

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)



117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 646

S.P. 249

In Senate, February 28, 1995

An Act to Reinstate the Laws Governing Dam Abandonment.

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

A handwritten signature in cursive script, reading "May M. Ross", is positioned above the printed name and title of the Secretary of the Senate.

MAY M. ROSS
Secretary of the Senate

Presented by Senator HANLEY of Oxford.

Cosponsored by Senators: CARPENTER of York, PENDEXTER of Cumberland,
Representatives: DEXTER of Kingfield, GOULD of Greenville, JACQUES of Waterville,
POULIN of Oakland, UNDERWOOD of Oxford, WATERHOUSE of Bridgton, WINSOR of
Norway.

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

4 **Sec. 1. 30-A MRSA c. 187, sub-c. VI, as amended, is repealed.**

6 **Sec. 2. 38 MRSA c. 5, sub-c. I, art. 6 is enacted to read:**

8 **Article 6**

10 **DAM ABANDONMENT**

12 **§901. Definitions**

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

16 **1. Board.** "Board" means the Board of Environmental
Protection.

18 **2. Commissioner.** "Commissioner" means the Commissioner of
20 Environmental Protection.

22 **3. Dam.** "Dam" means any man-made artificial barrier,
24 including appurtenant works, the site on which it is located and
appurtenant rights of flowage and access, that impounds or
26 diverts a river, stream or great pond and is 2 feet or more in
height and has an impounding capacity at maximum water storage
28 elevation of 15 acre-feet or more. Any such artificial barrier
constructed solely for the purpose of impounding water to allow
30 timber to be floated downstream in a logging operation is not
considered a dam for the purposes of this article, unless it has
32 been repaired, modified or maintained by or with the knowledge of
the owner, lessee or person in control since the discontinuance
34 of its use in connection with logging operations. Any adjacent
property, casements, roads, bridges or works not necessary for
36 the operation or maintenance of a dam or access to the dam is not
included under the provisions of this article.

38 **4. Department.** "Department" means the Department of
40 Environmental Protection.

42 **5. Height.** "Height" means, in reference to a dam, the
vertical distance in feet from the natural bed of the stream or
44 watercourse measured at the downstream toe of the barrier or from
the lowest water elevation of the outside limit of the barrier,
46 if it is not across a stream or watercourse, to the maximum
capable water storage elevation.

2 6. Littoral proprietor. "Littoral proprietor" means an
3 owner or lessee of property on the shore of a lake impounded by a
4 dam.

5 7. Person. "Person" means any individual, firm,
6 association, partnership, corporation, trust, municipality,
7 quasi-municipal corporation, state agency, federal agency or
8 other legal entity.

9 8. Public safety. "Public safety" or "safety of the
10 public" means protection of life, health or property from any
11 condition, event or action at a dam that might compromise the
12 safety, stability or integrity of the dam or its capacity to
13 function safely for its intended purposes.

14 9. Riparian proprietor. "Riparian proprietor" means an
15 owner or lessee of property on the bank of a river or stream or
16 shore of a pond or other small body of water impounded by a dam.

17 **§902. Abandonment**

18 The procedures of section 904 apply to any dam for which the
19 State has assumed ownership under section 903 due to an
20 authorized abandonment by the owner.

21 Once a dam is voluntarily or involuntarily abandoned, a
22 previous owner is not entitled to compensation for property
23 rights forfeited to the State or to any subsequent owner under
24 this Article.

25 **§903. Authorized abandonment**

26 1. Petition and authorization. The owner of any dam may
27 petition the commissioner for authorization to abandon the dam.
28 The commissioner shall authorize the abandonment if the
29 commissioner determines that the owner is unable to otherwise
30 dispose of the dam in a manner that ensures continuing compliance
31 with any order issued under this article.

32 2. Transfer or withdrawal. Within 30 days following the
33 issuance of an order by the commissioner authorizing abandonment
34 of a dam, the owner shall either:

35 A. Transfer all the owner's title, right and interest in
36 the dam to the State by deed; or

37 B. Withdraw the owner's petition for authorization to
38 abandon the dam and retain ownership subject to any
39 outstanding order issued under this article. If the owner
40 withdraws the petition following the issuance of an order by
41 the commissioner.

the commissioner pursuant to this section, the owner is prohibited from petitioning again under this section for one year.

§904. Award of new ownership

1. Initiation of proceedings; action. Within 30 days after the date on which the State assumes ownership of any dam under this article, the board shall initiate proceedings to award ownership of the dam. Within one year after the date on which the State assumes ownership of a dam, the board shall either:

A. Award ownership of the dam to a new owner under this section; or

B. If a person does not petition for ownership of the dam or the board determines under subsection 5 that no petitioner is qualified to accept ownership and control of the dam, retain ownership of the dam. Upon its decision to retain ownership of the dam, the board shall cause the dam to be maintained and operated in such a manner as to protect the public safety and public resources. The maintenance and operation may include, but is not limited to:

(1) The opening of the dam and draining of the impoundment;

(2) The operation of the dam in a specified manner; or

(3) The destruction of the dam.

The board may initiate further proceedings at any time to award ownership of any dam that has remained in state ownership by a decision of the board under this paragraph.

2. Public notice. The board shall give notice inviting petitions for the award of ownership of a dam at least twice in a newspaper of general circulation in any county in which the dam is located and at least once in the state paper. The board shall also give written notice to any municipality in which the dam or the body of water it impounds is located and to the county commissioners of any county in which the dam or the body of water it impounds is located.

3. Petitions. Petitions for the award of ownership of any dam must be made in a form prescribed by the board and be filed with the board by a specified date, which may not be less than 30 days after the first publication of notice.

2 Any person may petition the board to be awarded ownership of any
3 abandoned dam.

4 **4. An ownership proceeding.** The board may schedule and
5 conduct a public hearing for the purpose of receiving any
6 evidence and information that may aid it in making a
7 determination pursuant to subsection 5. The board may subpoena
8 such witnesses and documents as it may require. Any hearing held
9 under this section is an adjudicatory hearing and is governed by
10 Title 5, chapter 375, subchapter IV and the procedures specified
11 in this section.

12 **5. Criteria for determination.** The board shall determine
13 which petitioner, if any, is best qualified to accept ownership
14 and control of the dam. In reviewing any petition and the
15 qualifications of the petitioner to accept ownership and control
16 of the dam, the board shall consider the following criteria:

17 A. The technical, financial and administrative ability of
18 the petitioner;

19 B. Any plans of the petitioner with regard to the
20 operation, maintenance and repair of the dam;

21 C. The effect of the petitioner's plans upon private and
22 public property and the public resources of wildlife,
23 fisheries, water quality, recreation and other water uses;

24 D. The ability of the petitioner to comply with any order
25 issued under this article;

26 E. The willingness of the petitioner to accept ownership of
27 the dam upon reasonable terms; and

28 F. Any other effects of the petitioner's plans on public
29 health, safety and general welfare.

30 **6. Competing petitions.** If the board has determined under
31 subsection 5 that there is more than one petitioner who is
32 equally qualified to accept ownership and control of the dam, the
33 board shall hold a joint hearing on those petitions and award
34 ownership of the dam in accordance with the following order of
35 priority:

36 A. To an association composed of at least 50% of the
37 littoral or riparian proprietors;

38 B. To a river corridor commission, lake or watershed
39 district, dam commission or other similar agency created by
40 act of the Legislature or an agreement among municipalities

or other public agencies under the interlocal cooperation laws, Title 30-A, chapter 115;

C. To a municipality in which the dam or the body of water it impounds is located;

D. To a county in which the dam or the body of water it impounds is located;

E. To a state agency; and

F. To any other person.

7. Award of dam; terms. Forty-five days after notice to all petitioners of its decision, the board shall execute and deliver a deed awarding ownership and possession of the dam to the successful petitioner. This conveyance may be subject to such terms regarding the use and operation of the dam by the grantee and the grantee's heirs and assigns as may be reasonable. The board may not deliver the deed until the successful petitioner has reimbursed the department for expenses incurred by the department for the repair, operation or transfer of the dam.

The grantee shall cause a copy of the deed to be recorded in the registry of deeds for the county in which the dam is located.

8. Appeal. A decision by the board under this section constitutes final agency action for the purposes of appeal under Title 5, chapter 375, subchapter VII.

STATEMENT OF FACT

This bill reinstates the laws governing the abandonment of dams.