

HOUSE BILL NO. 84

INTRODUCED BY FAGG
BY REQUEST OF THE WATER POLICY COMMITTEE

IN THE HOUSE

DECEMBER 23, 1992	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
JANUARY 4, 1993	FIRST READING.
JANUARY 14, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 15, 1993	PRINTING REPORT.
JANUARY 16, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
JANUARY 19, 1993	SECOND READING, DO PASS AS AMENDED.
JANUARY 20, 1993	ENGROSSING REPORT.
JANUARY 21, 1993	THIRD READING, PASSED. AYES, 88; NOES, 7.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 16, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 17, 1993	SECOND READING, CONCURRED IN.
MARCH 18, 1993	THIRD READING, CONCURRED IN. AYES, 42; NOES, 7.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
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APRIL 2, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 84

INTRODUCED BY FAGG

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DAM SAFETY ACT; REVISING THE AUTHORITY OF THE DISTRICT COURT AND COUNTY COMMISSIONERS TO CONSIDER DAM SAFETY COMPLAINTS; AMENDING SECTIONS 85-15-106, 85-15-107, 85-15-209, 85-15-211, 85-15-212, 85-15-213, AND 85-15-216, MCA; AND REPEALING SECTIONS 85-15-306, 85-15-307, 85-15-308, 85-15-309, 85-15-310, 85-15-311, 85-15-402, 85-15-403, 85-15-404, AND 85-15-501, MCA."

STATEMENT OF INTENT

A statement of intent is required to provide guidance to the department of natural resources and conservation in adopting rules to implement this bill. It is the intent of the legislature to provide a uniform process for complaints regarding unsafe dams and to reduce the potential for nuisance actions against dam owners. It is further the intent of the legislature to authorize the department to investigate all complaints regarding unsafe dams.

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

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

"85-15-106. Definitions. Unless the context requires

otherwise, in this chapter the following definitions apply:

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

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

(a) a spillway, either in the dam or separate from it;

(b) the reservoir and its rim;

(c) a low-level outlet; and

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

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

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

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

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

1 any dam or reservoir.

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

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

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

13 (10) "Inspection" means a visual or mechanical check, a
14 measurement, a boring, or any other method necessary for
15 determination of the adequacy of construction techniques,
16 conformity of work with approved plans and specifications,
17 or the safety and operating performance of a dam or
18 reservoir.

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

22 (12) "Person" means an individual, association,
23 partnership, corporation, business trust, state agency,
24 political subdivision, utility, municipal or quasi-municipal
25 corporation, or any other entity or any authorized agent,

1 lessee, or trustee of any of the foregoing.

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

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

8 **Section 2.** Section 85-15-107, MCA, is amended to read:

9 "85-15-107. Exemptions. (1) The provisions of
10 ~~85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209~~
11 ~~through 85-15-216, 85-15-305, 85-15-401, 85-15-501,--and~~
12 ~~85-15-502, and [section 8]~~ do not apply to:

13 (a) dams subject to a permit issued pursuant to
14 82-4-335 for the period during which the dam is subject to
15 the permit;

16 (b) ~~The--provisions--of--85-15-108--through--85-15-110,~~
17 ~~85-15-209---through---85-15-216,---85-15-305,---85-15-401,~~
18 ~~85-15-501,--and--85-15-502--do--not--apply--to~~ federal dams and
19 ~~reservoirs,--to--nonfederal--dams--and--reservoirs--located--on~~
20 ~~federal--lands--if--they--are--subject--to--a--dam--safety--review--by~~
21 ~~a--federal--agency,--or--to;~~

22 (c) dams and reservoirs licensed and subject to
23 inspection by the federal energy regulatory commission--~~The~~
24 ~~provisions---of---85-15-105,--85-15-106,--85-15-108--through~~
25 ~~85-15-110,---85-15-209---through---85-15-216,---85-15-305,~~

~~85-15-401, 85-15-501, and 85-15-502 do not apply to, or~~

~~(d) dams that are required to obtain a certificate of environmental compatibility and public need pursuant to 75-20-201 for the period during which the dam is subject to the certificate. In addition, the provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply until July 1, 1990, to high-hazard dams that have been inspected by the U.S. Army Corps of Engineers pursuant to P.H.R. 92-367 and for which resultant dam safety reports have been submitted to the owner.~~

(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401, 85-15-502, and [section 8] do not apply to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency."

Section 3. Section 85-15-209, MCA, is amended to read:

"85-15-209. High-hazard dam -- determination. Any A person proposing to construct any a dam or reservoir with an impounding capacity of 50 acre-feet or more measured at the maximum normal operating pool shall make application to the department for a determination of whether the dam or reservoir is a high-hazard dam. The application must include the information required by the department. The department shall make the determination required by this section within

60 calendar days after a complete application is received by the department."

Section 4. Section 85-15-211, MCA, is amended to read:

"85-15-211. Inspection and reports during construction.

(1) An engineer must be in charge of and responsible for inspections during construction of any high-hazard dam.

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

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

(4) The department may also inspect the high-hazard dam during construction to ensure conformity with the construction permit.

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

Section 5. Section 85-15-212, MCA, is amended to read:

"85-15-212. Operating permit. (1) An operation plan must be prepared by the owner and approved by the department prior to operation of the high-hazard dam or reservoir. The

operation plan must set forth at a minimum:

(a) a reservoir operation procedure;

(b) a maintenance procedure for the high-hazard dam and appurtenant works; and

(c) emergency procedures and warning plans.

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

Section 6. Section 85-15-213, MCA, is amended to read:

"85-15-213. Periodic inspections after construction.

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

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

operation of the high-hazard dam as it considers necessary.

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

Section 7. Section 85-15-216, MCA, is amended to read:

"85-15-216. High-hazard dam Permit permit cancellation.

Failure to comply with the provisions of 85-15-209 through 85-15-212 or 85-15-214 subjects the permit to cancellation at any time during the progress of construction or the operation of the high-hazard dam. The department is authorized to cancel any permit if the provisions of 85-15-209 through 85-15-212 or 85-15-214 have not been or are not being complied with, and the cancellation operates as a forfeiture of all rights acquired under and by virtue of any permit approved by the department."

NEW SECTION. Section 8. Civil penalty. The owner of a dam with an impounding capacity of greater than 50 acre-feet or more measured at the maximum normal operating pool who fails to comply with a provision of this chapter or a rule or order of the department adopted pursuant to this chapter is subject to a civil penalty not to exceed \$1,000. Each day of violation is a separate offense.

NEW SECTION. Section 9. Repealer. Sections 85-15-306, 85-15-307, 85-15-308, 85-15-309, 85-15-310, 85-15-311, 85-15-402, 85-15-403, 85-15-404, and 85-15-501, MCA, are repealed.

1 NEW SECTION. **Section 10.** Codification instruction.
2 [Section 8] is intended to be codified as an integral part
3 of Title 85, chapter 15, part 5, and the provisions of Title
4 85, chapter 15, part 5, apply to [section 8].

5 NEW SECTION. **Section 11.** Coordination instruction. If
6 _____ Bill _____ [LC 0949] is passed and approved and if it
7 includes a section amending 85-15-107 and instituting a
8 civil penalty for a violation of the dam safety act, then
9 [sections 8 and 10 of this act] are void.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0084, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill provides for the consolidation of complaints concerning dam safety to the Department of Natural Resources and Conservation (DNRC). The legislation also provides for a civil penalty to be assessed by the DNRC for failure to comply with the Montana Dam Safety Act.

ASSUMPTIONS:

1. DNRC assumes that it will continue to get one to two complaints per year as has been experienced in the past few years. Therefore, no additional cost is anticipated.
2. Complaints will be resolved without having to go through District Court.

FISCAL IMPACT: No fiscal impact is anticipated.

Expenditures: No additional state expenditures are anticipated. Investigation costs would not change.

Revenues: Civil penalties assessed would be deposited in the general fund. The amount of civil penalties to be levied cannot be estimated.

Net Impact: The general fund will receive all funds from civil penalties. It is anticipated that there will not be a significant increase in revenue.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: No local impact. Only one or two complaints are received annually. Counties would receive one-half of any civil penalties collected in justice courts per new section 8.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: This bill would eliminate overlapping responsibilities for resolving complaints concerning unsafe dams.

David M. Lewis 1-7-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Russell C. Fagg 1/8/93
Russell Fagg, PRIMARY SPONSOR DATE

Fiscal Note for HB0084, as introduced

HB 84

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 84

INTRODUCED BY FAGG

BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DAM SAFETY ACT; REVISING THE AUTHORITY OF THE DISTRICT COURT AND COUNTY COMMISSIONERS TO CONSIDER DAM SAFETY COMPLAINTS; CHANGING THE TERM "HIGH-HAZARD DAM" TO "CLASS 2 DAM"; AMENDING SECTIONS 85-15-106, 85-15-107, 85-15-209, 85-15-211, 85-15-212, 85-15-213, AND 85-15-216, MCA; AND REPEALING SECTIONS 85-15-306, 85-15-307, 85-15-308, 85-15-309, 85-15-310, 85-15-311, 85-15-402, 85-15-403, 85-15-404, AND 85-15-501, MCA."

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

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

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

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

(6) "Emergency" means any a threat to life caused by

1 the condition of a dam or reservoir or by present or
2 imminent floods that threaten the structural integrity of
3 any dam or reservoir.

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

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

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

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

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

24 (12) "Person" means an individual, association,
25 partnership, corporation, business trust, state agency,

1 political subdivision, utility, municipal or quasi-municipal
2 corporation, or any other entity or any authorized agent,
3 lessee, or trustee of any of the foregoing.

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

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

10 **Section 2.** Section 85-15-107, MCA, is amended to read:

11 "85-15-107. Exemptions. (1) The provisions of
12 ~~85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209~~
13 ~~through 85-15-216, 85-15-305, 85-15-401, 85-15-501,--and~~
14 ~~85-15-502, and (section 8)~~ do not apply to:

15 (a) dams subject to a permit issued pursuant to
16 82-4-335 for the period during which the dam is subject to
17 the permit;

18 (b) ~~the--provisions--of--85-15-108--through--85-15-110,~~
19 ~~85-15-209---through---85-15-216,---85-15-305,---85-15-401,~~
20 ~~85-15-501,--and--85-15-502--do-not-apply-to~~ federal dams and
21 ~~reservoirs,--to-nonfederal-dams--and--reservoirs--located--on~~
22 ~~federal--lands-if-they-are-subject-to-a-dam-safety-review-by~~
23 ~~a-federal-agency,--or-to;~~

24 (c) dams and reservoirs licensed and subject to
25 inspection by the federal energy regulatory commission--The

~~provisions--of--85-15-105,--85-15-106,--85-15-108---through
85-15-110,---85-15-209---through---85-15-216,---85-15-305,
85-15-401,--85-15-501,--and--85-15-502--do--not--apply--to; or~~

(d) dams that are required to obtain a certificate of environmental compatibility and public need pursuant to 75-20-201 for the period during which the dam is subject to the certificate. ~~In--addition, the provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply until July 1, 1990, to high-hazard dams that have been inspected by the U.S. Army Corps of Engineers pursuant to P.L. 92-367 and for which resultant dam safety reports have been submitted to the owner.~~

(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401, 85-15-502, and [section 8] do not apply to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency."

Section 3. Section 85-15-209, MCA, is amended to read:

"85-15-209. High-hazard dam -- determination. Any A person proposing to construct any a dam or reservoir with an impounding capacity of 50 acre-feet or more measured at the maximum normal operating pool shall make application to the department for a determination of whether the dam or reservoir is a high-hazard dam. The application must include

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

Section 4. Section 85-15-211, MCA, is amended to read:

"85-15-211. Inspection and reports during construction.

(1) An engineer must be in charge of and responsible for inspections during construction of any high-hazard dam.

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

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

(4) The department may also inspect the high-hazard dam during construction to ensure conformity with the construction permit.

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

Section 5. Section 85-15-212, MCA, is amended to read:

"85-15-212. Operating permit. (1) An operation plan

1 must be prepared by the owner and approved by the department
2 prior to operation of the high-hazard dam or reservoir. The
3 operation plan must set forth at a minimum:

4 (a) a reservoir operation procedure;

5 (b) a maintenance procedure for the high-hazard dam and
6 appurtenant works; and

7 (c) emergency procedures and warning plans.

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

14 **Section 6.** Section 85-15-213, MCA, is amended to read:

15 "85-15-213. Periodic inspections after construction.

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

21 (2) Periodic inspections required by this section must
22 be performed by a qualified engineer, who shall make a
23 report of the inspection to the department. If the
24 department finds that the high-hazard dam conforms to
25 current safety standards, it shall issue or reissue, as the

1 case may be, a permit to continue operation of the
2 high-hazard dam, containing such conditions on the safe
3 operation of the high-hazard dam as it considers necessary.

4 (3) The owner is responsible for inspections required
5 under this section."

6 **Section 7.** Section 85-15-216, MCA, is amended to read:

7 "85-15-216. High-hazard dam Permit permit cancellation.

8 Failure to comply with the provisions of 85-15-209 through
9 85-15-212 or 85-15-214 subjects the permit to cancellation
10 at any time during the progress of construction or the
11 operation of the high-hazard dam. The department is
12 authorized to cancel any permit if the provisions of
13 85-15-209 through 85-15-212 or 85-15-214 have not been or
14 are not being complied with, and the cancellation operates
15 as a forfeiture of all rights acquired under and by virtue
16 of any permit approved by the department."

17 **NEW SECTION. Section 8.** Civil penalty. The owner of a
18 dam with an impounding capacity of greater than 50 acre-feet
19 or more measured at the maximum normal operating pool who
20 fails to comply with a provision of this chapter or a rule
21 or order of the department adopted pursuant to this chapter
22 is subject to a civil penalty not to exceed \$1,000. Each day
23 of violation is a separate offense.

24 **NEW SECTION. Section 9.** Repealer. Sections 85-15-306,
25 85-15-307, 85-15-308, 85-15-309, 85-15-310, 85-15-311,

85-15-402, 85-15-403, 85-15-404, and 85-15-501, MCA, are repealed.

NEW SECTION. SECTION 10. NAME CHANGE -- DIRECTIONS TO CODE COMMISSIONER. WHEREVER THE NAME "HIGH-HAZARD DAM", MEANING A DAM THAT MEETS THE REQUIREMENTS OF 85-15-106, APPEARS IN THE MONTANA CODE ANNOTATED OR IN LEGISLATION ENACTED BY THE 1993 LEGISLATURE, THE CODE COMMISSIONER IS DIRECTED TO CHANGE THE NAME TO "CLASS 2 DAM".

NEW SECTION. Section 11. Codification instruction.
[Section 8] is intended to be codified as an integral part of Title 85, chapter 15, part 5, and the provisions of Title 85, chapter 15, part 5, apply to [section 8].

NEW SECTION. Section 12. Coordination instruction. If _____ Bill _____ [LC 0949] is passed and approved and if it includes a section amending 85-15-107 and instituting a civil penalty for a violation of the dam safety act, then [sections 8 and 10 of this act] are void.

-End-

1 HOUSE BILL NO. 84

2 INTRODUCED BY FAGG

3 BY REQUEST OF THE WATER POLICY COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DAM SAFETY
6 ACT; REVISING THE AUTHORITY OF THE DISTRICT COURT AND COUNTY
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17 the department of natural resources and conservation in
18 adopting rules to implement this bill. It is the intent of
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20 regarding unsafe dams and to reduce the potential for
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8 attached to a dam or reservoir, including but not limited
9 to:

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2 corporation, or any other entity or any authorized agent,
3 lessee, or trustee of any of the foregoing.

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

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

10 **Section 2.** Section 85-15-107, MCA, is amended to read:

11 "85-15-107. Exemptions. (1) The provisions of
12 ~~85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209~~
13 ~~through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and~~
14 ~~85-15-502, and [section 8]~~ do not apply to:

15 (a) dams subject to a permit issued pursuant to
16 82-4-335 for the period during which the dam is subject to
17 the permit;

18 (b) ~~The provisions of 85-15-100 through 85-15-110,~~
19 ~~85-15-209 through 85-15-216, 85-15-305, 85-15-401,~~
20 ~~85-15-501, and 85-15-502 do not apply to federal dams and~~
21 ~~reservoirs, to nonfederal dams and reservoirs located on~~
22 ~~federal lands if they are subject to a dam safety review by~~
23 ~~a federal agency or to;~~

24 (c) dams and reservoirs licensed and subject to
25 inspection by the federal energy regulatory commission. The

provisions--of--85-15-105,--85-15-106,---85-15-108---through
85-15-110,---85-15-209---through---85-15-216,---85-15-305,
85-15-401,--85-15-501,--and-85-15-502-do-not-apply-to; or

(d) dams that are required to obtain a certificate of
environmental compatibility and public need pursuant to
75-20-201 for the period during which the dam is subject to
the certificate. In--addition, the provisions of 85-15-108
through 85-15-110, 85-15-209 through 85-15-216, 85-15-305,
85-15-401,--85-15-501,--and-85-15-502-do-not-apply-until July
1, 1998, to high-hazard dams that have been inspected by the
U.S. Army Corps of Engineers pursuant to F.E. 92-367 and for
which resultant dam safety reports have--been--submitted--to
the owner.

(2) The provisions of 85-15-108 through 85-15-110,
85-15-209 through 85-15-216, 85-15-401, 85-15-502, and
[section 8] do not apply to nonfederal dams and reservoirs
located on federal lands if they are subject to a dam safety
review by a federal agency."

Section 3. Section 85-15-209, MCA, is amended to read:

"85-15-209. High-hazard dam -- determination. Any A
person proposing to construct any a dam or reservoir with an
impounding capacity of 50 acre-feet or more measured at the
maximum normal operating pool shall make application to the
department for a determination of whether the dam or
reservoir is a high-hazard dam. The application must include

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

Section 4. Section 85-15-211, MCA, is amended to read:

"85-15-211. Inspection and reports during construction.

(1) An engineer must be in charge of and responsible for
inspections during construction of any high-hazard dam.

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

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

(4) The department may also inspect the high-hazard dam
during construction to ensure conformity with the
construction permit.

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

Section 5. Section 85-15-212, MCA, is amended to read:

"85-15-212. Operating permit. (1) An operation plan

1 must be prepared by the owner and approved by the department
2 prior to operation of the high-hazard dam or reservoir. The
3 operation plan must set forth at a minimum:

4 (a) a reservoir operation procedure;

5 (b) a maintenance procedure for the high-hazard dam and
6 appurtenant works; and

7 (c) emergency procedures and warning plans.

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

14 **Section 6.** Section 85-15-213, MCA, is amended to read:

15 "85-15-213. Periodic inspections after construction.

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

21 (B) THE DEPARTMENT DETERMINATION THAT AN INSPECTION IS
22 NECESSARY MORE OFTEN THAN ONCE EVERY 5 YEARS, AS PROVIDED IN
23 SUBSECTION (1)(A), MUST BE BASED ON SUBSTANTIVE EVIDENCE,
24 AND THE REASONS FOR THAT DETERMINATION MUST BE STATED IN
25 WRITING.

1 (2) Periodic inspections required by this section must
2 be performed by a qualified engineer, who shall make a
3 report of the inspection to the department. If the
4 department finds that the high-hazard dam conforms to
5 current safety standards, it shall issue or reissue, as the
6 case may be, a permit to continue operation of the
7 high-hazard dam, containing such conditions on the safe
8 operation of the high-hazard dam as it considers necessary.

9 (3) The owner is responsible for inspections required
10 under this section."

11 **Section 7.** Section 85-15-216, MCA, is amended to read:

12 "85-15-216. High-hazard dam Permit permit cancellation.

13 Failure to comply with the provisions of 85-15-209 through
14 85-15-212 or 85-15-214 subjects the permit to cancellation
15 at any time during the progress of construction or the
16 operation of the high-hazard dam. The department is
17 authorized to cancel any permit if the provisions of
18 85-15-209 through 85-15-212 or 85-15-214 have not been or
19 are not being complied with, and the cancellation operates
20 as a forfeiture of all rights acquired under and by virtue
21 of any permit approved by the department."

22 **NEW SECTION. Section 8.** Civil penalty. The owner of a

23 dam with an impounding capacity of greater than 50 acre-feet
24 or more measured at the maximum normal operating pool who
25 fails to comply with a provision of this chapter or a rule

or order of the department adopted pursuant to this chapter is subject to a civil penalty not to exceed \$1,000. Each day of violation is a separate offense.

NEW SECTION. Section 9. Repealer. Sections 85-15-306, 85-15-307, 85-15-308, 85-15-309, 85-15-310, 85-15-311, 85-15-402, 85-15-403, 85-15-404, and 85-15-501, MCA, are repealed.

NEW SECTION. SECTION 10. NAME CHANGE -- DIRECTIONS TO CODE COMMISSIONER. WHEREVER THE NAME "HIGH-HAZARD DAM", MEANING A DAM THAT MEETS THE REQUIREMENTS OF 85-15-106, APPEARS IN THE MONTANA CODE ANNOTATED OR IN LEGISLATION ENACTED BY THE 1993 LEGISLATURE, THE CODE COMMISSIONER IS DIRECTED TO CHANGE THE NAME TO "CLASS 2 DAM".

NEW SECTION. Section 11. Codification instruction. [Section 8] is intended to be codified as an integral part of Title 85, chapter 15, part 5, and the provisions of Title 85, chapter 15, part 5, apply to [section 8].

NEW SECTION. Section 12. Coordination instruction. If _____ Bill _____ [LC 0949] is passed and approved and if it includes a section amending 85-15-107 and instituting a civil penalty for a violation of the dam safety act, then [sections 8 and 10 of this act] are void.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 13, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 84 (first reading copy -- blue), respectfully report that House Bill No. 84 be amended as follows and as so amended be concurred in.

Signed: Don Bianchi
Senator Don Bianchi, Chair

That such amendments read:

1. Title, lines 7 and 8.

Strike: "CHANGING" on line 7 through ";" on line 8

2. Page 9, lines 8 through 13.

Strike: section 10 in its entirety

Renumber: subsequent sections

3. Page 9, line 19.

Strike: " _____ Bill _____ [LC 0949]"

Insert: "House Bill No. 121"

4. Page 9, line 22.

Following: "sections"

Insert: "2 and"

Following: "8"

Strike: "and 10"

-END-

AM
Amd. Coord.
Sec. of Senate

Grofield
Senator Carrying Bill

SENATE
HB 84
571045SC.San

HOUSE BILL NO. 84

INTRODUCED BY FAGG

BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DAM SAFETY ACT; REVISING THE AUTHORITY OF THE DISTRICT COURT AND COUNTY COMMISSIONERS TO CONSIDER DAM SAFETY COMPLAINTS; CHANGING THE--TERM--"HIGH-HAZARD--DAM"--TO--"CLASS--2--DAM"; AMENDING SECTIONS 85-15-106, 85-15-107, 85-15-209, 85-15-211, 85-15-212, 85-15-213, AND 85-15-216, MCA; AND REPEALING SECTIONS 85-15-306, 85-15-307, 85-15-308, 85-15-309, 85-15-310, 85-15-311, 85-15-402, 85-15-403, 85-15-404, AND 85-15-501, MCA."

STATEMENT OF INTENT

A statement of intent is required to provide guidance to the department of natural resources and conservation in adopting rules to implement this bill. It is the intent of the legislature to provide a uniform process for complaints regarding unsafe dams and to reduce the potential for nuisance actions against dam owners. It is further the intent of the legislature to authorize the department to investigate all complaints regarding unsafe dams.

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

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

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

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

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

(a) a spillway, either in the dam or separate from it;

(b) the reservoir and its rim;

(c) a low-level outlet; and

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

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

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

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

(6) "Emergency" means any a 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 a 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 a dam or reservoir with an impounding capacity of 50 acre-feet or more at the maximum normal operating pool, the failure of which would be likely to cause loss of life.

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

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

(12) "Person" means an individual, association, partnership, corporation, business trust, state agency,

political subdivision, utility, municipal or quasi-municipal corporation, or any other entity or any authorized agent, lessee, or trustee of any of the foregoing.

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

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

Section 2. Section 85-15-107, MCA, is amended to read:

"85-15-107. Exemptions. (1) The provisions of ~~85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501,--and 85-15-502, and [section 8]~~ do not apply to:

(a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit;

(b) ~~The--provisions--of--85-15-108--through--85-15-110, 85-15-209---through---85-15-216,---85-15-305,---85-15-401, 85-15-501--and--85-15-502--do-not-apply-to~~ federal dams and reservoirs, ~~to-nonfederal-dams--and--reservoirs--located--on federal--lands-if-they-are-subject-to-a-dam-safety-review-by a-federal-agency,--or-to;~~

(c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission. ~~The~~

~~provisions of 85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to; or~~

(d) dams that are required to obtain a certificate of environmental compatibility and public need pursuant to 75-20-201 for the period during which the dam is subject to the certificate. ~~In addition, the provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply until July 1, 1990, to high-hazard dams that have been inspected by the U.S. Army Corps of Engineers pursuant to P.L. 92-367 and for which resultant dam safety reports have been submitted to the owner.~~

(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401, 85-15-502, and [section 8] do not apply to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency.

Section 3. Section 85-15-209, MCA, is amended to read:

"85-15-209. High-hazard dam -- determination. Any A person proposing to construct any a dam or reservoir with an impounding capacity of 50 acre-feet or more measured at the maximum normal operating pool shall make application to the department for a determination of whether the dam or reservoir is a high-hazard dam. The application must include

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

Section 4. Section 85-15-211, MCA, is amended to read:

"85-15-211. Inspection and reports during construction.

(1) An engineer must be in charge of and responsible for inspections during construction of any high-hazard dam.

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

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

(4) The department may also inspect the high-hazard dam during construction to ensure conformity with the construction permit.

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

Section 5. Section 85-15-212, MCA, is amended to read:

"85-15-212. Operating permit. (1) An operation plan

must be prepared by the owner and approved by the department prior to operation of the high-hazard dam or reservoir. The operation plan must set forth at a minimum:

(a) a reservoir operation procedure;

(b) a maintenance procedure for the high-hazard dam and appurtenant works; and

(c) emergency procedures and warning plans.

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

Section 6. Section 85-15-213, MCA, is amended to read:

"85-15-213. Periodic inspections after construction.

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

(B) THE DEPARTMENT DETERMINATION THAT AN INSPECTION IS NECESSARY MORE OFTEN THAN ONCE EVERY 5 YEARS, AS PROVIDED IN SUBSECTION (1)(A), MUST BE BASED ON SUBSTANTIVE EVIDENCE, AND THE REASONS FOR THAT DETERMINATION MUST BE STATED IN WRITING.

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

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

Section 7. Section 85-15-216, MCA, is amended to read:

"85-15-216. High-hazard dam Permit permit cancellation. Failure to comply with the provisions of 85-15-209 through 85-15-212 or 85-15-214 subjects the permit to cancellation at any time during the progress of construction or the operation of the high-hazard dam. The department is authorized to cancel any permit if the provisions of 85-15-209 through 85-15-212 or 85-15-214 have not been or are not being complied with, and the cancellation operates as a forfeiture of all rights acquired under and by virtue of any permit approved by the department."

NEW SECTION. Section 8. Civil penalty. The owner of a dam with an impounding capacity of greater than 50 acre-feet or more measured at the maximum normal operating pool who fails to comply with a provision of this chapter or a rule

1 or order of the department adopted pursuant to this chapter
 2 is subject to a civil penalty not to exceed \$1,000. Each day
 3 of violation is a separate offense.

4 NEW SECTION. Section 9. Repealer. Sections 85-15-306,
 5 85-15-307, 85-15-308, 85-15-309, 85-15-310, 85-15-311,
 6 85-15-402, 85-15-403, 85-15-404, and 85-15-501, MCA, are
 7 repealed.

8 ~~NEW SECTION. SECTION 10. NAME CHANGE -- DIRECTIONS TO~~
 9 ~~CODE COMMISSIONER. WHEREVER THE NAME "HIGH-HAZARD-DAM",~~
 10 ~~MEANING A DAM THAT MEETS THE REQUIREMENTS OF 85-15-106,~~
 11 ~~APPEARS IN THE MONTANA CODE ANNOTATED OR IN LEGISLATION~~
 12 ~~ENACTED BY THE 1993 LEGISLATURE, THE CODE COMMISSIONER IS~~
 13 ~~DIRECTED TO CHANGE THE NAME TO "CLASS-2-DAM".~~

14 NEW SECTION. Section 10. Codification instruction.
 15 [Section 8] is intended to be codified as an integral part
 16 of Title 85, chapter 15, part 5, and the provisions of Title
 17 85, chapter 15, part 5, apply to [section 8].

18 NEW SECTION. Section 11. Coordination instruction. If
 19 ~~-----Bill-----{BE-0949}~~ HOUSE BILL NO. 121 is passed and
 20 approved and if it includes a section amending 85-15-107 and
 21 instituting a civil penalty for a violation of the dam
 22 safety act, then [sections 2 AND 8 and ~~10~~ of this act] are
 23 void.

-End-