

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1965

ENROLLED

SENATE BILL NO. 143

(By Mr. Gainer.....)

PASSED March 11,..... 1965

In Effect pm..... Passage

FILED IN THE OFFICE OF
JOE F. BURDETT
SECRETARY OF STATE
THIS DATE 3-18-65

#143

ENROLLED

Senate Bill No. 143

(By MR. GAINER)

[Passed March 11, 1965; in effect from passage.]

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 dams or obstructions in watercourses and providing penalties.

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; Pen-
2 **alty.**—No person shall fell 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 fifteen feet in height across any stream or watercourse
8 unless the design and proposed construction shall have
9 been declared to be safe by an order entered by the public
10 service commission after full investigation: *Provided,*
11 That no dam or other obstruction more than ten feet in
12 height shall be constructed across any stream or water-
13 course if such dam or other obstruction would create a
14 body of water covering ten or more acres, unless the
15 design and proposed construction of such dam or other
16 obstruction shall have been declared to be safe by an order
17 entered by the public service commission after full in-
18 vestigation. Except as may be provided by chapter twenty
19 of this code, no person shall construct or maintain any
20 dam or other structure in any stream or watercourse,
21 which shall in any way prevent or obstruct the free and
22 easy passage of fish up or down such stream or water-
23 course, without first providing as a part of such dam or
24 other structure a suitable fish ladder, way or flume, so con-

25 structed as to allow fish easily to ascend or descend the
26 same; which ladder, way or flume shall be constructed
27 only upon plans, in a manner, and at a place, satisfactory
28 to the natural resources commission: *Provided, however,*
29 That if the director of the department of natural resources
30 determines that there is no substantial fish life in such
31 stream or watercourse, or that the installation of a fish
32 ladder, way or flume would not facilitate the free and easy
33 passage of fish up or down a stream or watercourse, or that
34 an industrial development project requires the construc-
35 tion of such dam or other structure and the installation of
36 an operational fish ladder, way or flume is impracticable,
37 he may, in writing, permit the construction or mainte-
38 nance of a dam or other structure in a stream or water-
39 course without providing a suitable fish ladder, way or
40 flume; and in all navigable and floatable streams provi-
41 sions shall be made in such dam or structure for the pas-
42 sage of boats and other crafts, logs and other materials:
43 *Provided further,* That this section shall not relieve such
44 person from liability for damage to any riparian owner on
45 account of the construction or maintenance of such dam.

46 Any person who shall violate any of the provisions of
47 this section shall be guilty of a misdemeanor, and, upon
48 conviction thereof, shall be fined not exceeding one thou-
49 sand dollars, or imprisoned in the county jail not exceed-
50 ing one year, or both fined and imprisoned, and, whether
51 conviction be had under this section or not, such violation
52 shall be deemed a nuisance, which may be abated at the
53 suit of any citizen or taxpayer, the county court of the
54 county, or, as to fish ladders, at the suit of the natural
55 resources commission, and, if the same endangers county
56 roads the county court may abate such nuisance peace-
57 ably without such suit.

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

[Handwritten Signature]

Chairman Senate Committee

[Handwritten Signature]

Chairman House Committee

Originated in the Senate.

Takes effect *[Handwritten]* Passage.

[Handwritten Signature]

Clerk of the Senate

[Handwritten Signature]

Clerk of the House of Delegates

[Handwritten Signature]

President of the Senate

[Handwritten Signature]

Speaker House of Delegates

The within *approved* this the *18*

day of *March*, 1965.

[Handwritten Signature]

Governor

