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SENATE COMMITTEE REPORT

FURTHER:

4/21/87

DATE TURNED INTO OFFICE 4/29/87

Mr. President:

FINANCE Committee considered SB 183

dams and reservoirs; efd,

and recommended:

[] replace with CS FOR _____) [x] same title
[x] or adopt _____ CS FOR SB 183 (Res)) [] new title

[] attached amendment(s) and

[x] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[x] letter of intent adopted Trsp Intent

Committee [x] attached or [] adopted fiscal note(s)

[] new [] updated or [x] previous
[] zero [x] fiscal impact (yes funds)

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

[Signature] DO PASS
Chairman signature and recommendation

[] Committee Backup Attached

No 203

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

SENATE
BILL VERSION: SB 183 a
PUBLISH DATE: 4/3/87

REQUEST: _____

Revision Date: _____

Title: An act relating to dams and reservoirs

Sponsor: Sturgulavski

Requestor: _____

Agency Affected: Natural Resources

BRU: Land and Water Management

Component: Land and Water Public Use

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	65.0	65.0	65.0	65.0	65.0
OTHER	0	0	0	0	0	0
TOTAL	65.0	65.0	65.0	65.0	65.0	65.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS :

Senate Bill No. 183 will qualify DNR's Dam Safety Program to qualify for at least 65.0 federal funding under P.L. 99-662 for five years. No increases in state expenditures will occur as a result of this legislation.

Prepared by: Kyle J. Cherry
Division: Land and Water Management.

Phone: 562-3332
Date: 3/26/87

Approved by Commissioner: _____ Date: _____

Agency: _____

Distribution (by preparer):

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

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: SB 183
Publish Date: _____

Revision Date: _____

Agency Affected: Department of Law
BRU: Prosecution, Legal Services

Title: "An Act relating to dams and
reservoirs..."

Sponsor: Sen. Sturgulewski

Components: Prosecution - All

Requestor: Senate Transportation

Legal Services - Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 18, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: March 18, 1987
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

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MAR 19 1987

LEGISLATIVE FINANCE

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 183

This bill amends AS 46 by adding a new chapter that establishes a dam safety Act, which provides for the regulation, supervision, and periodic inspection of privately owned and state-owned dams and reservoirs. The Department of Law would assist the Department of Natural Resources to administer the Act by securing court injunctions needed to halt unsafe practices, and by prosecuting misdemeanor violations.

Although some of this work will undoubtedly be required, it is our view that such work will entail only a few occurrences each year, and it will not be sufficient to warrant fiscal note costs.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version : SB 183
Publish Date : _____

Revision Date: _____
Title: Relating to dams and reservoirs

Agency Affected: Environmental Conservation
BRU: N.A.

Sponsor: Senator Sturquilewski
Requestor: Senator Jones--Transportation

Components: N.A.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Randy Bayliss
Division: Office of the Commissioner

Phone: 465-2600
Date: March 17, 1987

Approved by Commissioner: _____
Agency: Environmental Conservation

Date: 3/18/87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

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MAR 18 1987

page ____ of ____

LEGISLATIVE FINANCE

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ALASKA STATE LEGISLATURE

Sen. Lloyd Jones, Chairman
Sen. John B. "Jack" Coghill, Vice Chairman
Sen. Mitch Abood
Sen. Bettye Fahrenkamp
Sen. Tim Kelly



P.O. Box V
Juneau, AK 99811

907-465-4921

Senate Transportation Committee

COMMITTEE REPORT

Madame President:

The transportation committee expresses that it is not the intent, either through Senate Bill 183, nor through regulations, that the bill affect settling ponds of small placer miners.

The transportation committee also asks to see and review the regulations that are promulgated to implement the legislation.

Sincerely,

 4/2/87

Senator Lloyd Jones, Chairman
Senate Transportation Committee

Original sponsor: Sturgulewski

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE BILL NO. 183 (Resources)
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 or a dam or reservoir regulated by the Federal Energy
16 Regulatory Commission.

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

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

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

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

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

13 (1) violates a provision of this chapter,

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

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

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

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

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

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

1 (3) "dam" includes an artificial barrier, and its appurte-
2 nant works, which may impound or divert water and which

3 (A) has or will have an impounding capacity at maximum
4 water storage elevation of 50 acre-feet and is at least 10 feet
5 in height measured from the lowest point at either the upstream
6 or downstream toe of the dam to the crest of the dam;

7 (B) is at least 20 feet in height measured from the
8 lowest point at either the upstream or downstream toe of the dam
9 to the crest of the dam; or

10 (C) poses a threat to lives and property as determined
11 by the department after an inspection;

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

13 (5) "enlargement" means an alteration of an existing dam or
14 reservoir that raises or is capable of raising the water storage
15 elevation, or that increases the quantity of water impounded by the
16 dam or reservoir;

17 (6) "owner" means a person who owns, controls, operates,
18 maintains, manages, or proposes to construct a dam or reservoir, and
19 includes

20 (A) a public utility; and

21 (B) the appointed or authorized agents, employees,
22 lessees, receivers, or trustees of an owner;

23 (7) "person" has the meaning given in AS 01.10.060, and
24 includes the state and political subdivisions of the state, including
25 the Alaska Railroad Corporation and the University of Alaska;

26 (8) "repair" means only a repair that might directly affect
27 the safety of the dam or reservoir, as determined by the department;

28 (9) "reservoir" means a basin, appurtenant to a dam, that
29 is capable of impounding water.

1 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of March 26, 1987-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: RESOURCES
FINANCE

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

3/12/87

DATE TURNED INTO OFFICE April 2, 1987

Mr. President:

TRANSPORTATION

Committee considered SB 183

dams and reservoirs; efd.

and recommended:

[] replace with CS _____ [] same title
[] new title

[] attached amendment(s) and

majority
 do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

letter of intent adopted and attached

** Committee attached or [] adopted fiscal note(s)
2 zero and one fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Tim 1987
[Signature]
[Signature]

[Signature] Do Pass
Chairman signature and recommendation

Committee Backup Attached

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.

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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.

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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
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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).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 27, 1987

SUBJECT: Sectional Analysis of SB 183
(Dams and reservoirs)

TO: Senator Arliss Sturgulewski
Chairman, Community and Regional Affairs
Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, I must advise you that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 imposes criminal penalties for knowingly making a false report to the Department of Natural Resources concerning the condition of a dam or reservoir.

Section 2 adds a new chapter concerning dam and reservoir safety.

Sec. 36.17.010 sets out the legislative purpose.

Sec. 46.17.020 gives the Department of Natural Resources responsibility for supervising the safety of dams and reservoirs.

Sec. 46.17.030 requires the department to adopt regulations and issue orders necessary to carry out the chapter.

Sec. 46.17.040 prohibits construction, repair, or removal of a dam or reservoir unless the department approves. Routine maintenance and operations are excepted.

*Back-up SB183
Sectional Analysis*

Sec. 46.17.050 directs the department to inspect each dam and reservoir subject to the chapter once every five years and permits the department to inspect more frequently. The department may require the owner to perform the inspection or pay for the cost of an inspection performed by the department.

Sec. 46.17.060 permits the department to seek a search warrant to allow an inspection if the department has given two weeks' written notice. The department may enter premises without notice if a dam or reservoir is believed to be unsafe.

Sec. 46.17.070 sets out standards for the department's determination of whether a dam or reservoir constitutes or would constitute a danger to life or property.

Sec. 46.17.080 permits the department to seek an injunction and damages in enforcing the chapter.

Sec. 46.17.090 subjects a final action of the department to judicial review under the Administrative Procedure Act.

Sec. 46.17.100 permits the department to enter into cooperative agreements with other governments and prohibits municipalities from exercising powers that conflict with the powers and duties given the department. Under subsections (c) and (d), the chapter does not apply to a federally-owned or operated dam or reservoir and does not affect the powers of the Department of Environmental Conservation or the Department of Fish and Game.

Sec. 46.17.110 limits actions against the state. An action may be maintained against the state if the state negligently orders a dam owner to perform an action and the dam owner complies with the order but objected to it.

Sec. 46.17.120 acknowledges that the chapter does not relieve an owner of a dam or reservoir of the duties or liabilities incident to the ownership or operation of the dam or reservoir.

Sec. 46.17.150 imposes penalties on persons who knowingly violate the chapter, an approval, order, regulation, or requirement of the department, or who obstruct performance of duties.

Senator Sturgulewski
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Sec. 46.17.900 is a definition section.

Section 3 is an immediate effective date clause.

If I may be of further assistance, please advise.

TBC:mkr
m10/065

March 30, 1987

The Honorable Arliss Sturgulewski
Sponsor of Senate Bill 183
Alaska State Legislature
P.O. Box V
Juneau, AK 99801

Dear Senator Sturgulewski:

Subject: Senate Bill 183, relating to supervision of safety of dams and reservoirs.

Position: The Department of Natural Resources recommends the passage of Senate Bill 183.

Background: Currently, there are 185 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 regulations in 11 AAC 93 under the authority of several sections in AS 46.15, the Alaska Water Use Act, including a provision in AS 46.15.080 which gives the commissioner authority to regulate water diversions.

Alaska Water Resources Board resolution 84-4, dated March 14, 1984, recommended review of the existing statutory authority under which dams in the state are regulated by the division.

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. SB 183 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.

DNR Testimony

Section 2, which contains the body of the bill, creates a new ch. 17 in AS 46. Proposed 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. The commissioner of that department is directed to employ a qualified engineer experienced in the design and construction of dams and reservoirs to direct the dam safety program. Proposed AS 46.17.040 would make it unlawful for anyone to construct, enlarge, repair, alter, remove, maintain, operate, or abandon a 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 proposed AS 46.17.050 to inspect or to require owners to inspect dams and reservoirs covered under the bill at least once every five years, or more frequently if necessary. To ensure that it can make adequate inspections, the department is also given authority, in proposed AS 46.17.060, to enter the private property on which the dam or reservoir is located as might be necessary to make the inspection. Proposed AS 46.17.050 also authorizes the department to require owners to bear the costs of inspection.

Proposed AS 46.17.070 sets out specific standards for determining the safety of a dam or reservoir. In addition, the department is allowed, by proposed 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 a dam or reservoir failure, proposed 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 proposed 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.

The Honorable Arliss Sturgulewski -3-

March 30, 1987

Recommendation: Given the importance of a good dam safety program to the State of Alaska, the Department of Natural Resources favors passage of this legislation.

Sincerely,

Judith M. Brady
Commissioner

cc: Senate Transportation Committee
George Sullivan
Rod Swope

SENATE COMMITTEE REPORT

FURTHER:

FINANCE

4/3/87

DATE TURNED INTO OFFICE _____

Mr. President:

RESOURCES

Committee considered

SB 183

dams and reservoirs; efd.

and recommended:

replace with CS FOR SB 183 (res)) same title
 or adopt _____ CS FOR _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted transportation

Committee attached or adopted fiscal note(s)

new updated or previous
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Julius Stangulovich
James D. ...
...
Paul Grish

John ... 20/1/88
Chairman signature and recommendation

Committee Backup Attached

Alaska State Legislature



SENATOR
ARLISS STURGULEWSKI

Chairman, Senate Community and Regional Affairs Committee
Vice-Chairman, Senate Judiciary Committee
Member, Senate Resources Committee

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
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Senate

MEMORANDUM

March 28, 1987

TO: Senator Lloyd Jones, Chairman
Senate Transportation Committee

FROM: Senator Arliss Sturgulewski 
Senate District F

RE: SB 183 "An Act relating to dams and reservoirs and providing for
an effective date."

Thank you for scheduling a hearing on SB 183 "An Act relating to dams and reservoirs and providing for an effective date."

Senate Bill 183 was before the legislature last year and extensive hearings were held. However at the end of last session the bill was still in the Senate Finance Committee. Senate Bill 183 sets up a formal system of regulation of dams by the Department of Natural Resources (DNR). Presently the DNR only has clear authority to regulate construction activities and no clear authority to monitor the safety of dams throughout the life of the dam. This legislation is based on a Model State Dam Safety Program sponsored by the Association of State Dam Safety Officials and the Council of State Governments. The main purpose of this legislation is to protect the public health and safety.

In order to assist states in the implementation of a dam safety program, the federal government will make funds available through PL 99-662. Alaska would be eligible to receive at least \$65,000 per year for the next five years.

I have enclosed a sectional analysis prepared by the Legislative Legal Services Division and a recent Wall Street Journal article discussing dam safety. My staff is available to assist if you need additional information.

Enclosures