MAINE STATE LEGISLATURE

130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document **No. 1964**

S.P. 690 In Senate, February 10, 2022

An Act To Update Certain Water Quality Standards and To Reclassify Certain Waters of the State

Reported by Senator BRENNER of Cumberland for the Joint Standing Committee on Environment and Natural Resources pursuant to Joint Rule 353.

Reference to the Committee on Environment and Natural Resources suggested and ordered printed pursuant to Joint Rule 218.

DAREK M. GRANT
Secretary of the Senate

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

Sec. 1. 38 MRSA §361-A, sub-§1-L, as enacted by PL 2017, c. 319, §1, is repealed.

Sec. 2. 38 MRSA §363-D, as enacted by PL 1993, c. 579, §1, is amended to read:

§363-D. Waiver or modification of protection and improvement laws

The commissioner or the commissioner's designee may waive or modify any of the provisions of this chapter if that waiver or modification promotes or assists any oil spill response activity conducted in accordance with the national contingency plan, a federal contingency plan, the state marine oil spill contingency plan, or as otherwise directed by the federal on-scene coordinator, the commissioner or commissioner's designee. A waiver issued by the commissioner under this section must be in writing.

This section does not apply to state or federal water quality standards applicable to any waters of the State, including, but not limited to, designated uses, criteria to protect existing and designated uses and antidegradation policies.

Sec. 3. 38 MRSA §464, sub-§2, ¶C, as enacted by PL 1985, c. 698, §15, is amended to read:

C. ~~The~~ Pursuant to subsection 3, paragraph B, the board may recommend changes in classification it ~~deems~~ considers necessary to the Legislature.

Sec. 4. 38 MRSA §464, sub-§2-A, ¶E, as enacted by PL 1993, c. 344, §1, is amended to read:

E. If the board adopts a proposal to enact a designated use under paragraph A, subparagraph (1) or to remove a designated use or adopt a subcategory of a designated use under paragraph A, subparagraph (2), it shall ~~forward that proposal~~ submit to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters ~~at~~ during the next regular session of the Legislature a report that includes that recommendation and the joint standing committee may report out legislation to implement that recommendation. The board may not ~~forward~~ propose any other recommendation to the Legislature under this subsection. The Legislature has sole authority to make changes in the designated uses of the waters of the State, including the creation of a subcategory of a designated use.

Sec. 5. 38 MRSA §464, sub-§3, as amended by PL 2015, c. 124, §6, is further amended to read:

3. Reports to the Legislature. The ~~department~~ commissioner or the board, as applicable, shall periodically report to the Legislature as ~~governed by the following provisions~~ follows.

A. ~~The commissioner shall submit to~~ During the first regular session of each Legislature, the commissioner shall submit to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters a report on the quality of the State's waters ~~which~~ that describes existing water quality, identifies waters that are not attaining their classification and states what measures are necessary for the attainment of the standards of their classification.

B. The board shall, from time to time, but at least once every 3 years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards ~~to the Legislature~~. After conducting the review, the board shall submit to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters a report describing the board's findings and any recommendations for changes to the water quality classification system and related standards and the joint standing committee may report out legislation to implement those recommendations.

C. ~~The commissioner shall report to~~ During the first regular session of each Legislature, the commissioner shall submit to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters a report on the status of licensed discharges.

Sec. 6. 38 MRSA §464, sub-§4, ¶A, as amended by PL 2017, c. 319, §2, is further amended by amending subparagraph (5) to read:

(5) Discharge of pollutants to any water of the State that violates sections 465, 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh waters to fall outside of the ~~6.0 to 8.5~~ 6.5 to 9.0 range; or causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range;

Sec. 7. 38 MRSA §464, sub-§4, ¶F, as amended by PL 1991, c. 66, Pt. B, §1, is further amended by amending subparagraph (2) to read:

(2) Where high quality waters of the State constitute an outstanding national resource, that water quality must be maintained and protected. For purposes of this paragraph, the following waters are considered outstanding national resources: those water bodies in national and state parks and wildlife refuges and in the Katahdin Woods and Waters National Monument; those water bodies in public reserved lands; and those water bodies classified as Class AA and SA waters pursuant to section 465, subsection 1; section 465-B, subsection 1; and listed under sections 467, 468 and 469.

Sec. 8. 38 MRSA §464, sub-§4, ¶F, as amended by PL 1991, c. 66, Pt. B, §1, is further amended by amending subparagraph (4) to read:

(4) When the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected. ~~The~~ Pursuant to subsection 3, paragraph B, the board shall recommend to the Legislature that that water be reclassified in the next higher classification.

Sec. 9. 38 MRSA §465, sub-§1, ¶B, as amended by PL 2017, c. 319, §4, is further amended to read:

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters must be as naturally occurs, except that the number of Escherichia coli bacteria in these waters may not exceed a geometric mean of 64 CFU or MPN per 100 milliliters over a 90-day interval or 236 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval.

Sec. 10. 38 MRSA §465, sub-§2, ¶B, as amended by PL 2017, c. 319, §5, is further amended to read:

B. The dissolved oxygen content of Class A waters may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the one-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. The aquatic life and bacteria content of Class A waters must be as naturally occurs, except that the numbers of Escherichia coli bacteria in these waters may not exceed a geometric mean of 64 CFU or MPN per 100 milliliters over a 90-day interval or 236 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval.

Sec. 11. 38 MRSA §465, sub-§3, ¶B, as amended by PL 2017, c. 319, §6, is further amended to read:

B. Class B waters must be of sufficient quality to support all aquatic species indigenous to those waters without detrimental changes in the resident biological community. The dissolved oxygen content of Class B waters may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the one-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. Between April 15th and October 31st, the number of Escherichia coli bacteria in these waters may not exceed a geometric mean of 64 CFU or MPN per 100 milliliters over a 90-day interval or 236 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval.

Sec. 12. 38 MRSA §465, sub-§4, ¶B, as amended by PL 2017, c. 319, §8, is further amended to read:

B. Class C waters must be of sufficient quality to support all species of fish indigenous to those waters and to maintain the structure and function of the resident biological community. The dissolved oxygen content of Class C water may not be less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality sufficient for these purposes must be maintained. In order to provide additional protection for the growth of indigenous fish, the following standards apply.

(1) The 30-day average dissolved oxygen criterion of a Class C water is 6.5 parts per million using a temperature of 22 degrees centigrade or the ambient temperature of the water body, whichever is less, if:

(a) A license or water quality certificate other than a general permit was issued prior to March 16, 2004 for the Class C water and was not based on a 6.5 parts per million 30-day average dissolved oxygen criterion; or

(b) A discharge or a hydropower project was in existence on March 16, 2005 and required but did not have a license or water quality certificate other than a general permit for the Class C water.

This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.

(2) In Class C waters not governed by subparagraph (1), dissolved oxygen may not be less than 6.5 parts per million as a 30-day average based upon a temperature of 24 degrees centigrade or the ambient temperature of the water body, whichever is less. This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.

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

Between April 15th and October 31st, the number of Escherichia coli bacteria in Class C waters may not exceed a geometric mean of 100 CFU or MPN per 100 milliliters over a 90-day interval or 236 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval. The board shall adopt rules governing the procedure for designation of spawning areas. Those rules must include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

Sec. 13. 38 MRSA §465-A, sub-§1, ¶B, as amended by PL 2017, c. 319, §10, is further amended to read:

B. Class GPA waters must be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters must have a stable or decreasing trophic state, subject only to natural fluctuations, and must be free of culturally induced algal blooms that impair their use and enjoyment. The number of Escherichia coli bacteria in these waters may not exceed a geometric mean of 29 CFU or MPN per 100 milliliters over a 90-day interval or 194 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval. The aquatic life of Class GPA waters must be as naturally occurs.

Sec. 14. 38 MRSA §465-B, sub-§1, ¶B, as amended by PL 2017, c. 319, §11, is further amended to read:

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters must be as naturally occurs, except that the number of enterococcus bacteria in these waters may not exceed a geometric mean of 8 CFU or MPN per 100 milliliters in any 90-day interval or 54 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval. The number of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration as set forth in its publication "Guide for the Control of Molluscan Shellfish" (2019 revision) or any successor publication.

Sec. 15. 38 MRSA §465-B, sub-§2, ¶B, as amended by PL 2017, c. 319, §12, is further amended to read:

B. Class SB waters must be of sufficient quality to support all estuarine and marine species indigenous to those waters without detrimental changes in the resident biological community. The dissolved oxygen content of Class SB waters may not be less than 85% of saturation. Between April 15th and October 31st, the number of enterococcus bacteria in these waters may not exceed a geometric mean of 8 CFU or MPN per 100 milliliters in any 90-day interval or 54 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval. The number of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration as set forth in its publication "Guide for the Control of Molluscan Shellfish" (2019 revision) or any successor publication.

Sec. 16. 38 MRSA §465-B, sub-§3, ¶B, as amended by PL 2017, c. 319, §13, is further amended to read:

B. Class SC waters must be of sufficient quality to support all species of fish indigenous to those waters and to maintain the structure and function of the resident biological community. The dissolved oxygen content of Class SC waters may not be less than 70% of saturation. Between April 15th and October 31st, the number of enterococcus bacteria in these waters may not exceed a geometric mean of 14 CFU or MPN per 100 milliliters in any 90-day interval or 94 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval. The number of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration as set forth in its publication "Guide for the Control of Molluscan Shellfish" (2019 revision) or any successor publication.

Sec. 17. 38 MRSA §466, sub-§2-C is enacted to read:

2-C. CFU. "CFU" means colony-forming units.

Sec. 18. 38 MRSA §466, sub-§8-B is enacted to read:

8-B. MPN. "MPN" means most probable number.

Sec. 19. 38 MRSA §467, sub-§1, ¶A, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §68, is further amended to read:

A. Androscoggin River, main stem, including all impoundments.

(1) From the Maine-New Hampshire boundary to its confluence with the Ellis River - Class B.

(2) From its confluence with the Ellis River to ~~a line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction~~ Worumbo Dam in Lisbon Falls - Class C.

(3) From Worumbo Dam in Lisbon Falls to a line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction - Class B.

Sec. 20. 38 MRSA §467, sub-§1, ¶B, as amended by PL 2003, c. 317, §1, is further amended by amending subparagraph (2) to read:

(2) Little Androscoggin River, tributaries - Class B unless otherwise specified.

(a) Outlet of Thompson Lake in Oxford - Class C.

(b) Andrews Brook in Woodstock - Class A.

~~(c) Black Brook in Woodstock - Class A.~~

~~(d) Cushman Stream in Woodstock - Class A.~~

~~(e) Meadow Brook in Woodstock - Class A.~~

(f) Bog Brook and tributaries in Minot, Oxford and Hebron - Class A.

(g) Twitchell Brook and its tributaries in Greenwood and Albany Township - Class A.

(h) Tributaries upstream of the confluence with Twitchell Brook in Greenwood - Class A.

Sec. 21. 38 MRSA §467, sub-§1, ¶D, as amended by PL 2019, c. 333, §1, is further amended by amending subparagraph (6) to read:

(6) Nezinscot River, east and west branches above their confluence in Buckfield and their tributaries - Class A.

Sec. 22. 38 MRSA §467, sub-§1, ¶D, as amended by PL 2019, c. 333, §1, is further amended by enacting a new subparagraph (10) to read:

(10) Cushman Stream in Woodstock, an unnamed tributary to Meadow Brook at Cushman Hill Road - Class A.

Sec. 23. 38 MRSA §467, sub-§1, ¶D, as amended by PL 2019, c. 333, §1, is further amended by enacting a new subparagraph (11) to read:

(11) Meadow Brook in Woodstock - Class A.

Sec. 24. 38 MRSA §467, sub-§4, ¶G, as repealed and replaced by PL 1989, c. 228, §2, is amended by amending subparagraph (2) to read:

(2) Sandy River, tributaries - Class B unless otherwise specified.

(a) All tributaries entering above the Route 142 bridge in Phillips - Class A unless otherwise specified.

(a-1) South Branch Sandy River and its tributaries - Class AA.

(a-2) Cottle Brook and its tributaries - Class AA.

(b) Wilson Stream, main stem, below the outlet of Wilson Pond - Class C.

(c) Mount Blue Stream and its tributaries - Class A.

(d) Orbeton Stream above Toothaker Pond Road and its tributaries - Class AA.

Sec. 25. 38 MRSA §467, sub-§5, ¶B, as amended by PL 2017, c. 137, Pt. B, §4, is further amended by amending subparagraph (7) to read:

(7) Fletcher Brook ~~in Township 36 Middle Division~~ and its tributaries - Class AA.

Sec. 26. 38 MRSA §467, sub-§5, ¶B, as amended by PL 2017, c. 137, Pt. B, §4, is further amended by amending subparagraph (8) to read:

(8) Magazine Brook ~~in Township 43 Middle Division~~ - Class AA.

Sec. 27. 38 MRSA §467, sub-§5, ¶B, as amended by PL 2017, c. 137, Pt. B, §4, is further amended by amending subparagraph (10) to read:

(10) Chain Lakes Stream ~~in Day Block Township~~, also known as Chain Lake Stream - Class AA.

Sec. 28. 38 MRSA §467, sub-§6-A, ¶B, as amended by PL 2017, c. 137, Pt. B, §6, is further amended by amending subparagraph (12) to read:

(12) Little Narraguagus River in Township 22 Middle Division and Township 28 Middle Division - Class AA.

Sec. 29. 38 MRSA §467, sub-§7, ¶B, as amended by PL 2019, c. 333, §4 and c. 463, §7, is further amended by enacting a new subparagraph (2), division (f) to read:

(f) All tributaries entering the East Branch Penobscot River from the west, any portion of which is located within the boundaries of the Katahdin Woods and Waters National Monument - Class AA.

Sec. 30. 38 MRSA §467, sub-§7, ¶B, as amended by PL 2019, c. 333, §4 and c. 463, §7, is further amended by enacting a new subparagraph (2), division (g) to read:

(g) Those segments of any tributary of the Sebois River that are located within the boundaries of the Katahdin Woods and Waters National Monument - Class AA.

Sec. 31. 38 MRSA §467, sub-§7, ¶B, as amended by PL 2019, c. 333, §4 and c. 463, §7, is further amended by enacting a new subparagraph (2), division (h) to read:

(h) Dry Brook, East Branch and West Branch Mud Brook and other tributaries located in T.3, R.7, W.E.L.S. that enter the East Branch Penobscot River from the east, any portion of which is located within the boundaries of the Katahdin Woods and Waters National Monument - Class AA.

Sec. 32. 38 MRSA §467, sub-§7, ¶C, as amended by PL 2019, c. 333, §5, is further amended by amending subparagraph (1), division (d) to read:

(d) From the McKay powerhouse to ~~its confluence with Ambajejus Lake~~ a point located 1,000 feet downstream - Class A.

Sec. 33. 38 MRSA §467, sub-§7, ¶C, as amended by PL 2019, c. 333, §5, is further amended by enacting a new subparagraph (1), division (d-1) to read:

(d-1) From a point located 1,000 feet downstream of the McKay powerhouse to its confluence with Ambajejus Lake - Class AA.

Sec. 34. 38 MRSA §467, sub-§7, ¶C, as amended by PL 2019, c. 333, §5, is further amended by amending subparagraph (2), division (a) to read:

(a) Those segments of any tributary that are located within the boundaries of Baxter State Park or the Katahdin Woods and Waters National Monument - Class AA.

Sec. 35. 38 MRSA §467, sub-§7, ¶C, as amended by PL 2019, c. 333, §5, is further amended by amending subparagraph (2), division (b) to read:

(b) Those tributaries ~~above~~ entering between Ripogenus Dam and the confluence with ~~the Debsconeag Deadwater, any portion of which is located within the boundaries of Baxter State Park~~ Ambajejus Lake - Class AA.

Sec. 36. 38 MRSA §467, sub-§7, ¶C, as amended by PL 2019, c. 333, §5, is further amended by enacting a new subparagraph (2), division (e) to read:

(e) Nahmakanta Stream and its tributaries including tributaries to Nahmakanta Lake and upstream lakes - Class AA.

Sec. 37. 38 MRSA §467, sub-§7, ¶E, as amended by PL 2009, c. 163, §5, is further amended by amending subparagraph (2), division (e) to read:

(e) Pleasant River, West Branch tributaries - Class A unless otherwise specified.

Sec. 38. 38 MRSA §467, sub-§7, ¶E, as amended by PL 2019, c. 333, §5, is further amended by enacting a new subparagraph (2), division (e-1) to read:

(e-1) Houston Brook and its tributaries - Class AA.

Sec. 39. 38 MRSA §467, sub-§7, ¶E, as amended by PL 2009, c. 163, §5, is further amended by amending subparagraph (2), division (k) to read:

(k) Schoodic Stream and its tributaries - Class A.

Sec. 40. 38 MRSA §467, sub-§7, ¶E, as amended by PL 2009, c. 163, §5, is further amended by amending subparagraph (2), division (l) to read:

(l) Scutaze Stream and its tributaries - Class A.

Sec. 41. 38 MRSA §467, sub-§7, ¶F, as amended by PL 2017, c. 137, Pt. B, §7, is further amended by repealing subparagraph (1).

Sec. 42. 38 MRSA §467, sub-§7, ¶F, as amended by PL 2017, c. 137, Pt. B, §7, is further amended by amending subparagraph (12) to read:

(12) Medunkeunk Stream and its tributaries - Class A.

Sec. 43. 38 MRSA §467, sub-§9, ¶A, as amended by PL 1999, c. 277, §12, is further amended by amending subparagraph (3) to read:

(3) From U.S. Route 202 to Saccarappa Falls, also known as Sacarappa Falls - Class B.

Sec. 44. 38 MRSA §467, sub-§9, ¶A, as amended by PL 1999, c. 277, §12, is further amended by amending subparagraph (4) to read:

(4) From Saccarappa Falls, also known as Sacarappa Falls, to tidewater - Class C.

Sec. 45. 38 MRSA §467, sub-§15, ¶F, as amended by PL 2019, c. 463, §13, is further amended by amending subparagraph (6) to read:

(6) Southwest Branch, from a point located 5 miles downstream of the international boundary to its confluence with the ~~Baker~~ Northwest Branch - Class AA.

Sec. 46. 38 MRSA §468, sub-§1, ¶C, as amended by PL 2017, c. 137, Pt. B, §11, is further amended by amending subparagraph (2) to read:

(2) ~~Finnard~~ Finnerd Brook - Class B.

Sec. 47. 38 MRSA §468, sub-§1, ¶J, as enacted by PL 2009, c. 163, §17, is repealed.

Sec. 48. 38 MRSA §468, sub-§2, ¶O, as enacted by PL 2019, c. 333, §10, is amended by enacting a new subparagraph (2) to read:

(2) Tributaries to Donnell Pond - Class A.

Sec. 49. 38 MRSA §468, sub-§2, ¶P, as enacted by PL 2019, c. 333, §10, is amended by enacting a new subparagraph (2) to read:

(2) Tributaries to Donnell Pond - Class A.

Sec. 50. 38 MRSA §468, sub-§2, ¶Q is enacted to read:

Q. Township 9 Southern Division.

(1) Tributaries to Donnell Pond - Class A.

Sec. 51. 38 MRSA §468, sub-§2, ¶R is enacted to read:

R. Franklin.

(1) Tributaries to Donnell Pond - Class A.

SUMMARY

This bill, which is reported out by the Joint Standing Committee on Environment and Natural Resources pursuant to Joint Rule 353, implements recommendations of the Board of Environmental Protection resulting from its review of the State's water quality classification system and related water quality standards pursuant to the Maine Revised Statutes, Title 38, section 464, subsection 3, paragraph B. As recommended by the board, the bill includes specific updates to certain water quality standards and water quality classifications based on water quality data and the recommendations of the United States Environmental Protection Agency, the Department of Environmental Protection and other parties. In addition to those recommended changes, the bill also includes technical clarifications to certain board reporting responsibilities and the corresponding authority for legislation of the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters.

The committee has not taken a position on the substance of the bill and by reporting this bill out, the committee is not suggesting and does not intend to suggest that it agrees or disagrees with any aspect of this bill. The committee is reporting the bill out for the sole purpose of obtaining a printed bill that can be referred to the committee for a public hearing and subsequent committee action in the normal course.