

# MAINE STATE LEGISLATURE

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Date: 5/16/07

NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 728, L.D. 968, "Resolve, Regarding Legislative Review of Portions of Chapter 587: In-stream Flow and Water Level Standards, a Major Substantive Rule of the Department of Environmental Protection"

Amend the resolve by striking out the title and substituting the following:

'Resolve, Regarding Legislative Review of Portions of Chapter 587: In-stream Flow and Lake and Pond Water Levels, a Major Substantive Rule of the Department of Environmental Protection'

Amend the resolve in section 1 in the last line (page 1, line 18 in L.D.) by striking out the following: "authorized." and inserting the following:

'authorized only if the rule is amended as follows:

1. Language is added to clarify that the rule establishes river and stream flow requirements and lake and pond water level requirements;

2. Throughout the rule, reference to "water flow plan" is changed to "alternative water flow" and "water level plan" is changed to "alternative water level";

3. In the summary it is provided that a water use that fails to comply with the requirements of the rule is subject to penalties pursuant to the Maine Revised Statutes, Title 38, section 349;

4. In section 1 a provision is added to make the rule apply to withdrawals or other activity or direct or indirect removal, diversion or use of the waters that causes the natural flow or water level to be altered for all nontidal fresh surface waters of the State;

5. In section 2 a provision is added to define "water user" to mean a person whose withdrawal or other activity or direct or indirect removal, diversion or use of the water by means of a structure or facility causes the natural flow or water level to be altered in any nontidal fresh surface waters of the State;

6. In section 1(D) new provisions are added relating to withdrawal certificates to provide:

COMMITTEE AMENDMENT

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- 1 A. That a withdrawal certificate must allow withdrawals up to the system design  
2 capacity of a community water system;
- 3 B. That considerations of economic and technical feasibility must include  
4 consideration of the water system's legislative charter or other authority, watershed  
5 protection benefits of the existing source and the financial viability of the water  
6 system, as long as the conditions and limitations of the certificate can be  
7 accomplished within the Public Utilities Commission's existing approved rate  
8 schedule of the system or do not in and of themselves cause a water system to request  
9 a rate increase of its customers;
- 10 C. That a water system is allowed to incorporate the cost of compliance with  
11 conditions of a certificate into the system's long-range capital plan;
- 12 D. That approval of withdrawal certificate conditions is required by the Department  
13 of Health and Human Services' drinking water program with technical assistance  
14 from the Office of the Public Advocate on economic issues; and
- 15 E. That the intent of the certificate process is to accommodate the needs of the water  
16 systems while striving to move towards achievement of water quality requirements;
- 17 7. In section 2(F) the definition of "system design capacity" is amended to add a  
18 provision that the amount of water that is available for water system purposes is  
19 expressed as annual withdrawal in total gallons per year;
- 20 8. In section 2(F) it is provided that existing system infrastructure includes water  
21 treatment and distribution facilities and other necessary structures;
- 22 9. Each reference to "groundwater extraction" is removed from the rule;
- 23 10. In section 5(A) language is added to the narrative requirements to provide that  
24 withdrawals or other activity or direct or indirect removal, diversion or use of Class A, B  
25 or C waters must maintain flows sufficient to protect all water quality standards;
- 26 11. In sections 5(B) and 5(C) language is added to provide that flow requirements  
27 established by the standard allowable alteration in Class A, B and C waters may not be  
28 less than the seasonal aquatic base flow, except when natural conditions alone cause those  
29 flows to be less;
- 30 12. In section 7 language is added to provide that the review of the alternative water  
31 flow or alternative water level by other state natural resource agencies and the public is a  
32 30-day review and excludes reference to review by federal agencies;
- 33 13. In section 7(B) language is added providing that at the request of an applicant,  
34 the Department of Environmental Protection may conduct field evaluations sufficient to  
35 determine an alternative water flow or alternative water level;
- 36 14. In section 8(A) language is deleted specifying that flows or water levels may be  
37 established provided they are protective of all water quality standards, including all  
38 designated uses and characteristics of the water body;
- 39 15. In section 8(A) it is provided that amendments or modifications to an existing  
40 permit that do not alter the manner of use or the amount of the water withdrawal, as stated  
41 in the permit, do not require review under the rule;

1 16. In section 10(B) it is provided that an existing water system has 5 years from the  
2 date it is notified by the Department of Environmental Protection of noncompliance with  
3 the in-stream flow or water level requirements to obtain a water system withdrawal  
4 certificate and to enter into an agreement to take the necessary actions;

5 17. In section 12 it is provided that any activity altering the flow or water level that  
6 requires a new or reissued permit must be regulated according to the flow and water level  
7 requirements in the rule; and

8 18. Any technical changes to the rule necessary to accomplish the changes described  
9 in this resolve are made.

10 The Board of Environmental Protection is not required to hold hearings or undertake  
11 further proceedings prior to final adoption of the rule in accordance with this section.'

12 **SUMMARY**

13 This amendment authorizes final adoption of portions of Chapter 587: In-stream  
14 Flows and Lake and Pond Water Levels, a provisionally adopted major substantive rule  
15 of the Department of Environmental Protection that has been submitted to the Legislature  
16 for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A,  
17 if certain specified changes are made to the rule.

**FISCAL NOTE REQUIRED**  
**(See attached)**



# 123rd MAINE LEGISLATURE

LD 968

LR 2498(02)

**Resolve, Regarding Legislative Review of Portions of Chapter 587: In-stream Flow and Water Level Standards, a Major Substantive Rule of the Department of Environmental Protection**

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

**Committee: Natural Resources**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund

### **Fiscal Detail and Notes**

The additional costs associated with this legislation can be absorbed by the Department of Environmental Protection utilizing existing budgeted resources.