

# MAINE STATE LEGISLATURE

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# 132nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2025

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Legislative Document

No. 1210

S.P. 499

In Senate, March 20, 2025

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### **An Act to Regarding Renewable Electricity Generation by Hydropower Projects**

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator FARRIN of Somerset.  
Cosponsored by Representative DUCHARME of Madison and  
Senators: CYRWAY of Kennebec, STEWART of Aroostook, TIMBERLAKE of  
Androscoggin, Representatives: DEBRITO of Waterville, POIRIER of Skowhegan,  
RUDNICKI of Fairfield.

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

2 **Sec. 1. 38 MRSA §464, sub-§14** is enacted to read:

3 **14. Water quality certification of hydropower projects; department**  
4 **considerations.** Notwithstanding any provision of law to the contrary, for the purposes of  
5 water quality certification of hydropower projects under the Federal Water Pollution  
6 Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications  
7 to these hydropower projects under section 636, in determining whether to issue or deny  
8 certification for the proposed project, the department shall consider the effect of issuing or  
9 denying certification on the State's renewable energy, decarbonization and economic  
10 development policies and goals; the environmental and economic benefits to the State of  
11 the hydroelectric generation provided by the project; and, taking those factors into  
12 consideration, whether issuance of certification for the project is permissible  
13 notwithstanding the project's effect on wildlife habitat and aquatic life within the waters  
14 affected by the project, including affected waters downstream of the project.

15 **Sec. 2. 38 MRSA §635, sub-§1,** as affected by PL 1989, c. 890, Pt. A, §40 and  
16 amended by Pt. B, §184, is further amended to read:

17 **1. Approval.** Approve the proposed project upon such terms and conditions as are  
18 appropriate and reasonable to protect and preserve the environment and the public's health,  
19 safety and general welfare, including the public interest in replacing oil with hydroelectric  
20 energy. In determining whether to approve or disapprove a proposed project, or the terms  
21 and conditions upon which the project will be approved, in addition to satisfying the  
22 approval criteria in section 636, the department shall consider the effect of approving or  
23 disapproving the project on the State's renewable energy, decarbonization and economic  
24 development policies and goals; the environmental and economic benefits to the State of  
25 the hydroelectric generation provided by the project; and, taking those factors into  
26 consideration, whether approval of the project is permissible notwithstanding the project's  
27 effect on wildlife habitat and aquatic life within the waters affected by the project, including  
28 affected waters downstream of the project. These The terms and conditions that may be  
29 imposed by the department upon approval of the proposed project may include, but are not  
30 limited to:

31 A. Establishment of a water level range for the body of water impounded by a  
32 hydropower project;

33 B. Establishment of instantaneous minimum flows for the body of water affected by a  
34 hydropower project; and

35 C. Provision for the construction and maintenance of fish passage facilities.

36 When the proposed project involves maintenance, reconstruction or structural alteration at  
37 an existing hydropower project and when the proposed project will not alter historic water  
38 levels or flows after its completion, the department may impose temporary terms and  
39 conditions of approval relating to paragraph A or paragraph B but may not impose  
40 permanent terms and conditions that alter historic water levels or flows;

41 **Sec. 3. 38 MRSA §635-B,** as amended by PL 2009, c. 270, Pt. D, §6, is further  
42 amended to read:

43 **§635-B. Procedures for water quality certification**

1 Issuance of a water quality certificate required under the Federal Water Pollution  
2 Control Act, Section 401, is coordinated for the applicant under this subarticle by the  
3 Commissioner of Environmental Protection. The issuance of a water quality certificate is  
4 mandatory in every case where the department approves an application for a permit or  
5 general permit under this subarticle. An application for a tidal energy demonstration  
6 project under section 636-A that is accepted as complete by the department serves as an  
7 application for water quality certification for the proposed project pursuant to the Federal  
8 Water Pollution Control Act, Section 401, 33 United States Code, Section 1341. The  
9 department shall issue or deny certification at the same time it approves or disapproves the  
10 proposed project, taking into consideration the factors specified in section 464, subsection  
11 14. If issued, the certification must state that there is a reasonable assurance that the project  
12 will not violate applicable water quality standards. The coordination function of the  
13 department with respect to water quality certification does not include any proceedings or  
14 substantive criteria in addition to those otherwise required by this subarticle.

### 15 SUMMARY

16 This bill amends the laws regulating the Department of Environmental Protection's  
17 process for approving or disapproving a permit for a hydropower project and for issuing or  
18 denying a water quality certification for a hydropower project as required under the Federal  
19 Water Pollution Control Act. It requires the department, in determining whether to approve  
20 or deny a permit, or issue or deny a water quality certification, to consider the effect of that  
21 approval, disapproval, issuance or denial on the State's renewable energy, decarbonization  
22 and economic development policies and goals; the environmental and economic benefits  
23 to the State of the hydroelectric generation provided by the project; and, taking those factors  
24 into consideration, whether approval of the permit or issuance of the certification for the  
25 project is permissible notwithstanding the project's effect on wildlife habitat and aquatic  
26 life within the waters affected by the project, including affected waters downstream of the  
27 project.