

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 994

S.P. 339

In Senate, March 31, 1987

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator KANY of Kennebec.

Cosponsored by Speaker MARTIN of Eagle Lake,
Representative MITCHELL of Freeport, Representative HOGLUND of
Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Coordinate the Review Process of
2 the Department of Environmental
3 Protection and Maine Land Use Regulation
4 Commission.
5

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

8 Sec. 1. 38 MRSA §631, sub-§2, as enacted by PL
9 1983, c. 458, §18, is amended to read:

10 2. Policy and purpose. The Legislature declares
11 that hydropower justifies singular treatment. The
12 Legislature further declares that it is the policy of
13 the State to support and encourage the development of
14 hydropower projects by simplifying and clarifying re-
15 quirements for permits, while assuring reasonable
16 protection of natural resources and the public inter-

1 est in use of waters of the State. It is the purpose
2 of this subarticle to require a single application
3 and permit for the construction of all hydropower
4 projects and for the reconstruction or structural al-
5 teration of certain projects, including water storage
6 projects. The permit application process shall be
7 administered by the Department of Environmental Pro-
8 tection, ~~except that, for hydropower projects within~~
9 ~~the jurisdiction of the Maine Land Use Regulation~~
10 ~~Commission, the commission shall administer the per-~~
11 ~~mit application process under this subarticle.~~

12 Sec. 2. 38 MRSA §632, sub-§1, as enacted by PL
13 1983, c. 458, §18, is amended to read:

14 1. Board. "Board" means the Board of Environ-
15 mental Protection, ~~except that, for any hydropower~~
16 ~~project within the jurisdiction of the Maine Land Use~~
17 ~~Regulation Commission, "board" means the Maine Land~~
18 ~~Use Regulation Commission.~~

19 Sec. 3. 38 MRSA §634, sub-§1, as amended by PL
20 1985, c. 772, §2, is further amended to read:

21 1. Coordinated permit review. Permits required
22 under the following laws shall not be required by any
23 state agency for projects reviewed or exempted from
24 review under this subarticle: Land use regulation
25 laws, Title 12, sections 681 to 689; stream altera-
26 tion laws, Title 12, sections 7776 to 7780; great
27 ponds laws, sections 391 to 394; alteration of coast-
28 al wetlands laws, sections 471 to 478; and site loca-
29 tion of development laws, sections 481 to 490. Not-
30 withstanding section 654, the board may attach rea-
31 sonable conditions consistent with this Act concern-
32 ing the operation of hydropower projects. The board
33 shall give written notice to the Commissioner of In-
34 land Fisheries and Wildlife and the Commissioner of
35 Marine Resources of the intent of any applicant for a
36 permit to construct a dam.

37 Issuance of a water quality certificate required un-
38 der the United States Water Pollution Control Act,
39 Section 401, shall be coordinated for the applicant
40 under this subarticle by the Department of Environ-
41 mental Protection. The issuance of a water quality
42 certificate shall be mandatory in every case where

1 the board approves an application under this
2 subarticle unless the board has found that the appli-
3 cant has not demonstrated that under section 636,
4 subsection 7, paragraph G, that the project or dis-
5 charge will not result in significant harm to water
6 quality or will not violate applicable water quality
7 standards. The commissioner ~~or-director~~ shall issue
8 or deny this certificate based on the board's finding
9 pursuant to section 636, subsection 7, paragraph G,
10 within 5 working days of the applicant's request or
11 the issuance of a permit. If issued, the certificate
12 shall state that there is a reasonable assurance that
13 the project will not violate the applicable water
14 quality standards. The coordination function of the
15 department with respect to water quality certifica-
16 tion shall not include any proceedings or substantive
17 criteria in addition to those otherwise required by
18 this subarticle. If the commissioner ~~or-director~~
19 fails to act on the certificate, the federal certifi-
20 cation requirements of the United States Water Pollu-
21 tion Control Act, Section 401, shall be waived.

22 Sec. 4. 38 MRSA §634, sub-§3, as enacted by PL
23 1983, c. 458, §18, is amended to read:

24 3. Application review. Within 10 working days
25 of receiving a completed application, the Commis-
26 sioner of Environmental Protection ~~or-the-Director-of-the~~
27 ~~Maine-Land-Use-Regulation-Commission,--as-appropriate,~~
28 shall notify the applicant of the official date on
29 which the application was accepted.

30 The commissioner ~~or--the--director,--as--appropriate,~~
31 shall circulate the application among the Department
32 of Environmental Protection, Department of Conserva-
33 tion, Department of Inland Fisheries and Wildlife,
34 Department of Marine Resources, Department of Trans-
35 portation, Maine Historic Preservation Commission,
36 Office of Energy Resources, Public Utilities Commis-
37 sion and the municipal officials of the municipality
38 in which the project is located. The Office of Ener-
39 gy Resources and the Public Utilities Commission
40 shall submit written comments on section 636, subsec-
41 tion 7, paragraph F. For projects within the jurisd-
42 iction of the Maine Land Use Regulation Commission,
43 the director commissioner may request and obtain
44 technical assistance and recommendations from the

1 staff of the department commission. The department
2 commission shall respond to the requests in a timely
3 manner. The department's commission's recommenda-
4 tions shall be considered by the commission
5 department in acting upon a project application.

6 Sec. 5. 38 MRSA §635-A, as amended by PL 1985,
7 c. 362, §1, is amended to read:

8 §635-A. Time limits for processing applications

9 Whenever the board receives a properly completed
10 application, the board shall make a decision as expedi-
11 tiously as possible. ~~When--the--proposed--project~~
12 ~~lies--within--the--jurisdiction--of--the--Department--of--En-~~
13 ~~vironmental--Protection;--the--Board--of--Environmental~~
14 ~~Protection~~ The board shall make a decision in accord-
15 ance with section 344, except that, following one ex-
16 tension of up to 45 working days, the commissioner
17 may waive the requirements of section 344, only at
18 the request of the applicant.

19 ~~When--the--proposed--project--lies--within--the--juris-~~
20 ~~isdiction--of--the--Maine--Land--Use--Regulation--Commission;~~
21 ~~decisions--shall--be--made--within--105--working--days--ex-~~
22 ~~cept--that--decisions--delegated--to--the--director--shall~~
23 ~~be--made--within--60--working--days;--Following--one--exten-~~
24 ~~sion--of--up--to--45--working--days;--the--director--may--waive~~
25 ~~the--time--limit--requirements--of--this--section--only--at~~
26 ~~the--request--of--the--applicant.~~

27 Sec. 6. 38 MRSA §1478, sub-§3-A is enacted to
28 read:

29 3-A. Maine Land Use Regulation Commission. For
30 facilities proposed to be located within areas sub-
31 ject to the jurisdiction of the Maine Land Use Regu-
32 lation Commission and reviewed by the board under
33 this subchapter, the reviewing agency shall be the
34 board and no permit or other approval may be required
35 from the commission.

36 In reviewing facilities proposed within the commis-
37 sion's jurisdiction, the board shall ensure that:

38 A. There will not be adverse effects on the re-
39 sources or uses of areas zoned as protection sub-
40 districts; and

