

## Office of Policy and Legal Analysis

Date: April 21, 2021

To: Joint Standing Committee on Environment and Natural Resources

From: Dan Tartakoff, Legislative Analyst

Re: LD 909, An Act Regarding the Depth of Phillips Lake in the Town of Dedham (O'Connell)

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### **Summary of bill**

Under current law, the Lucerne-in-Maine Village Corporation (“the Corporation”) in the Town of Dedham is required to construct, operate and maintain a dam at the north end of Phillips Lake at no higher than 227 feet above sea level. The bill removes that height restriction and instead requires the dam to be constructed, operated and maintained at a height adopted by the Corporation at an annual meeting.

### **Note on existing law**

Following discussion with the Office of the Revisor of Statutes and a review of the private and special laws affecting Phillips Lake and the Corporation, it was determined that the law proposed for amendment is the bill is not the most recent version of that law. The current law (P&SL 2005, ch. 17, §1, as amended by P&SL 2005, ch. 44, §1) should read:

**Sec. 1. Lucerne-in-Maine Village Corporation authorized to construct, operate and maintain dam.** The Lucerne-in-Maine Village Corporation in the Town of Dedham, Hancock County is authorized to construct, operate and maintain a dam at the outlet at the north end of Phillips Lake in the Town of Dedham. Unless a water level regime is established by the Commissioner of Environmental Protection pursuant to the Maine Revised Statutes, Title 38, chapter 5, subchapter 1, article 3-A, subarticle 4, the dam, including any flashboards, must be constructed, operated and maintained at no higher than 227 feet above sea level as established by the National Geodetic Survey and at a width that is no less than the current width of the dam.

The shaded language represents a 2006 change to this 2005 law that was not, but should have been, included in the bill. That language references the provisions in the Maine Revised Statutes under which the DEP Commissioner may establish a water level regime or minimum flow requirements for a body of water impounded by a dam.

### **Additional background – legislative history**

The Corporation was initially established in 1927 (P&SL 1927, ch. 43). In 1961, the Corporation was authorized to construct a dam and fishways at the outlet on the north end of Phillips Lake (P&SL 1961, ch. 188 – distributed separately at work session). That 1961 law provided that the dam must be constructed and operated and maintained “to hold the water level of Phillips Lake no higher than elevation 227 feet above sea level.” That authorization and the 227-foot water level requirement existed without amendment from 1961 until its repeal in 1999 (P&SL 1999, ch. 3).

The repeal of that authorization in 1999 was proposed by Representative Edward Povich of Ellsworth. A copy of the bill file from that legislation, including Representative Povich's remarks, have been distributed separately from this analysis. No others spoke on that bill or submitted testimony and it was unanimously voted OTP by the committee. That repealed authorization, in a slightly different form, was essentially reenacted in 2005 (P&SL 2005, ch. 17) and amended in 2006 (P&SL 2005, ch. 44) in the manner described above.

**List of legislators/entities that submitted written testimony and/or spoke at the hearing**

**Proponents** – Representative O'Connell, Representative Perry, additional members of the public.

**Opponents** – Lucerne-in-Maine Village Corporation, additional members of the public.

**Neither for nor against** – none.

**Notes, issues and proposed amendments**

1. *Amendment of existing law* – as described above, because the bill as printed does not contain the most recent version of the private and special law proposed for amendment, if the committee wishes to support this proposal, the bill should be amended to ensure that the most recent version of the law is amended.
2. *Sponsor's proposed amendment* – the sponsor has proposed an amendment to the bill intended to address issues raised at the hearing. That amendment has been distributed separately from this analysis.
3. *Current status* – according to the Corporation, it is at present working with DEP to do an inflow/outflow analysis of the lake and to assess the structural integrity of the dam and any need for repairs.
4. *Opposition of Corporation* – in written and oral testimony, the Corporation expressed, among other things, its specific concern with the bill's proposal to have the Corporation annually set the dam height, noting a concern over the Corporation's potential liability for any resulting property damages, especially given the legal history described at the hearing (a landowner sued and prevailed against the Corporation in 1999 for damages to property caused by high water levels).

**Requests for work session**

For the work session, Representative Doudera asked whether there are any other instances of a lake water level being set by law. Although not an exhaustive search by any means, with the assistance of an OPLA researcher, I was able to identify 3 laws that may be responsive to the question.

1. P&SL 1911, ch. 131 – authorized Pennamaquam Power Company to adjust the water levels of Pennaquam Lake in Washington County to certain specified water levels as necessary to support power production.
2. P&SL 1933, ch. 22 – authorized North East Harbor Water Company to erect and maintain a dam on Lower Hadlock Pond in Hancock County to raise the water level to 190.3 feet above mean sea level and hold it at that height.

3. P&SL 1985, c. 40 – authorized the Camden and Rockland Water Company to withdraw water from the Megunticook River provided that the Department of Human Services was authorized to establish minimum flow and minimum water level requirements for the Megunticook River to which that withdrawal would be subject.

It should also be noted that, as referenced above, the Commissioner of Environmental Protection has the authority under Title 38, section 840 to issue an order establishing a water level regime or minimum flow requirement for a body of water impounded by a dam.

**Fiscal information**

Not yet available from OFPR.