

SENATE BILL NO. 369

INTRODUCED BY NEUMAN, ELLISON, ECK, MOHAR, RAPP-SVRCEK,
MAZUREK, HALLIGAN, MANNING, B. WILLIAMS, LANE, SCHULTZ,
YELLOWTAIL, BLAYLOCK, SPAETH, HOLLIDAY

IN THE SENATE

February 9, 1985	Introduced and referred to Committee on Natural Resources.
February 13, 1985	Fiscal Note requested.
February 16, 1985	Fiscal Note returned.
February 21, 1985	Committee recommend bill do pass as amended. Report adopted.
February 22, 1985	Bill printed and placed on members' desks.
February 23, 1985	Second reading, do pass as amended.
February 25, 1985	Correctly engrossed. Third reading, passed. Ayes, 44; Noes, 4. Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Natural Resources.
March 25, 1985	Committee recommend bill be concurrred in as amended. Report adopted. Statement of Intent attached.
March 30, 1985	Second reading, concurrred in as amended.

April 1, 1985

Third reading, concurred in.

Returned to Senate with
amendments and Statement of
Intent.

IN THE SENATE

April 1, 1985

Received from House.

April 3, 1985

Second reading, amendments and
Statement of Intent concurred in.

April 5, 1985

Third reading, amendments and
Statement of Intent concurred in.
Ayes, 43; Noes, 2.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *369* *Lynn-Jurk*
 2 INTRODUCED BY *Neuman & others* *Edh Moran*
 3 *Margaret Kelly* *Richard Manning* *LANE Yellowtail Blaylock*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE *5 part*

5 SAFETY OF DAMS AND RESERVOIRS; AMENDING SECTIONS 85-15-101,
 6 85-15-102, AND 85-15-104, MCA; AND REPEALING SECTIONS
 7 85-15-103, 85-15-201 THROUGH 85-15-206, AND 85-15-301
 8 THROUGH 85-15-304, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

- 16 (1) "Alterations" or "repairs" means alterations or
 17 repairs that may directly affect the safety of a dam or
 18 reservoir.
- 19 (2) "Appurtenant works" means all works incident or
 20 attached to a dam or reservoir, including but not limited
 21 to:
 - 22 (a) a spillway, either in the dam or separate from it;
 - 23 (b) the reservoir and its rim;
 - 24 (c) a low-level outlet; and
 - 25 (d) a water conduit such as a tunnel, pipeline, or

1 penstock, either through the dam or its abutments.

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

5 (4) "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 (5) "Department" means the department of natural
 9 resources and conservation provided for in Title 2, chapter
 10 15, part 33.

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

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

18 (8) "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 (9) "High-hazard dam" means any dam or reservoir the
 23 failure of which would be likely to cause loss of life.

24 (10) "Inspection" means a visual or mechanical check, a
 25 measurement, a boring, or any other method necessary for

1 determination of the adequacy of construction techniques,
2 conformity of work with approved plans and specifications,
3 or the safety and operating performance of a dam or
4 reservoir.

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

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

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

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

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

19 "85-15-101. Dams and reservoirs -- how constructed. No
20 person must may fill or procure to be filled with water any
21 dam or reservoir which that is not so thoroughly and
22 substantially constructed as to safely hold any water that
23 may be turned therein."

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

25 "85-15-102. Construction in a secure manner. ~~{i}~~ A No

1 person ~~association, or corporation~~ may not construct or
2 cause to be constructed a dam, dike, or reservoir for the
3 purpose of accumulating, storing, appropriating, or
4 diverting any of the waters of this state, except in a
5 thorough, secure, and substantial manner.

6 ~~{2}--The--department--of--natural--resources--and~~
7 ~~conservation--may--at--any--time--on--its--own--motion,--and--it~~
8 ~~shall,--upon--complaint--on--oath--being--made--to--the--department~~
9 ~~by--three--or--more--persons--residing--or--having--property--in--such~~
10 ~~location--that--their--homes--or--property--would--be--in--danger--of~~
11 ~~destruction--or--damage--in--event--of--flood--occurring--on--account~~
12 ~~of--the--breaking--of--any--dam,--dike,--or--reservoir--within--the~~
13 ~~state--and--that--they--have--reason--to--believe--said--dam,--dike,~~
14 ~~or--reservoir--is--in--an--unsafe--condition--or--that--it--is~~
15 ~~diverting--or--is--being--filled--with--water--to--such--an--extent--as~~
16 ~~to--render--it--unsafe,--immediately--examine--or--cause--to--be~~
17 ~~examined--the--dam,--dike,--or--reservoir,--if,--upon--the~~
18 ~~examination,--the--department--finds--that--the--dam,--dike,--or~~
19 ~~reservoir--is--unsafe--or--is--diverting--or--is--being--filled--with~~
20 ~~water--to--such--an--extent--as--to--render--it--unsafe,--it--shall~~
21 ~~notify--the--county--attorney--of--the--county--in--which--the--dam,~~
22 ~~dike,--or--reservoir--is--located,--setting--forth--its--findings,~~
23 ~~and--the--county--attorney--shall--immediately--take--the--necessary~~
24 ~~steps--to--abate--the--danger--and--make--the--structure--safe;~~

25 ~~{3}--If--either--party--is--dissatisfied--with--the--findings~~

1 of--the--department,--it--may--appeal--to--the--district--court--of
 2 the--district--wherein--the--dam,--dike,--or--reservoir--is--located,
 3 and--the--court--shall--hear--and--determine--the--matter--at--the
 4 earliest--practical--time,--subject--to--the--right--of--either
 5 party--to--appeal--as--in--other--civil--cases,--however,--the
 6 judgment--of--the--department--shall--control--until--the--final
 7 determination--of--the--case."

8 Section 5. Section 85-15-104, MCA, is amended to read:

9 "85-15-104. Exemption--of--federal--structures
 10 Exemptions. The provisions of 85-15-102 and 85-15-103 shall
 11 [sections 6 through 20] do not apply to federal dams, dikes,
 12 and reservoirs which are subject to federal power commission
 13 inspections under federal laws, or to dams and reservoirs
 14 licensed and subject to inspection by the federal energy
 15 regulatory commission. In addition, the provisions of
 16 [sections 6 through 20] do not apply until July 1, 1990, to
 17 high-hazard dams that have been inspected by the U.S. army
 18 corps of engineers pursuant to P.L. 92-367 and for which
 19 resultant dam safety reports have been submitted to the
 20 owner."

21 NEW SECTION. Section 6. High-hazard dam --
 22 determination -- plans. Any person proposing to construct
 23 any dam or reservoir shall make application to the
 24 department for a determination of whether the dam or
 25 reservoir is a high-hazard dam. The application must include

1 the information required by the department. The department
 2 shall make the determination required by this section within
 3 60 calendar days after a complete application is received by
 4 the department.

5 NEW SECTION. Section 7. Preparation and approval of
 6 plans. (1) A person may not begin construction of a
 7 high-hazard dam as determined under [section 6] without
 8 first obtaining a construction permit from the department.

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

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

14 (b) other data and information required by the
 15 department.

16 (3) Within 60 calendar days after receipt of the
 17 application and any additional information requested by the
 18 department, the department shall:

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

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

24 NEW SECTION. Section 8. Inspection and reports during
 25 construction. (1) An engineer must be in charge of and

1 responsible for inspections during construction of any
2 high-hazard dam.

3 (2) Inspections during construction must be performed
4 at intervals necessary to ensure conformity with the permit.
5 The engineer in charge or a qualified designee shall perform
6 the inspections.

7 (3) The department shall set procedures and
8 requirements for reporting information obtained from,
9 during, or as the result of an inspection. The engineer in
10 charge shall certify all reports to the department.

11 (4) The department may also inspect the dam during
12 construction to ensure conformity with the construction
13 permit.

14 (5) If the department finds that construction of the
15 high-hazard dam does not conform with the construction
16 permit, it may order that construction be stopped until
17 changes are made in conformity with the permit.

18 NEW SECTION. Section 9. Operating permit. (1) An
19 operation plan must be prepared by the owner and approved by
20 the department prior to operation of the dam or reservoir.
21 The operation plan must set forth at a minimum:

- 22 (a) a reservoir operation procedure;
23 (b) a maintenance procedure for the dam and
24 appurtenant works; and
25 (c) emergency procedures and warning plans.

1 (2) When construction is complete and if the dam or
2 reservoir conforms to the construction permit and when an
3 operation plan has been approved, the department shall issue
4 a permit to operate the high-hazard dam or reservoir,
5 containing such conditions on the safe operation of the dam
6 as it considers necessary.

7 NEW SECTION. Section 10. Periodic inspections.
8 (1) Any high-hazard dam, whether or not previously
9 permitted by the department, must be inspected as often as
10 considered necessary by the department, but at least once
11 every 5 years, in order to ensure the continued safe
12 operation of the dam.

13 (2) Periodic inspections required by this section must
14 be performed by a qualified engineer, who shall make a
15 report of the inspection to the department. If the
16 department finds that the dam conforms to current safety
17 standards, it shall issue or reissue, as the case may be, a
18 permit to continue operation of the dam, containing such
19 conditions on the safe operation of the dam as it considers
20 necessary.

21 (3) The owner is responsible for inspections required
22 under this section.

23 NEW SECTION. Section 11. Requested inspections --
24 costs -- limitations against unsafe structures. (1) At its
25 discretion or upon receipt of an affidavit complaining that

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

7 (2) If the complainant continues to request an
 8 inspection even though the department has determined under
 9 subsection (1) that the complaint is not meritorious, the
 10 department may make the inspection upon requiring the
 11 complainant to deposit with the department money sufficient
 12 to cover the costs of the inspection.

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

21 (4) If the dam or reservoir is not found to be
 22 defective after an inspection made under subsection (2), any
 23 money deposited by the complainant therefor must be paid to
 24 the general fund.

25 (5) If the inspection discloses defects in the dam or

1 reservoir that, in the judgment of the department,
 2 constitute an immediate hazard to life or property, the
 3 department may order:

4 (a) the draining of the dam or reservoir;

5 (b) the limitation or cessation of use of the dam or
 6 reservoir or any defective appurtenant works; or

7 (c) any other steps to eliminate the hazard until the
 8 dam, reservoir, or appurtenant works have been made safe and
 9 approved by the department.

10 NEW SECTION. Section 12. Emergency repairs or
 11 breaching. (1) In case of an emergency, the department may
 12 take any action necessary to safeguard life and property.
 13 This action must be commenced immediately by the owner, or
 14 by the department at the owner's expense if the owner fails
 15 to act. The department must be notified immediately of any
 16 proposed emergency repairs or breaching to be instituted by
 17 the owner.

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

24 NEW SECTION. Section 13. Municipality or county
 25 prohibited from regulation. No municipality or county may

1 regulate, supervise, or provide for the regulation or
 2 supervision of any dam or reservoir in this state or the
 3 construction, maintenance, or operation thereof or limit the
 4 size of any dam or reservoir or the amount of water that may
 5 be stored therein. This chapter does not prevent a
 6 municipality or county from adopting ordinances or
 7 regulations 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 14. Liability of owners for
 13 damage. (1) Except as provided in subsection (2), nothing
 14 in this chapter relieves an owner of a dam or reservoir of
 15 any legal duty, obligation, or liability incident to its
 16 ownership or operation, including any damages resulting from
 17 leakage or overflow of water or floods caused by the failure
 18 or rupture of the dam or reservoir.

19 (2) The owner of a dam or reservoir that has been
 20 permitted by the department in accordance with this chapter
 21 is not, in the absence of negligence, liable for damages
 22 resulting from flows of water from the dam or reservoir
 23 which are of insufficient magnitude to exceed the limits of
 24 the 100-year floodplain as defined in 76-5-103. In addition,
 25 the owner of any dam or reservoir that has been permitted by

1 the department in accordance with this chapter may, without
 2 incurring liability, allow passage through the reservoir of
 3 inflows without diminution.

4 NEW SECTION. Section 15. Permit cancellation. Failure
 5 to comply with the provisions of [section 6, 7, 8, 9, or 11]
 6 subjects the permit to cancellation at any time during the
 7 progress of construction or the operation of the dam. The
 8 department is authorized to cancel any permit if the
 9 provisions of [section 6, 7, 8, 9, or 11] have not been or
 10 are not being complied with, and the cancellation operates
 11 as a forfeiture of all rights acquired under and by virtue
 12 of any permit approved by the department.

13 NEW SECTION. Section 16. Penalty. A person who
 14 violates or refuses or neglects to comply with the
 15 provisions of this chapter or any rule or order of the
 16 department adopted or made pursuant to this chapter is
 17 guilty of a misdemeanor and is punishable as provided in
 18 46-18-212. Each day of a continuing violation constitutes a
 19 separate offense.

20 NEW SECTION. Section 17. Deposit of penalties and
 21 costs. All penalties and costs collected under this chapter
 22 must be deposited in the state general fund.

23 NEW SECTION. Section 18. Entry upon land. Any
 24 employee or agent of the department authorized by the
 25 director of the department may enter upon any land to carry

1 out the purposes of this chapter. The department or its
2 agent shall give reasonable notice to the landowner of the
3 intention to enter upon the land.

4 NEW SECTION. Section 19. Legal assistance. When
5 requested by the department, the attorney general or the
6 county attorneys within their respective counties shall
7 perform legal services and conduct legal proceedings
8 necessary to carry out the purposes of this chapter. The
9 department may also employ legal counsel to enforce this
10 chapter and to conduct proceedings under it.

11 NEW SECTION. Section 20. Rules. The department may
12 adopt rules to implement the provisions of this chapter,
13 including but not limited to rules to:

- 14 (1) classify high-hazard dams and reservoirs;
- 15 (2) review, approve, and issue permits;
- 16 (3) govern inspections under this chapter;
- 17 (4) establish safety standards for the design,
18 construction, operation, and maintenance of high-hazard dams
19 and reservoirs; and
- 20 (5) establish emergency preparedness and warning
21 procedures.

22 NEW SECTION. Section 21. Codification instruction.
23 Sections 1, 2, and 6 through 20 are intended to be codified
24 as an integral part of Title 85, chapter 15, and the
25 provisions of Title 85, chapter 15, apply to sections 1, 2,

1 and 6 through 20.

2 NEW SECTION. Section 22. Severability. If a part of
3 this act is invalid, all valid parts that are severable from
4 the invalid part remain in effect. If a part of this act is
5 invalid in one or more of its applications, the part remains
6 in effect in all valid applications that are severable from
7 the invalid applications.

8 NEW SECTION. Section 23. Repealer. Sections
9 85-15-103, 85-15-201 through 85-15-206, and 85-15-301
10 through 85-15-304, MCA, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. FNN414-85

FISCAL NOTE

Form BD-15

In compliance with a written request received February 13, 19 85, there is hereby submitted a Fiscal Note for S.B. 369 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 of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Requires any person proposing to construct a dam or reservoir with a capacity of 50 acre-feet or more to apply to the department for a determination of whether the dam is a high-hazard dam.

ASSUMPTIONS:

1. Approximately 100 applications for dams of 50 acre-feet or more will be received each year.
2. Three to five of these proposed dams will be determined to be high-hazard structures.
3. The department will inspect about 20 high-hazard dams annually at an estimated average cost of \$1,500 to the dam owner. Other inspections will be conducted, but without reimbursement.
4. Reviews and inspections will begin in FY1987.

FISCAL IMPACT:

	<u>FY1986</u>			<u>FY1987</u>		
Revenue:	<u>Current</u>	<u>Proposed</u>	<u>Increase</u>	<u>Current</u>	<u>Proposed</u>	<u>Increase</u>
Inspection Fees	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ 30,000	\$ 30,000
Expenditures:						
Personal Services	\$ -0-	\$ 12,755	\$ 12,755	\$ -0-	\$ 74,374	\$ 74,374
Operating Expenses	-0-	3,200	3,200	-0-	43,000	43,000
Total Increased Costs	\$ -0-	\$ 15,955	\$ 15,955	\$ -0-	\$ 117,374	\$ 117,374
General Fund	\$ -0-	\$ 15,955	\$ 15,955	\$ -0-	\$ 87,374	\$ 87,374

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Passage of this legislation would decrease the involvement of county attorneys in the enforcement of existing dam safety laws as this legislation transfers jurisdiction to DNRC.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Future fiscal year revenues and expenses would continue at about the same level as FY 1987.

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 16, 1985
SB369

APPROVED BY COMM. ON
NATURAL RESOURCES

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an existing dam or reservoir that raises or may raise the
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capacity of the reservoir.

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failure of which would be likely to cause loss of life.

SECOND READING



1 (10) "Inspection" means a visual or mechanical check, a
 2 measurement, a boring, or any other method necessary for
 3 determination of the adequacy of construction techniques,
 4 conformity of work with approved plans and specifications,
 5 or the safety and operating performance of a dam or
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 9 conservation--may--at--any--time--on--its--own--motion,--and--it
 10 shall,--upon--complaint--on--oath--being--made--to--the--department
 11 by--three--or--more--persons--residing--or--having--property--in--such
 12 location--that--their--homes--or--property--would--be--in--danger--of
 13 destruction--or--damage--in--event--of--flood--occurring--on--account
 14 of--the--breaking--of--any--dam,--dike,--or--reservoir--within--the
 15 state--and--that--they--have--reason--to--believe--said--dam,--dike,
 16 or--reservoir--is--in--an--unsafe--condition--or--that--it--is
 17 diverting--or--is--being--filled--with--water--to--such--an--extent--as
 18 to--render--it--unsafe,--immediately--examine--or--cause--to--be
 19 examined--the--dam,--dike,--or--reservoir,--if,--upon--the
 20 examination,--the--department--finds--that--the--dam,--dike,--or
 21 reservoir--is--unsafe--or--is--diverting--or--is--being--filled--with
 22 water--to--such--an--extent--as--to--render--it--unsafe,--it--shall
 23 notify--the--county--attorney--of--the--county--in--which--the--dam,
 24 dike,--or--reservoir--is--located,--setting--forth--its--findings,
 25 and--the--county--attorney--shall--immediately--take--the--necessary

1 steps to abate the danger and make the structure safe.
 2 (3) If either party is dissatisfied with the findings
 3 of the department, it may appeal to the district court of
 4 the district wherein the dam, dike, or reservoir is located,
 5 and the court shall hear and determine the matter at the
 6 earliest practical time, subject to the right of either
 7 party to appeal as in other civil cases; however, the
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 11 "85-15-104. Exemption of federal structures
 12 Exemptions. THE PROVISIONS OF 85-15-102(2) AND (3),
 13 85-15-103, AND THIS ACT DO NOT APPLY TO DAMS SUBJECT TO A
 14 PERMIT ISSUED PURSUANT TO 82-4-335 FOR THE PERIOD DURING
 15 WHICH THE DAM IS SUBJECT TO THE PERMIT. The provisions of
 16 85-15-102 and 85-15-103 shall [sections 6 through 20] do not
 17 apply to federal dams, dikes, and reservoirs which are
 18 subject to federal power commission inspections under
 19 federal laws, or to dams and reservoirs licensed and subject
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 21 In addition, the provisions of [sections 6 through 20] do
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10 NEW SECTION. Section 7. Preparation and approval of
 11 plans. (1) A person may not begin construction of a
 12 high-hazard dam as determined under [section 6] without
 13 first obtaining a construction permit from the department.

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

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

19 (b) other data and information required by the
 20 department.

21 (3) Within 60 calendar days after receipt of the
 22 application and any additional information requested by the
 23 department, the department shall:

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

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

4 NEW SECTION. Section 8. Inspection and reports during
5 construction. (1) An engineer must be in charge of and
6 responsible for inspections during construction of any
7 high-hazard dam.

8 (2) Inspections during construction must be performed
9 at intervals necessary to ensure conformity with the permit.
10 The engineer in charge or a qualified designee shall perform
11 the inspections.

12 (3) The department shall set procedures and
13 requirements for reporting information obtained from,
14 during, or as the result of an inspection. The engineer in
15 charge shall certify all reports to the department.

16 (4) The department may also inspect the dam during
17 construction to ensure conformity with the construction
18 permit.

19 (5) If the department finds that construction of the
20 high-hazard dam does not conform with the construction
21 permit, it may order that construction be stopped until
22 changes are made in conformity with the permit.

23 NEW SECTION. Section 9. Operating permit. (1) An
24 operation plan must be prepared by the owner and approved by
25 the department prior to operation of the dam or reservoir.

1 The operation plan must set forth at a minimum:

2 (a) a reservoir operation procedure;

3 (b) a maintenance procedure for the dam and
4 appurtenant works; and

5 (c) emergency procedures and warning plans.

6 (2) When construction is complete and if the dam or
7 reservoir conforms to the construction permit and when an
8 operation plan has been approved, the department shall issue
9 a permit to operate the high-hazard dam or reservoir,
10 containing such conditions on the safe operation of the dam
11 as it considers necessary.

12 NEW SECTION. Section 10. Periodic inspections.

13 (1) Any high-hazard dam, whether or not previously
14 permitted by the department, must be inspected as often as
15 considered necessary by the department, but at least once
16 every 5 years, in order to ensure the continued safe
17 operation of the dam.

18 (2) Periodic inspections required by this section must
19 be performed by a qualified engineer, who shall make a
20 report of the inspection to the department. If the
21 department finds that the dam conforms to current safety
22 standards, it shall issue or reissue, as the case may be, a
23 permit to continue operation of the dam, containing such
24 conditions on the safe operation of the dam as it considers
25 necessary.

1 (3) The owner is responsible for inspections required
2 under this section.

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

12 (2) If the complainant continues to request an
13 inspection even though the department has determined under
14 subsection (1) that the complaint is not meritorious, the
15 department may make the inspection upon requiring the
16 complainant to deposit with the department money sufficient
17 to cover the costs of the inspection.

18 (3) If the dam or reservoir is found to be defective,
19 the department may require the person who owns the dam or
20 reservoir to pay all or part of the expenses of inspection.
21 If the department requires such payment, it shall present a
22 bill of costs to the owner. The costs shall constitute a
23 lien upon the dam, reservoir, and other property of the
24 owner and may be collected by appropriate action in a court
25 of competent jurisdiction.

1 (4) If the dam or reservoir is not found to be
2 defective after an inspection made under subsection (2), any
3 money deposited by the complainant therefor must be paid to
4 the general fund.

5 (5) If the inspection discloses defects in the dam or
6 reservoir that, in the judgment of the department,
7 constitute an immediate hazard to life or property, the
8 department may order:

9 (a) the draining of the dam or reservoir;

10 (b) the limitation or cessation of use of the dam or
11 reservoir or any defective appurtenant works; or

12 (c) any other steps to eliminate the hazard until the
13 dam, reservoir, or appurtenant works have been made safe and
14 approved by the department.

15 NEW SECTION. Section 12. Emergency repairs or
16 breaching. (1) In case of an emergency, the department may
17 take any action necessary to safeguard life and property.
18 This action must be commenced immediately by the owner, or
19 by the department at the owner's expense if the owner fails
20 to act. The department must be notified immediately of any
21 proposed emergency repairs or breaching to be instituted by
22 the owner.

23 (2) All costs incurred by the department during an
24 emergency must be paid by the owner on receipt of a bill of
25 costs from the department. The costs are a lien upon the

1 dam, reservoir, and other property of the owner and may be
2 collected by appropriate action in a court of competent
3 jurisdiction.

4 NEW SECTION. Section 13. Municipality or county
5 prohibited from regulation. No municipality or county may
6 regulate, supervise, or provide for the regulation or
7 supervision of any dam or reservoir in this state or the
8 construction, maintenance, or operation thereof or limit the
9 size of any dam or reservoir or the amount of water that may
10 be stored therein. This chapter does not prevent a
11 municipality or county from adopting ordinances or
12 regulations regulating, supervising, or providing for the
13 regulation or supervision of dams and reservoirs that:

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

17 NEW SECTION. Section 14. Liability of owners for
18 damage. (1) Except as provided in subsection (2), nothing
19 in this chapter relieves an owner of a dam or reservoir of
20 any legal duty, obligation, or liability incident to its
21 ownership or operation, including any damages resulting from
22 leakage or overflow of water or floods caused by the failure
23 or rupture of the dam or reservoir.

24 (2) The owner of a dam or reservoir that has been
25 permitted by the department in accordance with this chapter

1 is not, in the absence of negligence, liable for damages
2 resulting from flows of water from the dam or reservoir
3 which are of insufficient magnitude to exceed the limits of
4 the 100-year floodplain as defined in 76-5-103. In addition,
5 the owner of any dam or reservoir that has been permitted by
6 the department in accordance with this chapter may, without
7 incurring liability, allow passage through the reservoir of
8 inflows without diminution.

9 NEW SECTION. Section 15. Permit cancellation. Failure
10 to comply with the provisions of [section 6, 7, 8, 9, or 11]
11 subjects the permit to cancellation at any time during the
12 progress of construction or the operation of the dam. The
13 department is authorized to cancel any permit if the
14 provisions of [section 6, 7, 8, 9, or 11] have not been or
15 are not being complied with, and the cancellation operates
16 as a forfeiture of all rights acquired under and by virtue
17 of any permit approved by the department.

18 NEW SECTION. Section 16. Penalty. A person who
19 violates or refuses or neglects to comply with the
20 provisions of this chapter or any rule or order of the
21 department adopted or made pursuant to this chapter is
22 guilty of a misdemeanor and is punishable as provided in
23 46-18-212. Each day of a continuing violation constitutes a
24 separate offense.

25 NEW SECTION. Section 17. Deposit of penalties and

1 costs. All penalties and costs collected under this chapter
2 must be deposited in the state general fund.

3 NEW SECTION. Section 18. Entry upon land. Any
4 employee or agent of the department authorized by the
5 director of the department may enter upon any land to carry
6 out the purposes of this chapter. The department or its
7 agent shall give reasonable notice to the landowner of the
8 intention to enter upon the land.

9 NEW SECTION. Section 19. Legal assistance. When
10 requested by the department, the attorney general or the
11 county attorneys within their respective counties shall
12 perform legal services and conduct legal proceedings
13 necessary to carry out the purposes of this chapter. The
14 department may also employ legal counsel to enforce this
15 chapter and to conduct proceedings under it.

16 NEW SECTION. Section 20. Rules. The department may
17 adopt rules to implement the provisions of this chapter,
18 including but not limited to rules to:

- 19 (1) classify high-hazard dams and reservoirs;
20 (2) review, approve, and issue permits;
21 (3) govern inspections under this chapter;
22 (4) establish safety standards for the design,
23 construction, operation, and maintenance of high-hazard dams
24 and reservoirs; and
25 (5) establish emergency preparedness and warning

1 procedures.

2 NEW SECTION. Section 21. Codification instruction.
3 Sections 1, 2, and 6 through 20 are intended to be codified
4 as an integral part of Title 85, chapter 15, and the
5 provisions of Title 85, chapter 15, apply to sections 1, 2,
6 and 6 through 20.

7 NEW SECTION. Section 22. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 23. Repealer. Sections
14 85-15-103, 85-15-201 through 85-15-206, and 85-15-301
15 through 85-15-304, MCA, are repealed.

-End-

SENATE BILL NO. 369

INTRODUCED BY NEUMAN, ELLISON, ECK, MOHAR, RAPP-SVRCEK, MAZUREK, HALLIGAN, MANNING, B. WILLIAMS, LANE, SCHULTZ, YELLOWTAIL, BLAYLOCK, SPAETH, HOLLIDAY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE SAFETY OF DAMS AND RESERVOIRS; 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 85-15-301 THROUGH 85-15-304, MCA."

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

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

NEW SECTION. Section 2. 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 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 resources and conservation provided for in Title 2, chapter 15, part 33.

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

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



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

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

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

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

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

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

21 "85-15-101. Dams and reservoirs -- how constructed. No
 22 person must may fill or procure to be filled with water any
 23 dam or reservoir which that is not so thoroughly and
 24 substantially constructed as to safely hold any water that
 25 may be turned therein."

1 Section 4. Section 85-15-102, MCA, is amended to read:
 2 "85-15-102. Construction in a secure manner. ~~(1)-A No~~
 3 ~~person, association, or corporation~~ may not construct or
 4 cause to be constructed a dam, dike, or reservoir for the
 5 purpose of accumulating, storing, appropriating, or
 6 diverting any of the waters of this state, except in a
 7 thorough, secure, and substantial manner.

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

1 ~~steps to abate the danger and make the structure safe.~~
 2 ~~(3) If either party is dissatisfied with the findings~~
 3 ~~of the department, it may appeal to the district court of~~
 4 ~~the district wherein the dam, dike, or reservoir is located,~~
 5 ~~and the court shall hear and determine the matter at the~~
 6 ~~earliest practical time, subject to the right of either~~
 7 ~~party to appeal as in other civil cases; however, the~~
 8 ~~judgment of the department shall control until the final~~
 9 ~~determination of the case."~~

10 Section 5. Section 85-15-104, MCA, is amended to read:

11 "85-15-104. Exemption of federal structures
 12 Exemptions. THE PROVISIONS OF 85-15-102(2) AND (3) 7
 13 85-15-103, AND THIS ACT AND [SECTIONS 1, 2, AND 6 THROUGH
 14 20] DO NOT APPLY TO DAMS SUBJECT TO A PERMIT ISSUED PURSUANT
 15 TO 82-4-335 FOR THE PERIOD DURING WHICH THE DAM IS SUBJECT
 16 TO THE PERMIT. The provisions of 85-15-102 and 85-15-103
 17 shall [sections 6 through 20] do not apply to federal dams,
 18 dikes, and reservoirs which are subject to federal power
 19 commission inspections under federal laws, or to dams and
 20 reservoirs licensed and subject to inspection by the federal
 21 energy regulatory commission. In addition, the provisions of
 22 [sections 6 through 20] do not apply until July 1, 1990, to
 23 high-hazard dams that have been inspected by the U.S. army
 24 corps of engineers pursuant to P.L. 92-367 and for which
 25 resultant dam safety reports have been submitted to the

1 owner."

2 NEW SECTION. Section 6. High-hazard dam --
 3 determination -- plans. Any person proposing to construct
 4 any dam or reservoir shall make application to the
 5 department for a determination of whether the dam or
 6 reservoir is a high-hazard dam. The application must include
 7 the information required by the department. The department
 8 shall make the determination required by this section within
 9 60 calendar days after a complete application is received by
 10 the department.

11 NEW SECTION. Section 7. Preparation and approval of
 12 plans. (1) A person may not begin construction of a
 13 high-hazard dam as determined under [section 6] without
 14 first obtaining a construction permit from the department.

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

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

20 (b) other data and information required by the
 21 department.

22 (3) Within 60 calendar days after receipt of the
 23 application and any additional information requested by the
 24 department, the department shall:

25 (a) issue a construction permit or deny the

1 application, as filed; or

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

5 NEW SECTION. Section 8. Inspection and reports during
6 construction. (1) An engineer must be in charge of and
7 responsible for inspections during construction of any
8 high-hazard dam.

9 (2) Inspections during construction must be performed
10 at intervals necessary to ensure conformity with the permit.
11 The engineer in charge or a qualified designee shall perform
12 the inspections.

13 (3) The department shall set procedures and
14 requirements for reporting information obtained from,
15 during, or as the result of an inspection. The engineer in
16 charge shall certify all reports to the department.

17 (4) The department may also inspect the dam during
18 construction to ensure conformity with the construction
19 permit.

20 (5) If the department finds that construction of the
21 high-hazard dam does not conform with the construction
22 permit, it may order that construction be stopped until
23 changes are made in conformity with the permit.

24 NEW SECTION. Section 9. Operating permit. (1) An
25 operation plan must be prepared by the owner and approved by

1 the department prior to operation of the dam or reservoir.

2 The operation plan must set forth at a minimum:

3 (a) a reservoir operation procedure;

4 (b) a maintenance procedure for the dam and
5 appurtenant works; and

6 (c) emergency procedures and warning plans.

7 (2) When construction is complete and if the dam or
8 reservoir conforms to the construction permit and when an
9 operation plan has been approved, the department shall issue
10 a permit to operate the high-hazard dam or reservoir,
11 containing such conditions on the safe operation of the dam
12 as it considers necessary.

13 NEW SECTION. Section 10. Periodic inspections.

14 (1) Any high-hazard dam, whether or not previously
15 permitted by the department, must be inspected as often as
16 considered necessary by the department, but at least once
17 every 5 years, in order to ensure the continued safe
18 operation of the dam.

19 (2) Periodic inspections required by this section must
20 be performed by a qualified engineer, who shall make a
21 report of the inspection to the department. If the
22 department finds that the dam conforms to current safety
23 standards, it shall issue or reissue, as the case may be, a
24 permit to continue operation of the dam, containing such
25 conditions on the safe operation of the dam as it considers

1 necessary.

2 (3) The owner is responsible for inspections required
3 under this section.

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

13 (2) If the complainant continues to request an
14 inspection even though the department has determined under
15 subsection (1) that the complaint is not meritorious, the
16 department may make the inspection upon requiring the
17 complainant to deposit with the department money sufficient
18 to cover the costs of the inspection.

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20 the department may require the person who owns the dam or
21 reservoir to pay all or part of the expenses of inspection.
22 If the department requires such payment, it shall present a
23 bill of costs to the owner. The costs shall constitute a
24 lien upon the dam, reservoir, and other property of the
25 owner and may be collected by appropriate action in a court

1 of competent jurisdiction.

2 (4) If the dam or reservoir is not found to be
3 defective after an inspection made under subsection (2), any
4 money deposited by the complainant therefor must be paid to
5 the general fund.

6 (5) If the inspection discloses defects in the dam or
7 reservoir that, in the judgment of the department,
8 constitute an immediate hazard to life or property, the
9 department may order:

10 (a) the draining of the dam or reservoir;

11 (b) the limitation or cessation of use of the dam or
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13 (c) any other steps to eliminate the hazard until the
14 dam, reservoir, or appurtenant works have been made safe and
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10 size of any dam or reservoir or the amount of water that may
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19 damage. (1) Except as provided in subsection (2), nothing
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21 any legal duty, obligation, or liability incident to its
22 ownership or operation, including any damages resulting from
23 leakage or overflow of water or floods caused by the failure
24 or rupture of the dam or reservoir.

- 25 (2) The owner of a dam or reservoir that has been

1 permitted by the department in accordance with this chapter
2 is not, in the absence of negligence, liable for damages
3 resulting from flows of water from the dam or reservoir
4 which are of insufficient magnitude to exceed the limits of
5 the 100-year floodplain as defined in 76-5-103. In addition,
6 the owner of any dam or reservoir that has been permitted by
7 the department in accordance with this chapter may, without
8 incurring liability, allow passage through the reservoir of
9 inflows without diminution.

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11 to comply with the provisions of [section 6, 7, 8, 9, or 11]
12 subjects the permit to cancellation at any time during the
13 progress of construction or the operation of the dam. The
14 department is authorized to cancel any permit if the
15 provisions of [section 6, 7, 8, 9, or 11] have not been or
16 are not being complied with, and the cancellation operates
17 as a forfeiture of all rights acquired under and by virtue
18 of any permit approved by the department.

19 NEW SECTION. Section 16. Penalty. A person who
20 violates or refuses or neglects to comply with the
21 provisions of this chapter or any rule or order of the
22 department adopted or made pursuant to this chapter is
23 guilty of a misdemeanor and is punishable as provided in
24 46-18-212. Each day of a continuing violation constitutes a
25 separate offense.

1 NEW SECTION. Section 17. Deposit of penalties and
2 costs. All penalties and costs collected under this chapter
3 must be deposited in the state general fund.

4 NEW SECTION. Section 18. Entry upon land. Any
5 employee or agent of the department authorized by the
6 director of the department may enter upon any land to carry
7 out the purposes of this chapter. The department or its
8 agent shall give reasonable notice to the landowner of the
9 intention to enter upon the land.

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12 county attorneys within their respective counties shall
13 perform legal services and conduct legal proceedings
14 necessary to carry out the purposes of this chapter. The
15 department may also employ legal counsel to enforce this
16 chapter and to conduct proceedings under it.

17 NEW SECTION. Section 20. Rules. The department may
18 adopt rules to implement the provisions of this chapter,
19 including but not limited to rules to:

- 20 (1) classify high-hazard dams and reservoirs;
21 (2) review, approve, and issue permits;
22 (3) govern inspections under this chapter;
23 (4) establish safety standards for the design,
24 construction, operation, and maintenance of high-hazard dams
25 and reservoirs; and

1 (5) establish emergency preparedness and warning
2 procedures.

3 NEW SECTION. Section 21. Codification instruction.
4 Sections 1, 2, and 6 through 20 are intended to be codified
5 as an integral part of Title 85, chapter 15, and the
6 provisions of Title 85, chapter 15, apply to sections 1, 2,
7 and 6 through 20.

8 NEW SECTION. Section 22. Severability. If a part of
9 this act is invalid, all valid parts that are severable from
10 the invalid part remain in effect. If a part of this act is
11 invalid in one or more of its applications, the part remains
12 in effect in all valid applications that are severable from
13 the invalid applications.

14 NEW SECTION. Section 23. Repealer. Sections
15 85-15-103, 85-15-201 through 85-15-206, and 85-15-301
16 through 85-15-304, MCA, are repealed.

-End-

HOUSE STANDING COMMITTEE REPORT

PAGE 1 of March 18 1985

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration SENATE BILL 369 Bill No.

THIRD reading copy (BLUE color)

AN ACT TO PROVIDE FOR THE SAFETY OF DAMS AND RESERVOIRS

Respectfully report as follows: That SENATE BILL 369 Bill No.

BE AMENDED AS FOLLOWS:

- 1) Title, line 8. Strike: "SECTIONS" Insert: "SECTION"
2) Title, lines 9 and 10. Strike: "85-15-201" through "85-15-304,"
3) Page 8, line 1. Following: "of the" Insert: "high-hazard"
4) Page 12, line 4. Strike: "insufficient" Insert: "sufficient"

CONTINUED ON FOLLOWING PAGE STATEMENT OF INTENT ATTACHED

D. Iverson Chairman

PAGE 2 of 3 MARCH 18 1985

AMENDMENTS TO SB 369 (Continued)

- 4) Page 14, line 14. Strike: "Sections" Insert: "Section"
5) Page 14, lines 15 and 16. Strike: "85-15-201" through "85-15-304," Strike: "are" Insert: "is"

AND AS AMENDED, BE CONCURRED IN

Handwritten initials and date: 5/2 3/25

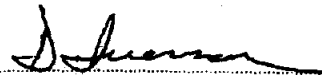
Rep. DENNIS IVERSON, Chairman

March 18 19 85

STATEMENT OF INTENT - SENATE BILL 369

A Statement of Intent is required for this bill because it delegates rulemaking authority to the Department of Natural Resources and Conservation in section 20.

It is the intent of the legislature that the department adopt rules relating to the classification of dams and reservoirs to determine whether dams and reservoirs are to be classified as high-hazard under the bill, rules governing the content, form, and procedure for applications for dam and reservoir classification and permits to be issued under the bill, rules governing criteria to be used by the owners of dams and reservoirs when conducting inspections of the high-hazard dams and reservoirs and submitting reports to the department, rules establishing safety standards for the design, construction, operation and maintenance of high-hazard dams and reservoirs, rules establishing emergency preparedness and warning procedures to be implemented by owners of high-hazard dams and reservoirs in cases of danger to people or property, and other rules as may be necessary for the department to implement the bill.


.....
Chairman.

COMMITTEE OF THE WHOLE AMENDMENT

HOUSE

3-30-85
DATE

4:00
TIME

MR. CHAIRMAN: I MOVE TO AMEND Senate Bill No. 369

3rd reading copy (blue) as follows:
Color

- 1. Page 13, line 25.
Strike: "and"
- 2. Page 14, line 2.
Following: "procedures"
Insert: "; and (6) establish fees commensurate with costs to cover inspections under this chapter"

ADOPT
REJECT

BQA

Gary Spauth
Rep. Spauth

1 STATEMENT OF INTENT

2 SENATE BILL 369

3 House Natural Resources Committee
4

5 A statement of intent is required for this bill because
6 it delegates rulemaking authority to the department of
7 natural resources and conservation in section 20.

8 It is the intent of the legislature that the department
9 adopt rules relating to the classification of dams and
10 reservoirs to determine whether dams and reservoirs are to
11 be classified as high-hazard under the bill; rules governing
12 the content, form, and procedure for applications for dam
13 and reservoir classification and permits to be issued under
14 the bill; rules governing criteria to be used by the owners
15 of dams and reservoirs when conducting inspections of the
16 high-hazard dams and reservoirs and submitting reports to
17 the department; rules establishing safety standards for the
18 design, construction, operation, and maintenance of
19 high-hazard dams and reservoirs; rules establishing
20 emergency preparedness and warning procedures to be
21 implemented by owners of high-hazard dams and reservoirs in
22 cases of danger to people or property; and other rules as
23 may be necessary for the department to implement the bill.

1 SENATE BILL NO. 369

2 INTRODUCED BY NEUMAN, ELLISON, ECK, MOHAR, RAPP-SVRCEK,
3 MAZUREK, HALLIGAN, MANNING, B. WILLIAMS, LANE, SCHULTZ,
4 YELLOWTAIL, BLAYLOCK, SPAETH, HOLLIDAY

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
7 SAFETY OF DAMS AND RESERVOIRS; AMENDING SECTIONS 85-15-101,
8 85-15-102, AND 85-15-104, MCA; AND REPEALING SECTIONS
9 SECTION 85-15-103, ~~85-15-201~~---THROUGH---~~85-15-206~~---AND
10 ~~85-15-301~~---THROUGH---~~85-15-304~~, MCA."

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

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

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

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

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

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

1 (c) a low-level outlet; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 "85-15-101. Dams and reservoirs -- how constructed. No
 22 person must may fill or procure to be filled with water any
 23 dam or reservoir which that is not so thoroughly and
 24 substantially constructed as to safely hold any water that
 25 may be turned therein."

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

2 "85-15-102. Construction in a secure manner. ~~(1)~~-A No
 3 ~~person, association, or corporation~~ may not construct or
 4 cause to be constructed a dam, dike, or reservoir for the
 5 purpose of accumulating, storing, appropriating, or
 6 diverting any of the waters of this state, except in a
 7 thorough, secure, and substantial manner.

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

1 steps to abate the danger and make the structure safer.
 2 ~~{3}--If either party is dissatisfied with the findings~~
 3 ~~of the department, it may appeal to the district court of~~
 4 ~~the district wherein the dam, dike, or reservoir is located,~~
 5 ~~and the court shall hear and determine the matter at the~~
 6 ~~earliest practical time, subject to the right of either~~
 7 ~~party to appeal as in other civil cases; however, the~~
 8 ~~judgment of the department shall control until the final~~
 9 ~~determination of the case."~~

10 Section 5. Section 85-15-104, MCA, is amended to read:

11 "85-15-104. Exemption of federal structures
 12 Exemptions. THE PROVISIONS OF 85-15-102(2) AND {3},
 13 85-15-103, AND THIS ACT AND [SECTIONS 1, 2, AND 6 THROUGH
 14 20] DO NOT APPLY TO DAMS SUBJECT TO A PERMIT ISSUED PURSUANT
 15 TO 82-4-335 FOR THE PERIOD DURING WHICH THE DAM IS SUBJECT
 16 TO THE PERMIT. The provisions of ~~85-15-102 and 85-15-103~~
 17 ~~shall [sections 6 through 20] do not apply to federal dams,~~
 18 ~~dikes, and reservoirs which are subject to federal power~~
 19 ~~commission inspections under federal laws, or to dams and~~
 20 ~~reservoirs licensed and subject to inspection by the federal~~
 21 ~~energy regulatory commission. In addition, the provisions of~~
 22 ~~[sections 6 through 20] do not apply until July 1, 1990, to~~
 23 ~~high-hazard dams that have been inspected by the U.S. army~~
 24 ~~corps of engineers pursuant to P.L. 92-367 and for which~~
 25 ~~resultant dam safety reports have been submitted to the~~

1 owner."

2 NEW SECTION. Section 6. High-hazard dam --
 3 determination -- plans. Any person proposing to construct
 4 any dam or reservoir shall make application to the
 5 department for a determination of whether the dam or
 6 reservoir is a high-hazard dam. The application must include
 7 the information required by the department. The department
 8 shall make the determination required by this section within
 9 60 calendar days after a complete application is received by
 10 the department.

11 NEW SECTION. Section 7. Preparation and approval of
 12 plans. (1) A person may not begin construction of a
 13 high-hazard dam as determined under [section 6] without
 14 first obtaining a construction permit from the department.

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

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

20 (b) other data and information required by the
 21 department.

22 (3) Within 60 calendar days after receipt of the
 23 application and any additional information requested by the
 24 department, the department shall:

25 (a) issue a construction permit or deny the

1 application, as filed; or

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

5 NEW SECTION. Section 8. Inspection and reports during
6 construction. (1) An engineer must be in charge of and
7 responsible for inspections during construction of any
8 high-hazard dam.

9 (2) Inspections during construction must be performed
10 at intervals necessary to ensure conformity with the permit.
11 The engineer in charge or a qualified designee shall perform
12 the inspections.

13 (3) The department shall set procedures and
14 requirements for reporting information obtained from,
15 during, or as the result of an inspection. The engineer in
16 charge shall certify all reports to the department.

17 (4) The department may also inspect the dam during
18 construction to ensure conformity with the construction
19 permit.

20 (5) If the department finds that construction of the
21 high-hazard dam does not conform with the construction
22 permit, it may order that construction be stopped until
23 changes are made in conformity with the permit.

24 NEW SECTION. Section 9. Operating permit. (1) An
25 operation plan must be prepared by the owner and approved by

1 the department prior to operation of the HIGH-HAZARD dam or
2 reservoir. The operation plan must set forth at a minimum:

3 (a) a reservoir operation procedure;

4 (b) a maintenance procedure for the dam and
5 appurtenant works; and

6 (c) emergency procedures and warning plans.

7 (2) When construction is complete and if the dam or
8 reservoir conforms to the construction permit and when an
9 operation plan has been approved, the department shall issue
10 a permit to operate the high-hazard dam or reservoir,
11 containing such conditions on the safe operation of the dam
12 as it considers necessary.

13 NEW SECTION. Section 10. Periodic inspections.

14 (1) Any high-hazard dam, whether or not previously
15 permitted by the department, must be inspected as often as
16 considered necessary by the department, but at least once
17 every 5 years, in order to ensure the continued safe
18 operation of the dam.

19 (2) Periodic inspections required by this section must
20 be performed by a qualified engineer, who shall make a
21 report of the inspection to the department. If the
22 department finds that the dam conforms to current safety
23 standards, it shall issue or reissue, as the case may be, a
24 permit to continue operation of the dam, containing such
25 conditions on the safe operation of the dam as it considers

1 necessary.

2 (3) The owner is responsible for inspections required
3 under this section.

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

13 (2) If the complainant continues to request an
14 inspection even though the department has determined under
15 subsection (1) that the complaint is not meritorious, the
16 department may make the inspection upon requiring the
17 complainant to deposit with the department money sufficient
18 to cover the costs of the inspection.

19 (3) If the dam or reservoir is found to be defective,
20 the department may require the person who owns the dam or
21 reservoir to pay all or part of the expenses of inspection.
22 If the department requires such payment, it shall present a
23 bill of costs to the owner. The costs shall constitute a
24 lien upon the dam, reservoir, and other property of the
25 owner and may be collected by appropriate action in a court

1 of competent jurisdiction.

2 (4) If the dam or reservoir is not found to be
3 defective after an inspection made under subsection (2), any
4 money deposited by the complainant therefor must be paid to
5 the general fund.

6 (5) If the inspection discloses defects in the dam or
7 reservoir that, in the judgment of the department,
8 constitute an immediate hazard to life or property, the
9 department may order:

- 10 (a) the draining of the dam or reservoir;
11 (b) the limitation or cessation of use of the dam or
12 reservoir or any defective appurtenant works; or
13 (c) any other steps to eliminate the hazard until the
14 dam, reservoir, or appurtenant works have been made safe and
15 approved by the department.

16 NEW SECTION. Section 12. Emergency repairs or
17 breaching. (1) In case of an emergency, the department may
18 take any action necessary to safeguard life and property.
19 This action must be commenced immediately by the owner, or
20 by the department at the owner's expense if the owner fails
21 to act. The department must be notified immediately of any
22 proposed emergency repairs or breaching to be instituted by
23 the owner.

24 (2) All costs incurred by the department during an
25 emergency must be paid by the owner on receipt of a bill of

1 costs from the department. The costs are a lien upon the
2 dam, reservoir, and other property of the owner and may be
3 collected by appropriate action in a court of competent
4 jurisdiction.

5 NEW SECTION. Section 13. Municipality or county
6 prohibited from regulation. No municipality or county may
7 regulate, supervise, or provide for the regulation or
8 supervision of any dam or reservoir in this state or the
9 construction, maintenance, or operation thereof or limit the
10 size of any dam or reservoir or the amount of water that may
11 be stored therein. This chapter does not prevent a
12 municipality or county from adopting ordinances or
13 regulations regulating, supervising, or providing for the
14 regulation or supervision of dams and reservoirs that:

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

18 NEW SECTION. Section 14. Liability of owners for
19 damage. (1) Except as provided in subsection (2), nothing in
20 this chapter relieves an owner of a dam or reservoir of any
21 legal duty, obligation, or liability incident to its
22 ownership or operation, including any damages resulting from
23 leakage or overflow of water or floods caused by the failure
24 or rupture of the dam or reservoir.

- 25 (2) The owner of a dam or reservoir that has been

1 permitted by the department in accordance with this chapter
2 is not, in the absence of negligence, liable for damages
3 resulting from flows of water from the dam or reservoir
4 which are of ~~insufficient~~ SUFFICIENT magnitude to exceed the
5 limits of the 100-year floodplain as defined in 76-5-103. In
6 addition, the owner of any dam or reservoir that has been
7 permitted by the department in accordance with this chapter
8 may, without incurring liability, allow passage through the
9 reservoir of inflows without diminution.

10 NEW SECTION. Section 15. Permit cancellation. Failure
11 to comply with the provisions of [section 6, 7, 8, 9, or 11]
12 subjects the permit to cancellation at any time during the
13 progress of construction or the operation of the dam. The
14 department is authorized to cancel any permit if the
15 provisions of [section 6, 7, 8, 9, or 11] have not been or
16 are not being complied with, and the cancellation operates
17 as a forfeiture of all rights acquired under and by virtue
18 of any permit approved by the department.

19 NEW SECTION. Section 16. Penalty. A person who
20 violates or refuses or neglects to comply with the
21 provisions of this chapter or any rule or order of the
22 department adopted or made pursuant to this chapter is
23 guilty of a misdemeanor and is punishable as provided in
24 46-18-212. Each day of a continuing violation constitutes a
25 separate offense.

1 NEW SECTION. Section 17. Deposit of penalties and
2 costs. All penalties and costs collected under this chapter
3 must be deposited in the state general fund.

4 NEW SECTION. Section 18. Entry upon land. Any
5 employee or agent of the department authorized by the
6 director of the department may enter upon any land to carry
7 out the purposes of this chapter. The department or its
8 agent shall give reasonable notice to the landowner of the
9 intention to enter upon the land.

10 NEW SECTION. Section 19. Legal assistance. When
11 requested by the department, the attorney general or the
12 county attorneys within their respective counties shall
13 perform legal services and conduct legal proceedings
14 necessary to carry out the purposes of this chapter. The
15 department may also employ legal counsel to enforce this
16 chapter and to conduct proceedings under it.

17 NEW SECTION. Section 20. Rules. The department may
18 adopt rules to implement the provisions of this chapter,
19 including but not limited to rules to:

- 20 (1) classify high-hazard dams and reservoirs;
- 21 (2) review, approve, and issue permits;
- 22 (3) govern inspections under this chapter;
- 23 (4) establish safety standards for the design,
24 construction, operation, and maintenance of high-hazard dams
25 and reservoirs; and

1 (5) establish emergency preparedness and warning
2 procedures; AND

3 (6) ESTABLISH FEES COMMENSURATE WITH COSTS TO COVER
4 INSPECTIONS UNDER THIS CHAPTER.

5 NEW SECTION. Section 21. Codification instruction.
6 Sections 1, 2, and 6 through 20 are intended to be codified
7 as an integral part of Title 85, chapter 15, and the
8 provisions of Title 85, chapter 15, apply to sections 1, 2,
9 and 6 through 20.

10 NEW SECTION. Section 22. Severability. If a part of
11 this act is invalid, all valid parts that are severable from
12 the invalid part remain in effect. If a part of this act is
13 invalid in one or more of its applications, the part remains
14 in effect in all valid applications that are severable from
15 the invalid applications.

16 NEW SECTION. Section 23. Repealer. Sections SECTION
17 85-15-103, 85-15-201---through--85-15-206,--and--85-15-301
18 through-85-15-304, MCA, are IS repealed.

-End-