

Introduced: 1/25/85
Referred: Resources, Judiciary
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 95

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to supervision of safety of dams and
7 reservoirs; and providing for an effective date."

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

9 * Section 1. AS 11.56.800(a) is amended to read:

10 (a) A person commits the crime of making a false report if the
11 person knowingly

12 (1) gives false information to a peace officer with the
13 intent of implicating another in a crime;

14 (2) makes a false report to a peace officer that a crime
15 has occurred or is about to occur; [OR]

16 (3) makes a false report or gives a false alarm that a fire
17 or other incident dangerous to life or property calling for an emer-
18 gency response has occurred or is about to occur; or

19 (4) makes a false report to the Department of Natural
20 Resources concerning the condition of a dam or reservoir under AS 46.-
21 17.010 -- 46.17.140.

22 * Sec. 2. AS 46 is amended by adding a new chapter to read:

23 CHAPTER 17. SUPERVISION OF SAFETY OF DAMS AND RESERVOIRS.

24 Sec. 46.17.010. PURPOSE. It is the purpose of this chapter to
25 provide for the regulation, supervision, and periodic inspection by
26 the department of privately or state owned dams, reservoirs, and
27 appurtenant works in order to ensure that the design, construction,
28 enlargement, alteration, repair, maintenance, operation, and removal
29 of dams and reservoirs is consistent with the protection of life and

1 property.

2 Sec. 46.17.020. ADMINISTRATION AND STAFFING. The supervision of
3 the safety of dams or reservoirs is the responsibility of the depart-
4 ment. The department shall employ a licensed and qualified engineer,
5 experienced in the design and construction of dams and reservoirs, and
6 other employees necessary for performing the duties outlined in this
7 chapter. The department may contract with engineering consultants not
8 employed by the state when necessary to assist in the performance of
9 its duties under this chapter.

10 Sec. 46.17.030. REGULATIONS AND ORDERS. The department shall
11 adopt regulations and issue orders necessary for carrying out the
12 provisions of this chapter.

13 Sec. 46.17.040. APPROVAL REQUIRED. (a) Except in the perfor-
14 mance of routine maintenance and operations not affecting structure
15 safety, no person may construct, enlarge, repair, alter, remove,
16 maintain, operate or abandon a dam or reservoir without the approval
17 of the department.

18 (b) The owner of a dam or reservoir that was constructed or was
19 in operation before the effective date of this Act shall file an
20 application with the department for the approval of the dam or reser-
21 voir, in accordance with regulations adopted by the department.

22 (c) Nothing in this chapter exempts an applicant under this
23 section from the requirements of other statutes.

24 Sec. 46.17.050. INSPECTIONS. The department shall inspect at
25 least once every five years every dam and reservoir subject to this
26 chapter. Upon receipt of a written complaint alleging that the person
27 or property of the complainant is endangered by the construction,
28 enlargement, repair, alteration, maintenance, or operation of a dam or
29 reservoir, the department shall physically inspect the dam or

1 reservoir, unless the data, records, and inspection reports on file
2 with the department are adequate to determine that the complaint has
3 no foundation.

4 Sec. 46.17.060. ENTRY UPON PRIVATE PROPERTY. In taking any
5 action under this chapter, the department's agents or employees may
6 enter the dam or reservoir premises as may be necessary.

7 Sec. 46.17.070. DETERMINING DANGER. In determining whether a
8 dam or reservoir or proposed dam or reservoir constitutes or would
9 constitute a danger to life or property, the department shall, at a
10 minimum, consider the possibility that the structural integrity of the
11 dam or reservoir might be endangered by overtopping, seepage, settle-
12 ment, erosion, cracking, earth movement, earthquakes, or the failure
13 of bulkheads, flashboards, gates, or conduits. If the department
14 determines that the dam or reservoir is unsafe, it shall order the
15 owner to take action the department considers necessary to ensure the
16 protection of life and property.

17 Sec. 46.17.080. INJUNCTION AND DAMAGES. With the assistance of
18 the attorney general, the department may seek an injunction and dam-
19 ages in the enforcement of its orders or the provisions of this chap-
20 ter.

21 Sec. 46.17.090. JUDICIAL REVIEW. A final action of the depart-
22 ment under this chapter is subject to judicial review as provided in
23 the Administrative Procedure Act, AS 44.62.

24 Sec. 46.17.100. VIOLATION OF THIS CHAPTER IS A MISDEMEANOR. A
25 person who knowingly violates a provision of this chapter, or know-
26 ingly violates the terms of an approval, order, regulation, or require-
27 ment of the department made under this chapter, or knowingly ob-
28 structs, hinders, or prevents the department's agents or employees
29 from performing duties under this chapter, is guilty of a class A

1 misdemeanor; upon conviction, the person is punishable by imprisonment
2 under AS 12.55.135(a), or by a fine of not more than \$10,000, or by
3 both. Each day that a violation continues constitutes a separate
4 offense.

5 Sec. 46.17.110. OTHER GOVERNMENT AGENCIES. (a) A municipal
6 corporation organized under AS 29 may not regulate, supervise, in-
7 spect, or provide for the regulation, supervision, or inspection of a
8 dam or reservoir in this state, or provide for the construction,
9 maintenance, operation, or removal or abandonment of them, or limit
10 the size of a dam or reservoir or the amount of water that may be
11 stored in them, if its action would conflict with the powers and
12 duties vested in the department. The department may enter into co-
13 operative agreements with municipal corporations and other state and
14 federal agencies to effectuate the purpose of this chapter.

15 (b) This chapter does not apply to a federally owned or operated
16 dam or reservoir.

17 (c) Nothing in this chapter affects the powers of the Department
18 of Environmental Conservation or the Department of Fish and Game.

19 Sec. 46.17.120. ACTION AGAINST STATE FOR DAMAGES. No person may
20 bring an action against the state, the department, or agents or em-
21 ployees of the state, for the recovery of damages caused by the par-
22 tial or total failure of a dam or reservoir, or by the operation of a
23 dam or reservoir, or by an act or omission in connection with any of
24 the following:

25 (1) approval of the construction of a dam or reservoir, or
26 approval of flood-handling plans during or after construction;

27 (2) issuance or enforcement of orders relating to mainte-
28 nance or operation of the dam or reservoir;

29 (3) control or regulation of the dam or reservoir;

1 (4) measures taken to protect against failure of the dam or
2 reservoir during an emergency; or

3 (5) investigations or inspections authorized under this
4 chapter.

5 Sec. 46.17.130. DUTIES OF OWNER. Nothing in this chapter re-
6 lieves an owner of a dam or reservoir of the duties or liabilities
7 incident to the ownership or operation of the dam or reservoir.

8 Sec. 46.17.900. DEFINITIONS. In this chapter, unless the con-
9 text requires otherwise,

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

13 (2) "appurtenant works" includes structures such as
14 spillways, either in a dam or separate from it; a reservoir and its
15 rim; low level outlet works; and water conduits such as tunnels,
16 pipelines, or penstocks, whether running through the dam or through
17 its abutments;

18 (3) "dam" includes any artificial barrier and appurtenant
19 works which may impound or divert water and (A) which has or will have
20 an impounding capacity at maximum water storage elevation of 50 acre-
21 feet or more, or (B) which is or will be 10 feet or more in height
22 measured from the lowest elevation at the downstream toe of the arti-
23 ficial barrier to the crest elevation of the barrier but excluding any
24 spillway;

25 (4) "department" means the Department of Natural Resources;

26 (5) "enlargement" means an alteration to an existing dam or
27 reservoir which raises or is capable of raising the water storage
28 elevation of the water, or which increases the quantity of water
29 impounded by the dam or reservoir;

1 (6) "owner" means a person who owns, controls, operates,
2 maintains, manages, or proposes to construct a dam or reservoir, and
3 includes the following:

4 (A) the state and its agencies and political subdivi-
5 sions;

6 (B) a public utility; and

7 (C) the appointed or authorized agents, employees,
8 lessees, receivers or trustees of any owner;

9 (7) "person" means the same as in AS 01.10.060, and, in
10 addition, includes the state and its agencies and political subdivi-
11 sions;

12 (8) "reservoir" means any basin appurtenant to a dam, which
13 may impound water.

14 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).