

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



STATE LAW LIBRARY
ORONO, MAINE

124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1310

H.P. 913

House of Representatives, March 31, 2009

**Resolve, To Establish the Blue Ribbon Commission To Examine the
Legal and Policy Implications of Groundwater Extraction**

(EMERGENCY)

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative WEBSTER of Freeport.
Cosponsored by Senator SHERMAN of Aroostook and
Representatives: CAIN of Orono, DILL of Cape Elizabeth, DUCHESNE of Hudson, Speaker
PINGREE of North Haven, ROTUNDO of Lewiston, Senators: HOBBS of York, MILLS of
Somerset.

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

3 **Whereas,** the laws governing groundwater must constantly evolve to respond to
4 scientific, geopolitical and environmental developments; and

5 **Whereas,** shifting areas of responsibilities and jurisdiction regarding environmental
6 protections and environmental controls may require a reexamination of groundwater
7 ownership in the State; and

8 **Whereas,** such an examination must involve an assessment of the implications on
9 environmental controls and ownership rights; and

10 **Whereas,** obligations under international trade agreements may compromise the
11 ability of state and local governments to manage resources like groundwater in the public
12 interest; and

13 **Whereas,** this legislation establishes the Blue Ribbon Commission To Examine the
14 Legal and Policy Implications of Groundwater Extraction and requires that the
15 commission report its findings no later than December 3, 2009; and

16 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
17 the meaning of the Constitution of Maine and require the following legislation as
18 immediately necessary for the preservation of the public peace, health and safety; now,
19 therefore, be it

20 **Sec. 1. Commission established. Resolved:** That the Blue Ribbon
21 Commission To Examine the Legal and Policy Implications of Groundwater Extraction,
22 referred to in this resolve as "the commission," is established; and be it further

23 **Sec. 2. Commission membership. Resolved:** That the commission consists of
24 11 members appointed as follows:

- 25 1. Four members appointed by the President of the Senate as follows:
- 26 A. Three Senators, one of whom is a member of the Joint Standing Committee on
27 Utilities and Energy, one of whom is a member of the Joint Standing Committee on
28 Judiciary and one of whom is a member of the Joint Standing Committee on
29 Agriculture, Conservation and Forestry; and
- 30 B. One member representing the interests of business and industry;
- 31 2. Four members appointed by the Speaker of the House as follows:
- 32 A. Three members of the House of Representatives, one of whom is a member of the
33 Joint Standing Committee on Health and Human Services, one of whom is a member
34 of the Joint Standing Committee on State and Local Government and one of whom is
35 a member of the Joint Standing Committee on Natural Resources; and

1 B. One member of the Citizen Trade Policy Commission established in the Maine
2 Revised Statutes, Title 5, section 12004-I, subsection 79-A;

3 3. One member of the Public Utilities Commission, appointed by the Governor; and

4 4. Two ex officio members. The following persons are appointed as ex officio
5 voting members:

6 A. The Attorney General, or a designee; and

7 B. The Commissioner of Environmental Protection; and be it further

8 **Sec. 3. Chairs. Resolved:** That the first-named Senate member is the Senate
9 chair and the first-named House of Representatives member is the House chair of the
10 commission; and be it further

11 **Sec. 4. Appointments; convening of commission. Resolved:** That all
12 appointments must be made no later than 30 days following the effective date of this
13 resolve. The appointing authorities shall notify the Executive Director of the Legislative
14 Council once all appointments have been completed. Within 15 days after appointment
15 of all members, the chairs shall call and convene the first meeting of the commission,
16 which must be no later than July 15, 2009; and be it further

17 **Sec. 5. Duties. Resolved:** That the commission shall study the legal and policy
18 implications of groundwater extraction and shall recommend any changes to state law
19 necessary to balance the State's interests in protecting the public good and maintaining
20 jurisdictional control over environmental impacts with protecting the rights of property
21 owners. In conducting the study, the commission shall specifically examine:

22 1. The various groundwater law classifications applicable throughout the United
23 States, including the absolute dominion rule, the reasonable use rule, the correlative rights
24 doctrine, the Restatement (Second) of Torts rule, and prior appropriation;

25 2. The impact of a state's geology and hydrogeology on that state's regulation of
26 groundwater;

27 3. The controlling law in the State governing groundwater rights and groundwater
28 withdrawal;

29 4. Methods used by other states to balance their interests in protecting the water
30 supply and the environment with private property owners' interests in water; and

31 5. Any potential consequences of granting water-taking rights to a company with the
32 status of a foreign investor under international trade agreements; and be it further

33 **Sec. 6. Staff assistance. Resolved:** That the Legislative Council shall provide
34 necessary staffing services to the commission; and be it further

35 **Sec. 7. Report. Resolved:** That, no later than December 3, 2009, the commission
36 shall submit a report that includes its findings and recommendations, including suggested
37 legislation, for presentation to the Second Regular Session of the 124th Legislature. The

1 Joint Standing Committee on Natural Resources is authorized to introduce a bill related to
2 the subject matter of the report to the Second Regular Session of the 124th Legislature
3 upon receipt of the report.

4 **Emergency clause.** In view of the emergency cited in the preamble, this
5 legislation takes effect when approved.

6 **SUMMARY**

7 This resolve establishes a commission to study the legal and policy implications of
8 groundwater extraction in the State and to recommend any changes to state law necessary
9 to balance the State's interest in protecting the public good and maintaining jurisdictional
10 control over environmental impacts with protecting the rights of property owners.