

Executive Summary of A Review of State Dam Abandonment and Registration Laws and Federal Dam Licensing Laws

This staff study summarizes state laws pertaining to dam abandonment and regulation, and federal laws pertaining to licensing and regulating hydroelectric dams. The study is the result of action by the Joint Standing Committee on Natural Resources to carry over LD 626, An Act to Reinstate the Laws Governing Dam Abandonment, from the First Regular Session of the 117th Legislature to the Second Regular Session. The committee requested authorization to meet during the interim between sessions to consider issues raised during the First Regular Session. The Legislative Council, which must approve carry-over requests, authorized a staff study.

Maine's Dam Laws

The exact number of dams in Maine is unknown. In 1993 there were 744 dams registered under a law that is now repealed. These dams represented dams that were larger than a certain minimum size. Approximately 107 dams exist in Maine associated with the production of hydropower that the federal government licenses and regulates. (The state does play a regulatory role with these 107 dams through a water quality certification process when the dams become due for relicensing. In addition, a state permit is required for construction or reconstruction of a dam, or for undertaking certain alterations of a dam.)

Current Maine law: Current Maine law provides the state various powers related to dams within the state's regulatory jurisdiction.

Water-level law: A dam owner may be ordered by the Commissioner of Environmental Protection to keep lake height and out-flow volumes at certain levels. The order may contain provisions requiring a dam owner to maintain a dam to ensure compliance with required levels. The commissioner may initiate an order. In addition, certain groups of people may petition the commissioner for an order. To date, the commissioner has issued water level orders for 29 dams. All of the orders resulted from petitions from lake-shore property owners who sought the establishment of certain water levels. Municipalities may adopt ordinances to set water levels, however, no municipalities have enacted such ordinances.

Dam safety law: A dam owner may be ordered by the director of the Maine Emergency Management Agency (MEMA) to repair, maintain or operate a dam in a certain manner. An order may follow a safety inspection by MEMA. The director may initiate a dam safety inspection. In addition, certain people may petition the director for a safety inspection of a dam. MEMA was required by law

to have inspected certain dams throughout Maine by June 1, 1995. However, a dam inspector position has never been funded and no dams have been inspected.

Abandoned dams: No general state law exists regarding the abandonment of dams.

Abandoned dams may be defined in two ways:

- Dams for which an owner has abandoned maintenance; or
- Dams for which an owner cannot be determined

From 1983 to 1993, Maine law did exist concerning abandoned dam ownership. Maine's former dam registration and abandonment law provided a mechanism for giving ownership of abandoned dams to the state or other parties interested in owning a dam. Under the law, any unregistered dam was considered abandoned. If efforts by the state to find an owner were unsuccessful, the state assumed ownership and entertained petitions to transfer ownership to interested third parties.

The state assumed ownership of 11 dams while the law was in effect. In the cases of several of these dams, ownership could not be determined. Ownership of nine dams has been transferred to third parties. The state has retained ownership of two dams.

Dams Regulated by the Federal Energy Regulatory Commission

Although the Federal Power Act grants some projects and provides exemptions for others, in general, a license from the Federal Energy Regulatory Commission is required to construct, operate, or maintain a hydropower project impacting navigable waters or a hydropower project that produces power affecting the public utility power grid. Typically, a project license includes not only the power generating dam but also related facilities such as storage dams, power houses and transmission lines.

State agencies consult with license applicants and make recommendations to FERC. FERC is not, however, required to incorporate the recommendations of the state agencies in the terms and conditions of a license. The only real control a state has in FERC licensing decisions is through certification of compliance with the Clean Water Act. An applicant for a FERC license must obtain certification from the appropriate state certifying agency. In Maine, the Maine Land Use Regulation Commission and the Department of Environmental Regulation are the certifying agencies. State law prohibits those state agencies from certifying a project unless they receive assurance that state water quality standards will not be violated.

Nationally, a growing number of dam owners seeking to terminate FERC licenses upon their expiration is anticipated. The complexity, cost and uncertainty of the relicensing process are cited as the reasons for this anticipated trend. FERC has recently issued a policy statement on the decommissioning of hydropower projects. This statement asserts FERC's authority to set conditions for the decommissioning of licensed projects. A dam licensed by FERC can not be simply abandoned.

There are approximately 15 storage dams in Maine that are not currently licensed or regulated by FERC yet are associated with hydroelectric projects licensed by FERC. The Department of Environmental Protection is waiting for FERC to make a determination of jurisdiction for these dams. If FERC decides a dam is not within its jurisdiction, in some cases the DEP may still not have authority to regulate water levels under current state law.