

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2157

S. P. 745

In Senate, January 2, 1974

Referred to the Committee on Public Utilities. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Cummings of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

**AN ACT Providing for State Supervision of the Construction and Safety of
Dams and Reservoirs.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 12, c. 5, additional. Title 12 of the Revised Statutes is amended by adding a new chapter 5 to read as follows:

CHAPTER 5

DAMS AND RESERVOIRS

§ 251. Legislative findings

It is the intent of the Legislature to provide for the regulation and supervision of all dams and reservoirs exclusively by the State of Maine to the extent required for the protection of public safety. This jurisdiction shall apply to all owners of dams and reservoirs as defined in section 252.

No municipality or subdivision of State Government has authority to regulate, supervise or provide for the regulation or supervision of any dams or reservoirs in this State, where such authority would conflict with the powers and authority vested in the Soil and Water Conservation Commission by this chapter.

§ 252. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. Agency. "Agency" means the Soil and Water Conservation Commission.

2. Alterations and repairs. "Alterations and repairs" means only such alterations or repairs as may affect the safety of the dam or reservoir, as determined by the agency.

3. Dam. "Dam" means any structure, publicly or privately owned, whether it be made of earth, concrete or other material or combinations of materials, which causes an increase in water level upstream of it to above levels which would normally occur without the structure. Farm, firm or other ponds which are excavated into the ground with water levels at or below existing ground levels are not considered to be dams.

4. Days. "Days" used in establishing deadlines means calendar days, including Sundays and holidays.

5. Enlargement. "Enlargement" means any change in or addition to an existing dam or reservoir, which raises or may raise the water storage elevation of the water impounded by the dam.

6. Owner. "Owner" includes any of the following who own, control, operate, maintain, manage, or propose to construct a dam or reservoir:

- A. The State and its agencies and political subdivisions;
- B. Every municipal or quasi-municipal corporation;
- C. Every district;
- D. Every person, firm or corporation.

7. Professional engineer. "Professional engineer" means a person holding a certificate of registration as a professional engineer issued by the State Board of Registration of Engineers and officers and employees of the United States Government while engaged within this State in the practice of the profession of engineering for said government.

8. Reservoir. "Reservoir" means the body of water immediately upstream of a dam, which is reasonably still or slow-moving due to the stream barrier presented by the dam.

9. Water storage elevation. "Water storage elevation" means the maximum elevation of water surface which can be obtained by the dam or reservoir.

§ 253. General provisions

1. Plans and specifications. All plans and specifications for initial construction, enlargement, alteration, repair and removal of dams shall be developed by a professional engineer, experienced in dam design and construction. Such plans and specifications shall carry the signature or seal of said professional engineer, or both.

2. Supervision. All construction of dams and reservoirs, including initial construction, enlargement, alteration, repair or removal shall be under the supervision of a professional engineer. Upon completion of such construction, he shall certify to the agency that such dam or reservoir, enlargement, alteration, repair or removal was completed according to design plans and specifications as previously approved by the agency. Any variations from approved plans and specifications shall be shown as built on such plans.

3. Damages. No action shall be brought against the State or the agency or its agents or employees for the recovery of damages caused by the partial or total failure of any dam or reservoir or through the operation of any dam or reservoir upon the ground that such defendant is liable by virtue of any of the following:

- A. The approval of the dam or reservoir;
- B. The issuance or enforcement of orders relative to maintenance or operation of the dam or reservoir;
- C. Control and regulation of the dam or reservoir;
- D. Measures taken to protect against failure during an emergency.

4. Relief of obligations. Nothing in this chapter shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations or liabilities incident to the ownership or operation of the dam or reservoir.

5. Orders final. The findings and orders of the agency and the certificate of approval of any dam or reservoir issued by the State are final and conclusive and binding upon all owners as to the safety of design, construction, maintenance and operation of any dam or reservoir.

6. Rights of owner. Nothing in this chapter shall be construed to deprive any owner of such recourse to the courts as he may be entitled to under the laws of this State.

7. Records. All records of official actions of the agency and its correspondence pertaining to the supervision of dams and reservoirs are public documents.

8. Certificate recorded. Upon completion of construction of a dam or reservoir, the owner shall record the certificate or permit in the registry of deeds and it shall become a part of the deed to the land upon which the dam or reservoir is located. All owners shall notify the agency of any change in ownership of any dam subject to this chapter at the time the transfer of ownership occurs.

9. Notification. When an owner contemplates the construction of a dam or reservoir, he shall notify the agency at least 3 months prior to the start of construction of his intention. He shall file sketch plans of the dam and reservoir area, including the type of construction, height of dam, acreage of the reservoir and other such pertinent information as the agency may require. If from the preliminary sketch plans the agency determines that the degree of

hazard is low, it may issue a notice to proceed without formal review of the completed design plans and specifications.

10. Exemptions. Exempted from this chapter are all dams and projects licensed by the Federal Power Commission under Part I of the Federal Power Act, and dams and projects of public utilities that have been certified by the Public Utilities Commission, after inspection at least once in every 5 years, to be in a safe condition.

§ 254. Administrative provisions

This chapter shall be administered by the agency. It shall employ such engineering, clerical and other assistance as are necessary. The agency may employ consultants, experts and witnesses.

When the safety and technical considerations pertaining to a certificate of approval for a dam or reservoir, or plans and specifications require it, or when requested in writing to do so by the owner, the agency may appoint a consulting board of 2 or more consultants not previously associated with the structure to report to the agency on the safety features involved. The cost and expense of a consulting board if appointed on the request of an owner shall be paid by the owner.

§ 255. Powers of the agency

1. Approval; jurisdiction. The agency shall review and approve the design, construction, enlargement, alteration, repair, maintenance, operation and removal of dams and reservoirs for the protection of life and property as provided in this chapter. All dams and reservoirs in the State or on waters which form a portion of the boundary of the State are under the jurisdiction of the agency, except federally-owned dams and reservoirs.

2. Rules and regulations. The agency shall adopt and revise from time to time such rules and regulations and issue such general orders as may be necessary for carrying out, but not inconsistent with, this chapter.

3. Investigations. For the purpose of enabling it to make decisions as compatible with economy and public safety as possible, and for the purpose of determining compliance with this chapter, the agency is empowered to make such investigations and inspections as are necessary. In making such investigations and inspections required or authorized by this chapter, the agency or its representatives may enter upon such public or private property as may be necessary.

4. Dangers to life and property. In determining whether a dam or reservoir or a proposed dam or reservoir constitutes or would constitute a danger to life or property, the agency shall take into consideration the possibility that the dam might be endangered by overtopping, seepage, settlement, erosion, cracking, earth movement, failure of flashboards, bulkheads, gates, conduits, wind up-rooting of trees on the embankment, or other conditions which exist or which might occur in any area in the vicinity of the dam or reservoir. Whenever the agency determines that any such condition endangers a dam or reservoir, it shall order the owner to take such action as is necessary to remove the resultant danger to life and property.

5. Watershed investigations. The agency shall make, or cause to be made, from time to time such watershed investigations and studies as may be necessary to keep abreast of developments affecting stream runoff and as required to facilitate its decisions.

6. Degree of hazard. In determining the safety features necessary for a proposed or existing dam, the agency shall take into consideration the degree of hazard involved. Such degree of hazard shall be based upon on-site conditions, height of dam, size and configuration of the reservoir, and downstream conditions present and likely to be present in the foreseeable future.

7. Restraining violations. Action and procedure to restrain violations shall be those set forth in the Administrative Code of the State.

8. Applications. Applications for new dams and reservoirs shall be submitted in such form and contain such information as the agency may require. Construction of any new dam or reservoir or the enlargement of any dam or reservoir shall not be commenced until the owner has applied for, and obtained from the agency, written approval of plans and specifications and a construction permit has been issued by the agency. Such construction permit shall contain such provisions as the agency deems necessary to assure safe construction and operation of the structure. A separate application for each reservoir and its dams shall be filed with the agency.

9. Approval. Before commencing the repair, alteration or removal of a dam or reservoir, the owner shall file an application and secure the written approval of the agency, except as provided. Repairs shall not be deemed to apply to routine maintenance not affecting the safety of the structure. In case of an emergency where the owner or the agency declares repairs are immediately necessary to safeguard life and property, repairs shall be started immediately by the owner, or the agency if he fails to do so. The agency shall be notified at once of proposed emergency repairs and of work underway when instituted by the owner. The proposed repairs and work shall conform to such orders as the agency issues.

10. Inspection. Upon receipt of a written complaint alleging that the person or property of the complainant is endangered by the construction, maintenance or operation of any dam or reservoir, the agency shall cause an inspection to be made unless the data, records or inspection reports on file with it are found adequate to make a determination whether the complaint is valid. If the agency authorizes an inspection, the complainant shall deposit with the agency a sum estimated by it to be sufficient to cover costs of the inspection. The agency may utilize independent consultants of its selection to make the inspection and a report to the agency. If it is found that an unsafe condition exists, the agency shall take such action as is necessary to render or cause the condition to be rendered safe, including breaching or removal of any dam found beyond repair, and any money deposited to secure an inspection shall be returned. If, after an inspection is made on account of a complaint, the complaint is found by the agency to have been without merit, the cost of the inspection shall be paid by the Treasurer of State from the money deposited by the complainant, with any excess returned to the

complainant. The complainant will be provided with a copy of the official report of the inspection.

11. During construction. During the construction of any dam or reservoir, or alterations, enlargements, repairs or additions thereto, the agency may make such inspections or investigations which it shall deem necessary to determine compliance with any construction permits as it may have issued. If conditions are revealed which will not permit the construction of a safe dam or reservoir, such construction permits shall be revoked or new provisions added to such permit which, if followed, will provide for safe construction.

12. Periodic inspection. The agency, from time to time, but not less often than once every 5 years, shall make inspections of dams and reservoirs at state expense for the purpose of determining their safety, but shall require owners to perform at their expense such work as may reasonably be required to disclose information sufficient to enable the agency to determine conditions of dams and reservoirs.

13. Emergency work. The agency shall be responsible for determining that an emergency exists and through normal disaster communication channels shall warn the public, immediately employing any remedial means necessary to protect life and property, if in its judgment:

A. The condition of any dam or reservoir is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation;

B. Passing of imminent floods or any other condition threatens the safety of any dam or reservoir;

In applying the remedial means provided for, the agency may in emergency do any of the following:

A. Take full charge and control of any dam or reservoir;

B. Lower the water level by releasing water from the reservoir;

C. Completely empty the reservoir;

D. Perform any necessary remedial or protective work at the site;

E. Take such other steps as may be essential to safeguard life and property, including the breaching of the dam itself.

The agency shall continue in full charge and control of such dam or reservoir until they are rendered safe or the emergency occasioning the action has ceased and the owner is able to take over such operations. Such actions shall not be construed to relieve an owner of a dam or reservoir of any liabilities incident to his ownership of the dam or reservoir.

The cost and expenses of the remedial means provided to render a dam or reservoir or its appurtenances safe shall be collected by presentation of bills to owners in the same manner as other debts of the State are recoverable.

14. Dams and reservoirs existing prior to the effective date of this Act. Owners of dams and reservoirs built prior to the effective date of this Act shall immediately file an application with the agency for the approval of such dam or reservoir. The agency shall make inspections of such dams and reservoirs and shall issue such orders or directives as are necessary. The compliance with such orders shall render the dams or reservoirs safe. Dams and reservoirs in any stage of construction on the effective date of this Act shall be considered as existing dams or reservoirs for the purposes of this chapter.

15. Acquisitions. The agency may acquire, in the name of the State, by gift, purchase, bequest or otherwise, ownership of any dam or reservoir and shall operate and maintain such structures, if and when funds are available. It may sell or otherwise dispose of ownership of any such structure.

16. Administrative control. The agency shall be within the administrative control of the State Soil and Water Conservation Commission.

Sec. 2. R. S., T. 38, §§ 811-813, repealed. Sections 811 to 813 of Title 38 of the Revised Statutes are repealed.

STATEMENT OF FACT

The purpose of this bill is to provide for state-wide supervision of the construction and maintenance of dams in Maine. A 1972 inventory of dams lists over 1,100 such structures. At present there is no publicly established criteria for such construction. This area of public safety has received little attention.

Recent dam failures in other states has pointed this matter out as of concern nation-wide. Federal efforts to date consist of providing funds for safety inspections. This legislation will assist the State in taking advantage of these federal funds.

It is estimated that over half of the dams in Maine do not meet today's standards of safety. As additional development takes place along our waterways, this matter becomes even more critical.