HOUSE BILL NO. 382

INTRODUCED BY SWYSGOOD BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

IN THE HOUSE

JANUARY 24, 1991

- JANUARY 25, 1991
- FEBRUARY 9, 1991 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
- FEBRUARY 11, 1991 PRINTING REPORT.
- FEBRUARY 12, 1991 SECOND READING, DO PASS.

FEBRUARY 13, 1991 ENGROSSING REPORT.

FEBRUARY 14, 1991 THIRD READING, PASSED. AYES, 97; NOES, 2.

TRANSMITTED TO SENATE.

ON NATURAL RESOURCES.

FIRST READING.

IN THE SENATE

FEBRUARY 15, 1991

INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.

INTRODUCED AND REFERRED TO COMMITTEE

FIRST READING.

MARCH 21, 1991

MARCH 23, 1991

MARCH 25, 1991

COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

SECOND READING, CONCURRED IN.

THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 25, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

52nd Legislature

LC 0910/01

l	Hause BILL NO. 382	1	(
2	INTRODUCED BY Sungarow	2	(
3	BI REQUEST OF THE DEPARTMENT OF	3	(
4	NATURAL RESOURCES AND CONSERVATION	4	penst
5		5	(
6	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	6	const
7	DAM SAFETY ACT; CLARIFYING THE DEFINITIONS OF DAM AND	7	a dam
8	RESERVOIR; EXEMPTING NONFEDERAL DAMS AND RESERVOIRS ON	8	(
9	FEDERAL LANDS THAT ARE SUBJECT TO DAM SAFETY REVIEW BY A	9	appur
10	FEDERAL AGENCY FROM STATE DAM SAFETY REVIEW; CLARIFYING THE	10	impou
11	LIABILITY OF OWNERS FOR DAMAGE; AMENDING SECTIONS 85-15-106,	11	maxim
12	85-15-107, AND 85-15-305, MCA; AND PROVIDING AN IMMEDIATE	12	(
13	EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION."	13	resou
14		14	15, p
15	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	15	(
16	Section 1. Section 85-15-106, MCA, is amended to read:	16	condi
17	"85-15-106. Definitions. Unless the context requires	17	flood
18	otherwise, in this chapter the following definitions apply:	18	reser
19	(1) "Alterations" or "repairs" means alterations or	19	(
20	repairs that may directly affect the safety of a dam or	20	licer
21	reservoir.	21	chapt
22	(2) "Appurtenant works" means all works incident or	22	(
23	attached to a dam or reservoir, including but not limited	23	exist
24	to:	24	stora
25	(a) a spillway, either in the dam or separate from it;	25	the m

Montana Legislative Council

(b) the reservoir and its rim;

(c) a low-level outlet; and

3 (d) a water conduit such as a tunnel, pipeline, or 4 penstock, either through the dam or its abutments.

(3) "Construction" or "construct" includes
 construction, alteration, repair, enlargement, or removal of
 a dam or reservoir.

8 (4) "Dam" means any artificial barrier, including 9 appurtenant works, used to impound or divert water with an 10 impounding capacity of 50 acre-feet or greater <u>measured at</u> 11 <u>maximum normal operating pool</u>.

12 (5) "Department" means the department of natural
13 resources and conservation provided for in Title 2, chapter
14 15, part 33.

15 (6) "Emergency" means any threat to life caused by the 16 condition of a dam or reservoir or by present or imminent 17 floods that threaten the structural integrity of any dam or 18 reservoir.

(7) "Engineer" means a registered professional engineer
 licensed to practice in the state of Montana under Title 37,
 chapter 67, part 3.

(8) "Enlargement" means any change in or addition to an
existing dam or reservoir that raises or may raise the water
storage elevation or increases the impoundment capacity of
the reservoir.

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(9) "High-hazard dam" means any dam or reservoir the 1 failure of which would be likely to cause loss of life. 2 (10) "Inspection" means a visual or mechanical check, a 3 measurement, a boring, or any other method necessary for 4 determination of the adequacy of construction techniques, 5 conformity of work with approved plans and specifications, 6 7 or the safety and operating performance of a dam or 8 reservoir.

9 (11) "Owner" means any person who owns, controls,
10 operates, maintains, manages, or proposes to construct a dam
11 or reservoir.

(12) "Person" means an individual, association,
partnership, corporation, business trust, state agency,
political subdivision, utility, municipal or quasi-municipal
corporation, or any other entity or any authorized agent,
lessee, or trustee of any of the foregoing.

17 (13) "Removal" means removing, taking down, or changing18 the location of any dam or reservoir.

19 (14) "Reservoir" means any valley, basin, coulee, 20 ravine, or other land area that contains 50 acre-feet or 21 more of impounded water measured at maximum normal operating 22 pool."

23 Section 2. Section 85-15-107, MCA, is amended to read:
24 "85-15-107. Exemptions. The provisions of 85-15-105,
25 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through

1 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to dams subject to a permit issued pursuant to 2 3 82-4-335 for the period during which the dam is subject to the permit. The provisions of 85-15-108 through 85-15-110, 4 85-15-209 through 85-15-216, 85-15-305, 85-15-401. 5 85-15-501, and 85-15-502 do not apply to federal dams and 6 reservoirs, to nonfederal dams and reservoirs located on 7 federal lands if they are subject to a dam safety review by я a federal agency, or to dams and reservoirs licensed and 9 subject to inspection by the federal energy regulatory 10 11 commission. The provisions of 85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 12 13 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply 14 to dams that are required to obtain a certificate of 15 environmental compatibility and public need pursuant to 16 75-20-201 for the period during which the dam is subject to 17 the certificate. In addition, the provisions of 85-15-108 18 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 19 85-15-401, 85-15-501, and 85-15-502 do not apply until July 20 1, 1990, to high-hazard dams that have been inspected by the 21 U.S. army corps of engineers pursuant to P.L. 92-367 and for 22 which resultant dam safety reports have been submitted to 23 the owner."

Section 3. Section 85-15-305, MCA, is amended to read:
"85-15-305. Liability of owners for damage. (1) Except

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1 as provided in subsection (2), nothing in this chapter 2 relieves an owner of a dam or reservoir of any legal duty, 3 obligation, or liability incident to its ownership or 4 operation, including any damages resulting from leakage or 5 overflow of water or floods caused by the failure or rupture 6 of the dam or reservoir.

7 (2) The owner of a dam or reservoir that has been 8 permitted by the department in accordance with this chapter 9 or the owner of a dam or reservoir that is exempt under 10 85-15-107 is not, in the absence of negligence, liable for 11 damages resulting from flows of water from the dam or reservoir which are of sufficient magnitude to exceed the 12 13 limits of the 100-year floodplain as defined in 76-5-103. In 14 addition, the owner of any dam or reservoir that has been 15 permitted by the department in accordance with this chapter 16 or the owner of a dam or reservoir that is exempt under 17 85-15-107 may, without incurring liability, allow passage 18 through the reservoir of inflows without diminution."

NEW SECTION. Section 4. Retroactive applicability.
 Section 2) applies retroactively, within the meaning of
 1-2-109, to all nonfederal dams and reservoirs located on
 federal lands if a federal agency provides a dam safety
 review for the nonfederal dams or reservoirs.

 24 <u>NEW SECTION.</u> Section 5. Effective date. [This act] is
 25 effective on passage and approval. -End-

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APPROVED BY COMM. ON Natural resources

1	HOUSE BILL NO. 382	1	(a) a spillway, either in the dam or separate from it;
2	INTRODUCED BY SWYSGOOD	2	(b) the reservoir and its rim;
3	BY REQUEST OF THE DEPARTMENT OF	3	(c) a low-level outlet; and
4	NATURAL RESOURCES AND CONSERVATION	4	(d) a water conduit such as a tunnel, pipeline, or
5		5	penstock, either through the dam or its abutments.
6	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	6	(3) "Construction" or "construct" includes
7	DAM SAFETY ACT; CLARIFYING THE DEFINITIONS OF DAM AND	7	construction, alteration, repair, enlargement, or removal of
8	RESERVOIR; EXEMPTING NONFEDERAL DAMS AND RESERVOIRS ON	8	a dam or reservoir.
9	FEDERAL LANDS THAT ARE SUBJECT TO DAM SAFETY REVIEW BY A	9	(4) "Dam" means any artificial barrier, including
10	FEDERAL AGENCY FROM STATE DAM SAFETY REVIEW; CLARIFYINGTHE	10	appurtenant works, used to impound or divert water with an
11	LIABILITY-OF-OWNERS-FOR-DAMAGE; AMENDING SECTIONS 85-15-106;	11	impounding capacity of 50 acre-feet or greater measured at
12	AND 85-15-1077AND05-15-305, MCA; AND PROVIDING AN	12	maximum normal operating pool.
13	IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY	13	(5) "Department" means the department of natural
14	PROVISION."	14	resources and conservation provided for in Title 2, chapter
15 -		15	15, part 33.
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	16	(6) "Emergency" means any threat to life caused by the
17	Section 1. Section 85-15-106, MCA, is amended to read:	17	condition of a dam or reservoir or by present or imminent
18	*85-15-106. Definitions. Unless the context requires	18	floods that threaten the structural integrity of any dam or
19	otherwise, in this chapter the following definitions apply:	19	reservoir.
20	(1) "Alterations" or "repairs" means alterations or	20	(7) "Engineer" means a registered professional engineer
21	repairs that may directly affect the safety of a dam or	21	licensed to practice in the state of Montana under Title 37,
22	reservoir.	22	chapter 67, part 3.
23	(2) "Appurtenant works" means all works incident or	23	(8) "Enlargement" means any change in or addition to an
24	attached to a dam or reservoir, including but not limited	24	existing dam or reservoir that raises or may raise the water
25	to:	25	storage elevation or increases the impoundment capacity of
20	A		SECOND READING

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1 the reservoir.

2 (9) "High-hazard dam" means any dam or reservoir the
3 failure of which would be likely to cause loss of life.

4 (10) "Inspection" means a visual or mechanical check, a 5 measurement, a boring, or any other method necessary for 6 determination of the adequacy of construction techniques, 7 conformity of work with approved plans and specifications, 8 or the safety and operating performance of a dam or 9 reservoir.

(11) "Owner" means any person who owns, controls,
operates, maintains, manages, or proposes to construct a dam
or reservoir.

(12) "Person" means an individual, association,
partnership, corporation, business trust, state agency,
political subdivision, utility, municipal or quasi-municipal
corporation, or any other entity or any authorized agent,
lessee, or trustee of any of the foregoing.

18 (13) "Removal" means removing, taking down, or changing19 the location of any dam or reservoir.

(14) "Reservoir" means any valley, basin, coulee,
ravine, or other land area that contains 50 acre-feet or
more of impounded water measured at maximum normal operating
pool."

Section 2. Section 85-15-107, MCA, is amended to read:
 "85-15-107. Exemptions. The provisions of 85-15-105,

1	85-15-106, 85-15-108 through 85-15-110, 85-15-209 through
2	85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do
3	not apply to dams subject to a permit issued pursuant to
4	82-4-335 for the period during which the dam is subject to
5	the permit. The provisions of 85-15-108 through 85-15-110,
6	85-15-209 through 85-15-216, 85-15-305, 85-15-401,
7	85-15-501, and 85-15-502 do not apply to federal dams and
8	reservoirs, to nonfederal dams and reservoirs located on
9	federal lands if they are subject to a dam safety review by
10	a federal agency, or to dams and reservoirs licensed and
11	subject to inspection by the federal energy regulatory
12	commission. The provisions of 85-15-105, 85-15-106,
13	85-15-108 through 85-15-110, 85-15-209 through 85-15-216,
14	85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply
15	to dams that are required to obtain a certificate of
16	environmental compatibility and public need pursuant to
17	75-20-201 for the period during which the dam is subject to
18	the certificate. In addition, the provisions of 85-15-108
19	through 85-15-110, 85-15-209 through 85-15-216, 85-15-305,
20	85-15-401, 85-15-501, and 85-15-502 do not apply until July
21	1, 1990, to high-hazard dams that have been inspected by the
22	U.S. army corps of engineers pursuant to P.L. 92-367 and for
23	which resultant dam safety reports have been submitted to
24	the owner."
25	Section-3:Section-85-15-305;-MCA;-is-amended-to-read:

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1 #85-15-305---biability--of-owners-for-damage--flt-Except 2 as-provided-in--subsection--+2+7--nothing--in--this--chapter 3 relieves--an--owner-of-a-dam-or-reservoir-of-any-legal-duty; 4 obligationy--or--liability--incident--to--its--ownership--or 5 operation,-including-any-damages-resulting-from--leakage--or 6 overflow-of-water-or-floods-caused-by-the-failure-or-rupture 7 of-the-dam-or-reservoir-8 t2)--The--owner--of--a--dam--or--reservoir-that-has-been 9 permitted-by-the-department-in-accordance-with-this--chapter 10 or--the--owner--of--a--dam-or-reservoir-that-is-exempt-under 11 85-15-107 is-noty-in-the-absence-of-negligence---liable--for 12 damages--resulting--from--flows--of--water--from--the-dam-or 13 reservoir-which-are-of-sufficient-magnitude--to--exceed--the 14 limits-of-the-100-year-floodplain-as-defined-in-76-5-103--In 15 addition7--the--owner--of-any-dam-or-reservoir-that-has-been 16 permitted-by-the-department-in-accordance-with-this--chapter 17 or--the--owner--of--a--dam-or-reservoir-that-is-exempt-under 18 85-15-107 may--without-incurring--liability--allow--passage 19 through-the-reservoir-of-inflows-without-diminution-" 20 NEW SECTION. Section 3. Retroactive applicability. 21 [Section 2] applies retroactively, within the meaning of 22 1-2-109, to all nonfederal dams and reservoirs located on federal lands if a federal agency provides a dam safety 23 24 review for the nonfederal dams or reservoirs. 25

NEW SECTION. Section 4. Effective date. [This act] is

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1 effective on passage and approval.

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1	HOUSE BILL NO. 382
2	INTRODUCED BY SWYSGOOD
3	BY REQUEST OF THE DEPARTMENT OF
4	NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 6 DAM SAFETY ACT; CLARIFYING THE DEFINITIONS OF DAM AND 7 8 RESERVOIR: EXEMPTING NONFEDERAL DAMS AND RESERVOIRS ON 9 FEDERAL LANDS THAT ARE SUBJECT TO DAM SAFETY REVIEW BY A 10 FEDERAL AGENCY FROM STATE DAM SAFETY REVIEW; CHARIFYING--PHB 11 51AB1517Y-OF-OWNERS-FOR-BAMAGE: AMENDING SECTIONS 85-15-1067 12 AND 85-15-107----ANB--85-15-385, MCA; AND PROVIDING AN 13 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION. " 14

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 17 Section 1. Section 85-15-106, MCA, is amended to read: 18 "B5-15-106. Definitions. Unless the context requires 19 otherwise, in this chapter the following definitions apply: 20 (1) "Alterations" or "repairs" means alterations or 21 repairs that may directly affect the safety of a dam or 22 reservoir.

23 (2) "Appurtemant works" means all works incident or
24 attached to a dam or reservoir, including but not limited
25 to:

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(a)	a spillway,	either	in	the	dam	or	separate	from	it;
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(b) the reservoir and its rim;

(c) a low-level outlet; and

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4 (d) a water conduit such as a tunnel, pipeline, or
5 penstock, either through the dam or its abutments.

6 (3) "Construction" or "construct" includes
7 construction, alteration, repair, enlargement, or removal of
8 a dam or reservoir.

9 (4) "Dam" means any artificial barrier, including
10 appurtenant works, used to impound or divert water with an
11 impounding capacity of 50 acre-feet or greater measured at
12 maximum normal operating pool.

13 (5) "Department" means the department of natural
14 resources and conservation provided for in Title 2, chapter
15 15, part 33.

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20 (7) "Engineer" means a registered professional engineer
21 licensed to practice in the state of Montana under Title 37,
22 chapter 67, part 3.

(8) "Enlargement" means any change in or addition to an
 existing dam or reservoir that raises or may raise the water
 storage elevation or increases the impoundment capacity of
 THIRD READING

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1 the reservoir.

2 (9) "High-hazard dam" means any dam or reservoir the 3 failure of which would be likely to cause loss of life.

4 (10) "Inspection" means a visual or mechanical check, a 5 measurement, a boring, or any other method necessary for 6 determination of the adequacy of construction techniques, 7 conformity of work with approved plans and specifications, 8 or the safety and operating performance of a dam or 9 reservoir.

10 (11) "Owner" means any person who owns, controls, 11 operates, maintains, manages, or proposes to construct a dam 12 or reservoir.

13 (12) "Person" means an individual, association, 14 partnership, corporation, business trust, state agency, 15 political subdivision, utility, municipal or guasi-municipal 16 corporation, or any other entity or any authorized agent, 17 lessee, or trustee of any of the foregoing.

18 (13) "Removal" means removing, taking down, or changing 19 the location of any dam or reservoir.

20 (14) "Reservoir" means any valley, basin, coulee, 21 ravine, or other land area that contains 50 acre-feet or 22 more of impounded water measured at maximum normal operating 23 pool."

24 Section 2. Section 85-15-107, MCA, is amended to read: 25 "85-15-107. Exemptions. The provisions of 85-15-105,

1 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 2 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do 3 not apply to dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to 4 5 the permit. The provisions of 85-15-108 through 85-15-110, 6 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 7 85-15-501, and 85-15-502 do not apply to federal dams and 8 reservoirs, to nonfederal dams and reservoirs located on 9 federal lands if they are subject to a dam safety review by 10 a federal agency, or to dams and reservoirs licensed and 11 subject to inspection by the federal energy regulatory 12 commission. The provisions of 85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 13 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply 14 15 to dams that are required to obtain a certificate of 16 environmental compatibility and public need pursuant to 17 75-20-201 for the period during which the dam is subject to 18 the certificate. In addition, the provisions of 85-15-108 19 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 20 85-15-401, B5-15-501, and 85-15-502 do not apply until July 1, 1990, to high-hazard dams that have been inspected by the 21 22 U.S. army corps of engineers pursuant to P.L. 92-367 and for 23 which resultant dam safety reports have been submitted to 24 the owner." 25

Section-3---Section-85-15-3057-MCA7-is-amended-to-read+

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1	#85-15-305biabilityof-owners-for-damage(1)-Except
2	as-provided-insubsection(2),nothinginthischapter
3	relievesanowner-of-a-dam-or-reservoir-of-any-legal-duty7
4	obligationorliabilityincidenttoitsownershipor
5	operationincluding-any-damages-resulting-fromleakageor
6	overflow-of-water-or-floods-caused-by-the-failure-or-rupture
7	of-the-dam-or-reservoir-
8	<pre>{2}Theownerofadamorreservoir-that-has-been</pre>
9	permitted-by-the-department-in-accordance-with-thischapter
10	ortheownerofadam-or-reservoir-that-is-exempt-under
11	<u>05-15-107</u> is-not7-in-the-absence-of-negligence;liablefor
12	damagesresultingfromflowsofwaterfromthe-dam-or
13	reservoir-which-are-of-sufficient-magnitudetoexceedthe
14	limits-of-the-100-year-floodplain-as-defined-in-76-5-103In
15	additionytheownerof-any-dam-or-reservoir-that-has-been
16	permitted-by-the-department-in-accordance-with-thischapter
17	ortheownerofadam-or-reservoir-that-is-exempt-under
18	<u>85-15-107</u> may ₇ -without-incurringliability ₇ allowpassage
19	through-the-reservoir-of-inflows-without-diminution-"
20	NEW SECTION. Section 3. Retroactive applicability.
21	[Section 2] applies retroactively, within the meaning of
22	1-2-109, to all nonfederal dams and reservoirs located on
23	federal lands if a federal agency provides a dam safety
24	review for the nonfederal dams or reservoirs.
25	NEW SECTION. Section 4. Effective date. [This act] is

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1 effective on passage and approval.

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1	HOUSE BILL NO. 382
2	INTRODUCED BY SWYSGOOD
3	BY REQUEST OF THE DEPARTMENT OF
4	NATURAL RESOURCES AND CONSERVATION
5	

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE DAM SAFETY ACT; CLARIFYING THE DEFINITIONS OF DAM AND 7 RESERVOIR: EXEMPTING NONFEDERAL DAMS AND RESERVOIRS ON 8 9 FEDERAL LANDS THAT ARE SUBJECT TO DAM SAFETY REVIEW BY A 10 FEDERAL AGENCY FROM STATE DAM SAFETY REVIEW; CHARIPYING--THE 11 biabibity-op-owners-for-bamage; Amending Sections 85-15-1067 12 AND 85-15-107,---AND--85-15-385, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY 13 14 PROVISION."

15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 85-15-106, MCA, is amended to read: 18 "85-15-106. Definitions. Unless the context requires 19 otherwise, in this chapter the following definitions apply: 20 (1) "Alterations" or "repairs" means alterations or 21 repairs that may directly affect the safety of a dam or 22 reservoir.

(2) "Appurtemant works" means all works incident or
attached to a dam or reservoir, including but not limited
to:

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1	(a) a spillway, either in the dam or separate from it;
2	(b) the reservoir and its rim;
3	(c) a low-level outlet; and
4	(d) a water conduit such as a tunnel, pipeline, or
5	penstock, either through the dam or its abutments.
6	(3) "Construction" or "construct" includes
7	construction, alteration, repair, enlargement, or removal of
8	a dam or reservoir.
9	(4) "Dam" means any artificial barrier, including
10	appurtenant works, used to impound or divert water with an
11	impounding capacity of 50 acre-feet or greater measured at
12	maximum normal operating pool.
13	(5) "Department" means the department of natural
14	resources and conservation provided for in Title 2, chapter
15	15, part 33.
16	(6) "Emergency" means any threat to life caused by the
17	condition of a dam or reservoir or by present or imminent
18	floods that threaten the structural integrity of any dam or
19	reservoir.
20	(7) "Engineer" means a registered professional engineer
21	licensed to practice in the state of Montana under Title 37,
22	chapter 67, part 3.
23	(8) "Enlargement" means any change in or addition to an
24	existing dam or reservoir that raises or may raise the water
25	storage elevation or increases the impoundment capacity of

storage elevation or increases the impoundment capacity of REFERENCE BILL

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1 the reservoir.

2 (9) "High-hazard dam" means any dam or reservoir the
3 failure of which would be likely to cause loss of life.

4 (10) "Inspection" means a visual or mechanical check, a 5 measurement, a boring, or any other method necessary for 6 determination of the adequacy of construction techniques, 7 conformity of work with approved plans and specifications, 8 or the safety and operating performance of a dam or 9 reservoir.

(11) "Owner" means any person who owns, controls,
operates, maintains, manages, or proposes to construct a dam
or reservoir.

13 (12) "Person" means an individual, association,
14 partnership, corporation, business trust, state agency,
15 political subdivision, utility, municipal or quasi-municipal
16 corporation, or any other entity or any authorized agent,
17 lessee, or trustee of any of the foregoing.

18 (13) "Removal" means removing, taking down, or changing19 the location of any dam or reservoir.

20 (14) "Reservoir" means any valley, basin, coulee,
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22 more of impounded water measured at maximum normal operating
23 pool."

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 25 "85-15-107. Exemptions. The provisions of 85-15-105,

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1 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do 2 3 not apply to dams subject to a permit issued pursuant to 4 82-4-335 for the period during which the dam is subject to the permit. The provisions of 85-15-108 through 85-15-110, 5 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 6 85-15-501, and 85-15-502 do not apply to federal dams and 7 8 reservoirs, to nonfederal dams and reservoirs located on 9 federal lands if they are subject to a dam safety review by 10 a federal agency, or to dams and reservoirs licensed and 11 subject to inspection by the federal energy regulatory 12 commission. The provisions of 85-15-105, 85-15-106, 13 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 14 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply 15 to dams that are required to obtain a certificate of environmental compatibility and public need pursuant to 16 17 75-20-201 for the period during which the dam is subject to 18 the certificate. In addition, the provisions of 85-15-108 19 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 20 85-15-401, 85-15-501, and 85-15-502 do not apply until July 21 1, 1990, to high-hazard dams that have been inspected by the 22 U.S. army corps of engineers pursuant to P.L. 92-367 and for 23 which resultant dam safety reports have been submitted to 24 the owner."

25 Section-3;--Section-05-15-305;-MCA;-is-amended-to-read;

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1 #85-15-385---biability--of-owners-for-damager-(1)-Except 2 as-provided-in--subsection--(2)7--nothing--in--this--chapter 3 relieves--an--owner-of-a-dam-or-reservoir-of-any-legal-duty7 4 obligation7--or--liability--incident--to--its--ownership--or 5 operation7-including-any-damages-resulting-from--leakage--or 6 overflow-of-water-or-floods-caused-by-the-failure-or-rupture 7 of-the-dam-or-reservoir-

8 t2)--The--owner--of--a--dam--or--reservoir-that-has-been 9 permitted-by-the-department-in-accordance-with-this--chapter 10 or--the--owner--of--a--dam-or-reservoir-that-is-exempt-under 11 85-15-187 is-not7-in-the-absence-of-negligence7--liable--for 12 damages--resulting--from--flows--of--water--from--the-dam-or 13 reservoir-which-are-of-sufficient-magnitude--to--exceed--the 14 limits-of-the-100-year-floodplain-as-defined-in-76-5-103--In 15 addition_--the--owner--of-any-dam-or-reservoir-that-has-been 16 permitted-by-the-department-in-accordance-with-this--chapter 17 or_the--owner--of--a--dam-or-reservoir-that-is-exempt-under 18 85-15-187 may7-without-incurring--liability7--allow--passage 19 through-the-reservoir-of-inflows-without-diminution-" 20 NEW SECTION, Section 3. Retroactive applicability. 21 [Section 2] applies retroactively, within the meaning of 22 1-2-109, to all nonfederal dams and reservoirs located on 23 federal lands if a federal agency provides a dam safety 24 review for the nonfederal dams or reservoirs.

25 NEW SECTION. Section 4. Effective date. [This act] is

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1 effective on passage and approval.

-End-

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