

MAINE STATE LEGISLATURE

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L.D. 1849

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Date: 3-28-12

(Filing No. S-496)

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INLAND FISHERIES AND WILDLIFE

4

Reproduced and distributed under the direction of the Secretary of the Senate.

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STATE OF MAINE

6

SENATE

7

125TH LEGISLATURE

8

SECOND REGULAR SESSION

9

COMMITTEE AMENDMENT "A" to S.P. 643, L.D. 1849, Bill, "An Act To
10 Protect Native Landlocked Salmon Fisheries in Schoodic and Sebocis Lakes from
11 Invasive Fish Species"

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Amend the bill by striking out the title and substituting the following:

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**'An Act To Protect Landlocked Salmon Fisheries in Schoodic and Sebocis Lakes
14 from Invasive Fish Species'**

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Amend the bill by striking out everything after the enacting clause and before the
16 summary and inserting the following:

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'Sec. 1. 12 MRSA §12760, as amended by PL 2011, c. 24, §§1 and 2, is further
18 amended to read:

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§12760. Fishways in dams and other artificial obstructions

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1. Commissioners' authority. In order to conserve, develop or restore anadromous
21 or migratory fish resources, the commissioner and the Commissioner of Marine
22 Resources jointly may require a fishway to be erected, maintained, repaired or altered by
23 the owners, lessors or other persons in control of any dam or other artificial obstruction
24 within inland waters frequented by alewives, shad, salmon, sturgeon or other anadromous
25 or migratory fish species.

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The ~~commissioner~~ commissioners may not require or authorize a fishway or fish bypass
27 structure at a dam on the outlet of Sebec Lake in the Town of Sebec or at a dam on the
28 Sebec River in the Town of Milo or at a dam on the outlet of Schoodic Lake in Lake
29 View Plantation or at a dam on the outlet of Sebocis Lake in Township 4, Range 9 NWP
30 that would allow the upstream passage of an invasive fish species known to be present
31 downstream in the Piscataquis River or Penobscot River drainage. For the purposes of
32 this section, "invasive fish species" means those invasive fish species identified in the
33 action plan for managing invasive aquatic species developed pursuant to Title 38, section
34 1872.

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COMMITTEE AMENDMENT

1 **2. Examination of dams.** The commissioner and the Commissioner of Marine
2 Resources shall periodically examine all dams and other artificial obstructions to fish
3 passage within the inland waters in order to determine whether fishways are necessary,
4 sufficient or suitable for the passage of anadromous or migratory fish.

5 **3. Monitoring program.** The commissioner and the Commissioner of Marine
6 Resources shall, ~~in cooperation with the Department of Marine Resources,~~ establish a
7 program to ensure fishways are functioning properly and remain sufficient or suitable for
8 the passage of anadromous or migratory fish. ~~The commissioner has~~ commissioners have
9 sole authority to take corrective action at fishways as prescribed under this section.

10 **4. Initiation of fishway proceedings.** The commissioner and the Commissioner of
11 Marine Resources shall initiate proceedings to consider construction, repair or alteration
12 of fishways in existing dams or other artificial obstructions whenever the ~~commissioner~~
13 ~~determines~~ commissioners determine that one or more of the following conditions may
14 exist:

15 A. Fish passage at the dam or obstruction in issue, whether alone or in conjunction
16 with fish passage at other upriver barriers, will improve access to sufficient and
17 suitable habitat anywhere in the watershed to support a substantial commercial or
18 recreational fishery for one or more species of anadromous or migratory fish; or

19 B. Fish passage at the dam or obstruction in issue is necessary to protect or enhance
20 rare, threatened or endangered fish species.

21 **5. Adjudicatory proceedings.** A fishway proceeding must conform to the following
22 requirements.

23 A. A fishway proceeding must be an adjudicatory proceeding under Title 5, chapter
24 375, subchapter 4, but a hearing is not required unless requested in accordance with
25 paragraph B. Notice of the proceeding must be given in accordance with Title 5,
26 section 9052 and the following requirements:

27 (1) Personal notice must be given to the dam owner, lessee or other person in
28 control of the dam or artificial obstruction, informing that person that a
29 proceeding has been undertaken and informing that person of that person's right
30 to request a hearing; and

31 (2) Notice to the public, in newspapers of general circulation in the areas
32 affected, must be given notifying the public of the initiation of the proceedings
33 and of the public's opportunity to request a hearing.

34 B. If any interested person requests a public hearing, the commissioner and the
35 Commissioner of Marine Resources shall, within 30 days, either notify the petitioners
36 in writing of the ~~commissioner's~~ commissioners' denial, stating the reasons for the
37 denial, or schedule a public hearing. ~~The commissioner~~ commissioners shall hold a
38 public hearing whenever:

39 (1) ~~The commissioner is~~ commissioners are petitioned by 50 or more residents of
40 the State; or

41 (2) The owner, lessee or other person in control of the dam or artificial
42 obstruction requests a hearing.

1 C. The commissioner and the Commissioner of Marine Resources shall accept
 2 testimony from the owner, lessee or other person in control of the dam or artificial
 3 obstruction on alternate fishway designs to those proposed by the ~~commissioner~~
 4 commissioners for that dam or artificial obstruction.

5 **6. Decision.** In the event that the commissioner ~~decides~~ and the Commissioner of
 6 Marine Resources decide that a fishway should be constructed, repaired, altered or
 7 maintained pursuant to this section, the ~~commissioner~~ commissioners shall issue final
 8 orders with specific plans and descriptions of the fishway construction, alteration, repair
 9 or maintenance requirements, the conditions of the use of the fishway and the time and
 10 manner required for fishway operation. The ~~commissioner~~ commissioners may issue a
 11 decision requiring the owners, lessees or other persons in control of the dam or
 12 obstruction to construct, repair, alter or maintain a fishway. Such a decision must be
 13 supported by a finding based on evidence submitted to the ~~commissioner~~ commissioners
 14 that either of the following conditions exist:

15 A. One or more species of anadromous or migratory fish can be restored in
 16 substantial numbers to the watershed by construction, alteration, repair or
 17 maintenance of a fishway and habitat anywhere in the watershed above the dam or
 18 obstruction is sufficient and suitable to support a substantial commercial or
 19 recreational fishery for one or more species of anadromous or migratory fish; or

20 B. The construction, alteration, repair or maintenance of a fishway is necessary to
 21 protect or enhance rare, threatened or endangered fish species.

22 In the event that the ~~commissioner decides~~ commissioners decide that ~~no~~ a fishway
 23 should not be constructed, the ~~commissioner~~ commissioners shall specify in that decision
 24 a period not to exceed 5 years subsequent to that decision during which ~~no~~ a fishway may
 25 not be required to be constructed.

26 **7. Compliance.** The owner, lessee or other person in control of a dam or other
 27 artificial obstruction is jointly and severally liable for the costs of fishway design,
 28 construction, repair, alteration or maintenance, and for full compliance with a decision
 29 issued pursuant to subsection 6.

30 A. If the owner, lessee or other person in control of a dam or other artificial
 31 obstruction refuses to comply or does not fully comply with the ~~commissioner's~~
 32 decision issued pursuant to subsection 6, the commissioner and the Commissioner of
 33 Marine Resources shall initiate a civil action to enjoin the owner, lessee or person in
 34 control of the dam to comply fully with the ~~commissioner's~~ commissioners' order or
 35 to restrain the violation of an order. In the proceeding, the court may not review the
 36 legality of the ~~commissioner's~~ commissioners' order, except when the owner, lessee
 37 or person in control of the dam or artificial obstruction has brought a timely petition
 38 for judicial review pursuant to Title 5, chapter 375, subchapter 7.

39 B. The court may render judgment against and order the sale of the dam or other
 40 artificial obstruction, the land on which it stands and a right-of-way to the dam or
 41 artificial obstruction, in order to secure the costs of fishway construction, repair,
 42 alteration or maintenance, the costs of the court-ordered sale and the costs incurred
 43 by the department for fishway design. The purchaser of the dam or other obstruction
 44 is subject to the ~~commissioner's~~ decision issued pursuant to subsection 6.

1 **8. Privileged entry.** The commissioner and the Commissioner of Marine Resources,
 2 the ~~commissioner's~~ commissioners' agents or subcontractors may enter upon any private
 3 land in order to examine, at least annually, fishways in dams or other artificial
 4 obstructions and dams as provided in subsection 2. The ~~commissioner~~ commissioners
 5 shall notify the landowner, lessee or other person in control of the dam when the
 6 examination will take place and the time required to complete the examination. The
 7 ~~commissioner~~ commissioners shall make every effort to preserve private land and shall
 8 restore surrounding lands to the grade and condition existing prior to entry, if
 9 economically feasible.

10 **9. Certain lakes, rivers and streams; fishways prohibited.** Notwithstanding any
 11 other provision of law to the contrary, the owners, lessors or other persons in control of a
 12 dam on the outlet of Sebec Lake in the Town of Sebec, of Schoodic Lake in Lake View
 13 Plantation or of Seboeis Lake or a dam on the Sebec River in the Town of Milo may not
 14 construct or authorize the construction of a fishway or fish bypass structure that would
 15 allow the upstream passage of an invasive fish species known to be present downstream
 16 in the Piscataquis River or Penobscot River drainage.

17 A. A person who violates this subsection commits a civil violation for which a fine
 18 of not less than \$500 or more than \$1,000 may be adjudged.

19 B. A person who violates this subsection after having been adjudicated as having
 20 committed 3 or more civil violations under this Part within the previous 5-year period
 21 commits a Class E crime.

22 **Sec. 2. 12 MRSA §12761,** as affected by PL 2003, c. 614, §9 and amended by c.
 23 655, Pt. B, §305 and affected by §422, is further amended to read:

24 **§12761. Construction of new dams or other artificial obstructions**

25 **1. Notice required.** Prior to construction or prior to authorizing construction of a
 26 new dam or other obstruction in the inland waters, the owner, lessee or other person in
 27 control of the dam or other artificial obstruction shall provide written notice to the
 28 commissioner; and the Commissioner of Marine Resources supplying information on
 29 construction plans, proposed location and date of construction of the dam or other
 30 artificial obstruction.

31 **2. Initiation of fishway proceedings.** Within 30 days of receipt of the construction
 32 notice pursuant to subsection 1, the commissioner and the Commissioner of Marine
 33 Resources shall review the plans in order to determine whether fishway construction or
 34 alteration of proposed fishway construction plans may be required pursuant to the criteria
 35 set forth in section 12760, subsection 4. If the ~~commissioner determines~~ commissioners
 36 determine that the construction or alteration may be necessary, the ~~commissioner~~
 37 commissioners shall initiate fishway proceedings and follow the procedures prescribed in
 38 section 12760.

39 **3. Unlawful building of dam.** A person may not build any dam or other obstruction
 40 in any of the rivers, streams or brooks of this State without first filing written notice with
 41 the commissioner and the Commissioner of Marine Resources pursuant to subsection 1.

42 A. A person who violates this subsection commits a civil violation for which a fine
 43 of not less than \$100 nor more than \$500 may be adjudged.

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1 B. A person who violates this subsection after having been adjudicated as having
2 committed 3 or more civil violations under this Part within the previous 5-year period
3 commits a Class E crime.

4 **Sec. 3. 38 MRSA §480-Q, sub-§27**, as enacted by PL 2009, c. 75, §3, is
5 amended to read:

6 **27. Fishways.** Erection, maintenance, repair or alteration of a fishway in a dam or
7 other artificial obstruction when required by the Commissioner of Inland Fisheries and
8 Wildlife and the Commissioner of Marine Resources pursuant to Title 12, section 12760
9 or by the Commissioner of Marine Resources pursuant to Title 12, section 6121;'

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SUMMARY

11 This amendment strikes and replaces the bill. It prohibits the construction of a
12 fishway or fish bypass structure at the dams at the outlets of Schoodic Lake and Seboeis
13 Lake that would allow the upstream passage of invasive fish species known to be present
14 downstream in the Piscataquis River or Penobscot River drainage. The amendment also
15 requires that the Commissioner of Inland Fisheries and Wildlife and the Commissioner of
16 Marine Resources act jointly in requiring a fishway to be erected, maintained, repaired or
17 altered on any dam within inland waters frequented by anadromous or migratory fish
18 species. It also prohibits the commissioners from requiring or authorizing a fishway or
19 fish bypass structure at the dams at the outlets of Schoodic Lake and Seboeis Lake. The
20 amendment also requires both commissioners to participate in the review process and
21 decision on the proposed construction of new dams on inland waters.

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FISCAL NOTE REQUIRED

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(See attached)



Approved: 03/22/12 *MRC*

125th MAINE LEGISLATURE

LD 1849

LR 2780(02)

An Act To Protect Native Landlocked Salmon Fisheries in Schoodic and Seboeis Lakes from Invasive Fish Species

Fiscal Note for Bill as Amended by Committee Amendment "A" S-496

Committee: Inland Fisheries and Wildlife

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Additional costs to the Department of Marine Resources associated with any involvement in decisions related to erecting, maintaining, repairing or altering fishways can be absorbed within existing budgeted resources.