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Resolve, To Establish the Blue Ribbon Commission To Examine the Legal and Policy Implications of Groundwater Extraction

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

Whereas, the laws governing groundwater must constantly evolve to respond to scientific, geopolitical and environmental developments; and

Whereas, shifting areas of responsibilities and jurisdiction regarding environmental protections and environmental controls may require a reexamination of groundwater ownership in the State; and

Whereas, such an examination must involve an assessment of the implications on environmental controls and ownership rights; and

Whereas, obligations under international trade agreements may compromise the ability of state and local governments to manage resources like groundwater in the public interest; and

Whereas, this legislation establishes the Blue Ribbon Commission To Examine the Legal and Policy Implications of Groundwater Extraction and requires that the commission report its findings no later than December 3, 2009; 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

Sec. 1 Commission established. Resolved: That the Blue Ribbon Commission To Examine the Legal and Policy Implications of Groundwater Extraction, referred to in this resolve as "the commission," is established; and be it further

Sec. 2 Commission membership. Resolved: That the commission consists of 11 members appointed as follows:

1. Four members appointed by the President of the Senate as follows:

A. Three Senators, one of whom is a member of the Joint Standing Committee on Utilities and Energy, one of whom is a member of the Joint Standing Committee on Judiciary and one of whom is a member of the Joint Standing Committee on Agriculture, Conservation and Forestry; and

B. One member representing the interests of business and industry;

2. Four members appointed by the Speaker of the House as follows:

A. Three members of the House of Representatives, one of whom is a member of the Joint Standing Committee on Health and Human Services, one of whom is a member of the Joint Standing Committee on State and Local Government and one of whom is a member of the Joint Standing Committee on Natural Resources; and

B. One member of the Citizen Trade Policy Commission established in the Maine Revised Statutes, Title 5, section 12004-I, subsection 79-A;

3. One member of the Public Utilities Commission, appointed by the Governor; and

4. Two ex officio members. The following persons are appointed as ex officio voting members:

A. The Attorney General, or a designee; and

B. The Commissioner of Environmental Protection; and be it further

Sec. 3 Chairs. Resolved: That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission; and be it further

Sec. 4 Appointments; convening of commission. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. Within 15 days after appointment of all members, the chairs shall call and convene the first meeting of the commission, which must be no later than July 15, 2009; and be it further

Sec. 5 Duties. Resolved: That the commission shall study the legal and policy implications of groundwater extraction and shall recommend any changes to state law necessary to balance the State's interests in protecting the public good and maintaining jurisdictional control over environmental impacts with protecting the rights of property owners. In conducting the study, the commission shall specifically examine:

1. The various groundwater law classifications applicable throughout the United States, including the absolute dominion rule, the reasonable use rule, the correlative rights doctrine, the Restatement (Second) of Torts rule, and prior appropriation;

2. The impact of a state's geology and hydrogeology on that state's regulation of groundwater;

3. The controlling law in the State governing groundwater rights and groundwater withdrawal;

4. Methods used by other states to balance their interests in protecting the water supply and the environment with private property owners' interests in water; and

5. Any potential consequences of granting water-taking rights to a company with the status of a foreign investor under international trade agreements; and be it further

Sec. 6 Staff assistance. Resolved: That the Legislative Council shall provide necessary staffing services to the commission; and be it further

Sec. 7 Report. Resolved: That, no later than December 3, 2009, the commission shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 124th Legislature. The Joint Standing Committee on Natural Resources is authorized to introduce a bill related to the subject matter of the report to the Second Regular Session of the 124th Legislature upon receipt of the report.

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

SUMMARY

This resolve establishes a commission to study the legal and policy implications of groundwater extraction in the State and to recommend any changes to state law necessary to balance the State's interest in protecting the public good and maintaining jurisdictional control over environmental impacts with protecting the rights of property owners.