

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1539

H. P. 1216

House of Representatives, March 27, 1979

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

EDWIN H. PERT, Clerk

Presented by Mr. Violette of Van Buren.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

**AN ACT to Require the Bureau of Civil Emergency Preparedness to Contract for the Inspection of Dams.**

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

**Sec. 1.** 37-A MRSA c. 7, first 2 lines, as enacted by PL 1973, c. 787, § 2, are repealed and the following enacted in their place:

**CHAPTER 7**

**DAMS AND RESERVOIRS**

**SUBCHAPTER I**

**EMERGENCY PLANS AND ACTIONS**

**Sec. 2.** 37-A MRSA § 181, sub-§ 2-A is enacted to read:

**2-A. Director.** "Director" means the director of the bureau.

**Sec. 3.** 37-A MRSA § 182, sub-§ 1, as enacted by PL 1973, c. 787, § 2, is amended to read:

**1. Rights of owner.** Nothing in this chapter subchapter 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.

**Sec. 4. 37-A MRSA § 182, sub-§ 3**, as enacted by PL 1973, c. 787, § 2, is amended to read:

**3. Relief of obligation.** Nothing in this ~~chapter~~ **subchapter** 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.

**Sec. 5. 37-A MRSA § 183**, as enacted by PL 1973, c. 787, § 2, is amended to read:

**§ 183. Administrative provisions**

This ~~chapter~~ **subchapter** shall be administered by the bureau.

In carrying out ~~the provisions of this chapter~~ **this subchapter**, the bureau ~~shall~~ **may** 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~~ **subchapter** and in emergency situations may require the aid and assistance of such agencies.

**Sec. 6. 37-A MRSA § 184, sub-§ 1**, as repealed and replaced by PL 1977, c. 694, § 744, is amended to read:

**1. Rules and regulations.** The bureau may, by procedures in accordance with the Maine Administrative Procedure Act, Title 5, section 8051, et seq., adopt, modify or repeal regulations for the carrying out of this ~~chapter~~ **subchapter**.

**Sec. 7. 37-A MRSA § 184, sub-§§ 2, 3 and 4**, as enacted by PL 1973, c. 787, § 2, are amended to read:

**2. Orders.** The bureau may, in emergency situations, issue such reasonable orders as are necessary for carrying out ~~the provisions of this chapter~~ **this subchapter** 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~~ **subchapter**, 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~~ **subchapter**, 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. Injunction; civil or criminal proceedings.** In the event of any violation of ~~any of the provisions of this chapter~~ **this subchapter** 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.

**Sec. 8. 37-A MRSA § 185**, as enacted by PL 1973, c. 787, § 2, is amended to read:

**§ 185. Exemptions**

Dams and projects licensed by or subject to the jurisdiction of the Federal Power Commission and dams and projects of the 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~~ **subchapter**.

If, however, the bureau is mistakenly petitioned under section 191, with a request for inspection of a dam or project subject to this section, the bureau shall notify as soon as possible the owner of the dam or project and the licensing or certifying agency of the dam or project of the petition.

Sec. 9. 37-A MRSA § 186, as repealed and replaced by PL 1977, c. 696, § 309, is amended to read:

**§ 186. Violations**

In addition to any other forfeitures or penalties provided by law, any person who violates ~~any provisions of this chapter~~ **this subchapter** or any regulation or order promulgated or issued hereunder shall be subject to a civil penalty of not less than \$100 nor more than \$5,000 for each day that any violation shall continue, payable to the State to be recovered in a civil action.

Sec. 10. 37-A MRSA c. 7, sub-c. II is enacted to read:

**SUBCHAPTER II****INSPECTION OF DAMS AND RESERVOIRS****§ 191. Request for inspection; hiring of engineer; duties**

1. **Petition.** Upon the petition of 10 resident taxpayers of any municipality or several municipalities of the legislative body of any municipality or of the county commissioners of any county, the director shall cause to be inspected any dam or reservoir, except dams licensed and inspected by any agency of the United States Government, located in the municipality or county and erected for the purpose of impounding water or water born wastes.

2. **Hiring.** The director shall contract for inspections required under subsection 1, and may contract for inspection of an individual dam or reservoir, for a number of dams or reservoirs, or for all dams and reservoirs which may require inspection under subsection 1 during any one calendar year. The director shall, in every case, contract with an individual, partnership or corporation with a competent and professional engineer on its staff who is licensed to practice in this State pursuant to Title 32, chapter 19, and who will be responsible for the work.

3. **Duties of inspector.** Following personal examination of any dam or reservoir inspected pursuant to subsection 1 and after hearing the testimony of witnesses summoned for the purpose, the inspector shall forthwith report to the director his findings and his opinion of the safety and sufficiency of the dam or reservoir.

In the case of a finding that a dam is unsafe or insufficient, the director shall notify all interested parties, including owners with riparian rights, any municipality in which the dam is located and any other person or organization that the director deems necessary.

The inspection of dams, as provided in this section, shall be under the sole jurisdiction of the director.

#### § 192. Correction of unsafe conditions

If, after the personal survey and inspection, the inspector reports that the dam or reservoir is unsafe or dangerous to the lives or property of persons residing, carrying on business or employed near or below the same the director shall issue an order, based on the inspector's report, directing implementation of one or more of the following measures: Specific investigation; rehabilitation, alterations, repairs or maintenance. The order shall specify the time within which the measure or measures are to be completed. The owners, occupants or lessees thereof shall within the specified time, make such investigations, rehabilitations, alterations, repairs or maintenance to that dam or reservoir as the director orders. In default thereof, upon application of the director to the Superior Court, the owners, occupants or lessees shall be enjoined from the use of that dam or reservoir and the water contained in it, until they or either of them comply with the requirements of the director, and the water contained in the dam or reservoir may be discharged from it by order of the director in the manner which is in his judgment most conducive to the safety of human life and consistent with the protection of property.

#### § 193. Compensation of engineer

The inspector shall receive, as full compensation for his services, the fee agreed upon between the director and the individual, partnership or corporation, together with the actual traveling expenses to be audited, allowed and paid from the bureau. In cases where the dam or reservoir is judged by the inspector to be unsafe or insufficient, the director shall collect from the owner of the dam the total expenses incurred by the State for the inspection. In the event that the owner of a dam, which is judged to be unsafe or insufficient, fails to pay the total cost of inspection as required in this section, the director shall forthwith commence a civil action in the name of the State for the recovery of the cost of the inspection.

#### § 194. Utilization of other state agency resources

The director may, with the approval of the Commissioner of Defense and Veterans' Services, utilize the engineering expertise that exists in any other state agency to assist in the evaluation of dams that are potentially hazardous to Maine citizens.

#### § 195. Liability of engineer who has contracted as inspector

No engineer who has contracted with the director for inspection of one or more

**dams or reservoirs shall be civilly liable to any person for any action taken under any one contract for an amount larger than either \$50,000 or the amount of his contract fee, whichever is greater.**

**Sec. 11.** 38 MRSA § 811, as repealed and replaced by PL 1977, c. 684, § 1, is repealed.

**Sec. 12.** 38 MRSA § 812, is repealed.

**Sec. 13.** 38 MRSA § 813, as repealed and replaced by PL 1977, c. 684, § 2, is repealed.

**Sec. 14.** 38 MRSA § 814, as enacted by PL 1977, c. 684, § 3, is repealed.

**Sec. 15. Appropriation.** The following funds shall be appropriated from the General Fund to carry out the purposes of this Act.

	1979-80	1980-81
DEFENSE AND VETERANS' SERVICES, DEPARTMENT OF		
Bureau of Civil Emergency Preparedness		
All Other	\$25,000	\$25,000
This sum shall be used to contract for initial dam inspections under nonemergency conditions.		
All Other	\$25,000	\$25,000
This sum shall be used to contract for emergency inspection of dams		
	\$50,000	\$50,000

STATEMENT OF FACT

This bill provides that the inspection of dams upon petition shall be carried out by the Bureau of Civil Emergency Preparedness rather than by the Department of Agriculture. The bureau is already responsible for dealing with dams and reservoirs under emergency conditions. This bill logically consolidates inspection of dams pursuant to petition under its jurisdiction.

The bill provides that the director of the bureau shall contract, for dam inspection, either for an individual inspection, for a number of inspections, or for a calendar year.

The bill also provides that the civil liability of any dam inspector is limited either to \$50,000 or to the amount of his fees, whichever is greater.