

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1472

H. P. 1195

House of Representatives, March 26, 1979

On Motion of Mr. Davies of Orono, referred to the Committee on Public Utilities. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Huber of Falmouth.

Cosponsor: Mr. Wood of Sanford.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Facilitate the Licensing of Small Hydroelectric Generating Facilities.

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

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 their policy 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, and to provide coordination of required permits for other hydroelectric facilities. The license application shall be administered by the Department of Environmental Protection, while allowing other agencies to intervene if it is necessary to protect the public welfare.

§ 622. Definitions

As used in this chapter, unless the context otherwise indicates, the following words 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 or reconstruction, in connection with the installation of any small hydroelectric power project.
4. 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, and which has not more than 15,000 kilowatts of installer capacity.

§ 623. Prohibition

No person shall initiate or cause to be initiated any construction or operation of any hydroelectric facilities after January 1, 1980, without first obtaining a permit from the Board of Environmental Protection.

§ 624. Procedures for small hydroelectric power projects

Any person intending to construct or operate a small hydroelectric power facility, before commencing construction or operation, shall file a request for permit. This request shall include information on the nature and location of the project, together with information as the board may require by regulation. Within 10 days of receiving a request for a permit the board shall circulate the request among interested state agencies, including the Department of Conservation, Department of Inland Fisheries and Wildlife, Public Utilities Commission, the Department of Transportation and the Office of Energy Resources. State agencies may object to the granting of this permit by written notice to the board within 45 days of the application. If there are no objections from state agencies, the board shall grant the request for a permit upon such terms as it deems necessary to fulfill the purposes of this chapter when it finds that the proposed activity will meet the criteria in section 625.

If any state agency objects to the permit application, the board shall hold a public hearing on the application. At the hearing the board shall solicit and receive testimony to determine whether this development will in fact substantially affect the environment or pose a threat to the public's health, safety or general welfare. The board may at the hearing also receive testimony on the economic effect of this development.

The board shall approve a request for a permit whenever it finds that it will meet the criteria in section 625. Approval by the board that the proposed development meets the requirements of section 625 shall be a sufficient basis to support a finding that the development meets the requirements of the Site Location of Development Law, sections 481 to 488, the Wetlands Law, sections 471,

to 478, the Great Ponds Law, chapter 3, subchapter 1, article 1-A, or the Stream Alteration Law, Title 12, section 2206 to 2212 and the rules and regulations adopted with respect to any such statutes, as any of the statutes, rules or regulations may apply. Disapproval of the board shall be a sufficient basis to support a finding that the proposed development does not meet the requirements of the Site Location of Development Law, sections 481 to 488, the Wetlands Law, sections 471 to 478, the Great Ponds Law, chapter 3, subchapter 1, article 1-A, or the Stream Alteration Law, Title 12, sections 2206 to 2212 and the rules and regulations adopted with respect to any of such statutes, as any of the statutes, rules or regulations may apply.

§ 625. Criteria

The board shall weigh the benefits of the proposed development against any adverse impact that may result. The board shall approve any project that will yield a net benefit. In making this determination, the board shall consider, as a minimum, the following:

1. **Energy.** The total energy and capacity the facility will provide, the amount of fossil fuel generation displaced and the cost savings anticipated over the life of the facility;
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 consideration.** 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.

§ 626. Procedures for other hydroelectric power projects

1. **Application process.** Prior to the submission of any application to any permitting and licensing agencies, the developer of a proposed hydroelectric power facility shall concurrently file a preliminary notification form with all permitting and licensing agencies and the department. This preliminary notification form shall be deemed the first agency application for the purposes of notification. Within 30 days after issuance of the notification forms prescribed by the department, the board shall convene a meeting of all permitting and licensing agencies, all agencies which may provide financial assistance, other interested persons or parties, including federal regulatory agencies, and the developer. At this meeting, the permitting and licensing agencies shall consult with the developer and determine the necessary permit and license requirements. The

department shall assist developers of these facilities with permitting and licensing, and is authorized to promulgate rules and regulations to carry out the purposes and requirements of this subarticle.

2. **Coordination.** The department shall establish coordination and assistance procedures for environmental permits issued by agencies of the State required for the proposed development. The procedures shall, to the extent practicable, ensure: The availability to the public of necessary information concerning the environmental permits; the provision of assistance to applicants in obtaining the permits from all the agencies; the coordination of application procedures, time schedules, application forms and similar requirements so as to reduce delay and duplication of effort by the applicant and the issuing agencies. The permit issuing agencies shall cooperate with the department in the development and effectuation of the coordination and assistance procedures.

STATEMENT OF FACT

This bill creates a simplified "one-stop" permitting system for the construction and operation of new small-scale hydroelectric facilities on existing dams. It also requires the Department of Environmental Protection to establish a coordination procedure for the construction of other hydroelectric facilities.