

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

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Legislative Document

No. 1267

H.P. 886

House of Representatives, March 31, 2009

**An Act To Establish a Groundwater Withdrawal Program and To
Recognize Groundwater as a Public Trust Resource**

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CAMPBELL of Newfield.
Cosponsored by Senator HOBBS of York and
Representatives: CASAVANT of Biddeford, CLARK of Millinocket, DUCHESNE of Hudson,
MARTIN of Eagle Lake, SCHATZ of Blue Hill, SMITH of Monmouth, WEBSTER of
Freeport, Senator: BARTLETT of Cumberland.

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

2 **Sec. 1. 38 MRSA §404-A** is enacted to read:

3 **§404-A. Groundwater as a public resource; policy**

4 In recognition that the groundwater of the State is a precious, finite and invaluable
5 resource upon which there is an ever-increasing demand for present, new and competing
6 uses; and in further recognition that an adequate supply of groundwater for domestic,
7 farming, dairy processing and industrial uses is essential to the health, safety and welfare
8 of the people of the State:

9 **1. Regulation to benefit people of the State.** The withdrawal of groundwater of the
10 State must be regulated in a manner that benefits the people of the State; is compatible
11 with long-range water resource planning and proper management and use of the water
12 resources of the State; and is consistent with the State's policy of managing groundwater
13 as a public resource for the benefit of all residents;

14 **2. Maintenance of high-quality drinking water.** The State shall protect its
15 groundwater resources to maintain high-quality drinking water;

16 **3. Minimization of risks.** The groundwater resources of the State must be managed
17 to minimize the risks of groundwater quality deterioration by regulating human activities
18 that present risks to the use of groundwater in the vicinities of those activities while
19 balancing the State's groundwater policy with the need to maintain and promote a healthy
20 and prosperous agricultural community; and

21 **4. Public trust.** The groundwater resources of the State are held in trust for the
22 public. The State shall manage its groundwater resources for the benefit of the State's
23 citizens who hold and share rights in those waters. The designation of the groundwater
24 resources of the State as a public trust resource may not be construed to allow a new right
25 of legal action by an individual other than the State, except to remedy injury to a
26 particularized interest related to water quantity protected under this Title.

27 **Sec. 2. 38 MRSA §470-A, sub-§1,** as enacted by PL 2001, c. 619, §1, is amended
28 to read:

29 **1. Nonconsumptive use.** "Nonconsumptive use" means any use of water that results
30 in the water being discharged back into the same water source within 1/4 mile upstream
31 or downstream from the point of withdrawal such that the difference between the volume
32 withdrawn and the volume returned is no more than the threshold amount per day. ~~This~~
33 ~~also includes withdrawals from groundwater that are discharged to a subsurface system or~~
34 ~~to a hydraulically connected surface water body such that no more than the threshold~~
35 ~~amount is consumed.~~

36 **Sec. 3. 38 MRSA §470-A, sub-§2,** as enacted by PL 2001, c. 619, §1, is amended
37 to read:

1 **2. Water source.** "Water source" means any river, stream or brook as defined in
2 section 480-B, or any lake or pond classified GPA pursuant to section 465-A or
3 groundwater located anywhere in the State.

4 **Sec. 4. 38 MRSA §470-B,** as enacted by PL 2001, c. 619, §1, is amended to read:

5 **§470-B. Threshold volumes for reporting**

6 Except as otherwise provided in this article, a person making a water withdrawal in
7 excess of the threshold volumes established in this section shall file a water withdrawal
8 report in accordance with section 470-D covering the 12 months ending on the previous
9 September 30th. The threshold volumes for reporting are as follows.

10 **1. Withdrawals from river, stream or brook.** The threshold volume for reporting
11 on withdrawals from a river, stream or brook ~~or groundwater within 500 feet of a river,~~
12 ~~stream or brook~~ is 20,000 gallons on any day or, if the watershed area at the point of
13 withdrawal exceeds 75 square miles, a volume in gallons per day for any day that is:

14 A. One percent of the estimated low-flow volume of water to occur for 7 days once
15 in 10 years based on historical flows for rivers, streams or brooks with an adequate
16 record of gauge data;

17 B. One percent of the estimated low-flow volume of water to occur for 7 days once
18 in 10 years based on an estimated low-flow value for a river, stream or brook below a
19 dam where flow is limited by gate settings or leakage; or

20 C. If paragraphs A and B are not applicable, then a threshold volume calculated
21 using the formula $V=168.031$ times A to 1.1 power, where V is the volume in gallons
22 per day and A is the watershed area in square miles.

23 **2. Withdrawals from GPA lake or pond.** The threshold volume for reporting on
24 withdrawals from a Class GPA lake or pond ~~or groundwater within 500 feet of the lake or~~
25 ~~pond~~ is determined from the following table:

Lake area in acres	gallons/ week
< 10	30,000
10-30	100,000
31-100	300,000
101-300	1,000,000
301-1000	3,000,000
1001-3000	10,000,000
3001-10,000	30,000,000

34 ~~**3. Withdrawals from other groundwater sources.** The threshold volume for~~
35 ~~reporting on withdrawals from groundwater greater than 500 feet from a river, stream,~~
36 ~~brook or GPA classified lake or pond is 50,000 gallons on any day, unless the person~~
37 ~~making the water withdrawal demonstrates to the department's satisfaction that the~~
38 ~~withdrawal will not impact any adjacent surface water body.~~

1 G. The raising, feeding or management of 4 or more equines owned or boarded by
2 the farmer, including training, showing and providing instruction and lessons in
3 riding, training and the management of equines.

4 **2. Groundwater.** "Groundwater" means water below the land surface, including
5 springs.

6 **3. Municipality.** "Municipality" means a city, town, plantation or unorganized
7 township.

8 **4. Spring.** "Spring" means a groundwater source where groundwater flows naturally
9 to the surface of the earth and is collected with a developed structure that is designed to
10 locate or extract groundwater.

11 **5. Surface water.** "Surface water" means all rivers, streams, creeks, brooks,
12 reservoirs, ponds, lakes and springs and all bodies of water, artificial or natural, that are
13 not groundwater and are contained within, flow through or border upon the State or any
14 portion of it.

15 **6. Water resources.** "Water resources" means groundwater or surface water.

16 **7. Well.** "Well" means any hole drilled, driven, bored, excavated or created by
17 similar method into the earth to locate, monitor, extract or recharge groundwater where
18 the water table or potentiometric surface is artificially lowered through pumping.

19 **8. Withdraw; withdrawal.** "Withdraw" or "withdrawal" means the intentional
20 removal by any method or instrument of groundwater from a well, spring or combination
21 of wells or springs.

22 **§470-S. Groundwater withdrawal; reporting**

23 Notwithstanding any other provision of law, this section governs the reporting of
24 withdrawals.

25 **1. Groundwater report.** Beginning October 1, 2009 and annually thereafter, a
26 person that withdraws more than 20,000 gallons per day averaged over a calendar month
27 at a single tract of land or place of business at any time during the preceding calendar
28 year shall file a groundwater report with the department on or before October 1st for the
29 preceding calendar year. The report must be made on a form prescribed by the
30 department and must include:

31 **A.** The location, capacity, frequency and rate of the withdrawal;

32 **B.** A description of the use of the water withdrawn; and

33 **C.** Where feasible, the distance of each withdrawal from the nearest surface water
34 source and wetland.

35 **2. Exemptions.** The following are exempt from the reporting requirements of this
36 section:

37 **A.** A withdrawal for fire suppression or other public emergency purposes;

1 B. A withdrawal reported to the department under any program that requires the
2 reporting of substantially similar data. The department shall record such withdrawals
3 with the information from withdrawals reported under this section;

4 C. Residential use;

5 D. Withdrawal for farming;

6 E. Dairy processors;

7 F. Public water systems; and

8 G. Closed loop, standing column or similar nonextractive geothermal heat pumps.

9 3. Rules. The department may adopt rules to implement this section, including
10 methods for calculating or estimating the amount of groundwater withdrawn from a well
11 or spring. Rules adopted pursuant to this subsection are routine technical rules as defined
12 in Title 5, chapter 375, subchapter 2-A.

13 **§470-T. Groundwater withdrawal permitting**

14 Notwithstanding any other provision of law, this section governs the permitting of
15 withdrawals.

16 1. Permit required. On and after July 1, 2010, a person may not, for commercial or
17 industrial uses, make a new or increased withdrawal of more than 57,600 gallons a day
18 from any well or spring on a single tract of land or at a place of business without first
19 receiving from the department a groundwater withdrawal permit. The following
20 constitutes a new or increased withdrawal:

21 A. The expansion of any existing permitted withdrawal through:

22 (1) Additional withdrawal from one or more new wells or springs; or

23 (2) An increase in the rate of withdrawal from a well or spring above the
24 maximum rate set forth in any existing permit issued by the department under
25 this section; or

26 B. For previously unpermitted withdrawals, an increase in the rate of withdrawal on
27 or after July 1, 2010 from a well or spring on a single tract of land or at a place of
28 business of 25% of the baseline withdrawal or an increase of 57,600 gallons of
29 groundwater withdrawn, whichever is less.

30 For the purposes of this subsection, the baseline withdrawal is the highest amount
31 withdrawn in a day by a person between 2005 and 2010.

32 2. Exemptions. The following are exempt from the permitting requirements of this
33 section:

34 A. A withdrawal for fire suppression or other public emergency purposes;

35 B. Residential use;

36 C. Withdrawal for farming;

37 D. Dairy processors;

- 1 E. Public water systems; and
- 2 F. Closed loop, standing column or similar nonextractive geothermal heat pumps.

3 **3. Public meetings; notification.** The provisions of this subsection govern meeting
4 and notification requirements relating to groundwater withdrawal permits.

5 A. At least 30 days before filing an application for a permit under this section, an
6 applicant shall hold an informational meeting in the municipality in which the
7 withdrawal is proposed in order to describe the proposed withdrawal and to hear
8 comments regarding the proposed withdrawal. The applicant shall give public notice
9 by posting in the office of the municipality in which the withdrawal is proposed and
10 by publishing in a local newspaper at least 10 days before the meeting.

11 B. On or before the date of filing an application for a permit under this section, an
12 applicant shall notify:

- 13 (1) The municipal officer, legislative body and any conservation commission in
14 the municipality in which the proposed withdrawal is located;
- 15 (2) Adjoining municipalities;
- 16 (3) Any regional planning commission in the region where the proposed
17 withdrawal is located;
- 18 (4) All landowners and mobile home park residents within the area affected by a
19 proposed withdrawal or within 1/4 mile downstream from a withdrawal from a
20 spring; and
- 21 (5) Any public water system in the municipality where the proposed withdrawal
22 is located.

23 C. An applicant for a permit under this section shall publish notice of the application
24 in a newspaper of general circulation in the area in which the withdrawal is proposed
25 and shall post a copy of the notice in the office of the municipality in which the
26 withdrawal is proposed.

27 D. On its own motion or on receipt of a written request, the department may hold a
28 public meeting in the municipality in which a withdrawal is proposed in order to
29 describe the proposed withdrawal and to hear comments regarding the proposed
30 withdrawal. Opportunity must be given all participants at a public meeting to ask
31 questions and comment on all issues involved. The department shall prepare a
32 summary of each public meeting conducted. Public notice must be given by posting
33 in the office of the municipality in which the withdrawal is proposed and by
34 publishing in a local newspaper at least 10 days before the meeting.

35 E. A defect in the form or substance of any notice requirements in this subsection
36 may not invalidate an application for a permit under this section as long as reasonable
37 efforts are made to provide adequate posting and notice. An application for a permit
38 under this section is invalid when a defective posting or notice was materially
39 misleading in content.

1 **4. Application.** Application for a permit under this section must be on a form
2 prepared by the department. An application must, at a minimum, contain the information
3 necessary to make the determinations contained in subsection 5 and the following:

4 A. The purpose for the withdrawal;

5 B. The location and source of the withdrawal;

6 C. The amount of the proposed withdrawal, including estimates of the projected
7 mean and peak daily, monthly and annual withdrawals;

8 D. The place of the proposed return flow of withdrawn water;

9 E. The estimated amount of water that will not be returned to the watershed where
10 the proposed withdrawal is located;

11 F. The location, demand on and yield of existing sources of groundwater and surface
12 water to be used by the applicant; and

13 G. A brief description of the alternative means considered for satisfying the
14 applicant's stated use for water.

15 **5. Determination by department.** The department may not issue a permit for a new
16 or increased withdrawal unless the department determines that:

17 A. The proposed withdrawal is planned in a fashion that provides for efficient use of
18 the water;

19 B. The proposed withdrawal, in combination with other existing withdrawals, will
20 meet the standards set by the department in rule for establishing a safe yield in the
21 area of the withdrawal;

22 C. The proposed withdrawal is consistent with a municipal ordinance, if any, in the
23 municipality in which the proposed withdrawal is located and with the state policy to
24 manage groundwater as a shared resource for the benefit of all citizens of the State,
25 including any policies and programs regarding long-range planning, management,
26 allocation and use of groundwater and surface water in effect at the time the
27 application for the withdrawal is filed;

28 D. The proposed withdrawal will not have an undue adverse effect on existing uses
29 of water dependent on the same water source;

30 E. The proposed withdrawal will not have an undue adverse effect on a public water
31 system;

32 F. The proposed withdrawal will not have an undue adverse effect on significant
33 wetlands under the State's wetland rules or on other water resources hydrologically
34 interconnected with the well or spring from which the proposed withdrawal would be
35 made;

36 G. The proposed withdrawal will not violate the State's water quality standards; and

37 H. Any other consideration that the department determines necessary for the
38 conservation of water or protection of groundwater quality is met.

1 **6. Permits.** A permit issued under this section is valid for the period of time
2 specified in the permit but not for more than 10 years. A permit issued under this section
3 must include the following:

4 A. A provision that withdrawals from a well or spring for drinking water supplies,
5 farming or dairy processing must be given priority over other uses during times of
6 shortage; and

7 B. Any other condition that the department determines necessary for the
8 conservation of water or protection of groundwater quality.

9 **7. Other permitting authority of department.** Notwithstanding subsection 1, the
10 department may require any person withdrawing groundwater in the State to obtain a
11 permit under this section if the withdrawal is not exempt under subsection 2 and the
12 department determines that the withdrawal violates the State's water quality standards or
13 has an undue adverse effect on an existing use of groundwater, a public water system,
14 wetlands or water resources hydrologically interconnected with the well or spring from
15 which the withdrawal occurs. The department shall make a determination under this
16 subsection based on review of the information set forth under subsection 4 that is readily
17 available to the department.

18 **8. Transfer of permit.** A withdrawal permit issued under this section may be
19 transferred upon a change of ownership of the facility or project for which the permit was
20 issued as long as the new owner applies for an amendment to the permit certifying its
21 agreement to comply with all terms and conditions of the transferred permit and assume
22 all other associated obligations.

23 **9. Compliance with public trust requirements.** The following withdrawals are
24 deemed to comply with the public trust requirements of the State for groundwater
25 management and are entitled to a presumption that the withdrawal complies with the
26 public trust requirements of the State:

27 A. A withdrawal permitted under this section;

28 B. A withdrawal for domestic residential use;

29 C. A withdrawal for a public water system except for a bottled water facility;

30 D. A withdrawal for farming; and

31 E. A withdrawal by a dairy processor.

32 **10. Rules.** By July 1, 2010, the department shall adopt rules to implement this
33 section. Rules adopted pursuant to this subsection are routine technical rules as defined
34 in Title 5, chapter 375, subchapter 2-A. Rules adopted under this subsection must
35 include:

36 A. Requirements for the mitigation of an undue adverse effect on drinking water
37 supplies, farming, public water systems or any other affected use when the
38 department determines such an undue adverse effect is likely to occur due to a
39 withdrawal; and

40 B. Requirements for the renewal of permits issued under this section.

