

HOUSE BILL NO. 121

INTRODUCED BY FAGG, HARPER, GROSFIELD, BECK
BY REQUEST OF THE WATER POLICY COMMITTEE

IN THE HOUSE

JANUARY 8, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
JANUARY 19, 1993	ON MOTION, REREFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 5, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 6, 1993	PRINTING REPORT.
FEBRUARY 9, 1993	SECOND READING, DO PASS.
FEBRUARY 10, 1993	ENGROSSING REPORT.
FEBRUARY 13, 1993	THIRD READING, PASSED. AYES, 63; NOES, 32.
FEBRUARY 15, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 16, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 30, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 31, 1993	SECOND READING, CONCURRED IN AS AMENDED.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 5, 1993

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 6, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 7, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 15, 1993

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 16, 1993

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 22, 1993

FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 22, 1993

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 23, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 121
 2 INTRODUCED BY F A G E Haysen
 3 BY REQUEST OF THE WATER POLICY COMMITTEE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A GROSS
 6 NEGLIGENCE LIABILITY STANDARD FOR CERTAIN DAM OWNERS;
 7 EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN
 8 ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY
 9 STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY;
 10 ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND
 11 85-15-305, MCA; AND REPEALING SECTION 85-15-501, MCA."

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

14 **Section 1.** Section 85-15-107, MCA, is amended to read:

15 "85-15-107. Exemptions. (1) The provisions of
 16 85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209
 17 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and
 18 85-15-502, and [section 4] do not apply to:

19 (a) dams subject to a permit issued pursuant to
 20 82-4-335 for the period during which the dam is subject to
 21 the permit;

22 (b) ~~The provisions of 85-15-108 through 85-15-110,~~
 23 ~~85-15-209 through 85-15-216, 85-15-305, 85-15-401,~~
 24 ~~85-15-501, and 85-15-502 do not apply to federal dams and~~
 25 ~~reservoirs, to nonfederal dams and reservoirs located on~~

1 ~~federal lands if they are subject to a dam safety review by~~
 2 ~~a federal agency, or to;~~

3 (c) dams and reservoirs licensed and subject to
 4 inspection by the federal energy regulatory commission. ~~The~~
 5 ~~provisions of 85-15-105, 85-15-106, 85-15-108 through~~
 6 ~~85-15-110, 85-15-209 through 85-15-216, 85-15-305,~~
 7 ~~85-15-401, 85-15-501, and 85-15-502 do not apply to; or~~

8 (d) dams that are required to obtain a certificate of
 9 environmental compatibility and public need pursuant to
 10 75-20-201 for the period during which the dam is subject to
 11 the certificate. ~~In addition, the provisions of 85-15-108~~
 12 ~~through 85-15-110, 85-15-209 through 85-15-216, 85-15-305,~~
 13 ~~85-15-401, 85-15-501, and 85-15-502 do not apply until July~~
 14 ~~1, 1990, to high-hazard dams that have been inspected by the~~
 15 ~~U.S. Army Corps of Engineers pursuant to P.E.R. 92-367 and for~~
 16 ~~which resultant dam safety reports have been submitted to~~
 17 ~~the owner;~~

18 (2) The provisions of 85-15-108 through 85-15-110,
 19 85-15-209 through 85-15-216, 85-15-401, 85-15-502, and
 20 [section 4] do not apply to nonfederal dams and reservoirs
 21 located on federal lands if they are subject to a dam safety
 22 review by a federal agency."

23 **NEW SECTION. Section 2. Purpose.** (1) The legislature
 24 finds that dams provide a variety of benefits to the state
 25 of Montana. These benefits include the regulation of

streamflows for flood control; water storage for irrigation, for municipal, industrial, and stock water consumption, and for hydropower generation; improved opportunities for flatwater recreation; and improved fisheries. Additionally, dams play a crucial role in maintaining the vitality of Montana's economy. The state therefore has a legitimate and compelling interest in encouraging the construction of dams that conform to the water storage policy provided in 85-1-703.

(2) The legislature further finds that one impediment to the construction of new dams is the potential liability associated with dam construction and operation. The legislature understands the inherent risks to public safety associated with dam construction and operation but finds that compliance with the Montana Dam Safety Act reduces those risks to an acceptable level.

(3) The legislature further understands and finds that a reasonable and prudent landowner should understand the inherent risks associated with placing a structure below an existing dam. The legislature finds that a landowner who places a structure downstream from an existing dam assumes some of the potential risk to person or property of dam failure. The legislature finds that instituting a gross negligence liability standard for existing permitted and other existing properly constructed dams, as provided for in

85-15-305, serves the compelling state interest of encouraging dam construction in the least intrusive manner possible and that the development of the gross negligence liability standard is closely related to that compelling state interest.

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

"85-15-305. Liability of owners for damage. (1) Except as provided in subsection subsections (2) and (3), nothing in this chapter relieves an owner of a dam or reservoir of any legal duty, obligation, or liability incident to its ownership or operation, including any damages resulting from leakage or overflow of water or floods caused by the failure or rupture of the dam or reservoir.

(2) The owner of a dam or reservoir that has been permitted by the department in accordance with this chapter or that was designed, constructed, and regularly maintained under the supervision of an engineer is not:

(a) in the absence of negligence, not liable for damages to persons or property resulting from flows of water from failure of the dam or reservoir; which--are--of sufficient--magnitude--to--exceed-the-limits-of-the-100-year floodplain-as-defined-in-76-5-103; or

(b) in the absence of gross negligence:

(i) not liable for property damages resulting from flows of water from failure of the dam or reservoir to

1 structures placed downstream from an existing dam; or
2 (ii) not liable for personal injury or death if the
3 person injured or killed was downstream from an existing dam
4 as a result of a structure being placed downstream from the
5 existing dam.

6 (3) In addition, the owner of any dam or reservoir that
7 has been permitted by the department in accordance with this
8 chapter or that was designed, constructed, and regularly
9 maintained under the supervision of an engineer may, without
10 incurring liability, allow passage through the reservoir of
11 inflows without diminution."

12 **NEW SECTION. Section 4. Civil penalty.** An owner of a
13 dam with an impounding capacity of 50 acre-feet or greater
14 measured at the maximum normal operating pool who fails to
15 comply with a provision of this chapter or a rule or order
16 of the department adopted or made pursuant to this chapter
17 is subject to a civil penalty not to exceed \$1,000. Each day
18 of violation is a separate offense.

19 **NEW SECTION. Section 5. Repealer.** Section 85-15-501,
20 MCA, is repealed.

21 **NEW SECTION. Section 6. Codification instruction.**
22 [Section 4] is intended to be codified as an integral part
23 of Title 85, chapter 15, part 5, and the provisions of Title
24 85, chapter 15, part 5, apply to [section 4].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0121, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill establishes a gross negligence liability standard in damage suits against dam owners of permitted or engineered dams by people taking up occupancy downstream from an already existing dam. This liability standard is extended to non-federal dams on federal property as well. This bill also establishes a penalty for failure to comply with the Montana Dam Safety Act, or rule, or order of the Department of Natural Resources and Conservation.

FISCAL IMPACT:

Expenditures: None

Revenues: Civil penalties assessed would be deposited in the general fund. The amount of civil penalties to be levied is unknown.

David Lewis 1-12-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Russell C. Fagg
RUSSELL FAGG, PRIMARY SPONSOR DATE

Fiscal Note for HB0121, as introduced

HB 121

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 121

INTRODUCED BY FAGG, HARPER, GROSFIELD, BECK

BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A GROSS NEGLIGENCE LIABILITY STANDARD FOR CERTAIN DAM OWNERS; EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; AND REPEALING SECTION 85-15-501, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. 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 4] 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 4] 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.

(3) THE PROVISIONS OF 85-15-305 DO NOT APPLY TO DAMS AND RESERVOIRS AT A NATIONAL PRIORITY LIST SITE AS DEFINED



BY THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE,
 COMPENSATION, AND LIABILITY ACT OF 1980 (CERCLA), PUBLIC LAW
 96-510."

NEW SECTION. **Section 2. Purpose.** (1) The legislature finds that dams provide a variety of benefits to the state of Montana. These benefits include the regulation of streamflows for flood control; water storage for irrigation, for municipal, industrial, and stock water consumption, and for hydropower generation; improved opportunities for flatwater recreation; and improved fisheries. Additionally, dams play a crucial role in maintaining the vitality of Montana's economy. The state therefore has a legitimate and compelling interest in encouraging the construction of dams that conform to the water storage policy provided in 85-1-703.

(2) The legislature further finds that one impediment to the construction of new dams is the potential liability associated with dam construction and operation. The legislature understands the inherent risks to public safety associated with dam construction and operation but finds that compliance with the Montana Dam Safety Act reduces those risks to an acceptable level.

(3) The legislature further understands and finds that a reasonable and prudent landowner should understand the inherent risks associated with placing a structure below an

existing dam. The legislature finds that a landowner who places a structure downstream from an existing dam assumes some of the potential risk to person or property of dam failure. The legislature finds that instituting a gross negligence liability standard for existing permitted and other existing properly constructed dams, as provided for in 85-15-305, serves the compelling state interest of encouraging dam construction in the least intrusive manner possible and that the development of the gross negligence liability standard is closely related to that compelling state interest.

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

"85-15-305. **Liability of owners for damage.** (1) Except as provided in subsections (2) and (3), nothing in this chapter relieves an owner of a dam or reservoir of any legal duty, obligation, or liability incident to its ownership or operation, including any damages resulting from leakage or overflow of water or floods caused by the failure or rupture of the dam or reservoir.

(2) The owner of a dam or reservoir that has been permitted by the department in accordance with this chapter or that was designed, constructed, and regularly PROPERLY maintained under the supervision of an engineer is not:

(a) in the absence of negligence, not liable for damages to persons or property resulting from flows of water

1 from failure of the dam or reservoir; which--are---of
 2 sufficient--magnitude--to--exceed-the-limits-of-the-100-year
 3 floodplain-as-defined-in-76-5-103- or

4 (b) in the absence of gross negligence:

5 (i) not liable for property damages resulting from
 6 flows of water from failure of the dam or reservoir to
 7 structures placed downstream from an existing dam; or

8 (ii) not liable for personal injury or death RESULTING
 9 FROM FLOWS OF WATER FROM FAILURE OF THE DAM OR RESERVOIR if
 10 the person injured or killed was downstream from an existing
 11 dam as a result of a structure being placed downstream from
 12 the existing dam.

13 (3) In addition, the owner of any dam or reservoir that
 14 has been permitted by the department in accordance with this
 15 chapter or that was designed, constructed, and regularly
 16 PROPERLY maintained under the supervision of an engineer
 17 may, without incurring liability, allow passage through the
 18 reservoir of inflows without diminution."

19 NEW SECTION. Section 4. Civil penalty. An owner of a
 20 dam with an impounding capacity of 50 acre-feet or greater
 21 measured at the maximum normal operating pool who fails to
 22 comply with a provision of this chapter or a rule or order
 23 of the department adopted or made pursuant to this chapter
 24 is subject to a civil penalty not to exceed \$1,000. Each day
 25 of violation is a separate offense.

1 NEW SECTION. Section 5. Repealer. Section 85-15-501,
 2 MCA, is repealed.

3 NEW SECTION. Section 6. Codification instruction.
 4 [Section 4] is intended to be codified as an integral part
 5 of Title 85, chapter 15, part 5, and the provisions of Title
 6 85, chapter 15, part 5, apply to [section 4].

7 NEW SECTION. SECTION 7. APPLICABILITY. [THIS ACT]
 8 APPLIES TO CAUSES OF ACTION ACCRUING ON OR AFTER OCTOBER 1,
 9 1993.

-End-

HOUSE BILL NO. 121

INTRODUCED BY FAGG, HARPER, GROSFIELD, BECK

BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A GROSS NEGLIGENCE LIABILITY STANDARD FOR CERTAIN DAM OWNERS; EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; AND REPEALING SECTION 85-15-501, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. 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 4] 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~~

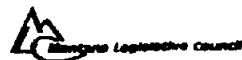
~~reservoirs to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency, or to;~~

(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 Pub. 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 4] 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.

(3) THE PROVISIONS OF 85-15-305 DO NOT APPLY TO DAMS AND RESERVOIRS AT A NATIONAL PRIORITY LIST SITE AS DEFINED



BY THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE,
 COMPENSATION, AND LIABILITY ACT OF 1980 (CERCLA), PUBLIC LAW
 96-510."

NEW SECTION. Section 2. Purpose. (1) The legislature finds that dams provide a variety of benefits to the state of Montana. These benefits include the regulation of streamflows for flood control; water storage for irrigation, for municipal, industrial, and stock water consumption, and for hydropower generation; improved opportunities for flatwater recreation; and improved fisheries. Additionally, dams play a crucial role in maintaining the vitality of Montana's economy. The state therefore has a legitimate and compelling interest in encouraging the construction of dams that conform to the water storage policy provided in 85-1-703.

(2) The legislature further finds that one impediment to the construction of new dams is the potential liability associated with dam construction and operation. The legislature understands the inherent risks to public safety associated with dam construction and operation but finds that compliance with the Montana Dam Safety Act reduces those risks to an acceptable level.

(3) The legislature further understands and finds that a reasonable and prudent landowner should understand the inherent risks associated with placing a structure below an

existing dam. The legislature finds that a landowner who places a structure downstream from an existing dam assumes some of the potential risk to person or property of dam failure. The legislature finds that instituting a gross negligence liability standard for existing permitted and other existing properly constructed dams, as provided for in 85-15-305, serves the compelling state interest of encouraging dam construction in the least intrusive manner possible and that the development of the gross negligence liability standard is closely related to that compelling state interest.

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

"85-15-305. Liability of owners for damage. (1) Except as provided in subsections (2) and (3), nothing in this chapter relieves an owner of a dam or reservoir of any legal duty, obligation, or liability incident to its ownership or operation, including any damages resulting from leakage or overflow of water or floods caused by the failure or rupture of the dam or reservoir.

(2) The owner of a dam or reservoir that has been permitted by the department in accordance with this chapter or that was designed, constructed, and regularly PROPERLY maintained under the supervision of an engineer is not:

(a) in the absence of negligence, not liable for damages to persons or property resulting from flows of water

from failure of the dam or reservoir, which--are---of sufficient--magnitude--to--exceed-the-limits-of-the-100-year floodplain-as-defined-in-76-5-103, or

(b) in the absence of gross negligence:

(i) not liable for property damages resulting from flows of water from failure of the dam or reservoir to structures placed downstream from an existing dam; or

(ii) not liable for personal injury or death RESULTING FROM FLOWS OF WATER FROM FAILURE OF THE DAM OR RESERVOIR if the person injured or killed was downstream from an existing dam as a result of a structure being placed downstream from the existing dam.

(3) In addition, the owner of any dam or reservoir that has been permitted by the department in accordance with this chapter or that was designed, constructed, and regularly PROPERLY maintained under the supervision of an engineer may, without incurring liability, allow passage through the reservoir of inflows without diminution."

NEW SECTION. Section 4. Civil penalty. An owner of a dam with an impounding capacity of 50 acre-feet or greater 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 or made 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 5. Repealer. Section 85-15-501, MCA, is repealed.

NEW SECTION. Section 6. Codification instruction. [Section 4] 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 4].

NEW SECTION. SECTION 7. APPLICABILITY. [THIS ACT] APPLIES TO CAUSES OF ACTION ACCRUING ON OR AFTER OCTOBER 1, 1993.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 29, 1993

Page 2 of 2
March 29, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 121 (third reading copy -- blue), respectfully report that House Bill No. 121 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, lines 5 and 6.
Strike: "ESTABLISHING" on line 5 through "OWNERS;" on line 6
2. Page 3, line 23 through page 4, line 11.
Strike: subsection (3) in its entirety
3. Page 4, line 23.
Following: "is"
Insert: ","
Strike: "i"
4. Page 4, line 24.
Strike: "(a)"
5. Page 5, line 1.
Strike: "i"
Insert: "."
6. Page 5, line 3.
Strike: "or"
7. Page 5, lines 4 through 12.
Strike: subsection (b) in its entirety
8. Page 5, line 19.
Following: line 18
Insert: "[(4) The limitation on liability provided in subsection (2) does not apply to a state-owned dam.]"

9. Page 6.
Following: line 6
Insert:

"NEW SECTION. Section 7. Two-thirds vote required. It is the intent of the legislature that the provisions of [section 3] apply to all qualifying state-owned dams as well as other dams. Because [section 3], when applied to state-owned dams, limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If [this act] fails to receive the required two-thirds vote, the bracketed language in [section 3(4)] is effective. If [this act] receives the required two-thirds vote, the bracketed language is void."

Renumber: subsequent section

-END-

Amd. Coord.
Sec. of Senate

Grosfield
Senator Carrying Bill

701359SC.San

SENATE
H/B 121
701359SC.San

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 31, 1993 11:05 am

Mr. Chairman: I move to amend House Bill No. 121 (third reading copy -- blue).

ADOPT

REJECT

Signed: 

Senator Lorents Grosfield

That such amendments read:

Amend Senate Committee on Judiciary Committee Report dated March 29, 1993, as follows:

Amendment No. 8

Following: "to a" in inserted subsection (4)

Insert: "nonpermitted"

-END-

SENATE

HB 121

r721105CW.Sma

m- Amd. Coord.

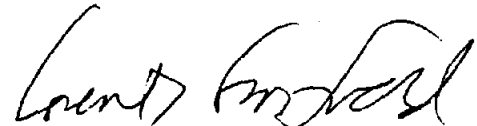
SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 31, 1993 4:50 pm

Mr. Chairman: I move to amend House Bill No. 121 (third reading copy -- blue).

ADOPT

REJECT

Signed: 
Senator Lorents Grosfield

That such amendments read:

1. Page 4, line 22.

Following: "designed"

Strike: ","

Insert: "and"

Following: "constructed"

Strike: ","

Insert: "under the supervision of an engineer"

2. Page 4, line 23.

Following: "maintained"

Strike: "under" through "engineer"

3. Page 5, line 15.

Following: "designed"

Strike: ","

Insert: "and"

Following: "constructed"

Strike: ","

Insert: "under the supervision of an engineer"

4. Page 5, line 16.

Following: "maintained"

Strike: "under" through "engineer"

-END-

SENATE

HB 121

r721649CW.Sma

M- Amd. Coord.

HOUSE BILL NO. 121

INTRODUCED BY FAGG, HARPER, GROSFIELD, BECK

BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING--A--GROSS NEGLIGENCE---LIABILITY--STANDARD--FOR--CERTAIN--DAM--OWNERS; EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; AND REPEALING SECTION 85-15-501, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. 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 4] 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.H. 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 4] 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.

(3) THE PROVISIONS OF 85-15-305 DO NOT APPLY TO DAMS AND RESERVOIRS AT A NATIONAL PRIORITY LIST SITE AS DEFINED

1 BY THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE,
 2 COMPENSATION, AND LIABILITY ACT OF 1980 (CERCLA), PUBLIC LAW
 3 96-510."

4 NEW SECTION. Section 2. Purpose. (1) The legislature
 5 finds that dams provide a variety of benefits to the state
 6 of Montana. These benefits include the regulation of
 7 streamflows for flood control; water storage for irrigation,
 8 for municipal, industrial, and stock water consumption, and
 9 for hydropower generation; improved opportunities for
 10 flatwater recreation; and improved fisheries. Additionally,
 11 dams play a crucial role in maintaining the vitality of
 12 Montana's economy. The state therefore has a legitimate and
 13 compelling interest in encouraging the construction of dams
 14 that conform to the water storage policy provided in
 15 85-1-703.

16 (2) The legislature further finds that one impediment
 17 to the construction of new dams is the potential liability
 18 associated with dam construction and operation. The
 19 legislature understands the inherent risks to public safety
 20 associated with dam construction and operation but finds
 21 that compliance with the Montana Dam Safety Act reduces
 22 those risks to an acceptable level.

23 ~~(3) The legislature further understands and finds that~~
 24 ~~a reasonable and prudent landowner should understand the~~
 25 ~~inherent risks associated with placing a structure below an~~

1 ~~existing dam. The legislature finds that a landowner who~~
 2 ~~places a structure downstream from an existing dam assumes~~
 3 ~~some of the potential risk to person or property of dam~~
 4 ~~failure. The legislature finds that instituting a gross~~
 5 ~~negligence liability standard for existing permitted and~~
 6 ~~other existing properly constructed dams, as provided for in~~
 7 ~~85-15-305, serves the compelling state interest of~~
 8 ~~encouraging dam construction in the least intrusive manner~~
 9 ~~possible and that the development of the gross negligence~~
 10 ~~liability standard is closely related to that compelling~~
 11 ~~state interest.~~

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

13 "85-15-305. Liability of owners for damage. (1) Except
 14 as provided in subsections (2) and (3), nothing
 15 in this chapter relieves an owner of a dam or reservoir of
 16 any legal duty, obligation, or liability incident to its
 17 ownership or operation, including any damages resulting from
 18 leakage or overflow of water or floods caused by the failure
 19 or rupture of the dam or reservoir.

20 (2) The owner of a dam or reservoir that has been
 21 permitted by the department in accordance with this chapter
 22 or that was designed, AND constructed, UNDER THE SUPERVISION
 23 OF AN ENGINEER and regularly PROPERLY maintained under the
 24 supervision of an engineer is, not;

25 ~~(a)~~ in the absence of negligence, not liable for

1 damages to persons or property resulting from flows of water
 2 from failure of the dam or reservoir, which--are--of
 3 sufficient-magnitude-to-exceed-the-limits--of--the--100-year
 4 floodplain-as-defined-in-76-5-103, or

5 ~~(b)--in-the-absence-of-gross-negligence:~~
 6 ~~(i)--not--liable--for--property--damages--resulting--from~~
 7 ~~flows-of-water-from-failure--of--the--dam--or--reservoir--to~~
 8 ~~structures-placed-downstream-from-an-existing-dam, or~~
 9 ~~(ii)--not--liable--for--personal-injury-or-death RESULTING~~
 10 ~~FROM FLOWS OF WATER FROM FAILURE OF THE DAM OR RESERVOIR IF~~
 11 ~~the-person-injured-or-killed-was-downstream-from-an-existing~~
 12 ~~dam--as-a-result-of-a-structure-being-placed-downstream-from~~
 13 ~~the-existing-dam;~~

14 (3) In addition, the owner of any dam or reservoir that
 15 has been permitted by the department in accordance with this
 16 chapter or that was designed, AND constructed, UNDER THE
 17 SUPERVISION OF AN ENGINEER and regularly PROPERLY maintained
 18 under--the-supervision-of-an-engineer may, without incurring
 19 liability, allow passage through the reservoir of inflows
 20 without diminution.

21 [(4) THE LIMITATION ON LIABILITY PROVIDED IN SUBSECTION
 22 (2) DOES NOT APPLY TO A NONPERMITTED STATE-OWNED DAM.]”

23 NEW SECTION. Section 4. Civil penalty. An owner of a
 24 dam with an impounding capacity of 50 acre-feet or greater
 25 measured at the maximum normal operating pool who fails to

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

5 NEW SECTION. Section 5. Repealer. Section 85-15-501,
 6 MCA, is repealed.

7 NEW SECTION. Section 6. Codification instruction.
 8 [Section 4] is intended to be codified as an integral part
 9 of Title 85, chapter 15, part 5, and the provisions of Title
 10 85, chapter 15, part 5, apply to [section 4].

11 NEW SECTION. SECTION 7. TWO-THIRDS VOTE REQUIRED. IT
 12 IS THE INTENT OF THE LEGISLATURE THAT THE PROVISIONS OF
 13 [SECTION 3] APPLY TO ALL QUALIFYING STATE-OWNED DAMS AS WELL
 14 AS OTHER DAMS. BECAUSE [SECTION 3], WHEN APPLIED TO
 15 STATE-OWNED DAMS, LIMITS GOVERNMENTAL LIABILITY, ARTICLE II,
 16 SECTION 18, OF THE MONTANA CONSTITUTION REQUIRES A VOTE OF
 17 TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE
 18 FOR PASSAGE. IF [THIS ACT] FAILS TO RECEIVE THE REQUIRED
 19 TWO-THIRDS VOTE, THE BRACKETED LANGUAGE IN [SECTION 3(4)] IS
 20 EFFECTIVE. IF [THIS ACT] RECEIVES THE REQUIRED TWO-THIRDS
 21 VOTE, THE BRACKETED LANGUAGE IS VOID.

22 NEW SECTION. SECTION 8. APPLICABILITY. [THIS ACT]
 23 APPLIES TO CAUSES OF ACTION ACCRUING ON OR AFTER OCTOBER 1,
 24 1993.

-End-

Free Conference Committee
on House Bill 121
Report No.1, April 20, 1993

Page 1 of 1

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 121 and recommend as follows:

1. Adopt the Senate Judiciary Committee amendments dated March 29, 1993.
2. Adopt the Senate Committee of the Whole amendment of Sen. Grosfield, dated March 31, 1993 at 11:05 a.m.

Further, that this Free Conference Committee report be adopted.

For the House:

For the Senate:

Russell C. Fagg
Rep. Fagg, Chair

Steve Doherty
Sen. Doherty, Chair

WM Tash
Rep. Tash

WM Yellowtail
Sen. Yellowtail

Harper
Rep. Harper

Sen. Grosfield
Sen. Grosfield

ADOPT

REJECT

F.C.C.R.#1

HB 121

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