

MAINE STATE LEGISLATURE

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L.D. 2107

(Filing No. H-738)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
112TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "C" to H.P. 1495, L.D. 2107,
Bill, "AN ACT to Clarify the Application of Water
Quality Standards to Hydroelectric Projects."

Amend the bill by striking out everything after
section 1 and inserting in its place the following:

'Sec. 2. 38 MRSA §634, sub-§1, as enacted by PL
1983, c. 458, §18, is amended to read:

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

Issuance of a water quality certificate required un-
der the United States Water Pollution Control Act,
Section 401, shall be coordinated for the applicant
under this subarticle by the Department of Environ-
mental Protection. The issuance of a water quality
certificate shall be mandatory in every case where
the board approves an application under this
subarticle unless the board has found that the appli-
cant has not demonstrated that under section 636,
subsection 7, paragraph G, that the project or dis-

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

18 Sec. 3. 38 MRSA §636, sub-§7, ¶¶E and F, as en-
19 acted by PL 1983, c. 458, §18, are amended to read:

20 E. Whether the project will result in signifi-
21 cant flood control benefits or flood hazards; and

22 F. Whether the project will result in signifi-
23 cant hydroelectric energy benefits, including the
24 increase in generating capacity and annual energy
25 output resulting from the project, and the amount
26 of nonrenewable fuels it would replace; and

27 Sec. 4. 38 MRSA §636, sub-§7, ¶G is enacted to
28 read:

29 G. For an application filed after the effective
30 date of this paragraph, whether there is reason-
31 able assurance that the project will not violate
32 applicable state water quality standards, as re-
33 quired for water quality certification under the
34 United States Water Pollution Control Act, Sec-
35 tion 401.

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STATEMENT OF FACT

2 The purpose of this amendment is to reorganize
3 and clarify the language of the bill. The amendment
4 also expressly conditions the commissioner's or di-
5 rector's issuance of a water quality certificate on
6 the board's prior actions in issuing a hydroelectric
7 power permit. The commissioner or director must issue
8 the certificate unless the board has made an express
9 finding that applicable water quality standards can-
10 not be met by a project.

11 The amendment also makes clear, as was originally
12 intended under the Maine Waterway Development and
13 Conservation Act, that the board responsible for is-
14 suing permits must consider whether the project meets
15 the applicable water quality requirements. Though wa-
16 ter quality standards have been considered in review-
17 ing permit applications to date, it has apparently
18 not been clear to the boards responsible for issuing
19 permits that express written findings relating to
20 those standards were also to be made.

21 This amendment requires that for future projects,
22 the board responsible for issuing permits, during the
23 process of considering issuance of a hydroelectric
24 power permit, not only consider but make express
25 written findings on whether a project will violate
26 applicable water quality standards. If that board
27 finds that the project will violate those standards,
28 the commissioner or director is prohibited from issu-
29 ing the water quality certificate.

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1 This amendment also removes a provision already
2 enacted early in this session. This amendment removes
3 the retroactivity clause from the original bill be-
4 cause Great Northern Paper Company has withdrawn its
5 application.

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Filed by Rep. Michaud of Medway
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House
4/15/86 (Filing No. H-738)