

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2309

H.P. 1646

House of Representatives, February 6, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

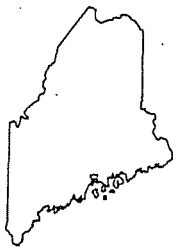
Presented by Representative MORRISON of Bangor.

Cosponsored by Representative AIKMAN of Poland and Senator CLEVELAND of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

An Act to Encourage the Wise Use and Management of Maine's Water
Resources.



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

4 Sec. 1. 5 MRSA Pt. 15-C is enacted to read:

6 PART 15-C

8 WATER RESOURCES MANAGEMENT BOARD

10 CHAPTER 358

12 WATER RESOURCES MANAGEMENT BOARD

14 §6401. Water Resources Management Board created

16 To carry out the purposes of this chapter, the Water
18 Resources Management Board, in this chapter called the "board,"
20 is established within the Executive Department. The board
22 consists of the Director of the State Planning Office and 6
24 public members, one of whom may be a state employee. Public
26 members are appointed by the Governor for staggered 4-year
terms. Among the public members there must be at least one
knowledgeable in State Government, one knowledgeable in commerce
and industry, one knowledgeable in public water supplies, one
knowledgeable in local government, one knowledgeable in
water-based recreation and one knowledgeable in water resources
management.

28 Of the initial appointees, 2 are appointed for 2-year terms,
30 2 appointed for 3-year terms and 2 appointed for 4-year terms.
Thereafter, appointees are appointed to serve 4-year terms. The
Director of the State Planning Office shall serve as chair.

32 §6402. Board meetings, rules and budget

34 Board meetings are at the call of the chair or at the call
36 of more than 1/2 of the membership. Board meetings are public
38 and must be held as frequently as necessary to carry out the
40 board's duties, but at least twice annually. The board, acting
42 in accordance with the procedures set forth in chapter 375,
44 subchapter II, may adopt rules it determines necessary for the
46 conduct of business. Members of the board, except state
employees, are entitled to compensation as provided in chapter
379. Action may not be taken by the board except by a vote of 4
or more members. The executive secretary of the board shall
prepare a biennial budget and shall submit to the Legislature
requests for appropriations sufficient to carry out the purposes
of this chapter.

2 **§6403. Executive secretary**

4 The board shall hire and appoint an executive secretary who
6 is the principal administrative, operational and executive
8 employee of the board. The executive secretary shall attend all
10 meetings of the board and shall participate fully, but is not a
12 voting member of the board. The executive secretary shall serve
14 as staff to the board and, as appropriate, prepare staff
16 recommendations for board actions and decisions, water basin
 plans and dispute resolution activities. The executive secretary
 may hire competent professional and other staff and obtain office
 space, goods and services as necessary. The executive secretary
 shall keep minutes of all proceedings of the board. Those
 minutes are a public record that must be available and kept on
 file at the State Planning Office.

18 **§6404. Duties of board**

20 The board shall undertake activities it considers necessary
22 to carry out the purposes of this chapter. Among these
 activities, the board shall:

24 1. Policy development. Assist the legislative and
26 executive branches of government in development of water
 management policies;

28 2. Official map of local water basins. Prepare and
30 maintain an official map of water basin divisions for use in
 planning and management activities;

32 3. Designate areas of limited supply. Determine and
34 designate areas of limited local water supplies and establish
36 priorities for undertaking water resource planning and management
 activities in these designated areas;

38 4. Water basin plans. Develop, review, adopt and, as
40 necessary, amend local water basin management plans in
 coordination with any local water planning agencies or committees;

42 5. Permits. Approve or deny water withdrawal permits in
44 accordance with section 6407. The board may delegate authority
46 to local water management districts or the regional or municipal
 authorities to approve or deny water withdrawal permits in
 accordance with any local water basin management plan;

48 6. Dispute resolution. Provide a forum to assist through
50 fact-finding, mediation and facilitation the resolution of
 water-related disputes that are not otherwise resolved through
 concurrent state agency proceedings or a board's permitting
 process.

2 7. Agency coordination. Provide for coordination among
4 federal, state, regional and local agencies involved in
6 activities that affect water resources management and serve as a
8 point of contact for, and collaboration among, all agencies
involved in water resources management. The board shall sponsor
a biennial information exchange conference among state, federal,
regional and local agencies;

10 8. Water data. In cooperation with other agencies,
12 collect, develop, evaluate, manage and disseminate water resource
14 data. The board shall initiate and carry out measures necessary
16 to standardize data collection among all state agencies, develop
and maintain a listing of priority research needs and produce an
annual report on state water-related studies; and

18 9. Technical assistance. Provide assistance to other
20 state, regional and local authorities, water management planning
22 committees and water districts in preparing study plans and
24 action plans for local water basin planning and determining
availability of local water supplies. All state agencies shall
provide information and support requested by the board for these
purposes to the extent practicable.

26 §6405. Local water basin plans

28 Local water basin management plans may be prepared by the
30 board or by local committees or coalitions of local authorities
32 representative of the entire area of the water basin. For areas
that have been designated by the board as areas of limited
supply, the board may require investigative sessions and approval
of study plans in advance of planning efforts by local committees
or authorities.

34 To be approved by the board, a local water basin management
36 plan must provide an estimate of the sustainable yield of the
38 water resources within the boundaries of the water basin as
40 delineated by the board's official map. The plan must also
42 identify the current and foreseeable growth in consumptive water
44 use within the basin. These estimates must be based upon
46 accepted resource and use evaluation techniques. The plans must
also identify and evaluate any regulatory or other measures
necessary to ensure that safe yields of the water resources in
the basin are not exceeded and any measures necessary to respond
to periods of water shortage, including any plans for restricting
water uses or setting priorities among local uses.

48 After proposed water basin management plans or substantive
50 amendments to those plans are received or prepared by the board,
the board shall hold a public hearing on the proposed plan or

2 amendment in accordance with requirements for rulemaking set
4 forth in chapter 375, subchapter II, except that the requirements
4 of section 8052, subsection 2, section 8056, subsections 1, 3 and
4 4 and section 8057, subsection 2 do not apply to these procedures.

6 The board and other relevant agencies shall provide
8 information and technical assistance to any committees or
8 delegations preparing local water basin management plans for the
10 purposes of this section.

12 **§6406. Permitting of water withdrawals**

14 **1. Review and approval required.** Review and approval are
14 required as follows.

16 A. Without a permit from the board, a single user other
18 than a public water utility may not withdraw and transport
20 away from any water basin more than 500,000 gallons of water
22 per day averaged over a 30-day period. For the purposes of
24 this section, water basins are as delineated on the board's
26 official map of water basin divisions.

28 B. A water withdrawal may not be made from any water source
30 in any area that the board has designated as an area of
32 limited supply and for which a local water basin management
34 plan is adopted by the board without a permit from the board
36 except as allowed without a permit by the adopted local
38 water basin management plan.

30 **2. Criteria for approval.** Criteria for approval are as
32 follows.

34 A. In approving permit applications according to this
36 section, the board may require such reasonable terms and
38 conditions as the board determines appropriate.

38 B. The board shall approve the proposed permit upon
40 demonstration by the applicant that:

42 (1) The proposed diversion will not exceed or threaten
44 safe yield of the water source;

44 (2) Other current water uses are not unreasonably
46 affected; and

46 (3) The proposal is in compliance with the
48 requirements of the State's water pollution control and
other environmental laws and any standards and
regulations adopted with respect to those laws.

2 The burden is on the applicant to demonstrate that the
4 criteria for approval are satisfied and that the public's
 health, safety and general welfare will be adequately
6 protected.

8 C. After adequate public notice, the board shall issue a
10 permit for a water diversion of greater than 500,000 gallons
12 per day and less than 1,000,000 gallons per day averaged
14 over any 30-day period without the demonstrations contained
16 in paragraphs A and B unless an opponent who would
18 potentially incur actual damage as a result of the diversion
 or a state agency produces evidence within 30 days of the
 notice that the proposed diversion, along with other current
 uses, would potentially exceed safe yield of the water
 source or otherwise be unreasonable, in which case the
 demonstrations contained in paragraphs A and B must be met
 by the applicant prior to permit approval by the board.

20 3. Limitation, expiration, transfer and revocation of
22 approval. A violation of any condition attached to a board
24 approval or permit or any change in the approved quantity or
26 manner of water use without prior approval of the board is a
28 violation of this chapter and, in addition to any other penalties
30 provided by law, constitutes grounds for the revocation or
 suspension of the approval. The board may, acting in accordance
 with section 10003, amend, modify or refuse to renew any board
 approval or permit when the board determines that the criteria
 for approval set forth in subsection 2, paragraphs A to C have
 not been, are not being or will not be satisfied.

32 4. Duration of water withdrawal permits. Except as
34 otherwise provided in an approved local water basin management
36 plan, water withdrawal permits must be issued for a period of at
38 least 10 years. The board may approve permits for periods longer
40 than 10 years if the applicant demonstrates to the board's
 satisfaction that a longer period of water use is necessary to
 ensure recovery of the investment in the water use project. All
 permits may be renewed by board action and may be transferred in
 whole or in part with the board's prior approval.

42 5. Standards for delegation. The board may establish
44 standards within which authority may be delegated to its staff or
46 to local authorities to approve, with reasonable conditions, or
48 deny water withdrawal permit applications. Any person aggrieved
 by a decision of the staff or local authority has a right to a
 review of the decision by the board.

§6407. Reporting of water withdrawals and reporting fee required

2 1. Reporting of water withdrawals. Any person making a
4 withdrawal of water from any single surface or ground water body,
6 or from 2 or more surface or ground water bodies that are
8 hydrologically connected, in excess of 50,000 gallons per day
10 averaged over any 30-day period or any public water supplier
12 withdrawing in excess of 50,000 gallons per day, or serving more
14 than 100 people, must report the withdrawal annually to the
16 board. These users must also report any subsequent changes in
 the quantity, destination or use of water withdrawn. Public
 water suppliers that are also required to report water use to the
 Public Utilities Commission or the Department of Human Services,
 Division of Health Engineering may submit a single report to the
 board to satisfy all data needs. The board shall forward the
 report to the appropriate agencies.

18 2. Water use reporting fee. Beginning on the effective
20 date of this chapter, the water users required to report
22 withdrawals must be assessed an annual reporting fee by the
24 board, which must be commensurate with the amount of water
26 withdrawn or households served by the reporting entity.
28 Reporting fees must be at a rate schedule approved by the board
30 but must be limited to the annual equivalent of 11¢ per person
32 served by any public water supplier or 11¢ per person-equivalent
 withdrawn by a nonpublic water user, determined by dividing the
 amount of water withdrawn by a number that reflects per capita
 use of public water supplies. Reporting fees must be paid to the
 board and must be credited upon receipt to a water resources
 management fund. Private water users withdrawing less than
 50,000 gallons per day averaged over any 30-day period and public
 water suppliers serving less than 100 people are exempt from the
 reporting fee.

34 §6408. Dispute resolution activities

36 As a principal forum for resolution of water-related
38 disputes, the board shall:

40 1. Coordinate and initiate strategies. Coordinate and
42 initiate proactive dispute resolution strategies including water
 basin planning activities;

44 2. Participate in planning. Assist other state agencies
46 involved with water management issues by participating in their
 related planning, regulatory and adjudicatory processes;

48 3. Provide fact-finding and technical assistance. Provide
50 fact-finding and technical assistance for individuals, state
 agencies and the Legislature seeking solutions to water-related
 disputes that are not subject to any other adjudicatory or
 judicial proceedings; and

2 4. Serve as forum. Serve as a mediation, facilitation and
4 fact-finding forum for resolving water disputes that are not
resolved by other state agency proceedings. Specifically, the
6 board may not be a review or appeals forum for issues that have
8 been adjudicated under the provisions of Title 12, section 685-B;
Title 38, chapter 3, subchapter I, article 5-A; Title 38, chapter
10 3, subchapter I, article 6; Title 38, chapter 3, subchapter II-A;
Title 38, chapter 5, subchapter I, article 1, subarticle 1-B; and
Title 38, chapter 5, subchapter I, article 3-A, subarticle 4.

12 **§6409. Exhaustion of remedies**

14 A person may not apply to the Legislature to grant that
16 person a right, privilege or immunity related to water use until
that person's rights to request before the board such a right
18 privilege or community are exhausted. In applying to the
Legislature, the person shall state in writing that the person
20 has requested assistance from the board in determining or
mediating the right, privilege or immunity requested and that the
22 board has deferred, declined or undertaken action on the request.

24 **§6410. Additional powers and duties**

26 1. Additional powers and duties. To carry out the purposes
of this chapter, the board may, in addition to its other powers
28 and duties:

30 A. Adopt rules in accordance with chapter 375, subchapter
II, unless otherwise provided by this chapter;

32 B. Compel attendance of witnesses and require production of
34 evidence;

36 C. Designate or request other appropriate agencies to
receive applications, provide assistance, undertake
38 investigations and make recommendations; and

40 D. Execute contracts and other agreements.

42 **§6411. Existing uses**

44 Clearly established beneficial water uses that existed prior
to the effective date of this chapter are not in any way
46 diminished by the provisions of this chapter.

48 **§6412. Water Resources Management Fund**

50 1. Fund established. The Water Resources Management Fund,
referred to in this section as "the fund," is established under
the jurisdiction of the board.

2 2. Sources of fund. The following must be paid into the
3 fund:

4 A. All money appropriated for inclusion in the fund;

6 B. Subject to any pledge, contract or other obligation, any
7 money that the board receives in repayment of any loans or
8 advancements from the fund;

10 C. Subject to any pledge, contract or other obligation, all
11 interest, dividends or other income from investment of the
12 fund;

14 D. Any money received from water use reporting fees; and

16 E. Any other money, including federal money, deposited in
17 the fund to implement this chapter.

20 3. Application of fund. Money in the fund must be
21 disbursed to carry out the board's responsibilities identified in
22 section 6404. Expenditures must be limited to support of state
23 agency activities, grants to counties, municipalities and
24 interjurisdictional or regional agencies and contractual services
25 necessary to carry out the purposes of this chapter. Money in
26 the fund not needed currently to meet the obligations of the
27 board may be invested as permitted by law.

28 4. Accounts within fund. The board may divide the funds
29 into separate accounts as it determines necessary or convenient.

32 5. Revolving fund. The fund is a nonlapsing revolving
33 fund. All money in the fund must be continuously applied by the
34 board to carry out the purposes of this chapter.

36 6. Submit budget. The State Planning Office shall submit a
37 budget of estimated revenues and costs to be incurred by the
38 program in the same manner as required for the General Fund.

40 **Sec. 2. 5 MRS §12004-D, sub-§5** is enacted to read:

42 5. Waste Resources Expenses 5 MRS §6401
43 Management Board Only

44 **Sec. 3. 12 MRS §408** is enacted to read:

46 **§408. Reasonable use of surface water and ground water**

48 The so-called "reasonable use rule" of common law applies to
49 both surface water and ground water as components of the

2 hydrologic cycle. Reasonable uses of water include all socially
3 and economically beneficial uses of all water sources but does
4 not include uses that are patently wasteful, malicious or
5 intentionally harmful. Nonriparian as well as riparian uses of
6 surface water, off-site as well as on-site uses of ground water
7 and diversions of water are among the uses that may be considered
8 reasonable. Beneficial uses of both surface water and ground
9 water must be judged reasonable based on their impacts upon the
10 sustainability of the water source, their impacts upon other
11 legitimate uses of surface and ground water and any other
12 reasonable factors bearing upon the equities involved.

13 1. Factors for resolving disputes. Valid factors in
14 determining disputes over reasonable uses include:

15 A. The purpose of the respective uses or activities
16 affected;

17 B. The economic, social and environmental value of
18 respective uses, including protection of public health;

19 C. The nature and extent of the harm caused;

20 D. Whether the utility of the use outweighs the gravity of
21 its harms;

22 E. The maintenance or improvement of ground water and
23 surface water quality;

24 F. The suitability of the use to the watercourse or water
25 body where it is intended;

26 G. The protection of existing values of land, investments,
27 enterprises and productive uses;

28 H. The practicality of adjusting the quantities used by
29 each proprietor;

30 I. The extent to which the use in question occurred prior
31 to the competing use; and

32 J. The burden and fairness of requiring a person who causes
33 harm to bear the loss.

34 2. Guidelines for resolving disputes. To help resolve
35 disputes among reasonable uses, the following guidelines may be
36 employed when reasonable and applicable.

37 A. In resolving water disputes involving water utilities,
38 it is recognized that water utilities are required by law
39 to provide service to all users of water.

2 and perform an essential public source and are granted
4 charter rights by the Legislature to fulfill that public
service. Water utilities need access to sources of supply
to fulfill their legal obligation.

6 B. Uses that maintain or protect public health and safety
are superior over other uses.

8 C. All other lawful uses are equal in priority.

10 D. One lawful use does not destroy another.

12 E. When one use damages another, the relative
14 reasonableness of the uses and whether or not equitable
16 adjustment is possible must be determined.

18 **Sec. 4. 22 MRSA c. 601, sub-c. VI, as amended, is repealed.**

20 **Sec. 5. Allocation.** The following funds are allocated from the
22 Water Resources Management Fund to carry out the purposes of this
24 Act.

1992-93

26 **EXECUTIVE DEPARTMENT**

28 **State Planning Office**

30 **Water Resources Management
Fund**

32	Positions	(2)
34	Personal Services	\$73,487
	All Other	34,650

36 Provides funds for one
38 full-time Executive Secretary
to the Water Resources
40 Management Board and one
full-time Clerk Typist
42 position, funds for the
appointed members' per diem
44 and travel and other funds
necessary to carry out the
duties of the board.

46 **EXECUTIVE DEPARTMENT**
48 **TOTAL**

\$108,137

50 **Sec. 6. Effective date.** This Act takes effect on October 1, 1992.

2

STATEMENT OF FACT

4

6 Reflecting the findings and recommendations of the Water
Resources Management Board, this bill establishes policy to
8 manage the reasonable uses of surface water and ground water in
conjunction with each other, reflecting the nature of surface and
10 ground water resources as interrelated components of the
hydrologic cycle. This bill also creates a new, permanent Water
12 Resources Management Board and establishes its duties and
responsibilities to provide a state governmental structure and
14 procedures for the sound planning and management of water
resources. These procedures are designed: to ensure adequate
16 supplies in areas of limited water resources; to provide a
reasoned balance among all legitimate uses of surface and ground
18 water resources; to provide a forum to resolve disputes among
water uses not otherwise addressed through state permitting
20 activities; to provide an orderly process for the management and
dissemination of water data; and to provide technical assistance
22 related to water resource planning and management activities.
This bill also creates a Water Resources Management Fund to be
used to carry out the board's duties.

24