

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1961

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ENROLLED

HOUSE BILL No.....9.....

(By Mr. Speaker Mr. Layton)

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PASSED June 15 1961

In Effect July 1, 1961 Passage

Filed in Office of the Secretary of State
'of West Virginia JUN 21 1961

JOE F. BURDETT
SECRETARY OF STATE

ENROLLED

House Bill No. 9

(By MR. SPEAKER, MR. SINGLETON)

[Passed June 15, 1961; in effect July 1, 1961.]

AN ACT to amend and reenact section forty-seven, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to obstructions, dams or other structures in streams of watercourses and fish ladders, ways or flumes in connection therewith; granting to the director of the department of natural resources authority under certain circumstances to permit the construction or maintenance of a dam or other structure in a stream or watercourse without providing suitable fish ladder, way or flume; and providing penalties for violation thereof and specifying a violation constitutes an abatable nuisance.

Be it enacted by the Legislature of West Virginia:

That section forty-seven, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 47. *Dams or Obstructions in Watercourses;*

2 *Penalty.*—No person shall fall any timber and permit the
3 same to remain in any navigable or floatable stream of
4 this state when to do so shall obstruct the passage of
5 boats, rafts, staves, ties or timber of any kind. No person
6 shall construct any dam or other obstruction more than
7 ten feet in height across any stream or watercourse unless
8 the design and proposed construction shall have been
9 declared to be safe by an order entered by the public
10 service commission after full investigation. Except as
11 may be provided by chapter twenty of this code, no per-
12 son shall construct or maintain any dam or other struc-
13 ture in any stream or watercourse, which shall in any way
14 prevent or obstruct the free and easy passage of fish up
15 or down such stream or watercourse, without first pro-
16 viding as a part of such dam or other structure a suitable
17 fish ladder, way or flume, so constructed as to allow fish
18 easily to ascend or descend the same; which ladder,
19 way or flume shall be constructed only upon plans, in a
20 manner, and at a place, satisfactory to the natural re-
21 sources commission: *Provided, however, That if the di-*

22 rector of the department of natural resources determines
23 that there is no substantial fish life in such stream or
24 watercourse, or that the installation of a fish ladder, way
25 or flume would not facilitate the free and easy passage of
26 fish up or down a stream or watercourse, or that an in-
27 dustrial development project requires the construction of
28 such dam or other structure and the installation of an
29 operational fish ladder, way or flume is impracticable, he
30 may, in writing, permit the construction or maintenance
31 of a dam or other structure in a stream or watercourse
32 without providing a suitable fish ladder, way or flume;
33 and in all navigable and floatable streams provisions shall
34 be made in such dam or structure for the passage of boats
35 and other crafts, logs and other materials: *Provided,*
36 *however,* That this section shall not relieve such person
37 from liability for damage to any riparian owner on ac-
38 count of the construction or maintenance of such dam.

39 Any person who shall violate any of the provisions of
40 this section shall be guilty of a misdemeanor, and, upon
41 conviction thereof, shall be fined not exceeding one thou-
42 sand dollars, or imprisoned in the county jail not exceed-

43 ing one year, or both fined and imprisoned, and, whether
44 conviction be had under this section or not, such violation
45 shall be deemed a nuisance, which may be abated at the
46 suit of any citizen or taxpayer, the county court of the
47 county, or, as to fish ladders, at the suit of the natural
48 resources commission, and, if the same endangers county
49 roads the county court may abate such nuisance peace-
50 ably without such suit.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Howard Davis, Jr.
Chairman Senate Committee

Mrs. H. H. Withrow
Chairman House Committee

Originated in the House.

Takes effect *July 1, 1961* passage.

Howard Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

Julius W. Singleton Jr.
Speaker House of Delegates

The within *approved* this the *21st* day of *June*, 1961.

Wm. Baum
Governor

Filed in Office of the Secretary of State
8th West Virginia **JUN 21 1961**
JOE F. BURDETT
SECRETARY OF STATE

