

# MAINE STATE LEGISLATURE

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L.D. 1776

DATE: 3-30-06

(Filing No. S-540)

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**AGRICULTURE, CONSERVATION AND FORESTRY**

8 Reported by:

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**STATE OF MAINE  
SENATE  
122ND LEGISLATURE  
SECOND REGULAR SESSION**

18  
20  
COMMITTEE AMENDMENT "A" to S.P. 693, L.D. 1776, Bill, "An  
Act To Establish the Maine Agricultural Drought Protection Act"

22 Amend the bill by striking out the title and substituting  
the following:

24  
26 **'An Act To Establish the Maine Agricultural Water Management  
Board and the Sustainable Agricultural Water Source Program'**

28 Further amend the bill by striking out all of the emergency  
preamble and inserting in its place the following:

30  
32 **'Emergency preamble. Whereas, acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and**

34  
36 **Whereas, the Legislature declares its intent that the State  
plan, regulate and control the prudent use of the waters of the  
State under the Laws of Maine to protect the public health,  
safety and welfare; and**

40  
42 **Whereas, the Legislature finds that the use of water  
resources for the State for agricultural purposes is of vital  
importance to the food security and economic well-being of the  
State; and**

44  
46 **Whereas, the health, safety and food security of the people  
of the State require adequate and affordable local agricultural  
products and services from Maine farmers; and**

48  
50 **Whereas, the Legislature finds the protection of the rivers,  
streams and brooks necessary for a healthy riverine ecosystem and  
a healthy population of aquatic life; and**

**COMMITTEE AMENDMENT**

2           **Whereas**, the wise use of water, the protection of stream  
flow and the economic well-being of the State will be furthered  
4 by proper water use management; and

6           **Whereas**, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
8 Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
10 safety; now, therefore, '

12           Further amend the bill in section 1 by striking out all of  
subsection 3-D and inserting in its place the following:

14	'3-D.	<u>Maine</u>	<u>Expenses</u>	<u>7 MRSA</u>
16	<u>Agriculture</u>	<u>Agricultural</u>	<u>Only</u>	<u>§352'</u>
18		<u>Water</u>		
20		<u>Management</u>		
		<u>Board</u>		

22           Further amend the bill by striking out all of section 2 and  
inserting in its place the following:

24           '**Sec. 2. 7 MRSA §§352 and 353** are enacted to read:

26           **§352. Maine Agricultural Water Management Board**

28           The Maine Agricultural Water Management Board is established  
in Title 5, section 12004-G, subsection 3-D and referred to in  
30 this section and section 353 as "the board."

32           1. **Membership.** All members of the board must be residents  
of this State. The board consists of 9 members as follows:

34           A. Five members appointed by the commissioner, consisting  
36 of:

- 38                   (1) A potato producer;
- 40                   (2) A wild blueberry producer;
- 42                   (3) A small fruit or vegetable grower;
- 44                   (4) A producer of ornamental crops; and
- 46                   (5) A livestock producer;

48           B. Three members appointed by the Governor, consisting of:

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(1) A person with expertise in federal wetlands permitting;

(2) A person with expertise in agricultural engineering and water use efficiency; and

(3) A member of the general public; and

C. The Commissioner of Environmental Protection or the commissioner's designee.

2. Duties. The board, working in conjunction with the Department of Environmental Protection, shall:

A. Oversee and coordinate the environmentally sound and affordable development of water sources for agricultural use;

B. Make recommendations for improvements to federal and state permitting processes for the development of farm ponds and other water sources for agricultural use;

C. Work to secure funding for the construction of environmentally sound, efficient and affordable water sources for agricultural use;

D. Use data generated by water withdrawal reports under Title 38, section 470-D and other available information to prioritize watersheds needing alternative water sources for agricultural use and the allocation of funding; and

E. Facilitate the implementation of the sustainable agricultural water source program under section 353.

3. Agricultural water use management plans. In addition to its duties under subsection 2, the board shall develop a model for agricultural water use management plans including a list of issues to be addressed in each plan. The board shall assist agricultural users in the development of water management plans. For the purposes of this section and section 353, "agricultural water use management plan" means a written document that states the source of water and outlines how water is managed, including a method of storage, if needed, and how water is used on the farm for which the plan is written.

4. Terms of membership; chair. Except for initial appointees under subsection 1, each member appointed serves for a term of 3 years. In the case of a vacancy, the Governor shall appoint a member to fill the unexpired term. The Governor and commissioner shall determine initial appointment terms to stagger

2 term expirations. The board shall annually elect one of its  
3 members as chair.

4 5. Compensation. Members of the board are entitled to  
5 expenses only.

6 6. Staff. The department shall provide staff to the board.

7 7. Meetings. The board shall meet as needed to perform its  
8 duties.

9 **§353. Sustainable agricultural water source program**

10 The board shall work with the department and the Department  
11 of Environmental Protection to facilitate implementation of the  
12 sustainable agricultural water source program in accordance with  
13 this section. The Board of Environmental Protection shall  
14 determine flow standards through rulemaking authorized under  
15 Title 38, section 470-H.

16 1. Site-specific standards. Upon request of the board, the  
17 department or a person using or proposing to use surface waters  
18 for agricultural purposes, the Department of Environmental  
19 Protection shall determine site-specific flow standards and water  
20 levels for a water body used or being considered for use as a  
21 water source for agriculture.

22 2. Compliance date for water use standards. An  
23 agricultural producer has 5 years from the effective date of  
24 rules adopted under Title 38, section 470-H to meet the standards  
25 established in those rules if that agricultural producer is:

26 A. An agricultural producer who has filed or whose  
27 predecessor had filed a water use report under Title 38,  
28 section 470-D prior to December 1st of the year in which  
29 rules authorized by Title 38, section 470-H are finally  
30 adopted; or

31 B. An agricultural producer who can otherwise document a  
32 history of agricultural water use at the site prior to  
33 December 1st of the year in which rules authorized by Title  
34 38, section 470-H are finally adopted.

35 An agricultural producer who has or whose predecessor had a  
36 permit or voluntary agreement establishing withdrawal limits must  
37 adhere to those limits for the 5-year period or until in  
38 compliance with the standards established in rule.

2 For the purposes of this subsection, "predecessor" means a person  
3 who preceded an agricultural producer in the ownership or use of  
4 a parcel of land.

5 3. Assistance to agricultural producers. Agricultural  
6 producers may seek assistance from the board for the development  
7 of sustainable water sources, including permitting assistance  
8 where applicable. An agricultural producer must have an  
9 agricultural water use management plan prior to receiving  
10 financial support for the development of an alternative water  
11 source.

12 4. Compliance extension. The Department of Environmental  
13 Protection, upon recommendation of the board, may grant an  
14 extension beyond the original 5 years to an agricultural producer  
15 who qualifies for the 5-year compliance date under subsection 2  
16 and has a strategy for compliance with the rules authorized by  
17 Title 38, section 470-H if:

18 A. The agricultural producer requesting the extension has  
19 an agricultural water use management plan consistent with  
20 the board's model developed under section 352, subsection 3;

21 B. The agricultural water use management plan identifies  
22 water storage options for the agricultural producer and  
23 alternative water sources;

24 C. The agricultural producer has applied for funding and  
25 permits as needed;

26 D. The agricultural producer has implemented all feasible  
27 water use reduction options that are consistent with the  
28 agricultural water use management plan;

29 E. The agricultural producer has complied with water  
30 withdrawal limits established in an existing permit or  
31 voluntary agreement; and

32 F. Unforeseen or exceptional circumstances, such as weather  
33 events, delays in federal permitting or federal cost-share  
34 funding, have prevented implementation of the agricultural  
35 water use management plan.

36 5. Enforcement. The board shall examine water withdrawals  
37 for agricultural uses that result in a violation of flow rates or  
38 water levels, consider any unforeseen or exceptional  
39 circumstances of the agricultural producers, withdrawing water  
40 from the water bodies and make recommendations to the Department  
41 of Environmental Protection regarding compliance. Nothing in the  
42 responsibilities or actions of the board limits the enforcement  
43 of this subsection.

2 or compliance authority of the Department of Environmental  
Protection under Title 38.

4 6. Biennial report. The board shall submit a report on the  
sustainable agricultural water source program to the joint  
6 standing committee of the Legislature having jurisdiction over  
agricultural matters and the joint standing committee of the  
8 Legislature having jurisdiction over natural resources matters by  
January 30th of odd-numbered years beginning January 30, 2007.  
10 The committees of jurisdiction shall review this report together  
with the annual report on all aspects of water use for that year  
12 required under Title 38, section 470-G.'

14 **SUMMARY**

16 This amendment establishes the Maine Agricultural Water  
Management Board and the sustainable agricultural water source  
18 program. The amendment details the responsibilities of the  
board, the Department of Agriculture, Food and Rural Resources  
20 and the Department of Environmental Protection.

FISCAL NOTE REQUIRED  
(See attached)



# 122nd MAINE LEGISLATURE

LD 1776

LR 2860(02)

**An Act To Establish the Maine Agricultural Drought Protection Act**

**Fiscal Note for Bill as Amended by Committee Amendment "A"**

**Committee: Agriculture, Conservation and Forestry**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund

### Fiscal Detail and Notes

The additional costs associated with providing determinations on flow issues and other responsibilities can be absorbed by the Department of Environmental Protection utilizing existing budgeted resources. In addition, the costs of paying for the board-related expenses of board members of the Maine Agricultural Water Management Board can be absorbed by the Department of Agriculture, Food and Rural Resources utilizing existing budgeted resources.