

MAINE STATE LEGISLATURE

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D. OF R.

1

L.D. 1080

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(Filing No. S-135)

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STATE OF MAINE

4

SENATE

5

11TH LEGISLATURE

6

FIRST REGULAR SESSION

7

COMMITTEE AMENDMENT " A " to S.P. 359,

8

L.D. 1080, Bill, "AN ACT Concerning Fishways in Dams

9

and Other Artificial Obstructions in Coastal Waters."

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Amend the bill in section 1 in that part designated "§6121." in subsection 4, paragraph B, by striking out all of subparagraphs (1), (2) and (3) (page 3, lines 12 to 22 in L.D.) and inserting in their place the following:

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'(1) He is petitioned by 50 or more Maine residents; or

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'(2) The owner, lessee or other person in control of the dam or artificial obstruction requests a public hearing.'

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Further amend the bill in section 1 in that part designated "§6121." in subsection 4 by adding at the end the following:

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'C. The commissioner shall accept testimony from the dam owner, lessee or other person in control of the dam or artificial obstruction on alternate fishway designs to those proposed by the commissioner for that dam or artificial obstruction.'

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Further amend the bill in section 1 in that part designated "§6121." in subsection 5 by adding at the end the following:

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'In the event that the commissioner decides that no fishway should be constructed, he shall specify in that decision a period immediately subsequent to that decision during which no fishway may be required to be constructed. That period may not exceed 5 years.'

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COMMITTEE AMENDMENT "A" to S.P. 359, L.D. 1080

1 Further amend the bill in section 1 in that part
2 designated "§6121." in subsection 6, paragraph A by
3 striking out all of the 2nd and 3rd sentences (page
4 4, lines 15 to 27 in L.D.) and inserting in their
5 place the following:

6 'If the owner, lessee or other person in control of
7 the dam or other artificial obstruction refuses to
8 comply or does not fully comply with the commis-
9 sioner's decision, the commissioner shall initiate a
10 civil action to enjoin the owner, lessee or person in
11 control of the dam to comply fully with the commis-
12 sioner's order or to restrain the violation of an
13 order. In the proceeding, the court shall not
14 review the legality of the commissioner's order,
15 except when the owner, lessee or person in control of
16 the dam or artificial obstruction has brought a
17 timely petition for judicial review pursuant to Title
18 5, chapter 375, subchapter VII.'

19 Further amend the bill in section 1 in that part
20 designated "§6121." in subsection 6 by striking out
21 all of paragraph B (page 4, lines 28 to 36 in L.D.)
22 and inserting in its place the following:

23 'B. The court may render judgment against and
24 order the sale of the dam or other artificial
25 obstruction, the land on which it stands and a
26 right-of-way to the dam or artificial obstruction
27 in order to secure the costs of fishway construc-
28 tion, repair, alteration or maintenance and costs
29 of the court-ordered sale and the costs incurred
30 by the department for fishway design. The pur-
31 chaser of the dam or other obstruction shall be
32 subject to the commissioner's decision.'

33 Further amend the bill in section 1 in that part
34 designated "§6121" by striking out all of subsection
35 7 and inserting in its place the following:

36 '7. Privileged entry. The commissioner, his

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1 agents or subcontractors shall be privileged to
2 enter upon any private land in order to period-
3 ically examine fishways in dams or other artifi-
4 cial obstructions and the examination of dams
5 provided in subsection 2. The commissioner shall
6 notify the landowner, lessee or other person in
7 control of the dam when the examination will take
8 place and the time required to complete the exam-
9 ination. The commissioner shall make every
10 effort to preserve private land and shall restore
11 surrounding lands to the grade and condition
12 existing prior to entry, if economically fea-
13 sible.'

14 Further amend the bill in section 2 in that part
15 designated "§6122." in subsection 1 (page 5, line 16
16 in L.D.) by inserting after the underlined word
17 "owner" the underlined words and punctuation ',
18 lessee or other person in control of the dam or
19 other artificial obstruction'

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STATEMENT OF FACT

21 This amendment permits a hearing request by 50 or
22 more Maine residents rather than only those residing
23 in the location of the proposed fishway. It deletes
24 a section regarding request for hearing by a joint
25 standing committee of the Legislature. It clarifies
26 the section relating to court action and limits court
27 ordered sale proceeds to be used for the fishway con-
28 struction required by the commissioner's decision.
29 It removes the requirement that the department con-
30 struct a fishway and deletes additional references to
31 that requirement. The amendment adds the requirement
32 that the commissioner accept offered testimony relat-

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1 ing to the fishway construction. It includes lan-
2 guage to require the commissioner to include in this
3 decision a period following the decision during which
4 no fishway may be required. This latter provision
5 will give fair notice to dam owners.

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Reported by the Committee on Marine Resources
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