

FIRST REGULAR SESSION

HOUSE BILL NO. 159

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BIVINS (Sponsor), WHORTON,
SATER AND MOORE (Co-sponsors).

Pre-filed December 18, 2006 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0717L.01I

AN ACT

To repeal sections 236.400, 236.410, 236.415, 236.420, 236.425, 236.435, 236.440, 236.445, 236.460, 236.465, and 236.500, RSMo, and to enact in lieu thereof eleven new sections relating to dam and reservoir safety, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 236.400, 236.410, 236.415, 236.420, 236.425, 236.435, 236.440, 236.445, 236.460, 236.465, and 236.500, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 236.400, 236.410, 236.415, 236.420, 236.425, 236.435, 236.440, 236.445, 236.460, 236.465, and 236.500, to read as follows:

236.400. 1. As used in sections 236.400 to 236.500, standards, rules and regulations promulgated hereunder, unless the context otherwise requires the following words and terms mean:

(1) "Agricultural dam", any dam constructed to impound water for use in irrigation, livestock watering, or commercial fish rearing and sale;

(2) "Alterations", "repairs", or either of them, such alterations or repairs as affect the safety of a dam or reservoir, or public safety, life or property;

(3) "Chief engineer", the head of the dam and reservoir safety program of the department of natural resources or his representative;

(4) "Construction permit", a written authorization issued by the council giving the owner of a high or significant hazard dam the right to construct, alter, enlarge, reduce, repair or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 remove a dam or reservoir or appurtenances thereto, with such conditions as are necessary to
13 adequately protect the public safety, life, property, the dam or reservoir;

14 (5) "Dam", any artificial or manmade barrier, **including appurtenant works**, which
15 does or may impound water, and [which impoundment has or may have a surface area of fifteen
16 or more acres of water at the water storage elevation, or which is thirty-five feet or more in
17 height from the natural bed of the stream or watercourse measured at the downstream toe of the
18 barrier or dam, if it is not across a streambed or watercourse, together with appurtenant works.
19 Sections 236.400 to 236.500 shall not apply to any dam which is not or will not be in excess of
20 thirty-five feet in height or to any dam or reservoir licensed and operated under the Federal
21 Power Act] **is fifty feet or more in height with a storage volume of at least one hundred**
22 **acre-feet of water. For purposes of this definition, the height of the dam is measured either**
23 **from the natural bed of the stream or watercourse at the downstream toe of the barrier or**
24 **dam or the lowest point on the downstream toe of the dam, whichever is lower, up to the**
25 **dam crest elevation. The storage volume is the amount of water stored in the reservoir**
26 **below the dam crest elevation;**

27 (6) "Dam and reservoir safety council", as designated by sections 236.400 to 236.500 and
28 referred to as the "council" shall consist of seven members appointed by the governor according
29 to the provisions of sections 236.400 to 236.500;

30 (7) **"Dam crest elevation", the lowest elevation of the top surface of the dam**
31 **exclusive of the spillway;**

32 (8) "Director", the director of the department of natural resources of the state of
33 Missouri;

34 [(8)] (9) "Enlargement", any change in or addition to an existing dam or reservoir which
35 raises the height of a dam, increases the watershed for a reservoir, or raises the water storage
36 elevation of the water impounded by a dam or reservoir;

37 [(9)] (10) "Experienced professional engineer", an engineer registered in the state of
38 Missouri and experienced in hydraulics, hydrology and civil engineering as applied to dam
39 design and construction;

40 [(10)] (11) **"High hazard", loss of human life is probable or expected if the dam**
41 **were to fail;**

42 (12) **"Low hazard", any dam that is not high or significant hazard;**

43 (13) "Maintenance", the proper keeping of all aspects of a dam or reservoir and
44 appurtenances thereto, that pertain to safety, in a state of repair and working order as necessary
45 to comply with sections 236.400 to 236.500, any permit hereunder, and protect public safety, life
46 and property;

47 [(11)] **(14)** "Natural physical changes", those changes not directly or indirectly caused
48 by man which affect the safety of the dam or reservoir;

49 [(12)] **(15)** "Operation", the physical changes, natural or manmade that occur or are made
50 to a dam or reservoir, or operation of the mechanisms or appurtenances of the dam or reservoir,
51 which affect or may affect public safety, life or property;

52 [(13)] **(16)** "Operation or operating permit", a permit issued to the owner of a high
53 or significant hazard dam for a period of up to five years by the council indicating that the
54 dam meets the requirements of sections 236.400 to 236.500 and the guidelines, standards,
55 rules, and regulations issued under sections 236.400 to 236.500, and containing such
56 conditions as to operations, maintenance, and repair as are necessary to protect public
57 safety, life, and the dam or reservoir adequately;

58 **(17)** "Owner", a person who owns, controls, operates, maintains, manages, or proposes
59 to construct a dam or reservoir including:

60 (a) The state and its departments, institutions, agencies, and political subdivisions, but
61 not the United States government;

62 (b) A municipal or quasi-municipal corporation;

63 (c) A district;

64 (d) A public utility;

65 (e) A natural person, firm, partnership, association, corporation, political subdivision,
66 or legal entity;

67 (f) The duly authorized agents, lessees, or trustees of any of the foregoing;

68 (g) Receivers or trustees appointed by any court for any of the foregoing;

69 [(14)] **(18)** "Permit", a construction[, safety or registration] **or operating** permit;

70 [(15)] **(19)** "Permit applicant", an owner who applies for a construction[, safety or
71 registration] **or operating** permit;

72 [(16)] **(20)** "Reduction", any decrease in the height of a dam, watershed size, or water
73 storage elevation of the water impounded by a dam or reservoir;

74 [(17)] "Registration permit", a permit issued for a period not to exceed five years by the
75 council to the owner of a dam or reservoir in existence on September 28, 1979, or which
76 becomes subject to the provisions of sections 236.400 to 236.500 for such dams and reservoirs
77 which are in a properly maintained condition or which have made and complied with
78 recommendations for corrections of observed defects of the dam or reservoir and have been
79 examined and approved in accordance with sections 236.400 to 236.500 and standards, rules and
80 regulations and guidelines issued pursuant to sections 236.400 to 236.500;

81 **(18)] (21)** "Registration", a written statement submitted to the chief engineer on
82 forms provided by the department, by the owner of a dam or reservoir, including the name

83 **of the legal owner, a contact person, the address of the legal owner and contact person, the**
84 **height of the dam, the estimated reservoir storage volume at the dam crest elevation, and**
85 **the general location of the dam;**

86 (22) "Reservoir", any impoundment which results from a dam as defined in sections
87 236.400 to 236.500;

88 [(19) "Safety permit", a permit issued to the owner for a period of five years, or less if
89 safety considerations so require, by the council indicating that the dam meets the requirements
90 of sections 236.400 to 236.500 and the guidelines, standards, rules and regulations issued
91 pursuant to sections 236.400 to 236.500, and containing such conditions as to operations,
92 maintenance and repair as are necessary to adequately protect public safety, life and the dam or
93 reservoir;

94 (20)] (23) **"Significant hazard", no loss of human life expected if the dam were to**
95 **fail, but significant economic losses or substantial damage to public services or**
96 **infrastructure are probable or expected if the dam were to fail;**

97 (24) "Water", water, other liquid or tailings;

98 [(21)] (25) "Water storage elevation", that elevation of water surface at the principal
99 spillway which could be obtained by the dam or reservoir were there no outflow and were the
100 reservoir full of water;

101 [(22)] (26) "Watershed", the area, usually expressed in acres of square miles, that
102 contributes or may contribute surface water to a reservoir.

103 **2. Any dam or reservoir with a lake surface area of ten acres or less at the water**
104 **storage elevation that will be used primarily for fireclay quarry reclamation under the**
105 **provisions of the land reclamation commission will be exempt from all provisions of**
106 **sections 236.400 to 236.500.**

236.410. 1. There is hereby created a "Dam and Reservoir Safety Council", whose
2 domicile for the purposes of sections 236.400 to 236.500 shall be the department of natural
3 resources of the state of Missouri, for the regulation of dam and reservoir safety. The council
4 shall consist of seven members, no more than four of whom shall be members of the same
5 political party, appointed by the governor with the advice and consent of the senate.

6 2. The members of the council shall have a background of academic training or
7 professional experience directly related to the design of dams and reservoirs. At least two
8 members of the council shall be professional engineers registered in the state of Missouri, one
9 of whom shall represent the general public; at least one member shall be an engineering
10 geologist; at least one member, in addition to the professional engineer, shall be a representative
11 of the general public; two members shall be from industry, one of whom shall be earthmoving
12 contractors; and one member shall be the owner of a **high or significant hazard** dam or

13 reservoir. The members shall serve for a term of two years; except, of the first appointments
14 three shall be appointed for one year. The governor shall fill any vacancy on the council and may
15 remove any appointed member for cause. The council shall annually elect a chairman and vice
16 chairman from among its members. The council shall meet regularly but not less than quarterly.
17 Special meetings and hearings may be called upon delivery of written notice to each member of
18 the council signed by the director, the chief engineer, the council chairman or four of the council
19 members. Four members of the council shall constitute a quorum to transact the business of the
20 council. The council shall decide all questions by a majority vote of those present and
21 constituting a quorum. The members of this council shall not receive any compensations other
22 than for actual travel and subsistence when acting officially as members of the council.

236.415. 1. The council considering recommendations of the chief engineer shall,
2 subsequent to a public meeting, adopt, subject to the approval of the director, the general
3 technological guidelines and the standards, guidelines, rules and regulations applicable to
4 permits, **hazard classification**, the design, construction, maintenance, operation, alteration,
5 repair, enlargement, reduction, removal or natural physical changes that may occur to a dam or
6 reservoir. Violations of guidelines, standards, rules and regulations are violations of sections
7 236.400 to 236.500 permitting the revocation, suspension, or refusal to issue any permit required
8 by sections 236.400 to 236.500. No standards, guidelines, rules, or regulations shall be adopted,
9 or any amendment or repeal thereof shall be effective, except after a public hearing to be held
10 after thirty days' prior notice by advertisement or press release, and publication as required in
11 chapter 536, RSMo, of the date, time and place of the hearing and opportunity given to the public
12 to be heard.

13 2. At the hearing, opportunity to be heard by the council with respect to the subject
14 thereof shall be afforded any interested person upon written request to the council, addressed to
15 the chief engineer, received not later than seven days prior to the hearing and may be afforded
16 to other persons if convenient. In addition, any interested person, whether or not heard, may
17 submit, within seven days subsequent to the hearings, a written statement of his views. The
18 council may solicit the views, in writing, of persons who may be affected by, or interested in,
19 proposed rules and regulations, standards or guidelines. Any person heard or represented at the
20 hearing or making written request for notice shall be given written notice of the action of the
21 council with respect to the subject thereof.

22 3. The council upon hearing the recommendations of the chief engineer and reviewing
23 the application for a construction or [registration] **operating** permit shall approve or deny the
24 permit application. The council may delegate authority to approve or deny permit applications
25 to the chief engineer, whose actions shall be subject to appeal to the council as provided in
26 subsection 2 of section 236.425.

27 4. No standard, rule or regulation or guideline, or amendment or repeal thereof, adopted
28 by the council shall be in force and effect until it has been approved in writing by the director and
29 the requirements of chapter 536, RSMo, are satisfied. The affirmative vote of at least four
30 members of the council shall be required for adoption.

31 **5. The council shall by affirmative vote establish the fees for permits required in**
32 **this section by rule or regulation for the cost of renewal, design review, and inspection of**
33 **high and significant hazard dams and shall review the fees at least once every three years.**
34 **In no event shall the fees established for design review of high and significant hazard dams**
35 **exceed one percent of the total estimated cost of the dam or reservoir.**

36 **6. Beginning on June 1, 2008, there shall be convened a joint committee to consider**
37 **and review the fees established by the council under subsection 5 of this section. The**
38 **committee shall be made up of ten members, with five members of the house of**
39 **representatives appointed by the speaker of the house of representatives and five members**
40 **of the senate appointed by the president pro tempore of the senate. No more than three**
41 **members may be appointed from the majority party in either the house or the senate. The**
42 **committee shall examine the department's fee structure designed to support the dam and**
43 **reservoir safety program and evaluate the costs to the state for maintaining the program.**
44 **The committee shall prepare and submit a report, including any recommendations made**
45 **to consider restructuring the fees established under subsection 5 of this section, to the**
46 **governor, the senate, and the house of representatives no later than January 1, 2009.**

 236.420. The council, with the advice and assistance of the chief engineer, shall carry
2 out a state program of inspection of dams and reservoirs in accordance with regulations adopted
3 by the council. All **high and significant hazard** dams and reservoirs in this state shall be
4 inspected on a periodic basis to determine if they constitute a threat to public safety, life or
5 property. The chief engineer shall submit reports to the director and the council concerning the
6 condition of each dam or reservoir inspected, and recommendations as to any alterations or
7 repairs needed.

 236.425. 1. The chief engineer shall administer the provisions of sections 236.400 to
2 236.500 by:

3 (1) Recommending [general] technological guidelines that pertain to the design,
4 construction, maintenance, operation, use, alteration, repair, enlargement, reduction, or natural
5 physical changes of, or that may occur to, a dam or reservoir including their removal[; except
6 that, detailed technical specifications shall not be promulgated to regulate the design,
7 construction, operation, maintenance, use, alteration, repair or removal of a dam or reservoir].
8 Such guidelines shall not be effective until adopted by the council and approved by the director

9 at a public meeting, after notice requirements set forth in subsection 1 of section 236.415 herein
10 have been satisfied;

11 (2) Making recommendations concerning the issuing, continuing in effect, revoking,
12 modifying, suspending, or denying, under such conditions as prescribed by sections 236.400 to
13 236.500 and such rules as may be adopted to protect public safety, life, property, dams and
14 reservoirs, construction permits for the construction, alteration, enlargement, reduction, repair
15 or removal of **high and significant hazard** dams or appurtenances thereto, and [safety and
16 registration] **operating** permits to [insure] **ensure** continuing protection of public safety, life,
17 property, dams and reservoirs, for all **high and significant hazard** dams subject to the
18 provisions of sections 236.400 to 236.500;

19 (3) Making such investigations, including hearings, as are proper to protect public safety,
20 life and property from an unsafe dam or reservoir, and to determine whether any permits should
21 be issued, continued, revoked, modified, suspended, or denied or whether any violations of
22 sections 236.400 to 236.500, standards, or rules or regulations have occurred or are occurring;

23 (4) Entering, at any reasonable time, any private or public premises as necessary to make
24 an investigation or inspection of a dam or reservoir, or records kept, pertaining thereto, and such
25 inspection shall follow reasonable notice to the owner given prior to such investigation or
26 inspection except in the case of an emergency threatening public safety, life or property, in which
27 case such inspection or investigation may be made without prior notice. A suitably restricted
28 search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by
29 any judge having jurisdiction, to the chief engineer or his representative for the purpose of
30 enabling him to make the inspection.

31 2. The council shall meet with or hear the appeal of a permit applicant and his
32 representative upon request of the permit applicant if the chief engineer has rejected the
33 application for a construction[, safety or registration] **or operating** permit.

236.435. 1. Prior to the commencement of the construction, alteration, enlargement,
2 reduction or removal of a **high or significant hazard** dam or reservoir, the owner shall apply
3 to the council and upon satisfying the requirements of sections 236.400 to 236.500 and the rules,
4 regulations and standards promulgated pursuant hereto, obtain a construction permit.

5 2. The application for a construction permit shall bear the seal and signature of an
6 experienced professional engineer registered in Missouri [or employed by a qualified engineering
7 division of a state or federal agency regularly engaged in dam construction for soil and water
8 conservation, or irrigation or relating to wildlife conservation] and shall be accompanied by the
9 design report and plans and [specification] **specifications** of the proposed design, alteration,
10 enlargement, reduction, repair or removal of the dam or reservoir.

11 3. Any person constructing or owning a **high or significant hazard** dam or reservoir,
12 or living or owning property in an area affected, or whose safety may be affected by such dam
13 or reservoir may consult with the chief engineer concerning such dam or reservoir.

14 4. The council upon hearing the recommendation of the chief engineer shall approve or
15 deny an application for a construction permit within forty-five days after its receipt or the
16 completion of any hearings in connection with such application, whichever is later. The permit
17 shall be issued upon the receipt of the application if, in the judgment of the council, requirements
18 of sections 236.400 to 236.500 and all standards, rules and regulations hereunder are satisfied
19 and the design will be adequate to protect the public safety, life and property.

20 5. The council upon hearing the recommendation of the chief engineer may reject the
21 application if it decides that there is insufficient information to determine the safety of the
22 proposed construction, alteration, enlargement, reduction or removal of the dam or reservoir or
23 that the construction, alteration, enlargement, reduction or removal of the dam or reservoir would
24 endanger public safety, life or property, or otherwise not comply with sections 236.400 to
25 236.500 and any rules, standards, guidelines and regulations adopted hereunder.

26 6. A landowner who now owns or proposes to construct an agricultural dam or reservoir
27 which will be used primarily for agricultural purposes will be exempt from all provisions of
28 sections 236.400 to 236.500. If the council with the advice of the chief engineer, determines that
29 the dam or reservoir is no longer used primarily for agricultural services, it shall become subject
30 to the provisions of sections 236.400 to 236.500.

31 7. [Dams or their construction, alterations, enlargements, reductions or removals
32 designed by, and their construction, alteration, enlargement, reduction or repair or removal
33 monitored by, a qualified engineer regularly engaged in dam construction for soil and water
34 conservation or irrigation or relating to wildlife conservation are for the purposes of such
35 construction or other listed actions exempt from the provisions of this section except that the
36 plans for the dam shall be filed with the chief engineer prior to construction, or other listed
37 action. Amended plans shall be filed at the completion of construction or other listed action if
38 there have been significant deviations from the previously filed plans.] **A landowner who owns
39 an agricultural dam or reservoir that will be used primarily for agricultural purposes as
40 of the effective date of this section, or a landowner who proposes to construct an
41 agricultural dam or reservoir that will be used primarily for agricultural purposes, may
42 choose to have such dam regulated by the dam and reservoir safety council upon proper
43 notification to the department of such a request. For the purposes of this section, proper
44 notification shall mean a written request asking to be included in the council's regulation
45 of dams and reservoirs, mailed by certified letter to the council. After such a request has
46 been made, any subsequent request from a landowner to remove an agricultural dam or**

47 reservoir from regulation shall be decided solely by the director. Nothing in this section
48 shall be construed to require any landowner who owns or proposes to construct an
49 agricultural dam or reservoir that will be used primarily for agricultural purposes to
50 choose regulation by the council as a condition for doing business.

51 8. In the event the department believes an agricultural dam or reservoir that is or
52 will be used primarily for agricultural purposes and that is not regulated by the dam and
53 reservoir safety council poses a high hazard, the department shall initiate an engineering
54 study to determine whether or not the agricultural dam or reservoir in question satisfies
55 the high hazard standard established in section 236.400. Upon completion of the
56 engineering study and in the event that the department finds that the agricultural dam or
57 reservoir in question satisfies the high hazard standard, the department shall submit their
58 findings and subsequent recommendations for regulation to the appropriate soil and water
59 district board that encompasses the property on which the agricultural dam or reservoir
60 sits. If a majority of the soil and water district board agrees, based on section 236.400 and
61 any subsequent rules adopted under that section, that such agricultural dam or reservoir
62 poses a high hazard, then such agricultural dam or reservoir shall be subject to the
63 provisions of sections 236.400 to 236.500. If the soil and water district board does not agree
64 that such agricultural dam or reservoir meets the engineering requirements of section
65 236.400, then the agricultural dam or reservoir in question shall maintain the exemption
66 provided for in subsection 6 of this section. The department shall not initiate an
67 engineering study on any agricultural dam or reservoir that has been studied by the
68 department and considered by a soil and water district board for a period of no less than
69 one year after such a recommendation has been rejected by a soil and water district board.
70 After one year, the department may again initiate an engineering study for an agricultural
71 dam or reservoir that has been previously studied and ruled upon by a soil and water
72 district board. If a soil and water district board does not render a decision within sixty
73 days from the department's submission, the department's findings shall be considered
74 agreed to and the dam or reservoir shall be subject to regulation under sections 236.400
75 to 236.500.

236.440. 1. The owner shall notify the council upon completion of construction,
2 alteration, enlargement, or reduction of the **high or significant hazard** dam or reservoir. This
3 notification shall bear the seal and signature of an experienced professional engineer and shall
4 be accompanied by an application for [a safety] **an operating** permit. The owner of any **high**
5 **or significant hazard** dam or reservoir subject to the provisions of sections 236.400 to 236.500
6 shall obtain [a safety] **an operating** permit following completion of construction.

7 2. Upon receipt of complete and proper application for [a safety] **an operating** permit,
8 including notification of completion by the owner and certification by an experienced
9 professional engineer that the new construction, alteration, enlargement or reduction has been
10 completed in accordance with the provisions of the construction permit and sections 236.400 to
11 236.500, the council shall upon receipt of the application issue [a safety] **an operating** permit.
12 The council upon advice of the chief engineer may deny the application if it determines that
13 violations of the construction permit or sections 236.400 to 236.500 exist. If revisions have been
14 made which vary substantially from the provisions of the construction permit, it must be shown
15 that the revisions do not endanger public safety, life or property. The [safety] **operating** permit
16 for dams constructed pursuant to a construction permit issued under sections 236.400 to 236.500,
17 may contain conditions the council upon advice of the chief engineer determines are necessary
18 for the protection of public safety, life and property and a schedule and timetable for the dam and
19 reservoir to achieve compliance with the construction permit and provisions of sections 236.400
20 to 236.500, standards, rules and regulations promulgated hereunder, but such conditions shall
21 not be more stringent or restrictive than those contained in the construction permit.

22 3. [Owners of dams and reservoirs in existence on September 28, 1979, shall obtain
23 registration permits for dams of fifty to seventy feet in height within four years, and for dams up
24 to fifty feet in height within six years of September 28, 1979, or as otherwise required by the
25 provisions of sections 236.400 to 236.500 and rules and regulations adopted hereunder. A
26 registration] **An operating** permit shall be issued by the council upon the advice of the chief
27 engineer for dams and reservoirs only after it is determined that the **high or significant hazard**
28 dam meets the standards of sections 236.400 to 236.500 and rules and regulations hereunder, and
29 any recommendations made by the inspecting engineer pursuant thereto.

30 4. **Owners of all dams in existence on or constructed after August 28, 2007, who do**
31 **not have a current registration or safety permit issued prior to August 28, 2007, shall**
32 **register the existence of their dam with the chief engineer no later than six months after**
33 **August 28, 2007, and the owners of high or significant hazard dams shall apply for an**
34 **operating permit no later than one year after August 28, 2007, or at such other future time**
35 **as the council shall adopt by rule.**

36 5. **Owners of a dam or reservoir licensed and operating under the Federal Power**
37 **Act, 16 U.S.C. Section 791a, et Seq., as amended, shall apply for an operating permit no**
38 **later than three months after August 28, 2007.**

39 6. Upon complete and proper application for [a registration] **an operating** permit, on
40 forms provided by the department of natural resources, by the owner of a **high or significant**
41 **hazard** dam [in existence upon September 28, 1979, including a certification by an experienced
42 professional engineer or an engineering division of a state or federal agency regularly engaged

43 in dam construction for soil or water conservation, irrigation, or relating to wildlife
44 conservation,] that the dam has been inspected in accordance with sections 236.400 to 236.500,
45 standards, rules and regulations and guidelines promulgated hereunder, and that the owner has
46 complied with the inspecting engineer's [or agency's] recommendations necessary to correct
47 observed defects of the dam or reservoir, the council shall, upon receipt of the application, issue
48 [a registration] **an operating** permit. The council upon hearing the recommendations of the
49 chief engineer may deny the application if it determines that the owner has not complied with
50 the inspecting engineer's [or agency's] recommendations.

51 [5.] **7.** For **high or significant hazard** dams for which construction was completed prior
52 to the effective date of the construction permit requirements hereunder, the [registration]
53 **operating** permit may contain conditions the council upon hearing recommendations of the chief
54 engineer determines to be necessary to bring the dam and reservoir into compliance with sections
55 236.400 to 236.500 and standards, rules and regulations promulgated hereunder.

56 [6.] **8.** If a **high or significant hazard** dam or reservoir has been removed by the owner,
57 the council shall issue a final approval upon notification by the owner and receipt of certification
58 by an experienced professional engineer that the removal has been carried out in accordance with
59 the provisions of the construction permit issued for such removal. Failure to obtain final
60 approval shall be a violation of sections 236.400 to 236.500.

61 [7. The council shall issue safety permits for dams or their construction, alterations,
62 enlargements, reductions or removals designed by, and their construction or other listed actions
63 monitored by, a state or federal agency engaged in dam construction for soil and water
64 conservation, irrigation or relating to wildlife conservation provided the owners obtain from such
65 agency and file with the chief engineer a statement upon completion of the construction or other
66 listed actions and at not greater than five year intervals, and with every application for renewal
67 of a safety permit, that the dam conforms to the plans on file with the chief engineer and is in a
68 safe, properly maintained condition.

69 **8.] 9.** The owner **of a high or significant hazard dam or reservoir** shall apply for
70 renewal of [a safety or registration] **an operating** permit not less than sixty days prior to
71 expiration of the previously issued permit. The chief engineer shall determine if the dam and
72 reservoir are essentially as described in the latest permit issued for that dam and reservoir,
73 whether they satisfy the requirements of sections 236.400 to 236.500 and any rules, regulations,
74 standards and guidelines adopted pursuant to sections 236.400 to 236.500 and whether any
75 inspection conducted in connection with the permit renewal reveals any defect in the dam or
76 reservoir which would threaten public safety, life or property. Unless the chief engineer
77 determines that the dam and reservoir are not properly maintained, do not satisfy the
78 requirements of the permit, act or rules, regulations, standards and guidelines promulgated

79 hereunder, or that defects revealed by the inspection are not corrected, the council upon hearing
80 the recommendations of the chief engineer shall issue or renew the [safety or registration]
81 **operating** permit upon forty-five days of the receipt of a complete and proper application. The
82 council may require the owner to furnish a certification, as a part of an application to renew a
83 permit hereunder, by an experienced professional engineer [or a qualified engineering division
84 of a state or federal agency regularly engaged in dam construction for water conservation,
85 irrigation or relating to wildlife conservation] that the dam is in a properly maintained condition
86 and that any recommendation for correction of defects which violate sections 236.400 to
87 236.500, guidelines, rules, regulations and standards hereunder or which threaten public safety,
88 life or property have been complied with and that the engineer detected no other such defects
89 which have not been corrected.

90 [9.] **10.** If a barrier or water impoundment becomes a dam or reservoir through alteration
91 or enlargement as defined herein, it shall be subject to the provisions of sections 236.400 to
92 236.500, **and the owner shall register the dam with the council immediately.**

93 **11. If downstream conditions change the hazard classification of any dam or**
94 **reservoir, it shall be immediately subject to the provisions of sections 236.400 to 236.500**
95 **for that new class, and the owner shall notify the council of changed conditions within**
96 **three months of that event.**

97 [10.] **12.** Failure to obtain and comply with a permit as required in this section is a
98 violation of sections 236.400 to 236.500.

236.445. 1. If it is found that a **high or significant hazard** dam or reservoir presents
2 a threat to public safety, life or property, or that the safety of the dam or reservoir is threatened,
3 the permit for the dam or reservoir shall be suspended and shall be reinstated only when the
4 owner at his expense has completed the necessary alteration or has established such operational
5 procedures as the council upon hearing the recommendations of the chief engineer deems
6 necessary for protection of the public safety, life, property, the dam or reservoir. If necessary for
7 such protection, the council may require the owner at his expense to remove the dam or reservoir,
8 or if the owner refuses or neglects to act, the state may alter or remove the dam or reservoir, and
9 the chief engineer may recover the costs of such action as provided in section 236.450.

10 2. If the owner refuses to alter or remove a dam or reservoir as directed when found to
11 be a threat as set forth in sections 236.400 to 236.500, he shall be in violation of sections
12 236.400 to 236.500 and the permit requirements hereunder, and such action shall subject the
13 owner to the enforcement provisions contained herein and revocation of the permit.

236.460. **1.** The owner shall notify the chief engineer upon the sale or other transfer of
2 interest in a dam or reservoir, either existing or under construction, alteration or removal. The
3 construction[, safety or registration] **or operating** permit shall be transferred to the successive

owner, **along with notification of the current hazard classification of the dam**, upon receipt of this notification and upon determination that such transfer will not endanger public safety, life, property, the dam or reservoir.

2. Failure to notify the chief engineer of the transfer shall result in the prior owner retaining the obligations imposed by sections 236.400 to 236.500 until such time as the chief engineer is notified. In the event that the prior owner is a corporation and the corporation fails to transfer ownership or interest because of the dissolution or bankruptcy of the corporation, then the officers, directors, and stockholders, if any, individually shall have all obligations imposed by sections 236.400 to 236.500.

236.465. Irrespective of any other provisions of sections 236.400 to 236.500, the following provisions shall apply to the construction, alteration or enlargement of tailing, slime and settling ponds and to other similar industrial water retention structures included within the definitions of dam or reservoir in section 236.400:

(1) Applications for construction[, safety or registration] **and operating** permits shall be submitted as provided in section 236.435 and section 236.440 except that design plans and specifications which outline any anticipated enlargement of the industrial water retention structure shall be included;

(2) It shall not be necessary to reapply for a permit each time the structure is enlarged if the enlargement plans have been submitted in and approved with the original application, and the provisions of subdivision (3) of this section have been satisfied;

(3) Upon notification of the chief engineer, bearing the seal and signature of an experienced professional engineer, that the initial phase of construction has been completed in accordance with the provisions of the construction permit and sections 236.400 to 236.500, or if [a registration] **an operating** permit has been issued as provided in subdivision (1) of this section, and before any enlargement is begun, and if no violation of sections 236.400 to 236.500 can be shown, [a safety permit or a registration] **an operating** permit with special provisions that authorize the planned enlargement to the initially constructed structure shall be issued, on application, if enlargement plans were included and approved in the original application;

(4) It is not necessary to retain continuously a professional engineer after the initial stage of construction;

(5) The dam shall be inspected by an experienced professional engineer registered in the state of Missouri as required to renew the [safety permit or registration] **operating** permit at five-year intervals unless safety of the public, life and property require a shorter period of time;

(6) The chief engineer shall make inspections of these structures as necessary to insure adequate protection for public safety, life and property[;

27 (7) Where it is shown that a tailings, slime and settling pond, or other similar water
28 retention structure is subject to inspection for safety, using standards at least as stringent as those
29 required under sections 236.400 to 236.500, by a federal or state agency and the owner notifies
30 the council that the structure is subject to such inspection, such structures shall be exempt from
31 the provisions of sections 236.400 to 236.500].

236.500. 1. Any person who willfully violates any of the provisions of sections 236.400
2 to 236.500 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not
3 less than five hundred dollars nor more than ten thousand dollars, or by confinement in the
4 county jail for a term of not less than thirty days nor more than one year, or by both such fine and
5 confinement.

6 2. In the event of a continuing violation, each day that the violation continues shall
7 constitute a separate and distinct offense.

8 3. Any person who willfully obstructs, hinders or prevents the council, the chief engineer
9 or his agents or employees from performing the duties imposed by sections 236.400 to 236.500
10 and rules and regulations promulgated hereunder or who willfully resists the council, the chief
11 engineer or his agents in the performance of the duties imposed on them by sections 236.400 to
12 236.500 and rules and regulations promulgated hereunder is guilty of a misdemeanor and, upon
13 conviction, shall be punished as provided in subsection 1 of this section.

14 4. Any owner who willfully engages in the construction, repair, alteration or removal of
15 any **high or significant hazard** dam or reservoir without a construction permit or in violation
16 of a construction permit or willfully violates the requirements of or for [a safety or registration]
17 **an operating** permit is guilty of a misdemeanor and, upon conviction, shall be punished as
18 provided in subsection 1 of this section.

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