

# MAINE STATE LEGISLATURE

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DATE: March 18, 1996 (Filing No. S- 484)

**NATURAL RESOURCES**

Reported by: Senator LORD of York for the Committee.

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE  
SENATE  
117TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A " to S.P. 249, L.D. 646, Bill, "An Act to Reinstate the Laws Governing Dam Abandonment"

Amend the bill by striking out the title and substituting the following:

**'An Act to Create a Process for Identifying New Owners for Dams or Releasing Current Owners from Water Level Maintenance Obligations'**

Further amend the bill by inserting before the enacting clause the following:

**'Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.'

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. 14 MRSA §8104-A, sub-§2, ¶A,** as enacted by PL 1987, c. 740, §4, is amended to read:

A. The construction, ownership, maintenance or use of:

- (1) Unimproved land;

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2 (2) Historic sites, including, but not limited to,  
4 memorials, as defined in Title 12, section 601,  
subsection 1; or

6 (3) Land, buildings, structures, facilities or  
8 equipment designed for use primarily by the public in  
connection with public outdoor recreation; or

10 (4) Dams;

12 **Sec. 2. 38 MRSA §840, sub-§1**, as amended by PL 1993, c. 370,  
14 §§9 and 10, is further amended to read:

16 **1. Power.** The commissioner may on the commissioner's own  
18 motion and shall, at the request of the owner, lessee or person  
20 in control of a dam, the Commissioner of Inland Fisheries and  
22 Wildlife, or the Commissioner of Marine Resources, or upon  
24 receipt of petitions from the lesser of at least 25% or 50 of the  
littoral or riparian proprietors or from a water utility having  
the right to withdraw water from the body of water for which the  
water level regime is sought, 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 not:

26 A. Licensed Operating with a license or exemption issued by  
28 the Federal Energy Regulatory Commission or determined by  
30 the Federal Energy Regulatory Commission to be subject to  
the jurisdiction of that commission;

32 ~~B. Authorized under the Federal Power Act, Section 23;~~

34 ~~C. Used to store water for a downstream facility licensed~~  
36 ~~by the Federal Energy Regulatory Commission or authorized~~  
38 ~~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;~~

40 D. Operating with a permit setting water levels issued  
42 under the protection of natural resources laws, sections  
44 480-A to 480-S; the site location of development laws,  
sections 481 to 490; the small hydroelectric generating  
46 facilities laws, sections 631 to 636; the land use  
regulation laws, Title 12, sections 681 to 689; or any other  
statute regulating the construction or operation of dams; or

48 E. A dam regulated by one or more municipalities by  
50 ordinance or interlocal agreement pursuant to Title 30-A,  
chapter 187, subchapter VI; or

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F. Regulated by the International Joint Commission.

**Sec. 3. 38 MRSA c. 5, sub-c. I, art. 6** is enacted to read:

Article 6

RELEASE FROM DAM OWNERSHIP AND  
WATER LEVEL MAINTENANCE

**§901. Petition for release; public notice**

1. Petition. The owner of a dam that is not licensed or exempted from licensure by the Federal Energy Regulatory Commission may petition the department to initiate proceedings for release from dam ownership or water-level maintenance under this article. The petition must include the following information:

A. The name, address and phone number of the dam owner;

B. The location of the dam;

C. A plan of the dam and brief descriptions of the condition of the dam and recent operation of the dam; and

D. Any other reasonable information the department determines necessary to implement this article.

The department shall notify the owner within 15 days of receipt of the petition if the department determines that the petition does not comply with the requirements of this section. If notice is not sent within 15 days, the petition is deemed to comply.

2. Public notice. Not more than 30 days before filing a petition, the dam owner shall publish notice of intent to file a petition under this article at least once in a newspaper circulated in the area in which the dam and impoundment are located. The dam owner shall notify by certified mail the persons listed in section 902, subsection 3, paragraphs B, C and D. The dam owner shall notify abutting property owners as provided in subsection 3. The dam owner shall also make a good faith effort to notify local, regional and statewide private organizations interested in fisheries, wildlife, conservation, recreation and environmental issues whose interests may be affected by the dam.

3. Notice to property owners. The dam owner shall send notice of the intent to file a petition by first class mail to persons who own property abutting the dam site, water impounded

2 by the dam or waterways immediately downstream from the dam. If  
4 the dam owner chooses to meet the obligation to consult with  
6 property owners by holding a public meeting, as described in  
8 section 902, subsection 1, the dam owner shall include notice of  
10 the public meeting in the notice provided pursuant to this  
12 subsection.

14 The dam owner may request that a municipality send the  
16 required notice, but the dam owner is responsible for providing  
18 the notice if the municipality fails to do so. At the request of  
20 a dam owner, a municipality shall send notice of a petition filed  
22 under this article by first class mail to persons who own  
24 property in that municipality and who must be notified as  
26 provided in this subsection. The dam owner shall provide a  
28 sufficient number of copies of the notice to the municipality and  
30 shall reimburse the municipality for all costs incurred in  
32 providing the notice. County commissioners and tribal  
34 governments have the same obligation as municipalities under this  
36 subsection to send notice to persons who own property within  
38 their respective jurisdictions.

40 **§902. Consultation process**

42 **1. Consultation required.** Within 180 days of filing a  
44 petition pursuant to section 901, a dam owner shall consult with  
46 the persons and entities listed in subsection 3 to determine  
48 whether any of them wish to assume ownership of the dam. During  
50 consultation with each person or group of persons, the owner  
shall explain the process set forth in this article and shall  
inform the person or group that the department may issue an order  
requiring release of the water impounded by the dam if a new  
owner is not located. A dam owner may meet the obligation to  
consult with property owners by holding a public meeting and  
consulting with the persons who appear at that meeting, as long  
as notice has been sent to each property owner as required in  
section 901.

**2. Timing of consultation.** Consultation prior to the  
filing of a petition meets the requirements of subsection 1 only  
if the dam owner, during the consultation, disclosed an intent to  
file a petition under this article and provided the information  
required in subsection 1.

**3. Parties to consultation.** The following persons must be  
consulted as provided in subsection 1:

**A. Individuals and groups of persons, such as lake**  
**associations, who own property abutting the dam site, the**  
**water impounded by the dam or the waterway immediately**  
**downstream from the dam;**

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2           B. The Commissioner of Inland Fisheries and Wildlife, the  
3           Commissioner of Conservation and the Director of the Maine  
4           Emergency Management Agency;

6           C. The municipal officers of any municipality and the  
7           county commissioners of any unorganized area in which the  
8           dam or impoundment is located; and

10          D. Representatives of the tribal governments of Indian  
11          tribes or nations in whose territory a dam or impoundment is  
12          located.

14          4. Report to department. The dam owner shall file a report  
15          with the department within 180 days of filing a petition. The  
16          report must include:

18           A. Evidence that the owner complied with the notice  
19           requirements set forth in section 901;

20           B. Names and addresses of persons notified under section  
21           901 and of parties consulted in accordance with this  
22           section; and

24           C. The results of the consultations and whether a new owner  
25           has been located.

28          At the request of the dam owner, the department shall extend the  
29          deadline for reporting up to an additional 180 days.

30          5. Evaluation of report. If the department determines,  
31          after reviewing the report, that the dam owner has not complied  
32          with the requirements of section 901 or this section, the  
33          department shall allow the dam owner a reasonable period of time  
34          to correct the deficiency. The department shall reject the  
35          petition if:

38           A. The deficiency has not been corrected within the  
39           specified time period; or

40           B. The department finds that a person was willing to assume  
41           ownership of the dam but the dam owner refused to transfer  
42           the property because that person refused to pay  
43           compensation, other than costs, for the transfer.

46          §903. Assessment of public value of dam

48           1. Notification of agencies. If a new owner was not  
49           located during the consultation process and the department has  
50           not rejected the petition, the department shall immediately

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1 notify the Department of Inland Fisheries and Wildlife, the  
2 Department of Conservation and the Maine Emergency Management  
3 Agency that an assessment of public value for the dam may be  
4 required.

6 2. Evaluation of fisheries and wildlife value. Within 60  
7 days of receiving notice under subsection 1, the Department of  
8 Inland Fisheries and Wildlife shall review the following factors  
9 and determine whether the best interest of the public requires  
10 that department to assume ownership of the dam:

12 A. The cost of maintaining the dam;

14 B. The value to fisheries and wildlife of maintaining the  
15 dam; and

16 C. The value to fisheries and wildlife of releasing water  
17 from the dam.

20 The Department of Inland Fisheries and Wildlife shall notify the  
21 department of its determination. If the Department of Inland  
22 Fisheries and Wildlife determines, after considering these  
23 factors, that the best interest of the public requires it to  
24 assume ownership of the dam, the department shall issue an order  
25 directing the dam owner to transfer the dam to the Department of  
26 Inland Fisheries and Wildlife within a reasonable period of  
27 time. If the Department of Inland Fisheries and Wildlife  
28 determines that it will not assume ownership, the department  
29 shall notify the Department of Conservation.

30 3. Evaluation of public recreational value. Within 60 days  
31 of receiving notice under subsection 2, the Department of  
32 Conservation shall review the following factors and determine  
33 whether the best interest of the public requires that department  
34 to assume ownership of the dam:

36 A. The cost of maintaining the dam;

38 B. The value to public recreation, conservation and public  
39 use of maintaining the dam; and

40 C. The value to public recreation, conservation and public  
41 use of releasing water from the dam.

42 The Department of Conservation shall notify the department of its  
43 determination. If the Department of Conservation determines,  
44 after considering these factors, that the best interest of the  
45 public requires it to assume ownership of the dam, the department  
46 shall issue an order directing the dam owner to transfer the  
47 property to the Department of Conservation within a reasonable  
48 time.

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2 period of time. If the Department of Conservation determines  
3 that it will not assume ownership of the dam, the department  
4 shall notify the Maine Emergency Management Agency.

6 4. Evaluation of public safety value. Within 60 days of  
7 receipt of notice under subsection 3, the Maine Emergency  
8 Management Agency shall review the following factors and  
9 determine whether the best interest of the public requires that  
10 agency to assume ownership of the dam:

12 A. The cost of maintaining the dam;

14 B. The value to public safety, particularly flood  
15 protection, of maintaining the dam; and

16 C. The value to public safety, particularly flood  
17 protection, of releasing water from the dam.

18 The Maine Emergency Management Agency shall notify the department  
19 of its determination. If that agency determines, after  
20 considering these factors, that the best interest of the public  
21 requires it to assume ownership of the dam, the department shall  
22 issue an order directing the dam owner to transfer ownership of  
23 the dam to the Maine Emergency Management Agency within a  
24 reasonable period of time.

26 §904. Notice of failure to locate new owner

28 If a new owner has not been located through the process set  
29 forth in sections 902 and 903, the department shall provide  
30 notice that a new owner for the dam has not been located and that  
31 the department intends to issue an order requiring the dam owner  
32 to release water from the dam in accordance with section 905.  
33 Notice must be sent by certified mail to each municipality in  
34 which the dam and impoundment are located, to county  
35 commissioners when the dam and impoundment are located in  
36 unorganized territory and to tribal governments when the dam and  
37 impoundment are located on tribal territory. The department  
38 shall also publish notice of its intent to issue the order at  
39 least once in a newspaper circulated in the area in which the dam  
40 and impoundment are located.

42 §905. Order for release of water

44 1. Order. Not earlier than 30 days after providing notice  
45 as required in section 904, the department shall issue an order  
46 to the dam owner to release water from the dam in a manner that  
47 minimizes the impact of the release, including requirements for  
48 mitigation as appropriate. If the department receives a petition  
49 requesting additional time to negotiate assumption of ownership  
50 requesting additional time to negotiate assumption of ownership



2 of the dam and the dam owner agrees, the department may delay  
3 issuance of the order for an additional period agreed to by the  
4 dam owner and the petitioners.

5 2. Impact of order. An order issued under this article  
6 does not supersede any property right granted by deed or other  
7 legal instrument. An order issued under this article supersedes  
8 an order issued under section 840.

10 **§906. Property transfer provisions**

11 1. Compensation. A dam owner is not prohibited from  
12 requesting compensation for the transfer of a dam pursuant to  
13 this article. The department may not issue a water release order  
14 pursuant to section 905 to a dam owner who has refused to  
15 transfer the dam to a person willing to assume ownership of the  
16 dam because that person refused to compensate the dam owner for  
17 the property. The department may not refuse to issue the order  
18 if the dam owner requested only payment or a share in payment of  
19 the costs of transfer.

20 2. Property rights transferred. When a dam is transferred  
21 pursuant to this article, the dam owner shall transfer all  
22 property rights necessary to maintain and operate the dam, to the  
23 extent owned by the dam owner. Those property rights include  
24 title to the dam and land under the dam, title to equipment and  
25 other personal property normally located at the dam site, flowage  
26 rights and access rights.

30 **§907. Right to withdraw petition**

31 A dam owner may at any time withdraw a petition filed under  
32 this article.

34 **§908. Municipal actions on dam ownership**

35 The municipal legislative body, as defined in Title 30-A,  
36 section 2001, of any municipality notified pursuant to section  
37 901, subsection 2 must consider and act on the issue of dam  
38 ownership at a public meeting. The meeting must be held no later  
39 than 60 days after the municipal officers receive notice under  
40 section 901. County commissioners notified under section 901  
41 must also hold a public meeting to act on the issue of dam  
42 ownership not later than 60 days after receiving notification.'

43 Further amend the bill by inserting at the end before the  
44 statement of fact the following:

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50 **FISCAL NOTE**

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52 This bill requires municipalities to hold certain public

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2 hearings pertaining to dam abandonments. The additional costs of  
3 this state mandate are likely to be relatively minor; the exact  
4 amounts can not be determined at this time. Pursuant to the  
5 Mandate Preamble, the two-thirds vote of all members elected to  
6 each House exempts the State from the constitutional requirement  
7 to fund 90% of the additional local costs.

8 If, under the dam abandonment process, either the Department  
9 of Inland Fisheries and Wildlife, the Department of Conservation  
10 or the Maine Emergency Management Agency determines that assuming  
11 ownership of a particular dam would best serve the public  
12 interest, additional General Fund appropriations may be needed  
13 for the purchase, transfer and operating costs of the abandoned  
14 dams. The amounts can not be determined at this time.

15 Requiring the Maine Emergency Management Agency to evaluate  
16 dams for public safety value will result in additional costs to  
17 the Department of Defense and Veterans' Services since there is  
18 no staff available to provide this service. The Maine Emergency  
19 Management Agency is required to inspect dams under current law  
20 but funding has never been provided. Additional General Fund  
21 appropriations of approximately \$5,000 will be required to fund  
22 these inspection costs for each qualifying dam abandonment. The  
23 total General Fund appropriations required and the timing can not  
24 be determined at this time.

25 The Department of Environmental Protection will incur some  
26 minor additional costs to oversee and administer the dam  
27 abandonment process. These costs can be absorbed within the  
28 department's existing budgeted resources.

29 The Department of Inland Fisheries and Wildlife and the  
30 Department of Conservation will incur some minor additional costs  
31 to assess the public value of a particular dam. These costs can  
32 be absorbed within the departments' existing budgeted resources.'

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38 **STATEMENT OF FACT**

39 This amendment replaces the bill, including the title. It  
40 provides a formal process through which a dam owner may seek a  
41 new owner for the dam and provides for the issuance of a water  
42 release order to the current dam owner if a new owner can not be  
43 located for the dam.

44 A dam owner may petition the Department of Environmental  
45 Protection to begin the process. The owner is required to notify  
46 the public that the petition has been filed through newspaper  
47 notices and to send individual notice to municipalities, property  
48 owners, the Department of Inland Fisheries and Wildlife, the  
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2 Department of Conservation and the Maine Emergency Management  
Agency. The owner then consults with those persons and agencies  
to determine if any of them wish to assume ownership of the dam.

4  
6 The dam owner reports the results of the consultation to the  
Department of Environmental Protection, and if no new owner  
located, that department notifies state agencies to begin  
8 evaluating the public value of the dam.

10 If a department determines that the best interest of the  
public requires it to assume ownership of the dam, it must do  
12 so. The public interest is determined by weighing factors such  
as the cost of maintaining the dam, the benefit of maintaining  
14 the dam and the benefit of releasing water from the dam. The  
Department of Inland Fisheries and Wildlife makes the  
16 determination for fisheries and wildlife value; the Department  
of Conservation makes the determination for public recreation,  
18 conservation and public use; and the Maine Emergency Management  
Agency makes the evaluation for public safety value, especially  
20 flood protection.

22 If a department does not assume ownership of the dam, the  
Department of Environmental Protection, following public notice  
24 of intent to issue an order, issues an order requiring the dam  
owner to release the water from the dam.

26 The amendment allows a dam owner to request that  
28 compensation be paid for any transfer of dam ownership. If the  
request for compensation prevents the transfer of the dam, the  
30 dam owner is not entitled to proceed through the process. If the  
request for compensation prevents the transfer during the  
32 voluntary process, the petition is rejected before the state  
agencies are required to evaluate the public value of the dam.  
34 If the request prevents transfer to a state agency, the dam owner  
is not entitled to receive a water release order.

36 The amendment requires that a local government notified of  
38 this process hold a public meeting to discuss the issue of dam  
ownership.

40 The amendment specifies that governmental entities protected  
42 by the Maine Tort Claims Act are not liable for tort claims due  
to their construction, ownership, maintenance or use of dams.

44 The amendment changes the law regarding the conditions under  
46 which the Department of Environmental Protection may set water  
levels for a dam. It allows the department to set water levels  
48 for dams not yet determined to be under the jurisdiction of the  
Federal Energy Regulatory Commission.

50 The amendment also adds a fiscal note to the bill.