

**TEXAS WATER CODE § 12.052 (RELATING TO DAM SAFETY)**

Sec. 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.

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

(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 the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

→ (f) The owner, operator or lessee of a permitted or exempt dam having a maximum storage capacity of less than [1,000] [5,000] acre-feet that was substantially completed prior to January 1, 2009 shall not be required to upgrade such dam and its spillway or otherwise meet revised design flood hydrograph criteria pursuant to commission rules made effective on or after such date, and is not subject to any penalties under this section based upon revised design flood hydrograph criteria or subsequent downstream development. Such owner, operator or lessee shall otherwise operate and maintain the dam in accordance with commission rules. Nothing in this section or in rules or orders made by the commission shall be construed to relieve an owner, ~~or~~ operator or lessee of a dam or reservoir of any the legal duties, obligations, or liabilities incident to ownership or operation under the common law of the State of Texas.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.033, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(63), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 3.04, eff. Sept. 1, 1997.