

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

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PUBLIC LAWS

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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

to be invalid, or any other voter, if these petitions are determined to be valid, may appeal the decision of the Secretary of State by commencing an action in the Superior Court. This action shall be conducted in accordance with the Maine Rules of Civil Procedure, Rule 80B 80C, except as modified by this section. In reviewing the decision of the Secretary of State, the court shall determine whether the description of the subject matter is understandable to a reasonable voter reading the question for the first time and will not mislead a reasonable voter who understands the proposed legislation into voting contrary to his wishes. This action must be commenced within 5 days of the date of the decision of the Secretary of State and shall be tried, without a jury, within 15 days of the date of that decision. Upon timely application, anyone may intervene in this action when the applicant claims an interest relating to the subject matter of the petitions, unless the applicant's interest is adequately represented by existing parties. The court shall issue its written decision containing its findings of fact and stating the reasons for its decision within 30 days of the commencement of the trial or within 45 days of the date of the decision of the Secretary of State, if there is no trial.

3. Supreme Judicial Court. Any aggrieved party may appeal the decision of the Superior Court, on questions of law, by filing a notice of appeal within 3 days of that decision. The appellant must file the required number of copies of the record with the clerk within 3 days after filing notice of appeal. After a notice of appeal is filed, the parties have 10 days to file briefs with the clerk of courts. As soon as the record and briefs have been filed, the court shall immediately consider the case. The standard of review shall be the same as for the Superior Court. The court shall issue its decision within 30 days of the date of the decision of the Superior Court.

Sec. 2. 21-A MRSA §906, sub-§6, as enacted by PL 1985, c. 161, §6, is repealed and the following enacted in its place:

6. Wording of ballots for people's veto and initiative referenda. Ballots for a statewide vote on people's veto and initiative questions shall set out the question to be voted on as set forth in this subsection.

A. With respect to people's veto referenda, the question shall be presented to the voters in substantially the following form:

"Do you favor repealing the change in Maine law concerning (the subject matter of the law enacted) enacted by the Legislature in (the year of enactment) as (type of law and chapter number)?"

B. With respect to initiative referenda, the question shall be presented to the voters in substantially the following form:

"Do you favor the changes in Maine law concerning (the subject matter of the law) proposed by citizen petition?"

C. In the event that the Legislature adopts a competing measure to initiated legislation, the Secretary of State shall pose the question in substantially the following form:

"Do you favor one of the 2 measures concerning (the subject matter of the law), 'A' proposed by citizen petition, or 'B' adopted by the Legislature, or should both be rejected as provided in 'C'?"

D. In each case, the Secretary of State shall select language to describe the subject matter of the law that would be affected by approval of the referendum and shall complete the question factually as may be necessary.

E. In the event that several initiative referenda relating to the same general subject matter are to be submitted to the voters, the Secretary of State shall distinguish each question from the others in describing the subject matter.

Sec. 3. **Application.** This Act does not apply to any petition concerning a people's veto or initiative referenda which is filed with the Secretary of State prior to February 1, 1987.

Effective September 29, 1987.

CHAPTER 120

S.P. 265 — L.D. 746

AN ACT to Amend the Electric Rate Reform Act as it Applies to Cost Recovery for Utility Financing of Energy Conservation.

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

Sec. 1. 35 MRSA §93, sub-§5, as enacted by PL 1981, c. 697, §3, is amended to read:

5. Utility financing of energy conservation. Electric utility financing or subsidization of capital improvements undertaken by ratepayers to conserve the ratepayer's future use of electricity. The commission may approve and allow cost recovery for proposals that result in savings in fuel other than electricity. Nothing in this section may be construed to require an electric utility to invest in fuel and fuel use other than electricity.

Sec. 2. **Applicability.** This bill shall apply to prospective and current programs for utility financing of energy conservation or load management that the commission has already approved.

Effective September 29, 1987.
