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L.D. 1812

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DATE: 6-13-01

(Filing No. H-717)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

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HOUSE AMENDMENT "K" to S.P. 630, L.D. 1812, Bill, "An Act to Prevent Infestation of Invasive Aquatic Plants and to Control Other Invasive Species"

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Amend the bill by striking out all of Part A and inserting in its place the following:

22

PART A

24

Sec. A-1. 5 MRSA §3331, sub-§8 is enacted to read:

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8. Invasive aquatic plants and nuisance species; duties.
The council shall develop a comprehensive state invasive aquatic plants and nuisance species management plan that meets the requirements of the National Invasive Species Act of 1996, 16 United States Code, Section 4722. The plan must include, but is not limited to:

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A. Identification of inland waters of the State that are known to be infested with invasive aquatic plants and nuisance species;

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B. Recommendations on conducting a preliminary vulnerability assessment of the State's largest inland waters to identify the largest inland waters in the State most at risk of infestation by invasive aquatic plants and nuisance species. The assessment may include such factors as the proximity of the inland water body to other infested waters, proximity of major transportation routes, presence of a public watercraft launch, use of the inland water body by transient boaters, the number of lakefront property

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2 owners and other factors as the council may determine to be
3 appropriate. The assessment also must identify the most
4 probable vectors or pathways of introduction of invasive
5 aquatic plants and nuisance species and identify those
6 inspection locations most likely to result in identification
7 and prevention of new introductions;

8 C. Recommendations on a program to monitor inland waters in
9 the State for new introductions of invasive aquatic plants
10 and nuisance species, including recommendations on
11 implementing that program and methods to provide for the
12 periodic inspection of inland waters for new introductions
13 of invasive aquatic plants and nuisance species,
14 particularly in areas close to public watercraft launch
15 facilities; and

16 D. Recommendations on a response program to deal with new
17 introductions of invasive aquatic plants and nuisance
18 species in inland waters in the State.

19 Before implementing the plan, the council shall consult with
20 groups or organizations including lake associations, recreational
21 watercraft owners, marina owners, lake education programs, public
22 drinking water utilities, municipal governments, sporting
23 associations and recreational groups, institutions of higher
24 education, sporting camp owners, registered Maine guides,
25 transportation or tourism organizations, appropriate federal
26 agencies and any other interested groups or organizations.

27 The council may create a subcommittee on invasive aquatic plants
28 and nuisance species to assist in developing and implementing
29 this plan.

30 The council shall work with representatives from federal, state
31 and local agencies and private environmental and commercial
32 interests in the northeastern United States to form a
33 northeastern regional panel to establish priorities and
34 coordinate activities to prevent the spread of milfoil and other
35 invasive aquatic plants and nuisance species in the northeastern
36 United States.

37 **Sec. A-2. 12 MRSA §7801, sub-§38 is enacted to read:**

38 **38. Bringing watercraft, watercraft motor or watercraft**
39 **trailer into state prohibited.** A person who brings a watercraft,
40 watercraft motor or watercraft trailer into this State from
41 outside the State commits a civil violation for which a
42 forfeiture of \$500 must be adjudged. This subsection does not
43 apply to a person who sells or solicits or advertises the sale of
44 new watercraft, watercraft motors or watercraft trailers when

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2 that person brings a new watercraft, watercraft motor or
3 watercraft trailer into this State from outside the State.

4 **Sec. A-3. 38 MRSA §419-C, sub-§2,** as enacted by PL 1999, c.
5 722, §2, is amended to read:

6 **2. Penalty.** A person who intentionally violates this
7 section commits a civil violation for which a ~~warning may be~~
8 ~~issued for the first violation,~~ a forfeiture not to exceed \$50
9 ~~\$500~~ may be adjudged for the 2nd first violation and a forfeiture
10 ~~penalty~~ not to exceed \$500 \$2,500 may be adjudged for a
11 subsequent violation.
12

13 **Sec. A-4. 38 MRSA c. 20-A** is enacted to read:

14 **CHAPTER 20-A**

15 **PROGRAM TO PREVENT INFESTATION OF**
16 **AND TO CONTROL INVASIVE AQUATIC**
17 **PLANTS AND NUISANCE SPECIES**

18 **§1861. Definitions**

19 As used in this chapter, unless the context otherwise
20 indicates, the following terms have the following meanings.

21 **1. Invasive aquatic plant.** "Invasive aquatic plant" means
22 a species of aquatic plant described in section 410-N.

23 **2. Nuisance species.** "Nuisance species" means an aquatic
24 or terrestrial nonindigenous species that threatens the diversity
25 or abundance of native species, the ecological stability of
26 infested waters or commercial, agricultural, aquacultural or
27 recreational activity dependent on such waters as identified by
28 the department.

29 **3. Watercraft.** "Watercraft" has the same meaning as in
30 Title 12, section 7791, subsection 14.

31 **§1862. Program to prevent infestation of and to control**
32 **invasive aquatic plants and nuisance species**

33 The commissioner shall implement a program to develop and
34 distribute educational material on invasive aquatic plants and
35 nuisance species, including a guide to identifying those plants,
36 information on how to prevent the spread of those plants and
37 information on the potential environmental impact and other
38 impacts of infestation. The program must also include voluntary
39 inspection of watercraft, watercraft trailers and outboard motors
40 at locations selected by the commissioner based on the threat
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2 posed by invasive aquatic plants and nuisance species to inland
3 waters and efforts to contain, control or eradicate infestations
4 of invasive aquatic plants and nuisance species.

6 In implementing this program, the commissioner shall
7 collaborate with groups or organizations including lake
8 associations, recreational watercraft owners, marina owners, lake
9 education programs, public drinking water utilities, municipal
10 governments, sporting associations and recreational groups,
11 institutions of higher education, sporting camp owners,
12 registered Maine guides, transportation or tourism organizations,
13 appropriate federal agencies and any other interested groups or
14 organizations. Educational and reference material must include a
15 sticker indicating receipt of the material that may be affixed to
16 a boat or trailer.

18 **§1863. Invasive Aquatic Plant and Nuisance Species Fund**

20 The Invasive Aquatic Plant and Nuisance Species Fund,
21 referred to in this section as the "fund," is created within the
22 department as a nonlapsing fund and is administered by the
23 commissioner. Money in the fund may be used to develop and
24 distribute educational materials, for containment, eradication
25 and management activities to protect the inland waters of the
26 State from invasive aquatic plants and nuisance species and for
27 voluntary watercraft, watercraft trailer and outboard motor
28 inspections. The commissioner may also use funds to contract
29 with or provide grants to municipalities or other entities to
30 conduct inspection, prevention or eradication programs. This
31 fund is a dedicated nonlapsing fund that may accept funding from
32 other sources.

34 **§1864. Emergency authority to regulate surface use**

36 The commissioner and the Commissioner of Inland Fisheries
37 and Wildlife may jointly issue an emergency order to restrict or
38 prohibit the use of any watercraft on all or a portion of a water
39 body that has a confirmed infestation of an invasive aquatic
40 plant or nuisance species. The order must be for a specific
41 period of time and may be issued only when the use of watercraft
42 on that water body threatens to worsen or spread the infestation.
43 The order may require that watercraft on waters affected by the
44 order be taken out of the water only at locations identified in
45 the order and be inspected and cleaned by the department upon
46 removal.

48 If the infested water body is a public drinking water
49 supply, public notification by the commissioner and the
50 Commissioner of Inland Fisheries and Wildlife is required prior
to any response action that proposes the use of a chemical

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2 control agent. Public notification must include, at a minimum,
4 notification of adjoining municipalities, property owners,
6 drinking water suppliers who use that water supply and other
8 affected persons, and must provide adequate time for public
review and comment on the proposed emergency action. Chemical
control agents may not be used on a water body that is a public
drinking water supply without the prior written consent of each
public drinking water supplier using that water body.

10 **§1865. Prohibited acts**

12 **1. Launching contaminated watercraft.** A person who places
14 a watercraft that is contaminated with an invasive aquatic plant
upon the inland waters of the State commits a civil violation for
16 which a forfeiture of not less than \$500 and not more than \$5,000
per violation may be adjudged. A forfeiture imposed under this
subsection may not be waived by the court.

18 **2. Operating watercraft in quarantined area.** A person who
20 operates a watercraft in violation of an order issued under
section 1864 commits a civil violation for which a forfeiture of
22 not less than \$500 and not more than \$5,000 per violation may be
adjudged. A forfeiture imposed under this subsection may not be
24 waived by the court.'

26 Further amend the bill by striking out all of Part B.

28 Further amend the bill in Part C by striking out all of
30 section 3.

32 Further amend the bill by inserting after Part D the
34 following:

34 **PART E**

36 **Sec. E-1. 36 MRSA §6651, sub-§§2-A, 4 and 5** are enacted to read:

38 **2-A. Nonqualified service.** "Nonqualified service" means
40 any service engaged in in this State by a person for another
person or persons for a fee, retainer, commission or other
42 valuable consideration, exclusive of activities engaged in for an
employer by an employee, including, but not limited to, business
44 services, professional services, personal services and
recreational services. "Nonqualified service" does not include
46 any qualified service and does not include the following
activities or an activity by a person engaged in any of the
48 following activities that is conducted predominantly in support
of either the activities engaged in by that person or the
business activity of that person related to those activities:

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- 2 A. "Production" as defined in the first sentence of section
3 1752, subsection 9-B;
- 4
- 6 B. "Fabrication services" as defined by the first sentence
7 of section 1752, subsection 2-C;
- 8
- 10 C. Wood harvesting operations and the severance of sand,
11 gravel, oil, gas or other natural resources produced or
12 severed from the soil or water; or
- 14 D. "Commercial agricultural production," "commercial
15 aquacultural production" and "commercial fishing" as defined
16 by section 2013, subsection 1.

17 Activities conducted by a person in support of any of its
18 activities listed in paragraphs A to D or any qualified service
19 engaged in by that person include, without limitation,
20 management, administration, marketing, purchasing, design,
21 engineering, repair, maintenance, operation of support and
22 auxiliary equipment, distribution, accounting, financing,
23 billing, payroll, workers' compensation, accounts payable,
24 accounts receivable, medical, risk management, labor relations,
25 training, human resources, legal, packaging, storage, research
26 and development, quality control and environmental, security,
27 safety and fire protection.

28 4. Qualified service. "Qualified service" means any of the
29 following when provided by one person to another for a fee,
30 retainer, commission or other consideration: construction
31 services; printing; retail and wholesale services exclusive of
32 those performed at or in support of retail facilities;
33 modification of real or tangible personal property; development
34 of computer software; leasing by a lessor of property that would
35 be eligible for reimbursement under this chapter had the property
36 been owned by the lessee rather than the lessor; services
37 provided by financial institutions as defined by section 5206-D,
38 subsection 8; services provided by credit unions authorized to do
39 business in this State pursuant to Title 9-B, section 131,
40 subsection 12-A; services provided by insurance companies subject
41 to taxation under chapter 357; internet access services; computer
42 system services, including, but not limited to, maintenance,
43 support, development, management, operation, communication,
44 training, help desk, data processing, research, analysis,
45 troubleshooting and similar services involving computer systems;
46 repair, maintenance, refitting, refurbishing or upgrading
47 commercial or military watercraft and all machinery, equipment
48 and other property attached to or located on such watercraft and
49 related to the use of such watercraft; and transportation
50 services. "Qualified service" also includes any activity by a

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2 person engaged in a qualified service that is conducted
3 predominantly in support of either the qualified service engaged
4 in by that person or the business activity of that person related
5 to that qualified service.

6 **5. Retail sales facility.** "Retail sales facility" means a
7 physical structure or portion of a physical structure located in
8 the State and predominantly utilized as a facility to serve
9 customers who are physically present at the facility for the
10 purpose of selecting and purchasing goods or a nonqualified
11 service at retail.

12 **Sec. E-2. 36 MRSA §6652, sub-§1-B,** as enacted by PL 1997, c.
13 24, Pt. C, §14, is amended to read:

14 **1-B. Certain property excluded.** Notwithstanding any other
15 provision of law, reimbursement pursuant to this chapter may not
16 be made with respect to the following property:

17 **A.** Office furniture, including without limitation tables,
18 chairs, desks, bookcases, filing cabinets and modular office
19 partitions; and

20 **B.** Lamps and lighting fixtures;

21 **C.** Property predominantly employed by the person in
22 possession of it either in the provision of a nonqualified
23 service or in support of the provision of a nonqualified
24 service being provided by that person, exclusive of property
25 used by a person in providing a nonqualified service to an
26 affiliate when that property would be eligible for
27 reimbursement if it were owned by that affiliate; and

28 **D.** Property employed by the person in possession of it
29 either in a retail sales facility or employed predominantly
30 in the support of such a facility. Property employed in
31 support of a retail sales facility does not include property
32 employed predominantly in one or more qualified services or
33 in one or more of the activities listed in section 6651,
34 subsection 2-A, paragraphs A to D by any person or in any
35 activity in support thereof or the business activity of that
36 person related to such qualified services or listed
37 activities.

38 ~~This subsection applies~~ In the case of construction in progress
39 and inventory parts, eligibility must be determined as if the
40 item were currently in use as intended. Paragraphs A and B apply
41 to property tax years beginning after April 1, 1996. Property
42 affected by ~~this subsection~~ paragraphs A and B that was eligible
43 for reimbursement pursuant to chapter 915 of property taxes paid

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for the 1996 property tax year is grandfathered into the program and continues to be eligible for reimbursements for up to 12 years, unless it subsequently becomes ineligible. Paragraphs C and D apply to property tax years beginning after April 1, 2000. Property affected by paragraphs C and D that was eligible for reimbursement pursuant to this chapter for property taxes paid for the 2000 property tax year is grandfathered into the program and continues to be eligible for reimbursement to the extent permitted by this chapter as it existed on September 1, 2000, unless it subsequently becomes ineligible. Property used in the provision of a nonqualified service or in support of the provision of a nonqualified service and property used in a retail sales facility or in support of a retail sales facility includes, without limitation, property used in management, marketing, purchasing, distribution, accounting and research and development.

Sec. E-3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

	2001-02	2002-03
ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF		
Personal Property Tax Reform		
All Other	(\$621,557)	(\$1,680,944)
Deappropriates funds from the prospective elimination of some retail and service providers from the Business Equipment Tax Reimbursement program.		
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES		
TOTAL	(\$621,557)	(\$1,680,944)
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Land and Water Quality		
Positions - Legislative Count	(3,000)	(3,000)
Personal Services	\$91,572	\$178,342
All Other	788,028	1,466,972
Capital Expenditures		17,000

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2	TOTAL	<u>\$879,600</u>	<u>\$1,662,314</u>
4	Provides funds for one		
	additional Biologist I		
6	position to start on		
	September 1, 2001, one		
8	additional Environmental		
	Specialist III position to		
10	start on January 1, 2002, one		
	additional Environmental		
12	Specialist III position to		
	start on March 1, 2002 and		
14	operating costs necessary to		
	implement an invasive aquatic		
16	plants prevention program		
	including \$600,000 annually		
18	for grants to local		
	entities. Funds provided for		
20	this purpose may not lapse		
	but must be carried forward		
22	to be used for the same		
	purpose.		

24	DEPARTMENT OF ENVIRONMENTAL		
26	PROTECTION		
	TOTAL	<u>\$879,600</u>	<u>\$1,662,314</u>

28	INLAND FISHERIES AND WILDLIFE,		
30	DEPARTMENT OF		
32	Enforcement Operations -		
	Inland Fisheries and Wildlife		
34	Positions - Legislative Count		(6,000)
36	Personal Services	\$40,000	\$309,828
	All Other	15,000	80,000
38	Capital Expenditures		90,000
40	TOTAL	<u>\$55,000</u>	<u>\$479,828</u>

42	Provides funds to cover		
	overtime enforcement costs		
44	for Game Wardens in fiscal		
	year 2001-02, for 6		
46	additional Game Warden		
	positions beginning in fiscal		
48	year 2002-03 and for		
	operating costs necessary to		
50			

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2 implement an invasive aquatic
 plants prevention program.
 4 Funds provided for this
 purpose may not lapse but
 must be carried forward to be
 6 used for the same purpose.

8 **Public Information and Education -
 Division of**

10	Positions - FTE Count	(1.534)	(1.534)
12	Personal Services	\$45,891	\$48,186
14	All Other	30,000	30,000
16	TOTAL	<u>\$75,891</u>	<u>\$78,186</u>

18 Provides funds to increase 11
 Recreational Safety
 20 Coordinator positions from
 750 hours per year to 1040
 22 hours per year and for
 increased operational costs
 24 for these positions. Funds
 provided for this purpose may
 26 not lapse but must be carried
 forward to be used for the
 28 same purpose.

30 **Fisheries and Hatcheries Operations**

32	Positions - FTE Count	(1.000)	(1.000)
	Personal Services	\$48,206	\$50,616
34	All Other	10,000	10,000
36	TOTAL	<u>\$58,206</u>	<u>\$60,616</u>

38 Provides funds to increase 2
 40 part-time Biologist I
 positions to one full-time
 42 equivalent Biologist I
 position and for increases in
 44 operating costs for these
 positions. Funds provided
 46 for this purpose may not
 lapse but must be carried
 48 forward to be used for the
 same purpose.

50

**DEPARTMENT OF INLAND FISHERIES
AND WILDLIFE
TOTAL**

\$189,097 \$618,630

TOTAL APPROPRIATIONS

\$447,140 \$600,000

Sec. E-4. Application. This Part applies to property taxes assessed on or after April 1, 2001.'

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

FISCAL NOTE

2001-02 2002-03

APPROPRIATIONS/ALLOCATIONS

General Fund \$447,140 \$600,000

The amendment strikes the provisions that created the Lake and River Protection Fund within the Department of Inland Fisheries and Wildlife and the Invasive Aquatic Plant and Nuisance Species Protection Fund within the Department of Environmental Protection, eliminates the lake and river protection stickers that would have provided a source of dedicated revenue for these funds and eliminates the Other Special Revenue funds allocations for these programs.

The amendment also strikes the provisions from the bill that authorized transfers from the Maine Rainy Day Fund to provide initial capitalization for 2 dedicated funds, eliminating the indeterminate decrease of General Fund revenue from a reduction of interest earnings.

As amended, the prospective elimination of some retail and service providers from the Business Equipment Tax Reimbursement program will reduce expenditures in the Personal Property Tax Reform account within the Department of Administrative and Financial Services by \$621,557 in fiscal year 2001-02 and \$1,680,944 in fiscal year 2002-03. The bill includes deappropriations in these amounts.

The bill includes General Fund appropriations of \$189,097 and \$618,630 in fiscal years 2001-02 and 2002-03, respectively, for the Department of Inland Fisheries and Wildlife to provide funding to increase 2 part-time positions to the equivalent of

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2 one full-time Biologist I position, to increase 11 part-time
3 Recreational Coordinator positions from 750 hours per year to
4 1040 hours per year, to establish 6 additional Game Warden
5 positions beginning in fiscal year 2002-03 and for operating
6 costs necessary to implement an invasive aquatic plants
7 prevention program.

8 This bill also includes General Fund appropriations of
9 \$879,600 and \$1,662,314 in fiscal years 2001-02 and 2002-03,
10 respectively, for the Department of Environmental Protection to
11 provide funding for one additional Biologist I position beginning
12 on September 1, 2001, one additional Environmental Specialist III
13 position beginning on January 1, 2002, one additional
14 Environmental Specialist III position beginning on March 1, 2002,
15 for annual grants to be made to local entities and for operating
16 costs necessary to implement an invasive aquatic plants
17 prevention program.

18 The additional workload and administrative costs associated
19 with the minimal number of new cases filed in the court system
20 can be absorbed within the budgeted resources of the Judicial
21 Department. The collection of additional fines may increase
22 General Fund revenue by minor amounts.

23 The Department of Environmental Protection will incur some
24 minor additional costs to issue certain emergency orders and to
25 submit a required report to the Legislature. These costs can be
26 absorbed within the department's existing budgeted resources.

27 The Land and Water Resources Council will incur some minor
28 additional costs to develop a state invasive aquatic plants and
29 nuisance species management plan. These costs can be absorbed
30 within the council's existing budgeted resources.

31 The prohibition on bringing watercraft, watercraft motors or
32 watercraft trailers into the State will result in significant
33 enforcement costs. The amounts can not be determined at this
34 time.

40

SUMMARY

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43 This amendment eliminates the requirement of stickers and
44 fees from the bill and eliminates the transfer from the Maine
45 Rainy Day Fund. This amendment instead funds the program to
46 prevent infestation of invasive aquatic plants by excluding
47 certain additional property employed in support of a retail sales
48 facility from reimbursement under the BETR program.

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Rather than creating a new commission, the amendment utilizes the existing Land and Water Resources Council to develop a comprehensive state invasive aquatic plants and nuisance species management plan that meets the requirements of the National Invasive Species Act of 1996, 16 United States Code, Section 4722. The amendment authorizes the council to form a subcommittee to assist in developing and implementing that plan. It also directs the council to work with representatives from federal, state and local agencies and private environmental and commercial interests in the northeastern United States to form a northeastern regional panel to establish priorities and coordinate activities to prevent the spread of milfoil and other invasive aquatic plants and nuisance species in the Northeast.

SPONSORED BY: Bruce Bryant
(Representative BRYANT)

TOWN: Dixfield

HOUSE AMENDMENT