

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1252

6
7 S.P. 404

In Senate, March 17, 1983

8 Referred to the Committee on Energy and Natural Resources. Sent down
9 for concurrence and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Erwin of Oxford.

Cosponsors: Representative Smith of Island Falls, Representative Michael
11 of Auburn and Representative Hall of Sangerville.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Concerning Inspection,
18 Registration and Abandonment of Dams.
19

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

22 Sec. 1. 12 MRSA c.c. 5 and 6, as amended, are
23 repealed.

24 Sec. 2. 38 MRSA §811, as repealed and replaced
25 by PL 1977, c. 684, §1, is repealed.

26 Sec. 3. 38 MRSA §812 is repealed.

27 Sec. 4. 38 MRSA §813, as repealed and replaced
28 by PL 1977, c. 684, §2, is repealed.

29 Sec. 5. 38 MRSA §814, as enacted by PL 1977, c.
30 684, §3, is repealed.

1 Sec. 6. 38 MRSA c. 5, sub-c. I, Art. 3-A is
2 enacted to read:

3 ARTICLE 3-A. DAM INSPECTION, REGISTRATION AND ABAN-
4 DONMENT

5 §815. Short title

6 This Article shall be known and may be cited as
7 the "Maine Dam Inspection, Registration and Abandon-
8 ment Act."

9 §816. Legislative findings and purpose

10 The Legislature finds that there are many exist-
11 ing dams in the State which impound or otherwise
12 regulate the flow of the waters of the State and that
13 these dams are in various conditions of age, use and
14 repair.

15 The Legislature further finds that some of these
16 dams are now in or may fall into disrepair so as to
17 threaten the public health, safety and welfare.

18 The Legislature further finds that the owners of
19 some of these dams are unknown or difficult to deter-
20 mine and that the neglect by these owners of their
21 property is now or may in the future result in
22 inattention to the operation and repair of these dams
23 so that they threaten the public health, safety and
24 welfare.

25 The Legislature further finds that some dam
26 owners want to be relieved of the responsibility of
27 maintaining their dams and that there are persons who
28 are now or may in the future be willing to take own-
29 ership of these dams and to maintain, repair or
30 remove them to the best interests of the public and
31 the public resources. The Legislature further finds
32 that some dams impound waters that are subject to
33 much public use and increasing public and private
34 development and that these dams are now, or may in
35 the future, be operated in such a manner that they
36 threaten the public health, safety and welfare and
37 the public resources of wildlife, fisheries, waters
38 and water uses.

1 It is the purpose of this Article to provide for
2 the inspection of dams and the alteration of dams or
3 their operations to protect the public safety; to
4 provide for the registration of dams and their owner-
5 ship; to provide procedures for awarding ownership of
6 abandoned dams to persons who will maintain and oper-
7 ate the dams so as to protect the public and the
8 public resources; and to provide procedures for
9 establishing water levels in impoundments controlled
10 by dams that will, to the maximum extent practical,
11 allow competing uses while protecting the public and
12 the public resources.

13 §817. Definitions

14 As used in this Article, unless the context
15 otherwise indicates, the following terms have the
16 following meanings.

17 1. Board. "Board" means the Board of Environ-
18 mental Protection.

19 2. Commissioner. "Commissioner" means the Commis-
20 sioner of Environmental Protection.

21 3. Dam. "Dam" means any man-made artificial bar-
22 rier, including appurtenant works, the site on which
23 it is located and appurtenant rights of flowage and
24 access, which impounds or diverts water and which is
25 either 2 feet or more in height or has an impounding
26 capacity at maximum water storage elevation of
27 15-acre feet or more.

28 4. Department. "Department" means the Department
29 of Environmental Protection.

30 5. Height. "Height" means, in reference to a dam,
31 the vertical distance in feet from the natural bed of
32 the stream or watercourse measured at the downstream
33 toe of the barrier, or from the lowest elevation of
34 the outside limit of the barrier, if it is not across
35 a stream channel or watercourse, to the maximum capa-
36 ble water storage elevation.

37 6. Littoral proprietor. "Littoral proprietor"
38 means an owner or lessee of property on the shore of
39 a lake impounded by a particular dam.

1 7. Person. "Person" means any individual, firm,
2 association, partnership, corporation, trust, municipi-
3 pality, quasi-municipal corporation, state agency,
4 federal agency or other legal entity.

5 8. Riparian proprietor. "Riparian proprietor"
6 means an owner or lessee of property on the bank of a
7 river or stream or shore of a pond or other small
8 body of water impounded by a particular dam.

9 §818. Miscellaneous

10 1. Other laws. Except as specifically provided in
11 this Article, nothing in this Article shall be con-
12 strued as relieving any person from duties, responsi-
13 bilities or liabilities imposed by any other statute,
14 regulation, municipal ordinance or any rule of law.

15 2. Rights of others. Except as specifically pro-
16 vided in this Article, nothing in this Article shall
17 be construed as denying any person any rights he may
18 have under any other statute, regulation, municipal
19 ordinance or any rule of law.

20 3. Other powers. No provision of this Article may
21 be construed as limiting the powers of the Bureau of
22 Civil Emergency Preparedness under Title 37-A, sec-
23 tions 180 to 186.

24 4. Damages. No action may be brought against the
25 State, the board, the commissioner or his agents or
26 employees for the recovery of damages caused by any
27 order of the board or commissioner or by the partial
28 or total failure of any dam or through the operation
29 of any dam upon the ground that the State, the board,
30 the commissioner or his agents or employees are lia-
31 ble by virtue of any order or determination of the
32 board or commissioner.

33 Subarticle 1. Inspection

34 §820. Jurisdiction

35 The inspection of dams shall be under the sole
36 jurisdiction of the department, except that for any
37 dam licensed or inspected by any agency of the United
38 States Government, the department shall have no
39 inspection jurisdiction.

1 §821. Inspection of dams

2 1. Appointment. The commissioner shall appoint
3 one or more inspectors of dams who are licensed as
4 professional engineers under Title 32, chapter 19.
5 The commissioner may appoint an inspector to serve on
6 a full-time, part-time or independent contract basis.
7 The commissioner shall provide the inspector with
8 necessary professional, technical, clerical and
9 secretarial assistance.

10 2. Compensation. If the inspector of dams is an
11 independent contractor, he shall receive, as full
12 compensation for his services, \$100 a day while actu-
13 ally employed under section 823 or section 824,
14 together with his actual expenses, to be audited,
15 allowed and paid by the department.

16 §822. Inspection petition and order

17 1. Petition. A petition requesting the inspection
18 of any dam may be filed with the commissioner by any
19 of the following:

20 A. Ten resident taxpayers from any city, town,
21 plantation or unorganized township in which a dam
22 or the body of water it impounds is located;

23 B. The municipal officers, as defined in Title
24 30, section 1901, subsection 7, of any city, town
25 or plantation in which the dam or the body of
26 water it impounds is located; or

27 C. The commissioners of any county in which the
28 dam or the body of water it impounds is located.

29 2. Petition action. The commissioner shall,
30 within 30 days after receipt of a petition requesting
31 a dam inspection, notify the petitioners in writing
32 of his action on the petition. The commissioner may:

33 A. Accept the petition and order a formal inspec-
34 tion under section 823;

35 B. Accept the petition and order an informal
36 inspection under section 824; or

1 C. Deny the petition if he determines that
2 inspection of the dam is unnecessary.

3 3. Commissioner order. The commissioner may order
4 a formal or informal inspection of any dam at any
5 time without receipt of a petition requesting inspec-
6 tion of the dam.

7 §823. Formal inspection and hearing; decision

8 1. Formal inspection. At the direction of the
9 board or the commissioner, the inspector of dams, or
10 his agent, shall personally inspect a dam to deter-
11 mine if the dam is endangering the public safety. The
12 board may, at its discretion, conduct a hearing to
13 determine if the dam is endangering the public
14 safety.

15 2. Adjudicatory proceeding. A formal inspection
16 shall be an adjudicatory proceeding under Title 5,
17 chapter 375, subchapter IV and the procedures speci-
18 fied in this section, but a hearing shall not be re-
19 quired.

20 3. Notice. Notice, meeting the requirements of
21 Title 5, section 9052, subsection 2, paragraph A,
22 shall be given to:

23 A. The petitioners;

24 B. The owners, lessees or persons in control of
25 the dam; and

26 C. The officials described in section 822, sub-
27 section 1, paragraphs B and C.

28 Under the provisions of Title 5, section 9052, notice
29 of the hearing shall also be given to the general
30 public.

31 4. Decision; correction of unsafe conditions. If,
32 after receiving a report from the inspector of dams
33 on the inspection of a dam and a hearing, if held,
34 the board determines that a dam is endangering the
35 safety of the public, it may order the owners,
36 lessees or persons in control of the dam to make
37 alterations to the dam or its operations, including,
38 but not limited to:

- 1 A. Breach or removal of the dam;
- 2 B. Repair or maintenance of the dam;
- 3 C. Operation of the dam in a specified manner;
- 4 D. Preparation of and adherence to a safety man-
5 agement plan satisfactory to the board; or
- 6 E. Maintenance for public inspection of appropri-
7 ate records relating to water levels, dam opera-
8 tion and dam maintenance.

9 Before ordering an alteration in the dam or its oper-
10 ation that may change water levels below the dam or
11 in the body of water it impounds, the board shall
12 consider the possible impact of the proposed order on
13 the environment, public resources, littoral or ripari-
14 an proprietors and dam operation. The board may hold
15 a hearing under section 840 to establish a normal
16 water level regime for the body of water impounded by
17 the dam.

18 5. Enforcement. The board, the petitioners under
19 section 822, subsection 1, or any riparian or
20 littoral proprietor may commence an action to enjoin
21 the violation of any provision of this subarticle.
22 The board may enforce any order issued under subsec-
23 tion 4, by any other appropriate remedy, including,
24 but not limited to, entering the dam premises to
25 carry out the terms of the order.

26 The owners, lessees or persons in control of the dam
27 shall be jointly and severally liable for any costs
28 incurred by the department in enforcing any order
29 issued under subsection 4. If the owners, lessees or
30 persons in control of the dam refuse to comply or do
31 not fully comply with the board's order, the board
32 shall initiate a civil action against the owners,
33 lessees or other persons in control of the dam for
34 damages in the amount of the costs incurred by the
35 department in enforcing the board's order.

36 The violation of any order issued under subsection 4
37 shall be a civil violation punishable by a forfeiture
38 of not less than \$20 and not more than \$100. Each
39 day of violation shall be considered a separate
40 offense.

1 6. Eminent domain; abandonment. In the event that
2 the owner, lessee or person in control of the dam
3 fails to comply with an order issued under subsection
4 4, the department may commence eminent domain pro-
5 ceedings to assume ownership of the dam if necessary
6 to protect the public safety. Upon award of title to
7 the dam to the State, the State shall undertake to
8 make the dam safe and the dam shall be subject to the
9 procedures of subarticle 3.

10 7. Unregistered dam. In the event that a dam
11 sought to be inspected under this section or section
12 824 is unregistered under this Article, the provi-
13 sions of section 830, subsection 4, shall be imple-
14 mented and any order of the commissioner issued under
15 subsection 4 shall apply to any proceedings under
16 subarticle 3.

17 8. Appeal. Any person aggrieved by an order of
18 the commissioner under subsection 4 may appeal to the
19 Superior Court under Title 5, chapter 375, subchapter
20 VII.

21 §824. Informal inspection

22 1. Inspection. At the request of the commis-
23 sioner, the inspector of dams or his agent shall con-
24 duct an informal inspection of a dam to make a deter-
25 mination as to whether the dam is endangering the
26 public safety.

27 2. Adjudicatory proceeding. An informal inspec-
28 tion shall be an adjudicatory proceeding under the
29 provisions of Title 5, chapter 375, subchapter IV and
30 the notice procedures specified in section 823, sub-
31 section 3, but a hearing shall not be required.

32 3. Decision; further action. If the commissioner
33 determines, after receiving a report from the inspec-
34 tor of dams on the informal inspection of a dam, that
35 no further action by the department is warranted,
36 that decision shall constitute final agency action
37 for the purpose of Title 5, chapter 375, subchapter
38 IV. If the commissioner determines, after receiving a
39 report from the inspector of dams on the informal
40 inspection of a dam, that a formal inspection is war-
41 ranted, he shall proceed under section 823 and his

1 decision shall not be subject to judicial review as
2 final agency action under Title 5, chapter 375, sub-
3 chapter IV.

4 §825. Access and notification

5 The inspector of dams shall have full access to
6 any dam site for the purpose of conducting an inspec-
7 tion or enforcing an order under section 823 or 824.
8 The inspector shall make a good faith effort to
9 notify the owner, lessee or person in control of the
10 dam prior to making an inspection. In the event that
11 the owner, lessee or person in control of the dam
12 refuses to permit the inspector full access to the
13 dam for these purposes, the inspector shall obtain an
14 administrative warrant under the District Court Rules
15 of Civil Procedure, Rule 80E.

16 §826. Reimbursement for inspection expenses

17 When the commissioner determines that a dam is
18 endangering the public safety, the department shall
19 collect from the owner, lessee or person in control
20 of the dam the total expenses, including compensation
21 payable to the dam inspector, incurred by the State
22 for any inspections undertaken. Upon a failure to
23 reimburse the State as required in this section, the
24 department may commence a civil action to recover the
25 reimbursement.

26 §827. Utilization of other state agency resources

27 The commissioner may, with the approval of the
28 Commissioner of Transportation, utilize the engineer-
29 ing and other expertise that exists in the Department
30 of Transportation to assist in the evaluation of dams
31 that are inspected under this subarticle.

32 §828. Regulations

33 The board shall prescribe regulations, following
34 the procedures of Title 5, chapter 375, subchapter
35 II, establishing the criteria by which the department
36 is to determine whether or not a dam is endangering
37 the public safety and establishing procedures for the
38 scope of formal and informal inspections.

1 §829. Transitional provisions

2 Rules, regulations and interpretive criteria
3 adopted by the Department of Agriculture, Food and
4 Rural Resources under former chapter 5, subchapter I,
5 Article 3, shall continue in effect until regulations
6 are established under section 828 and any orders
7 issued by the inspector of dams under that Article
8 shall continue in effect and shall be enforced by the
9 board until replaced or amended under this
10 subarticle.

11 Subarticle 2. Registration

12 §830. Registration of ownership

13 1. Annual registration. Any person owning any dam
14 shall annually register the dam on or before January
15 1st of the registration year on forms provided by the
16 department. The registration forms shall seek from
17 and require of the registrant information reasonably
18 required by the department to perform its duties
19 under this Article. The department shall provide
20 notice of dam registration requirements to the known
21 or suspected owners of all currently or previously
22 registered dams at least 30 days prior to the annual
23 registration deadline.

24 2. Registration fee. The annual fee for registra-
25 tion shall be as follows, except that a state or fed-
26 eral agency owning, leasing or controlling any dam
27 shall not be required to pay a fee:

28 A. Twenty dollars for any dam between 2 feet and
29 20 feet in height, inclusive; or

30 B. Twenty dollars plus an additional \$1 for each
31 additional one foot in height above 20 feet for
32 any dam greater than 20 feet in height.

33 3. Late registration. An owner, lessee or person
34 in control of a dam, other than a state or federal
35 agency, who fails to register the dam on or before
36 January 1st shall pay \$50 in addition to the annual
37 registration fee upon registering the dam.

1 4. Revenues dedicated. All fees collected under
2 this subarticle shall be paid to the Treasurer of
3 State and credited to the Department of Environmental
4 Protection for the administration of this Article. If
5 any of these fees are not expended during the year in
6 which they are collected, the unexpended balance
7 shall not lapse, but shall be carried as a continuing
8 account and available for the purposes specified
9 until expended.

10 5. Notice of failure to register. Notice of fail-
11 ure to register a dam and of the consequences de-
12 scribed in this section shall be mailed by registered
13 mail after January 1st of the registration year to
14 the last known address of the owner and any lessee or
15 other person in control of the dam. The department
16 shall make a reasonable effort to determine the iden-
17 tity, where unknown, of an owner, lessee or person in
18 control of a dam by:

19 A. Consulting prior dam registration records;

20 B. Consulting the registry of deeds of the county
21 in which the dam is located;

22 C. Consulting the municipal tax list of the
23 municipality in which the dam is located; and

24 D. Consulting the tax list maintained by the
25 State Tax Assessor under Title 36, chapter 115
26 for a dam located in an unorganized territory.

27 If a dam is not registered within 90 days following
28 the mailing of the first notice of failure to regis-
29 ter, a 2nd notice of failure to register and of the
30 consequences described in this section shall be
31 mailed by registered mail within an additional 30
32 days to the person to whom the first notice was sent
33 and to any other person or persons whom the depart-
34 ment has reason to believe may be an owner, lessee or
35 person in control of the dam.

36 6. Abandonment. If a dam is not registered by
37 August 31st of any year, title to the dam, including
38 appurtenant easements, shall automatically vest in
39 the State on the following day and the dam shall be
40 subject to the precedures of subarticle 3.

1 §831. Notice of transfer or destruction

2 The owner, lessee or person in control of a dam
3 shall provide written notice to the department of:

4 1. Transfer. Any transfer of ownership of the
5 dam, whether by sale, lease or gift; or

6 2. Destruction. Any breach or destruction of the
7 dam in whole or in part.

8 Subarticle 3. Abandonment

9 §835. Abandonment

10 The procedures of section 837 shall apply to any
11 dam for which:

12 1. Eminent domain. The State has assumed owner-
13 ship through eminent domain proceedings under section
14 823, subsection 6, due to noncompliance with an
15 inspection order;

16 2. Nonregistration. The State has assumed owner-
17 ship under section 830, subsection 5, due to
18 nonregistration; or

19 3. Abandonment. The State has assumed ownership
20 under section 836 due to an authorized abandonment by
21 the owner.

22 Once a dam has been voluntarily or involuntarily
23 abandoned, no previous owner may be entitled to any
24 compensation for property rights forfeited to the
25 State or to any subsequent owner under this Article.

26 §836. Authorized abandonment

27 1. Petition and authorization. The owner of any
28 dam may petition the commissioner for authorization
29 to abandon the dam. The commissioner shall authorize
30 the abandonment if he determines that the owner is
31 unable to otherwise dispose of the dam in a manner
32 that will insure continuing compliance with any order
33 issued under this Article.

1 2. Transfer or withdrawal. Within 30 days follow-
2 ing the issuance of an order by the commissioner
3 authorizing abandonment of a dam, the owner shall
4 either:

5 A. Transfer all his title, right and interest in
6 the dam to the State by deed; or

7 B. Withdraw his petition for authorization to
8 abandon the dam and shall retain ownership sub-
9 ject to the requirements of registration and any
10 then outstanding order issued under this Article.
11 In the event that the owner withdraws his peti-
12 tion following the issuance of an order by the
13 commissioner pursuant to this section, the owner
14 shall be prohibited from petitioning again under
15 this section for one year.

16 §837. Awards of new ownership

17 1. Initiation of proceedings; action. Within 30
18 days after the date on which the State assumes owner-
19 ship of any dam under this Article, the board shall
20 initiate proceedings to award ownership of the dam.
21 Within one year after the date on which the State
22 assumes ownership of any such dam, the board shall
23 either:

24 A. Award ownership of the dam to a new owner
25 under this section; or

26 B. In the event that no person petitions for own-
27 ership of the dam or the board determines under
28 subsection 5 that none of the petitioners is
29 qualified to accept ownership and control of the
30 dam, retain ownership of the dam. Upon its deci-
31 sion to retain ownership of the dam, the board
32 shall cause the dam to be maintained and operated
33 in such a manner as to protect the public safety
34 and public resources. This maintenance and opera-
35 tion may include, but is not limited to:

36 (1) The opening of the dam and draining of
37 the impoundment;

38 (2) The operation of the dam in a specified
39 manner; or

1 (3) The destruction of the dam.

2 The board may initiate further proceedings at any
3 time to award ownership of any dam that has
4 remained in state ownership by a decision of the
5 board under this paragraph.

6 2. Public notice. The board shall give notice
7 inviting petitions for the award of ownership of the
8 dam at least twice in a newspaper of general circula-
9 tion in the county or counties in which the dam is
10 located and at least once in the state paper. The
11 board shall also give written notice to any munici-
12 pality or municipalities in which the dam or the body
13 of water it impounds is located and to the county
14 commissioners of any county or counties in which the
15 dam or the body of water it impounds is located.

16 3. Petitions. Petitions for the award of owner-
17 ship of any dam shall be made in a form prescribed by
18 the board and shall be filed with the board by a date
19 specified, which date shall not be less than 30 days
20 after the first publication of notice.

21 Any person may petition the board to be awarded own-
22 ership of any abandoned dam.

23 4. An ownership proceeding. The board may sched-
24 ule and conduct a public hearing for the purpose of
25 receiving any evidence and information that may aid
26 it in making a determination. The board may subpoena
27 such witnesses and documents as it may require. Any
28 hearing held under this section shall be an adjudica-
29 tory hearing under Title 5, chapter 375, subchapter
30 IV and the procedures specified in this section.

31 5. Criteria for determination. The board shall
32 determine which petitioner, if any, is best qualified
33 to accept ownership and control of the dam. In
34 reviewing any petition and the qualifications of the
35 petitioner to accept ownership and control of the
36 dam, the board shall consider the following criteria:

37 A. The technical, financial and administrative
38 ability of the petitioner;

39 B. Any plans of the petitioner with regard to the
40 operation, maintenance and repair of the dam;

1 C. The effect of the petitioner's proposal upon
2 private and public property and the public
3 resources of wildlife, fisheries, water quality,
4 recreation and other water uses;

5 D. The ability of the petitioner to comply with
6 any order issued under this Article;

7 E. The willingness of the petitioner to accept
8 ownership of the dam upon reasonable terms; and

9 F. Any other effects of the petitioner's proposal
10 on public health, safety and general welfare.

11 6. Competing petitions. In the event that the
12 board has determined under subsection 5 that there is
13 more than one petitioner who is otherwise equally
14 qualified to accept ownership and control of the dam,
15 the board shall hold a joint hearing on all petitions
16 and shall award ownership of the dam in the following
17 order of priority:

18 A. To an association of at least 50% of the
19 littoral or riparian proprietors;

20 B. To a river corridor commission, lake or water-
21 shed district, dam commission or other similar
22 agency created by Act of the Legislature or by an
23 agreement among municipalities or other public
24 agencies under the interlocal cooperation laws,
25 Title 30, chapter 203;

26 C. To a municipality in which the dam or the body
27 of water it impounds is located;

28 D. To a county in which the dam or the body of
29 water it impounds is located;

30 E. To any state agency; and

31 F. To any other person.

32 7. Award of dam; terms. No sooner than 45 days
33 after notice to all parties of its decision, the
34 board shall execute and deliver a deed awarding own-
35 ership and possession of the dam to the successful
36 petitioner. This conveyance may be subject to such

1 terms regarding the use and operation of the dam by
2 the grantee, his heirs and assigns as may be reason-
3 able. The board shall not deliver the deed until the
4 successful petitioner has reimbursed the department
5 for all outstanding registration fees and all
6 expenses incurred by the department for the repair,
7 operation or transfer of the dam.

8 The grantee shall cause a copy of the deed to be
9 recorded in the registry of deeds for the county in
10 which the dam is located.

11 8. Appeal. A decision by the board under this
12 section shall constitute final agency action for the
13 purposes of appeal under Title 5, chapter 375, sub-
14 chapter VII.

15 Subarticle 4. Water Levels

16 §840. Establishment of water levels

17 1. Power. The board may on its own motion and
18 shall upon receipt of petitions from the lesser of at
19 least 25% or 50 of the littoral or riparian propri-
20 etors conduct an adjudicatory hearing for the purpose
21 of establishing a water level regime for the body of
22 water impounded by any dam that is not either:

23 A. Licensed by the Federal Energy Regulatory Com-
24 mission; or

25 B. Operating with a permit setting water levels
26 issued under the great ponds laws, sections 391
27 to 394; the alteration of coastal wetlands laws,
28 sections 471 to 478; the site location of devel-
29 opment laws, sections 481 to 490; the small
30 hydroelectric generating facilities laws, sec-
31 tions 621 to 626; the land use regulation laws,
32 Title 12, sections 681 to 689; the stream altera-
33 tion laws, Title 12, sections 7776 to 7780 or any
34 other statute regulating the construction or
35 operation of dams.

36 2. Notice. The board shall provide personal
37 notice of its intent to hold a hearing by providing
38 written notice to the owner, lessee or person in con-
39 trol, if known, of any dam on the body of water and

1 to any petitioner who has petitioned for a hearing
2 with respect to the body of water. The board shall
3 give public notice of the hearing under Title 5,
4 section 9052. The board shall also file notice of
5 the hearing in the municipal office of any municipal-
6 ity and in the clerk's office of any county in which
7 the body of water is located.

8 3. Conduct of hearing. The hearing shall follow
9 the procedures for an adjudicatory hearing under
10 Title 5, chapter 375, subchapter IV and the proce-
11 dures specified in this section.

12 4. Evidence. At the hearing, the board shall
13 solicit and receive testimony, as provided by Title
14 5, section 9057, for the purpose of establishing a
15 water level regime for the body of water. The testi-
16 mony shall be limited to:

17 A. The water levels necessary to maintain the
18 public rights of access to and use of the water
19 for navigation, fishing, fowling, recreation and
20 other lawful public uses;

21 B. The water levels necessary to protect the
22 safety of the littoral or riparian proprietors
23 and the public;

24 C. The water levels necessary for the maintenance
25 of fish and wildlife habitat and water quality;

26 D. The water levels necessary to prevent the
27 excessive erosion of shorelines;

28 E. The water levels necessary to accommodate pre-
29 cipitation and run off of waters;

30 F. The water levels necessary to maintain public
31 and private water supplies;

32 G. The water levels and flows necessary for any
33 ongoing use of the dam to generate or to enhance
34 the downstream generation of hydroelectric or
35 hydromechanical power; and

36 H. The water levels necessary to provide flows
37 from any dam on the body of water to maintain

1 public access and use, fish propagation and fish
2 passage facilities, fish and wildlife habitat and
3 water quality downstream of the body of water.

4 5. Order. Based on the evidence solicited at the
5 hearing, the board shall, within 60 days after the
6 hearing, make written findings and issue an order to
7 the owner, lessee or person in control of the dam
8 establishing a water level regime for the body of
9 water impounded by the dam. The order shall, insofar
10 as practical, require the maintenance of a stable
11 water level, but shall include provision for varia-
12 tions in water level to permit sufficient draw down
13 of the body to accommodate precipitation and run off
14 of surface waters and to otherwise permit seasonal
15 and other necessary fluctuations in the water level
16 of the body of water in order to protect public
17 health, safety and welfare and the public and private
18 resources identified in subsection 4. The board shall
19 cause a copy of the order to be delivered to the
20 owner, lessee or person in control of the dam and
21 each petitioner, if any, and shall cause a copy of
22 the order to be filed in the registry of deeds in the
23 county where the dam is located.

24 §841. Maintenance of dams

25 1. Prohibition. After issuance of an order under
26 section 840, subsection 5, establishing a water level
27 regime for any body of water, no owner, lessee or
28 person in control of any dam impounding the body of
29 water, nor any subsequent transferee, may operate or
30 maintain the dam or cause or permit the dam to be
31 operated or maintained in any manner that will cause
32 the level of water to be higher or lower than that
33 permitted by order of the board or to otherwise vio-
34 late the terms of the order of the board.

35 2. Exception. No owner, lessee or person in con-
36 trol of a dam may be in violation of subsection 1,
37 where the water level fluctuation not permitted by
38 the order was caused by unforeseeable and
39 unpredictable meteorological conditions or operating
40 failures of the dam or any associated equipment, and
41 where the person could not have avoided the fluctu-
42 ation by promptly undertaking all reasonably avail-
43 able steps to regulate water flow through or over any

1 dam under his control. The burden of proof shall be
2 on the owner, lessee or person in control of the dam
3 to demonstrate the applicability of this subsection.

4 3. Enforcement. The board or any littoral or ri-
5 parian proprietor may commence an action to enjoin
6 the violation of any provision of this subarticle.
7 The board may enforce any order issued under section
8 840, subsection 5 by any other appropriate remedy,
9 including, but not limited to, entering the dam prem-
10 ises to carry out the terms of the order.

11 The violation of any order issued under section 840,
12 subsection 5, shall be punishable by a forfeiture of
13 not less than \$20 and not more than \$100. Each day
14 of violation shall be considered a separate offense.

15 4. Unregistered dam. In the event that a dam
16 impounding a body of water for which a water level
17 regime is sought to be established under section 840
18 is unregistered under this Article, the provisions of
19 section 830, subsection 4 shall be implemented, and
20 any order of the board issued under section 840, sub-
21 section 5 shall apply to any proceedings under
22 subarticle 3.

23 5. Appeal. Any person aggrieved by an order of
24 the board under section 840, subsection 5 may appeal
25 to the Superior Court under Title 5, chapter 375,
26 subchapter VII.

27 §842. Transition provision

28 All orders of the State Soil and Water Conserva-
29 tion Commission or the Commissioner of Agriculture,
30 Food and Rural Resources issued under former Title
31 12, section 304 shall continue in effect and shall be
32 enforced by the board until they expire or are
33 rescinded or amended under this subarticle.

34 Sec. 7. Allocation of Dam Registration Fund.
35 Funds from the Dam Registration Fund shall be allo-
36 cated as follows.

37 ALLOCATION FROM
38 DAM REGISTRATION FUND

1 Title 38, section 817 contains definitions of the
2 terms used in the Act. The definition of "dam" sets
3 lower limits on the height and impounding capacity of
4 a dam that will bring it under jurisdiction of the
5 Act.

6 Title 38, section 818 sets forth some miscellane-
7 ous provisions of the Act.

8 Title 38, section 820 marks the beginning of the
9 subarticle on the inspection of dams and sets forth
10 the jurisdiction of the subarticle. The department's
11 inspection activities will complement the existing
12 inspection programs of the Army Corps of Engineers
13 and the Federal Energy Regulatory Commission.

14 Title 38, section 821 establishes the position of
15 inspector of dams and the inspector's compensation.

16 Title 38, section 822 sets forth procedures under
17 which the department may, by its own motion or upon
18 receipt of a petition, order an inspection of a dam.

19 Title 38, section 823 outlines the procedures for
20 a formal inspection and hearing and establishes the
21 Department of Environmental Protection's authority to
22 order alterations to a dam or its operation if it has
23 determined that the dam is endangering public safety
24 and to enforce such an order. The section also
25 authorizes the department to commence eminent domain
26 proceedings to assume ownership of a dam if necessary
27 to protect the public safety in the event of noncom-
28 pliance by the dam owner with an order of the board.

29 Title 38, section 824 outlines the procedures for
30 an informal inspection and subsequent determination
31 by the commissioner.

32 Title 38, section 825 establishes the rights and
33 obligations of the inspector of dams in gaining ac-
34 cess to a dam site.

35 Title 38, section 826 provides that, in the event
36 that a dam is determined to be unsafe, the owner
37 shall be liable for all inspection expenses incurred
38 by the Department of Environmental Protection.

1 Title 38, section 827 authorizes the Department
2 of Environmental Protection to utilize the expertise
3 of the Department of Transportation in evaluating the
4 safety of dams.

5 Title 38, section 828 directs the Board of Envi-
6 ronmental Protection to develop regulations pursuant
7 to this subarticle.

8 Title 38, section 829 provides that all regula-
9 tions adopted and orders issued under the existing
10 inspection of dams and reservoirs laws shall remain
11 in force and be enforced by the Department of Envi-
12 ronmental Protection until replaced or amended.

13 Title 38, section 830 marks the beginning of the
14 subarticle on the registration of dams. The section
15 establishes a dam registration program, sets forth a
16 fee scale for the annual registration and sets forth
17 a process of notification to known or suspected
18 owners of unregistered dams. This section also pro-
19 vides that title to any dam that remains unregistered
20 for more than 8 months after registration comes due
21 shall revert to the State, regardless of whether the
22 dam owner is known or not.

23 Title 38, section 831 directs the owner of a dam
24 to notify the Department of Environmental Protection
25 of the transfer of ownership or destruction of the
26 dam.

27 Title 38, section 835 marks the beginning of the
28 subarticle on the abandonment of dams. The subarticle
29 sets forth the circumstances that result in a dam
30 being abandoned and provides that the previous owner
31 of an abandoned dam shall receive no compensation for
32 the dam and associated property and rights that have
33 been abandoned under this section.

34 Title 38, section 836 sets forth procedures under
35 which the commissioner may authorize an owner to
36 abandon a dam.

37 Title 38, section 837 directs the Board of Envi-
38 ronmental Protection to initiate proceedings to award
39 ownership of any abandoned dam to a new owner and,
40 within one year of abandonment, to either award own-

1 ership to a new owner or, if no person is willing or
2 qualified to assume ownership, to destroy the dam or
3 to retain ownership of the dam pending additional
4 proceedings to award ownership. The section outlines
5 the procedures under which the board shall invite and
6 consider petitions for the award of new ownership and
7 sets forth the criteria by which the board shall
8 determine which petitioner, if any, is best qualified
9 to accept ownership and control of the dam. The
10 section also sets forth a procedure by which the
11 board will award ownership in a priority order where
12 competing petitioners are determined to be equally
13 qualified to accept ownership and control of the dam.
14 Finally, the section establishes the procedures and
15 terms of the transfer of title to a new owner.

16 Title 38, section 840 marks the beginning of the
17 subarticle on the establishment of water levels. The
18 section sets forth procedures under which the board
19 may by its own motion or shall upon receipt of a
20 petition conduct a hearing to establish a water level
21 regime for any body of water impounded by a dam as
22 defined in Title 38, section 817, except for any body
23 of water impounded by a dam that is operating pur-
24 suant to a federal license or state permit. The
25 section also sets forth the criteria which shall be
26 considered by the board in establishing a water level
27 regime. The section establishes the procedures for
28 the issuance of a water level order and the terms of
29 any such order.

30 Title 38, section 841 sets forth the requirement
31 that the owner of any dam shall operate and maintain
32 the dam in such a manner as to be in compliance with
33 any order establishing a water level regime for the
34 body of water controlled by the dam. The section also
35 authorizes the board to enforce any water level
36 order.

1 Title 38, section 842 provides that all water
2 level orders issued under the existing neglected dams
3 laws shall remain in force and shall be enforced by
4 the Department of Environmental Protection until they
5 expire or are rescinded or amended.

6 Section 7 allocates the income from dam registra-
7 tion.

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