

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1888

S.P. 687

May 3, 2007

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### **An Act To Implement Recommendations of the Drinking Water Program Regarding Public Water Supply Protection**

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Reported by Senator MARTIN of Aroostook for the Joint Standing Committee on Natural Resources pursuant to Resolve 2005, chapter 140, section 3.

Reference to the Committee on Natural Resources suggested and ordered printed under Joint Rule 218.

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

JOY J. O'BRIEN  
Secretary of the Senate

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

2 **Sec. 1. 5 MRSA §6207, sub-§2, ¶B**, as enacted by PL 1987, c. 506, §§1 and 4, is  
3 amended to read:

4 B. Is habitat for plant or animal species or natural communities considered rare,  
5 threatened or endangered in the State; ~~or~~

6 **Sec. 2. 5 MRSA §6207, sub-§2, ¶C**, as amended by PL 1995, c. 462, Pt. D, §1, is  
7 further amended to read:

8 C. Provides nonmotorized or motorized public access to recreation opportunities or  
9 those natural resources identified in this section; or

10 **Sec. 3. 5 MRSA §6207, sub-§2, ¶D** is enacted to read:

11 D. Provides public water supply protection when that purpose is consistent and does  
12 not conflict with the natural resource conservation and recreation purposes of this  
13 chapter.

14 **Sec. 4. 22 MRSA §2649-A** is enacted to read:

15 **§2649-A. State's impact on public water supply protection**

16 When undertaking actions that have a negative impact on a public water supply, a  
17 state agency shall consider the impact, evaluate alternatives to minimize the impact and  
18 conduct mitigation of any unavoidable impact.

19 **Sec. 5. 30-A MRSA §5953-B, sub-§1**, as amended by PL 1997, c. 555, §3, is  
20 further amended to read:

21 **1. Loan application.** In addition to the other forms of financial assistance available  
22 under section 6006-B, a public water system that is a community water system or a  
23 nonprofit water system that is not a community water system may apply for a loan from  
24 the safe drinking water revolving loan fund, in this section called the "fund," the proceeds  
25 of which must be used to acquire, design, plan, construct, enlarge, repair, protect or  
26 improve drinking water supplies or treatment systems owned by the applicant; to acquire  
27 development rights, conservation easements and other protective interests in land by the  
28 applicant or in cooperation with a land trust or similar entity; or for any actions  
29 authorized or required under the federal Safe Drinking Water Act of 1996, 42 United  
30 States Code, Sections 300f to 300j-9, as amended.

31 The bank may prescribe an application form or procedure for a public water system to  
32 apply for a loan under this section. The application must include any information that the  
33 bank determines necessary for the purpose of implementing this section and section 6006-  
34 B.

35 For purposes of this section, the term "public water system" has the same meaning as  
36 defined in Title 22, section 2601, subsection 8.

37 **Sec. 6. 38 MRSA §480-B, sub-§1-A** is enacted to read:

1 1-A. Community public water system. "Community public water system" has the  
2 same meaning as "community water system" has in Title 22, section 2660-B, subsection  
3 2.

4 **Sec. 7. 38 MRSA §480-B, sub-§1-B** is enacted to read:

5 1-B. Community public water system primary protection area. "Community  
6 public water system primary protection area" means:

7 A. The area within 250 feet, measured horizontally, of a great pond that is a source  
8 for a community public water system;

9 B. The area within 250 feet, measured horizontally, of a river, stream or brook that is  
10 a source for a community public water system for a distance of 1/2 mile upstream  
11 from the intake of the public water supply; or

12 C. A source water protection area identified and mapped by the Department of  
13 Health and Human Services as described under Title 30-A, section 2001, subsection  
14 20-A.

15 **Sec. 8. 38 MRSA §480-B, sub-§8**, as enacted by PL 1987, c. 809, §2, is amended  
16 to read:

17 **8. Protected natural resource.** "Protected natural resource" means coastal sand  
18 dune system ~~systems~~, coastal wetlands, significant wildlife habitat, fragile mountain  
19 areas, freshwater wetlands, community public water system primary protection areas  
20 great ponds or rivers, streams or brooks, as these terms are defined in this article.

21 **Sec. 9. 38 MRSA §480-D, first ¶**, as affected by PL 1989, c. 890, Pt. A, §40 and  
22 amended by Pt. B, §71, is further amended to read:

23 The department shall grant a permit upon proper application and upon such terms as  
24 it considers necessary to fulfill the purposes of this article. The department shall grant a  
25 permit when it finds that the applicant has demonstrated that the proposed activity meets  
26 the ~~following standards set forth in subsections 1 to 9, except that when an activity~~  
27 requires a permit only because it is located in, on or over a community public water  
28 system primary protection area the department shall issue a permit when it finds that the  
29 applicant has demonstrated that the proposed activity meets the standards set forth in  
30 subsections 2 and 5.

31 **Sec. 10. 38 MRSA §480-E, sub-§2**, as enacted by PL 1989, c. 656, §4 and  
32 affected by c. 890, Pt. A, §40 and amended by Pt. B, §73, is further amended to read:

33 **2. Water supply notification and review.** If the resource subject to alteration or the  
34 underlying ground water is utilized by a ~~water company, municipality or water district~~  
35 community public water system as a source of supply, the applicant for the permit shall,  
36 at the time of filing an application, forward a copy of the application to the ~~water~~  
37 company, municipality or water district community public water system and the drinking  
38 water program of the Department of Health and Human Services by certified mail and the

1 department shall consider any comments concerning the application filed with the  
2 commissioner within a reasonable period, as established by the commissioner.

3 **Sec. 11. 38 MRSA §480-E-2** is enacted to read:

4 **§480-E-2. Delegation of review authority to the Department of Health and Human**  
5 **Services or to a community public water system**

6 The commissioner may delegate authority to determine whether an activity that  
7 requires a permit because it is located within a community public water system primary  
8 protection area meets the standards in section 480-D, subsections 2 and 5 if the activity  
9 does not in whole or in part otherwise require a permit pursuant to section 480-C. The  
10 commissioner may delegate this review authority to the drinking water program of the  
11 Department of Health and Human Services or to a community public water system that  
12 demonstrates adequate technical capacity to perform the review. If review authority is  
13 delegated, the department shall issue or deny the permit and retains enforcement  
14 authority.

15 **Sec. 12. 38 MRSA §480-Q, sub-§9-A** is enacted to read:

16 **9-A. Community public water systems.** Community public water systems are  
17 exempt from the provisions of this article for activities within their community public  
18 water system primary protection areas as long as the activities are conducted in a manner  
19 that protects the quality and quantity of water available for the system;

20 **Sec. 13. Rulemaking and implementation date.** The Department of  
21 Environmental Protection shall adopt rules to specify requirements for an activity located  
22 in a community public water system primary protection area. A permit is not required  
23 under the Maine Revised Statutes, Title 38, chapter 3, article 5-A for an activity located  
24 in, on or over a community public water system primary protection area until the  
25 effective date of the rules provided for in this section, unless a permit is otherwise  
26 required under the Maine Revised Statutes, Title 38, section 480-C. Rules adopted  
27 pursuant to this section are routine technical rules as defined in Title 5, chapter 375,  
28 subchapter 2-A.

29 **Sec. 14. Report.** The Department of Environmental Protection shall report to the  
30 Joint Standing Committee on Natural Resources by January 15, 2008 concerning the  
31 status of rulemaking on activities in, on or over community public water system primary  
32 protection areas and shall recommend any additional needed legislation. The Joint  
33 Standing Committee on Natural Resources may submit legislation related to this subject  
34 to the Second Regular Session of the 123rd Legislature.

35 **SUMMARY**

36 This bill implements recommendations of the drinking water program of the  
37 Department of Health and Human Services in connection with a report required pursuant  
38 to Resolve 2005, chapter 140. The bill accomplishes the following.

- 1       1. It amends the acquisition criteria for the Executive Department, Land for Maine's  
2 Future Board. It requires the board to consider whether the site provides public water  
3 supply protection.
- 4       2. It requires state agencies to consider the negative impact of the agency's actions on  
5 public water supplies, evaluate alternatives to minimize the impact and conduct  
6 mitigation of any unavoidable impact.
- 7       3. It allows the safe drinking water revolving loan fund to be used by a public water  
8 system to acquire protective interests in land.
- 9       4. It defines "community public water system" and "community public water system  
10 primary protection area."
- 11       5. It adds community public water system primary protection areas to the definition  
12 of "protected natural resource."
- 13       6. It adds language to the standards imposed under the laws governing natural  
14 resources protection to require that an applicant for a project in a community public water  
15 system primary protection area has to meet only the soil erosion and water quality  
16 standards contained in those laws.
- 17       7. It requires the applicant to notify the drinking water program of the Department of  
18 Health and Human Services and the community public water system if the resource  
19 subject to alteration or the underlying groundwater is used by a community public water  
20 system.
- 21       8. It authorizes the Commissioner of Environmental Protection to, under certain  
22 circumstances, delegate to the drinking water program of the Department of Health and  
23 Human Services or to a community public water system the authority to determine  
24 whether an activity that is located within a community public water system primary  
25 protection area meets the erosion and water quality standards.
- 26       9. It exempts community public water systems from the laws governing natural  
27 resources protection permitting requirements for activities within their community public  
28 water system primary protection areas.
- 29       10. It requires the Department of Environmental Protection to adopt rules to specify  
30 requirements for an activity located in a community public water system primary  
31 protection area.
- 32       11. It directs the Department of Environmental Protection to report to the Joint  
33 Standing Committee on Natural Resources by January 15, 2008 concerning the status of  
34 the rulemaking.