

Offered: 2/28/86
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 95 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND 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 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 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 commissioner for the approval of the dam or
21 reservoir, in accordance with regulations adopted by the commissioner.

22 (c) This chapter does not exempt an applicant under this section
23 from the requirements of other statutes.

24 Sec. 46.17.050. INSPECTIONS. At least once every five years,
25 the commissioner shall inspect every dam and reservoir subject to this
26 chapter. The commissioner may inspect a dam or reservoir more fre-
27 quently than every five years to protect public safety.

28 Sec. 46.17.060. ENTRY UPON PRIVATE PROPERTY. In taking an
29 action under this chapter, the commissioner, after giving two weeks'

1 written notice and being refused the right of entry, may seek a search
2 warrant to allow inspection of a dam or reservoir. The commissioner,
3 after being refused inspection of drawings, operational records, or
4 other information concerning a dam or reservoir, may seek an adminis-
5 trative subpoena compelling production of the drawings, operational
6 records, or other information. If the commissioner has reason to
7 believe the dam or reservoir may be unsafe or presents an imminent
8 threat to life or property, the commissioner may enter the dam or
9 reservoir premises without notice.

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

20 Sec. 46.17.080. INJUNCTION AND DAMAGES. With the assistance of
21 the attorney general, the commissioner may seek an injunction and dam-
22 ages in the enforcement of the commissioner's orders or the provisions
23 of this chapter.

24 Sec. 46.17.090. JUDICIAL REVIEW. A final action of the commis-
25 sioner under this chapter is subject to judicial review as provided in
26 the Administrative Procedure Act (AS 44.62).

27 Sec. 46.17.100. VIOLATION OF THIS CHAPTER IS A MISDEMEANOR. A
28 person who knowingly violates a provision of this chapter, or knowin-
29 gly violates the terms of an approval, order, regulation, or

1 requirement of the commissioner made under this chapter, or knowingly
2 obstructs, hinders, or prevents the commissioner's agents or employees
3 from performing duties under this chapter, is guilty of a class A
4 misdemeanor; upon conviction, the person is punishable by imprisonment
5 under AS 12.55.135(a), or by a fine of not more than \$10,000, or by
6 both. Each day that a violation continues constitutes a separate
7 offense.

8 Sec. 46.17.110. OTHER GOVERNMENT AGENCIES. (a) A municipality
9 organized under AS 29 may not regulate, supervise, inspect, or provide
10 for the regulation, supervision, or inspection of a dam or reservoir
11 in this state, or provide for the construction, maintenance, opera-
12 tion, or removal or abandonment of them, or limit the size of a dam or
13 reservoir or the amount of water that may be stored in them, if its
14 action would conflict with the powers and duties vested in the commis-
15 sioner. The commissioner may enter into cooperative agreements with
16 municipalities and other state and federal agencies to carry out the
17 purpose of this chapter.

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

20 (c) This chapter does not affect the powers of the Department of
21 Environmental Conservation or the Department of Fish and Game.

22 Sec. 46.17.120. ACTION AGAINST STATE FOR DAMAGES. (a) Except
23 as provided in (b) of this section, a person may not bring an action
24 against the state, the commissioner, or agents or employees of the
25 state, for the recovery of damages caused by the partial or total
26 failure of a dam or reservoir, or by the operation of a dam or reser-
27 voir, or by an act or omission in connection with any of the follow-
28 ing:

29 (1) approval of the construction of a dam or reservoir, or

1 approval of flood-handling plans during or after construction;
2 (2) issuance or enforcement of orders relating to mainte-
3 nance or operation of the dam or reservoir;
4 (3) control or regulation of the dam or reservoir;
5 (4) measures taken to protect against failure of the dam or
6 reservoir during an emergency; or
7 (5) investigations or inspections authorized under this
8 chapter.

9 (b) A person may bring an action against the state for the
10 recovery of damages caused by an action undertaken by a dam owner that
11 was negligently ordered by the state over the owner's objection.

12 Sec. 46.17.130. DUTIES OF OWNER. This chapter does not relieve
13 an owner of a dam or reservoir of the duties or liabilities incident
14 to the ownership or operation of the dam or reservoir.

15 Sec. 46.17.900. DEFINITIONS. In this chapter, unless the con-
16 text requires otherwise,

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

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

25 (3) "commissioner" means the commissioner of natural re-
26 sources;

27 (4) "dam" includes any artificial barrier and appurtenant
28 works that may impound or divert water and that

29 (A) has or will have an impounding capacity at maximum

1 water storage elevation of 50 acre-feet and is at least 10 feet
2 in height measured from the lowest point at either toe of the dam
3 to the crest of the dam;

4 (B) is at least 20 feet in height measured from the
5 lowest point at either toe of the dam to the crest of the dam; or

6 (C) poses a threat to lives and property as determined
7 positively by the commissioner;

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

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

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

17 (B) a public utility; and

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

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

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

25 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
26 10.070(c).