

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1723

S.P. 687

In Senate, April 20, 2023

**An Act to Prevent the Automatic Transfer of Permits and Contracts
in a Sale of Assets of a Water Export Company Without Review and
to Amend the Membership of the Water Resources Planning
Committee and the Maine Public Drinking Water Commission**

Reference to the Committee on Environment and Natural Resources 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 BENNETT of Oxford.
Cosponsored by Representative GRAMLICH of Old Orchard Beach and
Senators: BRAKEY of Androscoggin, CHIPMAN of Cumberland, HICKMAN of Kennebec,
KEIM of Oxford, Representatives: BLIER of Buxton, COLLINGS of Portland, O'NEIL of
Saco, Speaker TALBOT ROSS of Portland.

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

2 **Sec. 1. 5 MRSA §6401, sub-§1, ¶A**, as enacted by PL 2019, c. 67, §1, is amended
3 by adding at the end a new first blocked paragraph to read:

4 If a person or an immediate family member of the person has received income from an
5 entity engaged in the export from the State of water extracted in the State, the person
6 may not serve as a member.

7 **Sec. 2. 5 MRSA §6401, sub-§1, ¶B**, as enacted by PL 2019, c. 67, §1, is amended
8 to read:

9 B. The committee shall meet at least quarterly and ~~report annually to the Department~~
10 ~~of Agriculture, Conservation and Forestry, beginning in August 2020. The committee~~
11 ~~shall plan for the sustainable use of water resources. The committee shall focus on by:~~

- 12 (1) Collecting and reviewing information regarding water withdrawal activities;
- 13 (2) Coordinating state water resources information, encouraging the consolidation
14 and centralization of collected state water resources information within a single
15 state agency, ensuring public access to that information and identifying
16 opportunities and resources to enhance or supplement the collection of state water
17 resources information; and
- 18 (3) Identifying watersheds at risk by refining the most recent analysis of
19 watersheds at risk performed by the Bureau of Resource Information and Land Use
20 Planning, Division of Geology, Natural Areas and Coastal Resources, Maine
21 Geological Survey, including:
- 22 (a) Conducting appropriate water resources investigations in watersheds at
23 risk;
- 24 (b) Considering projected increased water use by population, agricultural
25 irrigation, commercial users, industrial users and other users;
- 26 (c) Considering seasonal use;
- 27 (d) Considering potential effects of climate change;
- 28 (e) Considering the effects of anticipated future water quality classification
29 changes on the availability of water for withdrawal;
- 30 (f) In establishing priorities for further investigations, seeking input from the
31 user community, from towns dealing with multimunicipal aquifers and from
32 towns with significant local aquifers; and
- 33 (g) Developing guidelines for consistency in further investigations.

34 **Sec. 3. 5 MRSA §6401, sub-§1, ¶E** is enacted to read:

35 E. Beginning January 15, 2024, and annually thereafter, the committee shall submit a
36 report to the joint standing committees of the Legislature having jurisdiction over
37 agriculture, conservation and forestry matters, environment and natural resources
38 matters, energy and utilities matters and health and human services matters. The report
39 must include a summary of the committee's activities during the prior calendar year
40 and any findings and recommendations, including any recommended legislation,
41 relating to the committee's duties under paragraphs B and C. After reviewing the report,

1 each joint standing committee may report out legislation to implement any of the
2 recommendations included in the report.

3 **Sec. 4. 7 MRSA §352, sub-§2, ¶D**, as enacted by PL 2005, c. 559, §2, is amended
4 to read:

5 D. Use data generated by water withdrawal reports under Title 38, section 470-D and
6 other available information to prioritize watersheds needing alternative water sources
7 for agricultural use and the allocation of funding; ~~and~~

8 **Sec. 5. 7 MRSA §352, sub-§2, ¶E**, as enacted by PL 2005, c. 559, §2, is amended
9 to read:

10 E. Facilitate the implementation of the sustainable agricultural water source program
11 under section 353-: and

12 **Sec. 6. 7 MRSA §352, sub-§2, ¶F** is enacted to read:

13 F. Make recommendations for measures to enhance drought preparedness and drought
14 resilience by agricultural producers, including, but not limited to, improved water
15 capture and storage measures, enhanced irrigation opportunities and measures to better
16 identify and notify producers of low-flow areas and low-flow occurrences.

17 **Sec. 7. 7 MRSA §352, sub-§8** is enacted to read:

18 **8. Report.** Beginning January 15, 2024, and annually thereafter, the board shall
19 submit a report to the joint standing committees of the Legislature having jurisdiction over
20 agriculture, conservation and forestry matters and environment and natural resources
21 matters. The report must include a summary of the board's activities during the prior
22 calendar year and any findings and recommendations, including any recommended
23 legislation, relating to the board's duties under subsections 2 and 3. After reviewing the
24 report, each joint standing committee may report out legislation to implement any of the
25 recommendations included in the report.

26 **Sec. 8. 22 MRSA §2660-C, sub-§1, ¶C**, as enacted by PL 1993, c. 410, Pt. DD,
27 §4, is amended to read:

28 C. All members appointed by the Governor must have demonstrated interest,
29 knowledge, experience and expertise regarding public drinking water concerns. If a
30 person or an immediate family member of the person has received income from an
31 entity engaged in the export from the State of water extracted in the State, the person
32 may not serve as a member. The Governor shall seek to appoint members who, to the
33 greatest extent possible, are qualified by interest, education, training or experience to
34 provide, assess and evaluate scientific and technical information regarding public
35 drinking water concerns, financial and staffing requirements and the adoption of
36 policies, standards and rules.

37 **Sec. 9. Commission to Study the Role of Water as a Resource in the State**
38 **of Maine established.** The Commission to Study the Role of Water as a Resource in the
39 State of Maine, referred to in this section as "the commission," is established as follows:

40 **1. Commission membership.** Notwithstanding Joint Rule 353, the commission
41 consists of 17 members:

42 A. Seven members appointed by the President of the Senate as follows:

- 1 (1) Two members of the Senate, including a member from each of the 2 parties
- 2 holding the largest number of seats in the Legislature;
- 3 (2) One member of the public residing in northern Maine;
- 4 (3) One member representing the interests of persons who bottle or package water
- 5 for commercial sale;
- 6 (4) One member representing the interests of municipal water utilities; and
- 7 (5) Two members who are members of a federally recognized Indian nation, tribe
- 8 or band in the State based on the joint recommendation of the tribal governments
- 9 of the Mi'kmaq Nation, the Houlton Band of Maliseet Indians, the Passamaquoddy
- 10 Tribe at Motahkomikuk, the Passamaquoddy Tribe at Sipayik and the Penobscot
- 11 Nation. If the tribal governments do not make unanimous joint recommendations,
- 12 the President of the Senate shall appoint 2 members of a federally recognized
- 13 Indian nation, tribe or band in the State;

14 B. Six members appointed by the Speaker of the House of Representatives as follows:

- 15 (1) Two members of the House of Representatives, including a member from each
- 16 of the 2 parties holding the largest number of seats in the Legislature;
- 17 (2) One member of the public residing in western Maine;
- 18 (3) One member representing the interests of businesses that use water to irrigate
- 19 agricultural products;
- 20 (4) One member representing organizations involved in protection of the
- 21 environment; and
- 22 (5) One member with general legal expertise in water rights and water ownership;

23 C. The Commissioner of Environmental Protection or the commissioner's designee;

24 D. The State Geologist or the State Geologist's designee;

25 E. The director of the drinking water program within the Department of Health and

26 Human Services, Maine Center for Disease Control and Prevention, division of

27 environmental and community health or the director's designee; and

28 F. The chair of the Public Utilities Commission or the chair's designee.

29 **2. Chairs.** The first-named Senate member is the Senate chair and the first-named

30 House of Representatives member is the House chair of the commission. A quorum is 9

31 members and a quorum must be present to start a meeting but is not required to continue a

32 meeting.

33 **3. Appointments; convening of commission.** All appointments must be made no later

34 than 30 days following the effective date of this Act. The appointing authorities shall notify

35 the Executive Director of the Legislative Council once all appointments have been

36 completed. After appointment of all members, the chairs shall call and convene the first

37 meeting of the commission. If 30 days or more after the effective date of this section a

38 majority of but not all appointments have been made, the chairs may request authority and

39 the Legislative Council may grant authority for the commission to meet and conduct its

40 business.

1 **4. Duties.** The commission shall review the report submitted to the Legislature by the
2 Commission To Study the Role of Water as a Resource in the State of Maine pursuant to
3 Resolve 2021, chapter 185. The commission shall develop findings and recommendations,
4 including any suggested legislation, to ensure that there is adequate clean, safe and
5 accessible drinking water for the State's residents and to meet the needs of commercial and
6 business interests now and in the future, which may include, but are not limited to,
7 consideration of the following matters:

8 A. Promoting public access to information about the State's water resources,
9 consolidating and centralizing access to existing water use and water resource data and
10 enhancing or supplementing water use and water resource monitoring and data
11 collection and the analysis of that data;

12 B. Enhancing drought preparedness and drought resilience by agricultural producers
13 and others;

14 C. Reviewing the legal status of groundwater rights and ownership in Maine, including,
15 but not limited to, further review of the Supreme Judicial Court's opinion in *Maddocks*
16 *v. Giles*, 1999 ME 63, and the approaches to this issue taken by other states;

17 D. Protecting public and private drinking water sources from perfluoroalkyl and
18 polyfluoroalkyl substances contamination and other contaminants;

19 E. Identifying any changes to state laws or rules regulating the large-scale extraction
20 of groundwater for public or private use that may be necessary to ensure adequate
21 supply for all users; and

22 F. Reviewing a proposed major substantive rule of the Maine Public Drinking Water
23 Commission under the Maine Revised Statutes, Title 22, section 2660-C under section
24 10 regarding the transfer of a permit or contract in a sale of assets of an entity engaged
25 in the exporting from the State of water extracted in the State and making
26 recommendations, if any, to the Maine Public Water Drinking Commission.

27 **5. Staff assistance.** The Legislative Council shall provide necessary staffing services
28 to the commission, except that Legislative Council staff support is not authorized when the
29 Legislature is in regular or special session.

30 **6. Report.** No later than December 6, 2023, the commission shall submit a report that
31 includes its findings and recommendations, including any recommended legislation, to the
32 Joint Standing Committee on Taxation. After reviewing the report, the joint standing
33 committee may report out legislation to implement any of the recommendations included
34 in the report.

35 **Sec. 10. Maine Public Drinking Water Commission to adopt major**
36 **substantive rules.** The Maine Public Drinking Water Commission under the Maine
37 Revised Statutes, Title 22, section 2260-C shall adopt major substantive rules under Title
38 5, chapter 375, subchapter 2-A regarding the transfer of a permit or contract in a sale of
39 assets of an entity engaged in the exporting from the State of water extracted in the State.
40 Prior to legislative review of the rules under Title 5, section 8072, the commission shall
41 submit for review the proposed rules to the Commission to Study the Role of Water as a
42 Resource in the State of Maine under section 9.

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SUMMARY

This bill does the following.

1. It amends the membership of the Water Resources Planning Committee and the Maine Public Drinking Water Commission by prohibiting a person who has received income from an entity engaged in the export from the State of water extracted in the State or has an immediate family member who has received income from such an entity from serving as a member.

2. It amends the duties of the Water Resources Planning Committee to include planning for the sustainable use of water resources by encouraging the consolidation and centralization of collected state water resources information within a single state agency, ensuring public access to that information and identifying opportunities and resources to enhance or supplement the collection of state water resources information. It requires the Water Resources Planning Committee to submit a report to relevant joint standing committees of the Legislature including a summary of the Water Resources Planning Committee's activities during the prior calendar year and any findings and recommendations.

3. It amends the duties of the Maine Agricultural Water Management Board to include recommendations for measures to enhance drought preparedness and drought resilience by agricultural producers and requires the board to submit a report to the Joint Standing Committee on Taxation including a summary of the board's activities during the prior calendar year and any findings and recommendations.

4. It establishes the Commission to Study the Role of Water as a Resource in the State of Maine to develop findings and recommendations, including any suggested legislation, to ensure that there is adequate clean, safe and accessible drinking water for the State's residents and to meet the needs of commercial and business interests now and in the future. This study is designed to build off the work of the Commission to Study the Role of Water as a Resource in the State of Maine that was established pursuant to Resolve 2021, chapter 185. The commission is also required to review proposed major substantive rules of the Maine Public Drinking Water Commission regarding the transfer of a permit or contract in a sale of assets of an entity engaged in the exporting from the State of water extracted in the State and making recommendations, if any, to the Maine Public Water Drinking Commission.

5. It requires the Maine Public Water Drinking Commission to adopt major substantive rules regarding the transfer of a permit or contract in a sale of assets of an entity engaged in the exporting from the State of water extracted in the State and to submit the proposed rules to the Commission to Study the Role of Water as a Resource in the State of Maine established under this bill for review before submitting the proposed rules for legislative review.