

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2005

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Legislative Document

No. 1643

H.P. 1158

House of Representatives, May 3, 2005

### **An Act To Clarify and Harmonize State Policy on Groundwater Management**

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Reference to the Committee on Natural Resources suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative EBERLE of South Portland. (GOVERNOR'S BILL)  
Cosponsored by Senator COWGER of Kennebec and  
Representatives: CARR of Lincoln, COLLINS of Wells, DUPLESSIE of Westbrook,  
KOFFMAN of Bar Harbor, PINEAU of Jay, PIOTTI of Unity.

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

4 **PART A**

6 **Sec. A-1. 12 MRSA §685-B, sub-§4, ¶C**, as amended by PL 1973,  
c. 569, §11, is further amended to read:

8 C. Adequate provision has been made for fitting the  
10 proposal harmoniously into the existing natural environment  
12 in order to assure there will be no undue adverse effect on  
14 existing uses, scenic character, and natural and historic  
16 resources in the area likely to be affected by the proposal,  
18 and. In making a determination under this paragraph  
20 regarding development to facilitate withdrawal of  
22 groundwater, the commission shall consider the effects of  
24 the proposed withdrawal on waters of the State, as defined  
by Title 38, section 361-A, subsection 7; water-related  
natural resources; and existing uses, including, but not  
limited to, public or private wells, within the anticipated  
zone of contribution to the withdrawal. In making findings  
under this paragraph, the commission shall consider both the  
direct effects of the proposed withdrawal and its effects in  
combination with existing water withdrawals;

26 **Sec. A-2. 22 MRSA §2612, sub-§1, ¶D** is enacted to read:

28 D. The department may approve a new source of supply if the  
department determines that use of the source of supply as  
proposed would not have an undue adverse effect on waters of  
the State, as defined by Title 38, section 361-A, subsection  
7; water-related natural resources; and existing uses,  
including, but not limited to, public or private wells,  
within the anticipated zone of contribution to the  
withdrawal. In making findings under this paragraph, the  
department shall consider both the direct effects of the  
proposed water withdrawal and its effects in combination  
with existing water withdrawals.

38 **Sec. A-3. 22 MRSA §2660-A, sub-§3, ¶D**, as enacted by PL 2003,  
40 c. 121, §1, is amended to read:

42 D. For a source not otherwise permitted by the Department  
44 of Environmental Protection or the Maine Land Use Regulation  
Commission, the water withdrawal will not adversely affect  
existing uses of groundwater or surface water resources,  
including private wells have an undue adverse effect on  
waters of the State, as defined by Title 38, section 361-A,  
subsection 7; water-related natural resources; and existing  
uses, including, but not limited to, public or private  
wells, within the anticipated zone of contribution to the

2 withdrawal. In making findings under this paragraph, the  
3 commissioner shall consider both the direct effects of the  
4 proposed water withdrawal and its effects in combination  
5 with existing water withdrawals.

6 **Sec. A-4. 38 MRSA §484, sub-§3, ¶F** is enacted to read:

8 F. In making a determination under this subsection  
9 regarding a structure to facilitate withdrawal of  
10 groundwater, the department shall consider the effects of  
11 the proposed withdrawal on waters of the State, as defined  
12 by section 361-A, subsection 7; water-related natural  
13 resources; and existing uses, including, but not limited to,  
14 public or private wells, within the anticipated zone of  
15 contribution to the withdrawal. In making findings under  
16 this paragraph, the department shall consider both the  
17 direct effects of the proposed water withdrawal and its  
18 effects in combination with existing water withdrawals.

## 20 **PART B**

22 **Sec. B-1. Development of consistent hydrogeological review**  
23 **procedures.** By January 1, 2006, the Department of Environmental  
24 Protection, the Maine Land Use Regulation Commission and the  
25 Department of Health and Human Services, in consultation with the  
26 Department of Agriculture, Food and Rural Resources, the Maine  
27 Geological Survey and other public or private entities or persons  
28 that they consider appropriate, shall:

30 1. Review their existing administrative procedures and  
31 practices regarding review of development activities involving  
32 groundwater withdrawal;

34 2. Develop and implement any changes to such administrative  
35 procedures and practices that are appropriate and necessary to  
36 establish a consistent, efficient and effective approach under  
37 their existing legal authority to review pertinent  
38 hydrogeological and related natural resources issues; and

40 3. Submit a report to the Governor and Joint Standing  
41 Committee on Natural Resources summarizing actions taken pursuant  
42 to this section.

44 **Sec. B-2. Permit fees.** The Department of Environmental  
45 Protection, the Maine Land Use Regulation Commission, the  
46 Department of Health and Human Services and the Maine Geological  
47 Survey shall each review their administrative costs of reviewing  
48 permit applications under the Maine Revised Statutes, Title 12,  
chapter 206-A; Title 22, chapter 601; and Title 38, chapter 3,

2 article 6, including administrative costs associated with any  
4 required impact studies or monitoring and shall adjust pertinent  
6 permit application fees as appropriate to ensure that such fees  
8 are adequate to cover such administrative costs. Beginning  
10 January 15, 2008, the Department of Environmental Protection, the  
12 Maine Land Use Regulation Commission, the Department of Health  
14 and Human Services and the Maine Geological Survey shall  
16 biennially review their administrative costs of reviewing permit  
18 applications under Title 12, chapter 206-A; Title 22, chapter  
20 601; and Title 38, chapter 3, article 6, including administrative  
22 costs associated with any required impact studies or monitoring  
24 and report to the joint standing committee of the Legislature  
26 having jurisdiction over natural resources matters on the  
28 adequacy of such fees to cover pertinent administrative costs  
30 anticipated in the next biennium.

32 **Sec. B-3. Rulemaking.** The Department of Environmental  
34 Protection, the Maine Land Use Regulation Commission, the  
36 Department of Health and Human Services and the Maine Geological  
38 Survey may adopt routine technical rules, as defined in the Maine  
40 Revised Statutes, Title 5, chapter 375, subchapter 2-A, to  
42 establish a consistent, efficient and effective approach to  
44 review of pertinent hydrogeological and related natural resources  
46 issues or adjust permit fees as provided in sections 1 and 2 of  
48 this Part.

## 50 PART C

52 **Sec. C-1. Study of state regulation of groundwater withdrawal.** The  
54 Land and Water Resources Council established in the Maine Revised  
56 Statutes, Title 5, section 3331 and referred to in this Part as  
58 "the council" shall undertake a study of current state law  
60 regarding regulation of withdrawal of groundwater. The purpose  
62 of the study is to identify any changes in state law needed to  
64 ensure a consistent, integrated and scientifically sound state  
66 policy that ensures that the withdrawal of groundwater does not  
68 have an undue adverse effect on waters of the State, as defined  
70 by the Maine Revised Statutes, Title 38, section 361-A,  
72 subsection 7; water-related natural resources; and existing uses,  
74 including, but not limited to, public or private wells, within  
76 the anticipated zone of contribution to the withdrawal.

78 **Sec. C-2. Oversight.** The council shall begin the study under  
80 section 1 no later than October 1, 2005. The study must be  
82 carried out under the direction of the council with work  
84 performed by an interagency staff work group, referred to in this  
86 Part as "the work group," composed of appropriate personnel from  
88 the Department of Environmental Protection, the Department of  
90 Agriculture, Food and Rural Resources, the Maine Land Use  
92 Regulation Commission, the Department of Health and Human

2 Services' drinking water program, the Maine Geological Survey and  
3 the Executive Department, State Planning Office, in consultation  
4 with a project steering committee. The work group shall propose  
5 and the council shall review and approve both the composition of  
6 the project steering committee and a public outreach plan  
7 designed to ensure appropriate opportunity for public comment.  
8 The project steering committee must include members of the public  
9 with expertise in relevant fields of interest, including, but not  
10 limited to, agriculture, public water utilities, groundwater law  
11 and water bottling and sale.

12 **Sec. C-3. Staffing assistance.** The Maine Geological Survey  
13 shall provide staff services to the council and serve as lead  
14 agency for purposes of management of the study at the council's  
15 direction.

16 **Sec. C-4. Issues to be considered.** In developing its  
17 recommendations, the council shall:

18  
19 1. Identify and review provisions under the Maine Revised  
20 Statutes, Title 12, chapter 206-A; Title 22, chapter 601; and  
21 Title 38, chapter 3, article 6, any other pertinent state laws  
22 that may trigger state regulation of a proposed withdrawal of  
23 groundwater;

24  
25 2. Review existing geological, hydrogeological and other  
26 related scientific information regarding Maine's groundwater  
27 resources in order to assess the efficacy of existing state law  
28 for ensuring that withdrawal of groundwater does not have an  
29 undue adverse effect on waters of the State as defined by Title  
30 38, section 361-A, subsection 7; water-related natural resources;  
31 and existing uses, including, but not limited to, public or  
32 private wells, within the anticipated zone of contribution to the  
33 withdrawal;

34  
35 3. Identify and assess criteria that should influence  
36 whether and how the State regulates or otherwise manages  
37 withdrawal of groundwater, including, but not necessarily limited  
38 to, the following:

39 A. The quantity of proposed withdrawal;

40

41 B. The hydrogeologic characteristics of the aquifer in  
42 which the proposed withdrawal will take place;

43

44 C. The duration of the proposed withdrawal;

45

46 D. The size of the land parcel on which the withdrawal  
47 occurs;

48

2 E. The location of the proposed withdrawal in relation to  
wetlands, great ponds or other protected natural resources;  
4 and

6 F. The nature, size and location of proximate surface  
waters;

8  
4. Propose any necessary changes to state law, including,  
10 but not limited to, a uniform regulatory threshold for the volume  
of the proposed groundwater withdrawal that would trigger state  
12 regulatory review of withdrawal of groundwater. The council  
shall recommend such changes that it considers appropriate and  
14 necessary to establish a consistent, integrated and  
scientifically sound state policy regarding groundwater  
16 management that ensures that withdrawal of groundwater does not  
have an undue adverse effect on waters of the State, as defined  
18 by Title 38, section 361-A, subsection 7; water-related natural  
resources; and existing uses, including, but not limited to,  
20 public or private wells within the anticipated zone of  
contribution to the withdrawal;

22  
5. Assess the projected costs to the State of developing  
24 and implementing any changes in state law proposed pursuant to  
subsection 4 and the adequacy of existing departmental resources,  
26 including regulatory fees, to develop and implement those changes  
efficiently and effectively; and

28  
6. Assess the projected costs to applicants for withdrawal  
30 of groundwater for complying with any changes in state law  
proposed in subsection 4.

32  
**Sec. C-5. Report.** The work group shall provide updates or  
34 reports to the council as determined by the council. The council  
shall submit its final report and recommendations to the joint  
36 standing committee of the Legislature having jurisdiction over  
natural resources matters no later than January 15, 2007.

38  
**Sec. C-6. Rulemaking.** By March 15, 2007, the Department of  
40 Environmental Protection, the Maine Land Use Regulation  
Commission, the Department of Health and Human Services and the  
42 Maine Geological Survey shall coordinate the adoption of any  
major substantive rules, as defined in Title 5, section 375,  
44 subchapter 2-A, needed to implement the recommendations of the  
council pursuant to section 4 of this Part.

## 46 PART D

48  
**Sec. D-1. Legislative intent.** The purpose of this Act is to  
50 promote development and implementation of consistent,

2 integrated and scientifically sound state policy regarding  
groundwater management through:

4 1. Establishment of a uniform standard for state regulatory  
6 review of the effects on groundwater withdrawal when such review  
is provided for under existing provisions of the Maine Revised  
8 Statutes, Title 12, chapter 206-A; Title 22, chapter 601; and  
Title 38, chapter 3, article 6;

10 2. Appropriate changes in administrative procedures and  
12 practices, including assessment of permit fees, under current  
law; and

14 3. Identification of proposed changes in state law  
16 appropriate and necessary to establish and implement a  
consistent, integrated and scientifically sound state policy  
18 regarding groundwater management for subsequent consideration by  
the Legislature.

20 Nothing in this Act expands or limits the activities  
22 currently subject to regulation under Title 12, chapter 206-A;  
Title 22, chapter 601; and Title 38, chapter 3, article 6.

## 24 SUMMARY

26 This bill directs the Department of Conservation, the  
28 Department of Environmental Protection and the Department of  
Health and Human Services, when permitting groundwater  
30 withdrawals, to consider the effect of the proposed withdrawal on  
water-related natural resources and existing uses and the effect  
32 when considered in combination with existing water withdrawals.  
It further directs those departments and the Maine Land Use  
34 Regulation Commission to develop consistent review criteria for  
groundwater withdrawal applications by January 1, 2006 and to  
36 submit a report to the Governor and Legislature summarizing this  
effort. The Department of Environmental Protection and the  
38 Department of Health and Human Services, the Maine Land Use  
Regulation Commission and the Maine Geological Survey are  
40 directed to review application fees to ensure that they  
adequately reflect the true cost of review. The Land and Water  
42 Resources Council is directed to undertake a comprehensive study  
of state groundwater regulations. The purpose of the study is to  
44 identify any further changes in state law needed to ensure a  
consistent, integrated and scientifically sound state policy with  
46 regard to groundwater withdrawal. The Land and Water Resources  
Council will report its findings to the Legislature by January  
48 15, 2007. Those agencies will adopt any major substantive rules  
recommended by the Land and Water Resources Council by March 15,  
50 2007.