

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1074

H. P. 868

House of Representatives, March 6, 1979

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

EDWIN H. PERT, Clerk

Presented by Mr. Tuttle of Sanford.

Sponsors: Mr. Paul of Sanford, Mr. McMahon of Kennebunk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Provide for the Establishment of Water Levels on Impoundments Controlled by Beneficial Use Dams, to Provide for the Establishment of Water Level Rights by Eminent Domain, and to Provide for the Improved Clarification in Determining Abandoned Dam Ownership.

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

Sec. 1. 12 MRSA § 253, sub-§ 1, as enacted by PL 1973, c. 787, § 1, is amended to read:

1. Any person may petition the commission to be awarded ownership of any dam, the owner of which is unknown, **known but wishes not to maintain his dam, or known and wishes to give up his rights.**

Sec. 2. 12 MRSA § 304, sub-§ 1, as enacted by PL 1975, c. 542, is repealed and the following enacted in its place:

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 that body of water. This section shall not apply to any dam operated or maintained for hydroelectric generation, for their associated water levels are

regulated by the Public Utilities Commission. Further, this section shall not apply to any other beneficial use dam operated or maintained for the use of the owner or an operator or other downstream littoral proprietor, unless a conflict concerning water level height and duration arises between lake residents and the owner or an operator or other downstream littoral proprietor. That conflict shall necessitate the commission to impose its regulatory authority for its resolution.

Beneficial uses shall include, but not be limited to, the maintenance of public or private water supplies, the maintenance of commercial transportation, the dilution of wastewater or sewage discharges or any other similar use economically beneficial to the owner or operator or other downstream littoral proprietor.

Sec. 3. 38 MRS § 613 is enacted to read:

§ 613. Public Utilities Commission authority in establishing water levels on impoundments controlled by hydroelectric dams.

1. Power. The Public Utilities 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 that body of water.

2. Notice. The commission shall provide public notice of its intent to hold the hearing by providing written notice to the owner, if known, of any dam on that body of water and to any proprietor who has petitioned for a hearing with respect to that body of water. The 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. The notice shall be provided to the owners and petitioners at least 60 days prior to the hearing. In addition, the commission shall give notice of its intent to hold the hearing by filing written notice of the hearing in the municipal office of any municipality in which the 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 the hearing.

3. Evidence. At the hearing, the commission shall solicit and receive testimony for the purpose of establishing a normal water level for the 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;**
- H. The historical fluctuations in water levels and the affect of the fluctuations on littoral proprietors and the users of the body of water; and**
- I. The water level necessary to generate hydro-electric power.**

4. Order. Based on the evidence solicited at the 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 the dam. The 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 the body of water to accommodate precipitation and runoff of surface waters and to otherwise permit seasonal or other necessary fluctuations in water level of the body of water in order to protect littoral proprietors and public health, safety and welfare. The commission shall cause a copy of the order to be delivered to the dam owner and each petitioner, if any, and shall cause a copy to be filed in the appropriate registry of deeds.

Sec. 4. 38 MRSa § 654 is amended to read:

§ 654. — restrictions as to height and duration

The height to which the water may be raised, and the length of time during which it may be kept up or lowered in each year, and the quantity of water that may be diverted by such canal, may be restricted and regulated by the ~~verdict of a jury, or report of commissioners~~ **Public Utilities Commission** as is provided.

Sec. 5. 38 MRSa § 655 is amended to read:

§ 655. — damages for flowing or diversion; limitations

Any person whose lands are damaged by being flowed by a milldam, or by the diversion of the water by such canal, may obtain compensation for the injury, by complaint to the Superior Court in the county where any part of the lands are; but no compensation shall be awarded for damages sustained more than 3 years before the institution of the complaint. **Furthermore, littoral proprietors, who have been accustomed to a stable water level range for 20 or more years, may assume the range as the natural water level range by eminent domain, and no subsequent reusage of the dam operations shall change those rights unless compensated for.**

STATEMENT OF FACT

The purposes of this bill are to:

1. Clarify the provisions dealing with the level of water on impoundments controlled by beneficial use dams;
2. Provide for the establishment of water level rights by eminent domain; and
3. Amend the law dealing with neglected or abandoned dams.