

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-520)
109TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1195, L.D. 1472, Bill, "AN ACT to Facilitate the Licensing of Small Hydroelectric Generating Facilities."

Amend the Bill by striking out everything after the enacting clause and inserting in its place the following:

'38 MRSA c. 5, sub-c 1, Art. 1, sub-art. 1-A is enacted to read:

Subarticle 1-A. Licensing of Hydroelectric Facilities

§621. Purpose

The Legislature declares that it is the policy of the State to support and encourage the development of hydroelectric generating facilities by simplifying requirements for permits and licenses. It is the purpose of this subarticle to provide a single license application for small hydroelectric facilities on existing dams. The license application shall be administered by the Department of Environmental Protection, while allowing others to intervene in accordance with the ←—————→ Maine Administrative Procedure Act, Title 5, chapter 375.

§622. Definitions

As used in this subarticle, the following terms shall have the following meanings.

1. Board. "Board" means/Board of Environmental Protection.
2. Department. "Department" means the Department of Environmental Protection.
3. Existing dam. "Existing dam" means any dam, the construction of which was completed on or before January 1, 1979, and which does not require any construction or enlargement of impoundment structures, other than repairs, in connection with the installation of any small hydroelectric power project.
4. Fossil fuel. "Fossil fuel" means materials extracted from the earth and used as a source of concentrated energy, including, but not limited to, peat, coal, oil and natural gas.
5. Small hydroelectric power project. "Small Hydroelectric power project" means any hydroelectric power project which is located at the site of any existing dam, which uses the water power potential of the dam, which has not more than 1,500 kilowatts of installed capacity, and which, prior to its construction or operation must secure a permit under any of the following statutes: Site Location of Development statute, sections 481 to 488; the ~~Wetlands~~ Laws, sections 471 to 478; the Great Ponds law, sections 391 to 394; or the Stream Alter ation Laws, Title 12, sections 2206 to 2211.

§623. Prohibition

No person shall initiate construction or operation of any small hydroelectric power project after January 1, 1980, without first obtaining a permit from the board.

§624. Application and notice procedures

An application for a permit required by section 623 shall be

made on forms provided by the department and shall be filed with the board. Public notice of the filing shall be made as required by the board.

Within 10 working days of receiving a completed application, the Commissioner of Environmental Protection shall notify the applicant of the official date on which the application was accepted and circulate the application among the Department of Conservation, Department of Inland Fisheries and Wildlife, Public Utilities Commission, the Department of Transportation and the Office of Energy Resources.

§625. Board action, administrative appeal and hearings

The board shall, within 30 days of receipt of a completed application, either approve the proposed small hydroelectric power project, upon such terms and conditions as are appropriate and reasonable, or disapprove the proposed small hydroelectric power project setting forth the reasons therefor, or schedule a hearing thereon in the manner provided in this section.

Within 30 days of the applicant's receipt of a board decision made without hearing, any person aggrieved by the decision may request a hearing before the board. The request shall set forth the findings and conclusions of the board to which the person objects, the basis of the objections and the nature of the relief requested. Upon receipt of the request, the board shall schedule and hold a hearing. The hearing shall be scheduled in accordance with section 345.

At the hearing, the board may receive testimony on the economic effect of the proposed facility.

At any hearing held under this section, the burden shall be upon the applicant to demonstrate to the board that, over the expected life of the facility, the advantages of the project outweigh any adverse impacts and that the public's health, safety and welfare will be adequately protected.

Within 30 days after the board adjourns any hearing held under this section, it shall make findings of fact and issue an order granting or denying authority to the person proposing the facility to construct or operate the ^{facility} as proposed, or granting the authority upon such terms and conditions as the board may deem advisable to protect and preserve the environment and the public's health, safety and general welfare.

§626. Criteria

The board shall approve any project where the advantages outweigh the adverse impacts over the life of the facility. In making this determination, the board shall consider, as a minimum the following:

1. Energy. The total energy and capacity the facility will provide and the amount of fossil fuel generation that will or may be displaced;

2. Flow regulation. The advantages of the facility in stabilizing stream flow, including maintaining minimum flows and providing flood control and adverse impacts, if any, from fluctuating water levels;

3. Fish and wildlife. The fish and wildlife habitat created or altered by the facility;

4. Other uses. Any benefits to or conflicts with recreation, navigation or other uses of the stream or impoundment; and

5. Environmental considerations. Whether the proposed project will significantly harm the natural environs of any great pond, river or stream, cause undue soil erosion or lower existing water quality.

Any small hydroelectric facility receiving approval of the board under this subarticle shall not require permits under the Site Location Development statutes, sections 481 to 488; the Wetlands / statutes, sections 471 to 478; the Great Ponds / statutes, sections 391 to 394; or the Stream Alteration / statutes, Title 12, sections 2206 to 2211, as any of these statutes may apply, notwithstanding their terms.'

Statement of Fact

This amendment limits the licensing requirements of the bill to projects which otherwise would be required to secure permits under existing environmental protection laws. The scope of the bill is also restricted to small scale hydroelectric facilities.

Reported by the Committee on Public Utilities
Reproduced and distributed under the direction of the
Clerk of the House.

5/29/79 (Filing No. H-520)