

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

—
H.P. 26 - L.D. 62

An Act to Support Municipal and County Actions on Dam Ownership and to Make Other Changes to the Laws Regulating Release from Dam Ownership

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

Sec. 1. 38 MRSA §901, sub-§1, as enacted by PL 1995, c. 630, §3, is amended to read:

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~~ 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 and related impoundment;
- C. ~~A plan~~ Plans of the dam and appurtenant features and brief descriptions of the condition of the dam and recent operation of the dam, including for all associated features used for operation, maintenance and water level management; and
- ~~D. Any other reasonable information the department determines necessary to implement this article.~~
- E. Documentation of the owner's title, right or interest in the dam;
- F. The location of or information regarding easements or deeded or contractual rights to the dam and appurtenant features or to water levels;
- G. A record of all state inspections of and all repairs and maintenance activities conducted on the dam over the 10-year period prior to the submission of the petition, including a record of any dam safety orders for the dam issued pursuant to Title 37-B, section 1119 and information regarding any necessary remedial measures undertaken pursuant to such orders;
- H. Operations and maintenance plans for the dam;
- I. An emergency action plan for the dam if the dam is assigned a high hazard potential or significant hazard potential pursuant to Title 37-B, section 1118;

J. Documentation of the scope of work and related costs incurred for the operation and maintenance of the dam over the 10-year period prior to the submission of the petition and of all estimates for necessary repairs to the dam that have not been completed;

K. A record of all federal, state and local permits and approvals issued for or relating to the dam;

L. Documentation of insurance policies for and information and associated costs for risk management of the dam;

M. Documentation of property tax obligations for the dam and appurtenant features;

N. If requested by the department, engineering reports relating to the dam and related impoundment, including, but not limited to, any geotechnical borings, soil test data, recommendation reports, topographic survey data, stream and lake cross sections and bathymetric surveys upstream and downstream of the dam and hydrologic and hydraulic studies and data;

O. If requested by the department, environmental reports relating to the dam and related impoundment, including, but not limited to, impact assessments relating to dam removal, dam configuration or dam abandonment, failure or breach;

P. Any other information necessary for the persons listed in section 902, subsection 3 to determine whether to assume ownership of the dam; and

Q. Any other information the department determines necessary for the purposes of 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.

Sec. 2. 38 MRSA §902, sub-§1, as enacted by PL 1995, c. 630, §3, is amended to read:

1. Consultation required. Within ~~180~~ 210 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 the consultation period, the dam owner must meet with the department, the Department of Inland Fisheries and Wildlife, the Department of Marine Resources and the Maine Emergency Management Agency to review the information provided in the petition submitted pursuant to section 901, subsection 1. 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.

Sec. 3. 38 MRSA §902, sub-§1-A, as corrected by RR 2013, c. 2, §48, is amended to read:

1-A. Extension of consultation period. The consultation period under subsection 1 must be extended for an additional ~~180~~ 210 days if:

A. A municipality in which the dam or impoundment is located applies to the department for an extension and demonstrates that the municipality needs additional consultation time to facilitate an agreement for municipal ownership of the dam; or

B. The dam owner applies to the department for an extension.

If, pursuant to this subsection, the department approves an application for an extension of the consultation period under subsection 1 for an additional 210 days, the department may approve a 2nd application for an extension of the consultation period for an additional 210 days in accordance with this subsection if determined necessary by the department. The department may not extend the consultation period under subsection 1 ~~may not be extended~~ for more than ~~180~~ twice, for more than 420 days in total, regardless of the number of applications for extension under this subsection.

Sec. 4. 38 MRSA §902, sub-§3, ¶B, as enacted by PL 1995, c. 630, §3 and amended by PL 2011, c. 657, Pt. W, §6, is further amended to read:

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

Sec. 5. 38 MRSA §902, sub-§4, as amended by PL 1997, c. 789, §2 and affected by §5, is further amended to read:

4. Report on notice compliance. The dam owner shall file a report with the department within ~~180~~ 210 days of filing a petition that includes:

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

B. Names and addresses of persons notified under section 901.

Sec. 6. 38 MRSA §902, sub-§4-A, as corrected by RR 1997, c. 2, §64, is amended to read:

4-A. Report on consultation process. The dam owner shall file a report with the department within ~~180~~ 210 days of filing a petition or before the conclusion of an extension to the consultation period granted pursuant to subsection 1-A that includes:

A. Names and addresses of parties consulted in accordance with this section; and

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

Sec. 7. 38 MRSA §903, as enacted by PL 1995, c. 630, §3 and amended by PL 2011, c. 657, Pt. W, §5, is further amended to read:

§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 Marine Resources, the Department of Agriculture, Conservation and Forestry 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~~ 90 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, based on the information provided in the petition under section 901, subsection 1 or other available information;
- 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 ~~Agriculture, Conservation and Forestry~~ Marine Resources.

2-A. Evaluation of marine resources value. Within 90 days of receiving notice under subsection 2, the Department of Marine Resources 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, based on the information provided in the petition under section 901, subsection 1 or other available information;
- B. The value to marine resources of maintaining the dam; and
- C. The value to marine resources of releasing water from the dam.

The Department of Marine Resources shall notify the department of its determination. If the Department of Marine Resources 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 Marine Resources within a reasonable period of time. If the Department of Marine Resources determines that it will not assume ownership, the department shall notify the Department of Agriculture, Conservation and Forestry.

3. Evaluation of public recreational value. Within ~~60~~ 90 days of receiving notice under subsection ~~2~~ 2-A, the Department of Agriculture, Conservation and Forestry 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, based on the information provided in the petition under section 901, subsection 1 or other available information;
- 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 Agriculture, Conservation and Forestry shall notify the department of its determination. If the Department of Agriculture, Conservation and Forestry 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 Agriculture, Conservation and Forestry within a reasonable period of time. If the Department of Agriculture, Conservation and Forestry 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~~ 90 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 and the safety of the dam, based on the information provided in the petition under section 901, subsection 1 or other available information;
- 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.

5. Additional consultations required. If the Maine Emergency Management Agency pursuant to subsection 4 determines that the best interest of the public does not require it to assume ownership of the dam, within 60 days of receiving notice of that determination, the department shall notify the dam owner that, pursuant to subsections 2 to 4, no agency has determined that the best interest of the public requires it to assume ownership of the dam. Upon receipt of such notification from the department, the dam owner, as directed by the department, shall consult again with the parties listed in section 902, subsection 3, paragraphs A, C and D to determine whether any of those parties wish to assume ownership of the dam, ensuring that those parties are provided with information regarding the agency determinations under this section.

Sec. 8. 38 MRSA §908, first ¶, as enacted by PL 1995, c. 630, §3, is amended to read:

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~~ 180 days after the municipal officers receive notice under section 901 and the department determines the petition is complete for processing. County commissioners notified under section 901 must also hold a public meeting to act on the issue of dam ownership not later than ~~60~~ 180 days after receiving notification.