

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 28, 1995 to December 1, 1995**

**SECOND REGULAR SESSION**  
**January 3, 1996 to April 4, 1996**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 4, 1996**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

A. Examine and, if feasible, seek a waiver or grant of demonstration authority from the federal Department of Agriculture to continue to use the food stamp standard utility allowance in determining the amount of food stamp benefits available to households that previously qualified for that allowance solely by reason of receipt of low-income home energy assistance benefits;

B. Determine, in cooperation with all appropriate entities operating publicly subsidized housing programs, a method of providing individualized bills or appropriate documentation for tenants in subsidized housing that would identify the tenants' shares of incurred heating costs, if doing so would qualify these tenants for the food stamp standard utility allowance;

C. Determine if federal law would permit the use of the standard utility allowance by households that previously qualified for that allowance solely on the basis of receipt of low-income home energy assistance benefits and implement that section of law if doing so would not result in any increase in the households' rent and energy costs or any reduction in food stamp allotments to either those households or any other households receiving food stamp assistance; and

D. If none of the alternatives listed in paragraphs A to C result in making the food stamp standard utility allowance available to households that had received it before the change in federal law, immediately estimate the General Fund cost of providing allotments to affected households in an amount equal to the amount they would have received had the federal law not been amended, and promptly provide that information to the joint standing committee of the Legislature having jurisdiction over human resources matters.

**2. Notice.** The department shall provide prompt written notice to households affected by any change in federal law related to the eligibility link between the food stamp program and the Low-Income Energy Assistance Program, or by any waiver received pursuant to this section, of the steps that households may take to gain eligibility for the food stamp standard utility allowance.

**3. Waiver.** The department shall immediately seek a waiver or demonstration authority to operate a demonstration project from the federal Department of Agriculture that would make the food stamp standard utility allowance available to households that incur a heating or cooling cost separate from their rent or mortgage, even if those bills are not based on actual usage as determined by individualized metering.

**4. Revised waiver application.** When federal approval for the waiver or demonstration authority described in this section is not granted, the department may submit a revised waiver request to accomplish the objectives of this section as fully as possible.

**5. Limitation.** This section must be implemented within the limits of the department's existing General Fund resources.

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

Effective April 8, 1996.

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## CHAPTER 630

S.P. 249 - L.D. 646

### An Act to Create a Process for Identifying New Owners for Dams or Releasing Current Owners from Water Level Maintenance Obligations

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

**Sec. 1. 14 MRSA §8104-A, sub-§2, ¶A,** as enacted by PL 1987, c. 740, §4, is amended to read:

A. The construction, ownership, maintenance or use of:

- (1) Unimproved land;
- (2) Historic sites, including, but not limited to, memorials, as defined in Title 12, section 601, subsection 1; ~~or~~
- (3) Land, buildings, structures, facilities or equipment designed for use primarily by the public in connection with public outdoor recreation; or
- (4) Dams;

**Sec. 2. 38 MRSA §840, sub-§1,** as amended by PL 1993, c. 370, §§9 and 10, is further amended to read:

**1. Power.** The commissioner may on the commissioner's own motion and shall, at the request of the owner, lessee or person in control of a dam, the Commissioner of Inland Fisheries and Wildlife, or the Commissioner of Marine Resources, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors or from a water utility having the right to withdraw water from the body of water for which the water level regime is sought, conduct an adjudicatory hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water impounded by any dam that is not:

~~A. Licensed Operating with a license or exemption issued by the Federal Energy Regulatory Commission or determined by the Federal Energy Regulatory Commission to be subject to the jurisdiction of that 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;~~

D. Operating with a permit setting water levels issued under the protection of natural resources laws, sections 480-A to 480-S; the site location of development laws, sections 481 to 490; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; or any other statute regulating the construction or operation of dams;

E. A dam regulated by one or more municipalities by ordinance or interlocal agreement pursuant to Title 30-A, chapter 187, subchapter VI-; or

F. Regulated by the International Joint Commission.

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

**Article 6**

**RELEASE FROM DAM OWNERSHIP AND WATER LEVEL MAINTENANCE**

**§901. Petition for release; public notice**

**1. Petition.** The owner of a dam that is not licensed or exempted from licensure by the Federal Energy Regulatory Commission may petition the department to initiate proceedings for release from

dam ownership or water-level maintenance under this article. The petition must include the following information:

A. The name, address and phone number of the dam owner;

B. The location of the dam;

C. A plan of the dam and brief descriptions of the condition of the dam and recent operation of the dam; and

D. Any other reasonable information the department determines necessary to implement this article.

The department shall notify the owner within 15 days of receipt of the petition if the department determines that the petition does not comply with the requirements of this section. If notice is not sent within 15 days, the petition is deemed to comply.

**2. Public notice.** Not more than 30 days before filing a petition, the dam owner shall publish notice of intent to file a petition under this article at least once in a newspaper circulated in the area in which the dam and impoundment are located. The dam owner shall notify by certified mail the persons listed in section 902, subsection 3, paragraphs B, C and D. The dam owner shall notify abutting property owners as provided in subsection 3. The dam owner shall also make a good faith effort to notify local, regional and statewide private organizations interested in fisheries, wildlife, conservation, recreation and environmental issues whose interests may be affected by the dam.

**3. Notice to property owners.** The dam owner shall send notice of the intent to file a petition by first class mail to persons who own property abutting the dam site, water impounded by the dam or waterways immediately downstream from the dam. If the dam owner chooses to meet the obligation to consult with property owners by holding a public meeting, as described in section 902, subsection 1, the dam owner shall include notice of the public meeting in the notice provided pursuant to this subsection.

The dam owner may request that a municipality send the required notice, but the dam owner is responsible for providing the notice if the municipality fails to do so. At the request of a dam owner, a municipality shall send notice of a petition filed under this article by first class mail to persons who own property in that municipality and who must be notified as provided in this subsection. The dam owner shall provide a sufficient number of copies of the notice to the municipality and shall reimburse the municipality for all costs incurred in providing the notice. County commissioners and tribal governments have the same obligation as municipalities under this subsection to

send notice to persons who own property within their respective jurisdictions.

### **§902. Consultation process**

**1. Consultation required.** Within 180 days of filing a petition pursuant to section 901, a dam owner shall consult with the persons and entities listed in subsection 3 to determine whether any of them wish to assume ownership of the dam. During consultation with each person or group of persons, the owner shall explain the process set forth in this article and shall inform the person or group that the department may issue an order requiring release of the water impounded by the dam if a new owner is not located. A dam owner may meet the obligation to consult with property owners by holding a public meeting and consulting with the persons who appear at that meeting, as long as notice has been sent to each property owner as required in section 901.

**2. Timing of consultation.** Consultation prior to the filing of a petition meets the requirements of subsection 1 only if the dam owner, during the consultation, disclosed an intent to file a petition under this article and provided the information required in subsection 1.

**3. Parties to consultation.** The following persons must be consulted as provided in subsection 1:

A. Individuals and groups of persons, such as lake associations, who own property abutting the dam site, the water impounded by the dam or the waterway immediately downstream from the dam;

B. The Commissioner of Inland Fisheries and Wildlife, the Commissioner of Conservation and the Director of the Maine Emergency Management Agency;

C. The municipal officers of any municipality and the county commissioners of any unorganized area in which the dam or impoundment is located; and

D. Representatives of the tribal governments of Indian tribes or nations in whose territory a dam or impoundment is located.

**4. Report to department.** The dam owner shall file a report with the department within 180 days of filing a petition. The report must include:

A. Evidence that the owner complied with the notice requirements set forth in section 901;

B. Names and addresses of persons notified under section 901 and of parties consulted in accordance with this section; and

C. The results of the consultations and whether a new owner has been located.

At the request of the dam owner, the department shall extend the deadline for reporting up to an additional 180 days.

**5. Evaluation of report.** If the department determines, after reviewing the report, that the dam owner has not complied with the requirements of section 901 or this section, the department shall allow the dam owner a reasonable period of time to correct the deficiency. The department shall reject the petition if:

A. The deficiency has not been corrected within the specified time period; or

B. The department finds that a person was willing to assume ownership of the dam but the dam owner refused to transfer the property because that person refused to pay compensation, other than costs, for the transfer.

### **§903. Assessment of public value of dam**

**1. Notification of agencies.** If a new owner was not located during the consultation process and the department has not rejected the petition, the department shall immediately notify the Department of Inland Fisheries and Wildlife, the Department of Conservation and the Maine Emergency Management Agency that an assessment of public value for the dam may be required.

**2. Evaluation of fisheries and wildlife value.** Within 60 days of receiving notice under subsection 1, the Department of Inland Fisheries and Wildlife shall review the following factors and determine whether the best interest of the public requires that department to assume ownership of the dam:

A. The cost of maintaining the dam;

B. The value to fisheries and wildlife of maintaining the dam; and

C. The value to fisheries and wildlife of releasing water from the dam.

The Department of Inland Fisheries and Wildlife shall notify the department of its determination. If the Department of Inland Fisheries and Wildlife determines, after considering these factors, that the best interest of the public requires it to assume ownership of the dam, the department shall issue an order directing the dam owner to transfer the dam to the Department of Inland Fisheries and Wildlife within a reasonable period of time. If the Department of Inland Fisheries and Wildlife determines that it will not assume ownership, the department shall notify the Department of Conservation.

**3. Evaluation of public recreational value.**

Within 60 days of receiving notice under subsection 2, the Department of Conservation shall review the following factors and determine whether the best interest of the public requires that department to assume ownership of the dam:

- A. The cost of maintaining the dam;
- B. The value to public recreation, conservation and public use of maintaining the dam; and
- C. The value to public recreation, conservation and public use of releasing water from the dam.

The Department of Conservation shall notify the department of its determination. If the Department of Conservation determines, after considering these factors, that the best interest of the public requires it to assume ownership of the dam, the department shall issue an order directing the dam owner to transfer the property to the Department of Conservation within a reasonable period of time. If the Department of Conservation determines that it will not assume ownership of the dam, the department shall notify the Maine Emergency Management Agency.

**4. Evaluation of public safety value.** Within 60 days of receipt of notice under subsection 3, the Maine Emergency Management Agency shall review the following factors and determine whether the best interest of the public requires that agency to assume ownership of the dam:

- A. The cost of maintaining the dam;
- B. The value to public safety, particularly flood protection, of maintaining the dam; and
- C. The value to public safety, particularly flood protection, of releasing water from the dam.

The Maine Emergency Management Agency shall notify the department of its determination. If that agency determines, after considering these factors, that the best interest of the public requires it to assume ownership of the dam, the department shall issue an order directing the dam owner to transfer ownership of the dam to the Maine Emergency Management Agency within a reasonable period of time.

**§904. Notice of failure to locate new owner**

If a new owner has not been located through the process set forth in sections 902 and 903, the department shall provide notice that a new owner for the dam has not been located and that the department intends to issue an order requiring the dam owner to release water from the dam in accordance with section 905. Notice must be sent by certified mail to each municipality in which the dam and impoundment are located, to county commissioners when the dam and

impoundment are located in unorganized territory and to tribal governments when the dam and impoundment are located on tribal territory. The department shall also publish notice of its intent to issue the order at least once in a newspaper circulated in the area in which the dam and impoundment are located.

**§905. Order for release of water**

**1. Order.** Not earlier than 30 days after providing notice as required in section 904, the department shall issue an order to the dam owner to release water from the dam in a manner that minimizes the impact of the release, including requirements for mitigation as appropriate. If the department receives a petition requesting additional time to negotiate assumption of ownership of the dam and the dam owner agrees, the department may delay issuance of the order for an additional period agreed to by the dam owner and the petitioners.

**2. Impact of order.** An order issued under this article does not supersede any property right granted by deed or other legal instrument. An order issued under this article supersedes an order issued under section 840.

**§906. Property transfer provisions**

**1. Compensation.** A dam owner is not prohibited from requesting compensation for the transfer of a dam pursuant to this article. The department may not issue a water release order pursuant to section 905 to a dam owner who has refused to transfer the dam to a person willing to assume ownership of the dam because that person refused to compensate the dam owner for the property. The department may not refuse to issue the order if the dam owner requested only payment or a share in payment of the costs of transfer.

**2. Property rights transferred.** When a dam is transferred pursuant to this article, the dam owner shall transfer all property rights necessary to maintain and operate the dam, to the extent owned by the dam owner. Those property rights include title to the dam and land under the dam, title to equipment and other personal property normally located at the dam site, flowage rights and access rights.

**§907. Right to withdraw petition**

A dam owner may at any time withdraw a petition filed under this article.

**§908. Municipal actions on dam ownership**

The municipal legislative body, as defined in Title 30-A, section 2001, of any municipality notified pursuant to section 901, subsection 2 must consider and act on the issue of dam ownership at a public

meeting. The meeting must be held no later than 60 days after the municipal officers receive notice under section 901. County commissioners notified under section 901 must also hold a public meeting to act on the issue of dam ownership not later than 60 days after receiving notification.

See title page for effective date.

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## CHAPTER 631

### H.P. 618 - L.D. 828

#### An Act to Provide Affordable Access to Information Services in All Communities of the State through Enhanced Library and School Telecommunications

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

**Sec. 1.** 35-A MRSA §7101, sub-§3, as amended by PL 1993, c. 638, §1, is repealed.

**Sec. 2.** 35-A MRSA §7101, sub-§4 is enacted to read:

**4. Information access.** The Legislature further declares and finds that computer-based information services and information networks are important economic and educational resources that should be available to all Maine citizens at affordable rates. It is the policy of the State that affordable access to those information services that require a computer and rely on the use of the telecommunications network should be made available in all communities of the State without regard to geographic location.

**Sec. 3.** 35-A MRSA §7104-A is enacted to read:

#### **§7104-A. Access to information services**

**1. Additional authority.** To carry out the policy goals established by section 7101, subsections 1, 2 and 4 and to meet the requirements of sections 301 and 9103 pertaining to the establishment of just and reasonable rates, the commission may:

A. Require a telecommunications carrier offering intrastate telecommunications services to provide telecommunications services, including instruction and equipment related to such services, at reduced charges or at no charge to qualified libraries and schools for the establishment and use of a program providing access to information networks;

B. Require a telecommunications carrier offering intrastate telecommunications services to provide funds for qualified libraries and schools to obtain telecommunications services, including instruction and equipment related to such services, from other vendors if the provision of such services is found by the commission to be consistent with the policies described in this section; and

C. Establish a telecommunications access fund and require all telecommunications carriers offering telecommunications services in the State to contribute to the fund. The fund must be available, with any accumulated interest, to qualified libraries and schools to assist in paying the costs of acquiring and using advanced telecommunications technologies.

The authority granted to the commission under this subsection is in addition to any other authority granted by this Title.

**2. Limitations.** In carrying out the authority granted by subsection 1, the commission:

A. Shall limit the annual cost to each telecommunications carrier of all programs to not more than 1.5% of its intrastate revenues as determined by the commission;

B. Shall ensure that funds are collected from each telecommunications carrier in a competitively neutral manner;

C. Shall attribute any amount collected from a telecommunications carrier pursuant to subsection 1 as an offset to any required intrastate support mechanism developed by the commission to preserve and advance universal service; and

D. May not exercise that authority with respect to any telecommunications carrier other than a local exchange carrier serving more than 100,000 lines, until September 30, 1997, except to the extent required by federal law.

**3. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Qualified library" means a public library as defined in Title 27, section 110, subsection 10; a research center as defined in Title 27, section 110, subsection 12; a library operated by a public school as defined in Title 20-A, section 1, subsection 24 that provides free public access to all advanced telecommunications services available at that library; or a library that provides free public access to all advanced telecommunications services available at that library and whose collection serves as a statewide resource, if the