

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 1253

6  
7 S.P. 405

In Senate, March 17, 1983

8 Referred to the Committee on Fisheries and Wildlife. Sent down for  
9 concurrence and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Dow of Kennebec.

Cosponsors: Representative Clark of Millinocket, Representative Vose of  
11 Eastport and Representative Erwin of Rumford.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT Concerning Fishways  
18 in Dams and Other  
19 Artificial Obstructions in  
20 Inland Waters.  
21

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

24 Sec. 1. 12 MRSA §7701, as enacted by PL 1979, c.  
25 420, §1, is repealed:

26 Sec. 2. 12 MRSA §7701-A, is enacted to read:

27 §7701-A. Fishways in dams and other artificial  
28 obstructions

29 1. Commissioner's authority. In order to con-  
30 serve, develop or restore anadromous or migratory  
31 fish resources, the commissioner may require a fish-  
32 way to be erected, maintained, repaired or altered by

1 the owners, lessors or other persons in control of  
2 any dam or other artificial obstruction within inland  
3 waters frequented by alewives, shad, salmon, sturgeon  
4 or other anadromous or migratory fish species.

5 2. Examination of dams. The commissioner shall  
6 periodically examine all dams and other artificial  
7 obstructions to fish passage within the inland waters  
8 in order to determine whether fishways are necessary,  
9 sufficient or suitable for the passage of anadromous  
10 or migratory fish.

11 3. Initiation of fishway proceedings. The com-  
12 missioner shall initiate proceedings to consider con-  
13 struction, repair or alteration of fishways in exist-  
14 ing dams or other artificial obstructions whenever he  
15 determines that one or more of the following condi-  
16 tions may exist:

17 A. Fish passage at the dam or obstruction in  
18 issue, whether alone or in conjunction with fish  
19 passage at other upriver barriers, will improve  
20 access to sufficient and suitable habitat any-  
21 where in the watershed to support a substantial  
22 commercial or recreational fishery for one or  
23 more species of anadromous or migratory fish; or

24 B. Fish passage at the dam or obstruction in  
25 issue is necessary to protect or enhance rare,  
26 threatened or endangered fish species.

27 4. Adjudicatory proceedings.

28 A. A fishway proceeding shall be an adjudicatory  
29 proceeding under the Maine Administrative Proce-  
30 dure Act, Title 5, chapter 375, subchapter IV,  
31 but a hearing shall not be required unless  
32 requested in accordance with paragraph B. Notice  
33 of the proceeding shall be given in accordance  
34 with Title 5, section 9052 and the following re-  
35 quirements:

36 (1) Personal notice shall be given to the  
37 dam owner, lessee or other person in control  
38 of the dam or artificial obstruction,  
39 informing that person that a proceeding has  
40 been undertaken and their right to request a  
41 hearing; and

1                   (2) Notice to the public, in newspapers of  
2                   general circulation in the areas affected  
3                   shall be given notifying the public of the  
4                   initiation of the proceedings and of the  
5                   public's opportunity to request a hearing.

6                   B. If any interested person requests a public  
7                   hearing, the commissioner shall, within 30 days,  
8                   either notify the petitioners in writing of his  
9                   denial stating the reasons therefor, or schedule  
10                   a public hearing. The commissioner shall hold a  
11                   public hearing whenever:

12                   (1) He is petitioned by 50 or more resi-  
13                   dents of a municipality or unorganized ter-  
14                   ritory in which the dam or other artificial  
15                   obstruction is located;

16                   (2) He is directed by the joint standing  
17                   committee of the Legislature having juris-  
18                   isdiction over inland fisheries and wildlife  
19                   to hold a hearing; or

20                   (3) The owner, lessee or other person in  
21                   control of the dam or artificial obstruction  
22                   requests a hearing.

23                   5. Decision. In the event that the commissioner  
24                   decides that a fishway should be constructed,  
25                   repaired, altered or maintained, his final orders  
26                   shall be issued with specific plans and descriptions  
27                   of the fishway construction, alteration, repair or  
28                   maintenance requirements, the conditions of the use  
29                   of the fishway and the time and manner required for  
30                   fishway operation. The commissioner may issue a  
31                   decision requiring the owners, lessees or other per-  
32                   sons in control of the dam or obstruction to con-  
33                   struct, repair, alter or maintain a fishway. Such a  
34                   decision shall be supported by a finding based on  
35                   evidence submitted to him that either of the follow-  
36                   ing conditions exist:

37                   A. One or more species of anadromous or migra-  
38                   tory fish can be restored in substantial numbers  
39                   to the watershed by construction, alteration,  
40                   repair or maintenance of a fishway and habitat  
41                   anywhere in the watershed above the dam or

1 obstruction is sufficient and suitable to support  
2 a substantial commercial or recreational fishery  
3 for one or more species of anadromous or migra-  
4 tory fish; or

5 B. The construction, alteration, repair or  
6 maintenance of a fishway is necessary to protect  
7 or enhance rare, threatened or endangered fish  
8 species.

9 6. Compliance.

10 A. The owner, lessee or other person in control  
11 of the dam or other artificial obstruction shall  
12 be jointly and severally liable for the costs of  
13 fishway design, construction, repair, alteration  
14 or maintenance, and for full compliance with a  
15 decision issued pursuant to subsection 5. If the  
16 owner, lessee or other person in control of the  
17 dam or other artificial obstruction refuses to  
18 comply or does not fully comply with the commis-  
19 sioner's decision, the commissioner shall initi-  
20 ate a civil action against the owner, lessee or  
21 other person in control of the dam or other arti-  
22 ficial obstruction in damages in the amount of  
23 fishway design, construction, repair, alteration  
24 or maintenance costs. Upon receipt of necessary  
25 funds through a court action, the commissioner  
26 shall construct, repair, alter or maintain the  
27 fishway in accordance with his decision.

28 B. The court may render judgment against and  
29 order the sale of the dam or other artificial  
30 obstruction, as well as surrounding lands, in  
31 order to secure the costs of fishway construc-  
32 tion, repair, alteration or maintenance and costs  
33 of the court-ordered sale. The purchaser of the  
34 dam or other obstruction shall be subject to all  
35 requirements concerning fish passage set forth in  
36 the commissioner's decision.

37 7. Privileged entry. The commissioner, his  
38 agents or subcontractors shall be privileged to enter  
39 upon any private land in order to construct, repair,  
40 alter or maintain a fishway or to periodically exam-  
41 ine fishways in dams or other artificial obstruc-  
42 tions. The commissioner shall notify the landowner,



