

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION
July 29, 2005

SECOND REGULAR SESSION
January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 28, 2005

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 23, 2006

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
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facturer's thermostats are not offered for sale in this State; and

B. A wholesaler or retailer may not offer for sale in this State any thermostat of a manufacturer that is not in compliance with this section.

4. Financial incentive plan. The department shall develop a manufacturer financial incentive plan in 2 phases. By January 1, 2007, the department shall develop phase one of the plan, which must address collection of mercury-added thermostats from contractors and service technicians. By August 1, 2007, the department shall develop phase 2 of the plan, which must address collection of mercury-added thermostats from homeowners. The plan must be developed in consultation with a stakeholder group that includes representatives from the thermostat industry, environmental groups, thermostat wholesalers and service contractors. The plan must be developed in a manner that ensures to the maximum extent practical that:

A. The capture rate of out-of-service mercury-added thermostats is maximized;

B. Adequate incentives and education are provided to contractors, service technicians and homeowners to encourage return of thermostats to established recycling collection points;

C. Administrative costs of the plan are minimized;

D. The plan encourages the purchase of nonmercury thermostats qualified by the United States Environmental Protection Agency's Energy Star program as replacements for mercury-added thermostats; and

E. Mechanisms are in place to protect against the fraudulent return of thermostats.

The plan must include a requirement that manufacturers provide a financial incentive with a minimum value of \$5 for the return of each mercury-added thermostat to an established recycling collection point in accordance with subsection 2, paragraphs E and F. The financial incentive may include, without limitation, cash, rebates, discounts, coupons or other incentives.

5. Goals. The goal of the collection and recycling efforts under this section is to collect and recycle at least 125 pounds of mercury per year from mercury-added thermostats within 2 years after the development of phase one of the plan required by subsection 4 and at least 160 pounds of mercury per year within 3 years after the development of phase 2 of the plan required by subsection 4.

6. Report. By March 15, 2007 and annually thereafter, the department shall submit a report on the collection and recycling of mercury-added thermostats in the State to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report due in 2007 must include a description and discussion of the financial incentive plan established under this section and recommendations for any statutory changes concerning the collection and recycling of mercury-added thermostats. Subsequent reports must include an evaluation of the effectiveness of the thermostat collection and recycling programs established under this section, information on actual collection rates and recommendations for any statutory changes concerning the collection and recycling of mercury-added thermostats.

Sec. 2. Authority to report legislation. The joint standing committee of the Legislature having jurisdiction over natural resources matters may report out legislation to the First Regular Session of the 123rd Legislature in connection with the report required pursuant to the Maine Revised Statutes, Title 38, section 1665-B, subsection 6.

See title page for effective date.

CHAPTER 559

S.P. 693 - L.D. 1776

An Act To Establish the Maine Agricultural Water Management Board and the Sustainable Agricultural Water Source Program

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

Whereas, the Legislature declares its intent that the State plan, regulate and control the prudent use of the waters of the State under the Laws of Maine to protect the public health, safety and welfare; and

Whereas, the Legislature finds that the use of water resources for the State for agricultural purposes is of vital importance to the food security and economic well-being of the State; and

Whereas, the health, safety and food security of the people of the State require adequate and affordable local agricultural products and services from Maine farmers; and

Whereas, the Legislature finds the protection of the rivers, streams and brooks necessary for a healthy riverine ecosystem and a healthy population of aquatic life; and

Whereas, the wise use of water, the protection of stream flow and the economic well-being of the State will be furthered by proper water use management; and

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

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

Sec. 1. 5 MRSA §12004-G, sub-§3-D is enacted to read:

3-D. <u>Agriculture</u>	<u>Maine</u> <u>Agricultural</u> <u>Water</u> <u>Management</u> <u>Board</u>	<u>Expenses</u> <u>Only</u>	<u>7 MRSA</u> <u>§352</u>
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Sec. 2. 7 MRSA §§352 and 353 are enacted to read:

§352. Maine Agricultural Water Management Board

The Maine Agricultural Water Management Board is established in Title 5, section 12004-G, subsection 3-D and referred to in this section and section 353 as "the board."

1. Membership. All members of the board must be residents of this State. The board consists of 9 members as follows:

A. Five members appointed by the commissioner, consisting of:

- (1) A potato producer;
- (2) A wild blueberry producer;
- (3) A small fruit or vegetable grower;
- (4) A producer of ornamental crops; and
- (5) A livestock producer;

B. Three members appointed by the Governor, consisting of:

- (1) A person with expertise in federal wetlands permitting;
- (2) A person with expertise in agricultural engineering and water use efficiency; and
- (3) A member of the general public; and

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

2. Duties. The board, working in conjunction with the Department of Environmental Protection, shall:

A. Oversee and coordinate the environmentally sound and affordable development of water sources for agricultural use;

B. Make recommendations for improvements to federal and state permitting processes for the development of farm ponds and other water sources for agricultural use;

C. Work to secure funding for the construction of environmentally sound, efficient and affordable water sources for agricultural use;

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

E. Facilitate the implementation of the sustainable agricultural water source program under section 353.

3. Agricultural water use management plans.

In addition to its duties under subsection 2, the board shall develop a model for agricultural water use management plans including a list of issues to be addressed in each plan. The board shall assist agricultural users in the development of water management plans. For the purposes of this section and section 353, "agricultural water use management plan" means a written document that states the source of water and outlines how water is managed, including a method of storage, if needed, and how water is used on the farm for which the plan is written.

4. Terms of membership; chair. Except for initial appointees under subsection 1, each member appointed serves for a term of 3 years. In the case of a vacancy, the Governor shall appoint a member to fill the unexpired term. The Governor and commissioner shall determine initial appointment terms to stagger term expirations. The board shall annually elect one of its members as chair.

5. Compensation. Members of the board are entitled to expenses only.

6. Staff. The department shall provide staff to the board.

7. Meetings. The board shall meet as needed to perform its duties.

§353. Sustainable agricultural water source program

The board shall work with the department and the Department of Environmental Protection to facilitate implementation of the sustainable agricultural water source program in accordance with this section. The Board of Environmental Protection shall determine flow standards through rulemaking authorized under Title 38, section 470-H.

1. Site-specific standards. Upon request of the board, the department or a person using or proposing to use surface waters for agricultural purposes, the Department of Environmental Protection shall determine site-specific flow standards and water levels for a water body used or being considered for use as a water source for agriculture.

2. Compliance date for water use standards. An agricultural producer has 5 years from the effective date of rules adopted under Title 38, section 470-H to meet the standards established in those rules if that agricultural producer is:

A. An agricultural producer who has filed or whose predecessor had filed a water use report under Title 38, section 470-D prior to December 1st of the year in which rules authorized by Title 38, section 470-H are finally adopted; or

B. An agricultural producer who can otherwise document a history of agricultural water use at the site prior to December 1st of the year in which rules authorized by Title 38, section 470-H are finally adopted.

An agricultural producer who has or whose predecessor had a permit or voluntary agreement establishing withdrawal limits must adhere to those limits for the 5-year period or until in compliance with the standards established in rule.

For the purposes of this subsection, "predecessor" means a person who preceded an agricultural producer in the ownership or use of a parcel of land.

3. Assistance to agricultural producers. Aggricultural producers may seek assistance from the board for the development of sustainable water sources, including permitting assistance where applicable. An agricultural producer must have an agricultural water use management plan prior to receiving financial support for the development of an alternative water source.

4. Compliance extension. The Department of Environmental Protection, upon recommendation of the board, may grant an extension beyond the original 5 years to an agricultural producer who qualifies for the 5-year compliance date under subsection 2 and has

a strategy for compliance with the rules authorized by Title 38, section 470-H if:

A. The agricultural producer requesting the extension has an agricultural water use management plan consistent with the board's model developed under section 352, subsection 3;

B. The agricultural water use management plan identifies water storage options for the agricultural producer and alternative water sources;

C. The agricultural producer has applied for funding and permits as needed;

D. The agricultural producer has implemented all feasible water use reduction options that are consistent with the agricultural water use management plan;

E. The agricultural producer has complied with water withdrawal limits established in an existing permit or voluntary agreement; and

F. Unforeseen or exceptional circumstances, such as weather events, delays in federal permitting or federal cost-share funding, have prevented implementation of the agricultural water use management plan.

5. Enforcement. The board shall examine water withdrawals for agricultural uses that result in a violation of flow rates or water levels, consider any unforeseen or exceptional circumstances of the agricultural producers, withdrawing water from the water bodies and make recommendations to the Department of Environmental Protection regarding compliance. Nothing in the responsibilities or actions of the board limits the enforcement or compliance authority of the Department of Environmental Protection under Title 38.

6. Biennial report. The board shall submit a report on the sustainable agricultural water source program to the joint standing committee of the Legislature having jurisdiction over agricultural matters and the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 30th of odd-numbered years beginning January 30, 2007. The committees of jurisdiction shall review this report together with the annual report on all aspects of water use for that year required under Title 38, section 470-G.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 10, 2006.
