

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

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

J.S. McCarthy Company
Augusta, Maine
2001

tion or prosthetic device. The facility shall collect the fee. All money received by the department under this subsection is retained by the facility to offset the cost of medical and dental services, prescriptions, medication and prosthetic devices.

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

Effective June 28, 2001.

CHAPTER 459

H.P. 224 - L.D. 259

An Act to Offer Reciprocity Concerning Concealed Firearms Permits

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

Sec. 1. 25 MRSA §2001, sub-§6, as enacted by PL 1989, c. 917, §6, is amended to read:

6. Licensed hunters and trappers. Firearms carried by any person engaged in conduct for which a state-issued hunting or trapping license is required and possessing the required license, or firearms carried by a resident person engaged in conduct expressly authorized by Title 12, section 7377, subsections 1 and 2. This subsection does not authorize or permit the carrying of a concealed or loaded firearm in a motor vehicle; and

Sec. 2. 25 MRSA §2001, sub-§7 is enacted to read:

7. Permit issued by another state. A firearm carried by a person to whom a valid permit to carry a concealed firearm has been issued by another state if a permit to carry a concealed firearm issued from that state has been granted reciprocity. The Chief of the State Police may enter into reciprocity agreements with 2 other states. Reciprocity may be granted to a permit to carry a concealed firearm issued from another state if:

A. The other state that issued the permit to carry a concealed firearm has substantially equivalent or stricter requirements for the issuance of a permit to carry a concealed firearm; and

B. The other state that issued the permit to carry a concealed firearm observes the same rules of reciprocity in regards to a person issued a permit to carry a concealed firearm under this chapter.

Sec. 3. Report. The Chief of the State Police shall report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters by January 15, 2003 regarding the costs and resources involved in entering into reciprocity agreements with other states pursuant to the Maine Revised Statutes, Title 25, section 2001, subsection 7.

See title page for effective date.

CHAPTER 460

H.P. 379 - L.D. 481

An Act to Promote Dam Safety

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

Sec. 1. 5 MRSA §12004-G, sub-§13-D, as enacted by PL 1997, c. 236, §1, is repealed.

Sec. 2. 37-B MRSA cc. 21 and 22 are repealed.

Sec. 3. 37-B MRSA c. 24 is enacted to read:

CHAPTER 24

DAM SAFETY

§1111. Definitions

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

1. Dam. "Dam" means any artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, that impounds or diverts water, and that:

A. Is 25 feet or more in height from the natural bed of the watercourse measured at the downstream toe of the barrier or from the lowest elevation of the outside limit of the barrier to the maximum water storage elevation and impounds at least 15 acre-feet of water; or

B. Is 6 feet or more in height from the natural bed of the watercourse measured at the downstream toe of the barrier or from the lowest elevation of the outside limit of the barrier to the maximum water storage elevation and has an impounding capacity at maximum water storage elevation of 50 acre-feet or more.

2. Commissioner. "Commissioner" means the Commissioner of Defense, Veterans and Emergency Management.

3. Emergency. "Emergency" means breaches and all conditions leading to or causing a breach, overtopping or any other condition in a dam and its appurtenant structures that may be construed as unsafe or threatening to life and property.

4. Emergency situation. "Emergency situation" means a situation determined by the commissioner, after consultation with other state and federal agencies if time permits, to present a potential but real and impending danger to life, limb or property because of flooding or potential and imminent flooding and includes a situation that the Governor declares to be an emergency pursuant to section 742.

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

6. Hazard potential. "Hazard potential" means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the dam or misoperation of the dam or appurtenances. The hazard potential classification of a dam does not reflect in any way on the current condition of the dam and its appurtenant structures. The classifications are as follows:

A. High hazard potential dam. "High hazard potential dam" means a dam assigned the high hazard potential classification where failure or misoperation will probably cause loss of human life;

B. Low hazard potential dam. "Low hazard potential dam" means a dam assigned the low hazard potential classification where failure or misoperation results in no probable loss of human life and low economic and environmental losses. Losses are principally limited to the owner's property; and

C. Significant hazard potential dam. "Significant hazard potential dam" means a dam assigned the significant hazard potential classification where failure or misoperation results in no probable loss of human life but can cause major economic loss, environmental damage or disruption of lifeline facilities or affect other concerns. Significant hazard potential dams are often located in predominantly rural or agricultural areas but could be located in areas with population and significant infrastructure.

7. Necessary remedial measure. "Necessary remedial measure" means any repair or hazard-reducing measure relating to a structural component or operation of a dam needed to mitigate a specific

condition at the dam that constitutes a threat to public safety.

8. Person. "Person" means any individual, firm, association, partnership, corporation, trust, municipality, quasi-municipal corporation, state department, federal department or other legal entity.

9. 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 that might compromise the safety, stability or integrity of the dam or its ability to function safely.

10. State dam inspector. "State dam inspector" means an inspector appointed or hired under section 1117.

§1112. Administration

The department shall administer this chapter. In carrying out the provisions of this chapter, the department shall consult as appropriate with other state agencies, including the Department of Conservation, the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the Department of Public Safety, the Department of Transportation, the Maine Land Use Regulation Commission, the Maine Atlantic Salmon Commission and the State Planning Office, for their aid and assistance.

§1113. Duties of the department

The department shall inspect existing dams and reservoirs to determine their hazard potential, review the design and construction of new and reconstructed dams, assist dam owners in developing emergency action plans to minimize the effects of dam failure and take all necessary actions in emergency situations of probable dam failure in order to protect life and property.

Except for the Federal Government, a person may not exercise any authority over the emergency regulation or supervision of any dams or reservoirs in the State when that exercise would conflict with the powers and authority vested in the department.

§1114. Powers of the department

1. Rules. In accordance with Title 5, chapter 375, subchapter II, the department may adopt, modify or repeal rules for carrying out this chapter. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

2. Emergency situation. When an emergency situation arises, the commissioner shall warn the public of the emergency and, notwithstanding any other provision of law, shall take all actions necessary

to protect life and property, which may include, but are not limited to, the following:

- A. Taking full charge and control of any dam or reservoir;
- B. Lowering the water level by releasing water from the reservoir;
- C. Completely emptying the reservoir;
- D. Breaching or removing the dam itself; and
- E. Taking other necessary steps to safeguard life and property.

3. Investigations. For the purpose of enabling it to make decisions as compatible as possible with economy and protection of life and property and for the purpose of determining compliance with this chapter, the department may make necessary investigations and inspections. In making investigations and inspections required or authorized by this chapter, the department or its representatives may, as necessary in emergency situations, enter upon public or private property or in nonemergency situations secure administrative warrants from any District Court Judge or Superior Court Justice for the purpose of gaining entry onto private property.

4. Injunction; civil or criminal proceedings. In the event of violation of any of the provisions of this chapter or of any rule, order or decision of the department, the department may institute injunctive proceedings or other civil action as provided in this chapter.

§1115. Jurisdiction

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

§1116. Design standards

All new dams that reasonably will be classified as high or significant hazard potential dams must be designed, constructed or reconstructed under the supervision of a registered professional engineer. Prior to construction, the dam owner shall provide a copy of the plans and specifications to the department.

§1117. Inspectors of dams

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

§1118. Dam hazard evaluation

1. Evaluation. The commissioner shall evaluate all dams to assign or reassign a hazard potential classification in accordance with the following schedule:

- A. New or reconstructed dams, within 6 months of construction or reconstruction;
- B. All other dams, at least once every 6 years;
- C. Any dam, within 30 days of a request for an evaluation from the dam owner, the municipality in which the dam is located or the emergency management director of the county in which the dam is located; and
- D. At any time a dam for which, in the judgment of the commissioner, such an evaluation is appropriate.

Notwithstanding the schedule of this subsection, the commissioner shall evaluate the hazard classification of a significant or high hazard potential dam within 30 days of receipt by the commissioner of a notice of transfer of ownership of the dam as required under section 1128 unless the dam has been evaluated under this subsection within 4 years preceding the notice of transfer of ownership.

Until the commissioner assigns or reassigns a hazard potential classification, a dam retains the hazard potential classification assigned in the 1981 United States Army Corps of Engineers' Inventory of Dams in the United States.

2. Factors considered. Before assigning a dam a hazard potential classification, the commissioner shall consider the potential risk to public safety and property that may result from the failure or operation of the dam. In addition, when reassigning a hazard potential classification, the commissioner shall review any changes in upstream and downstream conditions since the last hazard classification evaluation.

3. Hazard report. Before the commissioner assigns or reassigns a dam hazard potential classification, a state dam inspector shall visually inspect that dam and its upstream and downstream environs and provide a report to the commissioner recommending a hazard classification for that dam. The commissioner shall provide a copy of the report by certified mail to the dam owner, lessee or other person in control of the dam, to the municipality in which the dam is located and to the emergency management director of the county in which the dam is located. The dam owner, lessee or other person in control of the dam must notify the commissioner within 20 days of receipt of the report if the dam owner, lessee or other person in control of the dam disagrees with the recommended

hazard classification and must file within 3 months of receipt of the commissioner's classification the basis of the appeal with the commissioner. The commissioner may extend the 3 month period for good cause shown, but not more than an additional 3 months. The commissioner shall consider the evidence presented by the dam owner, lessee or other person in control of the dam as well as the evidence of the state inspector before issuing a final determination.

§1119. Dam condition inspection

1. Inspections. A state dam inspector shall conduct an inspection of all high and significant hazard potential dams to determine whether the integrity, structural stability, function or operation of those dams constitutes a threat to public safety, in accordance with the following schedule:

- A. All significant hazard potential dams, at least once every 4 years;
- B. All high hazard potential dams, at least once every 2 years;
- C. Any dam, within 30 days of a request for an inspection from the dam owner or the municipality in which the dam is located; and
- D. At any time any dam that may, in the judgment of the commissioner, constitute a potential risk to public safety.

Notwithstanding the schedule outlined in this subsection, a state dam inspector shall conduct an inspection of a significant or high hazard potential dam within 30 days of receipt by the commissioner of a notice of transfer of ownership of the dam as required under section 1128 unless the dam has been inspected under this subsection within 4 years preceding the notice of transfer of ownership.

2. Condition report. After the on-site dam inspection, a state dam inspector shall provide a condition report to the commissioner detailing the operation and material condition of the dam and recommending all necessary remedial measures. The commissioner shall send a copy of the state dam inspector's condition report by certified mail to the dam owner, lessee or other person in control of the dam, the municipality in which the dam is located and the emergency management director of the county in which the dam is located if the condition report recommends any necessary remedial measures. The dam owner, lessee or other person in control of the dam must notify the commissioner within 20 days of receipt of the report if the owner disagrees with the findings and recommendations of the report. The dam owner, lessee or other person in control of the dam must provide the basis of disagreement to the commissioner within 3 months of receipt of the inspector's

report. The dam owner, lessee or other person in control of the dam may apply for and be granted an extension of this deadline for good cause, but not for more than an additional 3 months.

3. Review conference. After receiving the inspector's report and prior to issuing any dam safety order, the commissioner shall hold a review conference and shall invite the emergency management director of the county in which the dam is located to the review conference as well as representatives from appropriate state agencies which may include the Department of Conservation, the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the Department of Public Safety, the Department of Transportation, the Maine Land Use Regulation Commission, the Maine Atlantic Salmon Commission and the State Planning Office, to discuss the public safety, environmental, economic and other concerns relating to the dam and the necessary remedial measures under consideration. A state dam inspector shall attend the review conference. The commissioner shall maintain a written record of the conference and shall make a copy of this record available to all parties participating in the conference.

4. Order. The commissioner shall consider the inspector's report, the evidence presented by the dam owner, lessee or other person in control of the dam and the record from the review conference before issuing a dam safety order directing that necessary remedial measures be undertaken by the dam owner, lessee or other person in control of the dam. The commissioner may issue such an order only if the commissioner determines that the integrity, structural stability, function or operation of the dam constitutes a threat to public safety. Necessary remedial measures may include, but are not limited to:

- A. Breach or removal of the dam;
- B. Repair or maintenance of the dam in a specified manner;
- C. Operation of the dam in a specified manner;
- D. Preparation of and adherence to any emergency action that is approved by the commissioner; and
- E. Maintenance of appropriate records relating to water levels, dam operation and dam maintenance.

§1120. Enforcement

The commissioner may commence an action to enjoin the violation of any provision of this chapter. The commissioner 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 are jointly and severally liable for any costs incurred by the department in carrying out its responsibilities under section 1114, subsection 2 or 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 department's order, the department 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 its order.

§1121. Appeal

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

§1122. Exemptions

Dams licensed by or subject to the jurisdiction of the Federal Energy Regulatory Commission are exempt from this chapter.

§1123. Rights of owner

This chapter may not be construed to deprive any owner of recourse to the court in which that owner may be entitled to relief under the laws of this State.

§1124. Immunity

An action may not be brought against the State, the department or its agents or employees for any action taken or failure to take action pursuant to this chapter.

§1125. Relief of obligation

This chapter may not be construed as relieving a person of duties, responsibilities or liabilities imposed by any other law, regulation, municipal ordinance or rule of law, including, but not limited to, the need to obtain permits or other approvals required to authorize repairs or other remedial measures at a dam and the need to comply with the terms and conditions of any outstanding water level or dam release order, except in an emergency situation as defined by this chapter.

§1126. Access and notification

1. Department access. A state dam inspector and any department staff member must have full access to any dam site under the commissioner'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 must 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 this chapter. 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 are liable to the abutters for all property damage caused by their activities on the abutters' land. The abutters may not be held 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.

§1127. Emergency action plans

Within 6 months after the determination of classification, the owner of a dam under the commissioner's jurisdiction that is classified as high or significant hazard potential shall prepare an emergency action plan, which must be updated every 2 years. Such emergency action plans must be reviewed for adequacy by the department. Emergency plans must follow a model plan supplied by the department. All emergency action plans must be available and on file at the appropriate local and county government offices and at the department.

§1128. Notice of transfer of ownership

Forty-five days prior to any change of ownership of a dam, whether by sale, lease or gift, the owner or owners of a dam classified as a high or significant hazard potential dam shall provide in writing to the commissioner the name and address of the prospective new owner or owners along with any plan that the prospective owner has with regard to maintaining competent operations and correcting unsafe conditions, if any. For purposes of this section, "competent operations" means properly and safely maintaining the dam and ensuring compliance with all safety, environmental and water level rules or orders.

§1129. Violations

In addition to any other forfeitures or penalties provided by law, a person who violates any provisions of this chapter or any rule or order adopted, promulgated or issued under this chapter is subject to a civil penalty as assessed by the commissioner of not less than \$100 nor more than \$5,000 for each day that the violation continues. The penalty is payable to the State, to be recovered in a civil action.

§1130. Dam Repair and Reconstruction Fund

1. Fund established. The Dam Repair and Reconstruction Fund, referred to in this section as the

"fund," is established within the department. The department shall administer the fund and make low-interest loans from the fund for purposes pursuant to this section. The department may seek assistance from the Finance Authority of Maine in administering the fund.

2. Purposes. The fund provides low-interest loans to municipalities for engineering, legal and construction costs involved in acquiring title to, establishing a long-term management plan for, repairs to, reconstruction of, breaching of or removal of a dam.

3. Rulemaking. The department shall adopt rules to implement this section, including criteria and procedures for the application for and award of low-interest loans from the fund and for repayment of loans to the fund. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

4. Nonlapsing. Any balance in the fund at the end of the fiscal year may not lapse but must be carried forward to the next fiscal year.

Sec. 4. 38 MRSA §818, sub-§3, as repealed and replaced by PL 1987, c. 769, Pt. A, §180, is amended to read:

3. Other powers. No provision of this article may be construed as limiting the powers of the Maine Emergency Management Agency under Title 37-B, sections 1051 to 1059 chapter 24.

Sec. 5. 38 MRSA §841, sub-§2, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §202, is further amended to read:

2. Exception. No An owner, lessee or person in control of a dam may not be in violation of subsection 1, where when 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, including an order issued pursuant to Title 37-B, section 1114, subsection 2, and where when 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 the person's control. The burden of proof is on the owner, lessee or person in control of the dam to demonstrate the applicability of this subsection.

Sec. 6. 38 MRSA §844, as enacted by PL 1999, c. 782, §1, is repealed.

Sec. 7. State Controller to transfer balance. The State Controller shall transfer any balance

held in the former Dam Repair and Reconstruction Fund established in the Maine Revised Statutes, Title 38, section 844 to the Dam Repair and Reconstruction Fund established in Title 37-B, section 1130 on the effective date of this Act.

Sec. 8. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	2001-02	2002-03
DEFENSE, VETERANS AND EMERGENCY MANAGEMENT, DEPARTMENT OF		
Dam Repair and Reconstruction Fund		
All Other	\$251,200	\$251,200
Allocates funds to provide low-interest loans to municipalities for engineering, legal and construction costs involved in establishing a long-term management plan for the repair, reconstruction, breaching or removal of dams.		
DEPARTMENT OF DEFENSE, VETERANS AND EMERGENCY MANAGEMENT		
TOTAL	\$251,200	\$251,200

Sec. 9. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	2001-02
DEFENSE, VETERANS AND EMERGENCY MANAGEMENT, DEPARTMENT OF	
Dam Repair and Reconstruction Fund	
All Other	(\$129,000)
Deallocates funds to reflect an allocation from the Dam Repair and Reconstruction Fund to the Department of Inland Fisheries and Wildlife.	

**DEPARTMENT OF DEFENSE,
VETERANS AND EMERGENCY
MANAGEMENT**
TOTAL (\$129,000)

**INLAND FISHERIES AND
WILDLIFE, DEPARTMENT OF
Administrative Services - Inland
Fisheries and Wildlife**

All Other	\$129,000
Allocates funds on a one-time basis from the Dam Repair and Reconstruction Fund within the Department of Defense, Veterans and Emergency Management for the reconstruction of 2 dams that control the water level at Rocky Lake in Whiting. Any unspent funds shall lapse to the Dam Repair and Reconstruction Fund.	

**DEPARTMENT OF INLAND
FISHERIES AND WILDLIFE**
TOTAL \$129,000

TOTAL ALLOCATIONS \$0

See title page for effective date.

CHAPTER 461

S.P. 480 - L.D. 1544

**An Act to Enhance Penalties for Use
of Illegal Gambling Machines**

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

Sec. 1. 17-A MRSA §952, sub-§5-A is enacted to read:

5-A. "Illegal gambling machine" means any machine, including electronic devices, however operated:

A. The internal mechanism or components of which when set in motion or activated may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tickets or something of value;

B. That is used to advance gambling activity; and

C. That is not a machine that a person may lawfully operate pursuant to a license that has been issued under Title 17, chapter 14 or that is operated by the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations.

Sec. 2. 17-A MRSA §§959 to 961 are enacted to read:

§959. Illegal gambling machines; forfeiture

1. An illegal gambling machine, including any monetary contents, is subject to forfeiture to the State.

2. An illegal gambling machine and any monetary contents may be declared forfeited under this section by any court that has jurisdiction over the illegal gambling machine or final jurisdiction over any related criminal proceeding brought under this chapter or by the Superior Court for Kennebec County. Property subject to forfeiture may be kept or stored at any location within the territorial boundaries of the State and is subject to the authority of any court in which a petition seeking the forfeiture of that property is filed.

3. Forfeitures under this section must be accomplished by the following procedure.

A. A district attorney or the Attorney General may petition the Superior Court in the name of the State in the nature of a proceeding in rem to order forfeiture of an illegal gambling machine and any monetary contents. The petition must be filed in the court having jurisdiction over the property.

B. The proceeding under paragraph A is an in rem civil action, in which the State has the burden of proving all material facts by a preponderance of the evidence.

C. A court shall order the State to give notice of the pendency of the action and the right to be heard by certified or registered mail or through hand delivery by a deputy sheriff to any person who appears to have an interest in the illegal gambling machine and any monetary contents. Receipt by a person then licensed to operate a motor vehicle in the State is presumed when notice is mailed to the last known address of that person on file with the Department of the Secretary of State, Bureau of Motor Vehicles.

D. A court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition after an answer is filed by a person served with notice under paragraph C. At the hearing, the court shall hear evidence and make findings of fact and enter conclusions of law.