

MAINE STATE LEGISLATURE

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NATURAL RESOURCES

Reported by:

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STATE OF MAINE
SENATE
122ND LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to S.P. 496, L.D. 1450, Bill, "An Act To Amend Water Quality Standards"

Amend the bill by inserting after the title and before the enacting clause the following:

'Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there are significant and long-standing water quality issues, including recurring algae blooms, associated with certain Class C waters; and

Whereas, the mitigation of water quality impairments on certain Class C waters requires extraordinary limitations on the discharge of certain pollutants, including phosphorus, that will reasonably necessitate longer than usual time frames for implementation; and

Whereas, there are presently expired wastewater discharge licenses for discharges to these waters that permit excessive pollutant discharges to certain Class C waters; and

Whereas, it is necessary promptly to address such expired wastewater discharge licenses in order to begin mitigation and provide for improvement in water quality; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, '

COMMITTEE AMENDMENT

R.018

2 Further amend the bill in section 2 in paragraph B by
4 inserting after subparagraph (2) a new paragraph blocked to
paragraph B to read:

6 'The department may negotiate and enter into agreements with
8 licensees and water quality certificate holders in order to
10 provide further protection for the growth of indigenous
12 fish. Agreements entered into under this paragraph are
14 enforceable as department orders according to the provisions
16 of section 347-A to 349.'

18 Further amend the bill by inserting after section 4 the
20 following:

22 **'Sec. 5. Water quality modeling.** The Department of
24 Environmental Protection shall supervise additional modeling of
26 Gulf Island Pond on the Androscoggin River in order to revise the
28 total maximum daily load for phosphorus.

30 1. The additional modeling must be done under contract to
32 the department and funded by those dischargers seeking additional
34 information on the present total maximum daily load for
36 phosphorus.

38 2. The additional modeling must be based on ambient data
40 collected under reduced loading conditions to Gulf Island Pond,
42 including model parameters such as sediment oxygen demand,
44 chlorophyll-a concentration at critical conditions and phosphorus
46 assimilation and mineralization rates.

48 3. The model revisions must be completed by March 15, 2009
50 and submitted to the Department of Environmental Protection and a
3rd-party peer reviewer for review and evaluation. The 3rd-party
peer reviewer must be approved by the joint standing committee of
the Legislature having jurisdiction over natural resources
matters.

4. The peer reviewer shall submit recommendations on the
model revisions and any revised total maximum daily load for
phosphorus to the Department of Environmental Protection by June
15, 2009. By September 15, 2009, the department shall publish
for review and public comment a revised modeling report and total
maximum daily load for phosphorus that is based on the peer
reviewer's recommendations.

5. By March 15, 2010, the Department of Environmental
Protection shall issue revised licenses, as needed, that are
based on the revised and approved total maximum daily load report
for phosphorus created as a result of the modeling revisions
pursuant to this section.

R.018

2 6. Any reallocation of phosphorus among licensed
4 dischargers contributing to algae blooms in Gulf Island Pond must
6 take into consideration all prior total maximum daily load
8 allocations, license limits and attainment of interim or final
10 phosphorus limits as issued in prior total maximum daily loads or
licenses so as not to create inequities in regard to attainment
of prior phosphorus limits. The purpose of this subsection is to
prevent penalizing dischargers who have attained early compliance
with prior license limits or total maximum daily load allocations.

12 7. Any change in license limits based on a revised and
14 approved total maximum daily load for phosphorus that increases a
16 phosphorus effluent limit is not considered backsliding as the
18 circumstances on which the previous permit was based are
20 considered to have been materially and substantially changed and
would constitute cause for permit revision under the Maine
Revised Statutes, Title 38, section 341-D and section 414-A,
subsection 5 and department rules governing backsliding.

22 8. The Department of Environmental Protection is not
24 obligated to make revisions to the model or existing approved
total maximum daily load if funding is not provided for the
additional work described in this section.

26 9. It is the intent of the Legislature that actual
28 continuous effluent reductions of phosphorus by dischargers will
occur during the period from the effective date of this section
through March 15, 2010.

30 **Sec. 6. Operations study.** The Department of Environmental
32 Protection shall supervise a study that evaluates the operation
of the dam on Gulf Island Pond with regard to its impact on algae
34 blooms. Hydrodynamic modeling of Gulf Island Pond and the dam
must be included in the study as well as an analysis of the dam's
36 operation to determine the feasibility and practicability of
forecasting algae blooms and modifying the dam's operation to
38 mitigate the likelihood of the occurrence of algae blooms.

40 The study must be voluntarily funded by those wastewater
42 dischargers that choose to participate in the study. The study
must be completed by September 2008. The operator of the dam on
44 Gulf Island Pond shall cooperate with the department in the
conduct of the study, including the submission of any relevant
46 information upon request. If any person demonstrates that the
information sought by the department in connection with the study
48 is entitled to protection as a trade secret and so falls within a
privilege against discovery and thus is not a public record
pursuant to the Maine Revised Statutes, Title 1, section 402,

R.O.S.

2 subsection 3, paragraph B, the information must be submitted to
the department but be treated by the department as confidential
and not available to public inspection.

4
6 Dischargers who have reached their final total maximum daily
load allocations as enforceable license limits may participate in
the study, but may not be considered for additional control
8 efforts until other dischargers and the owner of the dam on Gulf
Island Pond have either reached their final allocations or
10 implemented final mitigation efforts. It is the Legislature's
intent that if the study undertaken pursuant to this section
12 results in mitigation efforts that include alterations to the
dam's operation in lieu of discharger reductions, not including
14 effluent reductions that are required under a license or other
agreement, the dam owner or operator will not be required to
16 implement the alterations unless the dischargers compensate the
dam owner for such alterations.

18 **Sec. 7. Report to Joint Standing Committee on Natural Resources.**
20 By February 1, 2006 and annually by that date until 2011, the
Department of Environmental Protection shall submit a report on
22 the status of activities undertaken pursuant to this Act to the
joint standing committee of the Legislature having jurisdiction
24 over natural resources matters. The committee may report out
legislation related to the annual report to the Legislature.

26 **Emergency clause.** In view of the emergency cited in the
28 preamble, this Act takes effect when approved.'

30 **SUMMARY**

32 This amendment requires the Department of Environmental
34 Protection to supervise additional modeling of Gulf Island Pond
in order to revise the total maximum daily load for phosphorus.
36 The amendment also provides for a study that evaluates the
operations of Gulf Island Pond dam and the dam's impact on algae
38 blooms. The amendment also authorizes the Department of
Environmental Protection to enter into agreements with
40 licensees. The amendment also directs the Department of
Environmental Protection to report to the Joint Standing
42 Committee on Natural Resources by February 1, 2006 and annually
until 2011 and authorizes the committee to report out legislation
44 to any session of the Legislature. The amendment also adds an
emergency preamble and emergency clause.

46
48 **FISCAL NOTE REQUIRED**
(See attached)



122nd MAINE LEGISLATURE

LD 1450

LR 0584(02)

An Act To Amend Water Quality Standards

Fiscal Note for Bill as Amended by Committee Amendment 'A'

Committee: Natural Resources

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor cost increase - Other Special Revenue Funds