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1 IN THE SENATE

BY STURGULEWSKI

2 SENATE BILL NO. 183

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to dams and reservoirs; and provid-
7 ing 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 under AS 46.17 concerning the condition of a dam or reser-
21 voir.

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 owned and state-owned dams, reservoirs,
27 and appurtenant works in order to ensure that the design, construc-
28 tion, enlargement, alteration, repair, maintenance, operation, and
29 removal of dams and reservoirs is consistent with the protection of

1 life and property.

2 **Sec. 46.17.020. ADMINISTRATION AND STAFFING.** The department
3 shall supervise the safety of dams and reservoirs. The department
4 shall employ a licensed and qualified engineer, experienced in the
5 design and construction of dams and reservoirs, and other employees
6 necessary for performing the duties under this chapter. Under AS 36.-
7 30 (State Procurement Code), the department may contract with engi-
8 neering consultants to assist in the performance of the department's
9 duties under this chapter.

10 **Sec. 46.17.030. REGULATIONS AND ORDERS.** The department shall
11 adopt regulations and issue orders necessary to carry out this chap-
12 ter.

13 **Sec. 46.17.040. APPROVAL REQUIRED.** (a) Except in the perfor-
14 mance of routine maintenance and operations not affecting structural
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 department.

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

22 (c) An applicant under this section shall comply with the re-
23 quirements of other applicable statutes.

24 **Sec. 46.17.050. INSPECTIONS.** At least once every five years the
25 department shall inspect every dam and reservoir that is subject to
26 this chapter. The department may require the owner of a dam or reser-
27 voir to perform the required inspection, according to the department's
28 inspection standards, using a qualified engineer approved by the
29 department. To protect public safety, the department may inspect, or

1 may require the owner to inspect, a dam or reservoir more frequently
2 than every five years. The department may require the owner of the
3 dam or reservoir to pay the cost of an inspection under this section.

4 Sec. 46.17.060. ENTRY UPON PROPERTY. (a) If the department has
5 given two weeks' written notice of intent to inspect a dam or reser-
6 voir and the owner refuses to allow the inspection, the department may
7 seek a search warrant to allow the inspection. If the department has
8 been refused inspection of drawings, operational records, or other
9 information concerning a dam or reservoir, the department may seek an
10 administrative subpoena compelling production of the drawings, opera-
11 tional records, or other information.

12 (b) If the department has reason to believe that a dam or reser-
13 voir may be unsafe or presents an imminent threat to life or property,
14 the department may enter the dam or reservoir premises without notice.

15 Sec. 46.17.070. DETERMINING DANGER. In determining whether a
16 dam or reservoir, or proposed dam or reservoir, constitutes or would
17 constitute a danger to life or property, the department shall consider
18 whether the structural integrity of the dam or reservoir might be
19 endangered by overtopping, seepage, settlement, erosion, cracking,
20 earth movement, earthquakes, or the failure of bulkheads, flashboards,
21 gates, or conduits. The department may consider other relevant con-
22 ditions. If it determines that the dam or reservoir is unsafe, the
23 department shall order the owner to take the action that the depart-
24 ment considers necessary to protect life and property.

25 Sec. 46.17.080. INJUNCTION AND DAMAGES. With the assistance of
26 the attorney general, the department may seek an injunction and dam-
27 ages in the enforcement of this chapter, a department order issued
28 under this chapter, or a regulation adopted under AS 46.17.030.

29 Sec. 46.17.090. JUDICIAL REVIEW. A final action of the

1 department under this chapter is subject to judicial review as pro-
2 vided in the Administrative Procedure Act (AS 44.62).

3 Sec. 46.17.100. OTHER GOVERNMENT AGENCIES. (a) The department
4 may enter into cooperative agreements with municipalities and other
5 state and federal agencies to carry out this chapter.

6 (b) If the action would conflict with the powers and duties
7 vested in the department, a municipality may not

8 (1) regulate, supervise, inspect, or provide for the regu-
9 lation, supervision, or inspection of a dam or reservoir;

10 (2) provide for the construction, maintenance, operation,
11 removal, or abandonment of a dam or reservoir; or

12 (3) limit the size of or the amount of water that may be
13 stored in a dam or reservoir.

14 (c) This chapter does not apply to a federally-owned or operated
15 dam or reservoir.

16 (d) This chapter does not affect the powers of the Department of
17 Environmental Conservation or the Department of Fish and Game.

18 Sec. 46.17.110. ACTION AGAINST STATE FOR DAMAGES. (a) Except
19 as provided in (b) of this section, a person may not bring an action
20 against the state, the department, or agents or employees of the
21 state, for the recovery of damages caused by the partial or total
22 failure of a dam or reservoir, or by the operation of a dam or reser-
23 voir, or by an act or omission in connection with

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

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

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

29 (4) measures taken to protect against failure of the dam or

1 reservoir during an emergency; or

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

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

7 Sec. 46.17.120. DUTIES OF OWNER. This chapter does not relieve
8 an owner of a dam or reservoir of the duties or liabilities incident
9 to the ownership or operation of the dam or reservoir.

10 Sec. 46.17.150. PENALTIES. (a) A person is guilty of a class A
11 misdemeanor if the person knowingly

12 (1) violates a provision of this chapter,

13 (2) violates the terms of an approval, order, regulation,
14 or requirement of the department under this chapter; or

15 (3) obstructs, hinders, or prevents the department's agents
16 or employees from performing duties under this chapter.

17 (b) Each day that a violation continues constitutes a separate
18 offense.

19 Sec. 46.17.900. DEFINITIONS. In this chapter, unless the con-
20 text requires otherwise,

21 (1) "alteration" means only an alteration that might di-
22 rectly affect the safety of the dam or reservoir, as determined by the
23 department;

24 (2) "appurtenant works" includes structures including
25 spillways, either in a dam or separate from it; a reservoir and its
26 rim; low level outlet works; and water conduits including tunnels,
27 pipelines, or penstocks, whether running through the dam or through
28 its abutments;

29 (3) "dam" includes an artificial barrier, and its

1 appurtenant works, which may impound or divert water and which
2 (A) has or will have an impounding capacity at maximum
3 water storage elevation of 50 acre-feet and is at least 10 feet
4 in height measured from the lowest point at either the upstream
5 or downstream toe of the dam to the crest of the dam;
6 (B) is at least 20 feet in height measured from the
7 lowest point at either the upstream or downstream toe of the dam
8 to the crest of the dam; or
9 (C) poses a threat to lives and property as determined
10 by the department after an inspection;
11 (4) "department" means the Department of Natural Resources;
12 (5) "enlargement" means an alteration of an existing dam or
13 reservoir that raises or is capable of raising the water storage
14 elevation, or that increases the quantity of water impounded by the
15 dam or reservoir;
16 (6) "owner" means a person who owns, controls, operates,
17 maintains, manages, or proposes to construct a dam or reservoir, and
18 includes
19 (A) a public utility; and
20 (B) the appointed or authorized agents, employees,
21 lessees, receivers, or trustees of an owner;
22 (7) "person" has the meaning given in AS 01.10.060, and
23 includes the state and political subdivisions of the state, including
24 the Alaska Railroad Corporation and the University of Alaska;
25 (8) "repair" means only a repair that might directly affect
26 the safety of the dam or reservoir, as determined by the department;
27 (9) "reservoir" means a basin, appurtenant to a dam, that
28 is capable of impounding water.
29 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).