

# MAINE STATE LEGISLATURE

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NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1119, L.D. 1488, Bill, "An Act to Require Major Water Users to Provide Public Information About Their Annual Water Withdrawals from Public Water Resources"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 38 MRSA c. 3, sub-c. I, art. 4-B is enacted to read:

Article 4-B

WATER WITHDRAWAL REPORTING PROGRAM

§470-A. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Nonconsumptive use. "Nonconsumptive use" means any use of water that results in the water being discharged back into the same water source within 1/4 mile upstream or downstream from the point of withdrawal such that the difference between the volume withdrawn and the volume returned is no more than the threshold amount per day. This also includes withdrawals from groundwater that are discharged to a subsurface system or to a hydraulically connected surface water body such that no more than the threshold amount is consumed.

2. Water source. "Water source" means any river, stream or brook as defined in section 480-B, any lake or pond classified GPA pursuant to section 465-A or groundwater located anywhere in

the State.

3. Water withdrawal; withdrawal of water. "Water withdrawal" or "withdrawal of water" means the removal, diversion or taking of water from a water source. All withdrawals of water from a particular water source that are made or controlled by a single person are considered to be a single withdrawal of water.

**§470-B. Threshold volumes for reporting**

Except as otherwise provided in this article, a person making a water withdrawal in excess of the threshold volumes established in this section shall file a water withdrawal report in accordance with section 470-D covering the 12 months ending on the previous September 30th. The threshold volumes for reporting are as follows.

1. Withdrawals from river, stream or brook. The threshold volume for reporting on withdrawals from a river, stream or brook or groundwater within 500 feet of a river, stream or brook is 20,000 gallons on any day or, if the watershed area at the point of withdrawal exceeds 75 square miles, a volume in gallons per day for any day that is:

A. One percent of the estimated low-flow volume of water to occur for 7 days once in 10 years based on historical flows for rivers, streams or brooks with an adequate record of gauge data;

B. One percent of the estimated low-flow volume of water to occur for 7 days once in 10 years based on an estimated low-flow value for a river, stream or brook below a dam where flow is limited by gate settings or leakage; or

C. If paragraphs A and B are not applicable, then a threshold volume calculated using the formula  $V=168.031$  times A to 1.1 power, where V is the volume in gallons per day and A is the watershed area in square miles.

2. Withdrawals from GPA lake or pond or certain groundwater sources. The threshold volume for reporting on withdrawals from a Class GPA lake or pond or groundwater within 500 feet of the lake or pond is determined from the following table:

<u>Lake area in acres</u>	<u>gallons/ week</u>
<u>&lt; 10</u>	<u>30,000</u>
<u>10-30</u>	<u>100,000</u>
<u>31-100</u>	<u>300,000</u>
<u>101-300</u>	<u>1,000,000</u>
<u>301-1000</u>	<u>3,000,000</u>

1001-3000	10,000,000
3001-10,000	30,000,000

3. Withdrawals from other groundwater sources. The threshold volume for reporting on withdrawals from groundwater greater than 500 feet from a river, stream, brook or GPA classified lake or pond is 50,000 gallons on any day, unless the person making the water withdrawal demonstrates to the department's satisfaction that the withdrawal will not impact any adjacent surface water body.

**§470-C. Exemptions**

The following are exempt from the reporting requirements of this article:

1. Nonconsumptive uses. Nonconsumptive uses. Dams are explicitly exempt as nonconsumptive uses, including hydropower dams licensed by the Federal Energy Regulatory Commission, storage dams and dams subject to a water level setting order pursuant to sections 840 to 843;

2. Household uses. A water withdrawal for ordinary household uses;

3. Public water systems. A public water system that is regulated by the Department of Human Services pursuant to Title 22, chapter 601;

4. Subject to existing reporting requirements. Water withdrawals subject to water withdrawal reporting requirements established in any state permitting or licensing program prior to the effective date of this article, including, but not limited to, the site location of development laws, natural resources protection laws, Maine Land Use Regulation Commission laws and Maine waste discharge laws, provided that the water user files a notice of intent to be covered by this exemption on a form to be provided by the department;

5. Public emergencies. A water withdrawal from surface or groundwater for fire suppression or other public emergency purposes;

6. Commercial or industrial storage ponds. A water withdrawal from a storage pond or water supply system in existence prior to the effective date of this article provided that the withdrawal is for a commercial or industrial use, the water user has filed a water use plan as part of a state license application and the water user files a notice of intent to be

covered by this exemption on a form to be provided by the department;

7. Off-stream storage ponds. A water withdrawal from an artificial storage pond that does not have a river, stream or brook as an inlet or outlet, constructed for the purpose of storing water for crop irrigation or other uses;

8. In-stream storage ponds. A water withdrawal from an artificial pond constructed in a stream channel provided that it is subject to a minimum-flow release requirement in an existing permit, and the water user files a notice of intent to be covered by this exemption on a form to be provided by the department; and

9. Duplication of reporting. A water withdrawal that is reported to any other state agency under any program requiring substantially similar data provided that the other agency has entered into a memorandum of agreement with the department for the collection and sharing of that data.

**§470-D. Filing of reports by users; aggregation of data**

Unless exempted under section 470-C, a person withdrawing more than the threshold volume of water established in this article must file an annual water withdrawal report on December 1, 2003 and on every December 1st thereafter as provided in this section.

Water withdrawal reports must be submitted to either the Commissioner of Environmental Protection, the Commissioner of Conservation, the Commissioner of Human Services or the Commissioner of Agriculture, Food and Rural Resources in a form or manner prescribed by that commissioner. No later than January 1, 2003, those commissioners shall jointly publish a list indicating which classes of users are to report to which department. The form and manner of reporting must be determined by each commissioner, provided that the required information is collected from each user above the threshold and in a manner that allows that data to be combined with data collected by the other commissioners. The reports must include information on actual and anticipated water use, the identification of the water source, the location of the withdrawal including the distance of each groundwater withdrawal from the nearest surface water source, the volume of the withdrawals that might be reasonably anticipated under maximum high-demand conditions and the number of days those withdrawals may occur each month and the location and volume of each point of discharge. The reporting may allow volumes to be reported in ranges established by the commissioners and reported volumes may be calculated estimates of volumes. The

board, the Department of Agriculture, Food and Rural Resources, the Department of Conservation and the Department of Human Services may adopt routine technical rules as defined in Title 5, chapter 375, subchapter II-A as necessary to implement the reporting provisions of this article.

Individual water withdrawal reports filed under this article are confidential and are not public records as defined in Title 1, section 402, subsection 3.

**§470-E. Water use standards**

The board shall adopt rules by January 1, 2005 that establish water use standards for maintaining in-stream flows and GPA lake or pond water levels that are protective of aquatic life and other uses and that establish criteria for designating watersheds most at risk from cumulative water use. Standards adopted under this section must be based on the natural variation of flows and water levels, allowing variances if use will still be protective of water quality within that classification. Rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. Those rules must be provisionally adopted by January 1, 2005 and submitted for consideration to the joint standing committee of the Legislature having jurisdiction over natural resources matters in the First Regular Session of the 122nd Legislature. This section is repealed 90 days after adjournment of the First Regular Session of the 122nd Legislature.

**§470-F. Local water use policies encouraged**

The department shall encourage and cooperate with state, regional or municipal agencies, boards or organizations in the development and adoption of regional or local water use policies that protect the environment from excessive drawdown of water sources during low-flow periods. The department shall encourage those entities, in developing those policies, to review previously adopted low-flow policies, including any such policies adopted by the Aroostook Water and Soil Management Board established in Title 7, section 332.

**§470-G. Report to Legislature**

The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on January 15, 2003, and annually thereafter, on all aspects of water use reporting, data aggregation and the development of water use standards required by this article. That report must summarize water use reporting data on a regional basis and in a manner that does not allow for the identification

2 of any individual user. The report must compare cumulative water  
3 use and availability of water in watersheds and assess water use  
4 issues and priorities on a watershed basis. The report must also  
5 identify any impediments to implementing any of the requirements  
6 of this article and must include recommendations for addressing  
7 those impediments and may include recommendations on any other  
8 aspect of the reporting or water use standards provisions of this  
9 article. In preparing these reports, the commissioner shall  
10 encourage and assist in establishing regional task forces with  
11 cooperating agencies to assess regional water use issues and  
12 options for addressing those issues. The commissioner shall also  
13 solicit input from the Commissioner of Agriculture, Food and  
14 Rural Resources, the Commissioner of Conservation and the  
15 Commissioner of Human Services on all aspects of the requirements  
16 of this article and shall include in the report all comments and  
17 recommendations received from those departments on these  
18 requirements.'

19 Further amend the bill by inserting at the end before the  
20 summary the following:

21  
22 **FISCAL NOTE**

23  
24 The Department of Environmental Protection will incur some  
25 minor additional costs to administer a water withdrawal reporting  
26 program and to submit a required report to the Legislature.  
27 These costs can be absorbed within the department's existing  
28 budgeted resources.'

29  
30  
31 **SUMMARY**

32  
33 This amendment replaces the bill.

34  
35 The amendment requires annual water use reporting, beginning  
36 on December 1, 2003, by water users who use more than a specified  
37 threshold amount of water. A number of users are exempted from  
38 the reporting requirements, including dams and other  
39 nonconsumptive users, household users, public water systems,  
40 users who report water use under another state permit or  
41 licensing requirement, commercial or industrial storage ponds,  
42 off-stream and in-stream storage ponds and any water withdrawals  
43 made for fire suppression or other public emergency purposes.  
44 Users will report to either the Department of Agriculture, Food  
45 and Rural Resources, the Department of Conservation, the  
46 Department of Human Services or the Department of Environmental  
47 Protection, depending on the user's type of activity. The  
48 Commissioners of those departments are required to publish a list  
49 by January 1, 2003 indicating which users are required to report  
50

2 to which agency. Each commissioner may prescribe the form and  
3 manner of reporting, and reporting water use in ranges, rather  
4 than in specific gallons, is allowed. The amendment specifies  
5 that individual water use reports are confidential documents and  
6 are not public records under the State's freedom of access laws.

7  
8 The Department of Environmental Protection is charged with  
9 reporting annually on the water use reporting requirement to the  
10 joint standing committee of the Legislature having jurisdiction  
11 over natural resources matters. That department's report must  
12 summarize usage on a regional basis and in a manner that does not  
13 disclose the identity of any individual user. In preparing its  
14 annual reports, the department is required to encourage and  
15 assist in establishing regional task forces with cooperating  
16 agencies to assess regional water use issues and options for  
17 addressing those issues and to solicit input on all aspects of  
18 the water use reporting programs from the Commissioner of  
19 Agriculture, Food and Rural Resources, the Commissioner of  
20 Conservation and the Commissioner of Human Services. The report  
21 must also include all comments and recommendations received from  
22 those departments on those requirements.

23  
24 The amendment also requires the Department of Environmental  
25 Protection to encourage and cooperate with state, regional or  
26 municipal agencies, boards or organizations in the development  
27 and adoption of regional or local water use policies that protect  
28 the environment from excessive drawdown of water sources during  
29 low-flow periods. The department shall encourage those entities,  
30 in developing those policies, to review previously adopted  
31 low-flow policies, such as those adopted by the Aroostook Water  
32 and Soil Management Board.

33  
34 The amendment also directs the Board of Environmental  
35 Protection to adopt major substantive rules that establish water  
36 use standards for maintaining in-stream flows and GPA water  
37 levels that are protective of aquatic life and other uses and  
38 that establish criteria for designating watersheds most at risk  
39 from cumulative water use. Water use standards must be based on  
40 the natural variation of flows and water levels and must allow  
41 for variances if use will still be protective of water quality  
42 within that classification. Those rules must be provisionally  
43 adopted by January 1, 2005 and submitted to the joint standing  
44 committee of the Legislature having jurisdiction over natural  
45 resources matters in the First Regular Session of the 122nd  
46 Legislature. The amendment adds a fiscal note to the bill.