



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1255

H.P. 898

House of Representatives, February 16, 1999

An Act Providing for Regulation of the Uses of Surface Waters within or Affecting Passamaquoddy Territory.

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

JOSEPH W. MAYO, Clerk

Presented by Representative SOCTOMAH of the Passamaquoddy Tribe.
Cosponsored by Representatives: GOODWIN of Pembroke, LORING of the Penobscot Nation, TWOMEY of Biddeford.

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

2 **Sec. 1. 12 MRSA §685-C, sub-§10**, as enacted by PL 1997, c.
4 739, §1, is amended to read:

6 **10. Operating a personal watercraft.** Operating a personal
watercraft is prohibited on the following categories of great
8 ponds:

10 A. Great ponds located entirely or partly within the
jurisdiction of the commission that are identified in an
12 official comprehensive land use plan adopted by the
commission pursuant to subsection 1 as being not accessible
14 within 1/4 mile by 2-wheel drive vehicles, with less than
one development unit per mile, and at least one outstanding
16 resource value;

18 B. Great ponds located entirely or partly within the
jurisdiction of the commission that are identified in an
20 official comprehensive land use plan adopted by the
commission as being accessible within 1/4 mile by 2-wheel
22 drive vehicles, with less than one development unit per
mile, with 2 or more outstanding resource values in
24 fisheries, wildlife, scenic or shore character;

26 C. Great ponds and smaller ponds located entirely or partly
within the jurisdiction of the commission that are
28 identified in an official comprehensive land use plan
adopted by the commission as being not accessible within 1/2
30 mile by 2-wheel drive vehicles, with no more than one
noncommercial remote camp and with a cold water game
32 fishery; and

34 D. Great ponds with less than all but more than 2/3 of
their surface area in or partly in the jurisdiction of the
36 commission that are identified as being of statewide
significance in the "Maine Wildlands Lake Assessment" dated
38 June 1, 1987 prepared by the commission, with 2 or more
outstanding resource values in fisheries, wildlife, scenic
40 or shore character and with more than 1/2 of their shoreline
in public and private conservation ownership with guaranteed
42 public access for low-impact public recreation.

44 The commission shall implement this subsection by rule adopted in
accordance with section 685-A. Rules adopted to implement this
46 subsection are routine technical rules pursuant to Title 5,
chapter 375, subchapter II-A.

48 This section does not apply to any waters subject to regulation
50 by the Maine Indian Tribal-State Commission or the Passamaquoddy
Tribe under Title 30, section 6207, ~~subsection 2-A~~ 6207-A.

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Sec. 2. 30 MRSA §6207-A is enacted to read:

§6207-A. Regulation of surface water use

The Passamaquoddy Tribe has exclusive authority to regulate the use of surface water of ponds surrounded entirely by Passamaquoddy Indian territory as defined in section 6205. The commission has exclusive authority to regulate the use of surface water of great ponds when at least 10%, but less than 100%, of the shoreline of a pond is within Passamaquoddy Indian territory.

Sec. 3. Effective date; Passamaquoddy Tribe. This Act does not take effect unless within 90 days after adjournment of the Legislature the Secretary of State receives written notification from the Joint Tribal Council of the Passamaquoddy Tribe that that tribe has agreed to the provisions of this Act. Copies of that notification must be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives. In no event may this Act become effective until 90 days after adjournment of the Legislature.

SUMMARY

This bill proposes to give exclusive authority to regulate surface water use on ponds entirely within Passamaquoddy Indian territory to the Passamaquoddy Tribe and gives the Maine Indian Tribal-State Commission authority over surface water use of great ponds with at least 10%, but not all, of the shoreline within Passamaquoddy Indian territory. This law is subject to ratification by the Joint Tribal Council of the Passamaquoddy Tribe.

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 04/16/99
To: Joint Standing Committee on Judiciary
From: Peggy Reinsch, Legislative Analyst
LD 1255 **An Act Providing for Regulation of the Uses of Surface Waters within or Affecting Passamaquoddy Territory**

SUMMARY

This bill proposes to give exclusive authority to regulate surface water use on ponds entirely within Passamaquoddy Indian territory to the Passamaquoddy Tribe and gives the Maine Indian Tribal-State Commission authority over surface water use of great ponds with at least 10%, but not all, of the shoreline within Passamaquoddy Indian territory. This law is subject to ratification by the Joint Tribal Council of the Passamaquoddy Tribe.

TESTIMONY

Proponents

- Bill addresses use of outboard motor size and the use of jet skis on waters within Passamaquoddy Territory
- The effect of controlling the surface of these bodies of water is one way to protect water, land and wildlife
- Tribal Game Wardens cannot enforce boating laws
- Proposed amendment: MITSC regulate if at least 50% but less than 100% of shoreline of a great pond is within Passamaquoddy Territory
- All rules will apply equally on a nondiscriminatory basis to all persons
- Water level governed by something else
- Exclusive jurisdiction means exclusive enforcement jurisdiction, not to exclude others
- Penobscots not named, but if this is what Passamaquoddy want, we support
- If exclusive jurisdiction of Tribal Council, not willing to share with MITSC
- Don't amend bill to add Penobscots

Opponents

- Support MITSC proposed amendment, but not original bill
- Should have greater voice in the regulation of surface use of Great Ponds wholly within the Tribes' territories
- Great Ponds, wherever they are located, belong to all people of the State
- Don't oppose intent, but too broad - could cover water levels
- Would expand rights of Passamaquoddy Tribe beyond Settlement Act
- Surface water uses could go beyond recreational and boating uses to regulate water levels, water withdrawals for agriculture, silviculture, drinking water, and other domestic, commercial or industrial uses, and discharges to surface waters

NEITHER FOR NOR AGAINST

- MITSC discussions never included flowage or water levels
- Amendment is MITSC's proposal
- MITSC has been forum to discuss what to do about jet skis
- Keep in mind the effect surface water has on wildlife

POTENTIAL ISSUES OR TECHNICAL PROBLEMS:

- Was PL 97, c. 739 ratified?

FISCAL IMPACT:

Costs absorbed

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