

MAINE STATE LEGISLATURE

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(Governor's Bill)
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1830

H. P. 1719

House of Representatives, January 18, 1980

Referred to the Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk of the House

Presented by Mr. Mahany of Easton.

Cosponsors: Mr. Martin of Eagle Lake, Mr. Torrey of Poland and Mr. Morton of Farmington.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT Relating to Agricultural Development.

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

Sec. 1. 5 MRSA § 711, sub-§ 2, ¶ A, sub-¶ (1-A) is enacted to read:

(1-A) Department of Agriculture, food and rural resources:

- (a) Deputy commissioners;**
- (b) Associate Commissioner for Policy Development;**
- (c) Director, Bureau of Agricultural Productions;**
- (d) Director, Bureau of Agricultural Marketing;**
- (e) Director, Bureau of Agricultural and Rural Resources; and**
- (f) Director, Bureau of Public Services.**

Sec. 2. 7 MRSA § 1, first sentence, as repealed and replaced by PL 1975, c. 771, § 96, is amended to read:

The Department of Agriculture, **Food and Rural Resources**, as heretofore established and hereinafter in this Title called the "department," shall be

maintained for the improvement of agriculture and the advancement of the interests of husbandry, and shall consist of the Commissioner of Agriculture, **Food and Rural Resources**, hereafter in this Title called the "commissioner," and the following as heretofore created and established: The **Board of Pesticide Control**, the Maine Dairy and Nutrition Council Committee, **the Maine Dairy Promotion Board**, the Maine Milk Commission, the Maine Potato Commission, the Seed Potato Board, ~~Milk Tax Committee~~ the Soil and Water Conservation Commission, the Harness Racing Commission and the Board of Veterinary ~~Examiners~~ **Medicine**.

Sec. 3. 7 MRSA § 1, last 2 sentences, as repealed and replaced by PL 1975, c. 771, § 96, are repealed.

Sec. 4. 7 MRSA § 1-A is enacted to read:

§ 1-A. Legislative intent

The Legislature finds agriculture to be a major industry in the State, contributing substantially to the state's overall economy, essential to the maintenance and strengthening of rural life and values and necessary to the preservation of the health, safety and welfare of all of the people of this State.

The survival of the family farm is of special concern to the people of the State, and the ability of the family farm to prosper, while producing an abundance of high quality food and fiber, deserves a place of high priority in the determination of public policy. To this end there is established the Department of Agriculture, **Food and Rural Resources**.

Sec. 5. 7 MRSA § 2, first sentence, as amended by PL 1973, c. 598, § 1, is further amended to read:

The commissioner is the chief executive charged with the enforcement of ~~this Title and Title 17, chapter 43~~ **all statutes delegating responsibility to him or the department** and shall be vigilant in discovering violations thereof and making complaint to the proper authorities.

Sec. 6. 7 MRSA § 2, as last amended by PL 1975, c. 584, is further amended by adding at the end a new paragraph to read:

In addition, the commissioner shall be responsible for the development of all aspects of rural life and the health, safety and welfare of the state's rural community. The commissioner shall take such action as he deems appropriate to preserve and enhance the quality of life of Maine farmers and rural communities, as well as of the other people of the State who benefit therefrom directly or indirectly. The commissioner shall institute programs which include, but are not limited to, those designed to assist in farm financing and rural development proposals, to encourage conservation and preservation of agricultural lands, to study and implement an integrated pest management and crop development program, to provide for increased and improved production of bees, poultry, sheep, dairy beef and other livestock and expanded and improved production of

potatoes, fruits and other vegetables and horticultural ventures, to provide for successful and coordinated foreign and domestic marketing of agricultural products of the State and to ensure adequate regulatory control of the state's food supplies and animal welfare. To accomplish these objectives, the commissioner is authorized for, or on behalf of, Maine's farmers and rural community, to engage in research and educational programs, to participate directly or indirectly in financing and development of farm or other rural enterprises, to adopt all necessary administrative rules, to institute necessary litigation or to represent farmers or other members of the state's rural community in such litigation and to exercise all other powers of an agency of State Government. The commissioner may take any and all such actions either individually, for, or on behalf of, the state's farmers or rural residents, or jointly with such persons or with such other persons, agencies or organizations as he determines may benefit the state's farmers and rural communities.

Sec. 7. 7 MRSA § 3, as repealed and replaced by PL 1973, c. 598, § 2, is repealed and the following enacted in its place:

§ 3. Bureaus and divisions

The commissioner may establish and organize such bureaus and divisions of the department as he deems necessary and may incorporate commissions, boards and committees of the department within these bureaus and divisions. The commissioner may issue such administrative orders as he deems necessary to carry out the functions of the department.

Sec. 8. 7 MRSA § 5, as amended by PL 1975, c. 771, § 97, is further amended to read:

§ 5. Deputies; associates, directors

The commissioner may, with the approval of the Governor, appoint and fix the compensation of a ~~chief deputy and such other~~ deputies, associates and bureau directors as in his judgment are required to assist him, and to enable him to carry out all laws, the execution of which is entrusted to him. ~~The chief deputy~~ These deputies, associates and directors shall hold office ~~during good behavior and such other~~ during the pleasure of the commissioner. ~~Their compensation and expenses shall be paid from any funds appropriated for the use of the commissioner in the execution of said laws~~

Sec. 9. 7 MRSA c. 9 is enacted to read:

CHAPTER 9

FARM FINANCING

§ 301. Farm Financing Advisory Council

1. **Membership.** The commissioner shall appoint a Farm Financing Advisory Council, hereinafter called the council, composed of 9 members as follows:

A. Two officers of financial institutions of the State;

- B. One dairy farmer;
- C. One farmer engaged in growing horticultural products other than potatoes;
- D. One potato farmer;
- E. One poultry farmer;
- F. One agricultural economist;
- G. One representative of the cooperative extension service; and
- H. One public representative.

2. Meetings; terms and compensation. The term of office of the members of the advisory council shall be 4 years, except that of those first appointed 3 shall be appointed for one year, 2 shall be appointed for 2 years, 2 shall be appointed for 3 years and 2 shall be appointed for 4 years, as determined by the commissioner.

Members of the council shall serve until their successors are appointed and qualified. Any vacancy in the council shall be filled by appointment for the unexpired term. Members of the council shall each be allowed the sum of \$50 per day and their necessary expenses for actual attendance at meetings of the council.

The presence at any meeting of at least 5 members of the council shall be necessary to constitute a quorum.

3. Chairman. The members shall annually elect a chairman and such other officers as they deem necessary.

§ 302. Duties

The duties of the Farm Financing Advisory Council shall be as follows.

1. Review of programs. The council shall annually review the various state and federal programs and mechanisms for farm financing and may review farm financing programs and mechanisms of private financial institutions in the State. The council shall, prior to December 31st of each year, report to the commissioner regarding any changes or additions to state policies or programs needed to foster and promote the economic health and vitality of Maine farms and agricultural enterprises.

2. Procedures for providing advice. The council shall establish procedures for providing advice to applicants as to potential sources for farm financing in this State.

3. Procedures for reviewing loan applications. The council shall establish procedures for reviewing loan applications for farm financing in the State. Upon the request of any potential lender, the council shall review an application for farm financing and shall make recommendations to the lender as to its disposition, provided that the council shall review all farm financing applications made to the Maine Guarantee Authority. Any information received by the council regarding individual loan applications from the Maine Guarantee Authority or other lenders shall be kept confidential.

4. **Business practices recommended.** The council shall recommend to the Maine Guarantee Authority, consistent with Title 10, section 753-A, and such other lenders as may be appropriate, business practices to be followed to avoid default on farm financing obligations.

5. **Management programs.** The council shall, as it deems appropriate, recommend management programs to be followed by applicants for farm financing.

6. **Other recommendations.** The council shall make such other recommendations as it deems appropriate to maintain and improve methods of farm financing in this State.

§ 303. **Basis for recommendations**

In reviewing applications for farm financing, the council shall consider whether:

1. **Resident.** The applicant is a resident of the State;
2. **Education, training or experience.** The applicant has sufficient education, training or experience in the type of farming for which he wishes the loan and has agreed to participate in such farm management program as the council may prescribe;
3. **Utilization of farm land.** The applicant intends to obtain or utilize farm land for agricultural purposes and whether the land is suitable for that purpose; and
4. **Credit worthiness.** The applicant is credit worthy according to its standards and those established by the Maine Guarantee Authority, pursuant to Title 10, section 752, subsection 11, or by any other financial institution to which the application for farm financing was made.

§ 304. **Staff; services**

The commissioner shall provide the council with necessary staff, office space and administrative services. The commissioner may, in a manner consistent with the Maine Administrative Procedures Act, Title 5, chapter 375, adopt such rules and regulations as may be necessary to implement this chapter.

§ 305. **Farm and agricultural enterprises defined**

For purposes of this chapter and related provisions of Title 10, chapters 103 and 104, the term "farm" includes all land in the State that is capable of supporting the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, fruit or other horticultural products. The term "farm financing" includes obtaining funds from whatever source for the purchase and operation of farms and the term "agricultural enterprise" includes all activities which the commissioner determines to be related to farms and farm financing.

Sec. 10. 7 MRSA § 956, first ¶, 3rd sentence. as amended by PL 1965, c. 219, § 7, is further amended to read:

He may also, in person, or by duly authorized representative, open any container and may ~~upon tendering market price~~ take samples therefrom.

Sec. 11. 7 MRSA § 956, first ¶, as last amended by PL 1977, c. 696, § 80, is further amended by adding after the 3rd sentence a new sentence to read:

He shall, upon written request therefor, pay the packer the fair market value of any sample retained or destroyed by him.

Sec. 12. 7 MRSA § 958 is enacted to read:

§ 958. Law enforcement officers

In enforcing this Article, the commissioner or any of his duly authorized representatives shall be considered law enforcement officers for purposes defined by Title 17-A, section 17.

Sec. 13. 10 MRSA § 703, sub-§ 3, ¶ A, as amended by PL 1977, c. 82, § 2, is further amended to read:

A. Any lands, buildings, real estate improvements, including community industrial buildings constructed under chapter 102, or machinery and equipment, with auxiliary real and personal property, used by an industrial, manufacturing, fishing or agricultural enterprise for the manufacturing, processing, assembling or preparing for market of raw materials or other products ~~not including farm machinery or machinery used on a farm~~ including, but not limited to, an industry constructing sea-going ships and vessels, or for the purposes of research and development for such enterprises;

Sec. 14. 10 MRSA § 703, sub-§ 3, ¶ D, as amended by PL 1979, c. 228, § 1, is further amended to read:

D. Any fishing vessel documented or to be documented as a fishing vessel under the laws of the United States, or any fishing vessel registered or to be registered under State of Maine law which is designed to be used for catching, processing or transporting fish or any vessel outfitted for such activity; ~~and~~

Sec. 15. 10 MRSA § 703, sub-§ 3, ¶ E, as enacted by PL 1977, c. 489, § 1, is amended to read:

E. Any land designed for and proposed to be used as an industrial park or site for location of industrial enterprise, provided the municipality in which the proposed park is to be located has agreed to provide or assure the provision of support facilities, including utilities, access, site preparation, marketing efforts, and financial support as may be determined by the authority to be necessary and appropriate, and further provided that reasonable assurance is given to the authority that the project can gain approval for environmental permits and licenses and that the land shall be deeded to a local development corporation as defined in this section; **and**

Sec. 16. 10 MRSA § 703, sub-§ 3, ¶F is enacted to read:

F. Any land to be used as farm land which is capable of supporting the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, fruit or other horticultural products, providing that the Farm Financing Advisory Council created pursuant to Title 7, chapter 9, has reviewed and recommended approval of the specific project and provided that reasonable assurance is given to the authority that the project can gain approval for any environmental or other permits necessary for using the land for the purposes stated in this paragraph.

Sec. 17. 10 MRSA § 751, 2nd sentence, as amended by PL 1979, c. 533, § 7, is further amended to read:

The authority shall consist of ~~10~~ **11** members, including the Treasurer of State or his designee, ex officio, as a nonvoting member, **the Commissioner of Agriculture, Food and Rural Resources, or his designee**, and the Director of the State Development Office and 8 members at large appointed by the Governor, subject to review by the Joint Standing Committee on State Government and to confirmation by the Legislature, for a period of 4 years, provided that of the members first appointed, 2 shall be appointed for a term of one year, 2 for a term of 2 years, 2 for a term of 3 years and 2 for a term of 4 years.

Sec. 18. 10 MRSA § 752, sub-§ 9, as amended by PL 1975, c. 566, § 7, is further amended to read:

9. Advisability of eligible project. In connection with the insuring of payments of any mortgage of industrial or agricultural or recreational real estate, to require for its guidance a finding of the planning board of the municipality, or if there is no planning board, a finding of the municipal officers of the municipality, in which the eligible project is proposed to be located, or of the regional planning board of which such municipality is a member, as to the expediency and advisability of such project; **and, in connection with insuring of payments of any eligible farm financing project as defined in section 703, subsection 3, paragraph F, to require for its guidance a recommendation by the Farm Financing Advisory Council that the applicant should receive assistance from the Maine Guarantee Authority;**

Sec. 19. 10 MRSA § 803, 2nd ¶, 2nd sentence, as enacted by PL 1977, c. 489, § 10, is amended to read:

Loan guarantees pursuant to section 703, subsection 3, ~~paragraph~~ **paragraphs E and F** shall not be greater than 95% of the first mortgage loan and in no event shall the guarantees exceed 100% of the market value of the undeveloped land involved.

Sec. 20. 10 MRSA § 852, last ¶, as enacted by PL 1969, c. 584, § 1, is amended to read:

Nothing in this section shall be construed to prohibit the disclosure of information from records or files of the authority or the production of records or

files of the authority to a special interim legislative investigating committee, or its agent, upon written demand from the chairman of the committee or any member of the committee designated by him **or to the Farm Financing Advisory Council for purposes consistent in Title 7, chapter 9.** Such information, records or files may be used only for the lawful purposes of the **council or the committee** and in any actions arising out of investigations conducted by it.

Sec. 21. 12 MRSA c. 5, as enacted by PL 1973, c. 787, § 1, is repealed.

Sec. 22. 12 MRSA c. 6, as amended, is repealed.

Sec. 23. 32 MRSA § 4152, as amended by PL 1979, c. 26, § 1, is repealed and the following enacted in its place:

§ 4152. Maine Sardine Council

The Maine Sardine Council, as established by Title 36, section 4693, shall meet with the commissioner at regular intervals to be determined by it and more often if called by the commissioner.

The Maine Sardine Council shall advise the commissioner and the commissioner shall consult with the council on matters of general interest to the sardine industry within the jurisdiction of the commissioner.

Sec. 24. 32 MRSA § 4156, 2nd sentence, as repealed and replaced by PL 1979, c. 62, § 3, is amended to read:

The inspection fee provided for may be increased by the Commissioner of Agriculture, **Food and Rural Resources**, in a manner consistent with the rule-making provisions of the Maine Administrative Procedure Act, after consultation with the **Maine Sardine Industry Advisory Board Council** to an amount not to exceed 12¢ per case, in the event the fee of 8¢ per case is not adequate to cover the cost of the inspection, but the increased fee shall be reasonable and shall cover as nearly as may be possible the cost of the inspection.

Sec. 25. 36 MRSA § 4693, last ¶, as repealed and replaced by PL 1979, c. 26, § 5 and c. 541, Pt. B, § 49, is amended by adding after the 2nd sentence, a new sentence to read:

The council is authorized to consult with the Commissioner of Agriculture, Food and Rural Resources consistent with Title 32, chapter 61.

Sec. 26. 38 MRSA § 811, as repealed and replaced by PL 1977, c. 684, § 1, is repealed.

Sec. 27. 38 MRSA § 812 is repealed.

Sec. 28. 38 MRSA § 813, as repealed and replaced by PL 1977, c. 684, § 2, is repealed.

Sec. 29. 38 MRSA § 814, as enacted by PL 1977, c. 684, § 3, is repealed.

Sec. 30. 38 MRSA c. 5, Art. 3-A, is enacted to read:

ARTICLE 3-A. DAMS AND WATER LEVELS**§ 820. Findings and purpose**

The Legislature recognizes that the Colonial Ordinance of 1641, which is a part of the common law of Maine and chapter 3, established the principle that great ponds are held by the State in trust for the people and the Legislature declares that it is desirable for owners of shoreline property, owners of dams and the public to have water levels in bodies of water impounded by dams maintained at levels, subject to beneficial uses, at which these bodies have been traditionally maintained. This public policy includes the maintenance of water to provide hydro-power, to permit navigation on the body of water in the customary fashion, to maintain customary habitat for fish and wildlife, to prevent the exposure of unsightly shorelines, 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 uses to which the owners of shoreline property, owners of dams and the public have through the passage of time become accustomed.

The Legislature finds that the owners of many presently existing dams in the State are unknown or that the ownership of these dams is so diffuse as to make it extremely difficult to determine the ownership; that these 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 these dams and to maintain, repair or remove them to the best interests of both private property owners and the public.

The Legislature further finds the hazards presented by abandoned or neglected dams present threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State and that these state interests outweigh any economic burdens imposed by the Legislature upon owners of dams.

The Legislature intends by the enactment of this legislation to exercise the police powers of the State through the Board of Environmental Protection by conferring upon the board the power to deal with hazards and threats of danger posed by dams; to require prompt mitigation of any safety hazards posed by dams and to provide a fund for the inspection and supervision of such activities as carry out the duties of this chapter.

§ 821. Definitions

Unless the context otherwise indicates, the following words and terms when used in any statute administered by the Department of Environmental Protection shall have the following meanings.

1. Abandoned dam. "Abandoned dam" means any dam which has not been identified as having an owner under section 828.

2. **Beneficial use.** “Beneficial use” means use to provide or assure hydro-electric power, public or private water supplies, commercial transportation, dilution of wastewaters or any other similar use economically beneficial to the owner of a dam or the public.

3. **Dam.** “Dam” means any artificial barrier or barriers 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.

4. **Inspector of dams.** “Inspector of dams” means a competent professional engineer licensed to practice in Maine pursuant to Title 32, chapter 19, appointed by the Commissioner of Environmental Protection.

5. **Neglected dam.** “Neglected dam” means any dam which is not being maintained for any beneficial use.

§ 822. Powers and duties

1. **Board of Environmental Protection; powers.** In order to carry out the purposes of this Article and in addition to powers otherwise conferred, the Board of Environmental Protection may:

A. Award ownership of an abandoned dam to a petitioner;

B. Set and modify water levels for impoundments;

C. Require structural improvements in dams;

D. Order the draw down of water behind an unsafe dam;

E. Conduct public hearings;

F. Subpoena records and documents;

G. Require performance bonds;

H. Seek injunctions pursuant to section 826;

I. Require owners of dams to register claim of ownership annually;

J. Establish annual registration fees within statutory limits; and

K. Order the discontinuance of the use of a dam judged unsafe by the Commissioner of Environmental Protection and the inspector of dams.

2. **Commissioner of Environmental Protection; power.** The Commissioner of Environmental Protection may:

- A. Appoint and prescribe the duties of an inspector of dams, subject to the Personnel Law;
- B. Recommend draw downs of water behind unsafe dams;
- C. Recommend structural improvement in dams;
- D. Recommend the discontinuance of the use of a dam judged unsafe;
- E. Recommend water levels for impoundments;
- F. Recommend ownership of an abandoned dam; and
- G. Carry out duties delegated by the Board of Environmental Protection.

3. Inspector of dams. The inspector of dams shall:

- A. Periodically inspect all registered dams;
- B. Inspect any other dam, the safety of which is in question;
- C. Gather data and testimony;
- D. Make recommendations to the commissioner with respect to:
 - (1) Abandoned dam petitions;
 - (2) Water levels;
 - (3) Dam inspections;
 - (4) Structural improvements of inspected dams;
 - (5) Draw down of water behind unsafe dams;
 - (6) Neglected dams; and
 - (7) Permanent or temporary discontinuance of dams; and
- E. Perform any other duties delegated by the commissioner.

§ 823. Public hearings; notice

Public hearings conducted for the purposes of this Article shall be consistent with section 345. In addition, written notice to the registered owners of a dam, any petitioners and the municipal officers of any municipality in which the dam is located shall be provided at least 60 days prior to the date of the hearing.

§ 824. Establishment of water levels

1. Power. The board may upon its own motion, and shall upon receipt of petitions from 10% of the owners of shoreline property on any impoundment created by a dam, conduct a public hearing for the purpose of establishing an acceptable water level for the impoundment.

2. Evidence. At the hearing the board shall solicit and receive testimony for the purpose of establishing an acceptable water level for the impoundment, including, but not limited to:

- A. The water level necessary to maintain traditional navigation and boating;
- B. A water level necessary to maintain fish and wildlife habitat;
- C. The water level necessary to prevent exposure of unsightly shores along the impoundment;
- D. The water level necessary to prevent the erosion of impoundment shorelines;
- E. The water level necessary to provide customary access to the water of the impoundment by shoreline property owners and the public;
- F. The water level necessary to accommodate precipitation and runoff of waters into the impoundment;
- G. The water level necessary to prevent creation of hazardous conditions to shoreline property owners and the public;
- H. The historical fluctuations in water levels of the impoundment and the effect of these fluctuations on shoreline property owners and the uses of the impoundment; and
- I. Past, present and potential beneficial uses of the impoundment.

3. Order. Based on the evidence received at a hearing the board shall, within 60 days after adjournment, issue a decision and order to the owner of any dam thereon establishing an acceptable 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 of the impoundment to permit sufficient draw down to accommodate beneficial uses, precipitation and runoff of surface waters and to otherwise permit seasonal or other fluctuations in the water level of the impoundment necessary in order to protect shoreline property owners and public health, safety and welfare. The board shall cause a copy of the order to be mailed to the registered dam owner, to each petitioner, if any, and to the municipal officers of any municipality in which the dam is located, and shall cause the same to be filed in the appropriate registry or registries of deeds.

4. Modification of order. In the event that the owner of a registered dam may propose to develop a beneficial use after the board has established an acceptable water level for an impoundment, the board, upon petition of the owner and after opportunity for public hearing, may modify its order as necessary to permit the beneficial use.

5. Restriction. This section shall not apply to any dam operated or maintained for a beneficial use.

§ 825. Abandoned dam petitions

1. Petition. Any person may petition the Board of Environmental Protection to be awarded ownership of any dam which is not registered in accordance with section 828.

2. Public hearing. Upon receipt of a petition containing information required by the board and after public notice published in a newspaper of general

circulation within the county or counties in which the dam is located and notification to the municipal officers in municipalities in which the dam is located, the board may schedule a public hearing.

Upon notice from the board that a public hearing will be scheduled, the petitioner shall give notice of the public hearing, in writing, to the municipal officers in any municipality in which the dam is located and also by publication at least 5 times, at least 10 days apart, in the same newspapers in which the notice of the filing of the petition was published.

In addition to the date of the public hearing, location, time and 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 shall file notice of the ownership with the Board of Environmental Protection within 60 days of the date of the last publication, in such form as the board 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. Claim of ownership. Upon receipt of a claim of ownership by any person the board 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 the claimant by any person, determines that the claimant is not the owner of the dam, or the claimant withdraws his claim.

4. Evidence. At any hearing under this section the board shall solicit and receive testimony for the purpose of awarding ownership, including, but not limited to:

- A. Technical ability to maintain the dam;
- B. Financial capability;
- C. Intended use of impoundment water;
- D. Proposals to maintain or repair dam;
- E. The effects of any proposal on water quality, aquatic life and recreational uses of the impoundment;
- F. The beneficial uses to be gained; and
- G. The safety characteristics of the intended uses.

5. Filing of decree; effect. The board 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 or counties 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.

§ 826. Safety inspection

If after inspection by the inspector of dams or his agent, the Commissioner of Environmental Protection recommends to the board that a dam or impoundment

is unsafe, dangerous or potentially dangerous to the lives or property or persons residing, carrying on business or employed near or below the dam or impoundment, then the owners, occupants, operators or lessee thereof shall immediately carry out the recommendations of the commissioner if so ordered by the board. If the party ordered to carry out the order of the board fails to do so in the time specified in the order, the board shall seek an injunction from a Superior Court and the party shall be enjoined from the use of the dam or impoundment and the waters therein until the board's order is fully complied with by the party named in the order.

§ 827. Maintenance of dams

1. **Acceptable water level.** After issuance of an order establishing an acceptable water level for any body of water, no owner of a dam thereon, nor any subsequent transferee, shall operate or maintain the dam or cause or permit the dam to be operated or maintained in any manner that will cause the water level to be higher or lower than that permitted by the order of the board.

2. **Ownership of abandoned dam.** After issuance of an order awarding ownership of an abandoned dam, the owner thereof shall maintain and operate the dam in accordance with the board's order.

3. **Repair.** After issuance of an order to repair a dam that is judged unsafe or to lower the water level to what is deemed a safe level the owner of a dam shall immediately carry out the order.

4. **Bond.** The board may require the owner of a dam to post a bond or other security equal to the estimated costs of repairing or maintaining the dam. In the event that the owner of a dam fails to carry out the board order within the time limits specified, the board may take any action necessary to apply the posted bond or other security to the accomplishment of the board's order.

§ 828. Registration of ownership

1. **Registration.** Any person owning or operating any dam shall annually register with the board, on forms provided by the board, by January 1st of each year. The owner or operator shall provide to the board such information as may be reasonably required by it to perform the duties required by this Article. The annual fee for the registration shall be deposited in a nonlapsing revolving account to be held distinct from all other moneys, the fee to be used by the board for administration of the chapter. Moneys in excess of the amount needed to administer the subchapter shall be carried from year to year and may be invested by the Treasurer of State. All interest earned shall be credited to the segregated account.

2. **Registration fee.** In the event that the board determines that the estimated amount to be generated by the annual registration fee established in subsection 4 will be in excess of the amount needed for the administration of this Article, the board shall reduce the fee to an amount that will generate the estimated operating costs.

3. **Special safety account.** The board may deposit moneys in excess of the amount needed for general operating expenses in a special safety subdivision of the account. This special subdivision of the account may be used by the board only

when the commissioner recommends that it is necessary to have a detailed safety inspection of a dam by a consultant because the needed work is beyond the resources of the department.

4. **Annual fee calculations.** The annual fee shall be calculated by multiplying the height in feet times \$10. "Height in feet" means the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe of the dam to the maximum capable water storage elevation, or if not across a stream channel or watercourse, the vertical distance from the lowest elevation of the outside limit of the dam to the maximum capable water storage elevation.

§ 829. Enforcement

1. **Commencement of action.** The board, a dam owner or any shoreline property owner may commence an action to enjoin the violation of this Article. The board may also enforce its order in accordance with sections 347 and 348.

2. **Violation.** Any person violating any order of the board under this Article shall be liable for the penalties established in section 349.

§ 830. Appeal

Any person aggrieved by an order of the board may appeal to the Superior Court pursuant to section 346.

§ 831. Miscellaneous

Nothing in this subchapter 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.

No action may be maintained against the State, the board or its agents or employees for the recovery of damages caused by any order of the board under this Article, except as provided in the Maine Tort Claims Act, Title 14, c. 741.

Sec. 31. Transitional provision. All existing decisions made under the Revised Statutes, Title 12, chapters 5 and 6 and Title 38, sections 811, 812, 813 and 814 shall remain in full force and effect until revoked or amended by the board.

All funds appropriated or collected for the purposes of the Revised Statutes, Title 12, chapters 5 and 6 and Title 38, sections 811, 812, 813 and 814 shall be credited to the account established in accordance with the Revised Statutes, Title 38, section 828.

Sec. 32. Transition; Department of Agriculture, Food and Rural Resources. The Department of Agriculture, as heretofore created, shall be known as the Department of Agriculture, Food and Rural Resources. Any reference to the Department of Agriculture shall be deemed to be a reference to the Department of Agriculture, Food and Rural Resources and all obligations and responsibilities having accrued to the Department of Agriculture shall be deemed to have accrued to the Department of Agriculture, Food and Rural Resources.

The commissioner is authorized to transfer positions, lines, programs or accounts between bureaus and appropriations in order to carry out the intent of this Act.

Sec. 33. Revision clause. Wherever in the Revised Statutes the words "Department of Agriculture" appear or reference is made to that name, they shall be amended to read and mean the "Department of Agriculture, Food and Rural Resources."

Fiscal Note

This bill provides for 27 new positions in a restructured Department of Agriculture, Food and Rural Resources and for the transfer to the General Fund of 3 positions currently funded by special revenue. These transfers are in response to concerns raised by the Joint Standing Committee on Audit and Program Review and represents \$76,686 of the total budget request of \$615,111, which is included in the Supplemental Appropriation Act.

The funding does not take into account potential savings in current departmental General Fund programs as may be recommended by the Joint Standing Committee on Audit and Program Review.

Funding for the administration of dams, transferred by this bill from the Department of Agriculture, Food and Rural Resources to the Department of Environmental Protection, is derived from dam registration fees. The present \$10 annual fee is changed to a sliding scale fee based on the hazard presented by the structure.

STATEMENT OF FACT

Farming is important to Maine people. The industry's contribution to the state's economy is close to one and a quarter billion dollars annually - of which in 1978 \$410.4 million represented direct income to more than 7,500 farm families, employing 10,000 farm workers. Investments in farmland and buildings are valued at \$745 million. For thousands more individuals, farming generates off-farm related employment in processing, transportation and agri-service industries.

In 1977, only pulp and paper stood ahead of food production and processing in value of all goods and products produced in the State. Still, Maine agriculture faces a number of critical issues. The potato industry must deal with such issues as yields, quality and markets. The poultry industry is experiencing serious cost and price problems. The transportation of farm inputs and products is inadequate. Financing for entrance into farming and for maintenance of current operations may often be either unavailable or counterproductive.

This proposal for a Maine Agriculture Development Act of 1980 arises from the conviction that the time has arrived for a comprehensive look at Maine agriculture and rural resources and at the state's proper role in agricultural policies and activities. It is an initial response to the findings and

recommendations of the Food and Farmland Study Commission, a special legislative body which, after months of deliberations, analyzed the major issues concerning agriculture in this State.

The proposal also seeks to deal with inadequacies in the present staff and structure of the Department of Agriculture.

The bill provides:

1. That the State officially adopt a policy to encourage the preservation and conservation of agricultural lands and charge the Department of Agriculture with the responsibility of defining an ongoing program to facilitate farmland conservation and preservation;

2. That the Department of Agriculture be funded to implement the state's Direct Marketing Act;

3. That the Legislature create and fund a development mechanism within the Department of Agriculture that would coordinate entrance to farming activities, coordinate activities aimed at establishing marketing and storage cooperatives and provide advice concerning a farmland loan program; and

4. That the department be restructured to consolidate like functions into 4 bureaus: Agricultural production, consisting of functions directly related to the development and maintenance of the state's food and fiber production capabilities; agricultural marketing, consisting of functions directly related to the development and implementation of the state's role in the promotion and marketing of food and fiber products; agricultural and rural resources, consisting of functions directly related to the wise and economic development of the state's resource base; and public service, consisting of functions directly related to the department's current regulatory and consumer protection responsibilities. The restructuring will also limit to a more manageable number the subordinates who report to the commissioner by designating directors of each of the above bureaus. In addition to the bureau directors, the proposal also provides for staff and program resources which are not now available in the department.

In addition to the provisions above, this bill transfers authority for abandoned and neglected dams and for the inspection of dams to the Department of Environmental Protection.