

10104610D

HOUSE BILL NO. 438

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 3, 2010)

(Patron Prior to Substitute—Delegate Toscano)

A BILL to amend and reenact §§ 10.1-605, 10.1-607.1, and 10.1-609 of the Code of Virginia, relating to dam safety.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-605, 10.1-607.1, and 10.1-609 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-605. Promulgation of regulations by the Board; guidance document.

A. The Board shall ~~promulgate~~ *adopt* regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and operated. Dam safety regulations promulgated by the State Water Control Board shall remain in full force until amended in accordance with applicable procedures.

B. *The Board's regulations shall establish an incremental damage analysis procedure that permits the spillway design flood requirement for an impounding structure to be reduced to the level at which dam failure shall not significantly increase downstream hazard to life or property, provided that the spillway design flood requirement shall not be reduced to below the 100-year flood event for high or significant hazard impounding structures, or to below the 50-year flood event for low hazard potential impounding structures.*

C. *The Board shall consider the impact of limited-use or private roadways with low traffic volume and low public safety risk that are downstream from or across an impounding structure in the determination of the hazard potential classification of an impounding structure.*

§ 10.1-607.1. Criteria for designating a dam as unsafe.

A. Designation of a dam as unsafe shall be based on one or more of the following findings:

1. The dam has serious deficiencies in its design or construction or has a physical condition that if left unaddressed could result in a failure that may result in loss of life or *significant* damage to downstream property.

2. The design, construction, operation, or maintenance of the dam is such that its expected performance during flooding conditions threatens the structural integrity of the dam.

B. After completion of the safety inspections pursuant to § 10.1-607, or as otherwise informed of an unsafe condition, the Department shall take actions in accordance with § 10.1-608 or 10.1-609 depending on the degree of hazard and imminence of failure caused by the unsafe condition.

§ 10.1-609. Unsafe dams presenting nonimminent danger.

A. Within a reasonable time after completion of a safety inspection of an impounding structure authorized by § 10.1-607, the Board shall issue a report to the owner of the impounding structure containing its findings and recommendations for correction of any deficiencies which could threaten life or property if not corrected. Owners who have been issued a report containing recommendations for correction of deficiencies shall undertake to implement the recommendations contained in the report according to the schedule of implementation contained in the report. If an owner fails or refuses to commence or diligently implement the recommendations for correction of deficiencies according to the schedule contained in an issued report, the Director shall have the authority to issue an administrative order directing the owner to commence implementation and completion of such recommendations according to the schedule contained in the report with modifications as appropriate. Within thirty days after being served by personal service or by mail with a copy of an order issued pursuant to this section, any owner shall have the right to petition the Board for a hearing. *As part of his petition, a dam owner may submit to the Board his own plan, consistent with regulations adopted pursuant to § 10.1-605, to address the recommendations for correction of deficiencies and the schedule of implementation contained in the report. The Board shall determine if the submitted plan and schedule are sufficient to address deficiencies.* A timely filed petition shall stay the effect of the administrative order.

The hearing shall be conducted before the Board or a designated member thereof pursuant to § 2.2-4019. The Board shall have the authority to affirm, modify, amend or cancel the administrative order. Any owner aggrieved by a decision of the Board after a hearing shall have the right to judicial review of the final Board decision pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. The provisions of subsection A of this section notwithstanding, if the Director determines, after the report is issued, that changed circumstances justify reclassifying the deficiencies of an impounding structure as an imminent danger to life or property, the Director may proceed directly under § 10.1-613

60 for enforcement of his order, and the owner shall have the opportunity to contest the fact based upon
61 which the administrative order was issued.

62 C. The Director, upon a determination that there is an unsafe condition at an impounding structure, is
63 authorized to cause the lowering or complete draining of such impoundment until the unsafe condition
64 has been corrected at the owner's expense and prior to any authorization to refill.

65 An owner who fails to comply with the provisions contained in an administrative order of the
66 Department shall be subject to procedures set out in § 10.1-613 and the penalties authorized under
67 §§ 10.1-613.1 and 10.1-613.2.

68 D. No persons, other than those authorized to maintain an impounding structure, shall interfere with
69 the operation of an impounding structure.