

# MAINE STATE LEGISLATURE

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L.D. 2107

(Filing No. S-393

STATE OF MAINE  
SENATE  
112TH LEGISLATURE  
SECOND REGULAR SESSION

SENATE AMENDMENT " A " 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 all of section 2  
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 776 to 780; 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 under  
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. The commissioner or the director shall  
issue this certificate within 5 working days of the  
applicant's request or the issuance of a permit,

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1 which certificate shall state that there is a reason-  
2 able assurance that the project will not violate the  
3 applicable water quality standards, unless the board  
4 has found under section 636, subsection 7, that the  
5 project will result in significant harm to water  
6 quality or that any discharge from the project will  
7 violate applicable water quality standards. The coordi-  
8 nation function of the department with respect to  
9 water quality certification shall not include any  
10 proceedings or substantive criteria in addition to  
11 those otherwise required by this subarticle. If the  
12 commissioner or director fails to issue the certifi-  
13 cate, the federal certification requirements of the  
14 United States Water Pollution Control Act, Section  
15 401, shall be waived.

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

18 E. Whether the project will result in signifi-  
19 cant flood control benefits or flood hazards; ~~and~~

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

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

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

34 Further amend the bill by renumbering the sec-  
35 tions to read consecutively.

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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 is-  
8 sue the certificate unless the board has made an ex-  
9 press finding that applicable water quality standards  
10 cannot 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           Thus, this amendment requires that for future  
22 projects, the board responsible for issuing permits,  
23 during the process of considering issuance of a hy-  
24 droelectric power permit, not only consider but make  
25 express written findings on whether a project will  
26 violate applicable water quality standards. If that  
27 board finds that the project will violate those stan-  
28 dards, the commissioner or director is prohibited  
29 from issuing the water quality certificate.

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1           Because a board responsible for issuing hydro-  
2 electric power permits has considered applicable wa-  
3 ter quality standards in reviewing previous applica-  
4 tions, the Maine Revised Statutes, Title 38, section  
5 636, subsection 7, paragraph G, as proposed in this  
6 amendment, shall not be included in the application  
7 of the retroactivity section of the original bill.

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9           (Sen. Bustin)  
10 SPONSORED BY: Beneby Bustin

11           COUNTY: Kennebec

          Reproduced and Distributed Pursuant to Senate Rule 12.  
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