

MAINE STATE LEGISLATURE

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**STATE OF MAINE
117TH LEGISLATURE**

SECOND REGULAR SESSION

**BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
NATURAL RESOURCES**

JUNE 1996

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Sen. W. John Hathaway
Sen. Richard P. Ruhlin*

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**ONE HUNDRED SEVENTEENTH LEGISLATURE
SECOND REGULAR SESSION**

***Summary Of Legislation Before The Joint Standing Committees
June 1996***

We are pleased to provide this summary of bills that were considered by the 15 Joint Standing Committees of the Maine Legislature staffed by this office. The document is a compilation of bill summaries which describe each bill, committee amendments and other relevant amendments, as well as the final action taken on the bill. Also included are statistical summaries of bill activity this Session for the Legislature and each of its joint standing committees.

The document is organized for convenient reference to information on bills handled by the joint standing committees. It is organized alphabetically by committees and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills.

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

| | |
|-----------------------------------------|---------------------------------------------------------------------|
| <i>CARRIED OVER</i> | <i>Bill carried over to Second Session</i> |
| <i>CON RES XXX</i> | <i>Chapter # of Constitutional Resolution passed by both Houses</i> |
| <i>CONF CMTE UNABLE TO AGREE</i> | <i>Committee of Conference unable to agree; bill died</i> |
| <i>DIED BETWEEN BODIES</i> | <i>House & Senate disagree; bill died</i> |
| <i>DIED ON ADJOURNMENT</i> | <i>Action incomplete when session ended; bill died</i> |
| <i>EMERGENCY</i> | <i>Enacted law takes effect sooner than 90 days</i> |
| <i>FAILED EMERGENCY ENACTMENT</i> | <i>Emergency bill failed to get 2/3 vote</i> |
| <i>FAILED ENACTMENT</i> | <i>Bill failed to get majority vote</i> |
| <i>FAILED MANDATE ENACTMENT</i> | <i>Bill imposing local mandate failed to get 2/3 vote</i> |
| <i>INDEF PP</i> | <i>Bill Indefinitely Postponed</i> |
| <i>ONTP</i> | <i>Ought Not To Pass report accepted</i> |
| <i>P&S XXX</i> | <i>Chapter # of enacted Private & Special Law</i> |
| <i>PUBLIC XXX</i> | <i>Chapter # of enacted Public Law</i> |
| <i>RESOLVE XXX</i> | <i>Chapter # of finally passed Resolve</i> |
| <i>UNSIGNED</i> | <i>Not signed by Governor within 10 days</i> |
| <i>VETO SUSTAINED</i> | <i>Legislature failed to override Governor's Veto</i> |

Please note the effective date for all non-emergency legislation enacted in the Second Regular Session (unless otherwise specified in a particular law) is July 4, 1996.

Joint Standing Committee on Natural Resources

LD 646

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

PUBLIC 630

Sponsors(s)
HANLEY

Committee Report
OTP-AM

Amendments Adopted
S-484

LD 646 proposed to reenact the law allowing a dam owner to abandon ownership of a dam under certain circumstances, and requiring the State to assume ownership of the dam. This bill was carried over from the 1st Regular Session of the 117th Legislature. A staff study on the issue of dam abandonment was performed during the legislative interim and presented to the Natural Resources Committee at the beginning of the 2nd Regular Session.

Committee Amendment "A" (S-484) replaced the bill. It proposed to provide a formal process through which a dam owner would seek a new owner for the dam and, if a new owner was not found, would require the Department of Environmental Protection to issue an order requiring the current owner to release water from the dam. This water release order would relieve the dam owner of any obligation to maintain a water level to meet the needs of persons other than the owner.

Under the process proposed in the amendment, the owner of any dam not licensed by the Federal Energy Regulatory Commission would petition the Department of Environmental Protection to begin the process and would publish newspaper notice and send individual notice to interested parties (municipalities, tribal governments, abutting property owners, the Department of Inland Fisheries and Wildlife, the Department of Conservation and the Maine Emergency Management Agency). The amendment proposed to require that a local government notified of this process hold a public meeting to discuss the issue of dam ownership.

If none of the interested parties wished to assume ownership of the dam following consultation with the dam owner, the state agencies involved (Conservation, Fisheries and Wildlife, Emergency Management) would be required to evaluate the public value of the dam and to assume ownership if the public interest warranted assumption. The public interest would be determined by weighing factors such as the cost of maintaining the dam, the benefit of maintaining the dam and the benefit of releasing water from the dam.

If a department did not assume ownership of the dam, the Department of Environmental Protection, following public notice of intent to issue an order, would issue an order requiring the dam owner to release the water from the dam.

The amendment would allow a dam owner to request that compensation be paid for any transfer of dam ownership, but if the request for compensation prevents the transfer of the dam, the dam owner would not be entitled to proceed through the process.

The amendment also proposed to specify that governmental entities protected by the Maine Tort Claims Act are not liable for tort claims due to their construction, ownership, maintenance or use of dams.

The amendment proposed to allow the DEP to set water levels for dams not yet determined to be under the jurisdiction of the Federal Energy Regulatory Commission.

Enacted law summary

Public Law 1995, chapter 630 creates a formal process through which the owner of a dam that is not federally-licensed may seek a new owner for the dam. The owner must notify and consult with municipalities, tribal governments, abutting property owners and the state departments of conservation, inland fisheries and wildlife and emergency management. The purpose of the consultation is to attempt to locate a new owner for the dam from among persons and agencies with an interest in maintaining the dam. If a state agency (Conservation, Inland Fisheries & Wildlife or Emergency Management) finds that the public interest warrants state assumption of the dam, the agency must assume ownership. The public interest would be determined by weighing factors such as the cost of maintaining the dam, the benefit of maintaining the dam and the benefit of releasing water from the dam.

If a new owner is not found, the law requires the Department of Environmental Protection to issue an order requiring the current owner to release water from the dam. This water release order would relieve the dam owner of any obligation to maintain a water level to meet the needs of persons other than the owner.

The new law also specifies that the Maine Tort Claims Act includes protection from liability for tort claims due to the construction, ownership, maintenance or use of dams. Finally, the law allows the Department of Environmental Protection to set water levels for dams not yet determined to be under the jurisdiction of the Federal Energy Regulatory Commission.

LD 819 An Act to Require Notification to the Landowner When Land Is Being Considered for Placement in a Resource Protection Zone PUBLIC 542

| <u>Sponsors(s)</u> | <u>Committee Report</u> | <u>Amendments Adopted</u> |
|--------------------|-------------------------|---------------------------|
| BUNKER | OTP-AM | H-685 S-436 |

LD 819, which was carried over from the 1st Regular Session, proposed to require the Board of Environmental Protection to adopt rules under the shoreland zoning law providing for individualized, written notification to a landowner whose property is being considered for placement in a resource protection zone.

Committee Amendment "B" (H-685) replaced the bill. It proposed to require a municipality to send notice by first-class mail to a landowner whose property is being considered for placement in a resource protection zone. Notice would be sent at least 14 days before the municipal planning board first discusses placing the property in the resource protection zone. If the Board of Environmental Protection adopted an ordinance for a municipality, the municipality would provide the names and addresses of landowners to the board, and the board would provide notice to landowners. The board would send notice at least 30 days before the close of the public comment period before adoption by the board.

The amendment proposed to require the municipality and the board to file written certificates indicating the names and addresses of persons they notified, and made the list prima facie evidence that notice was sent. A landowner who challenged the validity of an ordinance or map on the grounds that the municipality or the board failed to provide the required notice would be required to prove that notice was not sent, that the person did not otherwise have knowledge of the ordinance or map and that the person was materially prejudiced by that lack of knowledge.