

MAINE STATE LEGISLATURE

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D. OF R.

1

L.D. 1253

2

(Filing No. S- 124)

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STATE OF MAINE

4

SENATE

5

11TH LEGISLATURE

6

FIRST REGULAR SESSION

7

COMMITTEE AMENDMENT " A " to S.P. 405,

8

L.D. 1253, Bill, "AN ACT Concerning Fishways in Dams

9

and Other Artificial Obstructions in Inland Waters."

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Amend the Bill in section 2 in that part designated "§7701-A." in subsection 4, paragraph B, by striking out all of subparagraph (1) and inserting in its place the following:

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

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Further amend the Bill in section 2 in that part designated "§7701-A." in subsection 4, paragraph B, by striking out all of subparagraph (2).

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Further amend the Bill in section 2 in that part designated "§7701-A." in subsection 4 by adding at the end the following:

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'C. The commissioner shall accept testimony from the 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 2 in that part designated "§7701-A." 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 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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OF A.

COMMITTEE AMENDMENT " A " to S.P. 405, L.D. 1253

1 Further amend the Bill in section 2 in that part
2 designated "§7701-A." in subsection 6, paragraph A,
3 by striking out all of the last 2 sentences and
4 inserting in their place the following:

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

19 Further amend the Bill in section 2 in that part
20 designated "§7701-A." in subsection 6, paragraph B,
21 in the 3rd line (page 4, line 30 in L.D.) by striking
22 out the underlined words "as well as surrounding
23 lands" and inserting in their place the underlined
24 words 'the land on which it stands and a right-of-way
25 to the dam or artificial obstruction'

26 Further amend the Bill in section 2 in that part
27 designated "§7701-A." in subsection 6, paragraph B,
28 in the 6th line (page 4, line 33 in L.D.) by insert-
29 ing after the underlined word "sale" the following:
30 'and the costs incurred by the department for fishway
31 design'

32 Further amend the Bill in section 2 in that part
33 designated "§7701-A." in subsection 6, paragraph B in
34 the 7th and 8th lines (page 4, lines 34 and 35 in
35 L.D.) by striking out the underlined words "all re-
36 quirements concerning fish passage set forth in"

37 Further amend the Bill in section 2 in that part

COMMITTEE AMENDMENT " A " to S.P. 405, L.D. 1253

1 designated "§7701-A." by striking out all of subsec-
2 tion 7 and inserting in its place the following:

3 '7. Privileged entry. The commissioner, his
4 agents or subcontractors shall be privileged to enter
5 upon any private land in order to periodically exam-
6 ine fishways in dams or other artificial obstructions
7 and the examination of dams provided in subsection 2.
8 The commissioner shall notify the landowner, lessee
9 or other person in control of the dam when the exami-
10 nation will take place and the time required to com-
11 plete the examination. The commissioner shall make
12 every effort to preserve private land and shall
13 restore surrounding lands to the grade and condition
14 existing prior to entry, if economically feasible.'

15 Further amend the Bill in section 3 in the first
16 line by striking out the following: "§7701-A" and
17 inserting in its place the following: '§7701-B'

18 Further amend the Bill in section 3 in the 2nd
19 line by striking out the following: "§7701-A." and
20 inserting in its place the following: '§7701-B.'

21 Further amend the Bill in section 3 in that part
22 designated "§7701-A." in subsection 1 in the 3rd line
23 (page 5, line 14 in L.D.) by inserting after the
24 underlined word "owner" the underlined punctuation
25 and words ', lessee or other person in control of the
26 dam or other artificial obstruction,'

27 STATEMENT OF FACT

28 This amendment permits a hearing request by 50 or
29 more Maine residents rather than only those residing
30 in the location of the proposed fishway. It deletes
31 a section regarding request for hearing by a joint
32 standing committee of the Legislature. It clarifies
33 the section relating to court action and the use of
34 court-ordered sale proceeds. It removes the require-
35 ment that the department construct a fishway and

J. OF R.

(Filing No. S-124)

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1 deletes additional references to that requirement.
2 The amendment adds the requirement that the commis-
3 sioner accept offered testimony relating to the fish-
4 way construction. It includes language to require the
5 commissioner to include in his decision a period fol-
6 lowing the decision during which no fishway shall be
7 required. This latter provision gives fair notice to
8 dam owners.

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Reported by the Committee on Fisheries and Wildlife.
Reproduced and distributed pursuant to Senate Rule 11-A
May 16, 1983 (Filing No. S-124)