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H.P. 1076

House of Representatives, April 2, 2019

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.

A handwritten signature in cursive script that reads "Robert 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4 E. Water withdrawn pursuant to a permit issued by the Department of Environmental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 the
7 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 \varnothing , 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.