

# "Georgia Safe Dams Act of 1978"

as amended (O.C.G.A. [12-5-370](#) through [12-5-385](#)).

*“Current through the 2020 Regular Session of the Georgia General Assembly “*

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**§ 12-5-370. Short title**

This part shall be known and may be cited as the "Georgia Safe Dams Act of 1978."

*History: Ga. L. 1978, p. 795, § 1.*

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**§ 12-5-371. Declaration of purpose**

It is the purpose of this part to provide for the inspection and permitting of certain dams in order to protect the health, safety, and welfare of all the citizens of the state by reducing the risk of failure of such dams. The General Assembly finds and declares that the inspection and permitting of certain dams is properly a matter for regulation under the police powers of the state.

*History: Ga. L. 1978, p. 795, § 2.*

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**§ 12-5-372. Definitions**

As used in this part, the term:

- (1) "Board" means the Board of Natural Resources.
- (2) "Commission" means the State Soil and Water Conservation Commission.
- (3) "Construct" or "construction" means the building of any artificial barrier, together with appurtenant works, for the impoundment or diversion of water or liquid substances and shall include any activity which, other than routinely as part of an approved maintenance program, repairs or restores such artificial barrier, or alters its design, shape, or structural characteristics, and shall also include any enlargement of such artificial barrier.
- (4) (A) Except as otherwise provided in subparagraph (B) of this paragraph, "dam" means any artificial barrier, including appurtenant works, which impounds or diverts water and which:
  - (i) Is 25 feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if the barrier is not across a stream channel or watercourse, to the maximum water storage elevation; or
  - (ii) Has an impounding capacity at maximum water storage elevation of 100 acre-feet or more.
- (B) The word "dam" shall not include:
  - (i) Any dam owned and operated by any department or agency of the United States government;

- (ii) Any dam constructed or financially assisted by the United States Soil Conservation Service or any other department or agency of the United States government when such department or agency designed or approved plans and supervised construction and maintains a regular program of inspection of the dam; provided, however, that this exemption shall cease on November 1, 2000, only if funds are specifically appropriated on or before November 1, 1995, for purposes of inspection, reconstruction, and financial assistance with respect to such dams in an appropriations Act making specific reference to this division; otherwise this exemption shall cease on November 1, 1995, for all such dams over which the supervising federal agency has relinquished authority for the operation and maintenance of such a dam to a person unless the supervising federal agency certifies by said date and at least biannually thereafter to the director that such dams are in compliance with requirements of this part, including minimum spillway design, and with the maintenance standards of the supervising federal agency;
- (iii) Any dam licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission;
- (iv) Any dam classified by the director as a category II dam pursuant to Code Section 12-5-375, except that such category II dams shall be subject to the provisions of this part for the purposes of said Code Section 12-5-375 and for the purposes of subsection (b) of Code Section 12-5-376;
- or
- (v) Any artificial barrier which is not in excess of six feet in height regardless of storage capacity, or which has a storage capacity at maximum water storage elevation not in excess of 15 acre-feet regardless of height.

(5) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources, or his designee.

(6) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(7) "Enlargement" means any change in or addition to an existing dam or impoundment, which change or addition raises or may raise the water storage elevation of the water impounded by the dam or reservoir.

(8) "Impoundment" means the water or liquid substance that is or will be stored by a dam and which may be commonly referred to as the reservoir.

(9) "Local unit of government" means a municipal corporation or county, or any legal consolidation thereof.

(10) "Operate" or "operation" means the impoundment or diversion of water or liquid substance by a dam.

(11) "Person" means any municipal corporation or county, or legal consolidation thereof; individual; partnership; corporation; or public or private authority and shall include the State of Georgia and all its departments, boards, bureaus, commissions, authorities, and any other agencies or instrumentalities.

*History: Ga. L. 1978, p. 795, § 3; Ga. L. 1982, p. 2339, §§ 1, 8; Ga. L. 1983, p. 3, § 9; Ga. L. 1984, p. 454, § 1; Ga. L. 1986, p. 196, § 1; Ga. L. 1988, p. 269, § 20; Ga. L. 1990, p. 326, § 1; Ga. L. 1995, p. 987, § 1.*

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### **§ 12-5-373. Powers and duties of director generally**

In addition to any other powers and duties provided for in this part, the director shall have and may exercise the following powers and duties:

- (1) To exercise general supervision over the administration and enforcement of this part and all rules and regulations and orders promulgated hereunder;
- (2) To require progress reports from the supervising engineer of a dam construction project, as deemed necessary;
- (3) To supervise investigations necessary to carry out the duties prescribed in this part;
- (4) To advise, consult, cooperate, contract, and enter into cooperative agreements with private persons, local units of government, and other governmental agencies or committees, including, but not limited to, the Department of Transportation, the State Soil and Water Conservation Commission, and the United States Army Corps of Engineers for the purposes of carrying out this part;
- (5) To take such other actions as may be necessary to carry out this part.

*History: Ga. L. 1978, p. 795, § 13; Ga. L. 1984, p. 454, § 2; Ga. L. 1988, p. 269, § 21.*

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### **§ 12-5-374. Powers and duties of board as to dams and artificial barriers**

In the performance of its duties, the board shall:

- (1) Establish by rule or regulation such policies, requirements, or standards governing the construction, operation, and maintenance of dams or artificial barriers permitted or required to be permitted under this part, including, but not limited to, the following:
  - (A) Requiring that the engineer who provides engineering design services for a dam constructed after July 1, 1978, certify to the director that he is registered by the State of Georgia and that he has the necessary training and experience to design such dam, and requiring that the engineer attach such certification to the application for permit;
  - (B) Requiring that, if the engineer determines that a geological investigation of the dam site is advisable, such investigation shall be conducted by a professional geologist registered to practice in the State of Georgia;
  - (C) Requiring that the engineer who undertakes the design of a dam constructed after July 1, 1978, submit to the director all documentation of the analysis and calculations for such design and the as-built drawings for such dam;
  - (D) Requiring that an approved plan for inspection and maintenance be put into effect by the owner or operator for any permitted dam;
  - (E) Requiring that the owner of a dam immediately notify the division of the occurrence of symptoms of failure, including, but not limited to, erosion, surface cracks, seepage, settlement, or movement;
  - (F) Requiring that prior to construction of a dam the owner shall provide the board of commissioners or other governing authority of the county in which the dam is to be constructed with the name and address of the person owning such dam and the person having direct responsibility for the operation of such dam. In addition, the owner shall have recorded on the official land plat for the county the location of such dam;

- (2) Establish by rule or regulation such criteria to be included in dam construction and operation application forms;
- (3) Establish by rule or regulation such standards necessary to govern the inspection of permitted dams; and
- (4) Adopt, modify, repeal, and promulgate such other rules and regulations relating to dam safety as are necessary and proper to carry out the purposes of this part, including Code Section 12-5-375.

*History: Ga. L. 1978, p. 795, § 12; Ga. L. 1982, p. 2339, §§ 6, 9; Ga. L. 1984, p. 454, § 3.*

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**§ 12-5-375. Inventory and classification of dams; investigations; technical assistance to local government; artificial barriers; notice requirements; provision of information regarding dams to clerks of superior courts**

- (a) It shall be the duty of the director to inventory the dams in this state and to classify each dam into one of the following categories:
  - (1) Category I -- Dams where improper operation or dam failure would result in probable loss of human life. Situations constituting "probable loss of human life" are those situations involving frequently occupied structures or facilities, including, but not limited to, residences, commercial and manufacturing facilities, schools, and churches.
  - (2) Category II -- Dams where improper operation or dam failure would not be expected to result in probable loss of human life.
- (b) The first inventory shall be completed by July 1, 1983. The director shall reinventory the dams in this state at least once every five years after the completion of the first inventory. The director is authorized to contract with other state or federal agencies or private entities to accomplish the purposes of this Code section.
- (c) The director is authorized to use information furnished to the director by the United States Army Corps of Engineers to accomplish the purposes of this Code section, including, but not limited to, the classification of dams as set forth in subsection (a) of this Code section.
- (d) The director shall have the right to direct and conduct investigations as the director may reasonably deem necessary to carry out the director's duties as prescribed in this Code section. For this purpose, the employees of the division or any authorized representatives shall have the right to enter at reasonable times on any property, public or private, for the purpose of inventorying, classifying, and investigating any dam and to require written reports from the owner or operator of any dam for the purpose of accomplishing its duties under this Code section. It is specifically provided, however, that if the owner of the dam is a resident of the county wherein the dam is located, the director shall notify the owner before the division employees or representatives shall enter the property of the dam for the purposes of this Code section.
- (e) Upon request of the governing authority of a local unit of government, the director is authorized in the director's discretion to provide technical assistance to such local unit of government relative to those dams within its jurisdiction for which a permit is not required by this part. Such assistance may include, but shall not necessarily be limited to, the inventorying of dams of any size or holding capacity for which a permit is not required by this part, visual inspections, written reports on any structural

inadequacies discovered during such inspections, written descriptions of the potential dam failure flood plain, technical advice on procedures to correct such structural inadequacies, and assistance in the development of model dam safety ordinances.

(f) Any person who desires to construct an artificial barrier for the purpose of impounding or diverting water may request of the director, and the director is authorized to furnish such person with, a determination as to whether such artificial barrier, if constructed, would be a category I or category II dam for the purposes of this part.

(g) Before a permit to construct a structure or facility is issued by the governing authority of a local unit of government which would result in changing a category II dam to a category I dam, the local unit of government shall notify the owner of said dam by certified mail or statutory overnight delivery of the proposed permit. The owner of the dam may within ten days of the notice request the director to inspect said dam and determine whether or not said dam is in compliance. If the director determines the dam is not in compliance with category I, both the owner and the local unit of government shall be notified in writing.

(h) Not later than December 31, 2005, and annually thereafter, the director shall provide the clerk of the superior court of each county with information relating to each category I and category II dam in the county. Such information shall include, without limitation, the exact location of the dam and the name and address of the owner of the dam. The clerk shall maintain the information in an easily accessible location near the county's land records for information purposes only.

*History: Ga. L. 1978, p. 795, § 6; Ga. L. 1982, p. 2339, §§ 2-4, 10-12; Ga. L. 1983, p. 3, § 9; Ga. L. 1984, p. 454, § 4; Ga. L. 1990, p. 326, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2005, p. 57, § 1/ HB 496.*

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## **§ 12-5-376. Permits to construct and operate dams**

(a) Any person who desires to construct a dam but has not commenced such construction as of July 1, 1978, shall obtain a permit from the director to construct a dam prior to commencement of construction. Any person who is operating a dam or who is in the physical process of constructing a dam as of July 1, 1978, shall obtain a permit from the director for such operation or construction, provided that the person may continue to operate or construct such dam pending final action by the director on the application for a permit; provided, further, that such application has been filed with the director within 180 days after the director serves upon the person a written notice that such dam has been classified as a category I dam in accordance with Code Section 12-5-375. Service of notice upon the person shall be made by delivering the notice to the person or by mailing it to the person by certified mail or statutory overnight delivery at the person's home or business address. Service by mail is complete upon mailing unless the notice is returned to the director by the U.S. Postal Service for any reason other than a refusal by the person to accept the mailing. Permits issued for the construction of dams pursuant to this part shall also authorize the operation of such dams in accordance with the conditions contained in such permits.

(b) If the director reclassifies a dam formerly classified as a category II dam as a category I dam because of modification in the dam or because of changing circumstances, the director shall serve upon the owner or operator of the dam a written notice of the director's determination regarding the dam.

Within 180 days after such service of notice, the owner or operator shall apply to the director for a permit to operate the dam. Notice shall be served in accordance with subsection (a) of this Code section. Such owner or operator may continue to operate the dam pending final action by the director on the application for a permit. A permit to operate such dam shall be issued in accordance with the requirements of subsection (g) of this Code section, notwithstanding the date specified in said subsection (g).

(c) Notwithstanding subsection (a) of this Code section, no permit shall be required to be obtained by any person who constructs a dam, if the dam is constructed in connection with or incidental to "surface mining" as defined in Part 3 of Article 2 of Chapter 4 of this title, but if the dam so constructed is classified by the director as a category I dam, the owner or operator shall, upon the completion of the mining activity in connection with which such dam was constructed, either drain and reclaim the impoundment formed by such dam pursuant to such person's mining land use plan approved by the director under Part 3 of Article 2 of Chapter 4 of this title, the "Georgia Surface Mining Act of 1968," or stabilize such impoundment as a lake pursuant to such mining land use plan. If the impoundment is reclaimed as a lake and the dam which created the impoundment remains in place as a category I dam, then, before such lake is deemed acceptable reclamation and the miner is released from his obligations under Part 3 of Article 2 of Chapter 4 of this title the miner must obtain a permit for such dam as provided by this part.

(d) Consistent with the provisions of Code Section 12-5-376.1, the director is authorized to establish such conditions in permits issued pursuant to this part as are necessary to assure compliance with this part and all rules and regulations promulgated under this part. The director, under the conditions he prescribes, may require the submission of such plans, specifications, and other information as he deems relevant in connection with the issuance of such permits and subsequent construction and operation of such dams.

(e) Permit applications for the construction of dams shall be accompanied by a certificate from a professional engineer registered to practice in Georgia stating that he is responsible for the design of the dam and that the design meets the standards of this part and the rules and regulations promulgated under this part. As an alternative to a certificate from a professional engineer, the director may accept a permit application accompanied by a certificate from the United States Soil Conservation Service stating that the design of the dam meets the standards of this part and the rules and regulations promulgated under this part.

(f) If the director disapproves an application for construction of a dam, a copy of the application shall be returned to the applicant with a statement of the reasons for such disapproval. Such applicant may reapply incorporating the improvements indicated by the director.

(g) Permits authorizing the operation of dams in existence or being physically constructed as of July 1, 1978, shall be issued only when one of the following conditions precedent is met:

- (1) Approval by the director of the applicant's submission of a detailed engineering study of the dam, prepared by a professional engineer registered by the State of Georgia or prepared by the United States Soil Conservation Service;
- (2) Approval by the director of a written report prepared by the division or other authorized agency under contract with the director entered into upon behalf of the division after a visual

inspection has been performed by such agency under the supervision of a professional engineer registered by the State of Georgia; or

(3) Approval by the director of the applicant's submission of a written report prepared by a professional engineer registered by the State of Georgia after a visual inspection has been performed under the supervision of such engineer.

(h) Subsection (g) of this Code section shall not be construed as exempting any existing dam from compliance with the design standards established pursuant to this part and the rules and regulations promulgated under this part prior to the issuance of a permit authorizing the operation of such dam. Further, in the event a visual inspection provided for in paragraph (2) or paragraph (3) of subsection (g) of this Code section reveals that distress of the dam is indicated by various conditions including, but not limited to, lack of adequate maintenance, seepage, surface cracks, settlement, movement, or erosion, or when such inspection indicates that the dam was not designed or constructed in accordance with the requirements of this part and the rules and regulations promulgated under this part, a permit may be issued only after the director has received a detailed engineering study as provided for in paragraph (1) of subsection (g) of this Code section. Based upon a review of such study, the director shall deny the permit or issue it subject to conditions necessary to bring the dam into compliance with this part and the rules and regulations promulgated under this part.

(i) The visual inspection performed pursuant to paragraph (2) of subsection (g) of this Code section shall be made by the division or under the provisions of a contract between the director entered into upon behalf of the division and the United States Army Corps of Engineers, the United States Soil Conservation Service, the Georgia Department of Transportation, or some other governmental agency.

(j) The director may revoke, suspend, or modify any permit issued pursuant to this part or deny the issuance of a permit for cause, including, but not limited to, the following:

- (1) Violation of any condition of the permit;
- (2) Obtaining a permit by misrepresentation or by failure to disclose fully all relevant facts;
- (3) Violation of any provision of this part or any rule or regulation promulgated under this part;
- (4) Failure to comply with dam safety standards provided for in this part or any rules and regulations promulgated under this part;
- (5) Change in any condition that requires revocation, suspension, or modification of a permit in order to ensure compliance with this part or any rules and regulations promulgated under this part.

(k) Earthen embankments serving as dams shall be protected from surface erosion by appropriate vegetation or some other type protective surface such as riprap or paving and shall be maintained in a safe condition. Examples of appropriate vegetation include, but are not limited to, Bermuda grass, Tall Fescue, and Lespedeza sericea. Inappropriate vegetation such as trees shall be removed from dams only after consultation with the division on the proper procedures for removal. Hedges and small shrubs may be allowed if they do not obscure inspection or interfere with the operation and maintenance of the dam.

*History: Ga. L. 1978, p. 795, § 7; Ga. L. 1982, p. 2339, §§ 5, 13; Ga. L. 1983, p. 3, § 9; Ga. L. 1984, p. 454, §§ 5, 6; Ga. L. 1992, p. 1098, § 6; Ga. L. 1996, p. 6, § 12; Ga. L. 2000, p. 1589, § 3.*

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**§ 12-5-376.1. Subclassification of category I dams by director; minimum spillway design requirements**

(a) For the purposes of this Code section:

- (1) "Acre-feet" means the measurement of the impounding capacity of a dam as described in paragraph (4) of Code Section 12-5-372.
- (2) "Height" means the height of a dam determined in the manner described in paragraph (4) of Code Section 12-5-372.
- (3) "PMP" means probable maximum precipitation as determined by the United States Weather Service to be the greatest amount of rainfall of a six-hour duration which would be expected for a given location.

(b) All category I dams identified by the commission pursuant to Code Section 12-5-375 shall be subclassified by the director as follows:

- (1) Small dams -- Those with a storage capacity not exceeding 500 acre-feet and a height not exceeding 25 feet.
- (2) Medium dams -- Those with a storage capacity exceeding 500 acre-feet but not exceeding 1,000 acre-feet or a height exceeding 25 feet but not exceeding 35 feet.
- (3) Large dams -- Those with a storage capacity exceeding 1,000 acre-feet but not exceeding 50,000 acre-feet or a height exceeding 35 feet but not exceeding 100 feet.
- (4) Very large dams -- Those with a storage capacity exceeding 50,000 acre-feet or a height exceeding 100 feet.

(c) Permits issued pursuant to this part shall require minimum spillway design as follows:

- (1) Small dams.....25 percent PMP
- (2) Medium dams.....33.3 percent PMP
- (3) Large dams.....50 percent PMP
- (4) Very large dams.....100 percent PMP

Based on visual inspection and detailed hydrologic and hydraulic evaluation, including documentation of competent original design and construction procedures, up to a 10 percent lower requirement (22.5, 30, 45, 90) can be accepted, at the discretion of the director, provided the project is in an acceptable state of maintenance. The design storm may also be reduced if the applicant's engineer can successfully demonstrate to the director by engineering analysis that the dam is sufficient to protect against probable loss of human life downstream at a lesser design storm.

*History: Ga. L. 1982, p. 2339, § 7; Code 1981, § 12-5-376.1, enacted by Ga. L. 1982, p. 2339, § 14; Ga. L. 1983, p. 3, § 9; Ga. L. 1984, p. 22, § 12; Ga. L. 1984, p. 454, § 7; Ga. L. 1985, p. 149, § 12; Ga. L. 1988, p. 269, § 22.*

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### **§ 12-5-377. Dam removal**

- (a) It shall be unlawful for the owner or operator of any dam for which a permit is required by this part to remove the dam without the approval of the director.
- (b) Prior to the commencement of removing any such dam, such owner or operator shall apply to the director on forms supplied by the division for permission to remove the dam.
- (c) Within 60 days after the receipt of a completed application for removal, the director shall approve, or approve subject to appropriate conditions, the applicant's request for removal.
- (d) Upon receipt of approval for removal, the removal shall be commenced as soon as practicable; and the impoundment shall be drained and the structure permanently breached.
- (e) Nothing in this part shall be construed to prevent the owner or operator of any impoundment from draining such impoundment without authorization from the director.

*History: Ga. L. 1978, p. 795, § 8.*

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### **§ 12-5-378. Inspection of dams and other barriers; administrative orders to enforce compliance; emergency action by director**

- (a) The director or any authorized agency with which the director has entered into a contract on behalf of the division is authorized to make a visual inspection of any dam or other artificial barrier for which a permit is or may be required by this part and to enter on any property, public or private, at reasonable times without notice for the purpose of accomplishing such inspection. After any such visual inspection, and upon a finding by the director that a dam is not in compliance with any provision of this part or any rule or regulation promulgated hereunder, the director may issue an administrative order to the owner of such dam requiring such owner to undertake, at the owner's expense, such maintenance, alterations, repairs, reconstruction, change in construction or location, or removal as may be deemed necessary by the director, or the draining or lowering of the water level of the dam, within the time period specified in such administrative order.
- (b) Based upon a visual inspection of a dam, if the director determines that the dam is not in compliance with this part or any rule and regulation promulgated hereunder, and there is not sufficient time to issue an administrative order, the director may immediately take such measures as may be necessary to provide emergency protection to life or property, including lowering the reservoir level or destroying in whole or in part the barrier and impoundment. The costs of such emergency measures may be recovered by the state in an action brought in the superior court of the county in which the dam is located or the county of residence of the dam owner.

*History: Ga. L. 1978, p. 795, § 9.*

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**§ 12-5-379. Investigations; right of access by division; right to require statements and reports regarding construction and operation of dams; refusal of access or interference**

(a) The division shall have the right to direct and conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this part. For this purpose, the employees of the division or any authorized representatives shall have the right to enter at reasonable times on any property, public or private, for the purpose of investigating the condition, construction, or operation of any dam or other artificial barrier dealt with in this part. Such employees or representatives shall also have the right to require written statements or the filing of reports with respect to pertinent questions relating to the construction or operation of any dam; provided, however, that no person shall be required to disclose any secret formula, processes, or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision.

(b) It shall be unlawful for any person to refuse entry or access to any authorized representative of the division who requests entry for purposes of inspection and who presents appropriate credentials. It shall also be unlawful to obstruct, hamper, or interfere with any such representative while in the process of carrying out his official duties.

*History: Ga. L. 1978, p. 795, § 10.*

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**§ 12-5-380. Administrative and judicial review**

Any person who is aggrieved or adversely affected by an order or action of the director shall be entitled to administrative and judicial review in accordance with subsection (c) of Code Section 12-2-2.

*History: Ga. L. 1978, p. 795, § 11; Ga. L. 1980, p. 922, § 1; Ga. L. 1984, p. 454, § 8.*

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**§ 12-5-380.1. Orders of director or administrative law judge filed in superior court; effect of filing**

The division may file in the superior court in the county in which the person under order resides or in the county in which the violation occurred or, if the person is a corporation, in the county in which the corporation maintains its principal place of business a certified copy of a final order of the director or the administrative law judge unappealed from, or a final order of the administrative law judge affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. The judgment shall have the same effect as though the judgment had been rendered in an action duly heard and determined by the court.

*History: Code 1981, § 12-5-380.1, enacted by Ga. L. 1992, p. 1314, § 1.*

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### **§ 12-5-381. Injunctive relief**

Whenever in the judgment of the director any person has engaged in or is about to engage in any act or practice which constitutes or will constitute an unlawful action under this part, he may make application to the superior court of the county in which the unlawful act or practice has been or is about to be engaged in, or in which jurisdiction is appropriate, for an order enjoining such act or practice, or for an order requiring compliance with this part. Upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy at law.

*History: Ga. L. 1978, p. 795, § 15.*

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### **§ 12-5-382. Power of commissioner of transportation as to contracts relating to part**

The commissioner of transportation is authorized to enter into contracts on behalf of the Department of Transportation with the division for the purpose of carrying out this part.

*History: Ga. L. 1978, p. 795, § 16; Ga. L. 1984, p. 454, § 9.*

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### **§ 12-5-383. Liability for damages**

(a) Nothing in this part shall be construed to constitute a waiver of the sovereign immunity of the state, the board, or the division. No action shall be brought against the state, the board, the division, or any member, officer, or employee of the state, the board, or the division for damages sustained through the partial or total failure of any dam or other artificial barrier dealt with in this part or its maintenance by reason of any supervision or other action taken or not taken pursuant to or under this part, including specifically, but not limited to, any action taken or not taken by the board or its members, the director, the division, its officers or employees, or its representatives pursuant to Code Section 12-5-375.

Nothing in this part and no order, action, or advice of the director or the division or any representative thereof shall be construed to relieve a dam owner or operator of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam.

(b) Nothing in this part shall be construed to constitute a waiver of the sovereign immunity of the commission. No action shall be brought against the state, the commission, or any employee of the state or the commission for damages sustained through the partial or total failure of any dam or other artificial barrier dealt with in this part or its maintenance by reason of any supervision or other action taken or not taken pursuant to former Code Section 12-5-375.

*History: Ga. L. 1978, p. 795, § 4; Ga. L. 1984, p. 454, § 10; Ga. L. 1988, p. 269, § 23.*

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### **§ 12-5-384. Conformance to and compliance with part required**

It shall be unlawful for any person to own, construct, operate, or remove a dam or other artificial barrier dealt with in this part, except in such a manner as to conform to and comply with this part and with all rules, regulations, orders, and permits established under this part.

*History: Ga. L. 1978, p. 795, § 5.*

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### **§ 12-5-385. Criminal and civil penalties**

(a) Any person who engages in any action made unlawful by this part shall be guilty of a misdemeanor. Each day of continued violation after conviction shall constitute a separate offense.

(b) As an alternative to criminal enforcement pursuant to subsection (a) of this Code section, the director may impose civil penalties in accordance with the following provisions:

(1) Any person violating any provision of this part or any permit condition or limitation established pursuant to this part or negligently or willfully failing or refusing to comply with any final order of the director issued as provided in this part shall be liable for a civil penalty not to exceed \$1,000.00 for such violation and an additional civil penalty not to exceed \$500.00 for each day during which the violation continues;

(2) Whenever the director has reason to believe that any person has violated any provision of this part or any permit condition or limitation established pursuant to this part or has negligently or willfully failed or refused to comply with any final order of the director, he may, upon written request, cause a hearing to be conducted before a hearing officer appointed by the board. Upon a finding that such person has violated any provision of this part or any permit condition or limitation established pursuant to this part or has negligently or willfully failed or refused to comply with a final order of the director, the hearing officer shall issue his initial decision imposing such civil penalties as are provided in paragraph (1) of this subsection. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with subsection (c) of Code Section 12-2-2.

*History: Ga. L. 1978, p. 795, § 14.*