

SENATE BILL NO. 362

Introduced: 02/04/83

Referred to Committee on natural Resources: 02/04/83

Hearing: 2/11/83

Report: 02/19/83

2nd Reading: 02/22/83

2nd Reading: 02/22/83, Be Indefinitely Postponed
Bill Killed.

1 *Senate* BILL NO. *362*
2 INTRODUCED BY *Robert James Lybeck Ellison*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE
5 CONSTRUCTION OF DAMS AND RESERVOIRS; TO PROVIDE FOR
6 INSPECTIONS AND PENALTIES; ESTABLISHING AN INSPECTION
7 COMMISSION; AMENDING SECTIONS 85-15-101, 85-15-102, AND
8 85-15-104, MCA; AND REPEALING SECTIONS 85-15-103, 85-15-201
9 THROUGH 85-15-206, AND 85-15-301 THROUGH 85-15-304, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Short title. This chapter
13 may be cited as the "Montana Dam Safety Act of 1983".

14 NEW SECTION. Section 2. Definitions. Unless the
15 context requires otherwise, in this chapter the following
16 definitions apply:

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

20 (2) "Appurtenant works" means all works appurtenant to
21 a dam or reservoir, including but not limited to spillways,
22 either in the dam or separate therefrom; the reservoir and
23 its rim; low-level outlets; and water conduits such as
24 tunnels, pipelines, or penstocks, either through the dam or
25 its abutments.

1 (3) "Commission" means the dam inspection commission
2 established in [section 14].

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

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

8 (6) "Department" means the department of natural
9 resources and conservation provided for in Title 2, chapter
10 15, part 33.

11 (7) "Emergency" means any threat to life or property
12 caused by the condition of a dam or reservoir or by present
13 or imminent floods that threaten the structural integrity of
14 any dam or reservoir.

15 (8) "Engineer" means a registered professional
16 engineer licensed to practice in the state of Montana under
17 Title 37, chapter 67.

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

22 (10) "High-hazard dam or reservoir" means any dam or
23 reservoir the failure of which would cause loss of life or
24 serious damage to homes; agricultural, industrial, or
25 commercial facilities; public utilities; main highways or

1 railroad lines; or campgrounds.

2 (11) "Inspection" means visual or mechanical checks,
3 measures, borings, or any other methods necessary for
4 determination of the adequacy of construction techniques,
5 conformity of work with approved plans and specifications,
6 or the safety and operating performance of a dam or
7 reservoir.

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

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

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

19 (15) "Reservoir" means any valley, basin, coulee,
20 ravine, or other land area that contains 50 acre-feet or
21 more of impounded water.

22 Section 3. Section 85-15-101, MCA, is amended to read:

23 "85-15-101. Dams and reservoirs -- how constructed. No
24 person must ~~pay~~ fill or procure to be filled with water any
25 dam or reservoir which ~~that~~ is not so thoroughly and

1 substantially constructed as to safely hold any water that
2 may be turned therein."

3 Section 4. Section 85-15-102, MCA, is amended to read:

4 "85-15-102. Construction in a secure manner. ~~(1)~~ A
5 person, ~~association, or corporation~~ may not construct or
6 cause to be constructed a dam, dike, or reservoir for the
7 purpose of accumulating, storing, appropriating, or
8 diverting any of the waters of this state, except in a
9 thorough, secure, and substantial manner.

10 ~~(2) The department of natural resources and~~
11 ~~conservation may at any time on its own motion and it~~
12 ~~shall upon complaint on oath being made to the department~~
13 ~~by three or more persons residing or having property in such~~
14 ~~location that their homes or property would be in danger of~~
15 ~~destruction or damage in event of flood occurring on account~~
16 ~~of the breaking of any dam, dike, or reservoir within the~~
17 ~~state and that they have reason to believe said dam, dike~~
18 ~~or reservoir is in an unsafe condition or that it is~~
19 ~~diverting or is being filled with water to such an extent as~~
20 ~~to render it unsafe, immediately examine or cause to be~~
21 ~~examined the dam, dike, or reservoir, if upon the~~
22 ~~examination the department finds that the dam, dike, or~~
23 ~~reservoir is unsafe or is diverting or is being filled with~~
24 ~~water to such an extent as to render it unsafe, it shall~~
25 ~~notify the county attorney of the county in which the dam~~

1 dike, or reservoir is located, setting forth its findings,
2 and the county attorney shall immediately take the necessary
3 steps to abate the danger and make the structure safe.

4 (3) If either party is dissatisfied with the findings
5 of the department, it may appeal to the district court of
6 the district wherein the dam, dike, or reservoir is located,
7 and the court shall hear and determine the matter at the
8 earliest practicable time, subject to the right of either
9 party to appeal as in other civil cases; however, the
10 judgment of the department shall control until the final
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12 Section 5. Section 85-15-104, MCA, is amended to read:

13 "85-15-104. Exemption of federal structures. The
14 provisions of 85-15-102 and 85-15-103 shall ~~this chapter do~~
15 not apply to federal dams, dikes, and reservoirs which ~~that~~
16 are subject to federal power commission inspections under
17 federal laws ~~or to dams and reservoirs licensed and subject~~
18 ~~to inspection by the federal energy regulatory commission."~~

19 NEW SECTION. Section 6. High-hazard determination.

20 Any person proposing to construct any dam or reservoir shall
21 make application to the department for determination of
22 whether the dam or reservoir is a high hazard. The
23 application must include the information required by the
24 department. The department shall make the determination
25 required by this section within 60 calendar days after a

1 complete application has been received by the department.

2 NEW SECTION. Section 7. Application -- construction
3 permit. (1) A person may not construct a high-hazard dam or
4 reservoir as determined under [section 6] without obtaining
5 a construction permit from the department.

6 (2) An application for a construction permit must be
7 submitted to the department and must contain:

8 (a) plans and specifications for the proposed
9 construction, prepared by or under the direction of an
10 engineer experienced in dam design and construction; and

11 (b) other data and information required by the
12 department.

13 (3) At the request of the department, the engineer
14 responsible for the plans and specifications shall carry out
15 any revisions of the plans and specifications or provide any
16 additional information necessary to justify or clarify the
17 design.

18 (4) As soon as practicable after receipt of the
19 application and any additional information requested by the
20 department, the department shall:

21 (a) issue a construction permit or deny the
22 application as filed; or

23 (b) issue a construction permit upon the terms,
24 conditions, or modifications the department considers
25 appropriate.

1 **NEW_SECTION.** Section 8. Engineer to be in charge of
2 construction -- inspection -- reports. (1) An engineer must
3 be in charge of and responsible for the construction of any
4 high-hazard dam or reservoir.

5 (2) The engineer in charge shall provide for
6 inspections at intervals necessary to insure conformity with
7 the permit. The engineer in charge or a qualified designee
8 shall perform the inspections. The engineer is responsible
9 for the designee's work.

10 (3) The engineer in charge shall certify and report to
11 the department all information obtained from, during, or as
12 the result of an inspection. The department shall set the
13 time for reporting.

14 (4) The department shall keep a copy of all reports.

15 **NEW_SECTION.** Section 9. Inspection by department --
16 cost -- operating permit. (1) If the department determines
17 that inspections carried out under [section 8] are
18 inadequate or that additional inspections are necessary, the
19 department may inspect the construction of any high-hazard
20 dam or reservoir. If after any inspection the department
21 finds that amendments, modifications, or changes are
22 necessary to insure the security and integrity of the work
23 and structure or the protection of property or public
24 safety, the department may order the owner of the
25 high-hazard dam or reservoir to revise the plans and

1 specifications. No person may proceed with or continue such
2 work until any revisions have been approved by the
3 department.

4 (2) The owner of the high-hazard dam or reservoir
5 shall pay the costs of any inspections required by this
6 section, including but not limited to such work or tests as
7 are necessary to fully provide any information or data
8 required by the department or its appointed representative.

9 (3) When construction is complete and if the dam or
10 reservoir conforms to the construction permit as determined
11 under [section 8] and this section, the department shall
12 issue a permit to operate the high-hazard dam or reservoir.

13 **NEW_SECTION.** Section 10. Periodic inspections. (1)
14 Any high-hazard dam or reservoir must be inspected at least
15 once every 5 years or as often as considered necessary in
16 order to insure the continued safe operation of the works or
17 structure.

18 (2) The department or its appointed representative
19 shall perform inspections required by subsection (1). The
20 department shall retain a copy of all information obtained
21 as a result of such inspection.

22 (3) The owner shall pay the costs of inspections
23 required under this section.

24 **NEW_SECTION.** Section 11. Requested inspections --
25 costs -- limitations against unsafe structures. (1) At its

1 discretion or upon receipt of a written complaint alleging
2 that the person or property of the complainant is endangered
3 by the construction, maintenance, or operation of any dam or
4 reservoir, the department may order an inspection of the dam
5 or reservoir unless the data, records, and inspection
6 reports on file are adequate to determine that the complaint
7 is not meritorious.

8 (2) If the complainant insists upon an inspection
9 regardless of the findings by the department on the merits
10 of the complaint, the department may make the inspection
11 upon requiring the complainant to deposit with the
12 department money sufficient to cover the costs of the
13 inspection.

14 (3) If the dam or reservoir is found to be defective,
15 the department may require the person owning the dam or
16 reservoir to pay the whole or any part of the expenses of
17 inspection. If the department requires such payment, it
18 shall present a bill of costs to the owner. The costs shall
19 constitute a lien upon the dam, reservoir, or other
20 properties of the owner and may be collected by appropriate
21 action in a court of competent jurisdiction.

22 (4) If the dam or reservoir is not found to be
23 defective after an inspection made on account of a complaint
24 and the complaint is found by the department to have been
25 without merit, any money deposited therefor is payable to

1 the general fund.

2 (5) If the inspection discloses defects in the works
3 that, in the judgment of the department, constitute an
4 immediate hazard to life or property, the department shall
5 order the draining of the dam or reservoir involved or the
6 limitation or cessation of its use or the use of any
7 defective appurtenant works until such time as the dam or
8 reservoir or appurtenant works have been made safe and
9 approved by the department.

10 NEW SECTION. Section 12. Outlets -- drainage. (1)
11 All dams or reservoirs constructed after [the effective date
12 of this act] must contain a low-level outlet controlled by a
13 headgate or other control works. The headgate or control
14 works must be maintained in an operable condition at all
15 times and in such manner that water impounded by or within
16 the dam or reservoir may be evacuated or maintained at any
17 water level as may be required by the department.

18 (2) All dams or reservoirs constructed prior to [the
19 effective date of this act] that have no low-level outlet or
20 means for lowering the reservoir water level in an
21 expeditious manner must be drained by breaching at the
22 owner's expense when the department determines that
23 breaching is necessary to safeguard life or property.

24 NEW SECTION. Section 13. Emergency repairs or
25 breaching. (1) In case of an emergency, the department may

1 declare that repairs or breaching of a dam or reservoir are
2 immediately necessary to safeguard life or property.
3 Necessary repairs or breaching must be commenced immediately
4 by the owner or by the department at the owner's expense if
5 the owner fails to do so. The department must be notified
6 immediately of any proposed emergency repairs or breaching
7 to be instituted by the owner.

8 (2) After the emergency situation has passed and if
9 the owner plans to repair the dam or reservoir, the owner
10 shall make all repairs necessary to place the dam or
11 reservoir in safe and usable condition.

12 (3) All costs incurred by the department during an
13 emergency must be paid by the owner on receipt of the bill
14 of costs from the department. The costs are a lien upon the
15 dam, reservoir, or other properties of the owner and may be
16 collected by appropriate action in a court of competent
17 jurisdiction.

18 **NEW_SECTION_14. Dam inspection commission.**

19 (1) There is a dam inspection commission composed of five
20 members appointed by the governor to serve 4-year terms. The
21 dam inspection commission must be appointed as follows:

22 (a) two members who are board members of existing
23 irrigation districts;

24 (b) one member who is a board member of an existing
25 rural electrification cooperative board or rural telephone

1 cooperative board;

2 (c) one member who is a consumer of a rural
3 electrification cooperative or rural telephone cooperative
4 agency;

5 (d) one member who is from the public at large.

6 (2) The commission members shall serve without
7 compensation; however, they may receive travel and per diem
8 allowances as provided in Title 2, chapter 18, part 5.

9 (3) The commission is allocated to the department of
10 natural resources and conservation for administrative
11 purposes only as prescribed in 2-15-121.

12 **NEW_SECTION_15. Dam inspection commission**
13 **duties. The dam inspection commission shall perform the**
14 **following duties:**

15 (1) determine the specifications to be utilized in dam
16 or reservoir construction. The commission shall utilize the
17 current United States army corps of engineer specifications
18 as minimum criteria for dam or reservoir construction in
19 Montana.

20 (2) review department determinations and orders made
21 under [section 9]; and

22 (3) make final inspections of dams or reservoirs
23 subject to [this act] and the inspections requested under
24 [section 11].

25 **NEW_SECTION_16. City or county prohibited**

1 from regulation. No city or county may regulate, supervise,
 2 or provide for the regulation or supervision of any dams or
 3 reservoirs in this state or the construction, maintenance,
 4 or operation thereof or limit the size of any dam or
 5 reservoir or the amount of water that may be stored therein.
 6 This chapter does not prevent a city or county from adopting
 7 ordinances regulating, supervising, or providing for the
 8 regulation or supervision of dams and reservoirs that:

- 9 (1) are not within the state's jurisdiction; or
- 10 (2) are not subject to regulation by another public
- 11 agency or body.

12 **NEW_SECTION.** Section 17. No limitation of liability.
 13 Nothing in this chapter relieves an owner of any dam or
 14 reservoir of any legal duties, obligations, or liabilities
 15 incident to ownership or operation, including any damages
 16 resulting from leakage or overflow of water or floods caused
 17 by the failure or rupture of the dam or reservoir.

18 **NEW_SECTION.** Section 18. Permit cancellation. Failure
 19 to comply with the provisions of [sections 6 through 9, 11,
 20 or 12] subjects a permit to cancellation at any time during
 21 the progress of work. The department may cancel any permit
 22 if the provisions of such sections have not been or are not
 23 being complied with. The cancellation operates as a
 24 forfeiture of all rights acquired under and by virtue of any
 25 permit approved by the department.

1 **NEW_SECTION.** Section 19. Penalties. A person who
 2 violates or refuses or neglects to comply with the
 3 provisions of this chapter or any rule or order of the
 4 department pursuant to this chapter is guilty of a
 5 misdemeanor. Each day of a continuing violation constitutes
 6 a separate offense.

7 **NEW_SECTION.** Section 20. Deposit of penalty fees and
 8 costs. All penalty fees and costs collected under this
 9 chapter must be deposited in the state general fund.

10 **NEW_SECTION.** Section 21. Entry on land. Any employee
 11 or agent of the department authorized by the director may
 12 enter upon any land to carry out the purpose of this
 13 chapter. The department or its agent shall give reasonable
 14 notice to the landowner of its intention to enter upon the
 15 land.

16 **NEW_SECTION.** Section 22. Legal assistance. When
 17 requested by the department, the attorney general or the
 18 county attorneys within their respective counties shall
 19 perform legal services and conduct legal proceedings
 20 necessary to carry out the purposes of this chapter. The
 21 department may also employ legal counsel to enforce this
 22 chapter and to conduct proceedings under it.

23 **NEW_SECTION.** Section 23. Rules. The department may
 24 adopt rules to implement the provisions of this chapter.

25 **NEW_SECTION.** Section 24. Applicability. The

1 provisions of this act do not apply to dams or reservoirs
2 for which construction has been completed on or before
3 October 1, 1983.

4 NEW SECTION. Section 25. Repealer. Sections
5 85-15-103, 85-15-201 through 85-15-206, and 85-15-301
6 through 85-15-304, MCA, are repealed.

7 NEW SECTION. Section 26. Codification instruction.
8 Sections 1, 2, and 6 through 23 are intended to be codified
9 as an integral part of Title 85, chapter 15, and the
10 provisions of Title 85, chapter 15, apply to sections 1, 2,
11 and 6 through 23.

12 NEW SECTION. Section 27. Severability. If a part of
13 this act is invalid, all valid parts that are severable from
14 the invalid part remain in effect. If a part of this act is
15 invalid in one or more of its applications, the part remains
16 in effect in all valid applications that are severable from
17 the invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 343-83

FISCAL NOTE

Form BD-15

compliance with a written request received February 7, 19 83, there is hereby submitted a Fiscal Note
Senate Bill 362 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members
 the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 362 provides for regulation of the construction of dams and reservoirs; provides for inspections and penalties; requires construction permits for high-hazard dams; and establishes an inspection commission, appointed by the governor, to determine specifications for dam and reservoir construction, to review department orders and to make final inspections.

ASSUMPTIONS:

- 1) Approximately 100 applications for dams of 50 acre-feet or more will be received each year.
- 2) Three to five of these dams will be determined to be high-hazard structures.
- 3) The department will inspect about 20 high-hazard per year at an estimated average cost to the owner of \$1,500.

FISCAL IMPACT:Revenue:

	<u>FY 84</u>	<u>FY 85</u>
Inspection Fees		
Under Current Law	\$ -0-	\$ -0-
Under Proposed Law	30,000	33,000
Increase	<u>\$ 30,000</u>	<u>\$ 33,000</u>

Expenditures:Personal Services

Under Current Law	\$ -0-	\$ -0-
Under Proposed Law	86,940	91,285
Increase	<u>\$ 86,940</u>	<u>\$ 91,285</u>

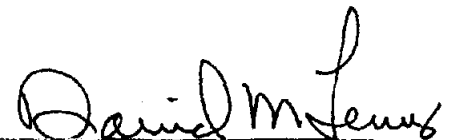
Operating Expenses

Under Current Law	\$ -0-	\$ -0-
Under Proposed Law	50,500	55,500
Increase	<u>\$ 50,500</u>	<u>\$ 55,500</u>

Continued

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-11-83


-2-

Total Expenditures		
Under Current Law	\$ -0-	\$ -0-
Under Proposed Law	137,440	146,785
Increase	<u>\$137,440</u>	<u>\$146,785</u>
Net increase costs to general fund	<u>\$107,440</u>	<u>\$113,785</u>

FISCAL NOTE 12:Y/2

SB 362

Approved by Committee
on Natural Resources

SENATE BILL NO. 362

INTRODUCED BY ETCHART, R. JENSEN, LYBECK,

ELLISON

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE
CONSTRUCTION OF DAMS AND RESERVOIRS; TO PROVIDE FOR
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COMMISSION A--TECHNICAL REVIEW COMMITTEE; AMENDING SECTIONS
85-15-101, 85-15-102, AND 85-15-104, MCA--AND--REPEALING
SECTIONS--85-15-103--85-15-201--THROUGH--85-15-206--AND
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either in the dam or separate therefrom; the reservoir and
its rim; low-level outlets; and water conduits such as

tunnels, pipelines, or penstocks, either through the dam or
its abutments.

~~(3) "BOARD" MEANS THE BOARD OF NATURAL RESOURCES AND
CONSERVATION PROVIDED FOR IN 2-15-3302.~~

~~(3)(4) "Commission" "COMMITTEE" means the dam
inspection-commission TECHNICAL REVIEW COMMITTEE established
in [section 14].~~

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alteration, repair, enlargement, or removal of a dam or
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11 HERE IS A NEW MCA SECTION THAT READS:

12 Section 4. Construction in a secure manner. A person
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15 appropriating, or diverting any of the waters of this state,
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 2 by three or more persons residing or having property in such
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department SUFFICIENT FOR SUPPORTING THE DESIGN.

{3}--At the request of the department, the engineer responsible for the plans and specifications shall carry out any revisions of the plans and specifications or provide any additional information necessary to justify or clarify the design.

{4}{3} As soon as practicable after receipt of the application and any additional information requested by the department, the department shall:

(a) issue a construction permit or deny the application as filed; or

(b) issue a construction permit upon the terms, conditions, or modifications the department considers appropriate.

NEW SECTION. Section 8. Engineer to be in charge of construction -- inspection -- reports. (1) An engineer must be in charge of and responsible for the construction INSPECTION of any high-hazard dam or reservoir.

(2) The engineer in charge shall provide for inspections INSPECTIONS DURING CONSTRUCTION SHALL BE PERFORMED at intervals necessary to insure conformity with the permit. The engineer in charge or a qualified designee shall perform the inspections. The engineer is responsible for the designee's work.

(3) The engineer in charge shall certify and report

REPORTS to the department OF all information obtained from, during, or as the result of an inspection. The department shall set the time for reporting.

{4} THE DEPARTMENT MAY INSPECT THE DAM DURING CONSTRUCTION TO INSURE CONFORMITY WITH THE PERMIT.

{4}{5} The department shall keep a copy of all reports.

NEW SECTION. Section 9. Inspection by department -- cost -- operating permits -- {1} if the department determines that inspections carried out under {section 8} are inadequate or that additional inspections are necessary, the department may inspect the construction of any high-hazard dam or reservoir if after any inspection the department finds that amendments, modifications, or changes are necessary to insure the security and integrity of the work and structure or the protection of property or public safety, the department may order the owner of the high-hazard dam or reservoir to revise the plans and specifications. No person may proceed with or continue such work until any revisions have been approved by the department.

{2} The owner of the high-hazard dam or reservoir shall pay the costs of any inspections required by this section, including but not limited to such work or tests as are necessary to fully provide any information or data

required--by-the-department-or-its-appointed-representative
 OPERATING CERTIFICATE. (1) AN OPERATION PLAN MUST BE
 PREPARED BY THE OWNER AND APPROVED BY THE DEPARTMENT PRIOR
 TO OPERATION OF THE DAM OR RESERVOIR. THE OPERATION PLAN
 MUST SET FORTH AT A MINIMUM:

(A) A RESERVOIR OPERATIONAL PROCEDURE;

(B) A MAINTENANCE PROCEDURE FOR THE DAM AND
 APPURTENANT WORKS;

(C) EMERGENCY PROCEDURES AND WARNING PLANS.

(2) When construction is complete and if the dam or
 reservoir conforms to the construction permit as--determined
 under--[section-8]-and-this-section, AND UPON APPROVAL OF AN
 OPERATIONAL PLAN, the department shall issue a permit
 CERTIFICATE to operate the high-hazard dam or reservoir.

NEW SECTION. Section 10. Periodic inspections AND
 RECERTIFICATION. (1) Any high-hazard dam or reservoir must
 be inspected AND RECERTIFIED at least once every 5 years or
 as often as considered necessary in order to insure the
 continued safe operation of the works or structure.

(2) The--department--or--its--appointed-representative
 shall--perform-inspections-required-by--subsection--(1)--The
 department--shall--retain-a-copy-of-all-information-obtained
 as-a-result-of-such-inspection ANY INSPECTIONS REQUIRED IN
 THIS SECTION MUST BE DONE BY A QUALIFIED ENGINEER.

(3) The owner shall pay the costs of BE RESPONSIBLE

EQB inspections required under this section.

NEW SECTION. Section 11. Requested inspections --
 costs -- limitations against unsafe structures. (1) At its
 discretion or upon receipt of a written complaint alleging
 that the person or property of the complainant is endangered
 by the construction, maintenance, or operation of any dam or
 reservoir, the department may order an inspection of the dam
 or reservoir unless the data, records, and inspection
 reports on file are adequate to determine that the complaint
 is not meritorious.

(2) If the complainant insists upon an inspection
 regardless of the findings by the department on the merits
 of the complaint, the department may make the inspection
 upon requiring the complainant to deposit with the
 department money sufficient to cover the costs of the
 inspection.

(3) If the dam or reservoir is found to be defective,
 the department may require the person owning the dam or
 reservoir to pay the whole or any part of the expenses of
 inspection. If--the--department--requires--such-payment--it
 shall--present-a-bill-of-costs-to-the-owner--The-costs--shall
 constitute--a-lien-upon--the--dam--reservoir--or--other
 properties-of-the-owner-and THE COSTS may be collected by
 appropriate action in a court of competent jurisdiction.

(4) If the dam or reservoir is not found to be

1 defective after an inspection made on account of a complaint
2 and the complaint is found by the department to have been
3 without merit, any money deposited therefor is payable to
4 the general fund.

5 (5) If the inspection discloses defects in the works
6 that, in the judgment of the department, constitute an
7 immediate hazard to life or property, the department shall
8 ~~order the draining of the dam or reservoir involved or the~~
9 ~~limitation or cessation of its use or the use of any~~
10 ~~defective appurtenant works until such time as the dam or~~
11 ~~reservoir or appurtenant works have been made safe and~~
12 ~~approved by the department~~ TAKE NECESSARY STEPS TO MAKE
13 THESE STRUCTURES SAFE.

14 NEW SECTION. Section 12. Outlets -- drainage. (1)
15 All dams or reservoirs constructed after [the effective date
16 of this act] must contain a low-level outlet controlled by a
17 headgate or other control works. The headgate or control
18 works must be maintained in an operable condition at all
19 times and in such manner that water impounded by or within
20 the dam or reservoir may be evacuated or maintained at any
21 water level as may be required by the department.

22 (2) All dams or reservoirs constructed prior to [the
23 effective date of this act] that have no low-level outlet or
24 means for lowering the reservoir water level in an
25 expeditious manner must be drained by breaching at the

1 owner's expense when the department determines that
2 breaching is necessary to safeguard life or property.

3 NEW SECTION. Section 13. Emergency repairs or
4 breaching. (1) In case of an emergency, the department may
5 ~~SHALL declare that repairs or breaching of a dam or~~
6 ~~reservoir are immediately necessary to safeguard life or~~
7 ~~property~~ TAKE NECESSARY STEPS TO SAFEGUARD LIFE AND
8 PROPERTY. Necessary repairs or breaching must be commenced
9 immediately by the owner or by the department at the owner's
10 expense if the owner fails to do so. The department must be
11 notified immediately of any proposed emergency repairs or
12 breaching to be instituted by the owner.

13 (2) After the emergency situation has passed and if
14 the owner plans to repair the dam or reservoir, the owner
15 shall make all repairs necessary to place the dam or
16 reservoir in safe and usable condition.

17 (3) All costs incurred by the department during an
18 emergency must be paid by the owner on receipt of the bill
19 of costs from the department. ~~The costs are a lien upon the~~
20 ~~dam, reservoir, or other properties of the owner and~~ COSTS
21 ~~may be collected by appropriate action in a court of~~
22 ~~competent jurisdiction.~~

23 NEW SECTION. Section 14. Dam inspection commission
24 ~~(1) There is a dam inspection commission composed of five~~
25 ~~members appointed by the governor to serve 4-year terms. The~~

1 dam inspection commission must be appointed as follows:

2 (a) two members who are board members of existing

3 irrigation districts;

4 (b) one member who is a board member of an existing

5 rural electrification cooperative board or rural telephone

6 cooperative board;

7 (c) one member who is a consumer of a rural

8 electrification cooperative or rural telephone cooperative

9 agency;

10 (d) one member who is from the public at large;

11 (2) the commission members shall serve without

12 compensation; however, they may receive travel and per diem

13 allowances as provided in title 24, chapter 10, part 5;

14 (3) the commission is allocated to the department of

15 natural resources and conservation for administrative

16 purposes only as prescribed in 2-15-12;

17 (4) IN CASE OF A DISPUTE BETWEEN THE OWNER AND THE

18 DEPARTMENT, A TECHNICAL REVIEW COMMITTEE MAY BE APPOINTED BY

19 THE BOARD TO REVIEW THE TECHNICAL MERITS OF A PROJECT. THE

20 COMMITTEE SHALL BE MADE UP OF FIVE MEMBERS APPOINTED AS

21 FOLLOWS:

22 (A) ONE MEMBER WHO IS A BOARD MEMBER AND SHALL SERVE

23 AS COMMITTEE CHAIRMAN;

24 (B) TWO MEMBERS WHO ARE SELECTED BY THE OWNER;

25 (C) TWO MEMBERS WHO ARE SELECTED BY THE DEPARTMENT. AT

1 LEAST ONE OF WHOM MUST BE FROM OUTSIDE THE DEPARTMENT.

2 (5) ALL COMMITTEE MEMBERS EXCEPT THE CHAIRMAN MUST

3 HAVE TECHNICAL QUALIFICATIONS IN THE DISCIPLINES OF DAM

4 DESIGN OR DAM CONSTRUCTION OR BOTH.

5 (6) THE COMMITTEE MAY BE CALLED BY ANY OF THE

6 FOLLOWING METHODS:

7 (A) BY THE BOARD ON ITS OWN MOTION;

8 (B) BY THE REQUEST OF THE DEPARTMENT;

9 (C) BY THE REQUEST OF THE OWNER.

10 (7) THE COMMITTEE SHALL MAKE RECOMMENDATIONS TO THE

11 BOARD. THE BOARD SHALL MAKE FINAL DECISIONS OF APPROVAL OR

12 DISAPPROVAL OF PERMITS AND CERTIFICATION IN THE CONTEXT OF

13 THE DISPUTE.

14 (8) THE TECHNICAL COMMITTEE IS ENTITLED TO A

15 REASONABLE COMPENSATION FOR THEIR SERVICES TO BE ALLOWED BY

16 THE BOARD.

17 (9) THE BOARD SHALL SET A SCHEDULE OF COSTS OF THE

18 TECHNICAL REVIEW COMMITTEE BASED ON THE PROJECT SIZE AND

19 COMPLEXITY TO BE PAID BY THE PERSON REQUESTING THE REVIEW

20 PROCESS.

21 NEW SECTION. Section 14. Dam inspection commission

22 duties. The dam inspection commission shall perform the

23 following duties:

24 (1) determine the specifications to be utilized in dam

25 or reservoir construction. The commission shall utilize the

1 current United States army corps of engineer specifications
2 as minimum criteria for dam or reservoir construction in
3 Montana.

4 (2) review department determinations and orders made
5 under [section 9]; and

6 (3) make final inspections of dams or reservoirs
7 subject to [this act] and the inspections requested under
8 [section 11].

9 **NEW_SECTION.** Section 15. City or county prohibited
10 from regulation. No city or county may regulate, supervise,
11 or provide for the regulation or supervision of any dams or
12 reservoirs in this state or the construction, maintenance,
13 or operation thereof or limit the size of any dam or
14 reservoir or the amount of water that may be stored therein.
15 This chapter does not prevent a city or county from adopting
16 ordinances regulating, supervising, or providing for the
17 regulation or supervision of dams and reservoirs that:

18 (1) are not within the state's jurisdiction; or

19 (2) are not subject to regulation by another public
20 agency or body.

21 **NEW_SECTION.** Section 16. No limitation of liability.
22 Nothing in this chapter relieves an owner of any dam or
23 reservoir of any legal duties, obligations, or liabilities
24 incident to ownership or operation, including any damages
25 resulting from leakage or overflow of water or floods caused

1 by the failure or rupture of the dam or reservoir.

2 **NEW_SECTION.** Section 17. Permit cancellation. Failure
3 to comply with the provisions of [sections 6 through 9, 11,
4 or 12] subjects a permit to cancellation at any time during
5 the progress of work. The department may cancel any permit
6 if the provisions of such sections have not been or are not
7 being complied with. The cancellation operates as a
8 forfeiture of all rights acquired under and by virtue of any
9 permit approved by the department.

10 **NEW_SECTION.** Section 18. Penalties. A person who
11 violates or refuses or neglects to comply with the
12 provisions of this chapter or any rule or order of the
13 department pursuant to this chapter is guilty of a
14 misdemeanor. Each day of a continuing violation constitutes
15 a separate offense.

16 **NEW_SECTION.** Section 19. Deposit of penalty fees and
17 costs. All penalty fees and costs collected under this
18 chapter must be deposited in the state general fund.

19 **NEW_SECTION.** Section 20. Entry on land. Any employee
20 or agent of the department authorized by the director may
21 enter upon any land to carry out the purpose of this
22 chapter. The department or its agent shall give reasonable
23 notice to the landowner of its intention to enter upon the
24 land.

25 **NEW_SECTION.** Section 21. Legal assistance. When

1 requested by the department, the attorney general or the
 2 county attorneys within their respective counties shall
 3 perform legal services and conduct legal proceedings
 4 necessary to carry out the purposes of this chapter. The
 5 department may also employ legal counsel to enforce this
 6 chapter and to conduct proceedings under it.

7 ~~NEW_SECTION.~~ Section 22. Rules. The department may
 8 adopt rules to implement the provisions of this chapter.

9 ~~NEW_SECTION.~~ Section 23. Applicability. The
 10 provisions of this act do not apply to dams or reservoirs
 11 for which construction has been completed on or before
 12 October 1, 1983.

13 ~~NEW_SECTION--Section-25--Repeater-----Sections~~
 14 ~~85-15-103--85-15-201--through--85-15-206--and--85-15-301~~
 15 ~~through-85-15-304-MCA-are-repeated.~~

16 ~~NEW_SECTION.~~ Section 24. Codification instruction.
 17 Sections 1, 2, and 6 through 23 22 are intended to be
 18 codified as an integral part of Title 85, chapter 15, and
 19 the provisions of Title 85, chapter 15, apply to sections 1,
 20 2, and 6 through 23 22.

21 ~~NEW_SECTION.~~ Section 25. Severability. If a part of
 22 this act is invalid, all valid parts that are severable from
 23 the invalid part remain in effect. If a part of this act is
 24 invalid in one or more of its applications, the part remains
 25 in effect in all valid applications that are severable from

1 the invalid applications.

-End-