

MAINE STATE LEGISLATURE

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L.D. 646

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DATE: March 18, 1996 (Filing No. S- 484)

NATURAL RESOURCES

Reported by: Senator LORD of York for the Committee.

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**STATE OF MAINE
SENATE
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A " to S.P. 249, L.D. 646, Bill, "An Act to Reinstate the Laws Governing Dam Abandonment"

Amend the bill by striking out the title and substituting the following:

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

Further amend the bill by inserting before the enacting clause the following:

'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.'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'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;

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2 (2) Historic sites, including, but not limited to,
4 memorials, as defined in Title 12, section 601,
subsection 1; or

6 (3) Land, buildings, structures, facilities or
8 equipment designed for use primarily by the public in
connection with public outdoor recreation; or

10 (4) Dams;

12 **Sec. 2. 38 MRSA §840, sub-§1**, as amended by PL 1993, c. 370,
14 §§9 and 10, is further amended to read:

16 **1. Power.** The commissioner may on the commissioner's own
18 motion and shall, at the request of the owner, lessee or person
20 in control of a dam, the Commissioner of Inland Fisheries and
22 Wildlife, or the Commissioner of Marine Resources, or upon
24 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:

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

32 ~~B. Authorized under the Federal Power Act, Section 23;~~

34 ~~C. Used to store water for a downstream facility licensed~~
36 ~~by the Federal Energy Regulatory Commission or authorized~~
38 ~~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;~~

40 D. Operating with a permit setting water levels issued
42 under the protection of natural resources laws, sections
44 480-A to 480-S; the site location of development laws,
sections 481 to 490; the small hydroelectric generating
46 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; or

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

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2 hearings pertaining to dam abandonments. The additional costs of
3 this state mandate are likely to be relatively minor; the exact
4 amounts can not be determined at this time. Pursuant to the
5 Mandate Preamble, the two-thirds vote of all members elected to
6 each House exempts the State from the constitutional requirement
7 to fund 90% of the additional local costs.

8 If, under the dam abandonment process, either the Department
9 of Inland Fisheries and Wildlife, the Department of Conservation
10 or the Maine Emergency Management Agency determines that assuming
11 ownership of a particular dam would best serve the public
12 interest, additional General Fund appropriations may be needed
13 for the purchase, transfer and operating costs of the abandoned
14 dams. The amounts can not be determined at this time.

15 Requiring the Maine Emergency Management Agency to evaluate
16 dams for public safety value will result in additional costs to
17 the Department of Defense and Veterans' Services since there is
18 no staff available to provide this service. The Maine Emergency
19 Management Agency is required to inspect dams under current law
20 but funding has never been provided. Additional General Fund
21 appropriations of approximately \$5,000 will be required to fund
22 these inspection costs for each qualifying dam abandonment. The
23 total General Fund appropriations required and the timing can not
24 be determined at this time.

25 The Department of Environmental Protection will incur some
26 minor additional costs to oversee and administer the dam
27 abandonment process. These costs can be absorbed within the
28 department's existing budgeted resources.

29 The Department of Inland Fisheries and Wildlife and the
30 Department of Conservation will incur some minor additional costs
31 to assess the public value of a particular dam. These costs can
32 be absorbed within the departments' existing budgeted resources.'

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38 **STATEMENT OF FACT**

39 This amendment replaces the bill, including the title. It
40 provides a formal process through which a dam owner may seek a
41 new owner for the dam and provides for the issuance of a water
42 release order to the current dam owner if a new owner can not be
43 located for the dam.

44 A dam owner may petition the Department of Environmental
45 Protection to begin the process. The owner is required to notify
46 the public that the petition has been filed through newspaper
47 notices and to send individual notice to municipalities, property
48 owners, the Department of Inland Fisheries and Wildlife, the
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2 Department of Conservation and the Maine Emergency Management
Agency. The owner then consults with those persons and agencies
to determine if any of them wish to assume ownership of the dam.

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6 The dam owner reports the results of the consultation to the
Department of Environmental Protection, and if no new owner
located, that department notifies state agencies to begin
8 evaluating the public value of the dam.

10 If a department determines that the best interest of the
public requires it to assume ownership of the dam, it must do
12 so. The public interest is determined by weighing factors such
as the cost of maintaining the dam, the benefit of maintaining
14 the dam and the benefit of releasing water from the dam. The
Department of Inland Fisheries and Wildlife makes the
16 determination for fisheries and wildlife value; the Department
of Conservation makes the determination for public recreation,
18 conservation and public use; and the Maine Emergency Management
Agency makes the evaluation for public safety value, especially
20 flood protection.

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

26 The amendment allows a dam owner to request that
28 compensation be paid for any transfer of dam ownership. If the
request for compensation prevents the transfer of the dam, the
30 dam owner is not entitled to proceed through the process. If the
request for compensation prevents the transfer during the
32 voluntary process, the petition is rejected before the state
agencies are required to evaluate the public value of the dam.
34 If the request prevents transfer to a state agency, the dam owner
is not entitled to receive a water release order.

36 The amendment requires that a local government notified of
38 this process hold a public meeting to discuss the issue of dam
ownership.

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

44 The amendment changes the law regarding the conditions under
46 which the Department of Environmental Protection may set water
levels for a dam. It allows the department to set water levels
48 for dams not yet determined to be under the jurisdiction of the
Federal Energy Regulatory Commission.

50 The amendment also adds a fiscal note to the bill.