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Date: (Filing No. H-)

ENVIRONMENT AND NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
132ND LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 26, L.D. 62, “An Act to Support
Municipal and County Actions on Dam Ownership”

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

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

Amend the bill by striking out everything after the enacting clause and inserting the
following:

'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,

1 section 1119 and information regarding any necessary remedial measures undertaken
2 pursuant to such orders;

3 H. Operations and maintenance plans for the dam;

4 I. An emergency action plan for the dam if the dam is assigned a high hazard potential
5 or significant hazard potential pursuant to Title 37-B, section 1118;

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

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

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

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

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

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

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

24 Q. Any other information the department determines necessary for the purposes of this
25 article.

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

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

31 **1. Consultation required.** Within ~~180~~ 210 days of filing a petition pursuant to section
32 901, a dam owner shall consult with the persons and entities listed in subsection 3 to
33 determine whether any of them wish to assume ownership of the dam. During the
34 consultation period, the dam owner must meet with the department, the Department of
35 Inland Fisheries and Wildlife, the Department of Marine Resources and the Maine
36 Emergency Management Agency to review the information provided in the petition
37 submitted pursuant to section 901, subsection 1. During consultation with each person or
38 group of persons, the owner shall explain the process set forth in this article and shall
39 inform the person or group that the department may issue an order requiring release of the
40 water impounded by the dam if a new owner is not located. A dam owner may meet the
41 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 **1. Notification of agencies.** If a new owner was not located during the consultation
2 process and the department has not rejected the petition, the department shall immediately
3 notify the Department of Inland Fisheries and Wildlife, the Department of Marine
4 Resources, the Department of Agriculture, Conservation and Forestry and the Maine
5 Emergency Management Agency that an assessment of public value for the dam may be
6 required.

7 **2. Evaluation of fisheries and wildlife value.** Within ~~60~~ 90 days of receiving notice
8 under subsection 1, the Department of Inland Fisheries and Wildlife shall review the
9 following factors and determine whether the best interest of the public requires that
10 department to assume ownership of the dam:

11 A. The cost of maintaining the dam, based on the information provided in the petition
12 under section 901, subsection 1 or other available information;

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

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

15 The Department of Inland Fisheries and Wildlife shall notify the department of its
16 determination. If the Department of Inland Fisheries and Wildlife determines, after
17 considering these factors, that the best interest of the public requires it to assume ownership
18 of the dam, the department shall issue an order directing the dam owner to transfer the dam
19 to the Department of Inland Fisheries and Wildlife within a reasonable period of time. If
20 the Department of Inland Fisheries and Wildlife determines that it will not assume
21 ownership, the department shall notify the Department of ~~Agriculture, Conservation and~~
22 ~~Forestry~~ Marine Resources.

23 **2-A. Evaluation of marine resources value.** Within 90 days of receiving notice
24 under subsection 2, the Department of Marine Resources shall review the following factors
25 and determine whether the best interest of the public requires that department to assume
26 ownership of the dam:

27 A. The cost of maintaining the dam, based on the information provided in the petition
28 under section 901, subsection 1 or other available information;

29 B. The value to marine resources of maintaining the dam; and

30 C. The value to marine resources of releasing water from the dam.

31 The Department of Marine Resources shall notify the department of its determination. If
32 the Department of Marine Resources determines, after considering these factors, that the
33 best interest of the public requires it to assume ownership of the dam, the department shall
34 issue an order directing the dam owner to transfer the dam to the Department of Marine
35 Resources within a reasonable period of time. If the Department of Marine Resources
36 determines that it will not assume ownership, the department shall notify the Department
37 of Agriculture, Conservation and Forestry.

38 **3. Evaluation of public recreational value.** Within ~~60~~ 90 days of receiving notice
39 under subsection ~~2~~ 2-A, the Department of Agriculture, Conservation and Forestry shall
40 review the following factors and determine whether the best interest of the public requires
41 that department to assume ownership of the dam:

42 A. The cost of maintaining the dam, based on the information provided in the petition
43 under section 901, subsection 1 or other available information;

1 B. The value to public recreation, conservation and public use of maintaining the dam;
2 and

3 C. The value to public recreation, conservation and public use of releasing water from
4 the dam.

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

13 **4. Evaluation of public safety value.** Within ~~60~~ 90 days of receipt of notice under
14 subsection 3, the Maine Emergency Management Agency shall review the following
15 factors and determine whether the best interest of the public requires that agency to assume
16 ownership of the dam:

17 A. The cost of maintaining the dam and the safety of the dam, based on the information
18 provided in the petition under section 901, subsection 1 or other available information;

19 B. The value to public safety, particularly flood protection, of maintaining the dam;
20 and

21 C. The value to public safety, particularly flood protection, of releasing water from the
22 dam.

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

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

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

40 The municipal legislative body, as defined in Title 30-A, section 2001, of any
41 municipality notified pursuant to section 901, subsection 2 must consider and act on the
42 issue of dam ownership at a public meeting. The meeting must be held no later than ~~60~~
43 180 days after the municipal officers receive notice under section 901 and the department
44 determines the petition is complete for processing. County commissioners notified under

1 section 901 must also hold a public meeting to act on the issue of dam ownership not later
2 than ~~60~~ 180 days after receiving notification.'

3 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
4 number to read consecutively.

5 SUMMARY

6 This amendment replaces the bill and changes the title. It amends the process for
7 Department of Environmental Protection proceedings for release of dam ownership by
8 changing the information that must be submitted by the dam owner and changing the time
9 frames for certain required processes under the laws regulating those proceedings,
10 including in the consultation process required under those proceedings the Department of
11 Marine Resources to provide for an assessment of the value to marine resources associated
12 with the dam or its removal. The amendment also makes other specified changes to the
13 laws regulating release from dam ownership.

14 FISCAL NOTE REQUIRED

15 (See attached)