

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
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ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

AN ACT to Amend the Open Season Fishing Laws.

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

Sec. 1. 12 MRSA §7552, sub-§5, ¶D, as enacted by PL 1979, c. 420, §1, is amended to read:

D. The commissioner may issue a rule establishing an annual opening date as the last Saturday of April on waters reclaimed by the removal of rough fish; and

Sec. 2. 12 MRSA §7552, sub-§5, ¶F, as amended by PL 1983, c. 274, §2, is repealed.

Effective September 29, 1987.

CHAPTER 116

H.P. 1021 — L.D. 1374

AN ACT to Establish a Resident Small Game Hunting License.

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

Sec. 1. 12 MRSA §7101, sub-§5, ¶B-1 is enacted to read:

B-1. Resident small game hunting license **\$8**

(16 years of age or older)

(Permits hunting of all legal species, except deer, bear, turkey, moose, raccoon and bobcat)

Sec. 2. 12 MRSA §7101, sub-§5, ¶F, as repealed and replaced by PL 1983, c. 807, Pt. P, §3, is repealed and the following enacted to read:

F. Nonresident small game hunting license **\$47**

(Permits hunting of all legal species, except deer, bear, turkey, moose, raccoon and bobcat)

Effective September 29, 1987.

CHAPTER 117

H.P. 116 — L.D. 141

AN ACT to Amend the Laws Concerning Extension of Motor Vehicle Registration Expiration Dates.

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

Whereas, the Secretary of State has determined that this legislative measure is necessary to curb abuse of tardy renewals of automobile registrations; and

Whereas, timely observance of the State's registration requirements is required to ensure full compliance with the responsibilities involved in operating a motor vehicle in the State; 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:

29 MRSA §106, sub-§2, ¶B, as repealed and replaced by PL 1979, c. 664, is amended to read:

B. Except as herein provided, when application for registration of an automobile, motor truck, or truck tractor is made after the registration for the previous year has been the expired for more than 30 days, the expiration date of the renewal shall be at the end of the month, one year from the month of issuance of the previous registration. ~~If the applicant provides satisfactory evidence and certifies in writing to the Secretary of State that the vehicle has not been operated on a public way during the period of the expired registration, the registration expiration date, upon renewal, is at the end of the month one year from the month of issuance of the registration renewal.~~

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

Effective May 12, 1987.

CHAPTER 118

H.P. 1022 — L.D. 1376

AN ACT Concerning Inspection, Registration and Abandonment of Dams.

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

Sec. 1. 38 MRSA §817, sub-§3, as enacted by PL 1983, c. 417, §6, is amended to read:

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~~ 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 article, unless it has been repaired, modified or maintained by or with the knowledge of the owner, lessee or person in control since the discontinuance of its use in connection with logging operations. Any adjacent property, easements, roads, bridges or works not necessary for the operation or maintenance of a dam or access to the dam shall not be included under the provisions of this Article article.

Sec. 2. 38 MRSA §821, sub-§2, as enacted by PL 1983, c. 417, §6, is amended to read:

2. Compensation. If the inspector of dams is an independent contractor, he shall receive, as full compensation for his services, ~~\$100~~ \$250 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.

Sec. 3. 38 MRSA §823, sub-§1, as enacted by PL 1983, c. 417, §6, is repealed and the following enacted to read:

1. Formal inspection. At the direction of the board or the commissioner, an inspector of dams, or his agent, shall personally inspect a dam and conduct such investigations as he determines necessary to determine if the dam is endangering the public safety. The department shall notify the dam owner of the date and time for the inspection, by certified mail sent in a timely fashion. The board may, at its discretion, conduct a hearing to determine if the dam is endangering the public safety. Any hearing held shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.

Sec. 4. 38 MRSA §823, sub-§2, as enacted by PL 1983, c. 417, §6, is repealed.

Sec. 5. 38 MRSA §823, sub-§3, as enacted by PL 1983, c. 417, §6, is amended to read:

3. Notice. Notice If a hearing is held pursuant to subsection 1, 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 C and G D.

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

Sec. 6. 38 MRSA §823, sub-§§5 and 7, as enacted by PL 1983, c. 417, §6, are amended to read:

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~~ \$100 and not more than ~~\$100~~ \$10,000. Each day of violation shall be considered a separate offense.

7. Unregistered dam. In the event that a dam sought to be inspected under this section or section 824 is unregistered under this Article article, the provisions of section 830, subsection 4 5, shall be implemented and any order of the commissioner issued under section 823, subsection 4, shall apply to any proceedings under subarticle 3.

Sec. 7. 38 MRSA §824, sub-§ 1, as enacted by PL 1983, c. 417, §6, is amended to read:

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

Sec. 8. 38 MRSA §824, sub-§2, as enacted by PL 1983, c. 417, section 6, is repealed.

Sec. 9. 38 MRSA §825, as enacted by PL 1983, c. 417, §6, is repealed and the following enacted in its place:

§825. Access and notification

1. Inspector of dams; department staff. The inspector of dams and the department staff 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 department staff shall notify, by certified mail, the owner, lessee or person in control of the dam and persons owning property abutting the dam site, if appropriate, prior to making an inspection or enforcing an order. In the event that the owner or an abutter refuses to permit the inspector full access to the dam for these purposes, the inspector or department staff shall obtain an administrative warrant under the District Court Rules of Civil Procedure, Rule 80E.

2. Owners, lessees; necessary access. The owners, lessees or persons in control of a dam shall also have access over land abutting the dam site owned by others if such access, including the passage of vehicles, machinery and equipment, is reasonably necessary to comply with an order issued under section 823, subsection 3. In passing over land owned by abutters, the owners, lessees or persons in control of a dam shall make every effort to minimize the intrusion, shall restore the land to its preexisting condition to the maximum extent practicable and shall be liable to the abutters for all property damage caused the abutters by their activities on the abutters' land. The abutters shall not be liable to any person for any personal injuries or property damage arising from the crossing of their land by the owners, lessees or persons in control of a dam.

Sec. 10. 38 MRSA §830, sub-§§5 and 6, as enacted by PL 1983, c. 417, §6, are amended to read:

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 certified 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.

Sec. 11. 38 MRSA §840, sub-§5, as enacted by PL 1983, c. 417, §6, is amended to read:

5. Order. Based on the evidence solicited at the hearing, the board shall, within ~~60~~ 80 days after the hear-

ing, 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, the municipal officers of any municipality in which the dam or the body of water it impounds is located 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.

Sec. 12. 38 MRSA §841, sub-§§3 and 4, as enacted by PL 1983, c. 417, §6, are amended to read:

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~~ \$100 and not more than ~~\$100~~ \$10,000. 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~~ article, the provisions of section 830, subsection 4 5, shall be implemented, and any order of the board issued under section 840, subsection 5 shall apply to any proceedings under subarticle 3.

Effective September 29, 1987.

CHAPTER 119

S.P. 116 — L.D. 289

AN ACT Relating to Questions Put to the Electorate at Referendum.

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

Sec. 1. 21-A MRSA §905, sub-§§2 and 3, as enacted by PL 1985, c. 161, §6, are amended to read:

2. Superior Court. Any voter named in the application under section 901, or any person who has validly signed the petitions, if these petitions are determined