



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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**Legislative Document**

**No. 1474**

H.P. 1076

House of Representatives, April 2, 2019

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**An Act To Ensure Water Equity and Accountability for the People  
of the State**

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

*R. B. Hunt*  
ROBERT B. HUNT  
Clerk

Presented by Representative HICKMAN of Winthrop.

Cosponsored by Senator MIRAMANT of Knox and

Representatives: COLLINGS of Portland, DODGE of Belfast, DUNPHY of Old Town,  
EVANGELOS of Friendship, MAXMIN of Nobleboro, MEYER of Eliot, TALBOT ROSS of  
Portland, Senator: President JACKSON of Aroostook.

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

2           **Sec. 1. 22 MRSA §2660-A, sub-§2, ¶E**, as enacted by PL 2007, c. 399, §4 and  
3           amended by PL 2011, c. 682, §38, is further amended to read:

4           E. Water withdrawn pursuant to a permit issued by the Department of Environmental  
5           Protection or the Maine Land Use Planning Commission, as long as the permit  
6           requires the payment of rates that are just and reasonable, as determined by  
7           the Department of Environmental Protection or the Maine Land Use Planning  
8           Commission, in order to address negative externalities from the withdrawal with  
9           respect to local and regional infrastructure, labor resources and natural resources. For  
10           the purposes of this paragraph, "externalities" means those short-term and long-term  
11           effects resulting from the withdrawal or transportation of water that are not accounted  
12           for or quantified in the context of water use permitting, licensing or rate setting.

13           **Sec. 2. 22 MRSA §2660-A, sub-§3**, as amended by PL 2007, c. 399, §§5 to 7 and  
14           PL 2011, c. 682, §38, is further amended to read:

15           **3. Appeal.** The commissioner, after consultation with the Public Utilities  
16           Commission, the Department of Environmental Protection and the State Geologist, may  
17           authorize transport of water for commercial purposes if the commissioner finds that:

18           A. Transport of the water will not constitute a threat to public health, safety or  
19           welfare; and

20           D. For a source not otherwise permitted by the Department of Environmental  
21           Protection or the Maine Land Use Planning Commission, the water withdrawal will  
22           not have an undue adverse effect on waters of the State, as defined by Title 38,  
23           section 361-A, subsection 7; water-related natural resources; and existing uses,  
24           including, but not limited to, public or private wells, within the anticipated zone of  
25           contribution to the withdrawal. In making findings under this paragraph, the  
26           commissioner shall consider both the direct effects of the proposed water withdrawal  
27           and its effects in combination with existing water withdrawals. and the indirect  
28           negative externalities and inequity, both local and regional, associated with the water  
29           withdrawal. For the purposes of this paragraph, "externalities" means those short-  
30           term and long-term effects resulting from the withdrawal or transportation of water  
31           that are not accounted for or quantified in the context of water use permitting,  
32           licensing or rate setting;

33           E. Water is not available naturally in the location to which the water will be  
34           transported; and

35           F. Failure to authorize transport of the water will create a substantial hardship to the  
36           potential recipient of the water.

37           Any authorization under this subsection is for a period not to exceed 3 years but may be  
38           renewed subject to the same criteria. The department may adopt rules necessary for the  
39           implementation of this subsection. The rules may include imposition of a fee to cover the  
40           costs of providing permits, including any impact studies required by the department.  
41           Rules adopted pursuant to this subsection are major substantive rules as defined in Title  
42           5, chapter 375, subchapter 2-A.

1           **Sec. 3. 35-A MRSA §301, sub-§4, ¶B**, as amended by PL 1993, c. 506, §1, is  
2 further amended to read:

3           B. Shall, to a level within the commission's discretion, consider whether the utility  
4 is operating as efficiently as possible and is utilizing sound management practices,  
5 including the treatment in rates of executive compensation, and, for a water utility, is  
6 anticipating the negative regional externalities caused by demands for water not  
7 related to regional service, such as exportation of water from the regional watershed  
8 for profit or the use of a metric by the utility that is not regularly used by water  
9 utilities. For the purposes of this paragraph, "externalities" means those short-term  
10 and long-term effects resulting from the withdrawal or transportation of water that are  
11 not accounted for or quantified in the context of water use permitting, licensing or  
12 rate setting.

13           **Sec. 4. 35-A MRSA §6102-A, sub-§1**, as enacted by PL 2015, c. 115, §1, is  
14 amended to read:

15           **1. Rate-adjustment mechanism.** Notwithstanding any provision of law to the  
16 contrary, the commission may establish or authorize a reasonable rate-adjustment  
17 mechanism to decouple water utility revenues from water utility sales through revenue  
18 reconciliation when changes in sales are due to a change in the number of customers or, a  
19 change in the volume of consumption, a change in a metric used by the water utility, the  
20 addition of a unique use of water, such as exportation from the regional watershed for  
21 profit, or unanticipated negative regional externalities. In determining the reasonableness  
22 of any such rate-adjustment mechanism, the commission shall apply the standards of  
23 section 301 and shall consider the transfer of risks associated with any such changes in  
24 sales and, to the extent these risks are transferred between the utility and its customers,  
25 the commission shall consider the effect of any inequity in the transfer of risk in  
26 determining a utility's allowed rate of return. For the purposes of this subsection,  
27 "externalities" means those short-term and long-term effects resulting from the  
28 withdrawal or transportation of water that are not accounted for or quantified in the  
29 context of water use permitting, licensing or rate setting.

30           **Sec. 5. 35-A MRSA §6105, sub-§2**, as amended by PL 2013, c. 573, §1, is  
31 further amended to read:

32           **2. Just and reasonable rates.** The governing body shall establish rates, tolls or  
33 charges that are just and reasonable and that provide revenue as may be required to  
34 perform its public utility service and to attract necessary capital on just and reasonable  
35 terms. In determining just and reasonable rates, the governing body shall evaluate  
36 operating efficiency, management practices, the negative regional externalities caused by  
37 demands for water not related to regional services and the use of a metric by the utility  
38 that is not regularly used by water utilities. The governing body shall consider the effect  
39 of any unique use and ensure to the greatest extent practicable that the risks associated  
40 with that use are transferred to that use. Rates applied to the bulk export of water that, as  
41 a result of that export, can no longer provide public health, safety, comfort and  
42 convenience to the residents of the district must be approved by the legislative bodies of  
43 the municipalities within the watershed from which the water is being removed. For the  
44 purposes of this subsection, "externalities" means those short-term and long-term effects

1       resulting from the withdrawal or transportation of water that are not accounted for or  
2       quantified in the context of water use permitting, licensing or rate setting. The governing  
3       body shall provide the rate schedule and any changes to the rate schedule to the  
4       commission.

5       **Sec. 6. 35-A MRSA §6411**, as enacted by PL 1995, c. 616, §10, is amended to  
6       read:

7       **§6411. Standard districts; authorized to make and assume contracts**

8       A standard district, through its trustees, in order to carry out the purposes of its  
9       incorporation, may contract with persons, districts, municipalities, utilities or  
10      corporations. Contracts established for the purpose of exporting bulk water out of the  
11      local watershed must be approved by the legislative bodies of all municipalities within  
12      the watershed to ensure water is furnished for the public health, safety, comfort and  
13      convenience of the residents of the district in accordance with section 6404.

14      **Sec. 7. 36 MRSA §701-A, first ¶**, as amended by PL 2007, c. 389, §1, is further  
15      amended to read:

16      In the assessment of property, assessors in determining just value are to define this  
17      term in a manner that recognizes only that value arising from presently possible land use  
18      alternatives to which the particular parcel of land being valued may be put. In  
19      determining just value, assessors must consider all relevant factors, including without  
20      limitation the effect upon value of any enforceable restrictions to which the use of the  
21      land may be subjected including the effect on value of designation of land as significant  
22      wildlife habitat under Title 38, section 480-BB, current use, physical depreciation, sales  
23      in the secondary market, any economic benefit or inequity resulting from restrictions to  
24      which the use of the land may be subjected regarding large-volume water withdrawal and  
25      water withdrawal for bulk transport, functional obsolescence and economic obsolescence.  
26      Restrictions include but are not limited to zoning restrictions limiting the use of land,  
27      subdivision restrictions and any recorded contractual provisions limiting the use of lands.  
28      The just value of land is determined to arise from and is attributable to legally permissible  
29      use or uses only.

30      **Sec. 8. 38 MRSA §470-H**, as amended by PL 2007, c. 235, §1, is further amended  
31      to read:

32      **§470-H. In-stream flow and water level requirements; rules**

33      The board shall adopt rules that establish water use requirements for maintaining in-  
34      stream flows and lake or pond water levels that are protective of aquatic life and other  
35      uses and that establish criteria for designating watersheds most at risk from cumulative  
36      water use. Requirements adopted under this section must be based on the natural  
37      variation of flows and water levels, allowing variances if use will still be protective of  
38      water quality within that classification. The board shall incorporate into the rules a  
39      mechanism to reconcile, to the extent feasible, the objective of protecting aquatic life and  
40      other uses as provided for in this section and the objective of allowing community water  
41      systems to use their existing water supplies to provide water service. Before the

1 department issues a community water system withdrawal certificate, the certificate must  
2 be reviewed and approved by the drinking water program of the Department of Health  
3 and Human Services, with technical assistance from the Public Advocate on economic  
4 issues, to ensure that conditions contained in the certificate are economically affordable  
5 and technically feasible ~~and~~, will not jeopardize the safety, dependability or financial  
6 viability of the community water system ~~and will not result in inequity from negative  
7 regional externalities~~. Except as necessary to meet the requirements in this section and  
8 rules adopted pursuant to this section, a community water system does not forfeit the  
9 rights, powers or responsibilities related to water use that are contained in its legislative  
10 charter or similar authority. Rules adopted under this section are state water use rules in  
11 accordance with the authority reserved to states under the federal Clean Water Act. A  
12 water user that fails to comply with the requirements of the rules adopted under this  
13 section is subject to penalties pursuant to section 349. For purposes of this section,  
14 "community water system" has the same meaning as in Title 22, section 2660-B,  
15 subsection 2. Rules adopted under this section are major substantive rules as defined in  
16 Title 5, chapter 375, subchapter 2-A. For the purposes of this section, "externalities"  
17 means those short-term and long-term effects resulting from the withdrawal or  
18 transportation of water that are not accounted for or quantified in the context of water use  
19 permitting, licensing or rate setting.

20 **SUMMARY**

21 This bill requires certain governmental entities when issuing permits or licenses and  
22 setting rates to evaluate the negative externalities resulting from unique uses of water,  
23 such as the bulk exportation of water out of a region.