

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

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Legislative Document

No. 292

H. P. 225

House of Representatives, January 19, 1965

Referred to Committee on Inland Fisheries and Game. Sent up for concurrence and ordered printed.

JEROME G. PLANTE, Clerk

Presented by Mr. Roy of Winslow.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-FIVE

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**AN ACT Providing for Adequate Fishways in Dams.**

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

**R. S., T. 12, § 2201-A, additional.** Title 12 of the Revised Statutes is amended by adding a new section 2201-A, to read as follows:

**‘Sec. 2201-A. Adequate fishways in dams; procedure.** Any dam or other obstruction erected or maintained on any river, stream or brook in the State, without an adequate fishway or fishways, or, having a fishway inoperative because of faulty construction, improper location or inadequate water flow so as to obstruct the passage of fish, is declared to be a nuisance, and the Commissioner of Inland Fisheries and Game is directed to abate the same by the destruction of such dam or obstruction unless, within 90 days after written notice so declaring such a nuisance to exist, mailed to the owner or owners thereof by registered mail, return receipt requested, or by publication bimonthly for 3 consecutive months in a newspaper circulated in the county where the nuisance is declared to exist, said owner or owners shall give a bond with sufficient sureties to and in the name of the Commissioner of Inland Fisheries and Game in a penal sum twice the commissioner’s estimated cost of erecting or constructing an adequate and efficient fishway or fishways, upon said obstruction, the specifications of which fishway or repairs or modifications shall be prescribed by the commissioner. Whereupon, the owner or owners shall have a period of one year after the receipt of plans and specifications for construction or corrective modifications of said fishway or fishways, from the commissioner, to correct, modify or construct and erect the same.

If, after bond is given as provided, the owner or owners fail to so construct or modify said fishway or fishways as prescribed by the commissioner, a com-

plaint in the Superior Court in the county in which said nuisance is said to exist, shall be brought by the commissioner, as plaintiff, against the obligors on the bond, and neither the commissioner nor the Attorney General shall have any discretion in the matter. A simple complaint of breach of conditions of the bond and attaching the bond, or a copy thereof, to the complaint shall be sufficient to establish a prima facie case, entitling the plaintiff to judgment in the event of default.

Upon final judgment of the Superior Court on the bond for breach of condition thereof and execution obtained, the commissioner shall levy on the execution and with the money thus obtained shall contract with the lowest bidder for the erection, modification, construction and installation of adequate and proper fishway or fishways, efficacious for the purpose intended on such dam or obstruction in question, said contractor to give bond to complete said undertaking within one year from the date of the award of the contract. The commissioner is authorized to repair and maintain said fishway or fishways with the balance of the money remaining.

If, after the expiration of 90 days from the date of the return receipt of the written notice or last publication, the owner or owners have not supplied the bond required, the commissioner is directed to destroy the dam or obstruction forthwith. Neither the commissioner, his agents, employees or contractors shall be chargeable with trespass, either in a criminal or civil action, for any of their doings while acting in the course of their duties as prescribed, either for the purpose of maintaining, repairing or the construction of fishways, nor for the destruction of dams, or other obstructions as provided.

This section shall be given a broad and liberal construction to carry out the public policy expressed herein.