

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

OK
R. O. S.

L.D. 868

(Filing No. S- 70)

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49

STATE OF MAINE
SENATE
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 331, L.D. 868, Bill, "An Act Concerning the Inspection of Dams"

Amend the bill by striking all of section 1 and inserting in its place the following:

'Sec. 1. 37-B MRSA c. 22 is enacted to read:

CHAPTER 22

DAM INSPECTION

§1061. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Agency. "Agency" means the Maine Emergency Management Agency.

2. 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 chapter, unless it has been repaired, modified or maintained by or with the knowledge of the owner, lessee or person in control since the discontinuance of its use in connection with logging operations. Any adjacent property, easements, roads, bridges or works not necessary for the operation or maintenance of a dam or access to the dam shall not be included under the provisions of this chapter.

3. Dam reconstruction. "Dam reconstruction" means the

R. of S.

1 rebuilding or replacement of all or part of an existing dam that
2 no longer functions in the manner for which it was originally
3 constructed.

5 4. Director. "Director" means the Director of the Maine
6 Emergency Management Agency.

7
8 5. Emergency operations plan. "Emergency operations plan"
9 means a set of written instructions or guidelines for use by
10 public officials which recommends actions which, when
11 implemented, will minimize the effects of a dam failure on people
12 and property.

13
14 6. High or significant hazard. "High or significant
15 hazard" means that condition which poses a risk of loss of human
16 life and substantial property damage.

17
18 7. Public safety. "Public safety" or "safety of the
19 public" means protection of life, health or property from any
20 condition, event or action at a dam which might compromise the
21 safety, stability or integrity of the dam or its ability to
22 function safely.

23
24 8. State dam inspector. "State dam inspector" means an
25 inspector appointed or hired under section 1064.

27 §1062. Jurisdiction

28
29 The inspection of and design standards for all dams shall be
30 under the sole jurisdiction of the agency, except that the agency
31 does not have jurisdiction over any dam licensed or inspected by
32 any agency of the Federal Government or by the International
33 Joint Commission.

34 §1063. Design standards

35
36 All new or reconstructed dams which are classified as high
37 or significant hazard dams shall be constructed or reconstructed
38 in accordance with design and construction standards that are
39 consistent with accepted engineering standards. These standards
40 shall be promulgated by rule of the agency prior to July 1,
41 1990. The agency shall establish by rule a process by which the
42 design and construction of new or reconstructed dams shall be
43 reviewed under this section.

44
45 §1064. Inspectors of dams

46
47
48 The director shall appoint or hire one or more dam
49 inspectors who are licensed as professional engineers under Title
50 32, chapter 19, and experienced in the inspection and design of
51 dams.

1 §1065. Inspection of dams

3 1. Inspection. By June 1, 1995, the director shall, at a
5 minimum, inspect:

7 A. All dams which are listed in the 1981 United States Army
9 Corps of Engineers' Inventory of Dams in the United States
11 as "high" and "significant hazard" dams in the State;

13 B. Any other new or existing dam that may, in the judgment
15 of the director, constitute a potential threat to public
17 safety; and

19 C. Any dams identified by the director under section 1070,
21 subsection 2.

23 The purpose of the inspections shall be to reevaluate and
25 ascertain the downstream hazard classification of each dam.

27 2. Hazard classification. Each dam inspected under this
29 section shall be classified pursuant to the hazard potential of
31 the dam. The principal criterion used to determine the hazard
33 classification of the dam shall be the potential risk to public
35 safety and property downstream of the dam which may be affected
37 directly or indirectly by the failure of the dam. The standards
39 of classification of dams shall be the same as those adopted by
41 the United States Army Corps of Engineers, as set forth in 33
43 Code of Federal Regulations, Chapter II, and all subsequent
45 amendments thereto.

47 3. Report. A state dam inspector shall write and issue a
49 report making a recommendation regarding the classification of
51 each dam to the director. A copy of the report shall be provided
53 to the dam owner of record and forwarded by certified mail. The
dam owner shall notify the agency within 30 days of receipt of
the report if the owner disagrees with the conclusions of the
State's classification recommendation. If the owner of the dam
does not agree with the results and recommendations of the dam
inspector, the owner may at the owner's expense have a registered
professional engineer conduct an independent investigation to
determine the hazard classification of the dam. The dam owner
shall provide the results of this independent investigation to
the director within 6 months of receipt of the original report.
The owner may apply for and be granted an extension of this
deadline by the director for good cause. A state dam inspector
shall review and consider the information provided by the owner's
report pertaining to the classification of the dam and may issue
a new classification recommendation. After reviewing all
available data, the director shall then determine the
classification of the dam.

The director shall reevaluate the hazard classification of a dam
at least once every 6 years and, if necessary, reclassify the dam

1 to account for the possibility that conditions downstream of the
2 dam may have changed.

3
4 4. Ascertain conditions of dam. A state dam inspector
5 shall also conduct on-site inspections of the dams inspected
6 under subsection 1 to determine if the integrity, structural
7 stability and function of the dams constitute a threat to public
8 safety downstream of the dams. A state dam inspector shall issue
9 a report on the material condition of each dam which shall
10 describe in detail any material condition which constitutes a
11 threat to public safety. The engineering process, mathematical
12 calculations and complete documentation justifying the assessment
13 of the current material condition shall be provided to the
14 director.

15
16 5. Correction of unsafe conditions. After receiving a
17 report on a dam from a state dam inspector, if the director
18 determines that a dam is an imminent threat to the safety of the
19 public, the director may order the owners, lessees or persons in
20 control of the dam to make alterations to the dam or its
21 operations, including, but not limited to:

- 22 A. Breach or removal of the dam;
- 23 B. Repair or maintenance of the dam;
- 24 C. Operation of the dam in a specified manner;
- 25 D. Preparation of and adherence to an emergency operations
26 plan satisfactory to the agency; or
- 27 E. Maintenance of appropriate records relating to water
28 levels, dam operation and dam maintenance.

29 **§1066. Enforcement**

30
31 The director may commence an action to enjoin the violation
32 of any provision of section 1065. The director may enforce any
33 order by any other appropriate remedy, including, but not limited
34 to, entering the dam premises to carry out the terms of the order.

35
36 The owners, lessees or persons in control of the dam shall
37 be jointly and severally liable for any costs incurred by the
38 agency in enforcing any order. If the owners, lessees or persons
39 in control of the dam refuse to comply or do not fully comply
40 with the agency's order, the agency shall initiate a civil action
41 against the owners, lessees or other persons in control of the
42 dam for damages in the amount of the costs incurred by the agency
43 in enforcing its order.

1 §1067. Appeal

3 Any person aggrieved by an order of the director may appeal
4 to the Superior Court under the Maine Administrative Procedure
5 Act, Title 5, chapter 375, subchapter VII.

7 §1068. Access and notification

9 1. Agency access. A state dam inspector and any agency
10 staff member shall have full access to any dam site under the
11 director's jurisdiction for the purpose of conducting an
12 inspection or enforcing an order under this chapter subject to
13 the Maine Rules of Civil Procedure, Rule 80E.

15 2. Owners, lessees; necessary access. The owners, lessees
16 or persons in control of a dam shall have access over land
17 abutting the dam site owned by others if the access, including
18 the passage of vehicles, machinery and equipment, is reasonably
19 necessary to comply with an order issued under section 1065. In
20 passing over land owned by abutters, the owners, lessees or
21 persons in control of a dam shall make every effort to minimize
22 the intrusion, shall restore the land to its preexisting
23 condition to the maximum extent practicable and shall be liable
24 to the abutters for all property damage caused by their
25 activities on the abutters' land. The abutters shall not be
26 liable to any person for any personal injuries or property damage
27 arising from the crossing of their land by the owners, lessees or
28 persons in control of a dam.

29 §1069. Emergency plans

31 Within 6 months after the determination of the
32 classification of a dam under section 1065, the owners of dams
33 under the director's jurisdiction classified as high or
34 significant hazard will prepare and update every 2 years an
35 emergency operations plan. These emergency operations plans
36 shall be reviewed for adequacy by the agency. Emergency plans
37 shall follow a model plan supplied by the agency. All emergency
38 operations plans shall be available and on file at the
39 appropriate local and county government offices and at the agency.

41 §1070. Inspection petition and order

43 1. Petition. A petition requesting the inspection of any
44 dam may be filed with the director by any of the following:

46 A. Ten or more persons owning property adjacent to a stream
47 or impoundment affected by a dam;

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

52 C. The municipal officers of a municipality in which a dam
53

1 or the body of water it impounds is located; or

3 D. The commissioners of any county in which the dam or body
5 of water it impounds is located.

7 2. Petition action. The director shall, within 30 days
9 after receipt of a petition requesting a dam inspection, notify
11 the petitioners in writing of the director's action on the
13 petition. The director may:

15 A. Accept the petition and order an inspection under section
17 1065; or

19 B. Deny the petition if the director determines that
21 inspection of the dam is unnecessary.

23 3. Director's order. The director may order an inspection
25 of any dam at any time without receipt of a petition requesting
27 inspection of the dam.'

29 Further amend the bill by inserting before the emergency
31 clause the following:

33 'Sec. 9. Appropriation. The following funds are appropriated
35 from the General Fund to carry out the purposes of this Act.

37 1989-90 1990-91

39 **DEFENSE AND VETERANS' SERVICES,**
41 **DEPARTMENT OF**

43 **Maine Emergency Management Agency**

45	Positions	(1.5)	(1.5)
47	Personal Services	\$40,000	\$43,000
49	All Other	11,000	13,000
51	Capital Expenditures	4,000	4,000

53 Provides staff and resources
55 to implement the Dam Safety
57 Inspection Program.

59 **DEPARTMENT OF DEFENSE AND VETERANS'**
61 **SERVICES**

63 **TOTAL** \$55,000 \$60,000'

65 Further amend the bill by inserting before the statement of
67 fact the following:

69 **FISCAL NOTE**

71 This bill requires an appropriation from the General Fund of

COMMITTEE AMENDMENT "A" to S.P. 331, L.D. 868

1 \$55,000 in fiscal year 1989-90 and \$60,000 in fiscal year 1990-91
2 to provide staff and resources to the Maine Emergency Management
3 Agency in the Department of Defense and Veterans' Services for
4 the conduct of the dam safety inspection program. The Department
5 of Environmental Protection will maintain current staffing and
6 budgeted resource levels within its dam registration and
7 abandonment program despite the transfer of responsibilities for
8 the inspection of dams. The inspection of dams was an
9 insignificant part of this program.

11 This appropriation has been included in the Governor's
12 supplemental budget request, LD 640. This appropriation may be
13 deleted depending on its status in LD 640.'

15

STATEMENT OF FACT

17

18 This amendment includes the petition procedure for dam
19 safety inspections as that procedure currently exists under the
20 jurisdiction of the Department of Environmental Protection. The
21 amendment also makes several technical corrections and removes an
immunity provision from the existing bill.

Reported by Senator Erwin for the Committee on Energy and
Natural Resources. Reproduced and Distributed Pursuant to
Senate Rule 12.

(4/28/89)

(Filing No. S-70)