



# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

---

Legislative Document

No. 773

---

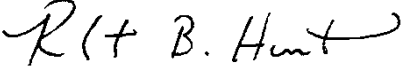
H.P. 526

House of Representatives, March 10, 2015

### **An Act To Allow Anadromous Fish Passage through Beaver Dams**

---

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

  
ROBERT B. HUNT  
Clerk

Presented by Representative PIERCE of Dresden.  
Cosponsored by Senator MIRAMANT of Knox and  
Representatives: BATTLE of South Portland, BLUME of York, DEVIN of Newcastle,  
HAWKE of Boothbay Harbor, McCREIGHT of Harpswell, SAWICKI of Auburn, TUCKER  
of Brunswick, Senator: BAKER of Sagadahoc.

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

2 **Sec. 1. 12 MRSA §12764** is enacted to read:

3 **§12764. Construction of a fishway or a passageway through a beaver dam**

4 **1. Permit required; prohibition.** A person may not construct, repair or alter a  
5 fishway or a passageway through a beaver dam for the purpose of allowing the passage of  
6 anadromous fish without a valid permit issued by the commissioner or the Commissioner  
7 of Marine Resources. The commissioner or the Commissioner of Marine Resources may  
8 place permit-specific conditions on a permit as necessary to minimize impacts to the  
9 beaver dam and the surrounding ecosystem while providing reasonable passage for  
10 anadromous fish. The permit holder is solely responsible for maintaining or removing the  
11 fishway or passageway as required under the permit.

12 **2. Penalties.** The following penalties apply to violations of this section.

13 **A.** A person who violates this section commits a civil violation for which a fine of  
14 not less than \$100 nor more than \$500 may be adjudged.

15 **B.** A person who violates this section 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 **3. Rules.** The commissioner shall adopt rules to carry out the purposes of this  
19 section. Rules adopted pursuant to this subsection are routine technical rules as defined in  
20 Title 5, chapter 375, subchapter 2-A.

21 **Sec. 2. 38 MRSA §480-Q, sub-§21-A** is enacted to read:

22 **21-A. Fish passage through a beaver dam.** Construction, repair or alteration of a  
23 fishway or a passageway through a beaver dam as permitted by the Commissioner of  
24 Inland Fisheries and Wildlife or the Commissioner of Marine Resources under Title 12,  
25 section 12764, as long as:

26 **A.** Efforts are made to minimize erosion of soil and fill material from disturbed areas  
27 into a protected natural resource;

28 **B.** Efforts are made to minimize alteration of undisturbed portions of a wetland or  
29 water body; and

30 **C.** Wheeled or tracked equipment is operated in the water only for the purpose of  
31 crossing a water body to facilitate the construction and maintenance of a fishway or a  
32 passageway through a beaver dam. Where practicable, wheeled or tracked equipment  
33 may cross a water body only on a rock, gravel or ledge bottom.

34 **This exemption includes the draining of a freshwater wetland resulting from the**  
35 **construction, repair or alteration of a fishway or a passageway through a beaver dam. It**  
36 **does not include removal or alteration of a beaver house.**

37 **For purposes of this subsection, "fishway" has the same meaning as in Title 12, section**  
38 **10001, subsection 25.**

1

## **SUMMARY**

2

This bill gives the Commissioner of Inland Fisheries and Wildlife and the  
3 Commissioner of Marine Resources the authority to issue a permit to a person to  
4 construct a fishway or a passageway through a beaver dam for the passage of anadromous  
5 fish.