

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
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Chapters 1-452

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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

those services at the rate of \$50 \$75 per day or \$30 \$45 per 1/2 day, provided that the total per diem compensation and retirement pension received by an Active Retired Justice of the Supreme Judicial Court in any calendar year may not exceed the annual salary of a Justice of the Supreme Judicial Court.

Sec. 2. 4 MRSA §104-A, as enacted by PL 1979, c. 692, §2, is amended to read:

§104-A. Per diem compensation for Active Retired Superior Court Justices

Any Active Retired Justice of the Superior Court, who performs judicial service at the direction and assignment of the Chief Justice of the Supreme Judicial Court, shall be compensated for those services at the rate of \$50 \$75 per day or \$30 \$45 per 1/2 day, provided that the total per diem compensation and retirement pension received by an Active Retired Justice of the Superior Court in any calendar year may not exceed the annual salary of a Justice of the Superior Court.

Sec. 3. 4 MRSA §157-B, last ¶, as enacted by PL 1979, c. 692, §4, is amended to read:

Any Active Retired Judge of the District Court, who performs judicial service at the direction and assignment of the Chief Judge of the District Court, shall be compensated for those services at the rate of \$50 \$75 per day or \$30 \$45 per 1/2 day, provided that the total per diem compensation and retirement pension received by an Active Retired District Court Judge in any calendar year may not exceed the annual salary of a Judge of the District Court.

Effective September 23, 1983.

CHAPTER 417

S.P. 404 - L.D. 1252

AN ACT Concerning Inspection, Registration and Abandonment of Dams.

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

Sec. 1. 12 MRSA c.c. 5 and 6, as amended, are repealed.

Sec. 2. 38 MRSA §811, as repealed and replaced by PL 1977, c. 684, §1, is repealed.

Sec. 3. 38 MRSA §812 is repealed.

Sec. 4. 38 MRSA §813, as repealed and replaced by PL 1977, c. 684, §2, is repealed.

Sec. 5. 38 MRSA §814, as enacted by PL 1977, c. 684, §3, is repealed.

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

ARTICLE 3-A. DAM INSPECTION, REGISTRATION AND ABANDONMENT

§815. Short title

This Article shall be known and may be cited as the "Maine Dam Inspection, Registration and Abandonment Act."

§816. Legislative findings and purpose

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

The Legislature further finds that some of these dams are now in or may fall into disrepair so as to threaten the public health, safety and welfare.

The Legislature further finds that the owners of some of these dams are unknown or difficult to determine and that the neglect by these owners of their property is now or may in the future result in inattention to the operation and repair of these dams so that they threaten the public health, safety and welfare.

The Legislature further finds that some dam owners want to be relieved of the responsibility of maintaining their dams and that there are persons who are now or may in the future be willing to take ownership of these dams and to maintain, repair or remove them to the best interests of the public and the public resources. The Legislature further finds that some dams impound waters that are subject to much public use and increasing public and private development and that these dams are now, or may in the future, be operated in such a manner that they threaten the public health, safety and welfare and the public resources of wildlife, fisheries, waters and water uses.

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

§817. Definitions

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

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

2. Commissioner. "Commissioner" means the Commissioner of Environmental Protection.

3. 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 Article. Any adjacent property, easements, roads, bridges or works not necessary for the operation of a dam shall not be included under the provisions of this Article.

4. Department. "Department" means the Department of Environmental Protection.

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

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

7. Person. "Person" means any individual, firm, association, partnership, corporation, trust, municipi-

pality, quasi-municipal corporation, state agency, federal agency or other legal entity.

8. Public safety. "Public safety" or "safety of the public" means protection of life, health or property from any condition, event or action at a dam which might compromise the safety, stability or integrity of the dam or its ability to function safely for its intended purposes.

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

§818. Miscellaneous

1. Other laws. Except as specifically provided in this Article, nothing in this Article shall be construed as relieving any person from duties, responsibilities or liabilities imposed by any other statute, regulation, municipal ordinance or any rule of law.

2. Rights of others. Except as specifically provided in this Article, nothing in this Article shall be construed as denying any person any rights he may have under any other statute, regulation, municipal ordinance or any rule of law.

3. Other powers. No provision of this Article may be construed as limiting the powers of the Bureau of Civil Emergency Preparedness under Title 37-A, sections 180 to 186.

4. Damages. No action may be brought against the State, the board, the commissioner or his agents or employees for the recovery of damages caused by any order of the board or commissioner or by the partial or total failure of any dam or through the operation of any dam upon the ground that the State, the board, the commissioner or his agents or employees are liable by virtue of any order or determination of the board or commissioner.

Subarticle 1. Inspection

§820. Jurisdiction

The inspection of dams shall be under the sole jurisdiction of the department, except that for any dam licensed or inspected by any agency of the United States Government, the department shall have no inspection jurisdiction.

§821. Inspection of dams

1. Appointment. The commissioner shall appoint

dam inspectors who are licensed as professional engineers under Title 32, chapter 19. The commissioner may appoint inspectors to serve on a full-time, part-time or independent contract basis. The commissioner shall provide the inspectors with necessary professional, technical, clerical and secretarial assistance. Any inspectors appointed under this subsection shall be experienced in dam design and construction or the investigation and safety of existing dams.

2. Compensation. If the inspector of dams is an independent contractor, he shall receive, as full compensation for his services, \$100 a day while actually employed under section 823 or section 824, together with his actual expenses, to be audited, allowed and paid by the department.

§822. Inspection petition and order

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

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

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

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

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

2. Petition action. The commissioner shall, within 30 days after receipt of a petition requesting a dam inspection, notify the petitioners in writing of his action on the petition. The commissioner may:

A. Accept the petition and order a formal inspection under section 823;

B. Accept the petition and order an informal inspection under section 824; or

C. Deny the petition if he determines that inspection of the dam is unnecessary.

3. Commissioner order. The commissioner may order a formal or informal inspection of any dam at any time without receipt of a petition requesting inspection of the dam.

§823. Formal inspection and hearing; decision

1. Formal inspection. At the direction of the board or the commissioner, the inspector of dams, or his agent, shall personally inspect a dam to determine if the dam is endangering the public safety. The board may, at its discretion, conduct a hearing to determine if the dam is endangering the public safety.

2. Adjudicatory proceeding. A formal inspection shall be an adjudicatory proceeding under Title 5, chapter 375, subchapter IV and the procedures specified in this section, but a hearing shall not be required.

3. Notice. Notice, meeting the requirements of Title 5, section 9052, subsection 2, paragraph A, shall be given to:

A. The petitioners;

B. The owners, lessees or persons in control of the dam; and

C. The officials described in section 822, subsection 1, paragraphs B and C.

Under the provisions of Title 5, section 9052, notice of the hearing shall also be given to the general public.

4. Decision; correction of unsafe conditions. If, after receiving a report from the inspector of dams on the inspection of a dam and a hearing, if held, the board determines that a dam is endangering the safety of the public, it may order the owners, lessees or persons in control of the dam to make alterations to the dam or its operations, including, but not limited to:

A. Breach or removal of the dam;

B. Repair or maintenance of the dam;

C. Operation of the dam in a specified manner;

D. Preparation of and adherence to a safety management plan satisfactory to the board; or

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

Before ordering an alteration in the dam or its operation that may change water levels below the dam or in the body of water it impounds, the board shall

consider the possible impact of the proposed order on the environment, public resources, littoral or riparian proprietors and dam operation. The board may hold a hearing under section 840 to establish a normal water level regime for the body of water impounded by the dam.

5. Enforcement. The board, the petitioners under section 822, subsection 1, or any riparian or littoral proprietor may commence an action to enjoin the violation of any provision of this subarticle. The board may enforce any order issued under subsection 4, by any other appropriate remedy, including, but not limited to, entering the dam premises to carry out the terms of the order.

The owners, lessees or persons in control of the dam shall be jointly and severally liable for any costs incurred by the department in enforcing any order issued under subsection 4. If the owners, lessees or persons in control of the dam refuse to comply or do not fully comply with the board's order, the board 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 department in enforcing the board's order.

The violation of any order issued under subsection 4 shall be a civil violation punishable by a forfeiture of not less than \$20 and not more than \$100. Each day of violation shall be considered a separate offense.

6. Eminent domain; abandonment. In the event that the owner, lessee or person in control of the dam fails to comply with an order issued under subsection 4, the department may commence eminent domain proceedings to assume ownership of the dam if necessary to protect the public safety. Upon award of title to the dam to the State, the State shall undertake to make the dam safe and the dam shall be subject to the procedures of subarticle 3.

7. Unregistered dam. In the event that a dam sought to be inspected under this section or section 824 is unregistered under this Article, the provisions of section 830, subsection 4, shall be implemented and any order of the commissioner issued under subsection 4 shall apply to any proceedings under subarticle 3.

8. Appeal. Any person aggrieved by an order of the commissioner under subsection 4 may appeal to the Superior Court under Title 5, chapter 375, subchapter VII.

§824. Informal inspection

1. Inspection. At the request of the commissioner, the inspector of dams or his agent shall conduct an informal inspection of a dam to make a determination as to whether the dam is endangering the public safety.

2. Adjudicatory proceeding. An informal inspection shall be an adjudicatory proceeding under the provisions of Title 5, chapter 375, subchapter IV and the notice procedures specified in section 823, subsection 3, but a hearing shall not be required.

3. Decision; further action. If the commissioner determines, after receiving a report from the inspector of dams on the informal inspection of a dam, that no further action by the department is warranted, that decision shall constitute final agency action for the purpose of Title 5, chapter 375, subchapter IV. If the commissioner determines, after receiving a report from the inspector of dams on the informal inspection of a dam, that a formal inspection is warranted, he shall proceed under section 823 and his decision shall not be subject to judicial review as final agency action under Title 5, chapter 375, subchapter IV.

§825. Access and notification

The inspector of dams shall have full access to any dam site for the purpose of conducting an inspection or enforcing an order under section 823 or 824. The inspector shall make a good faith effort to notify the owner, lessee or person in control of the dam prior to making an inspection. In the event that the owner, lessee or person in control of the dam refuses to permit the inspector full access to the dam for these purposes, the inspector shall obtain an administrative warrant under the District Court Rules of Civil Procedure, Rule 80E.

§826. Reimbursement for inspection expenses

When the commissioner determines that a dam is endangering the public safety, the department shall collect from the owner, lessee or person in control of the dam the total expenses, including compensation payable to the dam inspector, incurred by the State for any inspections undertaken. Upon a failure to reimburse the State as required in this section, the department may commence a civil action to recover the reimbursement.

§827. Utilization of other state agency resources

The commissioner may, with the approval of the

Commissioner of Transportation, utilize the engineering and other expertise that exists in the Department of Transportation to assist in the evaluation of dams that are inspected under this subarticle.

§828. Regulations

The board shall prescribe regulations, following the procedures of Title 5, chapter 375, subchapter II, establishing the criteria by which the department is to determine whether or not a dam is endangering the public safety and establishing procedures for the scope of formal and informal inspections.

§829. Transitional provisions

Rules, regulations and interpretive criteria adopted by the Department of Agriculture, Food and Rural Resources under former chapter 5, subchapter I, Article 3, shall continue in effect until regulations are established under section 828 and any orders issued by the inspector of dams under that Article shall continue in effect and shall be enforced by the board until replaced or amended under this subarticle.

Subarticle 2. Registration

§830. Registration of ownership

1. Registration. Each person owning a dam shall register the dam on or before January 1, 1984, and every 5th year thereafter, on forms provided by the department. For dams built after January 1, 1984, initial registration shall be due as of the date of completion of construction. The registration forms shall seek from and require of the registrant information reasonably required by the department to perform its duties under this Article. The department shall provide notice of dam registration requirements to the known or suspected owners of all currently or previously registered dams at least 30 days prior to the registration deadline.

2. Registration fee. The annual fee for registration shall be as follows, except that a state or federal agency owning, leasing or controlling any dam shall not be required to pay a fee:

A. Twenty dollars for any dam between 2 feet and 20 feet in height, inclusive; or

B. Twenty dollars plus an additional \$1 for each additional one foot in height above 20 feet for any dam greater than 20 feet in height.

The registration fee for the 5-year registration period may be paid in full at the time of registration at a 10% discount.

3. Late registration. An owner, lessee or person in control of a dam, other than a state or federal agency, who fails to register the dam on or before January 1st shall pay \$50 in addition to the annual registration fee upon registering the dam.

4. Revenues dedicated. All fees collected under this subarticle shall be paid to the Treasurer of State and credited to the Department of Environmental Protection for the administration of this Article. If any of these fees are not expended during the year in which they are collected, the unexpended balance shall not lapse, but shall be carried as a continuing account and available for the purposes specified until expended.

5. Notice of failure to register. Notice of failure to register a dam and of the consequences described in this subsection shall be mailed by registered mail after January 1st of the registration year to the last known address of the owner and any lessee or other person in control of the dam. The department shall make a reasonable effort to determine the identity, where unknown, of an owner, lessee or person in control of a dam by:

- A. Consulting prior dam registration records;
- B. Consulting the registry of deeds of the county in which the dam is located;
- C. Consulting the municipal tax list of the municipality in which the dam is located; and
- D. Consulting the tax list maintained by the State Tax Assessor under Title 36, chapter 115 for a dam located in an unorganized territory.

If a dam is not registered within 90 days following the mailing of the first notice of failure to register, a 2nd notice of failure to register and of the consequences described in this subsection shall be mailed by registered mail within an additional 30 days to the person to whom the first notice was sent and to any other person or persons whom the department has reason to believe may be an owner, lessee or person in control of the dam.

6. Abandonment. If a dam is not registered by December 31st of the registration year, title to the dam, including appurtenant easements, shall automatically vest in the State on the following day and the

dam shall be subject to the procedures of subarticle 3.

§831. Notice of transfer or destruction

The owner, lessee or person in control of a dam shall provide written notice to the department of:

1. Transfer. Any transfer of ownership of the dam, whether by sale, lease or gift; or

2. Destruction. Any breach or destruction of the dam in whole or in part.

Subarticle 3. Abandonment

§835. Abandonment

The procedures of section 837 shall apply to any dam for which:

1. Eminent domain. The State has assumed ownership through eminent domain proceedings under section 823, subsection 6, due to noncompliance with an inspection order;

2. Nonregistration. The State has assumed ownership under section 830, subsection 5, due to nonregistration; or

3. Abandonment. The State has assumed ownership under section 836 due to an authorized abandonment by the owner.

Once a dam has been voluntarily or involuntarily abandoned, no previous owner may be entitled to any compensation for property rights forfeited to the State or to any subsequent owner under this Article.

§836. Authorized abandonment

1. Petition and authorization. The owner of any dam may petition the commissioner for authorization to abandon the dam. The commissioner shall authorize the abandonment if he determines that the owner is unable to otherwise dispose of the dam in a manner that will insure continuing compliance with any order issued under this Article.

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

A. Transfer all his title, right and interest in the dam to the State by deed; or

B. Withdraw his petition for authorization to abandon the dam and shall retain ownership subject to the requirements of registration and any then outstanding order issued under this Article. In the event that the owner withdraws his petition following the issuance of an order by the commissioner pursuant to this section, the owner shall be prohibited from petitioning again under this section for one year.

§837. Awards 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 any such dam, the board shall either:

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

B. In the event that no person petitions for ownership of the dam or the board determines under subsection 5 that none of the petitioners 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. This 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 the dam at least twice in a newspaper of general circulation in the county or counties in which the dam is located and at least once in the state paper. The board shall also give written notice to any municipality or municipalities in which the dam or the body of water it impounds is located and to the county commissioners of any county or counties in which the dam or the body of water it impounds is located.

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

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

4. An ownership proceeding. The board may schedule and conduct a public hearing for the purpose of receiving any evidence and information that may aid it in making a determination. The board may subpoena such witnesses and documents as it may require. Any hearing held under this section shall be an adjudicatory hearing under Title 5, chapter 375, subchapter IV and the procedures specified in this section.

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

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

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

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

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

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

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

6. Competing petitions. In the event that the board has determined under subsection 5 that there is more than one petitioner who is otherwise equally qualified to accept ownership and control of the dam, the board shall hold a joint hearing on all petitions and shall award ownership of the dam in the following order of priority:

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

B. To a river corridor commission, lake or water-

shed district, dam commission or other similar agency created by Act of the Legislature or by an agreement among municipalities or other public agencies under the interlocal cooperation laws, Title 30, chapter 203;

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 any state agency; and

F. To any other person.

7. Award of dam; terms. No sooner than 45 days after notice to all parties 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, his heirs and assigns as may be reasonable. The board shall not deliver the deed until the successful petitioner has reimbursed the department for all outstanding registration fees and all 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 shall constitute final agency action for the purposes of appeal under Title 5, chapter 375, subchapter VII.

Subarticle 4. Water Levels

§840. Establishment of water levels

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, 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 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

D. Operating with a permit setting water levels issued under the great ponds laws, sections 391 to 394; the alteration of coastal wetlands laws, sections 471 to 478; the site location of development laws, sections 481 to 490; the small hydroelectric generating facilities laws, sections 621 to 626; the land use regulation laws, Title 12, sections 681 to 689; the stream alteration laws, Title 12, sections 7776 to 7780; or any other statute regulating the construction or operation of dams.

2. Notice. The board shall provide public notice of its intent to hold a hearing by providing written notice to the owner, lessee or person in control, if known, of any dam on the body of water and to any petitioner who has petitioned for a hearing with respect to the body of water. The board shall give public notice of the hearing under Title 5, section 9052. The board shall also file notice of the hearing in the municipal office of any municipality and in the clerk's office of any county in which the body of water is located.

3. Conduct of hearing. The hearing shall follow the procedures for an adjudicatory hearing under Title 5, chapter 375, subchapter IV and the procedures specified in this section.

4. Evidence. At the hearing, the board shall solicit and receive testimony, as provided by Title 5, section 9057, for the purpose of establishing a water level regime for the body of water. The testimony shall be limited to:

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

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

C. The water levels necessary for the maintenance of fish and wildlife habitat and water quality;

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

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

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

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

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

5. Order. Based on the evidence solicited at the hearing, the board shall, within 60 days after the hearing, make written findings and issue an order to the owner, lessee or person in control of the dam establishing a water level regime for the body of water impounded by the dam. The order shall, insofar as practical, require the maintenance of a stable water level, but shall include provision for variations in water level to permit sufficient draw down of the body to accommodate precipitation and run off of surface waters and to otherwise permit seasonal and other necessary fluctuations in the water level of the body of water in order to protect public health, safety and welfare and the public and private resources identified in subsection 4. The board shall cause a copy of the order to be delivered to the owner, lessee or person in control of the dam and each petitioner, if any, and shall cause a copy of the order to be filed in the registry of deeds in the county where the dam is located.

§841. Maintenance of dams

1. Prohibition. After issuance of an order under section 840, subsection 5, establishing a water level regime for any body of water, no owner, lessee or person in control of any dam impounding the body of water, nor any subsequent transferee, may operate or maintain the dam or cause or permit the dam to be operated or maintained in any manner that will cause the level of water to be higher or lower than that permitted by order of the board or to otherwise violate the terms of the order of the board.

2. Exception. No owner, lessee or person in control of a dam may be in violation of subsection 1, where the water level fluctuation not permitted by the order was caused by unforeseeable and unpredictable meteorological conditions or operating failures of the dam or any associated equipment or by

valid order of federal, state or local authorities and where the person could not have avoided the fluctuation by promptly undertaking all reasonably available steps to regulate water flow through or over any dam under his control. The burden of proof shall be on the owner, lessee or person in control of the dam to demonstrate the applicability of this subsection.

3. Enforcement. The board or any littoral or riparian proprietor may commence an action to enjoin the violation of any provision of this subarticle. The board may enforce any order issued under section 840, subsection 5 by any other appropriate remedy, including, but not limited to, entering the dam premises to carry out the terms of the order.

The violation of any order issued under section 840, subsection 5, shall be punishable by a forfeiture of not less than \$20 and not more than \$100. Each day of violation shall be considered a separate offense.

4. Unregistered dam. In the event that a dam impounding a body of water for which a water level regime is sought to be established under section 840 is unregistered under this Article, the provisions of section 830, subsection 4 shall be implemented, and any order of the board issued under section 840, subsection 5 shall apply to any proceedings under subarticle 3.

5. Appeal. Any person aggrieved by an order of the board under section 840, subsection 5 may appeal to the Superior Court under Title 5, chapter 375, subchapter VII.

§842. Transition provision

All orders of the State Soil and Water Conservation Commission or the Commissioner of Agriculture, Food and Rural Resources issued under former Title 12, section 304 shall continue in effect and shall be enforced by the board until they expire or are rescinded or amended under this subarticle.

Sec. 7. Allocation of Dam Registration Fund. Funds from the Dam Registration Fund shall be allocated as follows.

ALLOCATION FROM
DAM REGISTRATION FUND

1983-84 1984-85

ENVIRONMENTAL PROTECTION,
DEPARTMENT OF

Bureau of Land Quality Control

Positions	(1/2)	(1/2)
Personal Services	\$ 6,000	\$ 6,500
All Other	3,000	3,400
Capital Expenditures	1,000	100
Total	<u>\$10,000</u>	<u>\$10,000</u>

Provides for clerical
personnel, inspection
activities and office
equipment.

Effective September 23, 1983.

CHAPTER 418

H.P. 1037 - L.D. 1362

AN ACT to Permit Municipalities to
Regulate Shellfish Harvesting Within State
Park Lands.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the purpose of this Act is to permit municipalities to regulate shellfish harvesting within state park lands; and

Whereas, the 90-day period may not terminate until after the busy season for shellfish harvesting has gone by; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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