

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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Legislative Document

No. 1730

S.P. 573

In Senate, April 1, 1997

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**An Act to Implement the Recommendations of the Great Pond Task Force.**

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

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator TREAT of Kennebec.  
Cosponsored by Representative COWGER of Hallowell and  
Senator NUTTING of Androscoggin, Representatives: BARTH of Bethel, FULLER of  
Manchester, GREEN of Monmouth, McKEE of Wayne, NASS of Acton, TRUE of Fryeburg.

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

2  
4       **Sec. 1. 5 MRSA §3331, sub-§2, ¶¶E and F**, as enacted by PL 1993, c. 721, Pt. C, §1 and affected by Pt. H, §1, are amended to read:

6           E. Study specific land and water resources management issues and problems of state-level significance in order to develop sound, coordinated policies; and

10          F. Seek cooperation from federal agencies with responsibilities for land and water resources management to ensure that their programs and projects serve the best interests of the State; and

14       **Sec. 2. 5 MRSA §3331, sub-§2, ¶G** is enacted to read:

16           G. Administer the Lakes Heritage Trust Fund established in subsection 6.

20       **Sec. 3. 5 MRSA §3331, sub-§6** is enacted to read:

22           6. Lakes Heritage Trust Fund. The Lakes Heritage Trust Fund is established in the Executive Department for the purpose of protecting, preserving and enhancing the quality and value of the State's lakes and great ponds. By majority vote of all members, the council may accept monetary contributions to the fund from any public or private source and may spend or disburse those funds in a manner consistent with law for the purposes stated in this subsection. The council shall include an accounting of all donations to and expenditures from the Lakes Heritage Trust Fund in its annual report to the Legislature under subsection 4.

34       **Sec. 4. 12 MRSA §7791, sub-§11-A**, as enacted by PL 1989, c. 469, §1, is amended to read:

36           **11-A. Personal watercraft.** "Personal watercraft" means any motorized watercraft that is ~~less than 13~~ 14 feet or less in hull length as manufactured, ~~is capable of exceeding a speed of 20 miles per hour and has the capacity to carry not more than the operator and one other person while in operation~~ has as its primary source of propulsion an inboard motor powering a jet pump and is capable of carrying one or more persons in a sitting, standing or kneeling position. ~~The term "Personal watercraft"~~ includes, but is not limited to, a jet ski, wet bike, surf jet, miniature speedboat and hovercraft. "Personal watercraft" also includes motorized watercraft whose operation is controlled by a water skier.

2           **Sec. 5. 12 MRSA §7792, sub-§4**, as amended by PL 1993, c. 349,  
§28, is further amended to read:

4           **4. Horsepower; use, operation and type of watercraft.** Rules  
governing the horsepower of motors used to propel watercraft on  
6 all internal waters of this State and rules governing the use,  
operation and types of watercraft that may be used on all or any  
8 portion of a great pond. In promulgating these rules, the  
commissioner shall take into consideration the area of the  
10 internal waters, the use to which the internal waters are put,  
the depth of the water and, the amount of water-borne traffic  
12 upon the waters, the implications of each proposed rule on  
wildlife and environmental values, including noise and  
14 traditional uses of the regulated water body and determine  
whether or not the rule is necessary to ~~insure~~ ensure the safety  
16 of persons and property. The commissioner shall consult with the  
Maine Land Use Regulation Commission when developing rules under  
18 this subsection affecting a great pond that is wholly or  
partially within the unorganized territories. The adoption of  
20 rules under this subsection is governed by the Maine  
Administrative Procedure Act, Title 5, Part 18, except that such  
22 rules may be ~~only~~ only adopted as a result of a petition from the  
municipal officers of the municipality or municipalities in which  
24 the waters exist or from 25 citizens of the municipalities in  
which the waters exist, by county commissioners of the county in  
26 which the waters exist if they are located in unorganized  
territory or 25 citizens of the unorganized territory in which  
28 the waters exist, requesting the issuance of such a rule for a  
particular body of internal water and stating the proposed  
30 horsepower, use, operation and type of watercraft limitation;

32           **Sec. 6. 12 MRSA §7794, sub-§4, ¶A**, as amended by PL 1985, c.  
579, §§4 and 7, is repealed and the following enacted in its  
34 place:

36           A. All watercraft requiring or requesting certificate of  
number:

38                   (1) For the first watercraft registered by a person  
40 each year, \$15; and

42                   (2) For each additional watercraft registered in that  
44 person's name in that same year, \$4;

46           **Sec. 7. 12 MRSA §7794, sub-§4-A** is enacted to read:

48           4-A. Motorless watercraft; one-time registration fee.  
Beginning in 1998, a person shall pay a one-time clean water fee  
of \$10 for each motorless canoe, kayak, sailboard, sailboat or  
50 rowboat owned by that person. The fee is paid to the

2 municipality in which the person resides. The municipality shall  
3 retain \$1 of that fee and submit the remaining \$9 to the  
4 Treasurer of State, who shall credit that amount to the Lakes  
5 Heritage Trust Fund established in Title 5, section 3331. The  
6 Land and Water Resources Council shall make allocations from the  
7 fund to the lakes program within the Department of Environmental  
8 Protection in an amount sufficient to ensure that the lakes  
9 program is fully funded.

10 **Sec. 8. 12 MRSA §7799-B** is enacted to read:

12 **§7799-B. Licensing motorboat rental and leasing agent**

14 After January 1, 1998 a person may not lease or rent a  
15 motorboat to any person for recreational use on inland waters of  
16 the State unless that person is licensed by the department as a  
17 recreational motorboat rental and leasing agent. The annual fee  
18 for a calendar year license under this section is \$50.

20 **1. Revocation of licenses.** The commissioner may revoke a  
21 recreational motorboat rental and leasing license if the  
22 commissioner determines that the licensee:

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

26 B. Failed to instruct a person intending to rent or lease a  
27 motorboat on motorboat safety. The department shall provide  
28 each licensee with written materials and instructional  
29 guidelines on motorboat safety that the licensee shall  
30 review with each motorboat renter or lessor before that  
31 person operates that motorboat;

32 C. Has been convicted of operating an automobile,  
33 watercraft, snowmobile or ATV while under the influence of  
34 intoxicating liquor or drugs; or

35 D. Has been convicted of violating any fish and wildlife  
36 laws under chapters 701 to 721.

37 **2. Waiver of licensing fee.** The commissioner may reduce or  
38 waive the licensing fee for an applicant if, in the  
39 commissioner's opinion, payment of the fee is a financial  
40 hardship to the applicant.

41 A person who violates this section is subject to a civil  
42 penalty not to exceed \$100 payable to the Treasurer of State.  
43 This penalty is recoverable in a civil action.

44 **Sec. 9. 12 MRSA §7800, sub-§3,** as repealed and replaced by PL  
45 1989, c. 918, Pt. D, §8, is amended to read:  
46  
47  
48

2           **3. Disbursement of revenues.** All revenues collected under  
4 this subchapter, including fines, fees and other available money  
6 must be distributed as undedicated revenue to the General Fund  
8 and the Department of Marine Resources according to an allocation  
10 rate that directly relates to the administrative costs of the  
12 Division of Licensing and Registration and the historical revenue  
14 distribution pattern including any necessary year-end  
16 reconciliation and accounting distribution. The allocation rate  
18 must be jointly agreed to by the department and the Department of  
20 Marine Resources and approved by the Department of Finance  
Administrative and Financial Services, Bureau of the Budget.  
Seventy percent of the funds distributed as undedicated revenue  
to the General Fund must be appropriated to the Department of  
Inland Fisheries and Wildlife as reimbursements for  
administrative costs associated with the watercraft registration  
program. The remaining 30% of the funds must be appropriated to  
the lakes restoration program in the Department of Environmental  
Protection.

22           **Sec. 10. 12 MRSA §7801, sub-§20, ¶¶J and K,** as enacted by PL  
24 1979, c. 420, §1, are amended to read:

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

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

38           **Sec. 11. 12 MRSA §7801, sub-§20, ¶L** is enacted to read:

40           L. Operates a motorboat equipped with an internal  
42 combustion engine on the following waters on Mt. Desert  
44 Island in Hancock County: Upper Hadlock Pond; Lower Hadlock  
46 Pond; Witch Hole Pond; Aunt Betty's Pond; Bubble Pond; Round  
48 Pond; and Lake Wood.

50           **Sec. 12. 12 MRSA §7801, sub-§§33 to 38** are enacted to read:

33. Operating personal watercraft without safety sticker.  
          The owner of a personal watercraft is guilty of operating a  
          personal watercraft without a safety sticker if that person  
          operates or allows another person to operate that personal  
          watercraft without a safety sticker issued under section 7807. A  
          person who violates this subsection is subject to a civil penalty  
          not to exceed \$100 payable to the Treasurer of State. This  
          penalty is recoverable in a civil action.

2       34. Leasing or renting motorboat without license. A person  
4       in the business of renting or leasing motorboats for recreational  
6       use is guilty of renting or leasing a motorboat without a license  
8       if that person rents or leases a motorboat after January 1, 1998  
10      to any person for recreational use on inland waters of the State  
12      without a recreational motorboat rental and leasing agent's  
14      license issued by the department under section 7799-B. A person  
16      who violates this subsection is subject to a civil penalty not to  
18      exceed \$100 payable to the Treasurer of State. This penalty is  
20      recoverable in a civil action.

22      35. Wake jumping. The operator of a personal watercraft is  
24      guilty of wake jumping if that person crosses the wake of a  
26      watercraft at a speed sufficient to propel the personal  
28      watercraft above the surface of the water. A person who violates  
30      this subsection is subject to a civil penalty not to exceed \$100  
32      payable to the Treasurer of State. This penalty is recoverable  
34      in a civil action.

36      36. Operating motorboat without proper safety instruction.  
38      A person is guilty of operating a motorboat without the proper  
40      safety instruction if that person is 16 years of age or younger  
42      and operates a motorboat having a 10 horsepower or larger motor  
44      without carrying, on his or her person or in some easily  
46      accessible place in the motorboat, a watercraft safety program  
48      certificate of competency issued to that person under section  
50      7807. A person who violates this subsection is subject to a  
civil penalty not to exceed \$100 payable to the Treasurer of  
State. This penalty is recoverable in a civil action.

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

A. On or after January 1, 1998 that emits more than 78  
decibels of sound pressure at a distance of 50 feet as  
measured on the "A" scale by the Society of Automotive  
Engineers standards J-192; or

B. Before January 1, 1998 that emits more than 82 decibels  
of sound pressure at a distance of 50 feet as measured on  
the "A" scale by the Society of Automotive Engineers  
standards J-192.

38. Tampering with a muffler system. A person is guilty of  
tampering with a motorboat muffler system if that person modifies  
a motorboat muffler system in any way that results in an increase  
in the decibels of sound emitted by that motorboat. A person who  
violates this subsection is subject to a civil penalty not to

2 exceed \$100 payable to the Treasurer of State and recoverable in  
a civil action.

4 Sec. 13. 12 MRSA §§7806 and 7807 are enacted to read:

6 **§7806. Prohibitions on using personal watercraft on certain**  
waters

8 **1. Prohibitions.** Except as provided by rules adopted by  
10 the commissioner pursuant to section 7792, subsection 4:

12 **A.** A person may not operate a personal watercraft on a  
great pond that is located wholly within the unorganized  
14 territory of the State; and

16 **B.** A person may not operate a personal watercraft after  
June 1, 1999 on a great pond less than 200 acres in surface  
18 area that is located wholly or partially within the  
organized area of the State unless that use is permitted by  
20 rules adopted before June 1, 1999. Notwithstanding section  
7792, subsection 4, the commissioner may not adopt any rule  
22 after June 1, 1999 that allows or expands the use of a  
personal watercraft on a great pond less than 200 acres in  
24 surface area that is located wholly or partially within the  
organized areas of the State.

26 **2. Exemptions.** This section does not apply to any great  
28 pond located entirely within the jurisdiction of the Maine Indian  
Tribal-State Commission. The Maine Indian Tribal-State  
30 Commission shall make recommendations no later than January 1,  
1998 to the joint standing committee of the Legislature having  
32 jurisdiction over natural resource matters on the use of personal  
watercraft on those great ponds. After receipt of the  
34 recommendations, the committee may report out legislation to the  
Second Regular Session of the 118th Legislature pertaining to the  
36 use of personal watercraft on any great pond located entirely  
within the jurisdiction of the Maine Indian Tribal-State  
38 Commission. This subsection is repealed 90 days after the  
adjournment of the Second Regular Session of the 118th  
40 Legislature.

42 **§7807. Safety education for personal watercraft and other**  
motorboats

44 The commissioner shall establish a program to educate  
46 persons from 12 to 16 years of age on the safe and responsible  
operation of personal watercraft and other motorboats. The  
48 program must include instruction in watercraft safety laws and  
commonly accepted principles of boating safety. The commissioner  
50 may charge a fee to defray, in part or in whole, the cost of the  
safety education program. In developing the program, the  
52 commissioner may cooperate with any public or private association



2 that promotes responsible and safe operation of watercraft. In  
3 establishing the program, the commissioner shall:

4 1. Prescribe qualifications. Prescribe the qualifications  
5 of the instructors;

6  
7 2. Provide liability insurance. If necessary in the  
8 opinion of the commissioner, provide liability insurance for each  
9 instructor. The cost of this insurance may be recovered by the  
10 commissioner as part of the enrollment fee;

11 3. Prescribe type and length of instruction. Prescribe the  
12 type and length of instruction and the time and place of  
13 examinations; and

14  
15 4. Issue certificate of competency and safety sticker.  
16 Issue a certificate of competency and a safety sticker to persons  
17 who successfully complete the program.

18  
19 **Sec. 14. 12 MRSA §7901, sub-§17** is enacted to read:

20  
21 17. Unsafe operation of watercraft. A person that violates  
22 section 7801, subsection 8, 10, 11, 12 or 32, is subject to a  
23 fine of no less than \$100 that may not be suspended.

24  
25 **Sec. 15. 14 MRSA §159-C** is enacted to read:

26  
27 **§159-C. Liability related to placement of navigational aids in**  
28 **great ponds**

29  
30 1. Definitions. As used in this section, unless the  
31 context otherwise indicates, the following terms have the  
32 following meanings.

33  
34 A. "Great pond" has the meaning given in Title 38, section  
35 480-B, subsection 5.

36  
37 B. "Lake association" means a nonprofit organization  
38 incorporated under state law whose corporate purpose  
39 includes maintenance or improvement of water quality or  
40 public safety on a great pond, management of water levels or  
41 other social, educational, stewardship or advocacy efforts  
42 to benefit users of or the natural environment of a great  
43 pond.

44  
45 C. "Navigational aid markers" means navigational aids that  
46 conform to rules governing the State's marking of waterways.

47  
48 2. Limited liability. A lake association that has obtained  
49 a permit from the Department of Conservation to place

2 navigational aid markers in great ponds is not liable for  
3 personal injury, property damage or death caused by placement or  
4 maintenance of those navigational aid markers provided that the  
5 lake association has placed or maintained the markers in  
6 conformance with the terms and conditions of the permit.

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

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

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

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

22 **Sec. 16. 22 MRSA §2648, first ¶,** as amended by PL 1995, c. 502,  
23 Pt. E, §30, is further amended to read:

24 Any water utility or municipality is authorized to designate  
25 by buoys in water or markers on the ice in an area on a lake or  
26 pond from which water is taken, with a radius commencing at its  
27 point of intake. Sueh The radius may not exceed 200 1,000 feet  
28 and within that area a person may not anchor or moor a boat or  
29 carry on ice fishing. Any such buoys placed in the water must be  
30 plainly marked as required by the Director of the Bureau of Parks  
31 and Lands under Title 38, section 323. Any person violating this  
32 section must, on conviction, be penalized in accordance with  
33 Title 30-A, section 4452.

34 **Sec. 17. 36 MRSA §4641-A,** as repealed and replaced by PL  
35 1993, c. 398, §2, is amended to read:

36 **§4641-A. Rate of tax; liability for tax**

37 There is imposed on each deed by which any real property in  
38 this State is transferred a tax at the rate of \$2.20 for each  
39 \$500 or fractional part thereof of the value of the property  
40 transferred, the tax to be imposed 1/2 on the grantor and 1/2 on  
41 the grantee. That rate is \$2.42 for each \$500 or fractional part  
42 thereof of the value of property transferred that is located

2 wholly within a great pond watershed. Seventy percent of the  
4 additional funds obtained from the transfer of property  
6 identified by the Department of Environmental Protection as being  
8 located within a great pond watershed must be credited to the  
10 Department of Inland Fisheries and Wildlife and used by that  
12 department and the Department of Marine Resources, pursuant to a  
mutually agreeable formula, for boating enforcement, education  
and training activities. The remaining 30% of those additional  
funds must be credited to the Department of Environmental  
Protection and used for the preservation and enhancement of water  
quality in the lakes program.

14 **Sec. 18. 38 MRSA §439-A, sub-§8** is enacted to read:

16 **8. Water quality impact fee.** Each municipality shall  
18 assess an annual \$10 water quality impact fee on each residential  
20 dwelling unit located on a parcel wholly or partially within the  
22 shoreland zone of a great pond. The municipality shall keep \$1  
24 of each fee for the cost of collecting the fee and an additional  
\$3, which must be used by the municipality for code enforcement  
officer training and education. The remaining \$6 must be  
forwarded to the Treasurer of State who shall credit that amount  
to the Lakes Heritage Trust Fund established in Title 5, section  
3331.

26

## 28 SUMMARY

30 This bill implements the recommendations of the Great Ponds  
32 Task Force. The Great Pond Task Force is established under the  
Maine Revised Statutes, Title 38, section 1842-A.

34 This bill does the following.

36 1. It establishes the Lakes Heritage Trust Fund in the  
Executive Department to protect, preserve and enhance the quality  
and value of the State's great ponds. The fund is administered  
38 by the Land and Water Resources Council. The council is  
authorized to accept monetary contributions into the fund. The  
40 fund is also capitalized in part from 2 revenue sources proposed  
in the bill: a one-time registration fee for motorless watercraft  
42 and an annual \$10 water quality impact fee assessed on  
residential dwellings on lots within the watershed of a great  
44 pond.

46 2. It redefines "personal watercraft" to include jet  
propelled watercraft 14 feet or less in length.

48 3. It directs the Commissioner of Inland Fisheries and  
50 Wildlife to adopt rules governing the use, operation and type of

2 watercraft that may be used on great ponds less than 200 acres in  
3 surface area and requires the commissioner to consider potential  
4 wildlife impacts, environmental values, including noise, and the  
5 traditional uses of a water body when adopting rules governing  
6 the horsepower, use, operation or type of watercraft allowed on a  
7 water body.

8 4. It increases the registration fee for motorboats. The  
9 fee for the first motorboat registered by a person in a year is  
10 increased from \$4 to \$15. The fee for each additional motorboat  
11 registered in that person's name in that year remains at the  
12 current rate of \$4.

14 5. It creates a new one-time registration fee for motorless  
15 watercraft by requiring a person to pay \$10 for each motorless  
16 canoe, kayak, sailboard, sailboat or rowboat.

18 6. It creates a new recreational motorboat rental and  
19 leasing license. This license is required after January, 1998  
20 for any person to engage in the business of renting or leasing a  
21 motorboat for recreational use on the inland waters of the  
22 State. The annual fee for this license is \$50.

24 7. It prohibits a person from operating a motorboat on  
25 certain waters on Mt. Desert Island and from operating a  
26 motorboat within 1000 feet of the intake of a public drinking  
27 water supply.

28 8. It prohibits the operation of a personal watercraft  
29 without a safety sticker; leasing or renting a motorboat without  
30 a license; wake jumping by operators of personal watercraft;  
31 operating a motorboat without proper safety instruction; and  
32 operating an airmobile or other motorboat in excess of allowable  
33 noise limits.

36 9. It prohibits the use of personal watercraft on great  
37 ponds located wholly within the unorganized territories except as  
38 provided in rules adopted by the Commissioner of Inland Fisheries  
39 and Wildlife. The bill also allows the commissioner a 2-year  
40 period to adopt rules governing the use and operation of personal  
41 watercraft on great ponds less than 200 acres in the organized  
42 areas. On and after June 1, 1999, the use of personal watercraft  
43 on those great ponds will be prohibited unless the commissioner  
44 has adopted rules prior to that date specifying the use and  
45 operation of personal watercraft on those waters. Great ponds  
46 within the jurisdiction of the Maine Tribal-State Commission are  
47 temporarily exempted from the prohibition until such time as the  
48 commissioner provides recommendations on the use of personal  
49 watercraft on great ponds to the Legislature.

2           10. It requires the Commissioner of Inland Fisheries and  
Wildlife to establish a motorboat safety education program for  
persons from 12 to 16 years of age.

4

6           11. It limits the liability of a lake association from  
personal injury, property damage or death caused by the placement  
or maintenance by the association of navigational aid markers  
8 located and maintained under the provisions of a permit and in  
accordance with the State's marking system of waterways.

10

12           12. It changes from \$2.20 per \$500 in value to \$2.42 per  
\$500 in value the transfer tax that applies to property located  
within the watershed of a great pond. The additional revenue  
14 generated by this tax is targeted for watercraft enforcement,  
education and training and the protection and enhancement of  
16 water quality in Maine lakes.

18           13. It assesses an annual \$10 water quality impact fee on  
each residential dwelling unit located within the watershed of a  
20 great pond. Revenues from this assessment are targeted at  
education and training of code enforcement officers and for the  
22 Lakes Heritage Trust Fund.

24           14. It increases from 200 to 1,000 feet the allowable  
radius of the protection zone around intakes of public drinking  
26 water supplies.