

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2508

H.P. 1837

House of Representatives, April 13, 1990

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative MARSH of West Gardiner.

Cosponsored by Representative CARTER of Winslow, Senator HOLLOWAY of Lincoln and Senator KANY of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**Resolve, Authorizing the Governor and the Atlantic Sea Run Salmon
Commission to Enter into an Agreement with Edwards Manufacturing
Company, Inc..**

(EMERGENCY)



Emergency preamble. Whereas, Acts and resolves of the
2 Legislature do not become effective until 90 days after
adjournment unless enacted as emergencies; and

4
Whereas, Atlantic sea run salmon and other anadromous
6 species are important natural resources of the State which must
be protected and restored to further the people's interests in
8 environmental protection and recreation; and

10
Whereas, the historic runs of the Atlantic sea run salmon
and other anadromous species can be protected and restored in the
12 Kennebec River, one of the State's great rivers, by providing
increased spawning habitat in the Kennebec River Basin; and

14
Whereas, anadromous fish passage and increased spawning
16 habitat may be protected and restored more effectively by
removing or breaching the barrier commonly known as the Edwards
18 Dam; and

20
Whereas, the Edwards Manufacturing Company, Inc. currently
owns a licensed and operating hydroelectric facility in the
22 Kennebec River at Augusta which includes the Edwards Dam; and

24
Whereas, the Federal Energy Regulatory Commission license
for Project 2389, the hydroelectric facility, expires on December
26 31, 1993; and

28
Whereas, Edwards Manufacturing Company, Inc. has filed a
notice of intent to file a federal application for relicensing
30 and is applying to federal and state agencies to relicense the
Edwards Dam for hydroelectric purposes; and

32
Whereas, Edwards Manufacturing Company, Inc. currently has
34 contracted to sell electricity from the hydroelectric facility to
Central Maine Power Company and that contract expires on December
36 31, 1998; and

38
Whereas, it is in the best interest of the State, subject to
regulatory approvals, to remove or breach the Edwards Dam
40 following expiration of the existing power contract; and

42
Whereas, the Governor has requested that the Atlantic Sea
Run Salmon Commission be the lead instrumentality of the State to
44 effectuate the purposes of this policy and to apply to state and
federal agencies for a license to remove or breach the Edwards
46 Dam; and

48
Whereas, pursuant to the Maine Revised Statutes, Title 12,
section 6252-A, subsection 5, the commission has statutory
50 authority to acquire interests in dams and other real property,
including the Edwards Dam; accordingly, the purpose of this
52 resolve is to provide legislative direction with respect to the

2 future utilization of the Edwards Dam if the commission enters
3 into an agreement to acquire the Edwards Dam in accordance with
4 its existing legal authority; and

6 **Whereas,** the primary purposes of this policy are to remove
7 or to breach the Edwards Dam after January 2, 1999, and to
8 provide for the support of the State, as provided for in the
9 agreement, for the continued operation of the Edwards
10 hydroelectric facility through January 2, 1999, and thereafter so
11 long as the State is a colicensee; and

12 **Whereas,** the complex and lengthy federal and state licensing
13 processes and the expense of litigation that may occur if these
14 matters are not resolved require that action be taken
15 immediately; and

16 **Whereas,** in the judgment of the Legislature, these facts
17 create an emergency within the meaning of the Constitution and
18 require the following legislation as immediately necessary for
19 the preservation of the public peace, health and safety; now,
20 therefore, be it

22 **Sec. 1. Policy and findings. Resolved:** That the Legislature
23 declares it to be the policy of the State, consistent with its
24 duties to protect the health, safety and welfare of all citizens,
25 to enhance and maintain the quality of the environment and to
26 conserve and enhance natural resources, to authorize the Atlantic
27 Sea Run Salmon Commission and the Governor to enter into an
28 agreement with Edwards Manufacturing Company, Inc., referred to
29 in this resolve as Edwards, owner of the Edwards Hydroelectric
30 Facility, referred to in this resolve as the facility, in
31 Augusta, Maine, which includes the Edwards Dam, to provide for
32 the utilization of the Edwards Dam and flowage rights for the
33 purpose of the removal or breach of the Edwards Dam; and that
34 pursuant to that agreement, the State shall support Edwards'
35 application to join the State as a colicensee and for an
36 extension in its Federal Energy Regulatory Commission license to
37 allow for the continued operation of the facility by Edwards
38 until the removal or breach of the Edwards Dam by the State,
39 which may not be earlier than January 2, 1999, in accordance with
40 the terms of the agreement as set forth in section 2 of this
41 resolve; and be it further

44 **Sec. 2. Governor and Atlantic Sea Run Salmon Commission**
45 **authorized to enter into agreement. Resolved:** That the Governor and
46 the Atlantic Sea Run Salmon Commission are authorized to
47 negotiate with Edwards to enable the State to bind the State to
48 an agreement on such terms and conditions as they deem
49 appropriate; provided, however, that the agreement is not
50 inconsistent with this resolve and includes the following terms.

2 1. Edwards shall continue to operate the facility until the
removal or breach of the Edwards Dam by the State, which may not
4 be earlier than January 2, 1999. Edwards shall apply, at its
expense, for an extension herein and to join the State as a
6 colicensee of the facility, such application to be filed within
approximately 30 days after the execution of the agreement by
8 Edwards and the State. The State shall support Edwards in its
extension application to the Federal Energy Regulatory Commission
10 and any other necessary agencies for authorization to extend its
existing license to operate the project for up to an additional 7
12 years and add the State as a colicensee. If the Federal Energy
Regulatory Commission fails to approve the application for
14 extension and to join the State as a colicensee by April 1, 1991,
the agreement terminates.

16 2. If the Federal Energy Regulatory Commission grants the
application by April 1, 1991, Edwards shall install an upstream
18 and downstream fish passage facility as has been specified by the
Department of Marine Resources, the construction of which must
20 commence in the first construction season after receipt of
necessary regulatory approvals.

22 3. If the Federal Energy Regulatory Commission grants the
24 application for the extension and joining of the State as a
colicensee by April 1, 1991, the State shall submit a surrender
26 application as expeditiously as possible to the Federal Energy
Regulatory Commission for authorization to surrender the license
28 and remove or breach the Edwards Dam, effective no earlier than
January 2, 1999. Edwards shall support the State's application.
30 If the Federal Energy Regulatory Commission denies the State's
surrender application and that decision is no longer subject to
32 appeal, the agreement terminates.

34 4. If the Federal Energy Regulatory Commission fails to
grant the State's application by the earlier of December 1, 1998,
36 or the date by which an application to compete for the license
which expires on December 31, 2000 must be filed, Edwards may
38 then file a nonincumbent competitive application for a license to
operate the facility and may no longer be required to support the
40 State's application for surrender.

42 5. If the Federal Energy Regulatory Commission grants the
State's application to remove or breach the Edwards Dam, the
44 Commission shall pay to Edwards no more than \$1 for the dam and
flowage rights. The title to the Edwards Dam may not transfer
46 prior to January 2, 1999, except at the sole discretion of
Edwards.

48 6. If Edwards operates the facility after January 2, 1999,
50 the first \$750,000 of net revenues from operation of the facility
after January 2, 1999, must be paid into the Edwards Escrow Fund,
52 established under section 4 of this resolve. Any net revenues

2 accruing thereafter and until December 31, 1999, must be shared
3 equally by Edwards and the State. These revenues accruing to the
4 State must be paid into the Edwards Escrow Fund. This fund must
5 be used to pay the costs of removal or breach of the Edwards
6 Dam. Any unused balance in this fund must be returned to Edwards.

7 7. The cost of obtaining authorization to remove the
8 Edwards Dam and the cost of removal must be borne by the State.
9 Edwards shall defend, indemnify and hold the State harmless from
10 any liability, claims, damages, actions or costs of the State
11 arising from or caused by Edwards' operation of the facility.
12 The State shall defend, indemnify and hold Edwards harmless from
13 any liability, claims, damages, actions or costs arising from the
14 State's activities in and around the facility. The State shall
15 defend, indemnify and hold Edwards harmless from any liability,
16 claims, damages, actions or costs arising directly or indirectly
17 from the State's removal or breaching of the Edwards Dam,
18 including, but not limited to, any liability, claims, damages,
19 actions or costs relating to the existence in water, sediment or
20 other matter or substances placed there by persons or entities
21 other than Edwards, except as to actions of Edwards. Edwards
22 shall defend, indemnify and hold the State harmless from any
23 liability, claims, damages, actions or costs arising directly or
24 indirectly from the operation of the Edwards Dam, except as to
25 actions of the State, except that the ownership or lawful
26 operation of Edwards Dam and related structures may not be a
27 basis for liability of Edwards for materials or substances that
28 may have collected in sedimentary or other form in, around, above
29 or below the Edwards Dam and not placed there by the action of
30 Edwards; and be it further

32 **Sec. 3. Indemnification. Resolved:** That, notwithstanding any
33 statute or common law to the contrary, Edwards or its successors
34 or assigns, is authorized to bring suit against the State for any
35 liability Edwards incurs on account of the State's failure to
36 defend, indemnify and hold Edwards harmless as provided in the
37 agreement. The State is authorized to defend, indemnify and hold
38 Edwards harmless to the full extent provided in the agreement and
39 the State's sovereign immunity is hereby waived to that extent;
40 and be it further

42 **Sec. 4. Edwards Dam Funds. Resolved:** That there are
43 established 2 nonlapsing special accounts of the Atlantic Sea Run
44 Salmon Commission. The first fund, known as the Edwards Escrow
45 Fund, must contain money paid into it pursuant to section 2,
46 paragraph 6, of this resolve. The 2nd fund, known as the Edwards
47 Dam Fund, may receive funds from any source, including any money
48 transferred from the Edwards Escrow Fund, and is subject to
49 expenditure by the Atlantic Sea Run Salmon Commission for
50 purposes of removing or breaching the Edwards Dam and carrying
51 out the commission's other responsibilities under the agreement;
52 and be it further

