

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1762

H. P. 1302

House of Representatives, April 2, 1975

On Motion of Mr. Kelleher of Bangor referred to Committee on Public Utilities. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Stubbs of Hallowell.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Concerning the Regulation and Supervision of
Dams and Reservoirs.

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

Sec. 1. 37-A MRSA c. 7, as enacted by PL 1973, c. 787, § 2, and as amended, is repealed and the following enacted in place thereof:

CHAPTER 7

DAMS AND RESERVOIRS

§ 181. Legislative findings

It is the intent of the Legislature to provide for the regulation and supervision of all dams and reservoirs by the State of Maine to the extent required for the protection of life and property.

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 Bureau of Civil Emergency Preparedness by this chapter.

§ 182. Definitions

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

1. Alterations or repairs. "Alterations," or "repairs," or either of them, mean only such alterations or repairs as may directly affect the safety of the dam or reservoir, as determined by the bureau.

2. Appurtenant works. "Appurtenant works" include, but are not limited to, such structures as spillways, either in the dam or separate therefrom; the reservoir and its rim; low level outlet works and water conduits such as tunnels, pipelines or penstocks, either through the dam or its abutments.

3. Bureau. "Bureau" means the Bureau of Civil Emergency Preparedness.

4. Dam. "Dam" means any artificial barrier, including appurtenant works, which impounds or diverts water, and which is 6 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 50 acre-feet or more.

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

6. 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.

7. 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.

8. 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 subdivision;
- B. Every municipal or quasi-municipal corporation;
- C. Every district;
- D. Every person, firm or corporation.

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

10. Professional engineer. "Professional engineer" means a person holding a certificate or registration as a professional engineer issued by the State Board of Registration for Professional 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.

11. 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.

12. **Water storage elevation.** "Water storage elevation" means the maximum elevation of water surface which can be obtained by the dam or reservoir without encroaching on the approved freeboard.

§ 183. **General provisions**

1. **Plans and specifications.** All plans and specifications for initial construction, enlargement, alterations, repair or removal of dams and supervision of construction shall be under the supervision of a professional engineer, knowledgeable in dam design and construction, assisted by engineering geologists and other specialists when necessary.

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 approval of the dam or reservoir, or approval of flood handling plans during construction;

B. The issuance or enforcement of orders relative to maintenance of the dam or reservoir;

C. Control and regulation of the dam or reservoir or measures taken to protect against failure during an emergency in the absence of the owner.

3. **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.

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 bureau and the certificate or 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. **Records.** All records of official actions of the bureau and its correspondence pertaining to the supervision of dams and reservoirs are public documents.

7. **Written approval recorded.** Upon completion of construction of a dam or reservoir, the owner shall record the written approval or permit by the bureau, 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 bureau of any change in ownership of any dam subject to this chapter at the time the transfer of ownership occurs.

§ 184. **Administrative provisions**

1. **Administration.** This chapter shall be administered by the bureau and under the direct supervision of a professional engineer, experienced in the design and construction of dams and reservoirs, employed by this bureau.

2. Board of engineers. When the safety considerations pertaining to written approval of a dam or reservoir, or plans and specifications require it, or when requested in writing to do so by the owner, the bureau shall appoint a consulting board of 3 professional engineers, none of whom shall have been previously associated with the structure, one to be selected by the bureau, one to be selected by the owner and the 3rd to be selected by the first 2 appointees. This board shall report to the bureau on the bureau's proposed action with respect to these safety considerations. The cost and expense of the consulting board, if appointed at the request of the owner, shall be paid by the owner.

§ 185. Powers of the bureau

1. Approval; jurisdiction. The bureau shall review and approve the design, construction, enlargement, alteration, repair, operation and removal of dams and reservoirs 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 bureau, except federally-owned dams and reservoirs and dams and projects licensed by or subject to the jurisdiction of the Federal Power Commission or International Joint Commission.

A. New construction or enlargement. A separate application for each reservoir and its dam shall be submitted to the bureau upon forms to be provided by it. The application shall give the following information:

- (1) The name and address of the owner;
- (2) The location, type, size and height of the proposed dam and reservoir and appurtenant works;
- (3) The storage capacity and reservoir surface areas for normal pool and maximum high water;
- (4) Plans for proposed permanent instrument installations in the dam;
- (5) As accurately as may be readily obtained, the area of the drainage basin, precipitation and streamflow records and floodflow records and estimates;
- (6) Maps and general design drawing showing plans, elevations and sections of all principal structures and appurtenant works or other features of the project in sufficient detail, including design analyses, to determine safety, adequacy and suitability of design;
- (7) Such other pertinent information as the bureau requires, such as proposed time for commencement and completion of construction.

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 bureau, written approval of plans and specifications and a construction permit has been issued by the bureau. Such construction permit shall contain such provisions as the bureau deems necessary to assure safe construction and operation of the structure.

B. Repair and alteration. Before commencing the repair, alteration or removal of a dam or reservoir, the owner shall file an application and se-

cure the written approval of the bureau. 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 bureau declares repairs are immediately necessary to safeguard life and property, repairs shall be started immediately by the owner, or the bureau if the owner fails to do so. The bureau 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 bureau issues.

2. Rules and regulations. The bureau may, after public hearing, adopt, amend or repeal such reasonable regulations as it deems necessary for the carrying out of this chapter, consistent with the Administrative Code, but not inconsistent with this chapter.

3. Orders. The bureau may issue such reasonable orders as are necessary for carrying out the provisions of this chapter and regulations issued hereunder.

4. Investigations. For the purpose of enabling the bureau to make decisions concerning the protection of life and property and for the purpose of determining compliance with this chapter, it 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.

5. Dangers to life and property. In determining whether a dam or reservoir or proposed dam or reservoir constitutes or would constitute a danger to life or property, the bureau shall take into consideration the possibility that the dam or reservoir might be endangered by the following conditions which exist or which might occur in any area in the vicinity of the dam or reservoir and which are not necessarily all inclusive: overtopping; seepage; settlement; erosion; cracking; earth movement; earthquakes; failure of bulkheads, flashboards, gates and conduits. Whenever the bureau deems that any conditions endanger a dam or reservoir, it shall order the owner to take such action as necessary to the satisfaction of the bureau to remove the resultant danger to life and property.

6. Hazard potential. In determining the safety features necessary for a proposed or existing dam, the bureau shall take into consideration the hazard potential involved. Such hazard potential shall pertain to potential loss of life or property damage in the event of failures or improper operation of the dam, reservoir or appurtenant facilities.

7. Watershed investigations. The bureau shall also 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 run-off and as required to facilitate its decisions.

8. Inspection. Upon receipt of a written complaint by 5 or more people alleging that the person or property of one or more of the complainants is

endangered by the construction, maintenance, or operation of any dam or reservoir, or upon the written complaint of the councilmen, selectmen, or assessors of any municipality or the county commissioners of any county, the bureau 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. The bureau may utilize independent consultants of its selection to make the inspection and report to the bureau. If the bureau determines that an unsafe condition exists, it 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. The complainants will be provided with a copy of the official report of the determination.

9. **Inspection during construction.** During the construction of any dam or reservoir, or alterations, enlargements, repairs or additions thereto, the bureau may make such inspections or investigations which it shall deem necessary to determine compliance with any construction permits 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 will provide for safe construction.

10. **Periodic inspection.** The bureau, from time to time, 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 bureau to determine conditions of dams and reservoirs. The owner shall have the right to a consulting board as specified under section 184, 2nd paragraph.

11. **Emergency situations.** 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, if in its judgment the following will accomplish said purpose:

- A. Taking full charge and control of any dam or reservoir;
- B. Lowering the water level by releasing water from the reservoir;
- C. Completely emptying the reservoir;
- D. Performing any necessary remedial or protective work at the site; or
- E. Taking such other steps as may be essential to safeguard life and property, including the breaching of the dam itself.

The bureau shall continue in full charge and control of such dam or reservoir until it rendered safe or the emergency occasioning the action has ceased and the owner is able to take over such operations.

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

§ 186. Existing dams and reservoirs

Owners of existing dams and reservoirs built prior to the effective date of this chapter shall within 6 months file a statement with the bureau stating

the owner's name and address, location of the dam or reservoir, height, type of construction and surface area of water impoundment.

The bureau may make inspections of such dams and reservoirs and shall issue such orders or directives to the owner to make repairs as necessary for the protection of life and property. The owner shall have the right to a consulting board as specified under section 184, 2nd paragraph. Dams and reservoirs in any stage of construction on the effective date of this chapter shall be considered as existing dams or reservoirs for the purposes of this chapter.

§ 187. 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.

Sec. 2. 38 MRSA §§ 811-813 are repealed.

STATEMENT OF FACT

The purpose of this bill is to revise the bureau to include supervision of the construction and maintenance of new and existing dams and reservoirs under the Revised Statutes, Title 37-A, chapter 7. The bureau presently has jurisdiction over emergency situations only.

This bill will act in conjunction with PL 92-367, which authorizes the Secretary of the Army to undertake a national program of inspection of dams and to recommend to the Congress a comprehensive national program for the inspection, and regulation for safety purpose of dams. This bill will provide the State with the means of accommodating PL 92-367.

Within the past 3 years over 40 dams and reservoirs have failed or serious damage from storms has occurred because of inadequate supervision of dams and reservoirs under present laws.

A 1972 inventory of dams lists an estimated 400 such structures that will be affected by this Act. At present, there is no publicly established criteria for such construction. As additional development takes place along our waterways and population increases, the hazard to life and property becomes more prevalent.