

# MAINE STATE LEGISLATURE

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L.D. 1252

(Filing No. S- 137)

STATE OF MAINE  
SENATE  
111TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 404,  
L.D. 1252, Bill, "AN ACT Concerning Inspection,  
Registration and Abandonment of Dams."

Amend the Bill in section 6 in that part designated "§817." by striking out all of subsection 3 and inserting in its place the following:

'3. Dam. "Dam" means any man-made artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, which impounds or diverts a river, stream or great pond and which is 2 feet or more in height and has an impounding capacity at maximum water storage elevation of 15-acre feet or more. Any such artificial barrier constructed solely for the purpose of impounding water to allow timber to be floated downstream in a logging operation shall not be considered a dam for the purposes of this Article. Any adjacent property, easements, roads, bridges or works not necessary for the operation of a dam shall not be included under the provisions of this Article.'

Further amend the Bill in section 6 in that part designated "§817." by inserting after subsection 7 the following:

'8. Public safety. "Public safety" or "safety of the public" means protection of life, health or property from any condition, event or action at a dam which might compromise the safety, stability or integrity of the dam or its ability to function safely for its intended purposes.'

Further amend the Bill in section 6 in that part designated "§817." by renumbering subsection 8 to be

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1 subsection 9.

2 Further amend the Bill in section 6 in that part  
3 designated "§821." by striking out all of subsection  
4 1 and inserting in its place the following:

5 '1. Appointment. The commissioner shall appoint  
6 dam inspectors who are licensed as professional engi-  
7 neers under Title 32, chapter 19. The commissioner  
8 may appoint inspectors to serve on a full-time, part-  
9 time or independent contract basis. The commissioner  
10 shall provide the inspectors with necessary profes-  
11 sional, technical, clerical and secretarial assis-  
12 tance. Any inspectors appointed under this subsection  
13 shall be experienced in dam design and construction  
14 or the investigation and safety of existing dams.'

15 Further amend the Bill in section 6 in that part  
16 designated "§822." in subsection 1 by striking out  
17 all of paragraphs A to C and inserting in their place  
18 the following:

19 'A. Ten or more persons owning property adjacent  
20 to a stream or impoundment affected by a dam;

21 B. Fifty or more persons owning property within  
22 the floodplain downstream of a dam;

23 C. The municipal officers of a municipality in  
24 which a dam or the body of water it impounds is  
25 located; or

26 D. The commissioners of any county in which the  
27 dam or body of water it impounds is located.'

28 Further amend the Bill in section 6 in that part  
29 designated "§830." by striking out all of subsection  
30 1 and inserting in its place the following:

31 '1. Registration. Each person owning a dam  
32 shall register the dam on or before January 1, 1984,  
33 and every 5th year thereafter, on forms provided by

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1 the department. For dams built after January 1, 1984,  
2 initial registration shall be due as of the date of  
3 completion of construction. The registration forms  
4 shall seek from and require of the registrant infor-  
5 mation reasonably required by the department to per-  
6 form its duties under this Article. The department  
7 shall provide notice of dam registration requirements  
8 to the known or suspected owners of all currently or  
9 previously registered dams at least 30 days prior to  
10 the registration deadline.'

11 Further amend the Bill in section 6 in that part  
12 designated "§830." in subsection 2 by adding at the  
13 end the following underlined paragraph:

14 'The registration fee for the 5-year registration  
15 period may be paid in full at the time of registra-  
16 tion at a 10% discount.'

17 Further amend the Bill in section 6 in that part  
18 designated "§830." by striking out all of subsection  
19 6 and inserting in its place the following:

20 '6. Abandonment. If a dam is not registered by  
21 December 31st of the registration year, title to the  
22 dam, including appurtenant easements, shall automati-  
23 cally vest in the State on the following day and the  
24 dam shall be subject to the procedures of subarticle  
25 3.'

26 Further amend the Bill in section 6 in that part  
27 designated "§840." by striking out all of subsection  
28 1 and inserting in its place the following:

29 '1. Power. The board may on its own motion and  
30 shall at the request of the owner, lessee or person  
31 in control of a dam, or upon receipt of petitions  
32 from the lesser of at least 25% or 50 of the littoral  
33 or riparian proprietors, conduct an adjudicatory  
34 hearing for the purpose of establishing a water level  
35 regime for the body of water impounded by any dam  
36 that is neither:

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1 A. Licensed by the Federal Energy Regulatory  
2 Commission;

3 B. Authorized under the Federal Power Act,  
4 Section 23;

5 C. Used to store water for a downstream facility  
6 licensed by the Federal Energy Regulatory Commis-  
7 sion or authorized under the Federal Power Act,  
8 Section 23, provided that the owner of the down-  
9 stream facility possessed a majority ownership of  
10 the upstream dam as of January 1, 1983; nor

11 D. Operating with a permit setting water levels  
12 issued under the great ponds laws, sections 391  
13 to 394; the alteration of coastal wetlands laws,  
14 sections 471 to 478; the site location of devel-  
15 opment laws, sections 481 to 490; the small  
16 hydroelectric generating facilities laws, sec-  
17 tions 621 to 626; the land use regulation laws,  
18 Title 12, sections 681 to 689; the stream altera-  
19 tion laws, Title 12, sections 7776 to 7780; or  
20 any other statute regulating the construction or  
21 operation of dams.'

22 Further amend the Bill in section 6 in that part  
23 designated "§840." in subsection 2 in the first line  
24 (page 16, line 36 in L.D.) by striking out the under-  
25 lined word "personal" and inserting in its place the  
26 underlined word 'public'

27 Further amend the Bill in section 6 in that part  
28 designated "§841." by striking out all of subsection  
29 2 and inserting in its place the following:

30 '2. Exception. No owner, lessee or person in  
31 control of a dam may be in violation of subsection 1,  
32 where the water level fluctuation not permitted by  
33 the order was caused by unforeseeable and  
34 unpredictable meteorological conditions or operating  
35 failures of the dam or any associated equipment or by

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1 valid order of federal, state or local authorities  
2 and where the person could not have avoided the  
3 fluctuation by promptly undertaking all reasonably  
4 available steps to regulate water flow through or  
5 over any dam under his control. The burden of proof  
6 shall be on the owner, lessee or person in control of  
7 the dam to demonstrate the applicability of this sub-  
8 section.

9 STATEMENT OF FACT

10 The first section of this amendment clarifies the  
11 definition of a dam, exempts dams constructed solely  
12 for log driving and limits the definition of  
13 appurtenancy to the property, easements or works  
14 necessary to operate the dam.

15 The next section provides a definition of "public  
16 safety" for the purpose of dam inspection, registra-  
17 tion and abandonment.

18 The following section provides required qualifi-  
19 cations for dam inspectors.

20 The amendment to Title 38, section 822, clarifies  
21 the provisions on petitioning for dam inspection.

22 The amendments to Title 38, section 830, provide  
23 for registration of dams every 5 years rather than  
24 annually and clarify registration procedures.

25 The amendment to Title 38, section 840, exempts  
26 dams, including water storage dams, grandfathered by  
27 the Federal Power Act or owned by a Federal Energy  
28 Regulatory Commission licensee, from the water level  
29 setting provisions.

