

HOUSE BILL NO. 382

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

IN THE HOUSE

JANUARY 24, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

JANUARY 25, 1991 FIRST READING.

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.

IN THE SENATE

FEBRUARY 15, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

FIRST READING.

MARCH 21, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 23, 1991 SECOND READING, CONCURRED IN.

MARCH 25, 1991 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.

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

3 (10) "Inspection" means a visual or mechanical check, a
4 measurement, a boring, or any other method necessary for
5 determination of the adequacy of construction techniques,
6 conformity of work with approved plans and specifications,
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 (12) "Person" means an individual, association,
13 partnership, corporation, business trust, state agency,
14 political subdivision, utility, municipal or quasi-municipal
15 corporation, or any other entity or any authorized agent,
16 lessee, or trustee of any of the foregoing.

17 (13) "Removal" means removing, taking down, or changing
18 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
2 not apply to dams subject to a permit issued pursuant to
3 82-4-335 for the period during which the dam is subject to
4 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 reservoirs, to nonfederal dams and reservoirs located on
8 federal lands if they are subject to a dam safety review by
9 a federal agency, or to dams and reservoirs licensed and
10 subject to inspection by the federal energy regulatory
11 commission. The provisions of 85-15-105, 85-15-106,
12 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 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."

24 **Section 3.** Section 85-15-305, MCA, is amended to read:

25 "85-15-305. Liability of owners for damage. (1) Except

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
12 reservoir which are of sufficient magnitude to exceed the
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."

19 NEW SECTION. Section 4. Retroactive applicability.
20 [Section 2] applies retroactively, within the meaning of
21 1-2-109, to all nonfederal dams and reservoirs located on
22 federal lands if a federal agency provides a dam safety
23 review for the nonfederal dams or reservoirs.

24 NEW SECTION. Section 5. Effective date. [This act] is
25 effective on passage and approval.

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

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
7 DAM SAFETY ACT; CLARIFYING THE DEFINITIONS OF DAM AND
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; ~~CLARIFYING--THE~~
11 ~~LIABILITY-OF-OWNERS-FOR-DAMAGE~~; AMENDING SECTIONS 85-15-106,
12 AND 85-15-107,---AND--85-15-305, MCA; AND PROVIDING AN
13 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
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.

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

- 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

SECOND READING

HB 382



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 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 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
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:~~

1 ~~"85-15-305--liability--of--owners--for--damage--(1)--Except~~
 2 ~~as--provided--in--subsection--(2)--nothing--in--this--chapter~~
 3 ~~relieves--an--owner--of--a--dam--or--reservoir--of--any--legal--duty,~~
 4 ~~obligation--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 ~~(2)--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 not, 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 ~~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 ~~85-15-107 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
 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

1 effective on passage and approval.

-End-

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
 7 DAM SAFETY ACT; CLARIFYING THE DEFINITIONS OF DAM AND
 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; ~~CLARIFYING--THE~~
 11 ~~LIABILITY-OF-OWNERS-FOR-DAMAGE;~~ AMENDING SECTIONS 85-15-106,
 12 AND 85-15-107,---AND--85-15-305, MCA; AND PROVIDING AN
 13 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
 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.

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

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

THIRD READING



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 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 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
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 85-15-3057-MCA, is amended to read:~~

1 ~~"85-15-305--Liability--of--owners--for--damage--(1)--Except~~
 2 ~~as--provided--in--subsection--(2)--nothing--in--this--chapter~~
 3 ~~relieves--an--owner--of--a--dam--or--reservoir--of--any--legal--duty,~~
 4 ~~obligation--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 ~~(2)--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 not, 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 ~~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 ~~85-15-107 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
 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

1 effective on passage and approval.

-End-

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
 7 DAM SAFETY ACT; CLARIFYING THE DEFINITIONS OF DAM AND
 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; ~~CLARIFYING--THE~~
 11 ~~LIABILITY-OF-OWNERS-FOR-DAMAGE~~; AMENDING SECTIONS 85-15-106,
 12 AND 85-15-107,---AND--85-15-385, MCA; AND PROVIDING AN
 13 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
 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.

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

- 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



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 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 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
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:~~

1 ~~*85-15-305. Liability of owners for damage. (1) Except~~
 2 ~~as provided in subsection (2), nothing in this chapter~~
 3 ~~relieves an owner of a dam or reservoir of any legal duty,~~
 4 ~~obligation, 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 ~~(2) 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 not, 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 ~~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 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
 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

1 effective on passage and approval.

-End-