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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

TESTIMONY OF
LAURA PAYE, HYDROPOWER COORDINATOR
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING NEITHER FOR NOR AGAINST
L.D. 1698
AN ACT REGARDING CHANGES OF OWNERSHIP OF DAMS
PRESENTED BY REP. MILLIKEN

BEFORE THE JOINT STANDING COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

DATE OF HEARING:

MAY 5, 2025

Senator Tepler, Representative Doudera, and members of the Committee, I am Laura Paye, the Hydropower Coordinator for the Bureau of Land Resources in the Maine Department of Environmental Protection, speaking neither for nor against L.D. 1698.

This bill proposes to amend Maine's Release from Dam Ownership and Water Level Maintenance laws, located in Title 38 Sections 901-908. These statutes outline a process for an owner of a non-hydropower dam to petition the Maine Department of Environmental Protection for release from ownership or water level maintenance. The Department currently has before it the first instance of petitions that have been accepted for processing under Title 38 Sections 901-908.

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The Department proposed a bill earlier this session, L.D. 62, which would amend these sections of statute. The Committee amended L.D. 62 to incorporate provisions from other related bills and other Department suggestions before voting the bill ought to pass as amended. If the Committee desires, the Department believes that many of the provisions of L.D. 1698 could also be combined with L.D. 62. The Department has been working with Representative Milliken, municipal officials, the Department of Inland Fisheries and Wildlife (IFW) and the Maine Emergency Management Agency (MEMA) to determine which elements of L.D. 1698 should be combined with the provisions of L.D. 62. The Department suggests that many of the provisions of Section 1 of L.D. 1698 should be retained, with some edits. After consulting with IFW and MEMA, the Department does not recommend keeping sections 2 through 4 of the bill. However, we do recommend additional changes based on consultation with IFW and MEMA.

Attached to this testimony, the Department has provided proposed further amendments to L.D. 62 that would incorporate many of the provisions of L.D. 1698, as well as additional changes suggested by IFW and MEMA that the Department agrees are important. The proposed L.D. 62 amendment is color-coded to show the Department's recommended changes based on the provisions of L.D. 1698 and IFW and MEMA recommendations, as well as the previously incorporated provisions of L.D. 430. If the Committee wishes, it could reconsider L.D. 62 and combine the provisions of that bill with L.D. 1698. Either bill could ultimately serve as the vehicle to move the attached amendment forward.

Thank you for the opportunity to provide testimony on this bill. I would be happy to answer any questions from the Committee.

L.D.1698 Inclusions

§901. Petition for release; public notice

A. The name, address and phone number of the dam owner;

B. The location of the dam and related impoundment;

C. Plans of the dam and appurtenant features and brief descriptions of the condition of the dam and recent operation of the dam including all associated features used to provide operations, maintenance, and water level management; and

D. Title, right, or interest documentation;

E. Any information on easements, deeded, or contractual rights to water levels, the dam, and appurtenant features;

_____ 4. A copy of the Emergency Action Plan if the dam is
_____ a high hazard dam or a significant hazard dam.

G. Any operations and maintenance plans for the dam:

[illegible][illegible]

I. All repair and maintenance activities for the past 10 years for the dam:

J. Copies of any federal, state and local permits and approvals related to the dam:

additional consultation time to facilitate an agreement for municipal ownership of the dam; or [PL 1997, c. 789, §1 (NEW); PL 1997, c. 789, §5 (AFF).]

B. The dam owner applies to the department for an extension. [PL 1997, c. 789, §1 (NEW); PL 1997, c. 789, §5 (AFF).]

The consultation period under subsection 1 may not be extended for an additional more than 210 days regardless of the number of applications for extension under this subsection if determined necessary by the department.

38 M.R.S. §902, sub-§3, ¶B is 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 Department of Defense, the Commissioner of the Department of Corrections, the Director of the Maine Emergency Management Agency and the Dam Safety Unit;

38 M.R.S. §902, sub-§4 is amended to read:

4. Report on notice compliance. The dam owner shall file a report with the department within 180 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.

38 M.R.S. §902, sub-§4-A is amended to read:

4-A. Report on consultation process. The dam owner shall file a report with the department within 180 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.

38 M.R.S. §903, sub-§1 is amended to read:

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.

38 M.R.S. §903, sub-§2 is amended to read:

2. Evaluation of fisheries and wildlife value. Within 60 ~~10~~ 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 ~~as per records provided by the dam owner~~;
- B. The ~~value benefit~~ to fisheries and wildlife of maintaining the dam; and
- C. The ~~value benefit~~ 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~~ Department of Marine Resources.

38 M.R.S. §903, sub-§2, ¶2-A is enacted to read:

2-A. Evaluation of marine resources value. Within ~~60~~ days of receiving notice under subsection 1, 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 ~~as per records provided by the dam owner~~;
- B. The ~~benefit to marine resources~~ of maintaining the dam; and
- C. The ~~benefit 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 property 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 of the dam, the department shall notify the Department of Agriculture, Conservation, and Forestry.

38 M.R.S. §903, sub-§3 is amended to read:

3. Evaluation of public recreational value. Within 60 ~~90~~ days of receiving notice under ~~subsection 2~~ subsection 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 ~~_____~~;
- B. The ~~value~~ benefit to public recreation, conservation and public use of maintaining the dam; and
- C. The ~~value~~ benefit 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 ~~_____~~;
- 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. Notification of Interested Parties. Within 60 days of receiving notice under subsection 4, if no agency takes ownership of the dam, the department must notify the dam owner. The dam owner must re-engage consultation with parties that expressed interest in dam ownership under section 902(3) to ensure they receive the results of section 903 and have another opportunity to assume ownership.

38 M.R.S. §908 is amended to read:

Commented [LP1]: Already in L.D. 62

§908. Municipal actions on dam ownership

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 ~~and the department determines the petition is complete for processing~~ under section 901. 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.