

HOUSE BILL 880

Introduced by Ellis, et al.

2/15	Introduced
2/15	Referred to Natural Resources
2/16	First Reading
2/16	Fiscal Note Requested
2/20	Fiscal Note Received
2/22	Fiscal Note Printed
2/22	Hearing
2/22	Tabled in Committee

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HOUSE BILL NO. 880

INTRODUCED BY John A. Beck  
A BILL FOR AN ACT ENTITLED: "AN ACT REDEFINING DAM,  
HIGH-HAZARD DAM, AND RESERVOIR; CLARIFYING THE LIABILITY FOR  
DAMS AND RESERVOIRS; REMOVING THE AUTHORITY OF DISTRICT  
COURTS AND COUNTY COMMISSIONERS TO APPOINT WATER IMPOUNDMENT  
SAFETY PANELS; AMENDING SECTIONS 85-15-106, 85-15-209, AND  
85-15-305, MCA; AND REPEALING SECTIONS 85-15-306, 85-15-307,  
85-15-308, 85-15-309, 85-15-310, 85-15-311, 85-15-402,  
85-15-403, AND 85-15-404, MCA."

STATEMENT OF INTENT

A statement of intent is needed to provide guidance to  
the department of natural resources and conservation in  
adopting rules to implement the provisions of [this act]. It  
is the intent of the legislature to provide a uniform  
process for complaints regarding unsafe dams and to reduce  
the potential for nuisance actions against dam owners. It is  
the further intent of the legislature to authorize the  
department to investigate complaints regarding unsafe dams,  
even if those dams contain 50 acre-feet of water or more.  
Finally, it is the intent of the legislature to provide  
increased protection from liability to the owners of dams  
that have been permitted by the department and to the owners

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of dams that have been designed, constructed, and maintained  
under the supervision of an engineer.

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

**Section 1.** Section 85-15-106, MCA, is amended to read:

**"85-15-106. Definitions.** Unless the context requires  
otherwise, in this chapter the following definitions apply:

(1) "Alterations" or "repairs" means alterations or  
repairs that may directly affect the safety of a dam or  
reservoir.

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

- (a) a spillway, either in the dam or separate from it;
- (b) the reservoir and its rim;
- (c) a low-level outlet; and
- (d) a water conduit, such as a tunnel, pipeline, or  
penstock, either through the dam or its abutments.

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

(4) "Dam" means any an artificial barrier, including  
appurtenant works, used to impound or divert water with an  
impounding capacity of 50 acre-feet or greater.

(5) "Department" means the department of natural

1 resources and conservation provided for in Title 2, chapter  
2 15, part 33.

3 (6) "Emergency" means any a threat to life caused by  
4 the condition of a dam or reservoir or by present or  
5 imminent floods that threaten the structural integrity of  
6 any a dam or reservoir.

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

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

14 (9) "High-hazard dam" means any a dam or reservoir with  
15 an impounding capacity of 50 acre-feet or more measured at  
16 the maximum normal operating pool, the failure of which  
17 would be likely to cause loss of life.

18 (10) "Inspection" means a visual or mechanical check, a  
19 measurement, a boring, or any other method necessary for  
20 determination of the adequacy of construction techniques,  
21 conformity of work with approved plans and specifications,  
22 or the safety and operating performance of a dam or  
23 reservoir.

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

1 or reservoir.

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

7 (13) "Removal" means removing, taking down, or changing  
8 the location of any a dam or reservoir.

9 (14) "Reservoir" means any a valley, basin, coulee,  
10 ravine, or other land area that contains 50-acre-feet-or  
11 more-of impounded water."

12 **Section 2.** Section 85-15-209, MCA, is amended to read:

13 "85-15-209. High-hazard dam -- determination. Any A  
14 person proposing to construct any a dam or reservoir with an  
15 impounding capacity of 50 acre-feet or more measured at the  
16 maximum normal operating pool shall make application to the  
17 department for a determination of whether the dam or  
18 reservoir is a high-hazard dam. The application must include  
19 the information required by the department. The department  
20 shall make the determination required by this section within  
21 60 calendar days after a complete application is received by  
22 the department."

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

24 "85-15-305. Liability of owners for damage. (1) Except  
25 as provided in subsection subsections (2) through (4),

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

7 (2) The owner of a high-hazard dam or reservoir that  
 8 has been permitted by the department in accordance with this  
 9 chapter is not, in the absence of negligence, liable for  
 10 damages resulting from flows of water from failure of the  
 11 dam or reservoir ~~which are of sufficient magnitude to exceed~~  
 12 ~~the limits of the 100-year floodplain as defined in~~  
 13 76-5-103.

14 (3) The owner of a dam or reservoir that was designed,  
 15 constructed, and regularly maintained under the supervision  
 16 of an engineer is not, in the absence of negligence, liable  
 17 for damages resulting from flows of water from failure of  
 18 the dam or reservoir.

19 (4) In addition, the owner of any a dam or reservoir  
 20 described in subsection (3) or the owner of a high-hazard  
 21 dam or reservoir that has been permitted by the department  
 22 in accordance with this chapter may, without incurring  
 23 liability, allow passage through the reservoir of inflows  
 24 without diminution."

25 NEW SECTION. Section 4. Repealer. Sections 85-15-306,

1 85-15-307, 85-15-308, 85-15-309, 85-15-310, 85-15-311,  
 2 85-15-402, 85-15-403, and 85-15-404, MCA, are repealed.

3 NEW SECTION. Section 5. Coordination instruction. If  
 4 [this act] is passed and approved and [LC 0910] is passed  
 5 and approved with a section amending 85-15-106, the  
 6 definitions of dam and reservoir in [LC 0910] are void.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0880, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


This bill: 1) redefines dam, high-hazard dam, and reservoir; 2) clarifies the liability for dams and reservoirs; and 3) removes the authority of district courts and county commissioners to appoint water impoundment safety panels.

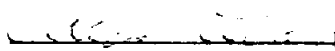
ASSUMPTIONS:

1. The Department of Natural Resources and Conservation has been doing this work on an informal basis; therefore, there is no increase in workload.

FISCAL IMPACT:

No fiscal impact.

  
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ROD SUNDSTED, BUDGET DIRECTOR                      DATE  
Office of Budget and Program Planning                      2-20-91

  
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ALVIN A. ELLIS JR., PRIMARY SPONSOR                      DATE  
Fiscal Note for HB0880, as introduced                      2/21/91  
**HB 880**