

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1155

H.P. 876

House of Representatives, February 28, 2001

An Act to Protect Maine Lakes from Milfoil and Other Invasive Plants.

(EMERGENCY)

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative McKEE of Wayne.

Cosponsored by Senator NUTTING of Androscoggin, Senator MARTIN of Aroostook and Representatives: BAKER of Bangor, COWGER of Hallowell, DAIGLE of Arundel, DUPLESSIE of Westbrook, KOFFMAN of Bar Harbor, TOBIN of Windham, TWOMEY of Biddeford, Senator: DAVIS of Piscataquis.

2 1. Aquatic plant. "Aquatic plant" means a vascular plant
species that requires a permanently flooded freshwater habitat.

4 2. Invasive aquatic plant. "Invasive aquatic plant" means
a species of aquatic plant described in section 410-N or
6 identified by the department through rulemaking pursuant to that
section.

8 3. Nuisance species. "Nuisance species" means a
10 nonindigenous species that threatens the diversity or abundance
of native species, the ecological stability of infested waters or
12 commercial, agricultural, aquacultural or recreational activity
dependent on such waters as identified by the department through
14 rulemaking.

16 Rules adopted pursuant to this section are routine technical
rules as defined in Title 5, chapter 375, subchapter II-A.

18 **§1853. Great Ponds Protection Council**

20 The Great Ponds Protection Council, as established in Title
22 5, section 12004-D, subsection 6 and referred to in this chapter
as the "council," is established.

24 1. Membership. The council consists of the commissioner,
26 the Commissioner of Inland Fisheries and Wildlife, the
Commissioner of Conservation and the Director of the Maine Land
28 Use Regulation Commission or their designees and 5 members of the
public who are residents of the State and at least 21 years of
30 age, appointed by the Governor, each representing the interests
of one of the following:

32 A. The State's lake associations;

34 B. The State's nonprofit environmental community;

36 C. The State's freshwater fishing interests;

38 D. The recreational boating industry; and

40 E. Public drinking water utilities.

42 2. Terms. Public members of the council appointed pursuant
44 to subsection 1 serve terms for 3 years and may be reappointed.

46 3. Duties. The council shall coordinate the State's effort
to prevent the spread of milfoil and other invasive aquatic
48 plants and nuisance species and the State's development of a
comprehensive state aquatic nuisance management plan that meets

2 the requirements of Section 1204 of the federal National Invasive
Species Act of 1996. The plan must:

4 A. Identify the management practices and measures that are
6 necessary to prevent infestation of the State's lakes and
8 other waters by milfoil and other invasive aquatic plants
and nuisance species;

10 B. Identify and recommend state and local programs for
12 cost-effective environmentally sound prevention and control
of invasive aquatic plants and nuisance species;

14 C. Identify and recommend federal actions that may be
16 needed for cost-effective environmentally sound prevention
18 and control of invasive aquatic plants and nuisance species
and describe the manner in which those actions should be
coordinated with state and local government activities;

20 D. Identify any additional authority from the Legislature
22 that the State may need to protect public health, property
and the environment from harm by invasive aquatic plants and
nuisance species;

24 E. Establish a schedule for implementing the plan; and

26 F. Include the following:

28 (1) A model municipal ordinance for preventing
30 infestation of lakes by milfoil and other invasive
aquatic plants and nuisance species;

32 (2) Recommendations for protecting lakes located
34 partially in the unorganized territory and partially in
one or more municipalities;

36 (3) Recommendations for protecting lakes located on
38 the border between Maine and New Hampshire and on the
border between Maine and Canada;

40 (4) A cost-effective program for inspecting boats and
42 trailers entering the State on the Maine Turnpike, at
44 customs check points on the border with Canada and, to
the extent practical, at other locations;

46 (5) Proposed rules applicable to live bait dealers,
48 pet supply dealers, seaplane operators and others to
prevent the introduction and spread of milfoil and
other invasive aquatic plants and nuisance species into
50 the State's lakes; and

2 (6) A program of research on the prevention,
4 eradication and containment of milfoil and other
6 invasive aquatic plants and nuisance species, including
 research into environmentally sound biological and
 genetic control strategies.

8 4. Plan completion; revision. The plan must be completed
10 by November 1, 2001 and be submitted to the federal Aquatic
 Nuisance Species Task Force for approval by January 1, 2002. The
 plan must be updated and revised annually.

12 5. Regional cooperation. The council shall work with
14 representatives from federal, state and local agencies and
 private environmental and commercial interests in the
16 northeastern United States to form a northeastern regional panel
 to establish priorities and coordinate activities to prevent the
18 spread of milfoil and other invasive aquatic plants and nuisance
 species in the northeast.

20 6. Staffing; contracts. The council may employ such
22 personnel and enter into such contracts as may be necessary to
 carry out the council's responsibilities under this Act.

24 **§1854. Emergency action plan to protect State's lakes**

26 The council shall adopt an emergency action plan that
28 includes the following elements to protect the State's lakes.

30 1. Identification of lakes already known to be infested.
 By June 30, 2001, the commissioner, with the advice of the
32 council, shall identify the great ponds in the State that are
 known to be infested with milfoil or other invasive aquatic
 plants and nuisance species.

34 2. Vulnerability assessment. By June 30, 2001, with the
36 advice of the council, the commissioner shall complete a
 preliminary vulnerability assessment of the State's largest
38 lakes. The preliminary vulnerability assessment shall identify
 the large lakes in the State most at risk of infestation by
40 invasive aquatic plants and nuisance species due to the close
 proximity to other infested waters, a location near major
42 transportation routes, the presence of public boat launch sites,
 heavy use by transient boaters, the number of lakefront property
44 owners and other factors as the commissioner may determine to be
 appropriate. The commissioner shall also identify the most
46 probable vectors or pathways of introduction of invasive aquatic
 plants and nuisance species and shall identify those inspection
48 locations most likely to result in identification and prevention
 of new introductions. The designated inspection locations must
50 include at a minimum the entrance to the Maine Turnpike in

2 Kittery and the public boat launches on the large lakes
3 identified as most at risk of immediate infestation.

4 3. Emergency boat inspection and public information
5 program. By June 30, 2001 the commissioner shall establish an
6 emergency boat inspection and public information program to
7 inspect boats and trailers and provide information about milfoil
8 and other invasive aquatic plants and nuisance species to boat
9 and trailer owners:

10

11 A. At the entrance to the Maine Turnpike;

12

13 B. At public boat launch sites on the lakes that are
14 already infested; and

15

16 C. At public boat launch sites on the lakes that have been
17 identified as most at risk of introduction of milfoil and
18 other invasive aquatic plants and nuisance species.

19

20 The commissioner may contract with a statewide volunteer lake
21 monitoring program, lake associations and other public and
22 private entities to carry out the emergency boat inspection and
23 public information program. Such contracting entities may use
24 volunteers, the Maine Conservation Corps and others in carrying
25 out boat inspection and public information activities. The
26 emergency boat inspection and public information program must be
27 designed and implemented so that not less than 10,000 hours are
28 devoted to boat inspection and public information activities
29 between June 30, 2001 and October 1, 2001.

30

31 4. Emergency lake monitoring program. By June 30, 2001,
32 the commissioner shall establish an emergency program to monitor
33 lakes in the State for new introductions of milfoil and other
34 invasive aquatic plants and nuisance species. The monitoring
35 program may be carried out through a contract with a statewide
36 volunteer lake monitoring program and may employ both paid staff
37 and trained volunteers. The emergency lake monitoring program
38 must be designed so that the State's great ponds are periodically
39 inspected for new introductions of milfoil and other invasive
40 aquatic plants and nuisance species, particularly in areas close
41 to public boat launch facilities. The emergency lake monitoring
42 program must be implemented so that each lake in the State with a
43 public boat launch is inspected for milfoil and other invasive
44 aquatic plants and nuisance species at least once between June
45 30, 2001 and October 15, 2001.

46

47 5. Emergency response program. By June 30, 2001, the
48 commissioner, in consultation with the council, shall establish
49 an emergency response program to deal with new introductions of
50 milfoil or other invasive aquatic nuisance species in lakes in

2 the State. The emergency response program must provide for
3 on-call personnel and equipment organized into emergency response
4 teams that can be mobilized quickly to eradicate new
5 introductions of milfoil and other invasive aquatic plants and
6 nuisance species in previously uninfested lakes in a
7 cost-effective and environmentally sound manner before the
8 infestations become well established. To the extent practicable,
9 the activities and methods of the emergency response teams must
10 be reviewed and approved in advance by applicable regulatory
11 authorities to avoid delays in responding to new introductions.
12 The commissioner shall apply for blanket wastewater discharge
13 permits on behalf of the department to permit emergency response
14 eradication and control activities to be undertaken in an
15 environmentally sound manner as soon as a new introduction is
16 discovered. Funds appropriated for the emergency response
17 program must be held in a separate nonlapsing fund administered
18 by the commissioner.

19
20 **6. Training and public information materials.** By June 30,
21 2001, the commissioner, with the advice of the council, shall
22 distribute training materials and public information materials
23 for use by lake monitors and persons authorized to inspect boats
24 and personal watercraft for milfoil and other invasive aquatic
25 plants and nuisance species. These materials must be distributed
26 in a manner so as to ensure that lake monitors and persons
27 authorized to inspect boats are able to recognize milfoil and
28 other invasive aquatic plants and nuisance species and that boat
29 inspectors understand how to remove and dispose of invasive
30 aquatic plants and nuisance species in a manner which avoids
31 further introduction into lakes and other bodies of water. The
32 public information materials may include, but not be limited to,
33 signs to be posted at public boat launches and brochures and
34 wallet-size cards depicting milfoil and other invasive aquatic
35 plants and nuisance species, that can be distributed to boat
36 owners and lakefront property owners.

37
38 **7. Rules.** The department may adopt rules as necessary to
39 carry out the purposes of this section. Rules adopted pursuant
40 to this section are major substantive rules as defined in Title
41 5, chapter 375, subchapter II-A.

42 **§1855. Nuisance species containment areas**

43
44 **1. Designation of invasive species containment areas.** The
45 commissioner, with the approval of the council, may designate
46 lakes and other bodies of water, or portions of lakes and other
47 bodies of water, that are infested by invasive aquatic plants or
48 nuisance species as invasive species containment areas. Such
49 invasive species containment areas may be marked by signs, buoys
50 or other means as determined by the commissioner. The

1 commissioner, with the approval of the council, shall adopt an
2 eradication and containment plan for each invasive species
3 containment area. The commissioner may by rule regulate or
4 prohibit the operation of sailboats, motorboats and personal
5 watercraft and other activities within designated invasive
6 species containment areas. The commissioner may by rule regulate
7 the transportation of watercraft to and from designated invasive
8 species containment areas.

10 **2. Suspension of use of state boat ramps.** If the
11 Commissioner of Environmental Protection determines that no other
12 method of containment of invasive aquatic plants and nuisance
13 species will be effective, the Commissioner of Environmental
14 Protection, with the approval of the council, may request the
15 Commissioner of Conservation or the Commissioner of Inland
16 Fisheries and Wildlife to suspend the use of a state boat ramp
17 under their respective jurisdictions. Upon receipt of such a
18 request, the Commissioner of Conservation and the Commissioner of
19 Inland Fisheries and Wildlife may suspend the use of state boat
20 ramps under their respective jurisdictions on lakes and other
21 bodies of water that have been designated as invasive species
22 containment areas or that contain designated invasive species
23 containment areas. These suspensions may not exceed 2 years in
24 duration, subject to renewal by the commissioners by following
25 the same procedures as for an initial suspension. The
26 Commissioner of Conservation and the Commissioner of Inland
27 Fisheries and Wildlife shall establish by rule procedures for
28 adopting such suspensions, including adequate notice to the
29 public and a reasonable opportunity for public comment. If the
30 use of a state boat ramp is suspended under this subsection, the
31 Commissioner of Conservation or the Commissioner of Inland
32 Fisheries and Wildlife, as applicable, shall seek alternate
33 public access to the affected lake or body of water during the
34 period of suspension to the extent consistent with containment of
35 the infestation to be controlled. Rules adopted pursuant to this
36 section are major substantive rules as defined in Title 5,
37 chapter 375, subchapter II-A.

38 **§1856. Grants to localities**

40 The commissioner shall establish a program of grants to
41 municipalities and other local entities as follows.

44 **1. Prevention and containment grants.** By October 1, 2001,
45 the commissioner, with the advice of the council, shall establish
46 a program of grants and other forms of technical assistance to
47 municipalities, watershed districts, lake associations and other
48 public and private entities to develop and carry out:

2 A. Plans to prevent the introduction of milfoil and other
4 invasive aquatic plants and nuisance species into lakes and
bodies of water that have not been infested by milfoil or
other invasive aquatic plants and nuisance species; and

6 B. Plans to eradicate and contain the spread of milfoil and
8 other invasive aquatic plants and nuisance species in lakes
and bodies of water where new introductions occur.

10 2. Sources of funds. The grants may be funded from current
12 appropriations, revenues from the boat trailer registration
14 program, boat registration fees deposited in the Great Ponds
16 Protection Fund established in section 1858, subsection 1 and
federal money that may be provided to the State under the federal
National Invasive Species Act of 1996.

18 3. Rules. The department may adopt rules as necessary to
20 carry out the purposes of this section. Rules adopted pursuant
to this section are major substantive rules as defined in Title
5, chapter 375, subchapter II-A.

22 **§1857. Municipal ordinances and plans**

24 Municipalities have the following authority, which may not
26 be construed as a limitation on their home rule authority.

28 1. Municipal ordinances. In order to prevent the spread of
30 milfoil and other invasive aquatic plants and nuisance species
32 into lakes and other bodies of water where milfoil and other
34 invasive aquatic plants and nuisance species have not been
introduced and to eradicate or contain milfoil and other invasive
aquatic plants and nuisance species in lakes where an
introduction is found, a municipality has the following ordinance
authority within the municipality's jurisdiction:

36 A. To require inspection and removal of milfoil and other
38 invasive aquatic plants and nuisance species from watercraft
before the boats and personal watercraft are launched into
lakes and other bodies of water;

40 B. To require inspection and removal of milfoil and other
42 invasive aquatic plants and nuisance species from watercraft
44 used on lakes and other bodies of water where milfoil or
46 other invasive aquatic plants have been introduced before
the watercraft are transported to other bodies of water;

48 C. To designate locations for inspecting sailboats,
motorboats and personal watercraft transported on or

- 2 launched from trailers and for removing milfoil and other
3 invasive aquatic plants and nuisance species;

- 4 D. To regulate surface uses on lakes and other bodies of
5 water infested by milfoil and other invasive aquatic plants
6 and nuisance species to prevent milfoil and other invasive
7 aquatic plants and nuisance species from spreading further;

- 8 E. To require sailboats, motorboats and personal watercraft
9 transported on or launched from trailers to be launched at
10 designated locations;

- 11 F. To establish civil penalties for violations of the
12 ordinances authorized by this chapter; and

- 13 G. To authorize municipal code enforcement officers, harbor
14 masters and seasonal wardens to enforce the ordinances
15 authorized by this chapter and to collect civil penalties in
16 the name of the municipality under Rule 80K of the Maine
17 District Court Rules.

18 Municipal ordinances adopted pursuant to this subsection are
19 subject to review and approval by the council.

20 **2. Municipal plans.** A municipality may adopt and implement
21 local plans to prevent introduction of, and to eradicate or
22 contain, milfoil and other invasive aquatic plants and nuisance
23 species in lakes and other bodies of water within the
24 municipality's jurisdiction. These plans may include:

- 25 A. Prevention plans for lakes and other bodies of water
26 that are free of milfoil or other invasive aquatic plants
27 and nuisance species; and

- 28 B. Eradication or containment plans for lakes and other
29 bodies of water in which milfoil or other invasive aquatic
30 plants and nuisance species have been introduced.

31 **§1858. Boat trailer registration**

32 The commissioner, in consultation and cooperation with the
33 Secretary of State and the Commissioner of Inland Fisheries and
34 Wildlife, shall adopt rules establishing a nuisance species
35 prevention boat trailer registration program.

36 **1. Boat trailer registration program.** The boat trailer
37 registration program must include the following elements.

- 38 A. All trailers used to transport boats to and from lakes
39 and other bodies of fresh water in the State are required to

2 A. All watercraft requiring or requesting certificate of
number and equipped with a motor having a manufacturer's
horsepower rating of:

4 (1) Ten horsepower or less\$6 ~~\$8~~;

6 (2) Greater than 10, but not more than 50
8 horsepower.....\$10 ~~\$12~~; and

10 (3) Greater than 50 horsepower\$15 ~~\$17~~.

12 A-1. All personal watercraft requiring or requesting a
certificate of number.....\$20 ~~\$22~~.

14 B. Duplicate certificate of number \$ 1

16 C. Duplicate validation sticker (per set)..\$1

18 D. Certificate of number issued with transfer of ownership
20 authorized in subsection 7 \$ 2

22 Two dollars of the fee for each original or renewal certificate
24 of number under this subsection must be credited to the Great
Ponds Protection Fund, as established in Title 38, section 1858,
26 subsection 1.

28 **Sec. B-2. 38 MRSA §419-C, sub-§2,** as enacted by PL 1999, c.
722, §2, is amended to read:

30 **2. Penalty.** A person who intentionally violates this
section commits a civil violation for which a ~~warning may be~~
32 issued forfeiture not to exceed \$500 may be adjudged for the
first violation, a forfeiture not to exceed \$50 ~~\$1,000~~ may be
34 adjudged for the 2nd violation and a forfeiture not to exceed
~~\$500~~ \$2,500 may be adjudged for a subsequent violation.

36 **Emergency clause.** In view of the emergency cited in the
38 preamble, this Act takes effect when approved.

40 SUMMARY

42 This bill creates a comprehensive program to protect Maine
44 lakes from introductions of milfoil and other invasive aquatic
plants and nuisance species. This bill establishes an emergency
46 program of boat inspections, public information activities, lake
monitoring and an emergency response program to eradicate new
48 introductions of milfoil and other invasive aquatic plants and
nuisance species. The emergency program is required to be
50 implemented by July 1, 2001.

2 The bill also establishes a Great Ponds Protection Council
and requires the council to coordinate the State's preparation of
4 a comprehensive state plan that meets the requirements of the
federal National Invasive Species Act of 1996. Approval of the
6 state plan by the federal Aquatic Nuisance Species Task Force is
required under federal law for the State to have the opportunity
8 to obtain up to 75% in federal matching funds for its invasive
species lake protection program.

10
12 The bill also provides state funding for the nuisance
species prevention boat trailer registration program through a
14 combination of new boat trailer registration fees and increased
boat registration fees. The bill gives the Commissioner of
16 Environmental Protection authority to designate lakes and other
bodies of water, or portions thereof, as invasive species
18 containment areas. The commissioner is authorized to regulate
the use of such containment areas to prevent the spread of
invasive aquatic plants and nuisance species.

20
22 The bill authorizes the Commissioner of Conservation and the
Commissioner of Inland Fisheries and Wildlife to suspend the use
of state boat launch facilities under the commissioners'
24 respective jurisdictions as necessary to contain infestations of
invasive aquatic species. To the extent consistent with the
26 containment of the infestation, the commissioner suspending the
use of a boat launch is required to provide alternate public
28 access to the affected lake or body of water.