

# MAINE STATE LEGISLATURE

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

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

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

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

**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:

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

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 owners and other factors as the council may determine to be appropriate. The assessment also must identify the

2 most probable vectors or pathways of introduction of  
3 invasive aquatic plants and nuisance species and identify  
4 those inspection locations most likely to result in  
5 identification and prevention of new introductions;

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

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

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

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

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

34 **Sec. 2. 5 MRSA §13090-K is enacted to read:**

35 **§13090-K. Tourism Marketing Promotion Fund**

36 **1. Fund established.** The Tourism Marketing Promotion Fund  
37 is established in the Department of Economic and Community  
38 Development, Office of Tourism as a nonlapsing dedicated account.

39 **2. Source of fund.** On or before July 30, 2002, the State  
40 Controller shall transfer to the Tourism Marketing Promotion Fund  
41 \$6,642,290 from the General Fund sales and use tax revenues.  
42 Beginning July 1, 2003 and every July 1st thereafter, the State

2 Controller shall transfer to the Tourism Marketing Promotion Fund  
3 an amount, as certified by the State Tax Assessor, that is  
4 equivalent to 5% of the 7% tax imposed on tangible personal  
5 property and taxable services pursuant to Title 36, section 1811,  
6 for the first 6 months of the prior fiscal year after the  
7 reduction for the transfer to the Local Government Fund as  
8 described by Title 30-A, section 5681, subsection 5. Beginning  
9 on October 1, 2003 and every October 1st thereafter, the State  
10 Controller shall transfer to the Tourism Marketing Promotion Fund  
11 an amount, as certified by the State Tax Assessor, that is  
12 equivalent to 5% of the 7% tax imposed on tangible personal  
13 property and taxable services pursuant to Title 36, section 1811,  
14 for the last 6 months of the prior fiscal year after the  
15 reduction for the transfer to the Local Government Fund. The tax  
16 amount must be based on actual sales for that fiscal year and may  
17 not consider any accruals that may be required by law. The  
18 amount transferred from General Fund sales and use tax revenues  
19 does not affect the calculation for the transfer to the Local  
20 Government Fund.

21 3. Restrictions. A minimum of 10% of the funds received by  
22 the Tourism Marketing Promotion Fund in accordance with  
23 subsection 2 must be used for regional marketing promotion and  
24 regional special events promotion.

25 Sec. 3. 36 MRSA §1752, sub-§8-A, as enacted by PL 1991, c.  
26 591, Pt. WW, §2 and affected by §4, is repealed and the following  
27 enacted in its place:

28 8-A. Prepared food. "Prepared food" means:

29 A. Meals served on or off the premises of the retailer;

30 B. Food and drinks that are prepared by the retailer and  
31 ready for consumption without further preparation; and

32 C. All food and drinks sold from an establishment whose  
33 sales of food and drinks that are prepared by the retailer  
34 account for more than 75% of the establishment's gross  
35 receipts.

36 "Prepared food" does not include bulk sales of grocery staples.

37 Sec. 4. 36 MRSA §1811, first ¶, as amended by PL 1999, c. 401,  
38 Pt. X, §1 and affected by §5, is further amended to read:

39 A tax is imposed on the value of all tangible personal  
40 property and taxable services sold at retail in this State. The  
41 rate of tax is 7% on the value of liquor sold in licensed  
42 establishments as defined in Title 28-A, section 2, subsection  
43

15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house, or tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile; 7% on the value of prepared food sold in establishments that are licensed for on-premises consumption of liquor pursuant to Title 28-A, chapter 43; and 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided.

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

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

Sec. 6. 38 MRSA c. 20-A is enacted to read:

CHAPTER 20-A

PROGRAM TO PREVENT INFESTATION OF  
AND TO CONTROL INVASIVE AQUATIC  
PLANTS AND NUISANCE SPECIES

§1861. Definitions

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

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

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

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

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

The commissioner shall implement a program to develop and

2 distribute educational material on invasive aquatic plants and  
3 nuisance species, including a guide to identifying those plants,  
4 information on how to prevent the spread of those plants and  
5 information on the potential environmental impact and other  
6 impacts of infestation. The program must also include voluntary  
7 inspection of watercraft, watercraft trailers and outboard motors  
8 at locations selected by the commissioner based on the threat  
9 posed by invasive aquatic plants and nuisance species to inland  
10 waters and efforts to contain, control or eradicate infestations  
11 of invasive aquatic plants and nuisance species.

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

24 **§1863. Invasive Aquatic Plant and Nuisance Species Fund**

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

40 **§1864. Emergency authority to regulate surface use**

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

2 the order and be inspected and cleaned by the department upon  
3 removal.

4 If the infested water body is a public drinking water  
5 supply, public notification by the commissioner and the  
6 Commissioner of Inland Fisheries and Wildlife is required prior  
7 to any response action that proposes the use of a chemical  
8 control agent. Public notification must include, at a minimum,  
9 notification of adjoining municipalities, property owners,  
10 drinking water suppliers who use that water supply and other  
11 affected persons, and must provide adequate time for public  
12 review and comment on the proposed emergency action. Chemical  
13 control agents may not be used on a water body that is a public  
14 drinking water supply without the prior written consent of each  
15 public drinking water supplier using that water body.

16 **§1865. Prohibited acts**

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18  
19 **1. Launching contaminated watercraft.** A person who places  
20 a watercraft that is contaminated with an invasive aquatic plant  
21 upon the inland waters of the State commits a civil violation for  
22 which a forfeiture of not less than \$500 and not more than \$5,000  
23 per violation may be adjudged. A forfeiture imposed under this  
24 subsection may not be waived by the court.

25  
26 **2. Operating watercraft in quarantined area.** A person who  
27 operates a watercraft in violation of an order issued under  
28 section 1864 commits a civil violation for which a forfeiture of  
29 not less than \$500 and not more than \$5,000 per violation may be  
30 adjudged. A forfeiture imposed under this subsection may not be  
31 waived by the court.

32  
33 **Sec. 7. Report to committee.** The Commissioner of Environmental  
34 Protection shall report to the Joint Standing Committee on  
35 Natural Resources and the Joint Standing Committee on Inland  
36 Fisheries and Wildlife no later than January 15, 2002 on the  
37 invasive aquatic plant and nuisance species education and  
38 inspection program established in the Maine Revised Statutes,  
39 Title 38, chapter 20-A. The report must quantify the number and  
40 type of informational materials produced and distributed, the  
41 number and type of training sessions conducted and number of  
42 participants and the type and location of any enforcement actions  
43 taken under the program. The report must contain a summary of  
44 all activities in the Invasive Aquatic Plant and Nuisance Species  
45 Fund, including any contracts or grants made from the fund or  
46 money accrued to the fund from other sources. The report must  
47 also summarize collaborative efforts undertaken by the  
48 commissioner and must document the actual costs of operating the  
49 program in 2001 and the projected cost of operating the program  
50 in 2002 and subsequent years, including any recommendations on

additional funding or personnel requirements.

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**Sec. 8. Authority to report out legislation.** Both the Joint Standing Committee on Natural Resources and the Joint Standing Committee on Inland Fisheries and Wildlife may report out legislation on invasive aquatic plants and nuisance species to the Second Regular Session of the 120th Legislature.

**Sec. 9. Application.** Those sections of this Act that repeal and replace the Maine Revised Statutes, Title 36, section 1752, subsection 8-A and amend Title 36, section 1811 apply to sales occurring on or after October 1, 2001.

**Sec. 10. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	2001-02	2002-03
<b>ECONOMIC AND COMMUNITY DEVELOPMENT, DEPARTMENT OF</b>		
<b>Office of Tourism</b>		
Positions - Legislative Count		(-7,000)
Personal Services		(\$438,314)
All Other		(4,210,132)
Deappropriates funds to permit the transfer of 7 positions and program operations from the General Fund to the Other Special Revenue funds program account.		
<b>DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT TOTAL</b>		<b>(\$4,648,446)</b>

**ENVIRONMENTAL PROTECTION, DEPARTMENT OF**

**Land and Water Quality**

Positions - Legislative Count	(1,500)	(1,500)
Personal Services	\$57,221	\$91,869
All Other	252,779	900,000
Capital Expenditures		10,000

Appropriates funds to increase the hours of a



2 half-time Biologist I  
 3 position in the Federal  
 4 Performance Partnership  
 5 Program to a full-time  
 6 split-funded position on July  
 7 1, 2001, to add one  
 8 Environmental Specialist III  
 9 position effective January 1,  
 10 2002 and to provide operating  
 11 funds to implement an  
 12 invasive aquatic plants  
 13 prevention program including  
 14 \$50,000 annually for grants  
 15 to local entities. Funds  
 16 provided for this program may  
 not lapse.

18 **DEPARTMENT OF ENVIRONMENTAL  
 19 PROTECTION**  
 20 **TOTAL**

\$310,000	\$1,001,869
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22 **SECTION**  
 23 **TOTAL**

\$310,000	(\$3,646,577)
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24 **Sec. 11. Allocation.** The following funds are allocated from  
 25 Other Special Revenue funds to carry out the purposes of this Act.

	<b>2001-02</b>	<b>2002-03</b>
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30 **ENVIRONMENTAL PROTECTION,  
 31 DEPARTMENT OF**

32 **Land and Water Quality**

All Other	\$500	\$500
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36 Allocates initial funds for  
 37 the newly established  
 38 Invasive Aquatic Plant and  
 39 Nuisance Species Fund.

42 **ECONOMIC AND COMMUNITY DEVELOPMENT,  
 43 DEPARTMENT OF**

44 **Office of Tourism**

Positions - Legislative Count		(7,000)
Personal Services		\$438,314
All Other		6,403,976

50

HOUSE AMENDMENT "L" to S.P. 630, L.D. 1812

2 Allocates funds to permit the  
transfer in of 7 positions  
4 and program operations from  
the General Fund to the Other  
6 Special Revenue funds program  
account and to increase  
tourism promotion.

8

10	<b>DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT</b>		
12	<b>TOTAL</b>		<u>\$6,842,790</u>
14	<b>SECTION</b>		
14	<b>TOTAL</b>	<u>\$500</u>	<u>\$6,842,790'</u>

16 **FISCAL NOTE**

18

	<b>2001-02</b>	<b>2002-03</b>
20	<b>APPROPRIATIONS/ALLOCATIONS</b>	
22		
24	General Fund	\$310,000 (\$3,646,577)
24	Other Funds	500 6,842,790

26 **REVENUES**

28

30	General Fund	\$8,611,606	\$8,075,990
30	Other Funds	462,794	7,644,010

32 The elimination of the lake and river protection sticker and  
34 all associated fees has the effect of removing all previous  
dedicated revenue estimates and all Other Special Revenue funds  
36 allocations. In addition, there is no longer any provision for  
use of the Maine Rainy Day Fund.

38 The amendment increases the tax on prepared food from 5% to  
40 7% and uses a portion of the additional General Fund revenue  
generated to provide funding for a program to be implemented by  
42 the Department of Environmental Protection and dedicates a  
portion of the revenue to the Office of Tourism within the  
Department of Economic and Community Development.

44 As amended, the increase in the tax on prepared food from 5%  
46 to 7% effective October 1, 2001 will increase sales and use tax  
collections by \$9,074,400 in fiscal year 2001-02 and \$15,720,000  
48 in fiscal year 2002-03. The increase of these tax collections  
will increase the amounts transferred to the Local Government  
50 Fund for state-municipal revenue sharing in those years by

HOUSE AMENDMENT "C" to S.P. 630, L.D. 1812

\$462,794 and \$801,720, respectively. The resulting net increase of General Fund revenue will be \$8,611,606 in fiscal year 2001-02 and \$14,918,280 in fiscal year 2002-03.

As amended, this bill includes General Fund appropriations of \$310,000 and \$1,001,869 in fiscal years 2001-02 and 2002-03, respectively, for the Land and Water Quality program in the Department of Environmental Protection to implement an invasive aquatic plants and nuisance species prevention program and to provide grants for local entities.

As amended, this bill also includes initial Other Special Revenue funds allocations of \$500 beginning in fiscal year 2001-02 for the newly established Invasive Aquatic Plant and Nuisance Species Fund within the Department of Environmental Protection. The fund is authorized to accept funds from private or other sources; these amounts can not be determined at this time.

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

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

The bill requires the transfer of \$6,842,290 from the General Fund in fiscal year 2002-03 to the Tourism Marketing Promotion Fund. An Other Special Revenue funds allocation in this amount is provided to the Office of Tourism program within the Department of Economic and Community Development for the salary and benefits of 7 positions and program operations.

Since the Office of Tourism program will be supported with dedicated revenue beginning in fiscal year 2002-03, the bill includes General Fund deappropriations from the office of \$4,648,446.

The Governor's proposed supplemental, "Part 2," budget includes proposals to fund the Tourism Marketing Promotion Fund. This estimate of the fiscal impact may need to be adjusted based on final legislative actions on that budget bill.

#### SUMMARY

This amendment replaces the bill.

2           The amendment requires the Department of Environmental  
4           Protection to undertake a program to address threats posed to the  
6           inland waters of the State by invasive aquatic plants and  
8           nuisance species that emphasizes collaboration and education in  
10          addition to control and eradication of invasive species and  
12          inspection of boats and trailers. In implementing this program,  
14          the Commissioner of Environmental Protection is required to  
16          collaborate with groups or organizations including lake  
          associations, recreational watercraft owners, marina owners, lake  
          education programs, public drinking water utilities, municipal  
          governments, sporting associations and recreational groups,  
          institutions of higher education, sporting camp owners,  
          registered Maine guides, transportation or tourism organizations,  
          appropriate federal agencies and any other interested groups or  
          organizations.

18          The amendment also authorizes the Commissioner of  
20          Environmental Protection and the Commissioner of Inland Fisheries  
22          and Wildlife to jointly issue emergency orders to restrict or  
24          prohibit the use of any watercraft on all or a portion of a water  
26          body that has a confirmed infestation of an invasive aquatic  
28          plant or nuisance species. Such orders must be for a specific  
30          period of time and may be issued only when the use of watercraft  
          on that water body threatens to worsen or spread the  
          infestation. If the infested water body is a public drinking  
          water supply, public notification and opportunity for comment is  
          required prior to taking any response action that proposes the  
          use of a chemical control agent.

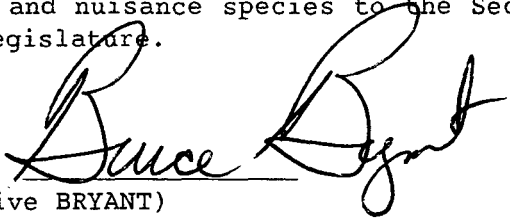
32          The amendment also directs the Commissioner of Environmental  
34          Protection to report to the Joint Standing Committee on Natural  
36          Resources and the Joint Standing Committee on Inland Fisheries  
38          and Wildlife no later than January 15, 2002 on the invasive  
40          aquatic plant and nuisance species education and inspection  
42          program established in the Maine Revised Statutes, Title 38,  
44          chapter 20-A. The report must quantify the number and type of  
46          informational materials produced and distributed, the number and  
48          type of training sessions conducted and number of participants  
          and the type and location of any enforcement actions taken under  
          the program. The report must contain a summary of all activities  
          in the Invasive Aquatic Plant and Nuisance Species Fund,  
          including any contracts or grants made from the fund or money  
          accrued to the fund from other sources. The report must also  
          summarize collaborative efforts undertaken by the commissioner  
          and must document the actual costs of operating the program in  
          2001 and the projected cost of operating the program in 2002 and  
          subsequent years, including any recommendations on additional  
          funding or personnel requirements.

HOUSE AMENDMENT "L" to S.P. 630, L.D. 1812

2           Rather than creating a new commission, the amendment  
4 utilizes the existing Land and Water Resources Council to develop  
6 a comprehensive state invasive aquatic plants and nuisance  
8 species management plan that meets the requirements of the  
10 National Invasive Species Act of 1996, 16 United States Code,  
12 Section 4722. The amendment authorizes the council to form a  
14 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.

16           The amendment funds the program over 2 years with an  
18 increase in the tax on certain prepared food. It also creates  
20 the Tourism Marketing Promotion Fund, which is partially funded  
from the increase in the tax on certain prepared food.

22           The amendment also authorizes the Joint Standing Committee  
24 on Natural Resources and the Joint Standing Committee on Inland  
26 Fisheries and Wildlife to report out legislation on invasive  
aquatic plants and nuisance species to the Second Regular Session  
of the 120th Legislature.

28           SPONSORED BY:   
30           (Representative BRYANT)

32           TOWN: Dixfield

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