

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act Concerning the Establishment of Water Levels**

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

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

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

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

### **SUMMARY**

This bill is reported out by the Joint Standing Committee on Environment and Natural Resources pursuant to Public Law 2015, chapter 264, section 5. This bill amends the laws governing the establishment of water levels to require the parties named in a petition or request to establish a water level regime and, if applicable, minimum flow requirements to engage in mediation prior to the Department of Environmental Protection initiating an adjudicatory hearing to resolve the dispute. The bill also provides that if the department holds an adjudicatory hearing to resolve the dispute, it may charge the parties named

in the petition or request an appropriate licensing fee, not to exceed \$20,000, to cover the department's costs in conducting the hearing. The department is directed to apportion such licensing fees equitably among the parties named in a petition or request.