

# MAINE STATE LEGISLATURE

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DATE: *March 25, 1998*

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**INLAND FISHERIES AND WILDLIFE**

Reported by: *Report A*

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**STATE OF MAINE  
SENATE  
118TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "*A*" to S.P. 573, L.D. 1730, Bill, "An Act to Implement the Recommendations of the Great Pond Task Force"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

**Sec. 1. 12 MRSA §685-C, sub-§10** is enacted to read:

10. Operating a personal watercraft. Operating a personal watercraft is prohibited on the following categories of great ponds:

A. Great ponds located entirely or partly within the jurisdiction of the commission that are identified in an official comprehensive land use plan adopted by the commission pursuant to subsection 1 as being not accessible within 1/4 mile by 2-wheel drive vehicles, with less than one development unit per mile, and at least one outstanding resource value;

B. Great ponds located entirely or partly within the jurisdiction of the commission that are identified in an official comprehensive land use plan adopted by the commission as being accessible within 1/4 mile by 2-wheel drive vehicles, with less than one development unit per mile, with 2 or more outstanding resource values in fisheries, wildlife, scenic or shore character;

2 C. Great ponds and smaller ponds located entirely or partly  
3 within the jurisdiction of the commission that are  
4 identified in an official comprehensive land use plan  
5 adopted by the commission as being not accessible within 1/2  
6 mile by 2-wheel drive vehicles, with no more than one  
7 noncommercial remote camp and with a cold water game  
8 fishery; and

9  
10 D. Great ponds with less than all but more than 2/3 of  
11 their surface area in or partly in the jurisdiction of the  
12 commission that are identified as being of statewide  
13 significance in the "Maine Wildlands Lake Assessment" dated  
14 June 1, 1987 prepared by the commission, with 2 or more  
15 outstanding resource values in fisheries, wildlife, scenic  
16 or shore character and with more than 1/2 of their shoreline  
17 in public and private conservation ownership with guaranteed  
18 public access for low-impact public recreation.

19 The commission shall implement this subsection by rule adopted in  
20 accordance with section 685-A. Rules adopted to implement this  
21 subsection are routine technical rules pursuant to Title 5,  
22 chapter 375, subchapter II-A.

23 This section does not apply to any waters subject to regulation  
24 by the Maine Indian Tribal-State Commission under Title 30,  
25 section 6207, subsection 3-A.

26  
27 **Sec. 2. 12 MRSA §7792, sub-§4,** as amended by PL 1993, c. 349,  
28 §28, is further amended to read:

29  
30 **4. Horsepower.** Rules governing the horsepower of motors  
31 used to propel watercraft on all internal waters of this State  
32 and rules governing the use, operation and types of watercraft  
33 that may be used on all or any portion of a great pond. In  
34 promulgating these rules, the commissioner shall take into  
35 consideration the area of the internal waters, the use to which  
36 the internal waters are put, the depth of the water and, the  
37 amount of water-borne traffic upon the waters, the implications  
38 of each proposed rule on wildlife and environmental values,  
39 including noise and traditional uses of the regulated water body,  
40 and ~~determine whether or not the rule is necessary to insure~~ the  
41 safety of persons and property. The adoption of rules under this  
42 subsection is governed by the Maine Administrative Procedure Act,  
43 Title 5, Part 18, ~~except that such rules may be only adopted.~~ At  
44 the request of a state or federal agency that has jurisdiction  
45 over lands that include a great pond, the commissioner may  
46 propose rules under this subsection to regulate the surface uses  
47 on those water bodies. The commissioner may also adopt rules  
48 under this section as a result of a petition from the municipal  
49 officers of the municipality or municipalities in which the  
50

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2 waters exist or from 25 50 citizens of the municipalities in  
4 which the waters exist, by county commissioners of the county in  
6 which the waters exist if they are located in unorganized  
8 territory or 25 citizens of the unorganized territory in which  
the waters exist or a majority of the citizens in that  
unorganized territory, whichever is less, requesting the issuance  
of such a rule for a particular body of internal water and  
stating the proposed horsepower limitation;

10 **Sec. 3. 12 MRSA §7801, sub-§13**, as enacted by PL 1979, c. 420,  
§1, is amended to read:

12 **13. Operating a motorboat other than a personal watercraft**  
14 **while under age.** A person is guilty of operating a motorboat  
16 other than a personal watercraft while under age if he that  
person:

18 A. Is under 12 years of age;

20 B. Operates any motorboat propelled by machinery of more  
22 than 10 horsepower; and

24 C. Is not under the immediate supervision of a person  
located in the motorboat who is at least 16 years of age.

26 This subsection does not apply to operating a personal watercraft.

28 **Sec. 4. 12 MRSA §7801, sub-§13-A** is enacted to read:

30 **13-A. Operating a personal watercraft while under age.** A  
32 person is guilty of operating a personal watercraft while under  
age if that person operates a personal watercraft while under 16  
years of age.

34 **Sec. 5. 12 MRSA §7801, sub-§20, ¶¶J and K**, as enacted by PL  
36 1979, c. 420, §1, are amended to read:

38 J. Operates a motorboat powered by an internal combustion  
40 engine on Nokomis Pond, situated in the Towns of Newport and  
Palmyra, Penobscot County; ~~or~~

42 K. Operates a motorboat in Merrymeeting Bay at a speed in  
44 excess of 10 miles per hour, except within the confines of  
the buoyed channels.;

46 **Sec. 6. 12 MRSA §7801, sub-§20, ¶¶L, M and N** are enacted to  
read:

2 L. Operates a motorboat equipped with an internal  
combustion engine on the following waters on Mount Desert  
4 Island in Hancock County: Witch Hole Pond; Aunt Betty's  
Pond; Bubble Pond; Round Pond; and Lake Wood;

6 M. Operates a motorboat equipped with a motor greater than  
10 horsepower on Upper Hadlock Pond or Lower Hadlock Pond on  
8 Mount Desert Island in Hancock County; or

10 N. Operates a personal watercraft in violation of section  
685-C, subsection 10 or any rule adopted by the commission  
12 to implement that subsection.

14 **Sec. 7. 12 MRSA §7801, sub-§§33 and 34 are enacted to read:**

16 **33. Operating airmobile or motorboat that exceeds noise**  
**limits.** A person is guilty of operating a watercraft that  
18 exceeds the noise limit if that person operates an airmobile or  
motorboat powered by an engine constructed:

20 A. On or after January 1, 1998 that emits more than 78  
22 decibels of sound pressure at a distance of 50 feet using a  
method prescribed by the commissioner; or

24 B. Before January 1, 1998 that emits more than 82 decibels  
26 of sound pressure at a distance of 50 feet using a method  
prescribed by the commissioner.

28 **34. Tampering with a motorboat muffler system.** A person is  
30 guilty of tampering with a motorboat muffler system if that  
person modifies a motorboat muffler system in any way that  
32 results in an increase in the decibels of sound emitted by that  
motorboat. A person who violates this subsection is subject to a  
34 civil penalty not to exceed \$100 payable to the Treasurer of  
State and recoverable in a civil action.

36 **Sec. 8. 12 MRSA §7825-B is enacted to read:**

38 **§7825-B. Motorboat rental agent certificate**

40 **1. Registration and issuance.** Except as provided in this  
42 section, a person or business may not rent or lease a motorboat  
after January 1, 1999 unless that person or business:

44 A. Registers with the department as a motorboat rental  
46 agent and is issued a motorboat rental and leasing agent  
certificate from the commissioner;

48 B. Registers each motorboat being offered for rent or lease  
50 in the name of the person or business holding that  
certificate; and

2           C. Provides each person who rents or leases a motorboat  
3           with written instructions on how to operate the motorboat.

4  
5           2. Fee. The fee for a motorboat rental and leasing agent  
6           certificate is \$25. The certificate is valid from July 1st to  
7           June 30th.

8  
9           3. Revocation of certificate. The commissioner may revoke  
10           a motorboat rental and leasing agent certificate if the  
11           commissioner determines that the certificate holder:

12           A. Rented or leased a motorboat that was unsafe; or

13           B. Failed to instruct a person intending to rent or lease a  
14           motorboat on motorboat safety. The department shall provide  
15           each certificate holder with written materials and  
16           instructional guidelines on motorboat safety that the  
17           certificate holder shall review with each motorboat renter  
18           or lessor before that person operates that motorboat.

19           4. Exception. This section does not apply to:

20           A. Campgrounds licensed by the Department of Human Services  
21           that offer the motorboats owned by that campground  
22           exclusively for use by campground clientele;

23           B. Commercial sporting camps. For the purposes of this  
24           section, "commercial sporting camp" means a business  
25           consisting of primitive lodging facilities that offers the  
26           public the opportunity to pursue primitive hunting, fishing,  
27           boating or snowmobiling activities; or

28           C. A person lawfully engaged in guiding activities under  
29           section 7311 who accompanies others on guided trips that  
30           include the use of motorboats.

31           Sec. 9. 12 MRSA §7827, sub-§26 is enacted to read:

32           26. Unlawfully renting or leasing a motorboat. A person is  
33           guilty of unlawfully renting or leasing a motorboat if that  
34           person rents or leases a motorboat in violation of section 7825-B.

35           Sec. 10. 12 MRSA §7901, sub-§17 is enacted to read:

36           17. Unlawfully renting or leasing a motorboat. A violation  
37           of section 7827, subsection 26 is a civil violation for which a  
38           forfeiture of not less than \$200 must be adjudged. The \$200  
39           minimum fine may not be waived by the court.

Sec. 11. 14 MRSA §159-C is enacted to read:

§159-C. Liability related to placement of navigational aids  
in great ponds

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Great pond" has the meaning given in Title 38, section 480-B, subsection 5.

B. "Lake association" means a nonprofit organization incorporated under state law whose corporate purpose includes maintenance or improvement of water quality or public safety on a great pond, management of water levels or other social, educational, stewardship or advocacy efforts to benefit users of or the natural environment of a great pond.

C. "Navigational aid markers" means navigational aids that conform to rules governing the State's marking of waterways.

2. Limited liability. A lake association that has obtained a permit from the Department of Conservation to place navigational aid markers in great ponds is not liable for personal injury, property damage or death caused by placement or maintenance of those navigational aid markers provided that the lake association has placed or maintained the markers in conformance with the terms and conditions of the permit.

3. No remuneration. In order to qualify for the immunity granted in subsection 2, a lake association may not receive any remuneration from the State or otherwise for placing navigational aid markers in great ponds.

4. Limitations. This section does not limit any liability that may otherwise exist for willful or malicious actions or failures to guard or warn against a known dangerous condition related to the navigational aid markers.

5. No duty created. Nothing in this section creates a duty of care or ground for liability.

6. Costs and fees. The court may award any direct legal costs, including reasonable attorney's fees, to a lake association against which a tort or related action is brought when the lake association is found not liable pursuant to this section.

2           **Sec. 12. 22 MRSA §2648, first ¶**, as amended by PL 1995, c. 502,  
Pt. E, §30, is further amended to read:

4           Any water utility or municipality is authorized, after  
5           consultation with the Commissioner of Inland Fisheries and  
6           Wildlife, the department and the Department of Conservation and  
7           after conducting a public hearing in the affected town, to  
8           designate by buoys in water or markers on the ice in an area on a  
9           lake or pond from which water is taken, with a radius commencing  
10          at its point of intake. Such The radius may not exceed 200 400  
11          feet and within that area a person may not anchor or moor a boat  
12          or carry on ice fishing or carry on any other activity designated  
13          by the water utility or municipality when such restriction is  
14          necessary to comply with primary or secondary drinking water  
15          regulations applicable to public water systems. Any such buoys  
16          placed in the water must be plainly marked as required by the  
17          Director of the Bureau of Parks and Lands under Title 38, section  
18          323. Any person violating this section must, on conviction, be  
19          penalized in accordance with Title 30-A, section 4452.

20                   **Sec. 13. 30 MRSA §6207, sub-§3-A** is enacted to read:

21                   **3-A. Horsepower and use of motors.** Subject to the  
22                   limitations of subsection 6, the commission has exclusive  
23                   authority to adopt rules to regulate the horsepower and use of  
24                   motors on waters less than 200 acres in surface area and entirely  
25                   within Indian territory.

26                   **Sec. 14. Effective date; Passamaquoddy Tribe.** The section of  
27                   this Act pertaining to the regulation of horsepower and use of  
28                   motors on waters entirely within Indian territory does not take  
29                   effect as to the Passamaquoddy Tribe, unless within 90 days after  
30                   adjournment of the Legislature, the Secretary of State receives  
31                   written notification from the Joint Tribal Council of the  
32                   Passamaquoddy Tribe that that tribe has agreed to the provisions  
33                   of this Act. Copies of that notification must be submitted by  
34                   the Secretary of State to the Secretary of the Senate and the  
35                   Clerk of the House of Representatives. In no event may this Act  
36                   become effective until 90 days after adjournment of the  
37                   Legislature.

38                   **Sec. 15. Effective date; Penobscot Nation.** The section of this  
39                   Act pertaining to the regulation of horsepower and use of motors  
40                   on waters entirely within Indian territory does not take effect  
41                   as to the Penobscot Nation, unless within 90 days after  
42                   adjournment of the Legislature, the Secretary of State receives  
43                   written notification from the Tribal Chief and Council of the  
44                   Penobscot Nation that the nation has agreed to the provisions of  
45                   this Act. Copies of that notification must be submitted by the



Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives. In no event may this Act become effective until 90 days after adjournment of the Legislature.

**Sec. 16. Report; Maine Indian Tribal-State Commission.** The Maine Indian Tribal-State Commission, established in the Maine Revised Statutes, Title 30, section 6212, shall make recommendations no later than January 1, 1999 to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters on the use of personal watercraft on waters within the jurisdiction of the Maine Land Use Regulation Commission.

**Sec. 17. Joint agency report.** The Maine Land Use Regulation Commission, the Department of Inland Fisheries and Wildlife and the Bureau of Parks and Lands within the Department of Conservation shall jointly report no later than January 1, 1999 to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters on the regulation of surface water uses on waters within the jurisdiction of the Maine Land Use Regulation Commission. In preparing the report and recommendations, the agencies shall consult among themselves and with any other state or federal agency having administrative authority for lands wholly or partly within the commission's jurisdiction that contain a great pond. The report must describe the authority of each agency to regulate surface water uses and may include recommendations for surface water use regulations on specific water bodies or classes of water bodies within that agencies jurisdiction.

**Sec. 18. Report on education and safety training; inland fisheries and wildlife.** The Commissioner of Inland Fisheries and Wildlife shall make recommendations no later than January 1, 1999 to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters on an education and safety training program for motorboat operators on inland waters. In preparing those recommendations, the commissioner shall consult with federal and state agencies and private businesses with an interest in recreational watercraft use. Those recommendations must include methods for evaluating the effectiveness of the program and must address the issue of mandatory versus voluntary participation in the program.

**Sec. 19. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1998-99

2

**INLAND FISHERIES AND WILDLIFE,  
DEPARTMENT OF**

4

6

**Enforcement Operations - Inland  
Fisheries and Wildlife**

8

Personal Services \$150,000

10

All Other 107,000

12

Appropriates funds for the costs of holding  
hearings, adopting rules and additional  
14 enforcement costs pertaining to the use of  
16 watercraft on great ponds.

16

**DEPARTMENT OF INLAND FISHERIES AND  
WILDLIFE TOTAL**

18

\$257,000'

20

Further amend the bill by inserting at the end before the  
22 summary the following:

24

**FISCAL NOTE**

26

1998-99

28

**APPROPRIATIONS/ALLOCATIONS**

30

General Fund \$257,000

32

The Department of Inland Fisheries and Wildlife will require  
34 an additional General Fund appropriation of \$257,000 in fiscal  
36 year 1998-99 for the costs of holding certain hearings, adopting  
rules and additional enforcement costs pertaining to the use of  
watercraft on great ponds. The estimated General Fund  
38 appropriations required to fund the future costs will be  
approximately \$557,000 annually beginning in fiscal year  
40 1999-2000.

42

The Maine Land Use Regulation Commission within the  
Department of Conservation will incur some minor additional costs  
44 to adopt certain rules pertaining to the use of personal  
watercraft on certain ponds. These costs can be absorbed within  
46 the commission's existing budgeted resources.

48

The Department of Inland Fisheries and Wildlife will incur  
some minor additional costs to administer registration and  
50 certification of motorboat rental agents. These costs will be

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offset by minor increases in revenue from fees for motorboat rental agent certificates.

The Maine Indian Tribal-State Commission will incur some minor additional costs to adopt certain rules pertaining to the use of motorcraft on certain ponds and to submit certain recommendations to the Legislature. These costs can be absorbed within the commission's existing budgeted resources.

The Department of Conservation and the Department of Inland Fisheries and Wildlife will incur some minor additional costs to submit certain reports to the Legislature. These costs can be absorbed within the departments' existing budgeted resources.

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$86.45 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

In addition to the criminal cases, this bill also may increase prosecutions for civil violations. The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.

This bill also may decrease the number of civil suits filed in the court system. The Judicial Department may realize some minor savings from reductions of workload and administrative costs associated with the minimal number of cases that will no longer be filed. Reductions in the collection of filing fees may decrease General Fund revenue by minor amounts.'

## SUMMARY

This amendment replaces the bill and is the majority report of the Joint Standing Committee on Inland Fisheries and Wildlife and the Joint Standing Committee on Natural Resources.

This amendment prohibits the operation of personal watercraft on remote and undeveloped ponds having at least one outstanding resource value that are wholly or partly within the jurisdiction of the Maine Land Use Regulation Commission. That provision would currently affect 242 ponds. The amendment also

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2 prohibits personal watercraft from lakes that are more than 2/3  
3 in the Maine Land Use Regulation Commission jurisdiction and that  
4 have more than 1/2 of their shoreline in conservation ownership  
5 for low-impact public recreation. That provision would currently  
6 affect 3 great ponds. The amendment also prohibits motorboats  
7 with internal combustion motors on 5 ponds on Mount Desert Island  
8 that are entirely within Acadia National Park and prohibits  
9 motors greater than 10 horsepower on 2 other great ponds wholly  
10 within the park.

11 The amendment also expands the authority of the Commissioner  
12 of Inland Fisheries and Wildlife to regulate surface waters uses  
13 in the State by allowing the commissioner to regulate, in  
14 addition to horsepower, the use, operation and type of watercraft  
15 on great ponds for reasons that include, in addition to public  
16 safety, wildlife or environmental concerns, noise and traditional  
17 uses of the water body. Under this amendment, the commissioner  
18 may initiate rulemaking without being petitioned to do so. The  
19 petition process is amended to require that petitions from  
20 organized areas of the State be signed by 50 persons from the  
21 affected town, rather than 25, and to allow a petition from an  
22 unorganized territory to have fewer than 25 signatures of  
23 residents of that territory if the majority of residents in that  
24 territory is less than 25.

25 The amendment also requires that motorboat rental and  
26 leasing agents obtain a certificate from the Department of Inland  
27 Fisheries and Wildlife in order to lawfully rent or lease  
28 motorboats after January 1, 1999, with the exception of  
29 commercial sporting camps and campgrounds. The amendment also  
30 grants immunity to lake associations from personal injury,  
31 property damage or death caused by the association's buoys and  
32 increases from 200 to 400 feet the maximum distance a water  
33 utility or municipality may place buoys and limit activities  
34 around intakes to public water supplies.

35 The amendment also authorizes the Maine Indian Tribal-State  
36 Commission to adopt rules to regulate horsepower and use of  
37 motors on waters less than 200 acres that are entirely within  
38 Indian territory. That authority does not take effect until  
39 approved by the Passamaquoddy Tribe and the Penobscot Nation, as  
40 required by the Indian land claims settlement.

41 The amendment also establishes 16 years of age as the  
42 minimum age to operate a personal watercraft and creates new  
43 civil penalties for operating a motorboat in excess of certain  
44 noise limits and for tampering with a motorboat muffler system.

45 The amendment also requires the Maine Land Use Regulation  
46 Commission, Department of Inland Fisheries and Wildlife and  
47  
48  
49  
50

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2 Department of Conservation, Bureau of Parks and Lands to report  
to the Legislature next session on the scope of their authority  
4 to regulate surface water uses and to make recommendations for  
regulating water bodies within their jurisdiction. It also  
6 requires the Department of Inland Fisheries and Wildlife to  
report back separately on a proposal for a safety training and  
education program for motorboat operators on inland waters.

8  
10 The amendment also adds an appropriation section and a  
fiscal note to the bill.