

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1776

S.P. 693

In Senate, December 30, 2005

An Act To Establish the Maine Agricultural Drought Protection Act

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 28, 2005. Referred to the Committee on Agriculture, Conservation and Forestry pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator WESTON of Waldo.

Cosponsored by Senators: DAVIS of Piscataquis, RAYE of Washington, Representative:
CARR of Lincoln.

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

4
6 **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,
8 safety and welfare; and

10 **Whereas,** the Legislature finds that the use of water
resources for the State for agricultural purposes is of vital
12 importance to the public health, safety, food security and
economic well-being of the State; and

14
16 **Whereas,** the use of water resources during drought
conditions may interfere with public and private rights and may
18 cause severe economic damage to a strong and efficient
agriculture; and

20 **Whereas,** the wise use of water resources, the protection of
stream flows and the economic well-being of the State will also
22 be served by a program providing incentives to ensure that
certain agricultural lands are not injured by drought; and

24
26 **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

28
30 **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

32
34 **Whereas,** the wise use of water, the protection of stream
flow and the economic well-being of the State will be furthered
36 by proper water allocation in periods of drought. A program
providing incentives to ensure that certain irrigated lands are
temporarily not irrigated during severe droughts will promote the
38 wise use of water resources, the protection of stream flows and
the economic well-being of the State; and

40
42 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
44 necessary for the preservation of the public peace, health and
safety; now, therefore,

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

48 **Sec. 1. 5 MRSA §12004-G, sub-§3-D is enacted to read:**

50

2 3-D. Maine Expenses 38 MRSA
3 Agriculture Agricultural Only §450-A
4 Water
5 Management
6 Board

8 **Sec. 2. 38 MRSA c. 3, sub-c. 1, article 2-C is enacted to read:**

10 **Article 2-C**

12 **MAINE AGRICULTURAL DROUGHT PROTECTION ACT**

14 **§450-A. Maine Agricultural Water Management Board**

16 **1. Membership.** The Maine Agricultural Water Management
Board, as established by Title 5, section 12004-G, subsection
3-D, consists of 5 members, who must be residents of the State.

18 **2. Terms.** The first board is appointed by the Commissioner
of Agriculture, Food and Rural Resources. The terms of the first
board are governed by Title 35-A, section 6410, subsection 4.
After the first appointment of the first board, members are
appointed for 3-year terms.

20 **3. Compensation.** Board members are compensated in
accordance with Title 5, chapter 379.

22 **4. Responsibilities.** The board shall develop, manage and
regulate all agricultural water source developments and
withdrawals in the State. The board is authorized to establish
withdrawal limits for agricultural water withdrawals based on
historical use or, for new users, based on calculated water
budgets to prevent drought stress on crops or livestock.

24 **§450-B. Definitions**

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

28 **1. Acceptable river stream flow.** "Acceptable river stream
flow" means the quantity of stream flows at one or more specific
locations that provides for aquatic life protection and other
needs as established by the department based on municipal,
agricultural, industrial and environmental needs.

2 **2. Affected area.** "Affected area" means that portion of
3 the State lying within a river watershed and areas where
4 groundwater use can affect the stream flow of the river or its
5 tributaries.

6 **3. Aquifer.** "Aquifer" means those rocks and sediments
7 described in the United States Geological Survey that are capable
8 of yielding groundwater to wells or discharging water into a
9 river or its tributaries.

10 **4. Board.** "Board" means the Maine Agricultural Water
11 Management Board.

12 **5. Bureau.** "Bureau" means the Bureau of Land and Water
13 Quality within the department.

14 **6. Director.** "Director" means the director of the Bureau
15 of Land and Water Quality within the department.

16 **7. Drought condition.** "Drought condition" means any
17 condition that results in a stream flow that is lower than the
18 water quality stream flow standard for the river stream flow or
19 in which the soil moisture level is lower than 30% of
20 water-holding capacity for the agricultural land associated with
21 the river in question.

22 **8. Drought protection fund.** "Drought protection fund"
23 means the funds held by the department for the accomplishment of
24 the purposes of this article.

25 **9. Irrigated land.** "Irrigated land" means farmland that is
26 irrigated by groundwater or surface water and is part of the
27 Maine Agricultural Water Management Board.

28 **10. Irrigation reduction auction.** "Irrigation reduction
29 auction" means the procedure established pursuant to which Maine
30 Agricultural Water Management Board members submit offers to
31 cease irrigation of a specified number of acres in exchange for a
32 certain sum of money.

33 **11. Participant.** "Participant" means a person
34 participating in the drought abatement program established by the
35 Maine Agricultural Water Management Board.

36 **12. Stream flow.** "Stream flow" means the quantity of water
37 passing a given location of a river over a given time period,
38 expressed in cubic feet per second.

39 **13. Watershed.** "Watershed" means the area of land that
40 drains into a river or its tributaries.

2
3 **§450-C. Powers and duties of board**

4 **1. Establish drought abatement program.** The board shall
5 establish by rule a drought abatement program for a river
6 watershed in accordance with this article.

7 **2. Rules.** In performance of its duties, the board may
8 exercise the power to adopt, modify, amend and repeal rules to
9 implement and enforce the provisions of this article. The rules
10 must include, but are not limited to, the following:

11 **A. Eligibility requirements for farmers with irrigation**
12 **systems located in the affected areas to receive payments**
13 **from the drought protection fund;**

14 **B. Establishment of documentation requirements for nonuse**
15 **of an irrigation system;**

16 **C. Establishment of rules and procedures to be followed in**
17 **connection with the irrigation reduction auction;**

18 **D. Establishment of rules and procedures to be followed in**
19 **connection with payments to permittees from the drought**
20 **protection fund;**

21 **E. Investigations and inspections to ensure compliance with**
22 **this article, the rules and regulations issued pursuant to**
23 **this article and any agreement or order that the bureau or**
24 **director enters into or issues pursuant to this article; and**

25 **F. Establishment of rules and procedures for conducting**
26 **meetings and hearings.**

27 Rules adopted pursuant to this section are routine technical
28 rules as defined in Title 5, chapter 375, subchapter 2-A.

29 **§450-D. Eligibility**

30 To be eligible to receive payments from the drought
31 protection fund, a person:

32 **1. Participation.** Must have applied to the board for
33 participation in the drought abatement program and must have been
34 accepted by the board as a participant prior to January 1st of
35 any year deemed to be a drought year; and

36 **2. Actual previous irrigation.** Must have demonstrated, in
37 a manner to be defined by the board, actual previous irrigation
38 on the same acres of land that the farmer agrees not to irrigate
39 in a given year.

2 **§450-E. Powers and duties of director**

4 The director may exercise the power to:

6 1. Establish acceptable river stream flows. Establish acceptable river stream flows at one or more locations;

8 2. Establish geographical areas. Establish those geographical areas in or adjacent to a river watershed where the bureau's studies indicate that groundwater use from an aquifer may affect stream flow in the river or its tributaries; and

10 3. Advise. Advise the board when drought conditions exist or are expected to exist during a given year based on historical, mathematical, meteorological or other scientific considerations that may be published by the director and that may be developed in consultation with the Department of Agriculture; the Department of Conservation, Maine Geological Survey; the State Geologist; or other appropriate experts.

12 **§450-F. Drought protection funds**

14 1. Administration of funds. The board shall administer a drought protection fund provided to it for purposes of this article by the department or other sources and shall make expenditures from the fund in accordance with this article. The board is authorized to expend a portion of the drought protection fund for incidental costs and expenses reasonably incurred by the board in connection with its administration of the drought protection fund for such things as postage, office supplies and prorated salaries and wages of personnel assigned the tasks associated with management of the drought protection funds.

16 2. Invest. The board shall invest the unexpended balance of any drought protection fund in the same manner as other funds under its control.

18 3. Interest. Any interest or other revenues earned on the principal of any drought protection fund must be added to the unexpended balance of the drought protection funds.

20 4. Accounting. Upon request of the director, the department shall provide accounting information to the director that may be reasonably necessary for the director to perform the director's duties and functions pursuant to this article.

22 5. Nonlapsing. All money deposited in the drought protection fund is deemed to be contractually obligated and may not lapse to the general fund.

2 6. Balance. The total maximum balance in the drought
protection fund may not exceed \$15,000,000.

4 §450-G. Drought prediction and auction; agreement

6 1. Prediction. On or before March 1st of each year, the
board shall issue a prediction as to whether drought conditions
8 are expected during the year.

10 2. Determination. If drought conditions are predicted or
otherwise declared, the board shall determine the total number of
12 acres of irrigated land, serviced by irrigation systems located
within one or more of the affected areas, that may not be
14 irrigated that year in order to maintain the acceptable river
stream flow.

16 3. Irrigation reduction auction; agreement. Upon a
18 determination pursuant to subsection 2, the board shall conduct
an irrigation reduction auction whereby a participant operating
20 an irrigation system located within the affected areas is given
an opportunity to enter into an agreement with the board,
22 agreeing that in exchange for a certain sum of money per acre of
irrigated land serviced by the irrigation system, the participant
24 will not irrigate those acres for the remainder of that calendar
year. The board shall pay the sum so agreed upon from the
26 unexpended balance of the drought protection fund.

28 4. Maximum dollar amount. In conducting the irrigation
reduction auction, the board shall establish a maximum dollar
30 amount per acre to be expended from the drought protection fund
for such purposes.

32 5. Terms and conditions. An agreement entered into in
34 accordance with this section must be upon such terms and
conditions as the board considers necessary.

36 6. Payment. An agreement must provide for payment of the
38 agreed upon sum within 30 days from the date of execution of the
agreement by the parties.

40 7. Noncompliance. Failure of a participant to comply with
42 all terms of an agreement is a violation of the agreement and
this article and is subject to enforcement by the board as
44 provided in this article.

46 8. Violation. A participant who enters into an agreement
in accordance with this section may not irrigate during the
48 period covered by the agreement on those acres that the
participant has agreed not to irrigate. If the participant
50 irrigates those acres during the period covered by the agreement,

2 that action is a violation of the agreement and this article and
3 is subject to a penalty as determined by the board as provided in
4 this article.

6 **9. Valid use of state funds; legislative determination.**

7 The expenditure of funds under this article as an incentive to
8 participants not to irrigate lands is determined by the
9 Legislature to be a valid use of state money to promote valid
10 land use policies that result in the protection of the riverine
11 environment by ensuring that such lands not be irrigated for
12 specified periods of time. The expenditure of funds under this
13 article is not an acknowledgement by the State of a property
14 right.

16 **§450-H. Irrigation reduction other than through auction**

17 **1. Order by board.** In the event that an irrigation
18 reduction auction does not reduce the amount of acres to be
19 withdrawn, or if drought conditions become apparent after March
20 1st of a given year, the board is authorized to issue an order,
21 in accordance with rules adopted by the board, requiring certain
22 participants not to irrigate a specified number of acres of
23 irrigated land until the end of the calendar year.

24 **2. Determination of participants.** When issuing such
25 orders, the board shall begin with the participants whose
26 applications to participate in the drought abatement program were
27 received most recently and then work chronologically backward
28 with each application approved.

29 The board shall compensate a participant who is issued an
30 order pursuant to this section for that restriction. The per
31 acre dollar amount received by a participant pursuant to this
32 section must be equal to the average agreed-upon sum per acre
33 paid pursuant to the irrigation reduction auction during the same
34 year.

36 **§450-I. Violations and enforcement of irrigation reduction**
37 **contracts**

38 **1. Violation.** Except as otherwise provided, whenever the
39 board has reason to believe that a violation of any provision of
40 this article or any rule adopted pursuant to this article has
41 occurred, the board shall attempt to obtain compliance by
42 conference, conciliation or persuasion, if appropriate. If the
43 board fails to obtain compliance in this manner, the board may
44 order the violator to take whatever corrective action the board
45 considers necessary in order to obtain the compliance within a
46 period of time to be prescribed in the order.

2 2. Order final. Except as otherwise provided, an order
3 issued by the board under this article is final unless the
4 participant named in the order files with the board a written
5 request for a hearing within 30 days after the order or contract
6 for the irrigation reduction is served on the participant.

7 3. Hearings. Except as otherwise provided, hearings on
8 contested matters and judicial review of final orders and other
9 enforcement action under this article must be provided and
10 conducted in accordance with the Maine Administrative Procedure
11 Act.

12 4. Prima facie violation. A showing that, during the
13 effective period of the agreement or order, the irrigation system
14 was observed in person or via remote sensing or other method
15 authorized by the board to have been operating and dispersing
16 water is prima facie evidence of a violation of an agreement
17 entered into in accordance with section 450-G or an order issued
18 in accordance with section 450-H.

19 5. Repayment penalty. A participant who irrigates in
20 violation of an agreement entered into in accordance with section
21 450-G or an order issued pursuant to section 450-H must pay a
22 repayment penalty equal to 3 times the dollar amount that
23 participant received in drought protection funds. Repayment
24 penalties under this subsection are assessed on a per violation
25 basis. A violation is deemed to have occurred each time a
26 participant irrigates in violation of an agreement or order.
27

28 6. Notice of violation. Within 30 days after discovery
29 that a violation has occurred, the board shall send via certified
30 mail a notice of violation to the participant stating:
31

32 A. The date on which the violation occurred;

33 B. The facts constituting the violation and a statement
34 that such facts will be deemed admitted unless denied by the
35 participant's petition for hearing; and
36

37 C. The total dollar amount of repayment penalties owed by
38 the participant, together with a demand that the amount be
39 paid in full within 30 days of the participant's receipt of
40 the notice.
41

42 7. Deadline for response. No more than 30 days after
43 receiving a notice of violation pursuant to subsection 6, a
44 participant must either pay in full the total amount of repayment
45 penalties set forth in the notice or submit to the board a
46 petition challenging the notice. If a petition is filed within
47 the required time, a hearing must be conducted by the board.
48
49
50

2 **8. Failure to respond.** If a participant receiving a notice
4 of violation does not either pay the total amount of repayment
6 penalties or submit a petition challenging the notice, then the
8 facts set out in the notice are deemed admitted and the board
10 shall issue an order to the participant, assessing the total
12 repayment penalties due from the participant as set forth in the
14 notice of violation and requiring payment of the penalties within
16 30 days of issuance of the order. Any order issued by the board
18 pursuant to this subsection is final agency action.

20 **Emergency clause.** In view of the emergency cited in the
22 preamble, this Act takes effect when approved.

SUMMARY

18 The purpose of this bill is to ensure reasonable use of
20 water during severe agricultural droughts when that use may be
22 limited. The bill creates the Maine Agricultural Water
Management Board and directs the board to establish a drought
protection program.