

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1455

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S.P. 539

In Senate, April 25, 2013

### **An Act To Authorize a General Fund Bond Issue To Ensure Clean Water and Safe Communities**

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Reference to the Committee on Appropriations and Financial Affairs suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator GOODALL of Sagadahoc.  
Cosponsored by Representative BERRY of Bowdoinham and  
Senators: BOYLE of Cumberland, HASKELL of Cumberland, HILL of York, JACKSON of  
Aroostook, SAVIELLO of Franklin, Representatives: BLACK of Wilton, KESCHL of  
Belgrade, McCABE of Skowhegan.

1         **Preamble.** Two thirds of both Houses of the Legislature deeming it necessary in  
 2 accordance with the Constitution of Maine, Article IX, Section 14 to authorize the  
 3 issuance of bonds on behalf of the State of Maine to provide funds as described in this  
 4 Act,

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

6   **PART A**

7         **Sec. A-1. Authorization of bonds.** The Treasurer of State is authorized, under  
 8 the direction of the Governor, to issue bonds in the name and on behalf of the State in an  
 9 amount not exceeding \$50,000,000 for the purposes described in section 6 of this Part.  
 10 The bonds are a pledge of the full faith and credit of the State. The bonds may not run for  
 11 a period longer than 10 years from the date of the original issue of the bonds.

12         **Sec. A-2. Records of bonds issued; Treasurer of State.** The Treasurer of  
 13 State shall ensure that an account of each bond is kept showing the number of the bond,  
 14 the name of the successful bidder to whom sold, the amount received for the bond, the  
 15 date of sale and the date when payable.

16         **Sec. A-3. Sale; how negotiated; proceeds appropriated.** The Treasurer of  
 17 State may negotiate the sale of the bonds by direction of the Governor, but no bond may  
 18 be loaned, pledged or hypothecated on behalf of the State. The proceeds of the sale of the  
 19 bonds, which must be held by the Treasurer of State and paid by the Treasurer of State  
 20 upon warrants drawn by the State Controller, are appropriated solely for the purposes set  
 21 forth in this Part. Any unencumbered balances remaining at the completion of the project  
 22 in this Part lapse to the Office of the Treasurer of State to be used for the retirement of  
 23 general obligation bonds.

24         **Sec. A-4. Interest and debt retirement.** The Treasurer of State shall pay  
 25 interest due or accruing on any bonds issued under this Part and all sums coming due for  
 26 payment of bonds at maturity.

27         **Sec. A-5. Disbursement of bond proceeds.** The proceeds of the bonds must be  
 28 expended as set out in this Part under the direction and supervision of the Water  
 29 Resources Commission.

30         **Sec. A-6. Allocations from Highway Fund and General Fund bond issue.**  
 31 The proceeds of the sale of the bonds authorized under this Part must be expended as  
 32 designated in the following schedule.

33   **WATER RESOURCES COMMISSION**

34                         Provides funds to ensure clean water and safe communities; to protect drinking water  
 35 sources; to allow communities to better prepare for extreme storms and floods; to  
 36 protect, enhance and restore state waters and wetlands and fish, game and wildlife

1 habitat; to create jobs and vital public infrastructure; and to strengthen the State's  
2 long-term economic base and competitive advantage.

3 Total \$50,000,000

4 **Sec. A-7. Contingent upon ratification of bond issue.** Sections 1 to 6 do not  
5 become effective unless the people of the State ratify the issuance of the bonds as set  
6 forth in this Part.

7 **Sec. A-8. Appropriation balances at year-end.** At the end of each fiscal year,  
8 all unencumbered appropriation balances representing state money carry forward. Bond  
9 proceeds that have not been expended within 10 years after the date of the sale of the  
10 bonds lapse to the Office of the Treasurer of State to be used for the retirement of general  
11 obligation bonds.

12 **Sec. A-9. Bonds authorized but not issued.** Any bonds authorized but not  
13 issued within 5 years of ratification of this Part are deauthorized and may not be issued,  
14 except that the Legislature may, within 2 years after the expiration of that 5-year period,  
15 extend the period for issuing any remaining unissued bonds for an additional amount of  
16 time not to exceed 5 years.

17 **Sec. A-10. Referendum for ratification; submission at election; form of**  
18 **question; effective date.** This Part must be submitted to the legal voters of the State at  
19 a statewide election held in the month of November following passage of this Act. The  
20 municipal officers of this State shall notify the inhabitants of their respective cities, towns  
21 and plantations to meet, in the manner prescribed by law for holding a statewide election,  
22 to vote on the acceptance or rejection of this Part by voting on the following question:

23 "Do you favor a \$50,000,000 bond issue to ensure clean water and safe  
24 communities across Maine; to protect drinking water sources; to allow  
25 communities to better prepare for extreme storms and floods; to protect,  
26 enhance and restore our lakes, rivers, streams, groundwater, wetlands and  
27 fish, game and wildlife habitat; to create jobs and vital public  
28 infrastructure; and to strengthen the State's long-term economic base and  
29 competitive advantage?"

30 The legal voters of each city, town and plantation shall vote by ballot on this question  
31 and designate their choice by a cross or check mark placed within a corresponding square  
32 below the word "Yes" or "No." The ballots must be received, sorted, counted and  
33 declared in open ward, town and plantation meetings and returns made to the Secretary of  
34 State in the same manner as votes for members of the Legislature. The Governor shall  
35 review the returns. If a majority of the legal votes are cast in favor of this Part, the  
36 Governor shall proclaim the result without delay and this Part becomes effective 30 days  
37 after the date of the proclamation.

38 The Secretary of State shall prepare and furnish to each city, town and plantation all  
39 ballots, returns and copies of this Part necessary to carry out the purposes of this  
40 referendum.

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**PART B**

**Sec. B-1. 5 MRSA Pt. 15-C** is enacted to read:

**PART 15-C**

**WATER RESOURCES COMMISSION**

**CHAPTER 357**

**WATER RESOURCES COMMISSION**

**§6401. Definitions.**

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

**1. Appraised value.** "Appraised value" means the fair market value of property without the consideration of the effect, if any, of dedication or other preservation-related restrictions.

**2. Built infrastructure.** "Built infrastructure" means a human-made structure, including, but not limited to, a stream crossing or culvert upgrade, storm water management project, irrigation system enhancement and other site improvement.

**3. Commission.** "Commission" means the Water Resources Commission, as established in section 12004-G, subsection 29-E.

**4. Cooperating entities.** "Cooperating entities" means private nonprofit organizations, municipal conservation commissions, local governments, water districts, federal agencies or other bodies designated by the Water Resources Commission that can assist the State in the conservation or management of the State's water resources.

**5. Fund.** "Fund" means the Fund To Ensure Clean Water and Safe Communities as established in section 6402.

**6. Low-impact development.** "Low-impact development" means an approach to storm water management that promotes the use of natural systems and processes in land development or redevelopment projects to reduce runoff and pollutant loading, including, but not limited to, rain gardens, vegetated rooftops, rain barrels and permeable pavements.

**7. Matching funds.** "Matching funds" means any combination of public and private funds used in conjunction with the fund for the purpose of this chapter, including, but not limited to, private contributions of cash or securities; money from municipal or other public agencies; money from a federal matching program, subject to the limitations of applicable federal and state laws, in an amount authorized by the federal matching program; contributions of real property or interest in real property that serve the conservation needs of the State as determined by the Water Resources Commission; and in-kind contributions or any combination of those funds. For purposes of this section

1 contributions of land or interest in land must be valued in the amount of their appraised  
2 value.

3 **8. Natural infrastructure.** "Natural infrastructure" means areas of undeveloped  
4 natural habitat, including, but not limited to, aquifer recharge areas, headwater forests,  
5 freshwater or coastal wetlands, lakes and ponds, rivers, streams and their floodplains and  
6 eelgrass beds.

7 **9. Stream connectivity.** "Stream connectivity" means the capacity of a waterway to  
8 pass wildlife and materials up and downstream throughout an aquatic network consisting  
9 of rivers, streams, brooks, floodplains and tributary lakes and ponds.

10 **10. Water resources.** "Water resources" means drinking water, groundwater,  
11 surface water, commercial and recreational fisheries, waterfowl, fish, wildlife and aquatic  
12 species and the ecosystem functions associated with water resources.

13 **§6402. Fund To Ensure Clean Water and Safe Communities**

14 **1. Fund established.** There is established the Fund To Ensure Clean Water and Safe  
15 Communities, which is administered by the commission. The fund consists of the  
16 proceeds from the sale of any bonds authorized for the purposes set forth in this chapter  
17 and any funds received as contributions from private and public sources for those  
18 purposes. The fund must be held separate and apart from all other money, funds and  
19 accounts. Eligible investment earnings credited to the assets of the fund become part of  
20 the assets of the fund. Any balance remaining in the fund at the end of any fiscal year  
21 does not lapse and must be carried forward for the next fiscal year.

22 **2. Fund available.** The fund is available to state agencies and designated  
23 cooperating entities upon authorization of the commission for the purposes of this  
24 chapter.

25 **3. Fund proceeds.** The proceeds of the fund must be divided evenly between  
26 natural infrastructure and built infrastructure projects qualified under section 6407 and  
27 distributed as follows:

28 A. Of the total allocation to natural infrastructure:

29 (1) When the qualified proposals exceed available funds, no less than 70% must  
30 be distributed to qualified projects to conserve water resources through the  
31 acquisition of real property or certain rights to property that achieve the water  
32 resource conservation goals of this chapter;

33 (2) When the qualified proposals exceed available funds, no less than 20% must  
34 be distributed to qualified projects to restore water quality and habitat that  
35 achieve the water resource conservation goals of this chapter; and

36 (3) When the qualified proposals exceed available funds, up to 10% may be  
37 distributed to other qualified projects to attain the water resource conservation  
38 goals of this chapter; and

39 B. Of the total annual allocation to built infrastructure:

1           (1) When the qualified proposals exceed available funds, no less than 65% must  
2           be distributed to qualified projects to address removal, rehabilitation or properly  
3           sized replacement of existing barriers, including culverts, which may not obstruct  
4           stream connectivity;

5           (2) When the qualified proposals exceed available funds, no less than 25% must  
6           be distributed to qualified low-impact development projects to address the  
7           abatement of stormwater or other nonpoint source pollution; and

8           (3) When the qualified proposals exceed available funds, up to 10% may be  
9           distributed to other qualified projects to attain the water resource conservation  
10          goals of this chapter, including, but not limited to, providing matching funds to  
11          qualified agricultural irrigation systems to attain the water use standards  
12          identified in Title 7, section 353 and Title 38, section 470-H.

13          **§6403. Water Resources Commission established**

14           The Water Resources Commission, as established in section 12004-G, subsection  
15          29-E, shall carry out the purposes of this chapter.

16           **1. Composition.** The commission consists of 11 members, 5 of whom are members  
17          of the public and 6 of whom are ex officio members.

18           A. The 5 public members are appointed by the Governor, subject to review by the  
19          joint standing committee of the Legislature having jurisdiction over natural resources  
20          matters and to confirmation by the Senate, and must be selected for their knowledge  
21          of the State's water resources and water-related infrastructure and their demonstrated  
22          commitment to water resource conservation and enhancement. Appointments must  
23          provide broad geographic representation.

24           Public members are appointed to 4-year terms and may not serve more than 2  
25          consecutive 4-year terms.

26           B. The ex officio members are the Commissioner of Agriculture, Conservation and  
27          Forestry; the Commissioner of Environmental Protection; the Commissioner of  
28          Health and Human Services; the Commissioner of Inland Fisheries and Wildlife; the  
29          Commissioner of Marine Resources; and the Commissioner of Transportation; or  
30          their designees.

31           **2. Chair.** The Governor shall appoint the chair of the commission from among its  
32          members.

33           **3. Assistance.** The Department of Agriculture, Conservation and Forestry; the  
34          Department of Environmental Protection; the Department of Health and Human Services;  
35          the Department of Inland Fisheries and Wildlife; the Department of Marine Resources;  
36          and the Department of Transportation shall provide necessary staff support and assistance  
37          to fulfill the objectives of this chapter. If agency assistance is not available, consultants  
38          from the private sector or nonprofit organizations may be hired from the proceeds of the  
39          fund to assist the commission in carrying out its responsibilities.

1           **§6404. Commission meetings; rules and administrative proceedings**

2           **1. Meetings.** The commission shall meet at least 4 times each year. The chair shall  
3 call the meetings of the commission. The commission shall use proceeds of the fund to  
4 cover the costs associated with all meetings.

5           **2. Rules.** The commission may adopt rules it considers necessary for the conduct of  
6 its business. Rules adopted under this subsection are routine technical rules as defined in  
7 Title 5, chapter 375, subchapter 2-A.

8           **3. Quorum.** A quorum of the commission for the transaction of business is 6  
9 members.

10           **4. Personal bias.** Commission members shall disclose any bias or personal financial  
11 interest, direct or indirect, that they have in relation to funding requests for natural and  
12 built infrastructure projects and recuse themselves from all decisions related to such  
13 funding requests. If a charge of bias or personal financial interest, direct or indirect, is  
14 filed against a member requesting that member to withdraw from a proceeding of the  
15 commission, that member shall attest to that member's ability to render an impartial  
16 decision. The remaining members of the commission shall vote on whether that member  
17 may participate in that particular funding decision and the commission's vote is a part of  
18 the record of that proceeding.

19           **§6405. Commission responsibilities**

20           The commission shall use proceeds of the fund to carry out its responsibilities under  
21 this section. The commission shall:

22           **1. Assessment.** Develop a water resources action plan for use in allocating the  
23 proceeds of the fund. The action plan must include an evaluation of the State's water  
24 resources and must describe the priorities, strategies and guidelines for the selection of  
25 qualified natural and built infrastructure projects to conserve them. The action plan must  
26 be updated every 5 years and must be implemented with opportunities for participation by  
27 interested state agencies, municipalities, relevant working groups and the public;

28           **2. Requests.** Solicit and receive funding requests from state agencies and  
29 cooperating entities proposed for natural and built infrastructure projects meeting  
30 commission guidelines;

31           **3. Funding request committee.** Designate a technical review committee to review  
32 all funding requests for natural and built infrastructure projects and to make  
33 recommendations to the commission on those funding requests that best meet  
34 commission guidelines. The committee consists of 11 members, 6 of whom are staff  
35 from each of the 6 state agencies represented as permanent members of the commission  
36 pursuant to section 6403, subsection 1, paragraph B and 5 of whom are private citizens  
37 with expertise relevant to the commission's overall goals;

38           **4. Process** Specify the process by which the distribution of proceeds from the fund  
39 for natural and built infrastructure is authorized; and



1 **5. Report.** By January 31st of every odd-numbered year, report to the joint standing  
2 committee of the Legislature having jurisdiction over natural resources matters on  
3 expenditures from the fund and revisions to the action plan developed under subsection 1.  
4 This report must include a summary of the projects funded from the fund during the  
5 reporting period and maps at a statewide level that show the location of all funded  
6 projects.

7 **§6406. Notice to landowners**

8 A state agency or cooperating entity submitting a funding request for a project that  
9 includes the acquisition of real property or interest in real property must provide the  
10 commission with documentation of the owner's willingness to sell the property or interest  
11 in the property. Prior to authorizing the distribution of proceeds from the fund for a  
12 project including the acquisition of property or interest in property, the commission shall  
13 publish a notice of its intent in a newspaper of general circulation in the area where the  
14 property is located that identifies the land proposed by the commission for acquisition  
15 and that notifies the residents of the area that the commission will accept public  
16 comments on the proposed acquisition.

17 **§6407. Distribution criteria**

18 **1. Distribution of funds.** The commission shall authorize the distribution of funds  
19 from the fund to state agencies and cooperating entities for projects for the protection and  
20 enhancement of the State's water resources that meet the criteria set forth in this section.

21 **2. Alignment with commission's action plan and overall goals.** In determining  
22 whether a proposed project may be funded in full or in part by the fund, the commission  
23 shall consider the extent to which the proposed project is consistent with the action plan  
24 developed pursuant to section 6405, subsection 1 and with the commission's overall goals  
25 to:

26 A. Ensure an abundant and high-quality water supply statewide;

27 B. Allow communities to more effectively prepare for storms and flood events;

28 C. Conserve or restore habitat for fisheries, waterfowl, fish, wildlife and aquatic  
29 species and ecosystem function; and

30 D. Target those watersheds that should receive highest priority for protective and  
31 corrective actions necessary to achieve the goals identified in Title 38, chapter 3,  
32 subchapter 1, article 4-A.

33 **3. Determination of statewide or regional significance.** In determining whether a  
34 proposed project may be funded in full or in part by the fund, the commission shall  
35 consider the location of the project site relative to statewide priority areas for drinking  
36 water protection, habitat conservation, stream connectivity, flood and drought protection  
37 or storm water management, as identified by a state agency or in other regional or  
38 municipal plans.

39 **4. Project readiness and feasibility.** In determining whether a proposed project  
40 may be funded in full or in part by the fund, the commission shall consider how ready the

1 proposed project is to move forward and the likelihood that the project will achieve its  
2 stated objectives, including the qualifications of the cooperating entity and its capacity to  
3 complete the required actions.

4 **5. Cost-effectiveness.** Whenever possible, the fund must be used for projects that  
5 represent an efficient and cost-effective use of funds, including a consideration of  
6 available matching funds and potential avoided costs associated with the proposed  
7 project, as long as the proposed project meets all other criteria set forth in this chapter.

8 **6. Monitoring and management.** Prior to final approval of a project under this  
9 chapter, a person submitting a proposal for funding from the fund must provide a  
10 description of the monitoring and management envisioned for the project site along with  
11 associated costs. A description of management envisioned for the project site must  
12 demonstrate how the proposed project will meet the terms of the action plan set out in  
13 section 6405, subsection 1.

14 **Sec. B-2. 5 MRSA §12004-G, sub-§29-E** is enacted to read:

15 **29-E.**  
16 Natural Resources    Water Resources            Not Authorized            5 MRSA §6403  
17 Commission

18 **Sec. B-3. Staggered terms of initial members.** Notwithstanding the Maine  
19 Revised Statutes, Title 5, section 6403, subsection 1, paragraph A, the initially appointed  
20 public members of the Water Resources Commission must be appointed to staggered  
21 terms. Of the initial appointments, 2 members must be appointed to 2-year terms; 2 to 3-  
22 year terms; and one to a 4-year term.

23 **Sec. B-4. Contingent upon ratification of bond issue.** This Part does not  
24 become effective unless the people of the State ratify the issuance of the bonds as set  
25 forth in Part A of this Act.

26 **SUMMARY**

27 This bill authorizes a bond issue in the amount of \$50,000,000 in order to make cost-  
28 effective investments in natural and built infrastructure to reduce threats to the State's  
29 water resources and provide a host of benefits for communities across Maine, including  
30 ensuring an abundant and high-quality drinking water supply, allowing communities to  
31 more effectively prepare for storms and flood events, conserving habitat for recreational  
32 fisheries, waterfowl and aquatic and wildlife species and strengthening the State's long-  
33 term economic base and competitive advantage. The bill establishes the Water Resources  
34 Commission and the Fund To Ensure Clean Water and Safe Communities. The  
35 commission is charged with assessing the State's water resource infrastructure needs and  
36 with allocating funds for resource conservation and development projects.