

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1797

H. P. 1459

House of Representatives, April 11, 1975

Speaker laid before the House and on Motion of Mr. Kelleher of Bangor referred to the Committee on Public Utilities. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Cox of Brewer.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

**AN ACT to Provide for the Maintenance of Neglected Dams
and Existing Water Levels in Lakes Impounded by Dams.**

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

Sec. 1. 12 MRSA c. 6 is enacted to read:

CHAPTER 6

NEGLECTED DAMS

§ 301. Legislative findings

The Legislature finds and declares that littoral proprietors and the public have the right to have water levels in bodies of water impounded by dams maintained at levels which such bodies have been traditionally maintained. These rights include the maintenance of water levels to provide navigation on such body of water in the customary fashion, to maintain customary habitat for fish and wildlife, to prevent the exposure of unsightly shorelines and to provide for access to the water in the customary fashion, to prevent erosion of shorelines from severely fluctuating lake levels, and to provide and maintain other rights to which such littoral proprietors and the public have through the passage of time become entitled thereto.

Failure to adequately maintain dams has increasingly threatened such rights. In addition, large fluctuations in lake levels, resulting from poorly maintained dams and inadequate operation of such dams has had an adverse impact on the rights of such littoral proprietors and has, in some cases, impaired the value of such property.

The Legislature further finds and declares that the existing legal remedies for the enforcement of such rights are expensive, time consuming and exceedingly burdensome upon the littoral proprietors and public in general and that enforcement of such rights may in many cases impose unfair and unreasonable financial burden upon persons owning such dams. Most such dams, having been established in an era when water was more commonly used as a source of power and transportation, have now in large measure outlived their useful economic life. The neglect or destruction thereof may, however, result in the abridgement of the aforesaid rights to which such littoral property owners and the public have, through the passage of time, acquired in such body of water.

The Legislature intends through the passage of this Act to create a comprehensive and economical way by which the State can protect and balance the interests of all persons affected by the construction and maintenance of such dams and the possible effect resulting from the neglect or destruction thereof.

§ 302. 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 of any kind whatsoever which impounds or diverts water, and which:

A. Is two feet or more in height in the natural bed of the stream or watercourse in which it is constructed measured at the downstream toe of the barrier, or from the lowest elevation from the outside limit of the barrier, if it is not across a stream, channel or watercourse, to the maximum capable water storage elevation, or is located at the outlet of a great pond as defined in Title 38, section 422.

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

§ 303. Registration of ownership

Any person owning or operating any dam shall annually register with the commission, on forms provided by the commission, on or before the first day of January of each calendar year. Such registration shall require that the owner or operator provide to the commission such information as may be reasonably required by it to perform the duties required by this Act. The annual fee for such registration shall be \$10. Said fee to be used by the commission for administration of the Act. Any dam not registered pursuant to this section shall be deemed abandoned under chapter 5.

The owner of any dam shall provide written notice to the commission 90 days prior to:

1. **Transfer of ownership.** Any transfer of ownership of such dam whether by sale, lease or gift;
2. **Breach or destroy a dam.** Any Act by him or at his direction to breach or destroy a dam, in whole or in part; or
3. **Alteration or discontinuation.** The alteration or discontinuation of any useful or beneficial purpose for which such dam has theretofore been maintained.

§ 304. Establishment of water levels

1. **Power.** The commission may upon its own motion and shall upon receipt of petitions from 10% of the littoral proprietors on any body of water impounded by a dam conduct a public hearing for the purpose of establishing a normal water level for such body of water.

2. **Notice.** The commission shall provide public notice of its intent to hold such hearing by providing written notice to the owner, if known, of any dam on such body of water and to any petitioner who has petitioned for a hearing with respect to such body of water. Such written notice shall be made by registered mail and shall identify the time and place of the hearing and the purpose for which it shall be conducted. Such notice shall be provided to the owners and petitioners at least 60 days prior to such hearing. In addition, to the foregoing, the commission shall give notice of its intent to hold such hearing by filing written notice of the same in the municipal office of any municipality in which such body of water may be located and by publication at least 5 times in a newspaper of general circulation within the county or counties in which the body of water is located, the date of first publication to be not less than 60 days and the date of the last publication to be not less than 15 days prior to such hearing.

3. **Evidence.** At such hearing the commission shall solicit and receive testimony for the purpose of establishing a normal water level for such body of water, including but not limited to:

- A. The water level necessary to maintain traditional navigation and boating;
- B. A water level necessary for the maintenance of fish and wildlife habitat;
- C. The water level necessary for the prevention of exposing unsightly shores;
- D. The water level necessary to prevent the erosion of shorelines;
- E. The water level necessary to provide customary access to the water by littoral proprietors and the public;
- F. The water level necessary to accommodate precipitation and runoff of waters;
- G. The water level necessary to prevent creation of a hazardous condition to littoral proprietors and the public; and

H. The historical fluctuations in water levels and the effect of such fluctuations on littoral proprietors and the uses of such body of water.

4. Order. Based on the evidence solicited at such hearing the commission shall, within 60 days after adjournment, make written findings and issue an order to the owner of any dam thereon establishing a normal water level for the body of water impounded by such dam. Such order shall, insofar as practicable, require the maintenance of a stable water level, but shall include provision for variations in water level to permit sufficient draw down of such body of water to accommodate precipitation and runoff of surface waters and to otherwise permit seasonal or other necessary fluctuations in water level of such body of water in order to protect littoral proprietors and public health, safety and welfare. The commission shall cause a copy of such order to be delivered to the dam owner and each petitioner, if any, and shall cause the same to be filed in the appropriate registry of deeds.

§ 305. Maintenance of dams

1. Prohibition. After issuance of an order under section 304, subsection 4 establishing a normal water level for any body of water, no owner of a dam thereon, nor any subsequent transferee, shall operate or maintain such dam or cause or permit such dam to be operated or maintained in any manner that will cause such level of water to be higher or lower than that permitted by order of the commission.

2. Exception. No owner shall be deemed to have violated subsection 1 where such violation was caused by unforeseeable and unpredictable meteorological conditions and such owner could not have avoided such violations by promptly undertaking all reasonably available steps to regulate water flow through or over any dam under his control. The burden of proof shall be on the owner of the dam to demonstrate the applicability of this subsection.

3. Applicability. The requirements of this section shall not apply to any dam so long as said dam is maintained and operated for the beneficial use of the owner or operator thereof. Such beneficial uses shall be defined as the generation of hydro-electric power, the maintenance of public and private water supplies, the maintenance of water level necessary for commercial transportation or any other similar use economically beneficial to the owner or operator thereof. In the event that such beneficial use is subsequently discontinued, the owner of such dam shall, upon such discontinuance, be subject to the requirements of this chapter and any order issued pursuant to section 304, subsection 4.

§ 306. Abandonment of dams

1. Authorization by commission. The owner of any dam subject to an order pursuant to section 304, subsection 4 may petition the commission for authorization to abandon such dam. The commission shall, after notice and hearing authorize such abandonment if it determines that:

A. Such dam no longer has any beneficial economic use for the owner thereof;

B. The costs of maintenance of said dam are unreasonable; and

C. The owner is unable to otherwise dispose of said dam in a manner that will insure continuing compliance with any order issued under section 304, subsection 4.

2. Method of disposition. Upon the issuance of an order by the commission authorizing abandonment of a dam, the owner may abandon such dam and avoid any further obligation with respect to its maintenance and operation. Such abandonment shall occur only in the manner provided by this section. This method of abandonment shall constitute the exclusive means by which an owner may dispose of a dam once authorized to do so by the commission.

3. Notice and determination. The owner of such dam shall provide notice of his intention to abandon the dam by publishing notice of the same in a form provided by the commission at least 5 times in a newspaper of general circulation in the county or counties in which the dam is located and at least once in the state paper. Any littoral proprietor or association of littoral proprietors desiring to accept ownership of such dam shall, within 60 days of the date of the last publication, submit a petition to the commission. The commission shall, after notice to such petitioners and public hearing as provided in section 304, determine which petitioner, if any, is best qualified to accept ownership and control of such dam. Such determination shall be based upon the consideration of the relative technical, financial and administrative ability of each petitioner, the purpose or intent of each petitioner with regard to maintenance and repair of the dam, the effect of each petitioner's proposal upon private and public property, the ability of the petitioner to comply with any order of the commission establishing normal water level, the willingness of the petitioner to accept ownership of the dam upon such terms as are reasonable and any other effects on the public's health, safety and general welfare. The commission shall make a written finding and cause a copy of its decree or decision to be mailed to each petitioner and the then current owner of the dam by registered mail. The owner may, no sooner than 30 days thereafter, transfer all right, title and interest in such dam only to the petitioner designated by the commission.

In the event that no littoral proprietors petition to accept the dam or the commission determines that none of the petitioners is qualified to accept ownership and control of such dam, the owner thereof may abandon such dam by offering all his right, title and interest in such dam as a gift to the municipality in which the dam is located.

In the event that such municipality is unwilling to accept ownership of such dam, the owner thereof shall publish notice of his intent to abandon the ownership of such dam to any other person in such a manner as the commission determines will best attain state-wide notice of such intent. Within 60 days of the last publication of said notice any interested person may petition for award of ownership and control of said dam. The commission shall, after notice and hearing, consider and evaluate such petitions in the manner provided in this subsection and provide notice of its decision to such petitioners.

The owner may, no sooner than 30 days thereafter, transfer all right, title and interest in said dam only to the petitioner designated by the commission.

The owner of such dam may, at any time during the foregoing proceedings, elect not to abandon such dam and may retain ownership subject to the requirements of any then outstanding order pursuant to section 304, subsection 4.

§ 307. Transfer to the commission

In the event that no person or municipality petitions for ownership of any such dam or the commission determines that such petitioners are unsuitable to own or maintain said dam, the owner of such dam may thereafter transfer all his right, title and interest in said dam to the commission. The commission shall thereafter operate and maintain said dam in a manner determined by the commission as will be best designed to protect the public health, safety and general welfare including, to the extent the commission finds desirable, the abandonment or destruction of said dam following public hearing. Any such abandonment or destruction shall take place in a manner that will not endanger the public health, safety or general welfare. Subsequent to acceptance of ownership of a dam the commission shall, after notice and hearing, transfer the ownership thereof, without cost, to any person subsequently found to have satisfied the requirements of section 306, subsection 2.

§ 308. Enforcement

The commission, a dam owner, or any littoral proprietor may commence an action to enjoin the violation of any provision of this chapter.

The violation of any order of the commission shall be punishable by a fine of not less than \$20 and not more than \$100. Each day of violation shall be considered a separate offense.

§ 309. Appeal

Any person aggrieved by an order of the commission may appeal to the Superior Court within 30 days of notice thereof.

§ 310. Miscellaneous

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

No action shall be brought against the State, the commission or its agents or employees for the recovery of damages caused by any order of the commission.

No provision of this Act shall be construed as limiting the powers of the Bureau of Civil Emergency Preparedness under Title 37-A, Sections 180 to 186.

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

FISCAL NOTE

Passage of this bill will result in an increase of \$11,000 annually to the department. However, no appropriation will be necessary under this Act.

STATEMENT OF FACT

Most lakes in the State are lakes the level of which was raised by dams. Such dams were originally built for the purpose of operating grist mills, driving logs, or generating power. With the increasing disuse of such dams and such uses, the owners find no economic incentive to maintain the dam in a good state of repair. As a result, lake levels once established by such dams are no longer adequately maintained. Littoral proprietors find that lake levels originally conceived to be normal are now experiencing major fluctuations.

This bill is designed to establish an administrative vehicle for the establishment of lake levels. Once established, either voluntarily by the commission or at the petition of littoral proprietors, such lake levels are binding on any dam owner and limit the manner in which he may operate the dam.

In the event that a dam subject to such order or limit becomes an economic burden to the owner, he may request permission to abandon the dam. Abandonment may be accomplished by making a gift of the dam to a littoral proprietor or association of littoral proprietors, or the municipality in which the dam is located or any other person, in that order. If no one is willing or capable of accepting the dam, the State must accept ownership and control of the dam. In this way, dam owners may be relieved of the burden of maintaining a dam which is unprofitable but are prevented from exacting an exorbitant price from littoral proprietors who desire to maintain the dam.

The Act does not apply to any dam which is presently used for some useful economic purpose including hydro-electric generation or transportation since such ventures are not consistent with maintenance of a stable lake level. Upon discontinuation of such useful purposes, the dam may be subject to regulation.