

# MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

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ONE HUNDRED AND SIXTH LEGISLATURE

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**Legislative Document**

**No. 2527**

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S. P. 916

In Senate, February 25, 1974

Reported by the Majority from Committee on Public Utilities and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FOUR

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**AN ACT** Relating to Dams and Reservoirs.

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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**

**ABANDONED DAMS**

§ 251. Purpose and scope

The Legislature finds that the owners of many presently existing dams in the State of Maine are unknown or that the ownership of such dams is so diffuse as to make it extremely difficult to determine the ownership; that such dams are now or may become in such a state of disrepair as to present a danger to human life, private and public property, including the public resources of wildlife, fisheries, waters and water uses and otherwise to the public's health, safety and general welfare, that there are persons who are willing to take over ownership of such dams and to maintain, repair or remove them to the best interests of both private property owners and the public.

§ 252. Definitions

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

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

2. Dam. "Dam" means any artificial barrier, including appurtenant works, which impounds or diverts water, and which

A. Is 2 feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or a watercourse, to the maximum capable water storage elevation, or

B. Has an impounding capacity at maximum water storage elevation of 15-acre feet or more.

3. Person. "Person" means any individual, firm, association, partnership, corporation, trust, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

#### § 253. Abandonment and new ownership of dams

1. Any person may petition the commission to be awarded ownership of any dam, the owner of which is unknown.

2. Upon receipt of a petition containing the information required by the commission's regulations, together with a fee in the amount of the cost of publication, the commission shall give notice of such petition, in writing, to the municipality in which the dam is located and also by publication at least 5 times in a newspaper of general circulation within the county or counties in which the dam is located and at least once in the state paper. In addition to setting forth the nature of the petition, the notice shall state that the owner of the dam is unknown, shall state that anyone claiming ownership of the dam must file notice of such ownership with the commission within 60 days of the date of the last publication, in such form as the commission may by regulation require, and shall also invite any interested person to petition for award of ownership of the dam within 60 days of the date of last publication.

3. Upon receipt of a claim of ownership by any person within 60 days of the date of last publication, the commission shall notify the petitioners and shall suspend all further proceedings until such time as a court of competent jurisdiction, in an action for declaratory judgment brought against such claimant by any person, determines that such claimant is not the owner of the dam, or the claimant withdraws his claim.

4. No sooner than 60 days after the date of last publication, the commission may schedule and conduct a public hearing for the purpose of receiving such evidence and information as may aid it in making a determination.

5. After any hearing held, or if none is held, no sooner than 60 days after the date of last publication, the commission may determine, by majority vote, to award the dam to a petitioner. In the case that there is more than one petitioner, the commission shall base its determination upon a consideration of the relative technical, financial and administrative ability of each petitioner,

the purpose and intent of each petitioner with regard to maintenance, repair or removal of the dam, the effect of each petitioner's proposal upon private and public property, including the public resources of wildlife, fisheries, waters and water uses, the effect otherwise upon the public's health, safety and general welfare and the willingness of each petitioner to accept ownership of the dam upon such terms as are reasonable.

6. No sooner than 45 days after notice to all petitioners of its proposed decision, the commission shall cause a copy of its decree or decision, signed by the petitioner to whom the dam is awarded and acknowledging acceptance of the dam subject to such terms as are reasonable, to be filed in the Registry of Deeds for the county in which the dam is located. Upon the filing of such decree or determination, the interests of all other persons in the dam shall be deemed to have been abandoned and the petitioners to whom the dam is awarded shall be deemed the owner thereof, in fee simple absolute, for all purposes.

#### § 254. Miscellaneous

1. Other laws. Nothing in this chapter shall be construed as relieving any person from duties, responsibilities or liabilities imposed by any other statute, regulation, municipal ordinance or any rule of law.

2. Rights of others. Except as specifically provided in this chapter, nothing in this chapter shall be construed as denying any person any rights he may have under any other statute, regulation, municipal ordinance or any rule of law.

3. Damages. No action brought against the State or the commission or its agents or employees for the recovery of damages caused by the partial or total failure of any dam or through the operation of any dam upon the ground that the State, the commission or its agents or employees are liable by virtue of the commission's decree or determination.

Sec. 2. R. S., T. 37-A, c. 7, additional. Title 37-A of the Revised Statutes is amended by adding a new chapter 7 to read as follows:

### CHAPTER 7

#### DAMS AND RESERVOIRS

##### § 180. Legislative findings

It is the intent of the Legislature to provide emergency plans and actions for the safe operation of dams and reservoirs in the State of Maine to protect life and property.

No person, except the Federal Government, shall exercise any authority over the emergency regulation or supervision of any dams or reservoirs in the State, where such exercise would conflict with the powers and authority vested in the Bureau of Civil Defense.

##### § 181. Definition

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

1. Bureau. "Bureau" means the Bureau of Civil Defense.
2. Dam. "Dam" means any artificial barrier, including appurtenant works, which impounds or diverts water, and which is 2 feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier or from the lowest elevation of the outside limit of the barrier, if it is not a stream channel or watercourse, to the maximum capable water storage elevation, or has an impounding capacity at maximum water storage elevation of 15-acre feet or more.
3. Person. "Person" means any individual, firm, association, partnership, corporation, trust, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.
4. Emergency or emergency situation. "Emergency" or "emergency situation" means situations deemed by the bureau, after consultation with other state and federal agencies, if time permits, to present a potential but real and imminent danger to life, limb or property because of flooding or potential and imminent flooding and includes those situations which the Governor declares to be emergency pursuant to section 57.
5. Reservoir. "Reservoir" means the body of water immediately upstream of a dam, which is reasonably still or slowmoving due to the stream barrier presented by the dam.

#### § 182. General provisions

1. Rights of owner. Nothing in this chapter shall be construed to deprive any owner of such recourse to the court as he may be entitled to under the laws of this State.
2. Damages. No action shall be brought against the State or the bureau 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 issuance or enforcement of orders relative to maintenance or operation of the dam or reservoir;
  - B. Control and regulation of the dam or reservoir;
  - C. Measures taken to protect against failure during an emergency.
3. Relief of obligation. Nothing in this chapter shall be construed as relieving any person from duties, responsibilities and liabilities imposed by any other law or regulation or municipal ordinance or any rule of law.

#### § 183. Administrative provisions

This chapter shall be administered by the bureau.

In carrying out the provisions of this chapter, the bureau shall consult with other state agencies, including the Soil and Water Conservation Commission, the State Planning Office, the Departments of Environmental Protection, Conservation, Transportation and Public Safety on matters pertaining to the

technical aspects of the administration of this chapter and in emergency situations may require the aid and assistance of such agencies.

§ 184. Powers of the bureau

1. Rules and regulations. The bureau may, in accordance with the Administrative Code and after public hearing, adopt, amend and repeal such reasonable regulations as it deems necessary for the carrying out of this chapter.

2. Orders. The bureau may, in emergency situations, issue such reasonable orders as are necessary for carrying out the provisions of this chapter or regulations issued hereunder.

3. Investigations. For the purpose of enabling it to make decisions as compatible with economy and protection of life and property as possible, and for the purpose of determining compliance with this chapter the bureau is empowered to make such investigations and inspections as are necessary. In making such investigations and inspections required or authorized by this chapter, the bureau or its representatives may, in emergency situations, enter upon such public or private property as may be necessary or otherwise secure administrative warrants from any District or Superior Court Justice for the purpose of gaining entry onto private property.

4. In the event of any violation of any of the provisions of this chapter or of any order, regulation or decision of the bureau, the bureau may institute injunctive proceedings or any other civil action or a criminal action as hereinafter provided.

5. When an emergency situation arises, the bureau shall warn the public of such emergency and shall employ all reasonable remedial means necessary to protect life and property.

Remedial means which the bureau may employ include, but are not limited to, the following:

- A. Taking full charge and control of any dam or reservoir;
- B. Lowering the water level by releasing water from the reservoir;
- C. Completely empty the reservoir;
- D. Take such other steps as may be essential to safeguard life and property, including the breaching or removal of the dam itself.

6. Contingency plans. The bureau shall develop contingency plans for the safe passage of floodwaters and for preparations prior to flood conditions.

§ 185. Exemptions

Dams and projects licensed by or subject to the jurisdiction of the Federal Power Commission 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, are exempt from this chapter.

**§ 186. Penalties**

In addition to any other penalties provided by law, any person who violates any provisions of this chapter or any regulation or order promulgated or issued hereunder shall be punished by a fine of not less than \$100 nor more than \$5,000 for each day that any violation shall continue.

**STATEMENT OF FACT**

There are over 1,100 dams in Maine and the owners of over 200 of them are unknown. 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 and population increases flooding becomes more prevalent and pressure on antiquated dams and reservoirs increases. Recent dam failures in other states have pointed this matter out as of concern nationwide.

Section 1 of this bill provides a vehicle by which dams of which the owner is unknown may be taken over and repaired, maintained or removed by an interested municipality, lake association or other person.

Section 2 of this bill grants power to the Bureau of Civil Defense, in emergency situations, to take or require such action as is necessary to lessen or avoid the damage to life, limb and property occasioned by floods.