

MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

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J.S. McCarthy Company
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PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
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ONE HUNDRED AND FOURTEENTH LEGISLATURE
1989

Sec. 1. 23 MRSA §4401, as enacted by PL 1981, c. 456, Pt. A, §88, is amended to read:

§4401. Ferry service for North Haven, Vinalhaven, Islesboro, Matinicus Isle, Swan's Island and Frenchboro

It is the duty of the Department of Transportation to operate a ferry route or routes between the mainland and the towns of North Haven, Vinalhaven, Islesboro, Matinicus Isle and Swan's Island for the purpose of transporting vehicles, freight and passengers to and from these towns, and the department may operate the ferry route or routes to and from Frenchboro. Ferry service to Matinicus Isle shall be ~~on a once a month basis~~ at least 12 times per year and may be up to 24 times per year and may be provided by state-owned or privately-contracted vessels. These ferry routes shall be designated as the "Maine State Ferry Service."

Sec. 2. P&SL 1929, c. 114, §1, sub-§(e), last sentence, as enacted by P&SL 1979, c. 51, §1, is repealed.

See title page for effective date.

CHAPTER 545

S.P. 331 - L.D. 868

An Act Concerning the Inspection of Dams

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

Whereas, there are numerous dams in this State which are in poor material condition and falling into disrepair, and therefore require periodic inspection and maintenance; and

Whereas, the State does not have a program of coordinated dam inspection and safety; 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:

Sec. 1. 37-B MRSA c. 22 is enacted to read:

CHAPTER 22

DAM INSPECTION

§1061. Definitions

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

1. Agency. "Agency" means the Maine Emergency Management Agency.

2. 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 chapter, 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 chapter.

3. Dam reconstruction. "Dam reconstruction" means the rebuilding or replacement of all or part of an existing dam that no longer functions in the manner for which it was originally constructed.

4. Director. "Director" means the Director of the Maine Emergency Management Agency.

5. Emergency operations plan. "Emergency operations plan" means a set of written instructions or guidelines for use by public officials which recommends actions which, when implemented, will minimize the effects of a dam failure on people and property.

6. High or significant hazard. "High or significant hazard" means that condition which poses a risk of loss of human life and substantial property damage.

7. 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.

8. State dam inspector. "State dam inspector" means an inspector appointed or hired under section 1064.

§1062. Jurisdiction

The inspection of and design standards for all dams shall be under the sole jurisdiction of the agency, except that the agency does not have jurisdiction over any dam licensed or inspected by any agency of the Federal Government or by the International Joint Commission.

§1063. Design standards

All new or reconstructed dams which are classified as high or significant hazard dams shall be constructed or reconstructed in accordance with design and construction

standards that are consistent with accepted engineering standards. These standards shall be promulgated by rule of the agency prior to July 1, 1990. The agency shall establish by rule a process by which the design and construction of new or reconstructed dams shall be reviewed under this section.

§1064. Inspectors of dams

The director shall appoint or hire one or more dam inspectors who are licensed as professional engineers under Title 32, chapter 19, and experienced in the inspection and design of dams.

§1065. Inspection of dams

1. Inspection. By June 1, 1995, the director shall, at a minimum, inspect:

A. All dams which are listed in the 1981 United States Army Corps of Engineers' Inventory of Dams in the United States as "high" and "significant hazard" dams in the State;

B. Any other new or existing dam that may, in the judgment of the director, constitute a potential threat to public safety; and

C. Any dams identified by the director under section 1070, subsection 2.

The purpose of the inspections shall be to reevaluate and ascertain the downstream hazard classification of each dam.

2. Hazard classification. Each dam inspected under this section shall be classified pursuant to the hazard potential of the dam. The principal criterion used to determine the hazard classification of the dam shall be the potential risk to public safety and property downstream of the dam which may be affected directly or indirectly by the failure of the dam. The standards of classification of dams shall be the same as those adopted by the United States Army Corps of Engineers, as set forth in 33 Code of Federal Regulations, Chapter II, and all subsequent amendments thereto.

3. Report. A state dam inspector shall write and issue a report making a recommendation regarding the classification of each dam to the director. A copy of the report shall be provided to the dam owner of record and forwarded by certified mail. The dam owner shall notify the agency within 30 days of receipt of the report if the owner disagrees with the conclusions of the State's classification recommendation. If the owner of the dam does not agree with the results and recommendations of the dam inspector, the owner may at the owner's expense have a registered professional engineer conduct an independent investigation to determine the hazard classification of the dam. The dam owner shall provide the results of this independent investigation to the director within 6 months of receipt of the original report. The owner may apply for and be granted an extension of this deadline by the director for good cause. A state dam inspector shall review and consider the information provided by the owner's report pertaining to the classi-

fication of the dam and may issue a new classification recommendation. After reviewing all available data, the director shall then determine the classification of the dam.

The director shall reevaluate the hazard classification of a dam at least once every 6 years and, if necessary, reclassify the dam to account for the possibility that conditions downstream of the dam may have changed.

4. Ascertain conditions of dam. A state dam inspector shall also conduct on-site inspections of the dams inspected under subsection 1 to determine if the integrity, structural stability and function of the dams constitute a threat to public safety downstream of the dams. A state dam inspector shall issue a report on the material condition of each dam which shall describe in detail any material condition which constitutes a threat to public safety. The engineering process, mathematical calculations and complete documentation justifying the assessment of the current material condition shall be provided to the director.

5. Correction of unsafe conditions. After receiving a report on a dam from a state dam inspector, if the director determines that a dam is an imminent threat to the safety of the public, the director 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 an emergency operations plan satisfactory to the agency; or

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

§1066. Enforcement

The director may commence an action to enjoin the violation of any provision of section 1065. The director may enforce any order 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 agency in enforcing any order. If the owners, lessees or persons in control of the dam refuse to comply or do not fully comply with the agency's order, the agency 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 agency in enforcing its order.

§1067. Appeal

Any person aggrieved by an order of the director may appeal to the Superior Court under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

§1068. Access and notification

1. Agency access. A state dam inspector and any agency staff member shall have full access to any dam site under the director's jurisdiction for the purpose of conducting an inspection or enforcing an order under this chapter subject to the Maine Rules of Civil Procedure, Rule 80E.

2. Owners, lessees; necessary access. The owners, lessees or persons in control of a dam shall have access over land abutting the dam site owned by others if the access, including the passage of vehicles, machinery and equipment, is reasonably necessary to comply with an order issued under section 1065. 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 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.

§1069. Emergency plans

Within 6 months after the determination of the classification of a dam under section 1065, the owners of dams under the director's jurisdiction classified as high or significant hazard will prepare and update every 2 years an emergency operations plan. These emergency operations plans shall be reviewed for adequacy by the agency. Emergency plans shall follow a model plan supplied by the agency. All emergency operations plans shall be available and on file at the appropriate local and county government offices and at the agency.

§1070. Inspection petition and order

1. Petition. A petition requesting the inspection of any dam may be filed with the director 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 director shall, within 30 days after receipt of a petition requesting a dam inspection, notify the petitioners in writing of the director's action on the petition. The director may:

A. Accept the petition and order an inspection under section 1065; or

B. Deny the petition if the director determines that inspection of the dam is unnecessary.

3. Director's order. The director may order an inspection of any dam at any time without receipt of a petition requesting inspection of the dam.

Sec. 2. 38 MRSA c. 5, sub-c. I, art. 3-A, first line is repealed and the following enacted in its place:

ARTICLE 3-A. DAM REGISTRATION AND ABANDONMENT

Sec. 3. 38 MRSA §815, as enacted by PL 1983, c. 417, §6, is amended to read:

§815. Short title

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

Sec. 4. 38 MRSA §816, first ¶, as enacted by PL 1983, c. 417, §6, is amended to read:

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.

Sec. 5. 38 MRSA §816, 2nd ¶, as enacted by PL 1983, c. 417, § 6, is repealed.

Sec. 6. 38 MRSA §816, last ¶, as enacted by PL 1983, c. 417, §6, is amended to read:

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; article 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.

Sec. 7. 38 MRSA §817, sub-§8, as enacted by PL 1983, c. 417, §6, is repealed.

Sec. 8. 38 MRSA c. 5, sub-c. I, art. 3-A, sub-art. 1, as amended, is repealed.

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

Effective July 10, 1989.