



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SIXTH LEGISLATURE

Bill 93

Dam Safety Act

Introduction

**Introduced by
Mr Paul Bégin
Minister of the Environment**

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EXPLANATORY NOTES

The purpose of this bill is to increase the safety of the dams to which the bill applies and of dikes and other appurtenant works. To that end, the bill reforms the legal framework governing the establishment and operation of this type of works.

A new authorization system is introduced for high-capacity dams that imposes a series of obligations on dam owners, particularly as concerns dam safety assessment and monitoring, the performance of remedial work and the implementation of impounded water management plans and emergency action plans.

The bill also requires low-capacity dams to be declared to the Minister of the Environment.

Under the bill, a register will be established for all dams one metre or more in height, that is to contain basic information on the condition and classification of the dams. The information will be available to the public.

The bill reinforces the powers of intervention available to public authorities to prevent or remedy any situation that may compromise the safety of persons or the protection of property.

The bill confers regulatory powers on the Government that deal with safety standards, dam classification and the content of the assessments, impounded water management plans, emergency action plans and registers prescribed by the Act.

Lastly, the bill imposes substantial penal sanctions for offences against the provisions of the Act or the regulations.

LEGISLATION AMENDED BY THIS BILL :

- Act respecting administrative justice (R.S.Q., chapter J-3).

Bill 93

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 the dams to which the Act applies and thereby protect persons and property against the risks associated with the presence of dams.
2. For the purposes of this Act, “dam” means any works intended to divert or impound the water of a watercourse or of a lake or reservoir listed in the *Répertoire toponymique du Québec* or a supplement to that publication.
3. This Act is binding on the Government, on government departments and on bodies that are mandataries of the State.

CHAPTER II

PROVISIONS APPLICABLE TO HIGH-CAPACITY DAMS

4. The following dams are considered to be high-capacity dams :
 - (1) dams 1 metre or more in height having a volume of impounded water greater than 1,000,000 m³;
 - (2) dams 2.5 metres or more in height having a volume of impounded water greater than 30,000 m³;
 - (3) dams 7.5 metres or more in height, regardless of the volume of impounded water;
 - (4) regardless of their height, retaining works and works appurtenant to a dam referred to in paragraph 1, 2 or 3, and works intended to retain all or part of the water stored by such a dam.

DIVISION I

PROJECTS REQUIRING AUTHORIZATION

5. The construction, structural alteration or removal, even partial, of any high-capacity dam requires the authorization of the Minister of the Environment.

The authorization of the Minister is also required for any change in use of a high-capacity dam likely to affect the safety of the works, and for any permanent or temporary stopping of the operation of the dam.

6. An application for authorization must be filed by the promoter or the owner of the dam by way of a notice containing a general description of the project.

The following documents must be submitted in support of an application for authorization for the construction or structural alteration of a high-capacity dam :

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

(2) a certificate of an engineer stating that the plans and specifications conform to the safety standards prescribed by the Government by regulation.

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

7. The Minister may require an applicant to submit any information, document, study or expert opinion the Minister considers necessary to the assessment of the project.

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

9. Any modification to the plans and specifications must be prepared by an engineer and, if the modification is likely to affect the safety of the works, be submitted to the Minister for approval before the work is undertaken.

The application for approval must include a certificate of an engineer stating that the proposed modifications conform to the safety standards prescribed by the Government by regulation.

10. Before a high-capacity dam is put into operation, the owner must advise the Minister of the completion of the work and forward to the Minister a certificate of an engineer stating that the work has been carried out in conformity with the plans and specifications and any conditions of authorization.

Any modifications made to the plans and specifications during the carrying out of the work that were not required to be submitted to the Minister for approval under section 9 must also, before the dam is put into operation, be forwarded to the Minister, together with a certificate of an engineer stating that the modifications are not likely to affect the safety of the works.

11. A new authorization must be sought for every proposed construction or structural alteration of a high-capacity dam that is not undertaken within two years.

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

13. The Minister shall maintain a register of applications for authorization and approval and shall record all authorizations and approvals granted.

The information contained in the register is public information.

DIVISION II

CLASSIFICATION

14. Every high-capacity dam must be classified on the basis of the risk it presents for persons and property.

The classification shall be effected and kept current by the Minister according to the conditions and using the methods and parameters determined by the Government by regulation, including dam type, location, dimensions, impounding capacity, age, condition and consequences of dam failure for persons and property.

Before a decision is made by the Minister on the classification of a dam, the owner must be informed of the Minister's intention and given an opportunity to present observations.

The Minister's decision as to the classification of a dam may be contested by the owner before the Administrative Tribunal of Québec within 30 days of notification.

DIVISION III

SAFETY STANDARDS

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

16. Every high-capacity dam must, at the intervals and on the other conditions determined by the Government by regulation, undergo a safety review by an engineer to assess its safety in terms of good practice and regulatory safety standards. The safety review must, in particular, identify any situation liable to compromise the safety of the works and indicate, where applicable, the proposed remedial measures.

17. In addition to forwarding the safety review required under section 16 to the Minister within the time fixed by the Government by regulation, the dam owner must forward for approval, within the same time, an outline of the remedial measures the owner intends to take and an implementation schedule.

The Minister's approval may include conditions; the Minister may modify the remedial measures and implementation schedule submitted, or require the owner to submit new remedial measures and a new implementation schedule within the time the Minister fixes, in which case the owner must first be advised of the Minister's intention and given an opportunity to present observations.

A decision by the Minister refusing approval, approving the remedial measures and implementation schedule with modifications, or requiring the owner to submit new remedial measures and a new implementation schedule may be contested by the owner before the Administrative Tribunal of Québec within 30 days of notification.

18. If the owner of a dam fails to have a safety review carried out as provided in section 16, to implement approved remedial measures in accordance with the implementation schedule, or to submit new remedial measures or a new implementation schedule within the time fixed, the Minister may have the safety review carried out or implement any required remedial measures at the owner's expense.

19. The owner of a high-capacity dam must have an impounded water management plan prepared by an engineer according to the conditions and within the time fixed by the Government by regulation, and must keep the management plan current.

In addition, the owner of the works must, in collaboration with the emergency preparedness authorities and in compliance with the conditions and time limits fixed by the Government by regulation, prepare and keep current an emergency action plan; the regulation may, however, prescribe the conditions on which dams may be exempted from that obligation.

The owner of the works is responsible for ensuring that the plans are applied. The plans must remain available for inspection by the Minister.

The information contained in the impounded water management plan and in the emergency action plan is public information. The Government shall, by regulation, determine the manner in which the plans are to be made available to the public.

20. Every high-capacity dam must be monitored and maintained on a regular basis to ensure the timely detection and correction of any deficiency and to maintain the works in good repair. The Government may, by regulation, determine the conditions applicable to the monitoring of the works, including monitoring frequency and the qualifications required of the persons who perform the monitoring.

In addition, the apparatus or devices with which the dam is equipped must, if they contribute to ensuring the safety of the dam, be maintained in accordance with good practice and the manufacturer's instructions so as to ensure that they are in proper working order at all times.

21. A register for every high-capacity dam must be established, and kept current, in which the results of the observations and monitoring performed under section 20 and all other information as may be required by the Government by regulation are recorded.

The register for the dam must remain available for inspection by the Minister.

22. In the event of a situation that may compromise the safety of a high-capacity dam, the dam owner must, without delay, take the necessary steps to correct the deficiency and inform the Minister and, if there is a threat to persons or property, the emergency preparedness authorities.

DIVISION IV

SAFETY PROGRAMS

23. An owner may, in respect of a high-capacity dam, submit a safety program to the Minister for approval that, if approved, will replace the regulatory standards prescribed pursuant to this Act and indicated in the program, other than the safety standards referred to in section 15.

The Minister shall approve the program submitted by the owner, with or without conditions, if the owner shows that the resulting level of safety under the program is equal to or greater than the level of safety that would be achieved through compliance with the regulatory standards. The Minister may also approve any safety program modification submitted by the owner that meets the requirements of this section.

A decision by the Minister refusing approval of a safety program or safety program modification may be contested by the owner of the works before the Administrative Tribunal of Québec within 30 days of notification.

No safety program may be established for a period exceeding five years.

24. 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.

25. A safety program may be terminated in the manner specified in the program.

A program may also be terminated by the Minister before its expiry and without compensation, where the Minister is of the opinion that the owner of the works

- (1) no longer meets the conditions for approval of the program ;
- (2) is failing to comply with the provisions of this Act or the regulations, or is not complying with the obligations incumbent upon the owner under the program ;
- (3) has made false or misleading statements to the Minister.

Before a program is terminated by the Minister, the owner must be informed of the Minister's intention and given an opportunity to present observations.

A decision by the Minister terminating a safety program before its expiry may be contested by the owner of the works before the Administrative Tribunal of Québec within 30 days of notification.

26. A person does not contravene the regulatory provisions indicated in a safety program approved by the Minister if the person complies with the corresponding provisions of the program.

27. The Minister shall maintain a register of approved programs containing the name and address of the beneficiaries of the programs, the designation of the dams involved, the regulatory provisions concerned and the contents of the approved substitutions. Where a program has been renewed or modified, or terminated before its expiry, the Minister shall make a mention to that effect in the register.

The information contained in the register is public information.

CHAPTER III

PROVISIONS APPLICABLE TO LOW-CAPACITY DAMS

28. The following dams are considered to be low-capacity dams :

- (1) dams 2 metres or more in height to which section 4 does not apply ;

(2) regardless of their height, retaining works and works appurtenant to a dam referred to in paragraph 1, and works intended to retain all or part of the water stored by such a dam.

29. The construction, structural alteration or removal, even partial, of any low-capacity dam must be declared.

The declaration must be filed with the Minister by the promoter or owner of the dam at the same time as an application for authorization under section 22 of the Environment Quality Act (R.S.Q., chapter Q-2), or a notice required under section 31.2 of that Act if the project is subject to an environmental assessment.

The Government shall, by regulation, determine the information to be contained in and the documents to be submitted with the declaration.

30. The Minister may require the person filing the declaration to submit any information, document, study or additional expert opinion the Minister considers necessary to assess the safety of the works or project.

CHAPTER IV

ADMINISTRATIVE MEASURES APPLICABLE TO ALL DAMS

31. The Minister shall establish and keep current a register of all dams 1 metre or more in height. For that purpose, every owner of such a dam is required to inform the Minister of the existence of the works.

The Government shall, by regulation, prescribe the information to be recorded in the register, including the location, characteristics and classification of the dams, and the conditions and time limits to be respected by the owners of the works in forwarding the information to the Minister.

The information contained in the register is public information. The Government shall, by regulation, determine the manner in which the register is to be made available to the public. The regulation shall also prescribe the procedure for the forwarding of any information recorded in the register concerning a dam to the local municipalities, regional county municipalities or urban communities in whose territory the dam is situated.

32. The Minister or any person authorized by the Minister may, for the purposes of this Act, the regulations or the safety programs mentioned in section 23,

(1) have access at all times to any place where dams, apparatus or devices governed by this Act are situated and conduct an inspection;

(2) inspect the premises and take photographs of the premises and of the dams, apparatus or devices;

(3) examine and obtain a copy of any register or other document relating to the dams, apparatus, devices or activities governed by this Act and the regulations;

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

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

33. The Minister may, for the purpose of assessing the safety of a dam, order the owner of the works to carry out any test, survey, testing or verification the Minister specifies.

The Minister may also, for the same purpose, order the owner to install, within the time specified, any device or apparatus the Minister indicates.

Furthermore, the Minister may require the owner to report, in the form and within the time the Minister determines, on any aspect of the construction or operation of the dam and to submit the report with any information or document required.

34. Where the Minister is of the opinion that a dam does not sufficiently ensure the safety of persons or the protection of property, the Minister may order the owner of the works to take any measure the Minister considers appropriate, including the lowering of the impounded water level or the removal of the works.

35. Where the owner of the works fails to comply with an order of the Minister, the Minister may cause the order to be carried out or the appropriate remedial measures to be taken at the expense of the owner. The Minister may recover the cost, with interest and other costs, in particular by claiming the security or guarantee furnished by the owner.

Where the owner of the dam is unknown or cannot be found, or ownership of the dam cannot be ascertained, a judge of the Superior Court may, on motion of the Minister, authorize the Minister to take any measure the Minister considers appropriate, including the performance of remedial work, or to immediately have the dam removed and recover the cost, with interest and other costs, from the owner if the owner's identity becomes known or the owner is found. The judge may also authorize the Minister to transfer ownership of the dam to any other person or partnership.

CHAPTER V

REGULATIONS

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

(1) determining the methods and criteria to be used to calculate the height of a dam and the volume of impounded water ;

(2) requiring, in the cases, on the conditions and within the time it determines, liability insurance to be contracted or security or a guarantee to be furnished, and determining the extent, term, amount and other conditions applicable thereto ;

(3) prescribing, in the cases, on the conditions and within the time it determines, the creation of a special trust fund to cover the costs generated by the maintenance or, where applicable, the removal of the works, where the operation of a dam is stopped temporarily or permanently, and in particular the rules governing the financing and administration of the trust fund and the conditions applicable to the payment of sums out of the trust fund ;

(4) fixing the file processing fees payable by any person filing a declaration or applying for an authorization or approval or for the renewal or modification of an authorization or approval, and the terms and conditions of payment ;

(5) determining the annual fees payable to the Minister by dam owners to cover the costs incurred in the administration of this Act and the regulations, or the method and criteria to be used to calculate the fees, and determining the terms and conditions of payment ;

(6) prescribing the time within which the Minister must make a decision pursuant to section 5, 9, 17 or 23 ;

(7) determining, from among the provisions of a regulation made pursuant to this Act, the provisions a violation of which constitutes an offence, and specifying, for each offence, the fines to which the offender is liable ; such fines may not exceed \$500,000.

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

37. The regulatory provisions made by the Government pursuant to this Act may vary according to such classes of dams or dam owners as may be established by the provisions, and specify the conditions in which and time limits within which the provisions may be applied to existing works.

CHAPTER VI

PENAL PROVISIONS

38. Every person who undertakes a project referred to in section 5 without holding the required authorization or fails to have a modification to plans and specifications approved, in contravention of section 9 is liable to a fine of not less than \$2,000 nor more than \$1,000,000.

39. Every dam owner who fails to fulfill the obligations prescribed under sections 16, 17, 19, 20 and 22 or fails to comply with an order made by the Minister under section 34 is liable to the fine under section 38.

40. Every dam owner who fails to comply with the conditions of an authorization or approval is liable to a fine of not less than \$2,000 nor more than \$500,000.

41. The following persons are liable to a fine of not less than \$2,000 nor more than \$200,000:

- (1) every dam owner who contravenes the provisions of section 10;
- (2) every promoter or dam owner who undertakes a project without holding the authorization required under section 11;
- (3) every dam owner who fails to keep the register prescribed by section 21 or fails to provide any information, documents, reports or registers required under this Act;
- (4) every promoter or dam owner who undertakes a project without filing the declaration required under section 29;
- (5) every dam owner who fails to comply with an order made by the Minister pursuant to section 33.

42. Every person who hinders the work of the Minister or of a person authorized by the Minister to exercise powers under section 32, makes a false or misleading statement, records false or misleading information or omits to record information in a document, report or register, or who participates in or consents to the making or recording of such a statement or such information or to the omitting 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.

43. The fines under this Act or a regulation under this Act shall be doubled for a subsequent offence.

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

45. 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 VII

MISCELLANEOUS PROVISIONS

46. Any balance of the fees payable under this Act that remains unpaid 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.

47. The provisions of this Act are public policy; they therefore apply to any dam governed by a special Act and prevail over any inconsistent provision of such an Act.

48. Schedule III to the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by adding, after paragraph 3, the following paragraph:

“(4) proceedings against decisions of the Minister under sections 5, 9, 14, 17, 23 and 25 of the Dam Safety Act (1999, chapter *(insert here the chapter number of this Act)*).”

49. The Minister of the Environment is responsible for the administration of this Act.

50. This Act comes into force on the date or dates to be fixed by the Government.