

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2016

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Legislative Document

No. 1566

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S.P. 618

In Senate, January 21, 2016

### An Act Concerning the Establishment of Water Levels

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Reported by Senator BRAKEY of Androscoggin for the Joint Standing Committee on Environment and Natural Resources pursuant to Public Law 2015, chapter 264, section 5.

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

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

2 **Sec. 1. 38 MRSA §840, sub-§§1-A and 1-B** are enacted to read:

3 **1-A. Mandatory mediation.** Prior to the department’s initiating a hearing for  
4 establishing a water level regime and, if applicable, minimum flow requirements in  
5 response to a petition or request that meets the requirements in subsection 1, the parties  
6 named in the petition or request must attempt to establish a water level management plan  
7 through mediation by an independent 3rd-party mediator. The department is not required  
8 to take part in the mediation. The department shall place the request or petition to  
9 establish a water level regime and, if applicable, minimum flow requirements on hold for  
10 a period of up to one year from the date of acceptance to allow mediation to occur. The  
11 on-hold period may be extended upon written agreement between the parties to the  
12 petition or request and the department. If mediation results in a water level management  
13 plan acceptable to all parties to a petition or request, that water level management plan  
14 must be recorded at the appropriate registry of deeds and is binding and civilly  
15 enforceable on the affected parties, unless the department issues a subsequent order  
16 establishing a water level regime and, if applicable, minimum flow requirements for the  
17 body of water in question. Establishment of a water level management plan through  
18 mediation relieves the department of any obligation it has to hold an adjudicatory hearing  
19 and issue an order in response to a petition or request, and the department shall return the  
20 petition or request to the submittor.

21 **1-B. Fees.** A petition or request that meets the requirements in subsection 1 for  
22 establishing a water level regime and, if applicable, minimum flow requirements must be  
23 accompanied by a processing fee established by the department. If the department holds  
24 an adjudicatory hearing as a result of a petition or request, the department may charge the  
25 parties named in the petition or request an appropriate licensing fee, not to exceed  
26 \$20,000, sufficient to cover costs incurred in conducting the hearing and reviewing  
27 evidence, including the time spent by state employees and necessary consultants and  
28 contractors in preparing, presenting and reviewing testimony, and in preparation of a  
29 department order establishing a water level regime and, if applicable, minimum flow  
30 requirements. The department shall ensure that any licensing fee assessed under this  
31 subsection is apportioned equitably among the parties named in a petition or request. All  
32 fees must be established in accordance with section 352.

33 **SUMMARY**

34 This bill is reported out by the Joint Standing Committee on Environment and  
35 Natural Resources pursuant to Public Law 2015, chapter 264, section 5. This bill amends  
36 the laws governing the establishment of water levels to require the parties named in a  
37 petition or request to establish a water level regime and, if applicable, minimum flow  
38 requirements to engage in mediation prior to the Department of Environmental Protection  
39 initiating an adjudicatory hearing to resolve the dispute. The bill also provides that if the  
40 department holds an adjudicatory hearing to resolve the dispute, it may charge the parties  
41 named in the petition or request an appropriate licensing fee, not to exceed \$20,000, to

1 cover the department's costs in conducting the hearing. The department is directed to  
2 apportion such licensing fees equitably among the parties named in a petition or request.