

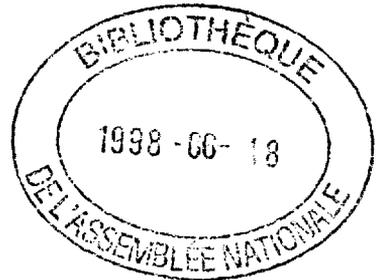
NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Draft Bill

Dam Safety Act



Tabled by
Mr Paul Bégin
Minister of the Environment and Wildlife

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EXPLANATORY NOTES

The purpose of this draft bill is to increase the safety of dams one metre or more in height and appurtenant dikes and facilities. To that end, it proposes a reform of the legal framework governing the establishment and operation of the dams.

Under the draft bill, a register is to be established that will contain relevant information on the condition of the dams and their classification. That information will be public information.

In addition to instituting a new authorization procedure, the draft bill imposes a number of obligations on the owners and operators of dams, particularly as regards the evaluation and monitoring of the safety of their works, the implementation of remedial measures and the establishment of water management and emergency preparedness plans. As well, the draft bill reinforces the powers vested in the public authorities that enable them to act to prevent or correct any situation that may be a hazard to the safety of persons and property.

Regulatory powers are conferred on the Government, including the power to prescribe dam safety and classification standards, the content of the evaluations, water management plans, emergency preparedness plans and registers it prescribes, as well as the qualifications of the persons who are to operate the dams.

Lastly, the draft bill provides penal sanctions for offences against its provisions and regulations.

Draft Bill

DAM SAFETY ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

CHAPTER I

GENERAL PROVISIONS

1. The purpose of this Act is to increase the safety of dams one metre or more in height and appurtenant dikes and facilities.

This Act is binding on the Government, government departments and bodies that are mandataries of the State.

2. The obligations imposed by this Act on the operator of a dam apply, where there is no operator, to the owner of the dam.

3. A register of dams one metre or more in height, situated in Québec, shall be established at the Ministère de l'Environnement et de la Faune. The information and documents to be contained in the register shall be prescribed by regulation of the Government, in particular, as regards the site, size and characteristics of the dams, their general condition as well as their classification on the basis of regulatory parameters established to that effect.

Operators of dams are required to furnish the information and documents required for the establishment and updating of the register.

The information contained in the register is public information.

In addition, the procedure for making the register accessible to the public shall be prescribed by regulation of the Government. The regulation shall also prescribe the procedure for the transmission to local municipalities, regional county municipalities and urban communities of any information recorded in the register that concerns a dam situated in their territory.

CHAPTER II

PROVISIONS APPLICABLE TO ALL DAMS ONE METRE OR MORE IN HEIGHT

4. Projects for the construction or structural alteration of any dam one metre or more in height must be submitted to the Minister of the Environment and Wildlife for authorization.

5. An application for authorization is filed by way of a notice containing a general description of the project.

The following documents must be submitted with the application:

(1) the plans and specifications of the project, prepared by an engineer;

(2) in the case of a high-capacity dam within the meaning of section 14, the plans and specifications and an affidavit by an engineer certifying that the plans and specifications conform to the regulatory safety standards together with an impounded water management plan and an emergency preparedness plan prepared in conformity with the provisions of this Act and the regulations.

The Government may, by regulation, determine any other information or documents to be furnished with an application for authorization.

6. The Minister may require from the applicant such information, document, study or expert opinion as the Minister considers necessary for the assessment of the project.

7. The authorization of the Minister may impose conditions and fix the time within which the work must be completed.

8. Where a project for the construction or structural alteration of a dam is submitted to the environmental impact assessment and review procedure provided for in sections 31.1 to 31.9 of the Environment Quality Act (R.S.Q., chapter Q-2), the Minister is bound by any decision made by the Government within the scope of that procedure.

9. Any modification to the plans and specifications must be submitted to the Minister for approval; if the modification concerns a high-capacity dam, an affidavit by an engineer certifying that the proposed modifications conform to the applicable regulatory safety standards must be submitted with the application for approval.

10. Before a dam is put into operation, the promoter must notify the Minister of the completion of the work and transmit to the Minister an affidavit by an independent engineer certifying that the work has been carried out in conformity with the plans and specifications and with the conditions attached to the authorization and, in the case of a high-capacity dam, that the work conforms to the regulatory safety standards.

11. If a project for the construction or structural alteration of a dam is not completed within two years, a new application for authorization must be filed in respect of the project.

12. A decision by the Minister refusing an authorization or approval may be contested by the interested person before the Administrative Tribunal of Québec within 30 days of notification.

13. The Minister shall maintain a register of applications for authorization and shall record therein the authorizations issued.

The information contained in the register is public information.

CHAPTER III

PROVISIONS APPLICABLE TO HIGH-CAPACITY DAMS

14. The following dams are considered high-capacity dams :

(1) dams 2.5 m or more in height having a volume of impounded water greater than 30,000 m³;

(2) dams 7.5 m or more in height, regardless of the volume of impounded water; and

(3) dams 1 m or more in height having a volume of impounded water greater than 1,000,000 m³.

DIVISION I

PROJECTS REQUIRING AUTHORIZATION

15. A project concerning a high-capacity dam must be submitted to the Minister for authorization where the project involves

(1) a change in the use of the dam ;

(2) a permanent or temporary stopping of the operation of the dam; or

(3) total or partial removal of the dam.

The provisions of sections 5 to 13, adapted as required, apply to such a project.

DIVISION II

SAFETY STANDARDS

16. The Government shall determine, by regulation, the safety standards applicable to high-capacity dams, in particular flood, earthquake and earth movement resistance standards.

17. Every high-capacity dam must, at the intervals and according to the other conditions determined by regulation of the Government, be submitted to a review carried out by an engineer for the purpose of evaluating the safety of

the dam in accordance with generally accepted practices. The safety review must report any situation that may be hazardous to the safety of the works and indicate, if necessary, the appropriate remedial measures.

18. In addition to the safety review, the operator must also, within the time prescribed by regulation of the Government, transmit to the Minister for approval an outline of the remedial measures the operator intends to implement, together with an implementation schedule.

The Minister's approval may be subject to conditions; the Minister may modify the remedial measures and the implementation schedule submitted and determine new remedial measures and a new schedule, in which case the Minister shall first notify and give the operator an opportunity to present observations.

A decision by the Minister refusing an approval, or approving the remedial measures and the implementation schedule submitted with modifications, may be contested by the operator before the Administrative Tribunal of Québec within 30 days of notification.

19. If the operator fails to have the safety review referred to in section 17 carried out or to implement the remedial measures within the specified time, the Minister may cause the safety review to be carried out at the expense of the operator or, subject to the same conditions, cause the remedial measures to be implemented.

20. Every operator must, in respect of a high-capacity dam, prepare and keep current, under conditions prescribed by regulation of the Government, an impounded water management plan and, in collaboration with the emergency preparedness authorities, an emergency preparedness plan.

The operator is responsible for seeing to the application of the plans.

21. Every high-capacity dam must be submitted to regular monitoring by the operator to enable the timely detection and correction of any anomaly.

The Government may, by regulation, determine the conditions applicable to the monitoring, including monitoring intervals and the qualifications required of the persons responsible for the monitoring.

22. An operator must, for each high-capacity dam operated, keep a register in which the information prescribed by regulation of the Government must be recorded.

23. If, in the operation of a high-capacity dam, a situation arises that may be hazardous to the safety of persons or property, the operator must immediately implement the appropriate remedial measures and inform the Minister.

DIVISION III

SAFETY PROGRAMS

24. An operator may, in respect of a high-capacity dam, submit to the Minister for approval a safety program to replace those of the regulatory safety standards prescribed pursuant to this Act that are designated in the program, except the safety standards referred to in section 16.

The Minister may, subject to the conditions determined by the Minister, approve the replacement of regulatory safety standards by a safety program if the operator demonstrates to the Minister that the resulting level of safety is equal to or greater than the level of safety afforded by the regulatory safety standards.

The term of a safety program shall not exceed five years.

25. The Government may, by regulation, prescribe the conditions subject to which a safety program may be approved and determine the minimal content of a safety program.

26. A safety program may be terminated in accordance with the provisions of the safety program.

In addition, the Minister may terminate a safety program before the end of its term and without compensation, if the Minister is of the opinion that the operator

(1) no longer fulfils the conditions for approval fixed by the Minister or by regulation ;

(2) is not complying with the provisions of this Act or the regulations or with the obligations incumbent upon the operator under the program ;

(3) has made false or misleading statements to the Minister.

Before terminating a program, the Minister must inform the operator in writing as provided in section 5 of the Act respecting administrative justice (1996, chapter 54).

27. A person does not contravene the regulatory provisions designated in a safety program approved by the Minister provided the person complies with the corresponding provisions of the program.

28. The Minister shall keep a register of the programs approved in which the Minister shall enter the names and addresses of the operators having an approved safety program, the designation of the dams concerned, the relevant regulatory provisions and the content of the replacements approved. The Minister shall indicate which programs have been renewed, modified or terminated.

The information contained in the register is public information.

CHAPTER IV

ADMINISTRATIVE MEASURES

29. The Minister may, for the purpose of evaluating the safety of a dam, order the dam operator to conduct any test, survey, testing or verification the Minister indicates.

The Minister may also, for the same purpose, order an operator to install, within a specified time, any equipment or device the Minister indicates.

Furthermore, the Minister may require the operator to submit, in the form and within the time determined by the Minister, a report on any aspect pertaining to the construction or operation of the dam along with any information or documents required.

30. Where the Minister is of the opinion that a dam may constitute a hazard to the safety of persons and property, the Minister may order the operator to implement any measure the Minister considers necessary, including lowering the impounded water level or removing the dam.

31. Where the operator subject to an order of the Minister refuses or fails to comply with the order, the Minister may, without prejudice to any other recourse, apply to the Superior Court to obtain an injunction ordering the operator to comply with the Minister's order.

The court may order that remedial measures be implemented at the expense of the operator or, as the case may be, authorize the Minister to confiscate the security furnished by the operator and use the security to have the remedial measures implemented, or authorize the Minister to take any measure indicated by the Court at the expense of that person.

Where the operator of the dam is unknown or cannot be located, the judge may authorize the Minister to carry out the remedial work or to forthwith remove the dam and recover the cost from the operator if the operator's identity becomes known or the operator is located. The judge may also authorize the Minister to transfer the dam to any person.

CHAPTER V

INSPECTIONS

32. Any person authorized by the Minister to conduct an inspection may, to ascertain compliance with this Act, the regulations or the safety programs referred to in section 24,

(1) have access, at any reasonable time, to any place where dams, facilities or equipment governed by this Act and the regulations are situated, and conduct an inspection of them;

(2) inspect the premises and take photographs of the premises, dams, facilities or equipment;

(3) examine the registers or other documents relating to the dams, facilities, equipment or operations governed by this Act and the regulations, and obtain copies thereof;

(4) require any information or document relating to the application of this Act, the regulations or a safety program.

33. A person conducting an inspection must, when so requested, produce a certificate signed by the Minister showing authority to conduct the inspection.

34. No person may hinder the work of an inspector conducting an inspection, mislead the inspector by concealment or false statements, or refuse to provide the inspector with information.

CHAPTER VI

REGULATIONS

35. In addition to the other regulatory powers provided for in this Act, the Government may make regulations

(1) determining the manner of calculating the height of a dam and the volume of impounded water;

(2) determining the parameters such as dam type, dam location, dam height, impoundment capacity, age, condition and the consequences of a failure for persons or property that are to be considered in establishing a classification of dams of one metre or more in height;

(3) requiring effective civil liability insurance as a condition for the issue of an authorization or approval or for the renewal or modification of an authorization or approval, and determining the extent, term, amount and other conditions applicable to the contract of insurance;

(4) determining the cases in which security or a guarantee must be furnished for the issue of an authorization or approval or for the renewal or modification of an authorization or approval, and determining the object, nature, term and amount of the security or guarantee, and prescribing rules for the utilization and remittance of the security or guarantee;

(5) determining the qualifications required to operate a high-capacity dam or carry on activities related to the operation of a dam;

(6) requiring the creation of a special trust fund to cover, where the operation of a dam has stopped, current and future costs incurred for the maintenance or removal of the dam, and prescribing rules of financing and administration of the fund as well as conditions applicable to payments out of the trust fund;

(7) fixing the fees payable for the processing of the file of any person applying for an authorization or an approval, or the renewal or modification thereof;

(8) determining the annual duties payable by any operator of a dam for the purpose of recovering the costs incurred in the application of this Act and the regulations, and determining the method and criteria to be used to calculate them;

(9) determining, from among the provisions of a regulation, the provisions the violation of which constitutes an offence and specifying, for each offence, the minimum and maximum amounts to which the offender is liable, which amounts, according to the seriousness of the offence, must be from \$500 to \$5,000, \$1,000 to \$10,000, \$2,000 to \$20,000 or \$50,000 to \$100,000.

The standards, fees or duties prescribed by regulation may vary according to such classes of dams or operators as the regulation may establish.

The regulations may make mandatory any standards, methods or technical procedures established by another government or by a body responsible for establishing such standards.

CHAPTER VII

PENAL PROVISIONS

36. Every person who undertakes a project referred to in section 4 or 15 without holding the required authorization is liable to a fine of \$2,000 to \$1,000,000.

37. Every operator of a dam or, where there is no operator, every owner who does not fulfil the obligations under sections 17, 18, 20 and 21 is liable to the fine under section 36.

38. Every holder of an authorization or approval who does not comply with the conditions of the authorization or approval is liable to a fine of \$2,000 to \$500,000.

39. The following persons are liable to a fine of \$2,000 to \$200,000:

(1) every promoter of a project who contravenes the provisions of section 9 or 10;

(2) every operator of a dam or, where there is no operator, every owner who fails to furnish any notice, information, document or report required under this Act.

40. Every person who contravenes the provisions of section 34, makes a false or misleading statement to the Minister or records false or misleading information in a document or register, or who participates in or consents to the making of such a statement or the recording of such information is liable to a fine of \$500 to \$20,000 in the case of a natural person and \$2,000 to \$50,000 in the case of a legal person.

41. The fines under this Act shall be doubled for a subsequent offence.

42. The court may order an offender to remedy any failure of which the offender has been found guilty.

43. Where an offence continues for more than one day, each day the offence continues shall be counted as a separate offence.

44. Every director or officer of a legal person who did not take reasonable measures, having regard to the circumstances, to prevent an offence from being committed, or who ordered, authorized, consented to or participated in the offence is liable to the fine prescribed for that offence whether or not the legal person has been prosecuted or convicted.

CHAPTER VIII

MISCELLANEOUS PROVISIONS

45. Any unpaid portion of duties or fees payable under this Act shall bear interest at the rate fixed under section 28 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31). The interest is capitalized monthly.

46. For the purposes of sections 5, 9, 10 and 17, “engineer” means any member of the Ordre des ingénieurs du Québec.

47. Schedule III to the Act respecting administrative justice (1996, chapter 54) is amended by adding, after paragraph 3, the following :

“(4) proceedings against decisions made by the Minister of the Environment and Wildlife under section 12 or 18 of the Dam Safety Act.”

48. The Minister of the Environment and Wildlife is responsible for the administration of this Act.

49. This Act comes into force on (*insert here the date of assent to this Act*).