certificate of debt<sup>2</sup>. Upon entry by  
32 the clerk, the lien, to the amount committed by the department for dam  
33 repair, shall attach to the revenues and all real and personal property  
34 of the owner <sup>1</sup>or person having control of the reservoir or dam<sup>1</sup>,  
35 whether or not the owner <sup>1</sup>or person having control of the reservoir or  
36 dam<sup>1</sup> is insolvent.

37 The <sup>2</sup>[notice of lien] certificate of debt<sup>2</sup> filed pursuant to this  
38 paragraph which affects the property of an owner <sup>1</sup>or person having  
39 control of a reservoir or dam<sup>1</sup> subject to the dam repairs shall create  
40 a lien with priority over all other claims or liens which are or have  
41 been filed against the property, except if the property comprises six  
42 dwelling units or less and is used exclusively for residential purposes,  
43 this <sup>2</sup>[notice of lien] certificate of debt<sup>2</sup> shall not affect any valid lien,  
44 right or interest in the property filed in accordance with established  
45 procedure prior to the filing of this <sup>2</sup>[notice of lien] certificate of  
46 debt<sup>2</sup>.

1     The <sup>2</sup>[notice of lien] certificate of debt<sup>2</sup> filed pursuant to this  
2 subsection which affects any property of an owner <sup>1</sup>or person having  
3 control of a reservoir or dam<sup>1</sup>, other than the property subject to the  
4 repairs, shall have priority from the day of the filing of the <sup>2</sup>[notice of  
5 lien] certificate of debt<sup>2</sup> over all other claims and liens filed against the  
6 property, but shall not affect any valid lien, right, or interest in the  
7 property filed in accordance with established procedure prior to the  
8 filing of a <sup>2</sup>[notice of lien] certificate of debt<sup>2</sup> pursuant to this  
9 subsection.

10     <sup>1</sup>Whenever the owner or person having control of the reservoir or  
11 dam is a private lake association or other body representing owners of  
12 property adjacent to the reservoir or lake created by the dam or  
13 impoundment, liens may be imposed upon the individual owners of the  
14 property represented by the association. An owner whose property  
15 has such a lien imposed may release the property from a lien claimed  
16 under this subsection by filing with the clerk of the Superior Court a  
17 cash or surety bond, payable to the department in the amount of the  
18 sums expended by the department pursuant to this section, including  
19 attorney's fees and court costs, or the value of the property after the  
20 abatement action is complete, whichever is less.<sup>1</sup>

21     <sup>1</sup>e. The provisions of this section shall not limit the use of other  
22 remedies available to the department pursuant to law.<sup>1</sup>

23     <sup>1</sup>f. The commissioner may adopt, pursuant to the "Administrative  
24 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or  
25 regulations necessary to implement the provisions of this section.<sup>1</sup>

26 (cf: P.L.1994, c.84, s.1)

27

28     2. R.S.58:4-6 is amended to read as follows:

29     58:4-6. [If the owner or person having control of any reservoir or  
30 dam shall not forthwith comply with any order of the commissioner  
31 made as provided in section 58:4-5 of this Title or shall not prosecute  
32 the work, when commenced, with reasonable expedition, the  
33 commissioner may direct the Attorney General to proceed in the name  
34 of the State to enforce its order in a court of competent jurisdiction.

35     Action may be brought against the person controlling or owning the  
36 reservoir or dam, and the court may make such order and judgment in  
37 the premises as will effectually secure the persons interested from  
38 danger of loss from the breaking of the reservoir or dam complained  
39 of. The court may proceed in the action in a summary manner or  
40 otherwise. Any person who violates the provisions of this chapter or  
41 of any order issued pursuant to this chapter shall be liable to a penalty  
42 of not more than \$5,000.00 for each offense. If the violation is of a  
43 continuing nature, each day during which it continues shall constitute  
44 an additional, separate and distinct offense.]

45     a. Whenever the Commissioner of Environmental Protection finds  
46 that a person has violated any provision of the "Safe Dam Act,"

1 P.L.1981, c.249 (C.58:4-8.1 et seq.), or any rule, regulation or order  
2 issued pursuant thereto, the commissioner may:

3 (1) Issue an order requiring any such person to comply in  
4 accordance with subsection b. of this section; or

5 (2) Bring a civil action in accordance with subsection c. of this  
6 section; or

7 (3) Levy a civil administrative penalty in accordance with  
8 subsection d. of this section; or

9 (4) Bring an action for a civil penalty in accordance with  
10 subsection e. of this section; or

11 (5) Petition the Attorney General to bring a criminal action in  
12 accordance with subsection f. of this section.

13 Recourse to any of the remedies available under this section shall  
14 not preclude recourse to any of the other remedies prescribed in this  
15 section or by any other applicable law.

16 b. Whenever, on the basis of available information, the  
17 commissioner finds a person in violation of any provision of <sup>1</sup>[the  
18 “Safe Dam Act.”] P.L.1981, c.249,<sup>1</sup> or any rule, regulation or order  
19 issued pursuant thereto, the commissioner may issue an administrative  
20 order: (1) specifying the provision or provisions of the law, rule,  
21 regulation, or order, of which the person is in violation; (2) citing the  
22 action which constituted the violation; (3) requiring compliance with  
23 the provision or provisions violated; (4) requiring the restoration of  
24 the area which is the site of the violation; and (5) providing notice to  
25 the person of the right to a hearing on the matters contained in the  
26 order.

27 c. The commissioner is authorized to institute a civil action in  
28 Superior Court for appropriate relief from any violation of <sup>1</sup>[the “Safe  
29 Dam Act.”] P.L.1981, c.249,<sup>1</sup> or any rule, regulation or order issued  
30 pursuant thereto. Such relief may include, singly or in combination:

31 (1) A temporary or permanent injunction, including an order or  
32 judgement as will effectually secure the persons interested from danger  
33 of loss from the breaking of a dam. The court may proceed in the  
34 action in a summary manner or otherwise;

35 (2) Assessment of the violator for the costs of any investigation,  
36 inspection, or monitoring survey which led to the establishment of the  
37 violation, and for the reasonable costs of preparing and bringing legal  
38 action under this subsection;

39 (3) Assessment of the violator for any costs incurred by the State  
40 in removing, correcting, or terminating the adverse effects resulting  
41 from any violation for which legal action under this subsection may  
42 have been brought;

43 (4) Assessment against the violator for compensatory damages for  
44 any loss or destruction of wildlife, fish or aquatic life, and for any  
45 other actual damages caused by a violation;

46 (5) A requirement that the violator restore the site of the violation

1 to the maximum extent practicable and feasible.  
2 d. The commissioner is authorized to assess a civil administrative  
3 penalty of up to \$25,000 for each violation of any provision of <sup>1</sup>[the  
4 “Safe Dam Act,”] P.L.1981, c.249,<sup>1</sup> or any rule, regulation or order  
5 issued pursuant thereto, and each day during which each violation  
6 continues shall constitute an additional, separate, and distinct offense.  
7 Any amount assessed under this subsection shall fall within a range  
8 established by regulation by the commissioner for violations of similar  
9 type, seriousness, and duration. In adopting rules and regulations  
10 establishing the amount of any penalty to be assessed, the  
11 commissioner may take into account the economic benefits from the  
12 violation gained by the violator. No assessment shall be levied  
13 pursuant to this section until after the party has been notified by  
14 certified mail or personal service. The notice shall: (1) identify the  
15 section of the law, rule, regulation or order violated; (2) recite the  
16 facts alleged to constitute a violation; (3) state the amount of the civil  
17 penalties to be imposed; and (4) affirm the rights of the alleged  
18 violator to a hearing. The ordered party shall have 20 days from  
19 receipt of the notice within which to deliver to the commissioner a  
20 written request for a hearing. After the hearing and upon finding that  
21 a violation has occurred, the commissioner may issue a final order  
22 specifying the amount of the fine imposed. If no hearing is requested,  
23 the notice shall become final after the expiration of the 20-day period.  
24 Payment of the assessment is due when a final order is issued or the  
25 notice becomes a final order. The authority to levy an administrative  
26 penalty is in addition to all other enforcement provisions in this act and  
27 in any other applicable law, rule, or regulation, and the payment of any  
28 assessment shall not be deemed to affect the availability of any other  
29 enforcement provisions in connection with the violation for which the  
30 assessment is levied. Any civil administrative penalty assessed under  
31 this section may be compromised by the commissioner upon the  
32 posting of a performance bond by the violator, or upon such terms and  
33 conditions as the commissioner may establish by regulation.  
34 e. A person who violates any provision of <sup>1</sup>[the “Safe Dam Act,”]  
35 P.L.1981, c.249<sup>1</sup> or any rule, regulation or order issued pursuant  
36 thereto, an administrative order issued pursuant to subsection b. of this  
37 section, or a court order issued pursuant to subsection c. of this  
38 section, or who fails to pay a civil administrative penalty in full  
39 pursuant to subsection d. of this section, shall be subject, upon order  
40 of a court, to a civil penalty not to exceed \$10,000 per day of such  
41 violation, and each day during which the violation continues shall  
42 constitute an additional, separate, and distinct offense. Any civil  
43 penalty imposed pursuant to this subsection may be collected with  
44 costs in a summary proceeding pursuant to the "Penalty Enforcement  
45 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to  
46 any penalties, costs or interest charges, the court may assess against



1 the violator the amount of actual economic benefit accruing to the  
2 violator from the violation. The Superior Court and the municipal  
3 court shall have jurisdiction to enforce the provisions of the "Penalty  
4 Enforcement Law of 1999" in connection with this <sup>1</sup>[act] section<sup>1</sup>.

5 f. A person who purposely, <sup>1</sup>knowingly or<sup>1</sup> recklessly <sup>1</sup>[or  
6 negligently]<sup>1</sup> violates any provision of <sup>1</sup>[the "Safe Dam Act,"]  
7 P.L.1981, c.249,<sup>1</sup> or any rule, regulation or order issued pursuant  
8 thereto, shall be guilty, upon conviction, of a crime of the fourth  
9 degree and, notwithstanding any provision of N.J.S.2C:43-3 to the  
10 contrary, shall be subject to a fine of not less than \$2,500 nor more  
11 than \$25,000 per day of violation, in addition to any other applicable  
12 penalties and provisions under Title 2C of the New Jersey Statutes.  
13 A second or subsequent offense under this subsection shall subject the  
14 violator to a fine, notwithstanding any provision of N.J.S.2C:43-3 to  
15 the contrary, of not less than \$5,000 nor more than \$50,000 per day  
16 of violation, in addition to any other applicable penalties and  
17 provisions under Title 2C of the New Jersey Statutes. A person who  
18 knowingly makes a false statement, representation, or certification in  
19 any application, record, or other document filed or required to be  
20 maintained under the <sup>1</sup>["Safe Dam Act"] provisions of P.L.1981,  
21 c.249<sup>1</sup> shall be guilty, upon conviction, of a crime of the fourth degree  
22 and, notwithstanding any provision of N.J.S.2C:43-3 to the contrary,  
23 shall be subject to a fine of not more than \$10,000, in addition to any  
24 other applicable penalties and provisions under Title 2C of the New  
25 Jersey Statutes.

26 g. In addition to the penalties prescribed in this section, a notice of  
27 violation of any provision of <sup>1</sup>[the "Safe Dam Act,"] P.L.1981,  
28 c.249,<sup>1</sup> or any rule, regulation or order issued pursuant thereto, shall  
29 be recorded on the deed of the property wherein the violation  
30 occurred, on order of the commissioner, by the clerk or register of  
31 deeds and mortgages of the county wherein the affected property is  
32 located and with the clerk of the Superior Court and shall remain  
33 attached thereto until such time as the violation has been remedied and  
34 the commissioner orders the notice of violation removed.

35 h. The department may require an owner <sup>1</sup>or person having control  
36 of a reservoir or dam<sup>1</sup> to provide any information the department  
37 requires to determine compliance with any provision of <sup>1</sup>[the "Safe  
38 Dam Act,"] P.L.1981, c.249,<sup>1</sup> or any rule, regulation or order issued  
39 pursuant thereto.

40 i. Any person who knowingly, recklessly, or negligently makes a  
41 false statement, representation or certification in any application,  
42 record, or other document filed or required to be maintained under the  
43 <sup>1</sup>["Safe Dam Act,"] provisions of P.L.1981, c.249,<sup>1</sup> shall be in  
44 violation of the act and shall be subject to the penalties assessed  
45 pursuant to subsections d. and e. of this section.

46 j. All penalties collected pursuant to this section <sup>1</sup>or sums collected

1 pursuant to R.S.58:4-5<sup>1</sup> shall be deposited in the “Environmental  
2 Services Fund,” established pursuant to section 5 of P.L.1975, c.232  
3 (C.13:1D-33), and kept separate from other receipts deposited therein,  
4 and appropriated to the department for the <sup>1</sup>[repair and maintenance]  
5 removal<sup>1</sup> of dams in the State.

6 k. The department shall have the authority to enter any property,  
7 facility, premises, or site for the purpose of conducting inspections to  
8 determine the condition of any dam, or to conduct inspections of  
9 ordered repairs or to otherwise determine compliance with the  
10 provisions of <sup>1</sup>[the “Safe Dam Act.”] P.L.1981, c.249.<sup>1</sup>  
11 (cf: P.L.1981, c.249, s.8)

12

13 3. This act shall take effect immediately.

14

15

16

17

18 Authorizes DEP to assess penalties for violations of the "Safe Dam  
19 Act" and to charge owners for repairs to dams.

**SENATE, No. 1895**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED OCTOBER 4, 2004

**Sponsored by:**

**Senator WAYNE R. BRYANT**

**District 5 (Camden and Gloucester)**

**SYNOPSIS**

Authorizes DEP to assess penalties for violations of the "Safe Dam Act" and to charge owners for repairs to dams.

**CURRENT VERSION OF TEXT**

As introduced.



S1895 BRYANT

2

1 AN ACT concerning dam safety, and amending R.S.58:4-5 and  
2 R.S.58:4-6.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. R.S.58:4-5 is amended to read as follows:

8 58:4-5. a. If, in the judgment of the commissioner, any reservoir or  
9 dam is not sufficiently strong to resist the pressure of water upon it or  
10 there is reasonable cause to believe that danger to life or property may  
11 be anticipated from the reservoir or dam, or if for any other cause the  
12 commissioner shall determine the reservoir or dam to be unsafe or  
13 improperly maintained, the commissioner shall determine whether the  
14 water in the reservoir or above the dam shall be drawn off in whole or  
15 in part, and what alterations, additions and repairs are necessary to be  
16 made to the reservoir or dam to make it safe and properly maintained.  
17 The commissioner shall forthwith in writing order the owner or person  
18 having control of the reservoir or dam to cause the alterations,  
19 additions and repairs to be made within the time to be limited in the  
20 order. The commissioner also may order the water in the reservoir or  
21 above the dam to be drawn off in whole or in part as the commissioner  
22 may determine. The commissioner shall not approve the  
23 decommissioning of a reservoir or dam until the commissioner has  
24 provided 30 days' prior notice and the commissioner has complied with  
25 the provisions of R.S.58:4-10 as applicable. The notice of the  
26 proposed decommissioning shall be published at least 30 days prior to  
27 the decommissioning of the reservoir or dam in at least one newspaper  
28 of general circulation in the municipality in which the reservoir or dam  
29 is located. The commissioner shall have the right to enter upon any  
30 and all properties for the purpose of obtaining information about the  
31 safety and proper maintenance of any reservoir, dam or appurtenant  
32 structures located therein.

33 b. Any owner who fails to comply with an order issued pursuant to  
34 subsection a. of this section shall be liable to the department in an  
35 amount equal to three times the cost of repair of the dam undertaken  
36 by the department pursuant to subsection c. of this section.

37 In instances where two or more owners are liable for the cost of  
38 repairs, the department may allocate the cost of repairs among the  
39 liable owners using such factors as the department determines are  
40 appropriate. Nothing in this subsection shall affect the right of any  
41 party to seek contribution from any other person responsible for the  
42 cost of repair of the dam pursuant to any other statute or under  
43 common law.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

S1895 BRYANT

1     c. (1) Whenever the commissioner determines that a dam is in  
2 imminent danger of failure, and the owner of the dam has failed to  
3 comply with an order to repair the dam issued pursuant to subsection  
4 a. of this section, the department may act to make the necessary  
5 repairs.

6     (2) Any expenditures made by the department pursuant to this  
7 section shall constitute, in each instance, a debt to the State. The debt  
8 shall constitute a lien on all property owned by the owner when a  
9 notice of lien, incorporating a description of the property of the owner  
10 subject to the repair, and related costs, is duly filed with the clerk of  
11 the Superior Court. The clerk shall promptly enter upon the civil  
12 judgment or order docket the name and address of the owner and the  
13 amount of the lien as set forth in the notice of lien. Upon entry by the  
14 clerk, the lien, to the amount committed by the department for dam  
15 repair, shall attach to the revenues and all real and personal property  
16 of the owner, whether or not the owner is insolvent.

17     The notice of lien filed pursuant to this paragraph which affects the  
18 property of an owner subject to the dam repairs shall create a lien with  
19 priority over all other claims or liens which are or have been filed  
20 against the property, except if the property comprises six dwelling  
21 units or less and is used exclusively for residential purposes, this notice  
22 of lien shall not affect any valid lien, right or interest in the property  
23 filed in accordance with established procedure prior to the filing of this  
24 notice of lien. The notice of lien filed pursuant to this subsection  
25 which affects any property of an owner, other than the property  
26 subject to the repairs, shall have priority from the day of the filing of  
27 the notice of the lien over all other claims and liens filed against the  
28 property, but shall not affect any valid lien, right, or interest in the  
29 property filed in accordance with established procedure prior to the  
30 filing of a notice of lien pursuant to this subsection.

31 (cf: P.L.1994, c.84, s.1)

32  
33     2. R.S.58:4-6 is amended to read as follows:

34     58:4-6. [If the owner or person having control of any reservoir or  
35 dam shall not forthwith comply with any order of the commissioner  
36 made as provided in section 58:4-5 of this Title or shall not prosecute  
37 the work, when commenced, with reasonable expedition, the  
38 commissioner may direct the Attorney General to proceed in the name  
39 of the State to enforce its order in a court of competent jurisdiction.  
40 Action may be brought against the person controlling or owning the  
41 reservoir or dam, and the court may make such order and judgment in  
42 the premises as will effectually secure the persons interested from  
43 danger of loss from the breaking of the reservoir or dam complained  
44 of. The court may proceed in the action in a summary manner or  
45 otherwise. Any person who violates the provisions of this chapter or  
46 of any order issued pursuant to this chapter shall be liable to a penalty

1 of not more than \$5,000.00 for each offense. If the violation is of a  
2 continuing nature, each day during which it continues shall constitute  
3 an additional, separate and distinct offense.]

4 a. Whenever the Commissioner of Environmental Protection finds  
5 that a person has violated any provision of the "Safe Dam Act," P.L.  
6 1981, c.249 (C.58:4-8.1 et seq.), or any rule, regulation or order  
7 issued pursuant thereto, the commissioner may:

8 (1) Issue an order requiring any such person to comply in  
9 accordance with subsection b. of this section; or

10 (2) Bring a civil action in accordance with subsection c. of this  
11 section; or

12 (3) Levy a civil administrative penalty in accordance with  
13 subsection d. of this section; or

14 (4) Bring an action for a civil penalty in accordance with  
15 subsection e. of this section; or

16 (5) Petition the Attorney General to bring a criminal action in  
17 accordance with subsection f. of this section.

18 Recourse to any of the remedies available under this section shall  
19 not preclude recourse to any of the other remedies prescribed in this  
20 section or by any other applicable law.

21 b. Whenever, on the basis of available information, the  
22 commissioner finds a person in violation of any provision of the "Safe  
23 Dam Act," or any rule, regulation or order issued pursuant thereto,  
24 the commissioner may issue an administrative order: (1) specifying the  
25 provision or provisions of the law, rule, regulation, or order, of which  
26 the person is in violation; (2) citing the action which constituted the  
27 violation; (3) requiring compliance with the provision or provisions  
28 violated; (4) requiring the restoration of the area which is the site of  
29 the violation; and (5) providing notice to the person of the right to a  
30 hearing on the matters contained in the order.

31 c. The commissioner is authorized to institute a civil action in  
32 Superior Court for appropriate relief from any violation of the "Safe  
33 Dam Act," or any rule, regulation or order issued pursuant thereto.  
34 Such relief may include, singly or in combination:

35 (1) A temporary or permanent injunction, including an order or  
36 judgement as will effectually secure the persons interested from danger  
37 of loss from the breaking of a dam. The court may proceed in the  
38 action in a summary manner or otherwise;

39 (2) Assessment of the violator for the costs of any investigation,  
40 inspection, or monitoring survey which led to the establishment of the  
41 violation, and for the reasonable costs of preparing and bringing legal  
42 action under this subsection;

43 (3) Assessment of the violator for any costs incurred by the State  
44 in removing, correcting, or terminating the adverse effects resulting  
45 from any violation for which legal action under this subsection may  
46 have been brought;

1       (4) Assessment against the violator for compensatory damages for  
2 any loss or destruction of wildlife, fish or aquatic life, and for any  
3 other actual damages caused by a violation;

4       (5) A requirement that the violator restore the site of the violation  
5 to the maximum extent practicable and feasible.

6       d. The commissioner is authorized to assess a civil administrative  
7 penalty of up to \$25,000 for each violation of any provision of the  
8 “Safe Dam Act,” or any rule, regulation or order issued pursuant  
9 thereto, and each day during which each violation continues shall  
10 constitute an additional, separate, and distinct offense. Any amount  
11 assessed under this subsection shall fall within a range established by  
12 regulation by the commissioner for violations of similar type,  
13 seriousness, and duration. In adopting rules and regulations  
14 establishing the amount of any penalty to be assessed, the  
15 commissioner may take into account the economic benefits from the  
16 violation gained by the violator. No assessment shall be levied  
17 pursuant to this section until after the party has been notified by  
18 certified mail or personal service. The notice shall: (1) identify the  
19 section of the law, rule, regulation or order violated; (2) recite the  
20 facts alleged to constitute a violation; (3) state the amount of the civil  
21 penalties to be imposed; and (4) affirm the rights of the alleged  
22 violator to a hearing. The ordered party shall have 20 days from  
23 receipt of the notice within which to deliver to the commissioner a  
24 written request for a hearing. After the hearing and upon finding that  
25 a violation has occurred, the commissioner may issue a final order  
26 specifying the amount of the fine imposed. If no hearing is requested,  
27 the notice shall become final after the expiration of the 20-day period.  
28 Payment of the assessment is due when a final order is issued or the  
29 notice becomes a final order. The authority to levy an administrative  
30 penalty is in addition to all other enforcement provisions in this act and  
31 in any other applicable law, rule, or regulation, and the payment of any  
32 assessment shall not be deemed to affect the availability of any other  
33 enforcement provisions in connection with the violation for which the  
34 assessment is levied. Any civil administrative penalty assessed under  
35 this section may be compromised by the commissioner upon the  
36 posting of a performance bond by the violator, or upon such terms and  
37 conditions as the commissioner may establish by regulation.

38       e. A person who violates any provision of the “Safe Dam Act,” or  
39 any rule, regulation or order issued pursuant thereto, an administrative  
40 order issued pursuant to subsection b. of this section, or a court order  
41 issued pursuant to subsection c. of this section, or who fails to pay a  
42 civil administrative penalty in full pursuant to subsection d. of this  
43 section, shall be subject, upon order of a court, to a civil penalty not  
44 to exceed \$10,000 per day of such violation, and each day during  
45 which the violation continues shall constitute an additional, separate,  
46 and distinct offense. Any civil penalty imposed pursuant to this

1 subsection may be collected with costs in a summary proceeding  
2 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274  
3 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest  
4 charges, the court may assess against the violator the amount of actual  
5 economic benefit accruing to the violator from the violation. The  
6 Superior Court and the municipal court shall have jurisdiction to  
7 enforce the provisions of the "Penalty Enforcement Law of 1999" in  
8 connection with this act.

9 f. A person who purposely, recklessly or negligently violates any  
10 provision of the "Safe Dam Act," or any rule, regulation or order  
11 issued pursuant thereto, shall be guilty, upon conviction, of a crime of  
12 the fourth degree and, notwithstanding any provision of N.J.S.2C:43-3  
13 to the contrary, shall be subject to a fine of not less than \$2,500 nor  
14 more than \$25,000 per day of violation, in addition to any other  
15 applicable penalties and provisions under Title 2C of the New Jersey  
16 Statutes. A second or subsequent offense under this subsection shall  
17 subject the violator to a fine, notwithstanding any provision of  
18 N.J.S.2C:43-3 to the contrary, of not less than \$5,000 nor more than  
19 \$50,000 per day of violation, in addition to any other applicable  
20 penalties and provisions under Title 2C of the New Jersey Statutes.  
21 A person who knowingly makes a false statement, representation, or  
22 certification in any application, record, or other document filed or  
23 required to be maintained under the "Safe Dam Act" shall be guilty,  
24 upon conviction, of a crime of the fourth degree and, notwithstanding  
25 any provision of N.J.S.2C:43-3 to the contrary, shall be subject to a  
26 fine of not more than \$10,000, in addition to any other applicable  
27 penalties and provisions under Title 2C of the New Jersey Statutes.

28 g. In addition to the penalties prescribed in this section, a notice of  
29 violation of any provision of the "Safe Dam Act," or any rule,  
30 regulation or order issued pursuant thereto, shall be recorded on the  
31 deed of the property wherein the violation occurred, on order of the  
32 commissioner, by the clerk or register of deeds and mortgages of the  
33 county wherein the affected property is located and with the clerk of  
34 the Superior Court and shall remain attached thereto until such time  
35 as the violation has been remedied and the commissioner orders the  
36 notice of violation removed.

37 h. The department may require an owner to provide any  
38 information the department requires to determine compliance with any  
39 provision of the "Safe Dam Act," or any rule, regulation or order  
40 issued pursuant thereto.

41 i. Any person who knowingly, recklessly, or negligently makes a  
42 false statement, representation or certification in any application,  
43 record, or other document filed or required to be maintained under the  
44 "Safe Dam Act," shall be in violation of the act and shall be subject to  
45 the penalties assessed pursuant to subsections d. and e. of this section.

46 j. All penalties collected pursuant to this section shall be deposited



1 in the "Environmental Services Fund," established pursuant to section  
2 5 of P.L.1975, c.232 (C.13:1D-33), and kept separate from other  
3 receipts deposited therein, and appropriated to the department for the  
4 repair and maintenance of dams in the State.

5 k. The department shall have the authority to enter any property,  
6 facility, premises, or site for the purpose of conducting inspections to  
7 determine the condition of any dam, or to conduct inspections of  
8 ordered repairs or to otherwise determine compliance with the  
9 provisions of the "Safe Dam Act."

10 (cf: P.L.1981, c.249, s.8)

11  
12 3. This act shall take effect immediately.

13  
14  
15 STATEMENT

16  
17 Under current law, the only recourse available to the Department  
18 of Environmental Protection to compel dam owners to comply with  
19 DEP orders to repair dams, is for the commissioner to request the  
20 Attorney General to request a court order to enforce the DEP's orders,  
21 and to impose a penalty of not more than \$5,000.

22 This bill would amend the "Safe Dam Act," (C.58:4-8.1 et seq.) to  
23 authorize the DEP, in its discretion, to make necessary repairs to  
24 dams, and to charge owners for such repairs, whenever any dam is, in  
25 the judgement of the commissioner, in imminent danger of failure, and  
26 where the owner has refused to comply with a repair order issued by  
27 the department. Further, the bill provides that any owner who fails to  
28 comply with such an order would be liable to the department for three  
29 times the cost of such repair. This bill would also allow allocation of  
30 the cost of repairs among the liable owners in instances where two or  
31 more owners are liable and provide that expenditures made by the  
32 department shall constitute a debt of the owner to the State. The debt  
33 would constitute a lien on all property owned by the owner and the  
34 lien would have priority over other liens with regard to the property  
35 subject to the repairs.

36 This bill would also expand the "Safe Dam Act" to allow the  
37 commissioner: 1) to issue an order requiring any person in violation  
38 of any provision of the act to comply, and to restore any area which  
39 is the site of the violation; 2) to institute a civil action for appropriate  
40 relief from any violation, including an injunction to secure an area  
41 from the danger of a breaking dam, assessment of the violator for the  
42 costs of investigation, inspection or monitoring of the site in violation,  
43 and the reasonable costs of bringing legal action, assessment of the  
44 violator for any costs incurred by the State to remedy any violation for  
45 which legal action has been brought, assessment against a violator for  
46 compensatory and actual damages caused as a result of a violation, and

**S1895 BRYANT**

1 requiring that a violator restore the site of a violation; 3) to levy a civil  
2 administrative penalty of up to \$25,000 for each violation of any  
3 provision of the act; 4) to bring an action for a civil penalty for any  
4 violation of the act; and 5) to petition the Attorney General to bring  
5 a criminal action against a dam owner who knowingly, recklessly or  
6 negligently violates the "Safe Dam Act." A person so convicted would  
7 be guilty of a fourth degree crime, and may be assessed a fine of not  
8 less than \$2,500 nor more than \$25,000 per day of violation, with  
9 increasing penalties for subsequent offenses. The bill would also  
10 authorize the assessment by the court, upon conviction, of a fine of not  
11 more than \$10,000 against any person that knowingly makes a false  
12 statement, representation, or certification in any application, record,  
13 or other document filed as required under the act.

14 This bill would allow the commissioner to order that violations of  
15 any provision of the Safe Dam Act, or any rule, regulation or order  
16 issued pursuant thereto, be recorded on the deed of the property  
17 wherein the violation occurred, and remain attached thereto until such  
18 time as the violation has been remedied. All penalties collected  
19 pursuant to this bill would be deposited in the "Environmental  
20 Services Fund," to be kept separate from other receipts deposited  
21 therein, and shall be appropriated to the department for the repair and  
22 maintenance of dams in the State. The bill would authorize the  
23 department to enter any property, facility, premises, or site for the  
24 purpose of conducting inspections of dams or to otherwise determine  
25 compliance with the provisions of the act.

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

[First Reprint]  
**SENATE, No. 1895**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 5, 2005

The Assembly Environment and Solid Waste Committee reports favorably Senate Bill No. 1895 (1R) with committee amendments.

Under current law, the only recourse available to the Department of Environmental Protection (DEP) to compel dam owners to comply with DEP orders to repair dams, is for the Commissioner of Environmental Protection to request the Attorney General to request a court order to enforce the DEP's orders, and to impose a penalty of not more than \$5,000.

As amended, Senate Bill No. 1895 (1R) revises the statutory law to strengthen the DEP's authority to take action regarding failing and failed dams and to integrate these measures with the provisions of the "Safe Dam Act," P.L.1981, c.249 (C.58:4-8.1 et seq.).

The bill, as amended, requires every owner or person having control of a reservoir or dam to:

(1) implement all measures required under the revised statutory law or the provisions of the "Safe Dam Act," or any rule, regulation, code, permit or order issued by the DEP pursuant thereto, including but not limited to, performance of periodic inspections or development, updating and implementation of emergency action plans;

(2) provide to the DEP, upon request, any reports or information required under the aforementioned acts, or any rule or regulation adopted, or permit or order issued by the DEP pursuant thereto; and

(3) implement any action ordered by the Commissioner of Environmental Protection to correct conditions that render the reservoir or dam to be considered unsafe or improperly maintained, as determined by the Commissioner, or to bring the reservoir or dam into compliance with standards established under the aforementioned acts, or any rule or regulation adopted, or permit or order issued by the DEP pursuant thereto.

As amended, Senate Bill No. 1895 (1R) requires that a copy of any order issued by the Commissioner concerning reservoir or dam repair

be sent to the clerk of the municipality and the clerk of the county in which the reservoir or dam is located. The bill, as amended, further requires, prior to any action by the DEP, an owner or person having control of a reservoir or dam is required to submit to the DEP in writing, no later than 60 days after receipt of a notice of a removal action from DEP, an acceptable implementation plan addressing the proposed actions to be taken regarding the failed or failing reservoir or dam.

As amended, Senate Bill No. 1895 (1R) directs the Commissioner of Environmental Protection to take any action authorized under the bill to compel compliance with the provisions of the revised statutory law, or any rule or regulation adopted, or permit or order issued by the DEP pursuant thereto, if the Commissioner determines that any reservoir or dam is not sufficiently strong to resist the pressure of water that is or may be upon it, there is reasonable cause to believe that danger to life or property may be anticipated from the reservoir or dam, or for any other cause, the reservoir or dam is unsafe or improperly maintained.

The Commissioner also must determine whether the water in the reservoir or above the dam should be drawn off in whole or in part, and what alterations, additions and repairs are necessary to be made to the reservoir or dam to make it safe and properly maintained, or whether the dam or appurtenant structures located therein should be removed. Finally, the Commissioner may take action as authorized pursuant to R.S.58:4-6 against the owner or person having control of the reservoir or dam for such relief as the Commissioner may determine.

As amended, Senate Bill No. 1895 (1R) provides that any owner or person having control over a dam or reservoir who fails to comply with a repair order or take appropriate interim measures as determined by the DEP, would be liable to the DEP for the cost of the removal of the dam. The bill, as amended, authorizes the DEP to enter upon any and all properties wherein the reservoir, dam or appurtenant structures are located, using resources and personnel available to the DEP, remove or cause to be removed the dam or appurtenant structures located therein, and charge the owner or person having control of the reservoir or dam for the costs of the removal.

The bill, as amended, also allows allocation of the cost of removal among the liable owners or persons having control of the dam or reservoir whenever two or more owners or such persons are liable and provides that expenditures made by the DEP would constitute, in each instance, a debt of the owner to the State. The debt would constitute a lien on all property owned by the liable owner or person and the lien would have priority over other liens with regard to the property.

Whenever the owner or person having control of the reservoir or dam is a private lake association or other body representing owners of property adjacent to the reservoir or lake created by the dam or impoundment, liens may be imposed upon the individual owners of the

property represented by the association. An owner whose property has such a lien imposed may release the property from a lien claimed under this subsection by filing with the clerk of the Superior Court a cash or surety bond, payable to the DEP in the amount of the sums expended by the DEP, including attorney's fees and court costs, or the value of the property after the abatement action is complete, whichever is less.

As amended, Senate Bill No. 1895 (1R) expands and complements the "Safe Dam Act" to allow the Commissioner to:

(1) issue an order requiring any person in violation of any provision of the act to comply, and to restore any area which is the site of the violation;

(2) institute a civil action for appropriate relief from any violation, including an injunction to secure an area from the danger of a breaking dam, assessment of the violator for the costs of investigation, inspection or monitoring of the site in violation, and the reasonable costs of bringing legal action, assessment of the violator for any costs incurred by the State to remedy any violation for which legal action has been brought, assessment against a violator for compensatory and actual damages caused as a result of a violation, and requiring that a violator restore the site of a violation;

(3) levy a civil administrative penalty of up to \$25,000 for each violation of any provision of the act;

(4) bring an action for a civil penalty for any violation of the act; and

(5) petition the Attorney General to bring a criminal action against a dam owner who purposely, knowingly or recklessly violates the "Safe Dam Act." A person so convicted would be guilty of a fourth degree crime, and may be assessed a fine of not less than \$2,500 nor more than \$25,000 per day of violation, with increasing penalties for subsequent offenses. Senate Bill No. 1895 (1R), as amended, would also authorize the assessment by the court, upon conviction, of a fine of not more than \$10,000 against any person that knowingly makes a false statement, representation, or certification in any application, record, or other document filed as required under the act.

As amended, Senate Bill No. 1895 (1R) allows the Commissioner to order that violations of any provision of the "Safe Dam Act," or any rule, regulation or order issued pursuant thereto, be recorded on the deed of the property wherein the violation occurred, and remain attached thereto until such time as the violation has been remedied.

All penalties collected under Senate Bill No. 1895 (1R), as amended, would be deposited in the "Environmental Services Fund," to be kept separate from other receipts deposited therein, and would be appropriated to the DEP for the removal of unsafe or failed dams in the State. The bill, as amended, authorizes the DEP to enter any property, facility, premises, or site for the purpose of conducting inspections of dams or to otherwise determine compliance with the provisions of the act.

As amended and reported by the committee, Senate Bill No. 1895 (1R) is identical to the committee substitute for Assembly Bill Nos. 3538, 3370, and 3373, as reported by the committee.

COMMITTEE AMENDMENTS:

Committee amendments to the bill:

1) Require a copy of any reservoir or dam repair order issued by the Commissioner of Environmental Protection to be sent to the clerk of the municipality and the clerk of the county in which the reservoir or dam is located;

2) Delete the requirement that an owner or person having control of a reservoir, high hazard dam, or significant hazard dam submit to DEP an implementation plan addressing the proposed actions to be taken, no later than 60 days after the receipt of an order of the Commissioner of Environmental Protection to correct conditions rendering a reservoir or dam unsafe or improperly maintained;

3) Provide that prior to any action by the DEP regarding a dam, the owner or person having control of the reservoir or dam has up to 60 days after receipt of a notice of a pending removal action to submit in writing to the DEP an acceptable implementation plan addressing the proposed actions to be taken;

4) Clarify that, along with the other conditions named in the bill, the Commissioner of Environmental Protection must determine, both, that a dam is in imminent danger of failure and there is reasonable cause to believe that danger to life or property may be anticipated from the reservoir, dam, or appurtenant structures before the DEP may enter the property, and remove or cause to remove the reservoir, dam, or structures; and

5) Change the terms "notice of lien" to "certificate of debt," and "civil judgment or order docket" to "civil judgment and order docket."

# SENATE ENVIRONMENT COMMITTEE

## STATEMENT TO

### **SENATE, No. 1895**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: OCTOBER 18, 2004

The Senate Environment Committee reports favorably and with committee amendments Senate Bill No. 1895.

Under current law, the only recourse available to the Department of Environmental Protection (DEP) to compel dam owners to comply with DEP orders to repair dams, is for the Commissioner to request the Attorney General to request a court order to enforce the DEP's orders, and to impose a penalty of not more than \$5,000.

As amended, Senate Bill No. 1895 revises the statutory law to strengthen the DEP's authority to take action regarding failing and failed dams and to integrate these measures with the provisions of the "Safe Dam Act," (C.58:4-8.1 et seq.).

The amended bill authorizes the DEP to provide for the dam's removal, and to charge the owner or person having control of the reservoir or dam for the costs of the removal, whenever any dam is in imminent danger of failure in the judgement of the Commissioner, and where the owner or person having control of the dam has refused to comply with a repair order issued by the DEP.

Further, the amended bill provides that any owner or person having control over a dam or reservoir who fails to comply with such an order would be liable to the DEP for the cost of the removal of the dam. The bill also allows allocation of the cost of removal among the liable owners or persons having control of the dam or reservoir whenever two or more owners or such persons are liable and provides that expenditures made by the DEP would constitute a debt of the owner to the State. The debt would constitute a lien on all property owned by the liable owner or person and the lien would have priority over other liens with regard to the property.

The bill, as amended, expands and complements the "Safe Dam Act" to allow the Commissioner to:

- (1) Issue an order requiring any person in violation of any provision of the act to comply, and to restore any area which is the site of the violation;
- (2) Institute a civil action for appropriate relief from any violation,

including an injunction to secure an area from the danger of a breaking dam, assessment of the violator for the costs of investigation, inspection or monitoring of the site in violation, and the reasonable costs of bringing legal action, assessment of the violator for any costs incurred by the State to remedy any violation for which legal action has been brought, assessment against a violator for compensatory and actual damages caused as a result of a violation, and requiring that a violator restore the site of a violation;

(3) Levy a civil administrative penalty of up to \$25,000 for each violation of any provision of the act;

(4) Bring an action for a civil penalty for any violation of the act; and

(5) Petition the Attorney General to bring a criminal action against a dam owner who purposely, knowingly or recklessly violates the "Safe Dam Act." A person so convicted would be guilty of a fourth degree crime, and may be assessed a fine of not less than \$2,500 nor more than \$25,000 per day of violation, with increasing penalties for subsequent offenses. The bill would also authorize the assessment by the court, upon conviction, of a fine of not more than \$10,000 against any person that knowingly makes a false statement, representation, or certification in any application, record, or other document filed as required under the act.

The amended bill allows the Commissioner to order that violations of any provision of the Safe Dam Act, or any rule, regulation or order issued pursuant thereto, be recorded on the deed of the property wherein the violation occurred, and remain attached thereto until such time as the violation has been remedied.

All penalties collected under the bill would be deposited in the "Environmental Services Fund," to be kept separate from other receipts deposited therein, and would be appropriated to the DEP for the removal of unsafe or failed dams in the State. The bill authorizes the DEP to enter any property, facility, premises, or site for the purpose of conducting inspections of dams or to otherwise determine compliance with the provisions of the act.

Committee Amendments:

The Committee amendments authorize the DEP to require every owner or person having control of a reservoir or dam to:

(1) Implement all measures required under the revised statutory law or the provisions of the "Safe Dam Act," or any rule, regulation, code, permit or order issued by the DEP pursuant thereto, including but not limited to, performance of periodic inspections or development, updating and implementation of emergency action plans;

(2) Provide to the DEP, upon request, any reports or information required under the aforementioned acts, or any rule or regulation adopted, or permit or order issued by the DEP pursuant thereto; and

(3) Implement any action ordered by the Commissioner of Environmental Protection to correct conditions that render the



reservoir or dam to be considered unsafe or improperly maintained, as determined by the Commissioner, or to bring the reservoir or dam into compliance with standards established under the aforementioned acts, or any rule or regulation adopted, or permit or order issued by the DEP pursuant thereto.

The Committee amendments provide that prior to implementing any action ordered by the Commissioner, an owner or person having control of a reservoir or high hazard dam or significant hazard dam, as identified by the DEP, is required to submit to the DEP, in writing, an implementation plan addressing the proposed actions to be taken regarding the failed or failing reservoir or dam, no later than 60 days of receipt of the order issued by the Commissioner.

The Committee amendments also provide that if the Commissioner determines that any reservoir or dam is not sufficiently strong to resist the pressure of water that is or may be upon it or there is reasonable cause to believe that danger to life or property may be anticipated from the reservoir or dam; or any other cause the Commissioner determines the reservoir or dam to be unsafe or improperly maintained, the Commissioner is then directed to take any action authorized under the bill to compel compliance with the provisions of the revised statutory law, or any rule or regulation adopted, or permit or order issued by the DEP pursuant thereto.

The Commissioner also must determine whether the water in the reservoir or above the dam should be drawn off in whole or in part, and what alterations, additions and repairs are necessary to be made to the reservoir or dam to make it safe and properly maintained; or the dam or appurtenant structures located therein should be removed.

The Commissioner also may take action as authorized pursuant to R.S.58:4-6 against the owner or person having control of the reservoir or dam for such relief as the Commissioner may determine.

Whenever the Commissioner determines that a dam is in imminent danger of failure or has reasonable cause to believe that danger to life or property may be anticipated from the reservoir, dam or appurtenant structures located therein, and the owner of the dam or person having control of the reservoir or dam has failed to comply with an order to repair the dam issued by the DEP, or to take such interim measures as the DEP determines are appropriate, including reducing the amount of water impounded by the dam or breaching the dam, the DEP may, in addition to the foregoing actions, enter upon any and all properties wherein the reservoir, dam or appurtenant structures are located and, using resources and personnel available to the DEP, remove or cause to be removed the dam or appurtenant structures located therein, allowing the water to flow freely. Any expenditures made by the DEP in this regard would constitute, in each instance, a debt to the State.

Whenever the owner or person having control of the reservoir or dam is a private lake association or other body representing owners of property adjacent to the reservoir or lake created by the dam or impoundment, liens may be imposed upon the individual owners of the

property represented by the association. An owner whose property has such a lien imposed may release the property from a lien claimed under this subsection by filing with the clerk of the Superior Court a cash or surety bond, payable to the DEP in the amount of the sums expended by the DEP, including attorney's fees and court costs, or the value of the property after the abatement action is complete, whichever is less.

# ASSEMBLY, No. 3538

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## STATE OF NEW JERSEY

### 211th LEGISLATURE

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INTRODUCED NOVEMBER 22, 2004

**Sponsored by:**

**Assemblywoman BONNIE WATSON COLEMAN**

**District 15 (Mercer)**

**Assemblyman REED GUSCIORA**

**District 15 (Mercer)**

**SYNOPSIS**

Authorizes DEP to assess penalties for violations of the "Safe Dam Act" and to charge owners for repairs to dams.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning dam safety, and amending R.S.58:4-5 and  
2 R.S.58:4-6.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. R.S.58:4-5 is amended to read as follows:

8 58:4-5. a. If, in the judgment of the commissioner, any reservoir or  
9 dam is not sufficiently strong to resist the pressure of water upon it or  
10 there is reasonable cause to believe that danger to life or property may  
11 be anticipated from the reservoir or dam, or if for any other cause the  
12 commissioner shall determine the reservoir or dam to be unsafe or  
13 improperly maintained, the commissioner shall determine whether the  
14 water in the reservoir or above the dam shall be drawn off in whole or  
15 in part, and what alterations, additions and repairs are necessary to be  
16 made to the reservoir or dam to make it safe and properly maintained.  
17 The commissioner shall forthwith in writing order the owner or person  
18 having control of the reservoir or dam to cause the alterations,  
19 additions and repairs to be made within the time to be limited in the  
20 order. The commissioner also may order the water in the reservoir or  
21 above the dam to be drawn off in whole or in part as the commissioner  
22 may determine. The commissioner shall not approve the  
23 decommissioning of a reservoir or dam until the commissioner has  
24 provided 30 days' prior notice and the commissioner has complied with  
25 the provisions of R.S.58:4-10 as applicable. The notice of the  
26 proposed decommissioning shall be published at least 30 days prior to  
27 the decommissioning of the reservoir or dam in at least one newspaper  
28 of general circulation in the municipality in which the reservoir or dam  
29 is located. The commissioner shall have the right to enter upon any  
30 and all properties for the purpose of obtaining information about the  
31 safety and proper maintenance of any reservoir, dam or appurtenant  
32 structures located therein.

33 b. Any owner who fails to comply with an order issued pursuant to  
34 subsection a. of this section shall be liable to the department in an  
35 amount equal to three times the cost of repair of the dam undertaken  
36 by the department pursuant to subsection c. of this section.

37 In instances where two or more owners are liable for the cost of  
38 repairs, the department may allocate the cost of repairs among the  
39 liable owners using such factors as the department determines are  
40 appropriate. Nothing in this subsection shall affect the right of any  
41 party to seek contribution from any other person responsible for the  
42 cost of repair of the dam pursuant to any other statute or under  
43 common law.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1       c. (1) Whenever the commissioner determines that a dam is in  
2 imminent danger of failure, and the owner of the dam has failed to  
3 comply with an order to repair the dam issued pursuant to subsection  
4 a. of this section, the department may act to make the necessary  
5 repairs.

6       (2) Any expenditures made by the department pursuant to this  
7 section shall constitute, in each instance, a debt to the State. The debt  
8 shall constitute a lien on all property owned by the owner when a  
9 notice of lien, incorporating a description of the property of the owner  
10 subject to the repair, and related costs, is duly filed with the clerk of  
11 the Superior Court. The clerk shall promptly enter upon the civil  
12 judgment or order docket the name and address of the owner and the  
13 amount of the lien as set forth in the notice of lien. Upon entry by the  
14 clerk, the lien, to the amount committed by the department for dam  
15 repair, shall attach to the revenues and all real and personal property  
16 of the owner, whether or not the owner is insolvent.

17       The notice of lien filed pursuant to this paragraph which affects the  
18 property of an owner subject to the dam repairs shall create a lien with  
19 priority over all other claims or liens which are or have been filed  
20 against the property, except if the property comprises six dwelling  
21 units or less and is used exclusively for residential purposes, this notice  
22 of lien shall not affect any valid lien, right or interest in the property  
23 filed in accordance with established procedure prior to the filing of this  
24 notice of lien. The notice of lien filed pursuant to this subsection  
25 which affects any property of an owner, other than the property  
26 subject to the repairs, shall have priority from the day of the filing of  
27 the notice of the lien over all other claims and liens filed against the  
28 property, but shall not affect any valid lien, right, or interest in the  
29 property filed in accordance with established procedure prior to the  
30 filing of a notice of lien pursuant to this subsection.

31 (cf: P.L.1994, c.84, s.1)

32  
33       2. R.S.58:4-6 is amended to read as follows:

34       58:4-6. [If the owner or person having control of any reservoir or  
35 dam shall not forthwith comply with any order of the commissioner  
36 made as provided in section 58:4-5 of this Title or shall not prosecute  
37 the work, when commenced, with reasonable expedition, the  
38 commissioner may direct the Attorney General to proceed in the name  
39 of the State to enforce its order in a court of competent jurisdiction.  
40 Action may be brought against the person controlling or owning the  
41 reservoir or dam, and the court may make such order and judgment in  
42 the premises as will effectually secure the persons interested from  
43 danger of loss from the breaking of the reservoir or dam complained  
44 of. The court may proceed in the action in a summary manner or  
45 otherwise. Any person who violates the provisions of this chapter or  
46 of any order issued pursuant to this chapter shall be liable to a penalty

1 of not more than \$5,000.00 for each offense. If the violation is of a  
2 continuing nature, each day during which it continues shall constitute  
3 an additional, separate and distinct offense.]

4 a. Whenever the Commissioner of Environmental Protection finds  
5 that a person has violated any provision of the "Safe Dam Act," P.L.  
6 1981, c.249 (C.58:4-8.1 et seq.), or any rule, regulation or order  
7 issued pursuant thereto, the commissioner may:

8 (1) Issue an order requiring any such person to comply in  
9 accordance with subsection b. of this section; or

10 (2) Bring a civil action in accordance with subsection c. of this  
11 section; or

12 (3) Levy a civil administrative penalty in accordance with  
13 subsection d. of this section; or

14 (4) Bring an action for a civil penalty in accordance with  
15 subsection e. of this section; or

16 (5) Petition the Attorney General to bring a criminal action in  
17 accordance with subsection f. of this section.

18 Recourse to any of the remedies available under this section shall  
19 not preclude recourse to any of the other remedies prescribed in this  
20 section or by any other applicable law.

21 b. Whenever, on the basis of available information, the  
22 commissioner finds a person in violation of any provision of the "Safe  
23 Dam Act," or any rule, regulation or order issued pursuant thereto,  
24 the commissioner may issue an administrative order: (1) specifying the  
25 provision or provisions of the law, rule, regulation, or order, of which  
26 the person is in violation; (2) citing the action which constituted the  
27 violation; (3) requiring compliance with the provision or provisions  
28 violated; (4) requiring the restoration of the area which is the site of  
29 the violation; and (5) providing notice to the person of the right to a  
30 hearing on the matters contained in the order.

31 c. The commissioner is authorized to institute a civil action in  
32 Superior Court for appropriate relief from any violation of the "Safe  
33 Dam Act," or any rule, regulation or order issued pursuant thereto.  
34 Such relief may include, singly or in combination:

35 (1) A temporary or permanent injunction, including an order or  
36 judgement as will effectually secure the persons interested from danger  
37 of loss from the breaking of a dam. The court may proceed in the  
38 action in a summary manner or otherwise;

39 (2) Assessment of the violator for the costs of any investigation,  
40 inspection, or monitoring survey which led to the establishment of the  
41 violation, and for the reasonable costs of preparing and bringing legal  
42 action under this subsection;

43 (3) Assessment of the violator for any costs incurred by the State  
44 in removing, correcting, or terminating the adverse effects resulting  
45 from any violation for which legal action under this subsection may  
46 have been brought;

1       (4) Assessment against the violator for compensatory damages for  
2 any loss or destruction of wildlife, fish or aquatic life, and for any  
3 other actual damages caused by a violation;

4       (5) A requirement that the violator restore the site of the violation  
5 to the maximum extent practicable and feasible.

6       d. The commissioner is authorized to assess a civil administrative  
7 penalty of up to \$25,000 for each violation of any provision of the  
8 “Safe Dam Act,” or any rule, regulation or order issued pursuant  
9 thereto, and each day during which each violation continues shall  
10 constitute an additional, separate, and distinct offense. Any amount  
11 assessed under this subsection shall fall within a range established by  
12 regulation by the commissioner for violations of similar type,  
13 seriousness, and duration. In adopting rules and regulations  
14 establishing the amount of any penalty to be assessed, the  
15 commissioner may take into account the economic benefits from the  
16 violation gained by the violator. No assessment shall be levied  
17 pursuant to this section until after the party has been notified by  
18 certified mail or personal service. The notice shall: (1) identify the  
19 section of the law, rule, regulation or order violated; (2) recite the  
20 facts alleged to constitute a violation; (3) state the amount of the civil  
21 penalties to be imposed; and (4) affirm the rights of the alleged  
22 violator to a hearing. The ordered party shall have 20 days from  
23 receipt of the notice within which to deliver to the commissioner a  
24 written request for a hearing. After the hearing and upon finding that  
25 a violation has occurred, the commissioner may issue a final order  
26 specifying the amount of the fine imposed. If no hearing is requested,  
27 the notice shall become final after the expiration of the 20-day period.  
28 Payment of the assessment is due when a final order is issued or the  
29 notice becomes a final order. The authority to levy an administrative  
30 penalty is in addition to all other enforcement provisions in this act and  
31 in any other applicable law, rule, or regulation, and the payment of any  
32 assessment shall not be deemed to affect the availability of any other  
33 enforcement provisions in connection with the violation for which the  
34 assessment is levied. Any civil administrative penalty assessed under  
35 this section may be compromised by the commissioner upon the  
36 posting of a performance bond by the violator, or upon such terms and  
37 conditions as the commissioner may establish by regulation.

38       e. A person who violates any provision of the “Safe Dam Act,” or  
39 any rule, regulation or order issued pursuant thereto, an administrative  
40 order issued pursuant to subsection b. of this section, or a court order  
41 issued pursuant to subsection c. of this section, or who fails to pay a  
42 civil administrative penalty in full pursuant to subsection d. of this  
43 section, shall be subject, upon order of a court, to a civil penalty not  
44 to exceed \$10,000 per day of such violation, and each day during  
45 which the violation continues shall constitute an additional, separate,  
46 and distinct offense. Any civil penalty imposed pursuant to this

1 subsection may be collected with costs in a summary proceeding  
2 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274  
3 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest  
4 charges, the court may assess against the violator the amount of actual  
5 economic benefit accruing to the violator from the violation. The  
6 Superior Court and the municipal court shall have jurisdiction to  
7 enforce the provisions of the "Penalty Enforcement Law of 1999" in  
8 connection with this act.

9 f. A person who purposely, recklessly or negligently violates any  
10 provision of the "Safe Dam Act," or any rule, regulation or order  
11 issued pursuant thereto, shall be guilty, upon conviction, of a crime of  
12 the fourth degree and, notwithstanding any provision of N.J.S.2C:43-3  
13 to the contrary, shall be subject to a fine of not less than \$2,500 nor  
14 more than \$25,000 per day of violation, in addition to any other  
15 applicable penalties and provisions under Title 2C of the New Jersey  
16 Statutes. A second or subsequent offense under this subsection shall  
17 subject the violator to a fine, notwithstanding any provision of  
18 N.J.S.2C:43-3 to the contrary, of not less than \$5,000 nor more than  
19 \$50,000 per day of violation, in addition to any other applicable  
20 penalties and provisions under Title 2C of the New Jersey Statutes.  
21 A person who knowingly makes a false statement, representation, or  
22 certification in any application, record, or other document filed or  
23 required to be maintained under the "Safe Dam Act" shall be guilty,  
24 upon conviction, of a crime of the fourth degree and, notwithstanding  
25 any provision of N.J.S.2C:43-3 to the contrary, shall be subject to a  
26 fine of not more than \$10,000, in addition to any other applicable  
27 penalties and provisions under Title 2C of the New Jersey Statutes.

28 g. In addition to the penalties prescribed in this section, a notice of  
29 violation of any provision of the "Safe Dam Act," or any rule,  
30 regulation or order issued pursuant thereto, shall be recorded on the  
31 deed of the property wherein the violation occurred, on order of the  
32 commissioner, by the clerk or register of deeds and mortgages of the  
33 county wherein the affected property is located and with the clerk of  
34 the Superior Court and shall remain attached thereto until such time  
35 as the violation has been remedied and the commissioner orders the  
36 notice of violation removed.

37 h. The department may require an owner to provide any  
38 information the department requires to determine compliance with any  
39 provision of the "Safe Dam Act," or any rule, regulation or order  
40 issued pursuant thereto.

41 i. Any person who knowingly, recklessly, or negligently makes a  
42 false statement, representation or certification in any application,  
43 record, or other document filed or required to be maintained under the  
44 "Safe Dam Act," shall be in violation of the act and shall be subject to  
45 the penalties assessed pursuant to subsections d. and e. of this section.

46 j. All penalties collected pursuant to this section shall be deposited



1 in the "Environmental Services Fund," established pursuant to section  
2 5 of P.L.1975, c.232 (C.13:1D-33), and kept separate from other  
3 receipts deposited therein, and appropriated to the department for the  
4 repair and maintenance of dams in the State.

5 k. The department shall have the authority to enter any property,  
6 facility, premises, or site for the purpose of conducting inspections to  
7 determine the condition of any dam, or to conduct inspections of  
8 ordered repairs or to otherwise determine compliance with the  
9 provisions of the "Safe Dam Act."

10 (cf: P.L.1981, c.249, s.8)

11  
12 3. This act shall take effect immediately.

13  
14  
15 STATEMENT

16  
17 Under current law, the only recourse available to the Department  
18 of Environmental Protection to compel dam owners to comply with  
19 DEP orders to repair dams, is for the commissioner to request the  
20 Attorney General to request a court order to enforce the DEP's orders,  
21 and to impose a penalty of not more than \$5,000.

22 This bill would amend the "Safe Dam Act," (C.58:4-8.1 et seq.) to  
23 authorize the DEP, in its discretion, to make necessary repairs to  
24 dams, and to charge owners for such repairs, whenever any dam is, in  
25 the judgement of the commissioner, in imminent danger of failure, and  
26 where the owner has refused to comply with a repair order issued by  
27 the department. Further, the bill provides that any owner who fails to  
28 comply with such an order would be liable to the department for three  
29 times the cost of such repair. This bill would also allow allocation of  
30 the cost of repairs among the liable owners in instances where two or  
31 more owners are liable and provide that expenditures made by the  
32 department shall constitute a debt of the owner to the State. The debt  
33 would constitute a lien on all property owned by the owner and the  
34 lien would have priority over other liens with regard to the property  
35 subject to the repairs.

36 This bill would also expand the "Safe Dam Act" to allow the  
37 commissioner: 1) to issue an order requiring any person in violation  
38 of any provision of the act to comply, and to restore any area which  
39 is the site of the violation; 2) to institute a civil action for appropriate  
40 relief from any violation, including an injunction to secure an area  
41 from the danger of a breaking dam, assessment of the violator for the  
42 costs of investigation, inspection or monitoring of the site in violation,  
43 and the reasonable costs of bringing legal action, assessment of the  
44 violator for any costs incurred by the State to remedy any violation for  
45 which legal action has been brought, assessment against a violator for  
46 compensatory and actual damages caused as a result of a violation, and

1 requiring that a violator restore the site of a violation; 3) to levy a civil  
2 administrative penalty of up to \$25,000 for each violation of any  
3 provision of the act; 4) to bring an action for a civil penalty for any  
4 violation of the act; and 5) to petition the Attorney General to bring  
5 a criminal action against a dam owner who knowingly, recklessly or  
6 negligently violates the "Safe Dam Act." A person so convicted would  
7 be guilty of a fourth degree crime, and may be assessed a fine of not  
8 less than \$2,500 nor more than \$25,000 per day of violation, with  
9 increasing penalties for subsequent offenses. The bill would also  
10 authorize the assessment by the court, upon conviction, of a fine of not  
11 more than \$10,000 against any person that knowingly makes a false  
12 statement, representation, or certification in any application, record,  
13 or other document filed as required under the act.

14 This bill would allow the commissioner to order that violations of  
15 any provision of the Safe Dam Act, or any rule, regulation or order  
16 issued pursuant thereto, be recorded on the deed of the property  
17 wherein the violation occurred, and remain attached thereto until such  
18 time as the violation has been remedied. All penalties collected  
19 pursuant to this bill would be deposited in the "Environmental Services  
20 Fund," to be kept separate from other receipts deposited therein, and  
21 shall be appropriated to the department for the repair and maintenance  
22 of dams in the State. The bill would authorize the department to enter  
23 any property, facility, premises, or site for the purpose of conducting  
24 inspections of dams or to otherwise determine compliance with the  
25 provisions of the act.

# ASSEMBLY, No. 3370

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED OCTOBER 18, 2004

**Sponsored by:**

**Assemblyman LARRY CHATZIDAKIS**

**District 8 (Burlington)**

**Assemblyman FRANCIS L. BODINE**

**District 8 (Burlington)**

**SYNOPSIS**

Authorizes DEP to assess penalties for violations of the "Safe Dam Act."

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning dam safety, and amending R.S.58:4-6.

2

3 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
4 *of New Jersey:*

5

6 1. R.S.58:4-6 is amended to read as follows:

7 58:4-6. [If the owner or person having control of any reservoir or  
8 dam shall not forthwith comply with any order of the commissioner  
9 made as provided in section 58:4-5 of this Title or shall not prosecute  
10 the work, when commenced, with reasonable expedition, the  
11 commissioner may direct the Attorney General to proceed in the name  
12 of the State to enforce its order in a court of competent jurisdiction.  
13 Action may be brought against the person controlling or owning the  
14 reservoir or dam, and the court may make such order and judgment in  
15 the premises as will effectually secure the persons interested from  
16 danger of loss from the breaking of the reservoir or dam complained  
17 of. The court may proceed in the action in a summary manner or  
18 otherwise. Any person who violates the provisions of this chapter or  
19 of any order issued pursuant to this chapter shall be liable to a penalty  
20 of not more than \$5,000.00 for each offense. If the violation is of a  
21 continuing nature, each day during which it continues shall constitute  
22 an additional, separate and distinct offense.]

23 a. Whenever the Commissioner of Environmental Protection finds  
24 that a person has violated any provision of the "Safe Dam Act," P.L.  
25 1981, c.249 (C.58:4-8.1 et seq.), or any rule, regulation or order  
26 issued pursuant thereto, the commissioner may:

27 (1) Issue an order requiring any such person to comply in  
28 accordance with subsection b. of this section; or

29 (2) Bring a civil action in accordance with subsection c. of this  
30 section; or

31 (3) Levy a civil administrative penalty in accordance with  
32 subsection d. of this section; or

33 (4) Bring an action for a civil penalty in accordance with  
34 subsection e. of this section; or

35 (5) Petition the Attorney General to bring a criminal action in  
36 accordance with subsection f. of this section.

37 Recourse to any of the remedies available under this section shall  
38 not preclude recourse to any of the other remedies prescribed in this  
39 section or by any other applicable law.

40 b. Whenever, on the basis of available information, the  
41 commissioner finds a person in violation of any provision of the "Safe  
42 Dam Act," or any rule, regulation or order issued pursuant thereto,  
43 the commissioner may issue an administrative order: (1) specifying the

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 provision or provisions of the law, rule, regulation, or order, of which  
2 the person is in violation; (2) citing the action which constituted the  
3 violation; (3) requiring compliance with the provision or provisions  
4 violated; (4) requiring the restoration of the area which is the site of  
5 the violation; and (5) providing notice to the person of the right to a  
6 hearing on the matters contained in the order.

7 c. The commissioner is authorized to institute a civil action in  
8 Superior Court for appropriate relief from any violation of the “Safe  
9 Dam Act,” or any rule, regulation or order issued pursuant thereto.  
10 Such relief may include, singly or in combination:

11 (1) A temporary or permanent injunction, including an order or  
12 judgement as will effectually secure the persons interested from danger  
13 of loss from the breaking of a dam. The court may proceed in the  
14 action in a summary manner or otherwise;

15 (2) Assessment of the violator for the costs of any investigation,  
16 inspection, or monitoring survey which led to the establishment of the  
17 violation, and for the reasonable costs of preparing and bringing legal  
18 action under this subsection;

19 (3) Assessment of the violator for any costs incurred by the State  
20 in removing, correcting, or terminating the adverse effects resulting  
21 from any violation for which legal action under this subsection may  
22 have been brought;

23 (4) Assessment against the violator for compensatory damages for  
24 any loss or destruction of wildlife, fish or aquatic life, and for any  
25 other actual damages caused by a violation;

26 (5) A requirement that the violator restore the site of the violation  
27 to the maximum extent practicable and feasible.

28 d. The commissioner is authorized to assess a civil administrative  
29 penalty of up to \$25,000 for each violation of any provision of the  
30 “Safe Dam Act,” or any rule, regulation or order issued pursuant  
31 thereto, and each day during which each violation continues shall  
32 constitute an additional, separate, and distinct offense. Any amount  
33 assessed under this subsection shall fall within a range established by  
34 regulation by the commissioner for violations of similar type,  
35 seriousness, and duration. In adopting rules and regulations  
36 establishing the amount of any penalty to be assessed, the  
37 commissioner may take into account the economic benefits from the  
38 violation gained by the violator. No assessment shall be levied  
39 pursuant to this section until after the party has been notified by  
40 certified mail or personal service. The notice shall: (1) identify the  
41 section of the law, rule, regulation or order violated; (2) recite the  
42 facts alleged to constitute a violation; (3) state the amount of the civil  
43 penalties to be imposed; and (4) affirm the rights of the alleged  
44 violator to a hearing. The ordered party shall have 20 days from  
45 receipt of the notice within which to deliver to the commissioner a  
46 written request for a hearing. After the hearing and upon finding that

1 a violation has occurred, the commissioner may issue a final order  
2 specifying the amount of the fine imposed. If no hearing is requested,  
3 the notice shall become final after the expiration of the 20-day period.  
4 Payment of the assessment is due when a final order is issued or the  
5 notice becomes a final order. The authority to levy an administrative  
6 penalty is in addition to all other enforcement provisions in this act and  
7 in any other applicable law, rule, or regulation, and the payment of any  
8 assessment shall not be deemed to affect the availability of any other  
9 enforcement provisions in connection with the violation for which the  
10 assessment is levied. Any civil administrative penalty assessed under  
11 this section may be compromised by the commissioner upon the  
12 posting of a performance bond by the violator, or upon such terms and  
13 conditions as the commissioner may establish by regulation.

14 e. A person who violates any provision of the "Safe Dam Act," or  
15 any rule, regulation or order issued pursuant thereto, an administrative  
16 order issued pursuant to subsection b. of this section, or a court order  
17 issued pursuant to subsection c. of this section, or who fails to pay a  
18 civil administrative penalty in full pursuant to subsection d. of this  
19 section, shall be subject, upon order of a court, to a civil penalty not  
20 to exceed \$10,000 per day of such violation, and each day during  
21 which the violation continues shall constitute an additional, separate,  
22 and distinct offense. Any civil penalty imposed pursuant to this  
23 subsection may be collected with costs in a summary proceeding  
24 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274  
25 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest  
26 charges, the court may assess against the violator the amount of actual  
27 economic benefit accruing to the violator from the violation. The  
28 Superior Court and the municipal court shall have jurisdiction to  
29 enforce the provisions of the "Penalty Enforcement Law of 1999" in  
30 connection with this act.

31 f. A person who purposely, recklessly or negligently violates any  
32 provision of the "Safe Dam Act," or any rule, regulation or order  
33 issued pursuant thereto, shall be guilty, upon conviction, of a crime of  
34 the fourth degree and, notwithstanding any provision of N.J.S.2C:43-3  
35 to the contrary, shall be subject to a fine of not less than \$2,500 nor  
36 more than \$25,000 per day of violation, in addition to any other  
37 applicable penalties and provisions under Title 2C of the New Jersey  
38 Statutes. A second or subsequent offense under this subsection shall  
39 subject the violator to a fine, notwithstanding any provision of  
40 N.J.S.2C:43-3 to the contrary, of not less than \$5,000 nor more than  
41 \$50,000 per day of violation, in addition to any other applicable  
42 penalties and provisions under Title 2C of the New Jersey Statutes.  
43 A person who knowingly makes a false statement, representation, or  
44 certification in any application, record, or other document filed or  
45 required to be maintained under the "Safe Dam Act" shall be guilty,  
46 upon conviction, of a crime of the fourth degree and, notwithstanding

1 any provision of N.J.S.2C:43-3 to the contrary, shall be subject to a  
2 fine of not more than \$10,000, in addition to any other applicable  
3 penalties and provisions under Title 2C of the New Jersey Statutes.

4 g. In addition to the penalties prescribed in this section, a notice of  
5 violation of any provision of the "Safe Dam Act," or any rule,  
6 regulation or order issued pursuant thereto, shall be recorded on the  
7 deed of the property wherein the violation occurred, on order of the  
8 commissioner, by the clerk or register of deeds and mortgages of the  
9 county wherein the affected property is located and with the clerk of  
10 the Superior Court and shall remain attached thereto until such time  
11 as the violation has been remedied and the commissioner orders the  
12 notice of violation removed.

13 h. The department may require an owner to provide any  
14 information the department requires to determine compliance with any  
15 provision of the "Safe Dam Act," or any rule, regulation or order  
16 issued pursuant thereto.

17 i. Any person who knowingly, recklessly, or negligently makes a  
18 false statement, representation or certification in any application,  
19 record, or other document filed or required to be maintained under the  
20 "Safe Dam Act," shall be in violation of the act and shall be subject to  
21 the penalties assessed pursuant to subsections d. and e. of this section.

22 j. All penalties collected pursuant to this section shall be deposited  
23 in the "Environmental Services Fund," established pursuant to section  
24 5 of P.L.1975, c.232 (C.13:1D-33), and kept separate from other  
25 receipts deposited therein, and appropriated to the department for the  
26 repair and maintenance of dams in the State.

27 k. The department shall have the authority to enter any property,  
28 facility, premises, or site for the purpose of conducting inspections to  
29 determine the condition of any dam, or to conduct inspections of  
30 ordered repairs or to otherwise determine compliance with the  
31 provisions of the "Safe Dam Act."

32 (cf: P.L.1981, c.249, s.8)

33  
34 2. This act shall take effect immediately.  
35  
36

37 STATEMENT  
38

39 Under current law, the only recourse available to the Department  
40 of Environmental Protection to compel dam owners to comply with  
41 DEP orders to repair dams, is for the commissioner to request the  
42 Attorney General to request a court order to enforce the DEP's orders,  
43 and to impose a penalty of not more than \$5,000.

44 This bill would expand the "Safe Dam Act" to allow the  
45 commissioner: 1) to issue an order requiring any person in violation  
46 of any provision of the act to comply, and to restore any area which

1 is the site of the violation; 2) to institute a civil action for appropriate  
2 relief from any violation, including an injunction to secure an area  
3 from the danger of a breaking dam, assessment of the violator for the  
4 costs of investigation, inspection or monitoring of the site in violation,  
5 and the reasonable costs of bringing legal action, assessment of the  
6 violator for any costs incurred by the State to remedy any violation for  
7 which legal action has been brought, assessment against a violator for  
8 compensatory and actual damages caused as a result of a violation, and  
9 requiring that a violator restore the site of a violation; 3) to levy a civil  
10 administrative penalty of up to \$25,000 for each violation of any  
11 provision of the act; 4) to bring an action for a civil penalty for any  
12 violation of the act; and 5) to petition the Attorney General to bring  
13 a criminal action against a dam owner who knowingly, recklessly or  
14 negligently violates the "Safe Dam Act." A person so convicted would  
15 be guilty of a fourth degree crime, and may be assessed a fine of not  
16 less than \$2,500 nor more than \$25,000 per day of violation, with  
17 increasing penalties for subsequent offenses. The bill would also  
18 authorize the assessment by the court, upon conviction, of a fine of not  
19 more than \$10,000 against any person that knowingly makes a false  
20 statement, representation, or certification in any application, record,  
21 or other document filed as required under the act.

22 This bill would allow the commissioner to order that violations of  
23 any provision of the Safe Dam Act, or any rule, regulation or order  
24 issued pursuant thereto, be recorded on the deed of the property  
25 wherein the violation occurred, and remain attached thereto until such  
26 time as the violation has been remedied. All penalties collected  
27 pursuant to this bill would be deposited in the "Environmental Services  
28 Fund," to be kept separate from other receipts deposited therein, and  
29 shall be appropriated to the department for the repair and maintenance  
30 of dams in the State. The bill would authorize the department to enter  
31 any property, facility, premises, or site for the purpose of conducting  
32 inspections of dams or to otherwise determine compliance with the  
33 provisions of the act.



# ASSEMBLY, No. 3373

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED OCTOBER 18, 2004

**Sponsored by:**

**Assemblyman FRANCIS L. BODINE**

**District 8 (Burlington)**

**Assemblyman LARRY CHATZIDAKIS**

**District 8 (Burlington)**

**SYNOPSIS**

Requires DEP to send copy of dam repair orders to municipalities and counties.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning dam repair orders, and amending R.S.58:4-5.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State  
4 of New Jersey:

5

6 1. R.S.58:4-5 is amended to read as follows:

7 58:4-5. If, in the judgment of the commissioner, any reservoir or  
8 dam is not sufficiently strong to resist the pressure of water upon it or  
9 there is reasonable cause to believe that danger to life or property may  
10 be anticipated from the reservoir or dam, or if for any other cause the  
11 commissioner shall determine the reservoir or dam to be unsafe or  
12 improperly maintained, the commissioner shall determine whether the  
13 water in the reservoir or above the dam shall be drawn off in whole or  
14 in part, and what alterations, additions and repairs are necessary to be  
15 made to the reservoir or dam to make it safe and properly maintained.  
16 The commissioner shall forthwith in writing order the owner or person  
17 having control of the reservoir or dam to cause the alterations,  
18 additions and repairs to be made within the time to be limited in the  
19 order. A copy of any order issued by the commissioner pursuant to  
20 this section shall be sent to the clerk of the municipality and the clerk  
21 of the county in which the dam is located. The commissioner also may  
22 order the water in the reservoir or above the dam to be drawn off in  
23 whole or in part as the commissioner may determine. The  
24 commissioner shall not approve the decommissioning of a reservoir or  
25 dam until the commissioner has provided 30 days' prior notice and the  
26 commissioner has complied with the provisions of R.S.58:4-10 as  
27 applicable. The notice of the proposed decommissioning shall be  
28 published at least 30 days prior to the decommissioning of the  
29 reservoir or dam in at least one newspaper of general circulation in the  
30 municipality in which the reservoir or dam is located. The  
31 commissioner shall have the right to enter upon any and all properties  
32 for the purpose of obtaining information about the safety and proper  
33 maintenance of any reservoir, dam or appurtenant structures located  
34 therein.

35 (cf: P.L.1994, c.84, s.1)

36

37 2. This act shall take effect immediately.

38

39 STATEMENT

40

41 This bill would amend the "Safe Dam Act" to require a copy of any  
42 dam repair order issued by the Commissioner of Environmental  
43 Protection to be sent to the clerk of the municipality and the clerk of  
44 the county in which the dam is located.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 3538, 3370, and 3373**

**STATE OF NEW JERSEY**

DATED: MAY 5, 2005

The Assembly Environment and Solid Waste Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 3538, 3370, and 3373.

Under current law, the only recourse available to the Department of Environmental Protection (DEP) to compel dam owners to comply with DEP orders to repair dams, is for the Commissioner of Environmental Protection to request the Attorney General to request a court order to enforce the DEP's orders, and to impose a penalty of not more than \$5,000.

This committee substitute revises the statutory law to strengthen the DEP's authority to take action regarding failing and failed dams and to integrate these measures with the provisions of the "Safe Dam Act," P.L.1981, c.249 (C.58:4-8.1 et seq.).

The committee substitute requires every owner or person having control of a reservoir or dam to:

(1) implement all measures required under the revised statutory law or the provisions of the "Safe Dam Act," or any rule, regulation, code, permit or order issued by the DEP pursuant thereto, including but not limited to, performance of periodic inspections or development, updating and implementation of emergency action plans;

(2) provide to the DEP, upon request, any reports or information required under the aforementioned acts, or any rule or regulation adopted, or permit or order issued by the DEP pursuant thereto; and

(3) implement any action ordered by the Commissioner of Environmental Protection to correct conditions that render the reservoir or dam to be considered unsafe or improperly maintained, as determined by the Commissioner, or to bring the reservoir or dam into compliance with standards established under the aforementioned acts, or any rule or regulation adopted, or permit or order issued by the DEP pursuant thereto.

The committee substitute requires that a copy of any order issued by the Commissioner concerning reservoir or dam repair be sent to the

clerk of the municipality and the clerk of the county in which the reservoir or dam is located. The committee substitute further requires, prior to any action by the DEP, an owner or person having control of a reservoir or dam is required to submit to the DEP in writing, no later than 60 days after receipt of a notice of a removal action from DEP, an acceptable implementation plan addressing the proposed actions to be taken regarding the failed or failing reservoir or dam.

The committee substitute directs the Commissioner of Environmental Protection to take any action authorized under the committee substitute to compel compliance with the provisions of the revised statutory law, or any rule or regulation adopted, or permit or order issued by the DEP pursuant thereto, if the Commissioner determines that any reservoir or dam is not sufficiently strong to resist the pressure of water that is or may be upon it, there is reasonable cause to believe that danger to life or property may be anticipated from the reservoir or dam, or for any other cause, the reservoir or dam is unsafe or improperly maintained.

The Commissioner also must determine whether the water in the reservoir or above the dam should be drawn off in whole or in part, and what alterations, additions and repairs are necessary to be made to the reservoir or dam to make it safe and properly maintained, or whether the dam or appurtenant structures located therein should be removed. Finally, the Commissioner may take action as authorized pursuant to R.S.58:4-6 against the owner or person having control of the reservoir or dam for such relief as the Commissioner may determine.

The committee substitute provides that any owner or person having control over a dam or reservoir who fails to comply with a repair order or take appropriate interim measures as determined by the DEP, would be liable to the DEP for the cost of the removal of the dam. The committee substitute authorizes the DEP to enter upon any and all properties wherein the reservoir, dam or appurtenant structures are located, using resources and personnel available to the DEP, remove or cause to be removed the dam or appurtenant structures located therein, and charge the owner or person having control of the reservoir or dam for the costs of the removal.

The committee substitute also allows allocation of the cost of removal among the liable owners or persons having control of the dam or reservoir whenever two or more owners or such persons are liable and provides that expenditures made by the DEP would constitute, in each instance, a debt of the owner to the State. The debt would constitute a lien on all property owned by the liable owner or person and the lien would have priority over other liens with regard to the property.

Whenever the owner or person having control of the reservoir or dam is a private lake association or other body representing owners of property adjacent to the reservoir or lake created by the dam or impoundment, liens may be imposed upon the individual owners of the

property represented by the association. An owner whose property has such a lien imposed may release the property from a lien claimed under this subsection by filing with the clerk of the Superior Court a cash or surety bond, payable to the DEP in the amount of the sums expended by the DEP, including attorney's fees and court costs, or the value of the property after the abatement action is complete, whichever is less.

The committee substitute expands and complements the "Safe Dam Act" to allow the Commissioner to:

(1) issue an order requiring any person in violation of any provision of the act to comply, and to restore any area which is the site of the violation;

(2) institute a civil action for appropriate relief from any violation, including an injunction to secure an area from the danger of a breaking dam, assessment of the violator for the costs of investigation, inspection or monitoring of the site in violation, and the reasonable costs of bringing legal action, assessment of the violator for any costs incurred by the State to remedy any violation for which legal action has been brought, assessment against a violator for compensatory and actual damages caused as a result of a violation, and requiring that a violator restore the site of a violation;

(3) levy a civil administrative penalty of up to \$25,000 for each violation of any provision of the act;

(4) bring an action for a civil penalty for any violation of the act; and

(5) petition the Attorney General to bring a criminal action against a dam owner who purposely, knowingly or recklessly violates the "Safe Dam Act." A person so convicted would be guilty of a fourth degree crime, and may be assessed a fine of not less than \$2,500 nor more than \$25,000 per day of violation, with increasing penalties for subsequent offenses. The committee substitute would also authorize the assessment by the court, upon conviction, of a fine of not more than \$10,000 against any person that knowingly makes a false statement, representation, or certification in any application, record, or other document filed as required under the act.

The committee substitute allows the Commissioner to order that violations of any provision of the "Safe Dam Act," or any rule, regulation or order issued pursuant thereto, be recorded on the deed of the property wherein the violation occurred, and remain attached thereto until such time as the violation has been remedied.

All penalties collected under the committee substitute would be deposited in the "Environmental Services Fund," to be kept separate from other receipts deposited therein, and would be appropriated to the DEP for the removal of unsafe or failed dams in the State. The committee substitute authorizes the DEP to enter any property, facility, premises, or site for the purpose of conducting inspections of dams or to otherwise determine compliance with the provisions of the act.

As reported, this committee substitute is identical to Senate Bill No.1895 (1R) with committee amendments, as also reported by the committee.