

MAINE STATE LEGISLATURE

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(New Draft of H.P. 370, L.D. 484)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1376

H.P. 1022 House of Representatives, April 29, 1987
Reported by Representative JACQUES from the Committee on
Energy and Natural Resources and printed under Joint Rule 2.

EDWIN H. PERT, Clerk

Original bill sponsored by Representative NUTTING of
Leeds. Cosponsored by Representatives TRACY of Rome, RUHLIN
of Brewer and Senator KANY of Kennebec.

STATE OF MAINE

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

**AN ACT Concerning Inspection, Registration
and Abandonment of Dams.**

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

Sec. 1. 38 MRSA §817, sub-§3, as enacted by PL
1983, c. 417, §6, is amended to read:

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 stor-
age elevation of ~~15-acre-feet~~ 15 acre-foot or more.
Any such artificial barrier constructed solely for

1 the purpose of impounding water to allow timber to be
2 floated downstream in a logging operation shall not
3 be considered a dam for the purposes of this ~~Article~~
4 article, unless it has been repaired, modified or
5 maintained by or with the knowledge of the owner,
6 lessee or person in control since the discontinuance
7 of its use in connection with logging operations.
8 Any adjacent property, easements, roads, bridges or
9 works not necessary for the operation or maintenance
10 of a dam or access to the dam shall not be included
11 under the provisions of this ~~Article~~ article.

12 **Sec. 2.** 38 MRSA §821, sub-§2, as enacted by PL
13 1983, c. 417, §6, is amended to read:

14 2. Compensation. If the inspector of dams is an
15 independent contractor, he shall receive, as full
16 compensation for his services, ~~\$100~~ \$250 a day while
17 actually employed under section 823 or section 824,
18 together with his actual expenses, to be audited, al-
19 lowed and paid by the department.

20 **Sec. 3.** 38 MRSA §823, sub-§1, as enacted by PL
21 1983, c. 417, §6, is repealed and the following en-
22 acted to read:

23 1. Formal inspection. At the direction of the
24 board or the commissioner, an inspector of dams, or
25 his agent, shall personally inspect a dam and conduct
26 such investigations as he determines necessary to de-
27 termine if the dam is endangering the public safety.
28 The department shall notify the dam owner of the date
29 and time for the inspection, by certified mail sent
30 in a timely fashion. The board may, at its discre-
31 tion, conduct a hearing to determine if the dam is
32 endangering the public safety. Any hearing held
33 shall be an adjudicatory proceeding under the Maine
34 Administrative Procedure Act, Title 5, chapter 375,
35 subchapter IV.

36 **Sec. 4.** 38 MRSA §823, sub-§2, as enacted by PL
37 1983, c. 417, §6, is repealed.

38 **Sec. 5.** 38 MRSA §823, sub-§3, as enacted by PL
39 1983, c. 417, §6, is amended to read:

1 3. Notice. Notice If a hearing is held pursuant
2 to subsection 1, notice, meeting the requirements of
3 Title 5, section 9052, subsection 2, paragraph A,
4 shall be given to:

5 A. The petitioners;

6 B. The owners, lessees or persons in control of
7 the dam; and

8 C. The officials described in section 822, sub-
9 section 1, paragraphs B C and E D.

10 Under the provisions of Title 5, section 9052, notice
11 of the hearing shall also be given to the general
12 public.

13 **Sec. 6.** 38 MRSA §823, sub-~~§§~~5 and 7, as enacted
14 by PL 1983, c. 417, §6, are amended to read:

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

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

33 The violation of any order issued under subsection 4
34 shall be a civil violation punishable by a forfeiture
35 of not less than ~~\$20~~ \$100 and not more than ~~\$100~~
36 \$10,000. Each day of violation shall be considered a
37 separate offense.

1 7. Unregistered dam. In the event that a dam
2 sought to be inspected under this section or section
3 824 is unregistered under this ~~Article~~ article, the
4 provisions of section 830, subsection 4 5, shall be
5 implemented and any order of the commissioner issued
6 under section 823, subsection 4, shall apply to any
7 proceedings under subarticle 3.

8 Sec. 7. 38 M RSA §824, sub-§ 1, as enacted by PL
9 1983, c. 417, §6, is amended to read:

10 1. Inspection. At the request of the commission-
11 er, the inspector of dams or his agent shall conduct
12 an informal inspection of a dam and conduct such in-
13 vestigations as he determines necessary to make a de-
14 termination as to whether the dam is endangering the
15 public safety.

16 Sec. 8. 38 M RSA §824, sub-§2, as enacted by PL
17 1983, c. 417, section 6, is repealed.

18 Sec. 9. 38 M RSA §825, as enacted by PL 1983, c.
19 417, §6, is repealed and the following enacted in its
20 place:

21 §825. Access and notification

22 1. Inspector of dams; department staff. The in-
23 pector of dams and the department staff shall have
24 full access to any dam site for the purpose of con-
25 ducting an inspection or enforcing an order under
26 section 823 or 824. The department staff shall noti-
27 fy, by certified mail, the owner, lessee or person
28 in control of the dam and persons owning property
29 abutting the dam site, if appropriate, prior to mak-
30 ing an inspection or enforcing an order. In the
31 event that the owner or an abutter refuses to permit
32 the inspector full access to the dam for these pur-
33 poses, the inspector or department staff shall obtain
34 an administrative warrant under the District Court
35 Rules of Civil Procedure, Rule 80E.

36 2. Owners, lessees; necessary access. The own-
37 ers, lessees or persons in control of a dam shall also
38 have access over land abutting the dam site owned
39 by others if such access, including the passage of
40 vehicles, machinery and equipment, is reasonably nec-

1 essary to comply with an order issued under section
2 823, subsection 3. In passing over land owned by
3 abutters, the owners, lessees or persons in control
4 of a dam shall make every effort to minimize the in-
5 trusion, shall restore the land to its preexisting
6 condition to the maximum extent practicable and shall
7 be liable to the abutters for all property damage
8 caused the abutters by their activities on the
9 abutters' land. The abutters shall not be liable to
10 any person for any personal injuries or property dam-
11 age arising from the crossing of their land by the
12 owners, lessees or persons in control of a dam.

13 Sec. 10. 38 MRSA §830, sub-§§5 and 6, as enacted
14 by PL 1983, c. 417, §6, are amended to read:

15 5. Notice of failure to register. Notice of
16 failure to register a dam and of the consequences de-
17 scribed in this subsection shall be mailed by
18 registered certified mail after January 1st of the
19 registration year to the last known address of the
20 owner and any lessee or other person in control of
21 the dam. The department shall make a reasonable ef-
22 fort to determine the identity, where unknown, of an
23 owner, lessee or person in control of a dam by:

- 24 A. Consulting prior dam registration records;
- 25 B. Consulting the registry of deeds of the county
26 in which the dam is located;
- 27 C. Consulting the municipal tax list of the mu-
28 nicipality in which the dam is located; and
- 29 D. Consulting the tax list maintained by the
30 State Tax Assessor under Title 36, chapter 115
31 for a dam located in an unorganized territory.

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

1 6. Abandonment. If a dam is not registered by
2 December 31st of the registration year, title to the
3 dam, ~~including appurtenant easements,~~ shall automati-
4 cally vest in the State on the following day and the
5 dam shall be subject to the procedures of subarticle
6 3.

7 **Sec. 11. 38 MRSA §840, sub-§5, as enacted by PL**
8 **1983, c. 417, §6, is amended to read:**

9 5. Order. Based on the evidence solicited at
10 the hearing, the board shall, within ~~60~~ 80 days after
11 the hearing, make written findings and issue an order
12 to the owner, lessee or person in control of the dam
13 establishing a water level regime for the body of wa-
14 ter impounded by the dam. The order shall, insofar as
15 practical, require the maintenance of a stable water
16 level, but shall include provision for variations in
17 water level to permit sufficient draw down of the
18 body to accommodate precipitation and run off of sur-
19 face waters and to otherwise permit seasonal and oth-
20 er necessary fluctuations in the water level of the
21 body of water in order to protect public health,
22 safety and welfare and the public and private re-
23 sources identified in subsection 4. The board shall
24 cause a copy of the order to be delivered to the own-
25 er, lessee or person in control of the dam, the mu-
26 nicipal officers of any municipality in which the dam
27 or the body of water it impounds is located and each
28 petitioner, if any, and shall cause a copy of the or-
29 der to be filed in the registry of deeds in the coun-
30 ty where the dam is located.

31 **Sec. 12. 38 MRSA §841, sub-§§3 and 4, as enacted**
32 **by PL 1983, c. 417, §6, are amended to read:**

33 3. Enforcement. The board or any littoral or
34 riparian proprietor may commence an action to enjoin
35 the violation of any provision of this subarticle.
36 The board may enforce any order issued under section
37 840, subsection 5 by any other appropriate remedy,
38 including, but not limited to, entering the dam
39 premises to carry out the terms of the order.

40 The violation of any order issued under section 840,
41 subsection 5, shall be punishable by a forfeiture of
42 not less than \$20 \$100 and not more than ~~\$100~~

1 \$10,000. Each day of violation shall be considered a
2 separate offense.

3 4. Unregistered dam. In the event that a dam
4 impounding a body of water for which a water level
5 regime is sought to be established under section 840
6 is unregistered under this ~~Article~~ article, the pro-
7 visions of section 830, subsection 4 5, shall be im-
8 plemented, and any order of the board issued under
9 section 840, subsection 5 shall apply to any proceed-
10 ings under subarticle 3.

11

STATEMENT OF FACT

12 This new draft makes several changes in the orig-
13 inal bill amending the Maine Dam Inspection, Regis-
14 tration and Abandonment Act.

15 First, it provides that adjacent property, ease-
16 ments, etc. which are necessary for access to a dam
17 are included within the definition of dam.

18 Second, it deletes the new provision proposed in
19 the bill which would have permitted the Commissioner
20 of Environmental Protection to appoint professional
21 hydrologists as dam inspectors.

22 Third, it permits a dam inspector to conduct an
23 investigation about the safety of the dam as well as
24 to inspect the dam, provides for notice to the dam
25 owner of an inspection and clarifies that any hearing
26 conducted on the safety of a dam is an adjudicatory
27 hearing.

28 Fourth, it makes penalties for violations of the
29 dam inspection law consistent with the general penal-
30 ty provisions of other Department of Environmental
31 Protection laws.

32 Fifth, it provides that department staff shall
33 have access to the dam site for inspection or en-
34 forcing any inspection order. If a dam is found to
35 be unsafe it expressly gives the dam owners access
36 over the land of abutting property owners if neces-

1 sary in order to comply with an order to correct un-
2 safe conditions. The dam owners shall restore the
3 abutting land to its preexisting condition and the
4 abutters shall not be liable to any person for dam-
5 ages arising from the crossing of the abutting land.

6 Finally, it makes a number of technical, clerical
7 and typographical corrections to existing laws.

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