86R145 SLB-F

By:  Metcalf H.B. No. 26

A BILL TO BE ENTITLED

AN ACT

relating to the creation of an alert system to notify affected persons of certain releases of water from certain dams.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Chapter 12, Water Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. DAMS

Sec. 12.1500.  DEFINITIONS. In this subchapter:

(1)  "Alert system" means the Texas Dam Release Alert System.

(2)  "Dam operator" means a political subdivision that operates a dam.

Sec. 12.1501.  TEXAS DAM RELEASE ALERT SYSTEM. (a) With the cooperation of the Texas Department of Transportation, the office of the governor, dam operators, and other appropriate emergency response agencies, the commission shall implement the Texas Dam Release Alert System to be activated on behalf of a dam operator to warn potentially affected persons of possible floods.

(b)  The alert system may be operated in conjunction with any other emergency alert system required by federal or state law. The alert system must be designed to notify potentially affected persons of a dam release through available means including:

(1)  public and commercial television or radio broadcasts;

(2)  a system of dynamic message signs located across the state;

(3)  posting on a website operated by a dam operator; and

(4)  reverse 9-1-1 calls, text messages, e-mails, social media, and other instant messaging systems.

Sec. 12.1502.  ADMINISTRATION; RULES. (a) The executive director is the coordinator of the alert system and shall ensure effective implementation of the system.

(b)  The commission shall adopt rules to ensure effective implementation of the alert system. The rules must include instructions on the procedures for activating and deactivating the alert system and updating alerts made by the system.

(c)  The executive director shall prescribe forms for use by dam operators in requesting activation of the alert system.

Sec. 12.1503.  PARTICIPATION BY OTHER PERSONS. (a) The executive director shall recruit public and commercial television and radio broadcasters, private commercial entities, state or local governmental entities, the public, and other appropriate persons to assist in developing and implementing the alert system.

(b)  The commission may enter into agreements with participants in the alert system to provide necessary support for the alert system.

Sec. 12.1504.  ACTIONS OF DAM OPERATORS. (a) A dam operator must request activation of the alert system, when practicable, at least two hours before a release of water that the dam operator reasonably believes will meet the criteria described by Section 12.1505(a).

(b)  The dam operator must provide to the commission information regarding the expected duration of the release, the time of the release, the expected level of flooding that will result, the name of the dam from which the release will occur, the name of the affected river basin, and the county in which the dam is located.

Sec. 12.1505.  ACTIVATION OF ALERT SYSTEM. (a) On the request of a dam operator, the executive director shall activate the alert system if:

(1)  a release of water from the dam operated by the dam operator is to take place;

(2)  flooding is a reasonable result from the release of water; and

(3)  flooding is likely to cause damage to life or property.

(b)  The commission may modify the criteria described by Subsection (a) as necessary for the implementation of the alert system.

Sec. 12.1506.  REQUIRED CONTENT OF ALERT MESSAGE. A notification issued under the alert system must include the following:

(1)  the name of the dam from which the release is to occur;

(2)  the county in which the dam is located;

(3)  the affected river basin;

(4)  the time of the release;

(5)  the expected duration of the release;

(6)  the potential level of flooding that will result downstream; and

(7)  any roadways or bridges that will be potentially affected by flooding as a result of the release.

Sec. 12.1507.  STATE AGENCIES. (a) A state agency participating in the alert system shall:

(1)  cooperate with the commission and assist in developing and implementing the alert system; and

(2)  establish a plan for providing relevant information to its officers, investigators, or employees, as appropriate, once the alert system has been activated.

(b)  In addition to the requirements of Subsection (a), the Texas Department of Transportation shall establish a plan for providing relevant information to the public through an existing system of dynamic message signs located across the state.

Sec. 12.1508.  TERMINATION. The executive director shall terminate an activation of the alert system when the release of water has been completed.

SECTION 2.  Section 12.052, Water Code, is transferred to Subchapter F, Chapter 12, Water Code, as added by this Act, redesignated as Section 12.1509, Water Code, and amended to read as follows:

Sec. 12.1509 [~~12.052~~].  DAM SAFETY. (a)  The commission shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of dams located in this state.  In performing the commission's duties under this subsection, the commission shall identify and focus on the most hazardous dams in the state.

(b)  Rules and orders made by the commission shall be made after proper notice and hearing as provided in the rules of the commission.

(b-1)  The commission may enter into an agreement with an owner of a dam who is required to reevaluate the adequacy of an existing dam or spillway.  The agreement may include timelines to achieve compliance with the commission's design criteria and may authorize deferral of compliance with the criteria, as appropriate.

(c)  If the owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this section wilfully fails or refuses to comply within the 30-day period following the date of the commission's final, nonappealable order to do so or if a person wilfully fails to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order, he is liable to a penalty of not more than $5,000 a day for each day he continues to violate this section. The state may recover the penalty by suit brought for that purpose in the district court of Travis County.

(d)  If the commission determines that the existing condition of the dam is creating or will cause extensive or severe property damage or economic loss to others or is posing an immediate and serious threat to human life or health and that other procedures available to the commission to remedy or prevent the occurrence of the situation will result in unreasonable delay, the commission may issue an emergency order, either mandatory or prohibitory in nature, directing the owner of a dam to repair, modify, maintain, dewater, or remove the dam which the commission determines is unsafe. The emergency order may be issued without notice to the dam owner or with notice the commission considers practicable under the circumstances. The notice does not have to comply with Chapter 2001, Government Code.

(e)  If the commission issues an emergency order under authority of this section without notice to the dam owner, the commission shall fix a time and place for a hearing which shall be held as soon as practicable to affirm, modify, or set aside the emergency order. The notice does not have to comply with Chapter 2001, Government Code. If the nature of the commission's action requires further proceedings, those proceedings shall be conducted as appropriate under Chapter 2001, Government Code.

(e-1)  The commission shall exempt an owner of a dam located on private property from meeting requirements related to dam safety if the dam:

(1)  at maximum capacity impounds less than 500 acre-feet;

(2)  has a hazard classification of low or significant;

(3)  is located in a county with a population of less than 350,000; and

(4)  is not located inside the corporate limits of a municipality.

(e-2)  Notwithstanding Subsection (e-1), an owner of a dam shall comply with operation and maintenance requirements established by commission rule.

(f)  Nothing in this section or in rules or orders made by the commission shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to ownership or operation.

SECTION 3.  This Act takes effect September 1, 2019.