

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 SENATE BILL NO. 362

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to supervision of safety of dams and
7 reservoirs."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 61. SUPERVISION OF SAFETY OF DAMS AND RESERVOIRS.

11 ARTICLE 1. PURPOSE.

12 Sec. 18.61.010. POLICY; APPLICATION OF CHAPTER. It is the
13 policy of the state to provide for the exclusive state regulation, super-
14 vision, and periodic inspection of dams, reservoirs, and appurtenant
15 works in the state to the extent required for the protection of
16 public safety, life and property. However, this chapter does not
17 apply to federally owned dams, reservoirs, and appurtenant works.

18 ARTICLE 2. ADMINISTRATIVE PROVISIONS.

19 Sec. 18.61.020. ADMINISTRATION AND STAFFING. The supervision of
20 safety of dams and reservoirs is the responsibility of the Department
21 of Public Works. The department shall employ a qualified engineer,
22 licensed by the state, experienced in the design and construction of
23 dams and reservoirs, and clerical, engineering and other assistants
24 necessary for carrying on the work of dam and reservoir regulation,
25 supervision, and periodic inspections not less than once each five-
26 year period, in accordance with this chapter.

27 Sec. 18.61.030. QUALIFIED CIVIL ENGINEER IN CHARGE. All plans
28 and specifications for initial construction, enlargement, alteration,
29 repair or removal of dams and supervision of construction shall be

1 prepared and carried out by a qualified engineer of the department,
2 licensed by this state, experienced in dam design and construction,
3 assisted by qualified engineers and other specialists when necessary.

4 Sec. 18.61.040. CONSULTING BOARD; APPOINTMENT AND REPORT. When
5 the safety and technical considerations pertaining to a certificate of
6 approval of a dam or reservoir, or when plans and specifications
7 require it, or when requested by the owner, in writing setting out
8 specific reasons to do so, the department shall appoint a consulting
9 board of two or more consultants not previously associated with the
10 structure, to report to the department on its proposed action with
11 respect to these considerations.

12 Sec. 18.61.050. COST AND EXPENSE OF CONSULTING BOARD. The cost
13 and expense of a consulting board, if appointed on the request of an
14 owner, shall be paid by the owner where the owner is determined by the
15 board to be in error.

16 ARTICLE 3. POWERS OF THE DEPARTMENT.

17 Sec. 18.61.060. CONSTRUCTION UNLAWFUL EXCEPT UPON APPROVAL. (a)
18 It is unlawful to construct, enlarge, repair, alter, remove, maintain,
19 operate or abandon any dam or reservoir subject to this chapter except
20 upon approval of the department; however, this section does not apply
21 to routine maintenance and operation not affecting the safety of the
22 structure.

23 (b) Every owner of a dam or reservoir subject to this chapter
24 that was completed before the effective date of this Act shall immediately
25 file an application with the department for the approval of the dam or
26 reservoir.

27 (c) The approval required by (a) or (b), or a final determination
28 by the department under this chapter, does not exempt the applicant
29 from the requirements of other statutes, including but not limited to

1 AS 16, AS 46.03, 46.15, and regulations adopted under them, nor does
2 it foreclose the responsibilities of the Department of Environmental
3 Conservation, the Department of Natural Resources, or the Department
4 of Fish and Game, under those statutes.

5 Sec. 18.61.070. SUPERVISION OF ACTIVITIES. The design, construc-
6 tion, enlargement, alteration, repair, maintenance, operation, and
7 removal of dams and reservoirs is subject to review by the department
8 under the police power of the state for the protection of life and
9 property as provided in this chapter.

10 Sec. 18.61.080. REGULATIONS AND ORDERS. The department shall
11 adopt regulations and issue orders necessary for carrying out the
12 provisions of this chapter, including, but not limited to, regulations
13 providing for the procedures and necessary forms for application for
14 approval of plans and specifications before construction of a dam or
15 reservoir, filing fee schedule setting out the fee to accompany each
16 application, emergency repairs, periodic inspection of dams, reservoirs,
17 and appurtenant works, and all other forms or procedures necessary to
18 implement this chapter.

19 Sec. 18.61.090. ENTRY UPON PRIVATE PROPERTY. In making an in-
20 vestigation or inspection necessary to enforce or implement this
21 chapter, the department or its representatives may enter upon the
22 private property of the dam or reservoir owner as may be necessary, in
23 accordance with regulations adopted by the department.

24 Sec. 18.61.100. DETERMINING DANGER. In determining whether
25 a dam or reservoir or proposed dam or reservoir constitutes or would
26 constitute a danger to life or property, the department shall take
27 into consideration the following conditions, not necessarily all
28 inclusive, which exist or which might occur in any area in the vicinity
29 of the dam or reservoir: the possibility that the dam or reservoir

1 might be endangered by overtopping; seepage; settlement; erosion;
2 cracking; earth movement; earthquakes; failure of bulkheads, flashboard,
3 gates or conduits. If the department considers that any conditions
4 endanger a dam or reservoir, it shall order the owner to take the
5 action the department considers necessary to remove the resultant
6 danger to life and property.

7 Sec. 18.61.110. INVESTIGATIONS AND GATHERING OF DATA. For the
8 purpose of enabling it to make decisions as compatible with public
9 safety and economy as possible, the department shall make or cause to
10 be made such investigations, and shall gather or cause to be gathered
11 such data including advances made in safety practices elsewhere, as
12 may be needed for a proper review and study of the various features of
13 the design, construction, repair and enlargement of dams, reservoirs,
14 and appurtenant works.

15 Sec. 18.61.120. WATERSHED INVESTIGATIONS AND STUDIES. The de-
16 partment shall, in addition to those activities set out in sec. 110,
17 make or cause to be made such watershed investigations and studies as
18 may be necessary to keep abreast of developments affecting stream run-
19 off and as required to facilitate its decisions.

20 Sec. 18.61.130. ENFORCEMENT. The department may take any appro-
21 priate legal action necessary for the enforcement of this chapter.

22 Sec. 18.61.140. CAUSES FOR WHICH ACTION OR PROCEEDING MAY BE
23 COMMENCED. An action or proceeding under this chapter may be commenced
24 whenever any owner or any person acting as a director, officer, agent,
25 or employee of any owner, or any contractor or agent or employee of a
26 contractor:

27 (1) fails or omits to do anything required of him by this
28 chapter or by any approval, order, regulation, or requirement of the
29 department under the authority of this chapter; or

1 (2) does or permits anything to be done in violation of or
2 contrary to this chapter or any approval, order, regulation, or
3 requirement of the department under this chapter.

4 Sec. 18.61.150. JUDICIAL REVIEW. Any final action of the depart-
5 ment under this chapter is subject to judicial review as provided in
6 the Administrative Procedure Act (AS 44.62).

7 Sec. 18.61.160. INSPECTION UPON RECEIPT OF COMPLAINT. Upon
8 receipt of a written complaint alleging that the person or property of
9 the complainant is endangered by the construction, enlargement, repairs,
10 alterations, maintenance, or operation of any dam or reservoir, the
11 department shall cause an inspection to be made unless the data,
12 records, and inspection reports on file with it are found adequate to
13 make a determination whether the complaint is valid.

14 Sec. 18.61.170. ACTION WHEN UNSAFE CONDITION FOUND. If, upon
15 inspection under sec. 160 of this chapter, it is found that an unsafe
16 condition exists, the department shall notify the owner to take such
17 action as is necessary to make the condition safe, including breaching
18 or removal of any dam found beyond repair.

19 Sec. 18.61.180. PAYMENT OF DEPOSIT INTO STATE TREASURY WHERE
20 COMPLAINT FOUND WITHOUT MERIT. If, after an inspection is made on
21 account of a complaint, the complaint is found by the department to
22 have been without merit, the department may require the complainant to
23 pay the department the cost of the inspection which shall then be paid
24 into the state treasury. The complainant shall be provided with a
25 copy of the official report of the inspection.

26 ARTICLE 4. OFFENSES AND PUNISHMENT.

27 Sec. 18.61.190. VIOLATION OF THIS CHAPTER IS A MISDEMEANOR. An
28 owner or any other person who violates a provision of this chapter or
29 of any approval, order, regulation, or requirement of the department

1 pursuant to this chapter is guilty of a misdemeanor and, upon con-
2 viction, is punishable by a fine of not more than \$50,000 or by im-
3 prisonment for not more than one year, or by both. In the event of a
4 continuing violation, each day that the violation continues constitutes
5 a separate and distinct offense.

6 Sec. 18.61.200. WILFUL OBSTRUCTION OF DEPARTMENT. Any owner or
7 any other person who wilfully obstructs, hinders, or prevents the
8 department or its agents or employees from performing the duties
9 imposed by this chapter or who wilfully resists the exercise of the
10 control and supervision conferred by this chapter upon the department
11 or its agents or employees is guilty of a misdemeanor and punishable
12 as provided in sec. 190 of this chapter.

13 Sec. 18.61.210. FAILURE TO NOTIFY DEPARTMENT OF KNOWN VIOLATIONS.
14 Any inspector, agent, or employee of the department who has knowledge
15 of construction, enlargement, repair, alteration, maintenance, or
16 removal of any dam or reservoir without approval or in violation of or
17 contrary to any approval as provided for in this chapter, and who
18 fails to notify the department of it immediately is guilty of a mis-
19 demeanor and, upon conviction, is punishable as provided in sec. 190
20 of this chapter.

21 ARTICLE 5. GENERAL PROVISIONS.

22 Sec. 18.61.220. AUTHORITY FOR MUNICIPALITY TO REGULATE DAMS OR
23 RESERVOIRS. No municipality, whether home rule or otherwise and
24 including municipalities unified under AS 29.68.240 - 29.68.440, may
25 regulate, supervise, inspect, or provide for the regulation, supervision,
26 or inspection of any dam or reservoir in this state, or the construction,
27 maintenance, operation, or removal or abandonment of them nor limit
28 the size of any dam or reservoir or the amount of water which may be
29 stored in them, if that action would conflict with the powers and

1 authority vested in the department by this chapter.

2 Sec. 18.61.230. ACTION AGAINST STATE FOR DAMAGES. No action may
3 be brought against the state or the department or its agents or employees
4 for the recovery of damages caused by the partial or total failure of
5 any dam or reservoir or through the operation of any dam or reservoir,
6 upon the ground that the defendant is liable by virtue of any of the
7 following:

8 (1) the approval of the dam or reservoir, or approval of
9 flood handling plans during or after construction;

10 (2) the issuance or enforcement of orders relative to
11 maintenance or operation of the dam or reservoir;

12 (3) control and regulation of the dam or reservoir;

13 (4) measures taken to protect against failure during an
14 emergency.

15 Sec. 18.61.240. DUTIES OF OWNER. Nothing in this chapter relieves
16 an owner of a dam or reservoir of the legal duties, obligations, or
17 liabilities incident to the ownership or operation of the dam or
18 reservoir.

19 Sec. 18.61.250. EFFECT OF FINDINGS, ORDERS AND APPROVAL CERTIFI-
20 CATES. The findings and orders of the department and the certificate
21 of approval of any dam or reservoir issued by the state are final and
22 conclusive and binding upon all owners and state agencies, regulatory
23 or otherwise, as to the safety of design, construction, maintenance,
24 and operation of any dam or reservoir, subject to judicial review
25 under sec. 150 of this chapter and subject to sec. 60(c) of this
26 chapter.

27 Sec. 18.61.260. RIGHT OF RECOURSE TO COURTS. Nothing in this
28 chapter deprives an owner of recourse to the courts to which the owner
29 may be entitled under the laws of this state.

1 Sec. 18.61.270. RECORDS AS PUBLIC DOCUMENTS. All records of
2 official actions of the department and its correspondence pertaining
3 to the supervision of dams and reservoirs are public documents, and
4 access to them is governed by AS 09.25.110 - 09.25.120.

5 Sec. 18.61.280. NOTIFICATION TO DEPARTMENT OF CHANGE IN OWNERSHIP.
6 All owners shall notify the department of any change in ownership of
7 any dam or reservoir subject to this chapter within 30 days after the
8 time the transfer of ownership occurs.

9 Sec. 18.61.290. DEFINITIONS. In this chapter, unless the
10 context requires otherwise

11 (1) "alterations" or "repairs" means only those alterations
12 or repairs which may directly affect the safety of the dam or reservoir,
13 as determined by the department;

14 (2) "appurtenant works" means, but is not limited to,
15 structures such as spillways, either in the dam or separate from it;
16 the reservoir and its rim; low level outlet works; and water conduits
17 such as tunnels, pipelines or penstocks, either through the dam or its
18 abutments;

19 (3) "dam" means any artificial barrier, including appurte-
20 nant works, which does or will impound or divert water, and which is
21 or will be 25 feet or more in height from the natural bed of the
22 stream or watercourse measured at the downstream toe of the dam as
23 determined by the department, or from the lowest elevation of the
24 outside limit of the dam as determined by the department, if it is not
25 across a stream channel or watercourse, to the maximum water storage
26 elevation, or has or will have an impounding capacity at maximum water
27 storage elevation of 50 acre-feet or more; a fill or structure for
28 highway, airport, or railroad use or for any other purpose, which does
29 or may impound water, is considered a dam if the criteria of this

1 paragraph for a dam are found applicable; however, no obstruction in a
2 canal used to raise or lower water in it or to divert water from it is
3 considered a dam;

4 (4) "department" means the Department of Public Works;

5 (5) "enlargement" means any change in or addition to an
6 existing dam or reservoir, which raises or is capable of raising the
7 water storage elevation of the water or which increases the quantity
8 of water impounded by the dam or reservoir;

9 (6) "owner" means any of the following who own, control,
10 operate, maintain, manage, or propose to construct a dam or reservoir,
11 but does not include any agency of the United States Government or any
12 person who operates and maintains a dam owned by the United States:

13 (A) the state and its agencies and political sub-
14 divisions;

15 (B) every municipality whether home rule or otherwise
16 and including municipalities unified under AS 29.68.240 - 29.68.-
17 440;

18 (C) every public utility;

19 (D) every municipal corporation;

20 (E) every person;

21 (F) the appointed or authorized agents, lessees, receivers
22 or trustees of any of the entities listed in this paragraph;

23 (7) "reservoir" means any basin appurtenant to a dam which
24 contains or will contain impounded water;

25 (8) "water storage elevation" means the maximum elevation
26 of water surface which can be obtained by the dam or reservoir without
27 encroaching on the approved freeboard at maximum design flood.

28 * Sec. 2. AS 44.43.020 is amended by adding a new paragraph to read:

29 (3) the duties involve the exclusive regulation, supervision,

1 and periodic inspection of all dams, reservoirs, and appurtenant works
2 within the state not owned by the federal government, under AS 18.61.

3 * Sec. 3. AS 46.15.020(b)(1) is amended to read:

4 (1) adopt procedural and substantive regulations to carry
5 out the provisions of this chapter, taking into consideration the
6 responsibilities of the Department of Environmental Conservation under
7 AS 46.03, [AND] the Department of Fish and Game under AS 16, and the
8 Department of Public Works under AS 18.61;

9 * Sec. 4. AS 46.15.040(b) is amended to read:

10 (b) A right to appropriate water shall be obtained by first
11 making application to the commissioner for a permit to appropriate.
12 The commissioner shall by regulation prescribe the form and contents
13 of the application and the procedure for filing the application. If a
14 permit is granted and the means of appropriation is constructed a
15 certificate of appropriation may be obtained. When the means of
16 appropriation require construction of a dam or reservoir, this certi-
17 ificate does not eliminate the need for approval under AS 18.61.
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