

Offered: 3/28/85  
Referred: Judiciary and Finance

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 95 (Resources)

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.

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 commissioner 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 commis-  
4 sioner. The commissioner shall employ a licensed and qualified engi-  
5 neer, experienced in the design and construction of dams and reser-  
6 voirs, and other employees necessary for performing the duties out-  
7 lined in this chapter. The commissioner may contract with engineering  
8 consultants not employed by the state when necessary to assist in the  
9 performance of its duties under this chapter.

10 Sec. 46.17.030. REGULATIONS AND ORDERS. The commissioner 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, a person may not construct, enlarge, repair, alter, remove,  
16 maintain, operate or abandon a dam or reservoir without the approval  
17 of the commissioner.

18 (b) The commissioner shall adopt regulations under AS 46.17.030  
19 to establish minimum safety standards for specified classes of low  
20 hazard dams up to 20 feet high, including mining dams. Dams in these  
21 classes constructed to the minimum standards do not require separate  
22 prior approval.

23 (c) The owner of a dam or reservoir that was constructed or was  
24 in operation before the effective date of this Act shall file an  
25 application with the commissioner for the approval of the dam or  
26 reservoir, in accordance with regulations adopted by the commissioner.

27 (d) Nothing in this chapter exempts an applicant under this  
28 section from the requirements of other statutes.

29 Sec. 46.17.050. INSPECTIONS. The commissioner shall inspect at

1 least once every five years every dam and reservoir subject to this  
2 chapter. Upon receipt of a written complaint alleging that the person  
3 or property of the complainant is endangered by the construction,  
4 enlargement, repair, alteration, maintenance, or operation of a dam or  
5 reservoir, the commissioner shall physically inspect the dam or reser-  
6 voir, unless the data, records, and inspection reports on file with  
7 the commissioner are adequate to determine that the complaint has no  
8 foundation.

9 Sec. 46.17.060. ENTRY UPON PRIVATE PROPERTY. In taking an  
10 action under this chapter the commissioner, after giving two weeks'  
11 written notice to the owner, may enter the dam or reservoir premises  
12 as necessary for inspection purposes. If the commissioner has reason  
13 to believe the dam or reservoir may be unsafe or presents an imminent  
14 threat to life or property, the commissioner may enter the dam or  
15 reservoir premises without notice.

16 Sec. 46.17.070. DETERMINING DANGER. In determining whether a  
17 dam or reservoir or proposed dam or reservoir constitutes or would  
18 constitute a danger to life or property, the commissioner shall, at a  
19 minimum, consider the possibility that the structural integrity of the  
20 dam or reservoir might be endangered by overtopping, seepage, settle-  
21 ment, erosion, cracking, earth movement, earthquakes, or the failure  
22 of bulkheads, flashboards, gates, or conduits. If the commissioner  
23 determines that the dam or reservoir is unsafe, it shall order the  
24 owner to take action the commissioner considers necessary to ensure  
25 the protection of life and property.

26 Sec. 46.17.080. INJUNCTION AND DAMAGES. With the assistance of  
27 the attorney general, the commissioner may seek an injunction and dam-  
28 ages in the enforcement of the commissioner's orders or the provisions  
29 of this chapter.

1           Sec. 46.17.090. JUDICIAL REVIEW. A final action of the commis-  
2 sioner under this chapter is subject to judicial review as provided in  
3 the Administrative Procedure Act, AS 44.62.

4           Sec. 46.17.100. VIOLATION OF THIS CHAPTER IS A MISDEMEANOR. A  
5 person who knowingly violates a provision of this chapter, or know-  
6 ingly violates the terms of an approval, order, regulation, or require-  
7 ment of the commissioner made under this chapter, or knowingly ob-  
8 structs, hinders, or prevents the commissioner's agents or employees  
9 from performing duties under this chapter, is guilty of a class A  
10 misdemeanor; upon conviction, the person is punishable by imprisonment  
11 under AS 12.55.135(a), or by a fine of not more than \$10,000, or by  
12 both. Each day that a violation continues constitutes a separate  
13 offense.

14           Sec. 46.17.110. OTHER GOVERNMENT AGENCIES. (a) A municipal  
15 corporation organized under AS 29 may not regulate, supervise, in-  
16 spect, or provide for the regulation, supervision, or inspection of a  
17 dam or reservoir in this state, or provide for the construction,  
18 maintenance, operation, or removal or abandonment of them, or limit  
19 the size of a dam or reservoir or the amount of water that may be  
20 stored in them, if its action would conflict with the powers and  
21 duties vested in the commissioner. The commissioner may enter into  
22 cooperative agreements with municipal corporations and other state and  
23 federal agencies to effectuate the purpose of this chapter.

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

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

28           Sec. 46.17.120. ACTION AGAINST STATE FOR DAMAGES. A person may  
29 not bring an action against the state, the commissioner, or agents or

1 employees of the state, for the recovery of damages caused by the par-  
2 tial or total failure of a dam or reservoir, or by the operation of a  
3 dam or reservoir, or by an act or omission in connection with any of  
4 the following:

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

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

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

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

12 (5) investigations or inspections authorized under this  
13 chapter.

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

17 Sec. 46.17.900. DEFINITIONS. In this chapter, unless the con-  
18 text requires otherwise,

19 (1) "alterations" or "repairs" means only those alterations  
20 or repairs that may directly affect the safety of the dam or reser-  
21 voir, as determined by the commissioner;

22 (2) "appurtenant works" includes structures such as spill-  
23 ways, either in a dam or separate from it; a reservoir and its rim;  
24 low level outlet works; and water conduits such as tunnels, pipelines,  
25 or penstocks, whether running through the dam or through its abut-  
26 ments;

27 (3) "dam" includes any artificial barrier and appurtenant  
28 works that may impound or divert water and (A) that has or will have  
29 an impounding capacity at maximum water storage elevation of 50 acre-

1 feet or more, or (B) that is or will be 10 feet or more in height  
2 measured from the lowest elevation at the downstream toe of the arti-  
3 ficial barrier to the crest elevation of the barrier but excluding any  
4 spillway;

5 (4) "commissioner" means the commissioner of natural re-  
6 sources;

7 (5) "enlargement" means an alteration to an existing dam or  
8 reservoir that raises or is capable of raising the water storage  
9 elevation of the water, or that increases the quantity of water  
10 impounded by the dam or reservoir;

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

14 (A) the state and its agencies and political subdivi-  
15 sions;

16 (B) a public utility; and

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

19 (7) "person" has the meaning given in AS 01.10.060, and, in  
20 addition, includes the state and its agencies and political subdivi-  
21 sions;

22 (8) "reservoir" means a basin appurtenant to a dam that may  
23 impound water.

24 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.-  
25 10.070(c).