

**COMMITTEE REPORT**  
**SENATE**

FURTHER:

2/28/86

Date \_\_\_\_\_

Mr. President

The Committee on FINANCE considered SB 95  
supervision of safety of dams and reservoirs; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for \_\_\_\_\_
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

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\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Chairman recommendation

COMMITTEE REPORT  
SENATE

FURTHER: FINANCE

3/28/85

Date 2/27/86

Mr. President

The Committee on JUDICIARY considered SB 95  
supervision of safety of dams and reservoirs; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with or adopt CS for SB 95 JUD
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

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19 20

MEMBERS, HAVING  
OTHER RECOMMENDATIONS

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20

no rec

Patrick R. Kelly

Chairman

no rec

Chairman recommendation

COMMITTEE REPORT  
SENATE

1/25/85

FURTHER: Judiciary  
Finance

Date 3/27/85

Mr. President

The Committee on RESOURCES considered SB 95  
supervision of safety of dams and reservoirs; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SENATE BILL 95 (RESOURCES)
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS

3: Battara, Fakhry, No Rec

2: Kish, Hefner Do Not Pass

\_\_\_\_\_

3: [Signature] No Rec.

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
Chairman

Do Pass  
Chairman recommendation

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  
S

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 know-  
29 ingly 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. 46.17.139. 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 leasees, 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).

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  
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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 knowing-  
6 ly 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).

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.

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25 person who knowingly violates a provision of this chapter, or knowingly  
26 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).

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 24, 1985

The Honorable Don Bennett  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to dam safety. The bill comes as a result of the Alaska Water Resources Board resolution 84-4, dated March 14, 1984, recommending review of the existing statutory authority under which dams in the state are regulated by the Department of Natural Resources, division of land and water management.

Currently there are 175 dams on Alaska's dam inventory. In 1981 the U.S. Department of the Army, Corps of Engineers, ended its dam safety program for non-federal dams in Alaska. There are but 20 federal dams in Alaska. The remaining dams are covered under a minimal dam safety program the Department of Natural Resources, division of land and water management, established through regulations. The department adopted 11 AAC 93 under a provision of the Alaska Water Use Act, at AS 46.15.080, which gives the commissioner authority to regulate water diversions. About half of the 50 states have enacted specific dam safety legislation, but most of these states did so in response to dam failures resulting in loss of life and extensive property damage. Clearly it would be advantageous for Alaska to have a well-founded, comprehensive dam safety statutory scheme and program in effect to prevent such tragedies from occurring here. The attached bill is based on the Model Law for State Supervision of Safety of Dams and Reservoirs drafted by the United States Committee on Large Dams of the International Commission on Large Dams.

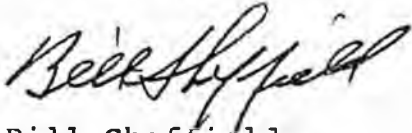
Section 2 contains the body of the bill, which creates a new chapter 17 for AS 46. New AS 46.17.010 first states the purpose of the chapter. It then makes the supervision

of safety of dams and reservoirs the responsibility of the Department of Natural Resources, which is directed to employ a qualified engineer experienced in the design and construction of dams and reservoirs to direct the dam safety program. A new AS 46.17.040 would make it unlawful for anyone to construct, enlarge, repair, alter, remove, maintain, operate or abandon any dam or reservoir, as defined in the bill, except upon application to and approval of the department. To ensure that dams and reservoirs remain safe once constructed, the department is directed in a new AS 46.17.050 to inspect dams and reservoirs covered under the bill at least once every five years. To ensure that it can make adequate inspections, the department is given authority to enter the private property on which the dam or reservoir is located as might be necessary to make the inspection. In addition, the department is allowed in a new AS 46.17.110 to enter into cooperative management agreements with municipal corporations and other state and federal agencies to effectuate its responsibilities under the bill. To ensure that the state's action in inspecting and regulating the operation of dams or reservoirs does not shift the liability of the private owner to the state for loss of life or property damage due to the dam's or reservoir's failure, AS 46.17.120 bars any action against the state based on any purported act or omission of a state agent or employee connected with the dam safety program.

Section 1 of the bill amends AS 11.56.800(a), dealing with the crime of making a false report. A new paragraph (4) will make it a crime to file a false report with the Department of Natural Resources concerning the condition of a dam or reservoir. Additional criminal sanctions are also contained in sec. 2 of the bill in a new AS 46.17.100, which would make it a class A misdemeanor to violate any provision of AS 46.17 or lawful order the department issues under AS 46.17.

Given the importance of a good dam safety program to the citizens of Alaska, I urge your favorable action on this measure.

Sincerely,



Bill Sheffield  
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: 95  
Title: Dam Safety

Sponsor: \_\_\_\_\_  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: Natural Resources  
Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Land and Water Management

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary

The legislation, which establishes in statute dam safety authorities, does not require new funding.

Prepared By: Ned Farquhar *Ned Farquhar* Phone: 465-2400  
Division: Commissioner's Office Date: 4 January 1985

Approved by Commissioner: NAMES D. ARMSTRONG, Deputy Date: 4 January 1985  
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

7/1/84

1802

Gov. letter  
of 4 note

ALASKA STATE LEGISLATURE

14TH Legislature FIRST Session

SENATE BILL NO. 95

By THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

"An Act relating to supervision of safety of dams and reservoirs; and providing for an effective date."

Introduced in the Senate 1/25, 1935

HISTORY IN THE SENATE

19 85	Read first time and referred to Committee on										
1 25	Resources, Judiciary and Finance										
3 24	Reported back with <i>Researched</i> recommendation that <i>replace w/CS - 4 copies 3 more to go</i>										
19 86											
2 28	<i>Jud: replace w/CS, 2 do pass, 2 more to finance. Fin:</i>										
	Read second time and										
	Read third time and										
	<table border="0"> <tr><td>PASS</td><td>Effective Date</td></tr> <tr><td>Yeas</td><td>Yeas</td></tr> <tr><td>Nays</td><td>Nays</td></tr> <tr><td>Absent</td><td>Absent</td></tr> <tr><td>Excused</td><td>Excused</td></tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
PASS	Effective Date										
Yeas	Yeas										
Nays	Nays										
Absent	Absent										
Excused	Excused										
	Reconsideration										
	<table border="0"> <tr><td>PASS</td><td>Effective Date</td></tr> <tr><td>Yeas</td><td>Yeas</td></tr> <tr><td>Nays</td><td>Nays</td></tr> <tr><td>Absent</td><td>Absent</td></tr> <tr><td>Excused</td><td>Excused</td></tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
PASS	Effective Date										
Yeas	Yeas										
Nays	Nays										
Absent	Absent										
Excused	Excused										
	Reported correctly engrossed										
	Signed by President										
	Sent to House										
	SECRETARY OF THE SENATE										

HISTORY IN THE HOUSE

19	Read first time and referred to Committee on										
	Reported back with recommendation that										
	Read second time and										
	Read third time and										
	<table border="0"> <tr><td>PASS</td><td>Effective Date</td></tr> <tr><td>Yeas</td><td>Yeas</td></tr> <tr><td>Nays</td><td>Nays</td></tr> <tr><td>Absent</td><td>Absent</td></tr> <tr><td>Excused</td><td>Excused</td></tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
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Yeas	Yeas										
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Absent	Absent										
Excused	Excused										
	Reported correctly engrossed										
	Signed by Speaker										
	Returned to Senate										
	CHIEF CLERK OF THE HOUSE										

HISTORY IN THE SENATE

19	Received from House
	To enrolling
	Reported correctly enrolled
	Sent to Governor
	..... by Governor
	Filed with Lt Governor
	Chapter No. ....

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 knowingly  
26 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-  
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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).

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  
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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:

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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

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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  
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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).

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 know-  
29 ningly 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 th 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 pounded 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).

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

092 #  
SB 95

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: \_\_\_\_\_  
Title: Dam Safety  
Sponsor: \_\_\_\_\_  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Natural Resources  
Program Category Affected: NRMEC  
BRU, Program or Subprogram(s) Affected:  
Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The legislation, which establishes in statute dam safety authorities, does not require new funding.

Prepared By: Ned Farquhar Ned Farquhar Phone: 465-2400  
Division: Commissioner's Office Date: 4 January 1985  
Approved by Commissioner: Ninos D Arnold, Deputy Date: 4 January 1985  
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

3/28/85

Date 2/27/86

Mr. President

The Committee on JUDICIARY considered SB 95 supervision of safety of dams and reservoirs; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- [ ] do pass
[ ] do pass with attached amendment(s)
[X] (replace with) or adopt CS for SB 95 JUD
[ ] new title
[X] same title and recommends
[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE
[ ] reports it back without recommendation
[ ] recommends referral to Committee

MEMBERS SIGNING DO PASS

2 [Signatures]
2 [Signatures]

MEMBERS HAVING OTHER RECOMMENDATIONS

1 [Signature] no rec

[Signature]
Chairman
no rec
Chairman recommendation

COMMITTEE REPORT  
SENATE

1/25/85

FURTHER: Judiciary  
Finance

Date 3/27/85

Mr. President

The Committee on RESOURCES considered SB 95  
supervision of safety of dams and reservoirs; efd.

and (a majority of the committee) (the committee) reports it back with  
the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SENATE BILL 95 (RESOURCES)
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS

3 Bottoms, Fahnkegs No Rec

2 Kirk Helged Do Not Pass

3 [Signature] No Rec.

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
Chairman

Do Pass  
Chairman recommendation