

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

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No. 868

S.P. 331

In Senate, March 21, 1989

Submitted by the Department of Defense and Veterans' Services pursuant to Joint Rule 24.

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator EMERSON of Penobscot.

Cosponsored by Representative McGOWAN of Canaan, Representative WEBSTER of Cape Elizabeth and Representative TARDY of Palmyra.

STATE OF MAINE

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

An Act Concerning the Inspection of Dams.

(EMERGENCY)



1 4. Director. "Director" means the Director of the Maine
2 Emergency Management Agency.

3
4 5. Emergency operations plan. "Emergency operations plan"
5 means a set of written instructions or guidelines for use by
6 public officials which recommends actions which, when
7 implemented, will minimize the effects of a dam failure on people
8 and property.

9
10 6. Public safety. "Public safety" or "safety of the
11 public" means protection of life, health or property from any
12 condition, event or action at a dam which might compromise the
13 safety, stability or integrity of the dam or its ability to
14 function safely.

15 7. State dam inspector. "State dam inspector" means an
16 inspector appointed or hired under section 1064.

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19 §1062 Jurisdiction

20 The inspection of and design standards for all dams shall be
21 under the sole jurisdiction of the agency; except that the agency
22 does not have jurisdiction over any dam licensed and inspected by
23 any agency of the Federal Government.

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26 §1063. Design standards

27 All new or reconstructed dams which are classified as high
28 or significant hazard dams shall be constructed or reconstructed
29 in accordance with design and construction standards that are
30 consistent with accepted engineering standards. These standards
31 shall be promulgated by rule of the agency prior to July 1,
32 1990. The agency shall establish by rule a process by which the
33 design and construction of new or reconstructed dams shall be
34 reviewed under this section.

35
36 §1064. Inspectors of dams

37 The director shall appoint or hire one or more dam
38 inspectors who are licensed as professional engineers under Title
39 32, chapter 19 and experienced in the inspection and design of
40 dams.

41
42 §1065. Inspection of dams

43 1. Ascertain hazard classification. The state dam
44 inspectors shall, at a minimum, within 6 years of the effective
45 date of this section, inspect all dams which are listed in the
46 1981 United States Army Corps of Engineers' Inventory of Dams in
47 the United States as "high" and "significant hazard" dams in the
48 State, as well as any other new or existing dam that may, in the
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1 judgment of the director, constitute a potential threat to public
3 safety. The purpose of the inspections shall be to reevaluate
and ascertain the downstream hazard classification of each dam.

5 Each dam shall be classified pursuant to the hazard potential of
7 the dam. The principal criterion used to determine the hazard
9 classification of the dam shall be the potential risk to public
11 safety and property downstream of the dam which may be affected
directly or indirectly by the failure of the dam. The standards
of classification of dams shall be the same as those promulgated
by the United States Army Corps of Engineers, as set forth in 33
Code of Federal Regulations, Chapter 11.

13
15 2. Report. The state dam inspectors shall write and issue
17 a report making a recommendation regarding the classification of
19 each dam to the director. A copy of the report shall be provided
21 to the dam owner of record and forwarded by certified mail. The
23 dam owner must notify the agency within 30 days of receipt of the
25 report if the owner disagrees with the conclusions of the State's
27 classification recommendation. If the owner of the dam does not
29 agree with the results and recommendations of the dam inspector,
31 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. The owner may apply for and be
granted an extension of this deadline by the agency for due
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.

33
35 The hazard classification of a dam is subject to change and shall
37 be reevaluated at least once every 6 years to account for the
possibility that conditions downstream of the dam may have
changed.

39 3. Ascertain conditions of dam. The state dam inspectors
41 shall also conduct on-site inspections of the dams to determine
43 if the integrity, structural stability and function of the dams
45 constitute a threat to public safety downstream of the dams. A
47 state dam inspector shall issue a report on the material
condition of each dam which shall describe in detail any material
condition which constitutes an imminent threat to public safety.
The engineering process, mathematical calculations and complete
documentation justifying the assessment of the current material
condition shall be provided to the director.

49
51 4. Correction of unsafe conditions. After receiving a
report from the inspector of dams on the inspection of a dam, if
the director determines that a dam is an imminent threat to the

1 safety of the public, the director may order the owners, lessees
3 or persons in control of the dam to make alterations to the dam
or its operations, including, but not limited to:

5 A. Breach or removal of the dam;

7 B. Repair or maintenance of the dam;

9 C. Operation of the dam in a specified manner;

11 D. Preparation of and adherence to an emergency operations
13 plan satisfactory to the agency; or

15 E. Maintenance for public inspection of appropriate records
relating to water levels, dam operation and dam maintenance.

17 5. Immunity. Any owner, lessee or person in control of a
19 dam, or an agent of any of those persons, acting in nonnegligent
21 compliance with an order of the director issued under this
section shall be granted the same immunity as provided to the
agency under section 1057.

23 §1066. Enforcement

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

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

39 §1067. Appeal

41 Any person aggrieved by an order of the director may appeal
43 to the Superior Court under Title 5, chapter 375, subchapter VII.

45 §1068. Access and notification

47 1. Agency access. A state dam inspector and any agency
49 staff member shall have full access to any dam site for the
purpose of conducting an inspection or enforcing an order under
51 this chapter. A dam owner shall be notified in writing before an
inspection takes place.

1 2. Owners, lessees; necessary access. The owners, lessees
3 or persons in control of a dam shall have access over land
4 abutting the dam site owned by others if the access, including
5 the passage of vehicles, machinery and equipment, is reasonably
6 necessary to comply with an order issued under section 1065. In
7 passing over land owned by abutters, the owners, lessees or
8 persons in control of a dam shall make every effort to minimize
9 the intrusion, shall restore the land to its preexisting
10 condition to the maximum extent practicable and shall be liable
11 to the abutters for all property damage caused by their
12 activities on the abutters' land. The abutters shall not be
13 liable to any person for any personal injuries or property damage
14 arising from the crossing of their land by the owners, lessees or
15 persons in control of a dam.

16 **§1069. Emergency plans**

17 Within 6 months after the determination of the
18 classification of a dam, the owners of high and significant
19 hazard dams not under the jurisdiction of any agency of the
20 Federal Government will prepare and update every 2 years an
21 emergency operations plan. These emergency operations plans
22 shall be reviewed for adequacy by the agency. Emergency plans
23 shall follow a model plan supplied by the agency. All emergency
24 operations plans shall be available and on file at the
25 appropriate local and county government offices and at the agency.

26 Sec. 2. 38 MRSA c. 5, sub-c. I, art. 3-A, first line is repealed and
27 the following enacted in its place:

28 **ARTICLE 3-A. DAM REGISTRATION AND ABANDONMENT**

29 Sec. 3. 38 MRSA §815, as enacted by PL 1983, c. 417, §6, is
30 amended to read:

31 **§815. Short title**

32 This Article article shall be known and may be cited as the
33 "Maine Dam Inspection, Registration and, Abandonment and Water
34 Level Act."

35 Sec. 4. 38 MRSA §816, first ¶, as enacted by PL 1983, c. 417,
36 §6, is amended to read:

37 The Legislature finds that there are many existing dams in
38 the State which impound or otherwise regulate the flow of the
39 waters of the State ~~and that these dams are in various conditions~~
40 ~~of age, use and repair.~~

41 Sec. 5. 38 MRSA §816, 2nd ¶, as enacted by PL 1983, c. 417, §
42 6, is repealed.

43 Sec. 6. 38 MRSA §816, last ¶, as enacted by PL 1983 c. 417, §6,
44 is amended to read:

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

11 **Sec. 7. 38 MRSA §817, sub-§8,** as enacted by PL 1983, c. 417,
12 §6, is repealed.

13 **Sec. 8. 38 MRSA c. 5, sub-c. I, art. 3-A, sub-art. 1,** as amended, is
14 repealed.

15 **Emergency clause.** In view of the emergency cited in the
16 preamble, this Act shall take effect when approved.

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21 **STATEMENT OF FACT**

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23 This bill transfers the responsibility for inspecting high
24 and significant hazard dams from the Department of Environmental
25 Protection to the Maine Emergency Management Agency, MEMA. These
26 dams are to be inspected within 6 years of the effective date of
27 this Act and every 6 years thereafter. A set of dam standards
28 shall be developed and promulgated by MEMA prior to July 1, 1990
29 for the owners of dams currently classified as high or
30 significant hazard and for new and reconstructed dams.
31