

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 351

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO WATER RESOURCES; AMENDING SECTION 42-1709, IDAHO CODE, TO PRO-  
2 VIDE FOR INSPECTION AND OVERSIGHT ON COMPLAINT OR DIRECTOR'S DETERMI-  
3 NATION, TO PROVIDE FOR WRITTEN REPORTS THAT CERTAIN ARTIFICIAL BARRI-  
4 ERS ARE UNSAFE AND ENDANGERING LIFE OR PROPERTY, TO PROVIDE FOR INSPEC-  
5 TION OF ARTIFICIAL BARRIERS, TO REVISE TERMINOLOGY AND TO PROVIDE FOR  
6 THE REGULAR INSPECTION AND REGULATION OF CERTAIN ARTIFICIAL BARRIERS  
7 AND EMBANKMENTS; AMENDING SECTION 42-1711, IDAHO CODE, TO REVISE DEF-  
8 INITIONS AND TO DEFINE TERMS; AMENDING SECTION 42-1712, IDAHO CODE, TO  
9 REVISE CRITERIA RELATING TO THOSE OWNERS REQUIRED TO SUBMIT DUPLICATE  
10 PLANS, DRAWINGS AND SPECIFICATIONS OF PROPOSED CONSTRUCTION, ENLARGE-  
11 MENT, ALTERATION OR REPAIR OF DAMS TO THE DIRECTOR OF THE DEPARTMENT OF  
12 WATER RESOURCES, TO REVISE PROVISIONS RELATING TO PROFESSIONAL ENGI-  
13 NEERS AND THE AUTHENTICATION OF PLANS, DRAWINGS AND SPECIFICATIONS, TO  
14 PROVIDE THAT THE DIRECTOR SHALL PREPARE DESIGN AND CONSTRUCTION CRITE-  
15 RIA FOR CERTAIN ARTIFICIAL BARRIERS OR EMBANKMENTS AND SUPPLY SUCH CRI-  
16 TERIA UPON REQUEST BY INTERESTED PERSONS AND TO PROVIDE THAT SUCH CRI-  
17 TERIA SHALL NOT BE THE BASIS OF CERTAIN LIABILITY RELATING TO ARTIFICIAL  
18 BARRIERS AND EMBANKMENTS; AND AMENDING SECTION 42-1715, IDAHO CODE, TO  
19 REVISE PROVISIONS RELATING TO PROFESSIONAL ENGINEERS AND THE AUTHENTI-  
20 CATION OF PLANS, DRAWINGS AND SPECIFICATIONS.  
21

22 Be It Enacted by the Legislature of the State of Idaho:

23 SECTION 1. That Section 42-1709, Idaho Code, be, and the same is hereby  
24 amended to read as follows:

25 42-1709. INSPECTION AND OVERSIGHT ON COMPLAINT OR DIRECTOR'S DETERMI-  
26 NATION. (1) If any person or persons shall report in writing to the director  
27 that any dam, artificial barrier or embankment, used for holding that stores  
28 or impounds water, except for those excluded in section 42-1711(b)(1)  
29 through (4), Idaho Code, or mine tailings impoundment structure used for  
30 storing tailings slurry is unsafe and endangering life or property, then  
31 it shall be the duty of the director to inspect, or cause to be inspected,  
32 such dam, artificial barrier or embankment or mine tailings impoundment  
33 structure as soon as possible, and, if he considers it unsafe, to proceed as  
34 provided in the following sections this chapter.

35 (2) If the director determines that the failure of any artificial bar-  
36 rier or embankment that stores or impounds water, except for those excluded  
37 in section 42-1711(b)(1) through (4), Idaho Code, would pose a threat of di-  
38 rect loss of life or significant property damage, the director shall regu-  
39 larly inspect and regulate it as a dam as provided in this chapter.

40 SECTION 2. That Section 42-1711, Idaho Code, be, and the same is hereby  
41 amended to read as follows:

1 42-1711. DEFINITIONS. Unless the context otherwise requires, the fol-  
2 lowing definitions govern the construction of this chapter.

3 (a) "Department" means the department of water resources.

4 (b) "Dam" means any artificial barrier or embankment, together with ap-  
5 purtenant works, constructed for the purpose of storing water or that stores  
6 water, which is ten (10) feet or more in height from the natural bed of the  
7 stream or watercourse at the downstream toe of the barrier, as determined  
8 by the department, or from the lowest elevation of the outside limit of the  
9 barrier, if it is not across a stream channel or watercourse, to the maxi-  
10 mum water storage elevation, ~~or~~ and has or will have an impounding capacity  
11 at maximum water storage elevation of fifty (50) acre-feet or more. The fol-  
12 lowing are not included as regulated dams or are not considered dams for the  
13 purposes of sections 42-1710 through 42-1721, Idaho Code; ~~provided however,~~  
14 ~~barriers defined in paragraphs (1) and (2), below, shall remain under the ex-~~  
15 ~~clusive jurisdiction of the department:~~

16 (1) ~~Barriers constructed in low risk areas as determined by the direc-~~  
17 ~~tor, which are six (6) feet or less in height, regardless of storage ca-~~  
18 ~~capacity.~~

19 ~~(2) Barriers constructed in low risk areas as determined by the direc-~~  
20 ~~tor, which impound ten (10) acre-feet or less at maximum water storage~~  
21 ~~elevation, regardless of height.~~

22 ~~(3) Barriers in a canal used to raise or lower water therein or divert~~  
23 ~~water therefrom.~~

24 (42) Fills or structures determined by the director to be designed pri-  
25 marily for highway or railroad traffic.

26 (53) Fills, retaining dikes or structures less than twenty (20) feet in  
27 height, which are under jurisdiction of the department of environmental  
28 quality or the department of agriculture, determined by the director of  
29 the department of water resources to be designed primarily for reten-  
30 tion or treatment of municipal, livestock, or domestic wastes, or sedi-  
31 ment and wastes from produce washing or food processing plants.

32 (64) Levees that store water regardless of storage capacity.

33 (c) "Levee" means a retaining structure alongside a natural lake which  
34 has a length that is two hundred (200) times or more greater than its greatest  
35 height measured from the lowest elevation of the toe to the maximum crest el-  
36 evation of the retaining structure.

37 (d) "Reservoir" means any basin which contains or will contain the wa-  
38 ter impounded by a dam.

39 (e) "Owner" includes any of the following who own, control, operate,  
40 maintain, manage, or propose to construct a dam, reservoir or mine tailings  
41 impoundment structure:

42 (1) The state of Idaho and its departments, agencies, institutions and  
43 political subdivisions;

44 (2) The United States of America and any of its departments, bureaus,  
45 agencies and institutions; provided that the United States of America  
46 shall not be required to pay any of the fees required by section 42-1713,  
47 Idaho Code, and shall submit plans, drawings and specifications as re-  
48 quired by section 42-1712, Idaho Code, for information purposes only;

49 (3) Every municipal or quasi-municipal corporation;

50 (4) Every public utility;

1 (5) Every person, firm, association, organization, partnership, busi-  
2 ness trust, corporation or company;

3 (6) The duly authorized agents, lessees, or trustees of any of the fore-  
4 going; or

5 (7) Receivers or trustees appointed by any court for any of the forego-  
6 ing.

7 (f) "Alterations," "repairs," or either of them, mean only such alter-  
8 ations or repairs as may directly affect the safety of the dam, reservoir or  
9 mine tailings impoundment structure, as determined by the department.

10 (g) "Enlargement" means any change in or addition to an existing dam,  
11 reservoir or mine tailings impoundment structure, which raises or may raise  
12 the water storage elevation of the water impounded by the dam or mine tail-  
13 ings slurry impounded by the mine tailings impoundment structure.

14 (h) "Maximum wWater storage elevation" means the maximum design eleva-  
15 tion of water surface which can be ~~obtained~~ impounded by the dam or reser-  
16 voir.

17 (i) "Storage capacity" means the total volume of storage at the maximum  
18 water storage elevation.

19 (j) "Days" used in establishing deadlines means calendar days includ-  
20 ing Sundays and holidays.

21 (k) "Certificate of approval" means a certificate issued by the direc-  
22 tor for all dams or mine tailings impoundment structures listing restric-  
23 tions imposed by the director, and without which no new dams shall be allowed  
24 to impound water or mine tailings impoundment structures shall be allowed to  
25 impound mine tailings slurry.

26 (l) "Mine tailings impoundment structure" means any artificial embank-  
27 ment which is or will be more than thirty (30) feet in height measured from  
28 the lowest elevation of the toe to the maximum crest elevation constructed  
29 for the purpose of storing mine tailings slurry.

30 (m) "Lift construction" means mine tailings impoundment structure en-  
31 largement by raising the elevation of the structure on a continuous or recur-  
32 ring basis. Such practice will be considered under construction until the  
33 structure reaches its final crest elevation.

34 (n) "Mine tailings impoundment elevation" means the maximum elevation  
35 of stored mine tailings which can be obtained by the impounding structure.

36 (o) "Mine tailings slurry" means all slurry wastes from a mineral pro-  
37 cessing or mining operation.

38 (p) "Mine tailings storage capacity" means the total storage volume of  
39 the impounding area when filled with tailings to the maximum designed stor-  
40 age elevation.

41 (q) "Hazard" means the potential consequences to downstream life and  
42 property resulting from a dam failure and uncontrolled release of water, ex-  
43 clusive of the size or the physical condition of the dam or mine tailings im-  
44 pondment structure. Hazard classifications shall be assigned to new and  
45 existing dams or mine tailings impoundment structures based on the severity  
46 of failure consequences to life and property.

47 (r) "Professional engineer" means a person who has been duly licensed  
48 as a professional engineer by the Idaho board of licensure of professional  
49 engineers and professional land surveyors under chapter 12, title 54, Idaho  
50 Code.

1       (s) "Artificial barrier or embankment" means any structure constructed  
2 to impede or obstruct the flow of water.

3       SECTION 3. That Section 42-1712, Idaho Code, be, and the same is hereby  
4 amended to read as follows:

5       42-1712. CONSTRUCTION, ENLARGEMENT, ALTERATION OR REPAIR OF DAMS  
6 -- SUBMISSION OF DUPLICATE PLANS, DRAWINGS AND SPECIFICATIONS. Owners who  
7 shall desire to construct, or enlarge, or alter or repair, meaning only such  
8 alterations or repairs as may affect the safety of the dam or reservoir, any  
9 dam, for the purpose of storing or appropriating or diverting any of the  
10 waters of this state, when the same is to be ~~more than twenty ten~~ 210 feet  
11 or more in height ~~or have~~ and having a storage capacity of ~~one hundred fifty~~  
12 (1050) acre-feet or more, except as otherwise in this chapter provided,  
13 shall submit duplicate plans, drawings and specifications of the proposed  
14 work to the director, and construction of a new dam or enlargement, or alter-  
15 ation or repairs shall not be commenced until the owner has applied for and  
16 obtained written approval of the plans, drawings and specifications.

17       Owners of dams under construction on the effective date of this legisla-  
18 tion and for which plans, drawings and specifications are required but have  
19 not been approved on or before the effective date of this legislation shall  
20 submit such plans, drawings and specifications for approval, with the fee  
21 established hereinafter. The director shall give notice to owners to sub-  
22 mit plans, drawings and specifications, and failure to submit plans, draw-  
23 ings and specifications for approval within thirty (30) days of the date of  
24 mailing the notice shall be punishable as provided in this act, and construc-  
25 tion shall be stopped upon issuance of an order by the director unless for  
26 good cause shown as determined by the director further time is allowed. The  
27 notice and/or order provided for in this paragraph may be given by certified  
28 mail and a return receipt signed by the owner or responsible company shall  
29 constitute prima facie evidence of service.

30       Upon receipt of the plans, drawings and specifications, the director  
31 shall give consideration thereto and shall approve or disapprove the same  
32 within the time provided in this section, and if he approves them, the di-  
33 rector shall affix his approval thereto and return one (1) copy of each such  
34 plans, drawings and specifications, with his approval, to the party or par-  
35 ties proposing to construct the works.

36       Plans, drawings and specifications submitted to the director complete  
37 with fees shall be approved or disapproved in no more than sixty (60) days and  
38 in no less than fourteen (14) days after receipt. Defective plans, drawings  
39 and specifications made in a bona fide attempt to conform to the law and rules  
40 of the water resource board shall not be rejected but notice of defect shall  
41 be sent to the owner by certified mail. If within thirty (30) days of the date  
42 of mailing the notice the owner does not file amended and perfected plans,  
43 drawings and specifications, the plans, drawings and specifications shall  
44 be rejected and canceled unless for good cause shown the director allows the  
45 owner further time.

46       The construction of all dams under plans, drawings and specifications  
47 approved by the director shall be pursued with reasonable diligence to com-  
48 pletion. In the event that an owner fails to commence actual construction  
49 and maintain reasonable construction progress of the dam under the plans,

1 drawings and specifications approved by the director prior to or after the  
 2 effective date of this act, such approval may be voided by the director one  
 3 (1) year after such approval. Notice of the intent to void any such approval  
 4 shall be sent by the director to the owner by certified mail and said owner  
 5 shall be allowed thirty (30) days within which to show cause why such ap-  
 6 proval should not be voided. The director may grant additional time within  
 7 which to commence the construction under plans, drawings and specifications  
 8 approved by the director upon a showing of reasonable cause. Plans, drawings  
 9 and specifications for which approval has become void must be resubmitted  
 10 for approval, with the fee therefor as hereafter provided, prior to commenc-  
 11 ing construction of any such dam.

12 The plans, drawings and specifications shall include the following in-  
 13 formation:

14 (a) The name and address of the owner.

15 (b) The location, type, size and height of the proposed dam or reservoir  
 16 and appurtenant works.

17 (c) The storage capacity of the reservoir.

18 (d) Such other pertinent information as the director may require in-  
 19 cluding the following:

20 (1) Data concerning subsoil and foundation conditions and materials  
 21 entering into construction of the dam or reservoir.

22 (2) Investigations of, and reports on subsurface conditions involving  
 23 such matters as exploratory pits, trenches, and adits, drilling, cor-  
 24 ing, geophysical surveys, tests to determine leakage rates, and phys-  
 25 ical tests to measure in place the properties and behavior of foundation  
 26 materials at the dam or reservoir site.

27 (3) Investigation of and reports on the geology of the dam or reser-  
 28 voir site and its vicinity, possible geological hazards, availability  
 29 and quality of construction materials, and other pertinent factors.

30 The plans, drawings and specifications shall be of such character and  
 31 size setting forth such pertinent details and dimensions and in such form as  
 32 the director requires. Plans, drawings and specifications which are sub-  
 33 mitted to the department shall be prepared by or under the direction of a  
 34 registered professional engineer who is registered pursuant to Idaho law and  
 35 authenticated by him as provided in section 54-1215, Idaho Code, ~~or by such~~  
 36 ~~other person as provided in section 54-1223, Idaho Code.~~

37 Where said dam is, in the opinion of the director, not of sufficient im-  
 38 portance to have the provisions of the section apply to such dam, then the di-  
 39 rector shall have power, upon written application, to suspend the provisions  
 40 of this section in regard to such dam.

41 The director shall prepare design and construction criteria for ~~dams~~  
 42 ~~and artificial barriers not requiring departmental approval of plans, draw-~~  
 43 ~~ings and specifications or embankments that store water, that are not dams as~~  
 44 ~~defined in this chapter,~~ and shall supply such criteria upon request to any  
 45 interested person to aid in constructing such ~~dams and artificial barriers~~  
 46 ~~or embankments~~. The use of such criteria shall in no way relieve the owner of  
 47 responsibility for adequacy of design and construction procedures, nor be  
 48 the basis of liability for any city or county that grants a permit related to  
 49 construction of the ~~dam or artificial barrier or embankment~~ pursuant to the  
 50 provisions of chapter 65, title 67, Idaho Code.

1 SECTION 4. That Section 42-1715, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 42-1715. INSPECTION DURING CONSTRUCTION, ENLARGEMENT, ALTERATION,  
4 REPAIR OR REMOVAL OF DAMS AND MINE TAILINGS IMPOUNDMENT STRUCTURES -- EFFECT  
5 OF NONCOMPLIANCE. During the construction, enlargement, repair, alter-  
6 ation, or removal of any dam, reservoir or mine tailings impoundment struc-  
7 ture, the director shall make or cause to have made continuous or periodical  
8 inspections at state expense for the purpose of securing conformity with the  
9 approved plans and specifications, but shall require the owner to perform at  
10 his expense such work or tests as necessary to disclose information suffi-  
11 cient to enable him to determine that conformity with the approved plans and  
12 specifications is being secured, which shall include adequate inspection,  
13 at owner's expense to verify compliance with approved plans, drawings and  
14 specifications.

15 The work of construction, enlargement, repair, alteration or removal of  
16 a dam, reservoir or mine tailings impoundment structure, for which approved  
17 plans, drawings and specifications are required, shall be under the respon-  
18 sible charge of a registered professional engineer who is registered accord-  
19 ing to Idaho law or by such other person as provided in section 54-1223, Idaho  
20 Code, and who shall certify that such construction, enlargement, repair, al-  
21 teration or removal was done in accordance with approved plans, drawings and  
22 specifications. If, after any inspections, investigations or examinations,  
23 or at any time as the work progresses, or at any time prior to issuance of a  
24 certificate of approval, it is found by the director that amendments, modi-  
25 fications or changes are necessary to insure safety, the director may order  
26 the owner to revise the plans and specifications. If conditions are revealed  
27 which will not permit the construction of a safe dam, reservoir or mine tail-  
28 ings impoundment structure, the approval may be revoked. In the event that  
29 conditions imposed may be waived or made less burdensome without sacrific-  
30 ing a proper margin of safety, the director may authorize an owner to revise  
31 the plans and specifications accordingly. If at any time during construc-  
32 tion, enlargement, repair or alterations of any dam, reservoir or mine tail-  
33 ings impoundment structure the director finds that the work is not being done  
34 in accordance with the provision of the approval and the approved plans and  
35 specifications, he shall give a written notice and order by certified mail or  
36 by personal service to the owner. The notice and order shall state the par-  
37 ticulars in which the approval and approved plans and specifications or the  
38 approval and approved plans and specifications as revised are not being or  
39 have not been complied with and shall order the immediate compliance with the  
40 approval and approved revised plans and specifications as the case may be.  
41 The director may order that no further work be done until such compliance has  
42 been effected and approved by him. A failure to comply with the approval and  
43 approved plans and specifications as originally approved or as revised shall  
44 render the approval subject to revocation by the director, if compliance is  
45 not made in accordance therewith after notice and order from him as provided  
46 in this chapter.