To reduce the hazards of dam failures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 1996

Mr. Zeliff (for himself, Mr. Pete Geren of Texas, Mr. Clinger, Mr. Ehlers, Mr. Emerson, and Mr. Coble) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To reduce the hazards of dam failures, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Dam Safety Program Act of 1996”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Dams are an essential part of the national infrastructure. Dams fail from time to time with cata-
astrophic results; thus, dam safety is a vital public concern.

(2) Dam failures have caused, and can cause in the future, enormous loss of life, injury, destruction of property, and economic and social disruption.

(3) Some dams are at or near the end of their structural, useful, or operational life. With respect to future dam failures, the loss, destruction, and disruption can be substantially reduced through the development and implementation of dam safety hazard reduction measures, including—

(A) improved design and construction standards and practices supported by a national dam performance resource bank;

(B) safe operations and maintenance procedures;

(C) early warning systems;

(D) coordinated emergency preparedness plans; and

(E) public awareness and involvement programs.

(4) Dam safety problems persist nationwide. The diversity in Federal and State dam safety programs calls for national leadership in a cooperative effort involving Federal and State governments and
the private sector. An expertly staffed and ade-
quately financed dam safety hazard reduction pro-
gram, based on Federal, State, local, and private re-
search, planning, decisionmaking, and contributions,
would reduce the risk of such loss, destruction, and
disruption from dam failure by an amount far grea-
ter than the cost of such program.

(5) There is a fundamental need for a national
dam safety program and the need will continue. An
effective national program in dam safety hazards re-
duction will require input from and review by Fed-
eral and non-Federal experts in dams design, con-
struction, operation, and maintenance and in the
practical application of dam failure hazards reduc-
tion measures. At the present time, there is no na-
tional dam safety program.

(6) The coordinating authority for national
leadership is provided through the Federal Emer-
gency Management Agency’s (hereinafter in this Act
referred to as “FEMA”) dam safety program
through Executive Order 12148 in coordination with
appropriate Federal agencies and the States.

(7) While FEMA’s dam safety program shall
continue as a proper Federal undertaking and shall
provide the foundation for a National Dam Safety
Program, statutory authority to meet increasing needs and to discharge Federal responsibilities in national dam safety is needed.

(8) Statutory authority will strengthen FEMA’s leadership role, will codify the national dam safety program, and will authorize the Director of FEMA (hereinafter in this Act referred to as the “Director”) to communicate directly with Congress on authorizations and appropriations and to build upon the hazard reduction aspects of national dam safety.

SEC. 3. PURPOSE.

It is the purpose of this Act to reduce the risks to life and property from dam failure in the United States through the establishment and maintenance of an effective national dam safety program which will bring together the Federal and non-Federal communities’ expertise and resources to achieve national dam safety hazard reduction. It is not the intent of this Act to preempt any other Federal or State authorities nor is the intent of this Act to mandate State participation in the grant assistance program to be established under this Act. This Act does not apply to levees.

SEC. 4. DEFINITIONS.

In this Act, the following definitions apply:
(1) **Federal agency.**—The term “Federal agency” means any Federal agency that designs, finances, constructs, owns, operates, maintains, or regulates the construction, operation, or maintenance of any dam.

(2) **Non-Federal agency.**—The term “non-Federal agency” means any State agency that has regulatory authority over the safety of non-Federal dams.

(3) **Federal guidelines for dam safety.**—The term “Federal Guidelines for Dam Safety” refers to a FEMA publication number 93, dated June 1979, which defines management practices for dam safety at all Federal agencies.

(4) **Program.**—The term “program” means the national dam safety program established under section 6.

(5) **Dam.**—The term “dam” means any artificial barrier with the ability to impound water, wastewater, or liquid-borne materials for the purpose of storage or control of water which is—

(A) 25 feet or more in height from (i) the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or (ii) 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

(B) has an impounding capacity for maximum storage elevation of 50 acre-feet or more.

Such term does not include any such barrier which is not greater than 6 feet in height regardless of storage capacity or which has a storage capacity at maximum water storage elevation not greater than 15 acre-feet regardless of height, unless such barrier, due to its location or other physical characteristics, is likely to pose a significant threat to human life or property in the event of its failure.

(6) HAZARD REDUCTION.—The term “hazard reduction” means those efforts utilized to reduce the potential consequences of dam failure to life and property.

(7) STATE.—The term “State” means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.
(8) PARTICIPATING STATE.—The term “participating State” means any State that elects to participate in the grant assistance program established under this Act.

(9) UNITED STATES.—The term “United States” means, when used in a geographical sense, all of the States.

(10) MODEL STATE DAM SAFETY PROGRAM.—The term “Model State Dam Safety Program” refers to a document, published by FEMA (No. 123, dated April 1987) and its amendments, developed by State dam safety officials, which acts as a guideline to State dam safety agencies for establishing a dam safety regulatory program or improving an already-established program.

SEC. 5. NATIONAL DAM SAFETY PROGRAM.

(a) AUTHORITY.—The Director, in consultation with appropriate Federal agencies, State dam safety agencies, and the national review board established by subsection (e)(3), shall establish and maintain, in accordance with the provisions and policies of this Act, a coordinated national dam safety program. This program shall—

(1) be administered by FEMA to achieve the objectives set forth in subsection (c);
(2) involve, where appropriate, the Departments of Agriculture, Defense, Energy, Interior, and Labor, the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the International Boundaries Commission (United States section), the Tennessee Valley Authority, and FEMA; and

(3) include each of the components described in subsection (d), the implementation plan described in subsection (e), and the assistance for State dam safety programs to be provided under this Act.

(b) DUTIES.—The Director—

(1) within 270 days after the date of the enactment of this Act, shall develop the implementation plan described in subsection (e);

(2) within 300 days after such date of enactment, shall submit to the appropriate authorizing committees of Congress the implementation plan described in subsection (e); and

(3) by rule within 360 days after such date of enactment—

(A) shall develop and implement the national dam safety program under this section;
(B) shall establish goals, priorities, and
target dates for implementation of the program;
and

(C) shall provide a method for cooperation
and coordination with, and assistance to (as
feasible), interested governmental entities in all
States.

(c) OBJECTIVES.—The objectives of the national dam
safety program are as follows:

(1) To ensure that new and existing dams are
safe through the development of technologically and
economically feasible programs and procedures for
national dam safety hazard reduction.

(2) To encourage acceptable engineering poli-
cies and procedures used for dam site investigation,
design, construction, operation and maintenance,
and emergency preparedness.

(3) To encourage establishment and implement-
tion of effective dam safety programs in each par-
ticipating State based on State standards.

(4) To develop and encourage public awareness
projects to increase public acceptance and support of
State dam safety programs.

(5) To develop technical assistance materials
for Federal and non-Federal dam safety programs.
(6) To develop mechanisms with which to pro-
vide Federal technical assistance for dam safety to
the non-Federal sector.

(d) COMPONENTS.—

(1) IN GENERAL.—The national dam safety
program shall consist of a Federal element and a
non-Federal element and 3 functional activities:
leadership, technical assistance, and public aware-
ness.

(2) ELEMENTS.—

(A) FEDERAL ELEMENT.—The Federal
element of the program incorporates all the ac-
tivities and practices undertaken by Federal
agencies to implement the Federal Guidelines
for Dam Safety.

(B) NON-FEDERAL ELEMENT.—The non-
Federal element of the program involves the ac-
tivities and practices undertaken by participat-
ing States, local governments, and the private
sector to safely build, regulate, operate, and
maintain dams and Federal activities which fos-
ter State efforts to develop and implement ef-
fective programs for the safety of dams.

(3) ACTIVITIES.—
(A) Leadership Activity.—The leadership activity of the program shall be the responsibility of FEMA. FEMA shall coordinate Federal efforts in cooperation with appropriate Federal agencies and State dam safety agencies.

(B) Technical Assistance Activity.—The technical assistance activity of the program involves the transfer of knowledge and technical information among the Federal and non-Federal elements.

(C) Public Awareness Activity.—The public awareness activity provides for the education of the public, including State and local officials, to the hazards of dam failure and ways to reduce the adverse consequences of dam failure and related matters.

(e) Grant Assistance Program.—The Director shall develop an implementation plan which shall demonstrate dam safety improvements through fiscal year 2001 and shall recommend appropriate roles for Federal agencies and for State and local units of government, individuals, and private organizations. The implementation plan shall provide, at a minimum, for the following:
(1) In order to encourage the establishment and maintenance of effective programs intended to ensure dam safety to protect human life and property and to improve such existing programs, the Director shall provide, from amounts made available under section 8 of this Act, assistance to participating States to establish and maintain dam safety programs, first, according to the basic provisions for a dam safety program listed below and, second, according to more advanced requirements and standards authorized by the review board under paragraph (3) and the Director with the assistance of established criteria such as the Model State Dam Safety Program. Participating State dam safety programs must be working toward meeting the following primary criteria to be eligible for primary assistance or must meet the following primary criteria prior to working toward advanced assistance:

(A) A dam safety program must be authorized by State legislation to include, at a minimum, the following:

(i) Authority to review and approve plans and specifications to construct, enlarge, modify, remove, or abandon dams.
(ii) Authority to perform periodic inspections during construction for the purpose of ensuring compliance with approved plans and specifications.

(iii) Upon completion of construction, a requirement that, before operation of the structure, State approval is received.

(iv) Authority to require or perform the inspection of all dams and reservoirs that pose a significant threat to human life and property in the event of failure at least every 5 years to determine their continued safety and a procedure for more detailed and frequent safety inspections.

(v) A requirement that all inspections be performed under the supervision of a registered professional engineer with related experience in dam design and construction.

(vi) Authority to issue notices, when appropriate, to require owners of dams to perform necessary maintenance or remedial work, revise operating procedures, or take other actions, including breaching dams when deemed necessary.
(vii) Rules and regulations for carrying out the provisions of the State’s legislative authority and necessary emergency funds to assure timely repairs or other changes to, or removal of, a dam in order to protect human life and property and, if the owner does not take action, to take appropriate action as expeditiously as possible.

(viii) A system of emergency procedures that would be utilized in the event a dam fails or in the event a dam’s failure is imminent, together with an identification of those dams where failure could be reasonably expected to endanger human life and of the maximum area that could be inundated in the event of a failure of the dam, as well as identification of those necessary public facilities that would be affected by such inundation.

(B) State appropriations must be budgeted to carry out the provisions of the State legislation.

(2) The Director shall enter into contracts with each participating State to determine a work plan
necessary for a particular State dam safety program
to reach a level of program performance previously
agreed upon in the contract. Federal assistance
under this Act shall be provided to aid the State
dam safety program in achieving its goal.

(3)(A) There is authorized to be established a
National Dam Safety Review Board (hereinafter in
this Act referred to as the “Board”), which shall be
responsible for monitoring participating State imple-
mentation of the requirements of the assistance pro-
gram. The Board is authorized to utilize the expert-
tise of other agencies of the United States and to
enter into contracts for necessary studies to carry
out the requirements of this section. The Board
shall consist of 11 members selected for their expert-
tise in dam safety as follows:

(i) 5 to represent FEMA, the Federal En-
ergy Regulatory Commission, and the Depart-
ments of Agriculture, Defense, and Interior.

(ii) 5 members selected by the Director
who are dam safety officials of States.

(iii) 1 member selected by the Director to
represent the United States Committee on
Large Dams.
(B) Each member of the Board who is an officer or employee of the United States shall serve without compensation in addition to compensation received for the services of the member as an officer or employee of the United States. Each member of the Board who is not an officer or employee of the United States shall serve without compensation.

(C) Each member of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from home or regular place of business of the member in the performance of services for the Board.

(D) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Board.

(4) No grant may be made to a participating State under this section in any fiscal year unless the State enters into such agreement with the Director as the Director may require to ensure that the participating State will maintain its aggregate expenditures from all other sources for programs to assure dam safety for the protection of human life and property at or above the average level of such ex-
penditures in its 2 fiscal years preceding the date of
the enactment of this Act.

(5) Any program which is submitted to the Di-
rector for participation in the assistance program
under this section shall be deemed approved 120
days following its receipt by the Director unless the
Director determines within such 120-day period that
the submitted program fails to reasonably meet the
requirements of paragraphs (1) and (2). If the Di-
rector determines the submitted program cannot be
approved for participation, the Director shall imme-
diately notify the State in writing, together with his
or her reasons and those changes needed to enable
the submitted program to be approved.

(6) Utilizing the expertise of the Board, the Di-
rector shall periodically review the approved State
dam safety programs. In the event the Board finds
that a program of a participating State has proven
inadequate to reasonably protect human life and
property and the Director agrees, the Director shall
revoke approval of the State’s participation in the
assistance program and withhold assistance under
this Act, until the State program has been re-
approved.
(7) The head of any Federal agency, when requested by any State dam safety agency, shall provide information on the construction, operation, or maintenance of any dam or allow officials of the State agency to participate in any Federal inspection of any dam.

(8) Within 180 days after the date of the enactment of this Act, the Director shall report to the Congress on the availability of dam insurance and make recommendations.

SEC. 6. BIENNIAL REPORT.

Within 90 days after the last day of each odd-numbered fiscal year, the Director shall submit a biennial report to Congress describing the status of the program being implemented under this Act and describing the progress achieved by the Federal agencies during the 2 previous years in implementing the Federal Guidelines for Dam Safety. Each such report shall include any recommendations for legislative and other action deemed necessary and appropriate. The report shall also include a summary of the progress being made in improving dam safety by participating States.

SEC. 7. AUTHORIZING OF APPROPRIATIONS.

(a) GENERAL PROGRAM.
(1) FUNDING.—There are authorized to be ap-
propriated to the Director to carry out the provi-
sions of sections 5 and 6 of this Act (in addition to
any authorizations for similar purposes included in
other Acts and the authorizations set forth in sub-
sections (b) through (e) of this section)—

(A) $1,000,000 for fiscal year 1997;

(B) $2,000,000 for fiscal year 1998;

(C) $4,000,000 for fiscal year 1999;

(D) $4,000,000 for fiscal year 2000; and

(E) $4,000,000 for fiscal year 2001.

(2) APPORTIONMENT FORMULA.—Sums appro-
priated under this subsection shall be distributed an-
ually among participating States on the following
basis: One-third among those States determined in
section 5 of this Act as qualifying for funding, and
two-thirds in proportion to the number of dams and
appearing as State-regulated dams on the National
Dam Inventory in each participating State that has
been determined in section 5(e)(1) of this Act as
qualifying for funding, to the number of dams in all
participating States. In no event shall funds distrib-
uted to any State under this subsection exceed 50
percent of the reasonable cost of implementing an
approved dam safety program in such State. The Di-
rector and Review Board shall determine how much
is allotted to participating States needing primary
funding and those needing advanced funding.

(b) Training.—

(1) In general.—The Director shall, at the
request of any State that has or intends to develop
a dam safety program under section 5(e)(1) of this
Act, provide training for State dam safety staff and
inspectors.

(2) Funding.—There is authorized to be ap-
propriated to carry out this subsection $500,000 for
each of fiscal years 1997 through 2001.

(c) Research.—

(1) In general.—The Director shall under-
take a program of technical and archival research in
order to develop improved techniques, historical ex-
perience, and equipment for rapid and effective dam
construction, rehabilitation, and inspection, together
with devices for the continued monitoring, of dams
for safety purposes.

(2) State participation; reports.—The Di-
rector shall provide for State participation in the re-
search under this subsection and periodically advise
all States and Congress of the results of such re-
search.
(3) *Funding.*—There is authorized to be appropriated to carry out this subsection $1,000,000 for each of fiscal years 1997 through 2001.

(d) *Dam Inventory.*—

(1) *Maintenance and Publication.*—The Secretary of the Army, acting through the Chief of Engineers, is authorized to maintain and periodically publish updated information on the inventory of dams.

(2) *Funding.*—There is authorized to be appropriated to carry out this subsection $500,000 for each of fiscal years 1997 through 2001.

(e) *Personnel.*—

(1) *Employment.*—The Director is authorized to employ additional staff personnel in numbers sufficient to carry out the provisions of this Act.

(2) *Funding.*—There is authorized to be appropriated to carry out this subsection $400,000 for each of fiscal years 1997 through 2001.

(f) *Limitation.*—No funds authorized by this Act shall be used to construct or repair any Federal or non-Federal dams.

SEC. 8. CONFORMING AMENDMENTS.

The Act entitled "An Act to authorize the Secretary of the Army to undertake a national program of inspection
dams”, approved August 8, 1972 (33 U.S.C 467–467m; Public Law 92–367), is amended—

(1) in the first section by striking “means any artificial barrier” and all that follows through the period at the end and inserting “has the meaning such term has under section 4 of the National Dam Safety Program Act of 1996.”;

(2) by striking the 2d sentence of section 3;

(3) by striking section 5 and sections 7 through 14; and

(4) by redesignating section 6 as section 5.