

MAINE STATE LEGISLATURE

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(New Title)
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FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2490

H. P. 1955

House of Representatives, February 7, 1974

Reported by Mrs. Baker from the Committee on Judiciary and printed under Joint Rules No. 18.

E. LOUISE LINCOLN, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT Relating to the Dredging, Filling or Otherwise Altering of Rivers,
Streams and Brooks.

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

Sec. 1. R. S., T. 12, § 2205, repealed. Section 2205 of Title 12 of the Revised Statutes, as amended by section 11 of chapter 85 and as last repealed and replaced by section 36 of chapter 622, both of the public laws of 1971, is repealed.

Sec. 2. R. S., T. 12, c. 313, sub-c. II, additional. Chapter 313 of Title 12 of the Revised Statutes is amended by adding a new subchapter II to read as follows:

SUBCHAPTER II

ALTERATION OF RIVERS, STREAMS AND BROOKS

§ 2206. Prohibitions

No individual person, firm, corporation, municipality, state agency or other legal entity shall dredge or cause to be dredged, fill or cause to be filled, or erect or cause to be erected a causeway, bridge, marina, wharf, dock or other permanent structure, in, on, over or abutting any river, stream or brook without first obtaining a permit therefor from the commissioner.

§ 2207. Permits; standards

If the applicant for the permit demonstrates to the satisfaction of the commissioner that the proposed activity will not unreasonably interfere with existing recreational, navigational, scenic and asthetic uses; nor otherwise

unreasonably interfere with or harm the natural environs of the river, stream or brook; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor create or cause to be created unreasonable noise or traffic of any nature; nor unreasonably harm any fish or wildlife habitat; nor lower the quality of any waters, the commissioner shall grant the permit upon such terms as he deems necessary to insure that the proposed activity will comply with the foregoing standards.

§ 2208. Hearings; appeals

In the event that an application for a permit is denied, or that it is granted upon terms objectionable to the applicant, the applicant may, within 30 days of receipt of notice of such decision, file a notice of appeal with the commissioner. The commissioner may then, within 30 days of receipt of such notice of appeal, provide the applicant with the opportunity for a hearing which shall be before him or his designee, and of which a transcript shall be made. Any person aggrieved by an order or decision of the commissioner following such hearing may, within 30 days of receipt of notice of such decision, appeal therefrom to the Superior Court by filing a notice of appeal stating the points of appeal. Such appeal shall be heard by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcript of the hearing, the exhibits thereto and the decision of the commission. The court's review shall be limited to questions of law and to whether the commissioner acted regularly and within the scope of his authority and the commissioner's decision shall be final so long as supported by substantial evidence. The court may affirm, reverse or remand the commissioner's decision for further proceedings. Appeals from all other orders or decisions of the commissioner, unless otherwise specified by statute, shall be taken pursuant to Rule 80B of the Maine Rules of Civil Procedure.

§ 2209. Administration

The commissioner may, pursuant to the Administrative Code and based upon the standards provided in section 2207, adopt, amend and repeal such regulations, establish such hearing procedures and charge such fees as he deems necessary to properly administer this subchapter. Fees collected shall accrue to the department and shall be expended by it for expenses in carrying out its duties prescribed by this subchapter.

§ 2210. Penalties

Any individual person, firm, corporation, municipality, state agency or other legal entity who dredges or causes to be dredged, fills or causes to be filled or erects or causes to be erected any causeway, bridge, marina, wharf, dock or other permanent structure in, on, over or abutting any river, stream or brook without a permit from the commissioner shall be punished by a fine of not less than \$100 nor more than \$200 for each day of such violation.

§ 2211. Injunction; restoration

In the event of the violation of this subchapter, the Attorney General may institute proceedings to enjoin further violations and to compel restoration of the affected area to its condition prior to the occurrence of the violation.

§ 2212. Exemptions

This subchapter shall not apply to river, stream or brook crossings in connection with public works projects which shall alter not more than a total of 200 feet in any mile of shore nor to private crossing or dam projects which shall alter not more than a total 100 feet in any mile of shore. Alterations to both shores of the river, stream or brook shall be combined in arriving at a total shore footage.