

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 802

H.P. 551

House of Representatives, March 10, 2015

An Act To Allow the Breach or Removal of Beaver Dams That Obstruct Passage of Anadromous or Migratory Fish

Reference to the Committee on Inland Fisheries and Wildlife suggested and ordered printed.

A handwritten signature in cursive script, reading "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TUCKER of Brunswick.
Cosponsored by Senator BAKER of Sagadahoc and
Representative: PIERCE of Dresden.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 12 MRSA §12760**, as amended by PL 2011, c. 612, §1, is further amended
3 to read:

4 **§12760. Fishways in dams and other artificial obstructions and in beaver dams**

5 **1. Commissioners' authority.** In order to conserve, develop or restore anadromous
6 or migratory fish resources, the commissioner and the Commissioner of Marine
7 Resources jointly may require within inland waters frequented by alewives, shad, salmon,
8 sturgeon or other anadromous or migratory fish species a fishway to be erected,
9 maintained, repaired or altered by the owners, lessors or other persons in control of any
10 dam or other artificial obstruction ~~within inland waters frequented by alewives, shad,~~
11 ~~salmon, sturgeon or other anadromous or migratory fish species~~ or of property on which a
12 beaver dam exists or by which a beaver dam may be accessed or may order such persons
13 to remove a beaver dam.

14 The commissioners may not require or authorize a fishway or fish bypass structure at a
15 dam on the outlet of Sebec Lake in the Town of Sebec or at a dam on the Sebec River in
16 the Town of Milo or at a dam on the outlet of Schoodic Lake in Lake View Plantation or
17 at a dam on the outlet of Seboeis Lake in Township 4, Range 9 NWP that would allow
18 the upstream passage of an invasive fish species known to be present downstream in the
19 Piscataquis River or Penobscot River drainage. For the purposes of this section, “invasive
20 fish species” means those invasive fish species identified in the action plan for managing
21 invasive aquatic species developed pursuant to Title 38, section 1872.

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

27 **3. Monitoring program.** The commissioner and the Commissioner of Marine
28 Resources shall establish a program to ensure fishways are functioning properly and
29 remain sufficient or suitable for the passage of anadromous or migratory fish. The
30 commissioners have sole authority to take corrective action at fishways as prescribed
31 under this section.

32 **4. Initiation of fishway proceedings.** The commissioner and the Commissioner of
33 Marine Resources shall initiate proceedings to consider construction, repair or alteration
34 of fishways in existing dams or other artificial obstructions or beaver dams or to consider
35 the removal of a beaver dam whenever the commissioners determine that one or more of
36 the following conditions may exist:

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

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

3 **5. Adjudicatory proceedings.** A beaver dam removal or fishway proceeding must
4 conform to the following requirements.

5 A. A beaver dam removal or fishway proceeding must be an adjudicatory proceeding
6 under Title 5, chapter 375, subchapter 4, but a hearing is not required unless
7 requested in accordance with paragraph B. Notice of the proceeding must be given in
8 accordance with Title 5, section 9052 and the following requirements:

9 (1) Personal notice must be given to the ~~dam~~ owner, lessee or other person in
10 control of the dam or artificial obstruction or of property on which a beaver dam
11 exists or by which a beaver dam may be accessed, informing that person that a
12 proceeding has been undertaken and informing that person of that person's right
13 to request a hearing; and

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

17 B. If any interested person requests a public hearing, the commissioner and the
18 Commissioner of Marine Resources shall, within 30 days, either notify the petitioners
19 in writing of the commissioners' denial, stating the reasons for the denial, or schedule
20 a public hearing. The commissioners shall hold a public hearing whenever:

21 (1) The commissioners are petitioned by 50 or more residents of the State; or

22 (2) The owner, lessee or other person in control of the dam or artificial
23 obstruction or of property on which a beaver dam exists or by which a beaver
24 dam may be accessed requests a hearing.

25 C. The commissioner and the Commissioner of Marine Resources shall accept
26 testimony from the owner, lessee or other person in control of the dam or artificial
27 obstruction or of property on which a beaver dam exists or by which a beaver dam
28 may be accessed on alternate fishway designs to those proposed by the
29 commissioners for that dam ~~or~~ artificial obstruction or beaver dam or on alternatives
30 to the removal of a beaver dam.

31 **6. Decision.** In the event that the commissioner and the Commissioner of Marine
32 Resources decide that a fishway should be constructed, repaired, altered or maintained
33 pursuant to this section or that a beaver dam should be removed, the commissioners shall
34 issue final orders with specific plans and descriptions of the fishway construction,
35 alteration, repair or maintenance requirements or of the removal of the beaver dam, the
36 conditions of the use of ~~the~~ a fishway and the time and manner required for fishway
37 operation. The commissioners may issue a decision requiring the owners, lessees or other
38 persons in control of the dam or obstruction or of property on which a beaver dam exists
39 or by which a beaver dam may be accessed to construct, repair, alter or maintain a
40 fishway or to remove a beaver dam. Such a decision must be supported by a finding
41 based on evidence submitted to the commissioners that either of the following conditions
42 exist:

1 A. One or more species of anadromous or migratory fish can be restored in
2 substantial numbers to the watershed by the removal of a beaver dam or by
3 construction, alteration, repair or maintenance of a fishway and habitat anywhere in
4 the watershed above the dam, beaver dam or obstruction is sufficient and suitable to
5 support a substantial commercial or recreational fishery for one or more species of
6 anadromous or migratory fish; or

7 B. The construction, alteration, repair or maintenance of a fishway or the removal of
8 a beaver dam is necessary to protect or enhance rare, threatened or endangered fish
9 species.

10 ~~In~~ With regard to a dam or other artificial obstruction, in the event that the commissioners
11 decide that a fishway should not be constructed, the commissioners shall specify in that
12 decision a period not to exceed 5 years subsequent to that decision during which a
13 fishway may not be required to be constructed.

14 **7. Compliance.** The owner, lessee or other person in control of a dam or other
15 artificial obstruction or of property on which a beaver dam exists or by which a beaver
16 dam may be accessed is jointly and severally liable for the costs of fishway design,
17 construction, repair, alteration or maintenance; or of the removal of a beaver dam and for
18 full compliance with a decision issued pursuant to subsection 6.

19 A. If the owner, lessee or other person in control of a dam or other artificial
20 obstruction or of property on which a beaver dam exists or by which a beaver dam
21 may be accessed refuses to comply or does not fully comply with the decision issued
22 pursuant to subsection 6, the commissioner and the Commissioner of Marine
23 Resources shall initiate a civil action to enjoin the owner, lessee or person in control
24 of the dam or of property on which a beaver dam exists or by which a beaver dam
25 may be accessed to comply fully with the commissioners' order or to restrain the
26 violation of an order. In the proceeding, the court may not review the legality of the
27 commissioners' order, except when the owner, lessee or person in control of the dam
28 or artificial obstruction or of property on which a beaver dam exists or by which a
29 beaver dam may be accessed has brought a timely petition for judicial review
30 pursuant to Title 5, chapter 375, subchapter 7.

31 B. The court may render judgment against and order the sale of the dam or other
32 artificial obstruction, the land on which it stands and a right-of-way to the dam or
33 artificial obstruction or of the property on which a beaver dam exists or by which a
34 beaver dam may be accessed, in order to secure the costs of fishway construction,
35 repair, alteration or maintenance or of removal of the beaver dam, the costs of the
36 court-ordered sale and the costs incurred by the department for any fishway design.
37 The purchaser of the dam or other obstruction or of the property on which a beaver
38 dam exists or by which a beaver dam may be accessed is subject to the decision
39 issued pursuant to subsection 6.

40 **8. Privileged entry.** The commissioner and the Commissioner of Marine Resources,
41 the commissioners' agents or subcontractors may enter upon any private land in order to
42 examine, at least annually, fishways in dams or other artificial obstructions and beaver
43 dams and dams and beaver dams as provided in subsection 2. The commissioners shall
44 notify the ~~landowner~~ owner, lessee or other person in control of the dam or of the

1 property on which a beaver dam exists or by which a beaver dam may be accessed when
2 the examination will take place and the time required to complete the examination. The
3 commissioners shall make every effort to preserve private land and shall restore
4 surrounding lands to the grade and condition existing prior to entry, if economically
5 feasible.

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

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

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

18 SUMMARY

19 This bill gives the Commissioner of Inland Fisheries and Wildlife and the
20 Commissioner of Marine Resources explicit authority to require fishways to be installed
21 and maintained through beaver dams by the owners, lessees or other persons in control of
22 the property on which a beaver dam exists or by which a beaver dam may be accessed or
23 to require a beaver dam to be removed in order to conserve, develop or restore
24 anadromous or migratory fish resources.