

MAINE STATE LEGISLATURE

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L.D. 1508

(Filing No. H- 332)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1086, L.D. 1508, Bill, "An Act to Regulate Water Flowage over Hydropower Dams"

Amend the bill by striking out all of the title and inserting in its place the following:

'An Act to Regulate Water Flowage over Dams'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 38 MRSA §840, sub-§1, as amended by PL 1987, c. 402, Pt. A, §205, is further amended to read:

1. Power. The board may on its own motion and shall at the request of the owner, lessee or person in control of a dam, the Commissioner of Inland Fisheries and Wildlife, the Commissioner of Marine Resources, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors, conduct an adjudicatory hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water impounded by any dam that is neither:

- A. Licensed by the Federal Energy Regulatory Commission;
- B. Authorized under the Federal Power Act, Section 23;
- C. Used to store water for a downstream facility licensed by the Federal Energy Regulatory Commission or authorized under the Federal Power Act, Section 23, provided that the owner of the downstream facility possessed a majority ownership of the upstream dam as of January 1, 1983; nor

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2 D. Operating with a permit setting water levels issued
3 under the ~~great--ponds--laws,--sections--391--to--394,--the~~
4 ~~alteration--of--coastal--wetlands--laws,--sections--471--to--478,~~
5 protection of natural resources laws, sections 480-A to
6 480-S; the site location of development laws, sections 481
7 to 490; the small hydroelectric generating facilities laws,
8 sections 631 to 636; the land use regulation laws, Title 12,
9 sections 681 to 689; ~~the--stream--alteration--laws,--sections~~
10 ~~425--to--430;~~ or any other statute regulating the construction
11 or operation of dams.

12 **Sec. 2. 38 MRSA §840, sub-§4,** as enacted by PL 1983, c. 417,
13 §6, is amended to read:

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15 **4. Evidence.** At the hearing, the board shall solicit and
16 receive testimony, as provided by Title 5, section 9057, for the
17 purpose of establishing a water level regime and, if applicable,
18 minimum flow requirements for the body of water. The testimony
19 shall be limited to:

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

24
25 B. The water levels necessary to protect the safety of the
26 littoral or riparian proprietors and the public;

27
28 C. The water levels and minimum flow requirements necessary
29 for the maintenance of fish and wildlife habitat and water
30 quality;

31
32 D. The water levels necessary to prevent the excessive
33 erosion of shorelines;

34
35 E. The water levels necessary to accommodate precipitation
36 and run off of waters;

37
38 F. The water levels necessary to maintain public and
39 private water supplies;

40
41 G. The water levels and flows necessary for any ongoing use
42 of the dam to generate or to enhance the downstream
43 generation of hydroelectric or hydromechanical power; and

44
45 H. The water levels necessary to provide flows from any dam
46 on the body of water to maintain public access and use, fish
47 propagation and fish passage facilities, fish and wildlife
48 habitat and water quality downstream of the body of water.

49
50 **Sec. 3. 38 MRSA §840, sub-§5,** as amended by PL 1987, c. 118,
51 §11, is further amended to read:

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3 5. Order. Based on the evidence solicited at the hearing,
3 the board shall, within 80 days after the hearing, make written
5 findings and issue an order to the owner, lessee or person in
7 control of the dam establishing a water level regime for the
7 body of water impounded by the dam and, if applicable, minimum
9 flow requirements for the dam. The order shall, insofar as
9 practical, require the maintenance of a stable water level, but
11 shall include provision for variations in water level to permit
13 sufficient draw down of the body to accommodate precipitation and
15 run off of surface waters, minimum flow requirements and to
17 otherwise permit seasonal and other necessary fluctuations in the
19 water level of the body of water in order to protect public
21 health, safety and welfare and the public and private resources
21 identified in subsection 4. The board shall cause a copy of the
21 order to be delivered to the owner, lessee or person in control
21 of the dam, the municipal officers of any municipality in which
21 the dam or the body of water it impounds is located and each
21 petitioner, if any, and shall cause a copy of the order to be
21 filed in the registry of deeds in the county where the dam is
21 located.

23

FISCAL NOTE

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27 It is anticipated that all costs associated with this
27 legislation would be absorbed by the Department of Environmental
29 Protection utilizing existing resources.'

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STATEMENT OF FACT

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35 This amendment allows the Department of Environmental
35 Protection to set minimum flow requirements, if applicable, for
37 dams that are not otherwise licensed by the State or Federal
37 Government. Minimum flow requirements may be set at zero after
39 the department weighs all the competing demands on the impounded
39 water. This amendment extends the ability to request a hearing
41 for water levels and minimum flow requirements by petition to the
41 Commissioner of Marine Resources and the Commissioner of Inland
41 Fisheries and Wildlife.

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Reported by the Committee on Energy and Natural Resources
Reproduced and distributed under the direction of the Clerk of the
House
5/30/89 (Filing No. H-332)