

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 12

H. P. 18

Office of the Clerk of the House

Submitted by the Department of Agriculture, Food and Rural Resources pursuant to Joint Rule 24.

EDWIN H. PERT, Clerk

Presented by Mr. Cox of Brewer.

Cosponsor: Mr. D. Brown of Livermore Falls.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Revise the Procedures for Regulating Dams.

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

Sec. 1. 12 MRSA § 252, sub-§ 1, as enacted by PL 1973, c. 787, § 1, is repealed and the following enacted in its place:

1. **Commissioner.** "Commissioner" means the Commissioner of Agriculture, Food and Rural Resources or his designee.

Sec. 2. 12 MRSA § 253, sub-§ 1, as enacted by PL 1973, c. 787, § 1, is amended to read:

1. **Petition for ownership.** Any person may petition the ~~commissioner~~ **commissioner** to be awarded ownership of any dam, the owner of which is unknown.

Sec. 3. 12 MRSA § 253, sub-§ 2, as enacted by PL 1973, c. 787, § 1, is repealed and the following enacted in its place:

2. **Notice of petition.** Upon receipt of a petition containing the information required by the commissioner's rules, together with a fee in the amount of the cost of publication, the commissioner shall give notice of such petition, in a manner consistent with the Maine Administrative Procedure Act. The commissioner shall also give notice in writing, to the municipality in which the

dam is located. The notice shall state that anyone claiming ownership of the dam, or any interested person seeking award of ownership of the dam, must file notice of such ownership or petition for the award with the commissioner by a date specified, which date shall be not less than 30 days after the first publication of notice.

Sec. 4. 12 MRSA § 253, sub-§ 3, as enacted by PL 1973, c. 787, § 1, is amended to read:

3. **Claim of ownership; court determination.** Upon receipt of a claim of ownership by any person within ~~60~~ 30 days of the date of ~~last~~ first publication, the ~~commissioner~~ commissioner 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 such claimant by any person, determines that such claimant is not the owner of the dam, or the claimant withdraws his claim.

Sec. 5. 12 MRSA § 253, sub-§ 4, as enacted by PL 1973, c. 787, § 1, is amended to read:

Sec. 4. **Public hearing.** ~~No sooner than 60 days after the date of last publication, the commissioner~~ The commissioner may schedule and conduct a public hearing for the purpose of receiving such evidence and information as may aid ~~it~~ him in making a determination. ~~The commissioner may subpoena such witnesses and documents as he may require and shall receive all testimony under oath.~~

Sec. 6. 12 MRSA § 253, sub-§ 5, as enacted by PL 1973, c. 787, § 1, is amended to read:

5. **Determination; award of dam.** After any hearing held, or if none is held, no sooner than ~~60~~ 30 days after the date of ~~last~~ first publication, the ~~commissioner~~ commissioner may determine ~~by majority vote~~ to award the dam to a petitioner. In the case that there is more than one petitioner, the ~~commissioner~~ commissioner shall base ~~its~~ his determination upon a consideration of the relative technical, financial and administrative ability of each petitioner, the purpose and intent of each petitioner with regard to maintenance, repair or removal of the dam, the effect of each petitioner's proposal upon private and public property, including the public resources of wildlife, fisheries, waters and water uses, the effect otherwise upon the public's health, safety and general welfare and the willingness of each petitioner to accept ownership of the dam upon such terms as are reasonable.

Sec. 7. 12 MRSA § 253, sub-§ 6, first sentence, as enacted by PL 1973, c. 787, § 1, is amended to read:

No sooner than 45 days after notice to all petitioners of ~~its proposed~~ his decision, the ~~commissioner~~ commissioner shall cause a copy of ~~its decree or~~ his 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 in which the dam is located.

Sec. 8. 12 MRSA § 254, sub-§ 3, as enacted by PL 1973, c. 787, § 1, is amended to read:

3. Damages. No action shall be brought against the State or the ~~commissioner or its agents or employees~~ **commissioner** for the recovery of damages caused by the partial or total failure of any dam or through the operation of any dam upon the ground that the State, ~~or the commissioner or its agents or employees~~ **commissioner** is liable by virtue of the ~~commissioner's decree or commissioner's~~ **determination under this chapter.**

Sec. 9. 12 MRSA § 302, sub-§ 1, as enacted by PL 1975, c. 542, is repealed and the following enacted in its place:

1. Commissioner. "Commissioner" means the Commissioner of Agriculture, Food and Rural Resources or his designee.

Sec. 10. 12 MRSA § 303, first ¶, as enacted by PL 1975, c. 542, is amended to read:

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

Sec. 11. 12 MRSA § 303, 2nd ¶, as enacted by PL 1975, c. 542, is amended to read:

The owner of any dam shall provide written notice to the ~~commissioner~~ **commissioner** 90 days prior to ~~the actions enumerated:~~

Sec. 12. 12 MRSA § 304, sub-§ 1, first sentence, as enacted by PL 1975, c. 542, is amended to read:

The ~~commissioner~~ **commissioner** may upon ~~its~~ **his** own motion and shall upon receipt of petitions from ~~10%~~ **25%** 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.

Sec. 13. 12 MRSA § 304, sub-§ 2, as amended by PL 1977, c. 694, § 198, is repealed and the following enacted in its place:

2. Notice. The commissioner shall provide public notice of his intent to hold the hearing by providing written notice to the owner, if known, of any dam on the body of water and to any petitioner who has petitioned for a hearing with respect to the body of water. The written notice shall be made by regular mail and shall conform to provisions of the Maine Administrative Procedure Act, Title 5,

chapter 375, as to adjudicatory proceedings. In addition the commissioner shall give notice of his intent to hold the hearing by filing written notice of the same in the municipal office of any municipality in which the body of water may be located and by publication consistent with Title 5, chapter 375 as to adjudicatory proceedings.

Sec. 14. 12 MRSA § 304, sub-§ 3, first sentence, as amended by PL 1977, c. 694, § 199, is further amended to read:

At such hearing the ~~commissioner~~ **commissioner** shall solicit and receive testimony, as provided by Title 5, section 9057, for the purpose of establishing a normal water level for such body of water, including but not limited to:

Sec. 15. 12 MRSA § 304, sub-§ 3, ¶ I, as enacted by PL 1977, c. 694, § 200, is repealed.

Sec. 16. 12 MRSA § 304, sub-§ 4, as amended by PL 1977, c. 694, §§ 201 and 202, is further amended to read:

4. Order. Based on the evidence solicited at such hearing the ~~commissioner~~ **commissioner** shall, within 60 days after adjournment, issue a decision and order that conform with Title 5, section 9061 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 ~~commissioner~~ **commissioner** shall cause a copy of such order to be mailed to the dam owner and each petitioner, if any, and shall cause the same to be filed in the appropriate registry of deeds.

Sec. 17. 12 MRSA § 304, sub-§§ 9 and 10, as enacted by PL 1977, c. 694, § 203 are repealed.

Sec. 18. 12 MRSA § 305, sub-§ 1, as enacted by PL 1975, c. 542, is amended to read:

1. Prohibition. After issuance of an order under section 304, subsection 4 establishing a normal water level of 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 the order of the ~~commissioner~~ **commissioner**.

Sec. 19. 12 MRSA § 306, as amended by PL 1977, c. 694, § 204, is further amended to read:

§ 306. Enforcement

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

~~commission~~ commissioner may enforce the order by any other appropriate remedy.

The violation of any order of the ~~commission~~ commissioner 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.

Sec. 20. 12 MRSA § 307, as amended by PL 1977, c. 694, § 205, is further amended to read:

§ 307. Appeal

Any person aggrieved by an order of the ~~commission~~ commissioner may appeal to the Superior Court pursuant to Title 5, chapter 375, subchapter VII.

STATEMENT OF FACT

The purpose of this bill is to transfer authority to regulate abandoned and neglected dams from the State Soil and Water Conservation Commission to the Commissioner of the Department of Agriculture, Food and Rural Resources. The bill also amends some of the existing requirements for hearings on these matters to bring this program into conformity with the Maine Administrative Procedure Act, Title 5, chapter 375.