

MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 1440, L.D. 2032)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 2107

7
8 H.P. 1495

House of Representatives, February 28, 1986

9 Reported by the Majority from the Committee on Energy and Natural
10 Resources and printed under Joint Rule 2. Original bill sponsored by
11 Representative Vose of Eastport. Cosponsored by Senator Usher of
Cumberland, Representative Paradis of Old Town, and Senator Perkins of
Hancock.

EDWIN H. PERT, Clerk

12
13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-SIX
17

18 AN ACT to Clarify the Application of Water
19 Quality Standards to Hydroelectric
20 Projects.
21

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

24 Sec. 1. 38 MRSA §363-C is enacted to read:

25 §363-C. Classification for certain hydroelectric
26 impoundments

27 For the purpose of water quality classification,
28 the waters of a new or proposed hydroelectric im-
29 pondment shall be deemed to be Class GP-A, if the
30 commissioner finds that it is reasonably likely that
31 the impoundment would:

32 1. Stratification. Thermally stratify;

33 2. Area. Exceed 30 acres in surface area; and

1 3. Discharge. Not have any upstream direct dis-
2 charges except cooling water.

3 Sec. 2. 38 MRSA §634, sub-§1, as enacted by PL
4 1983, c. 458, §18, is amended to read:

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

21 Issuance of a water quality certificate required under
22 the United States Water Pollution Control Act,
23 Section 401, shall be coordinated for the applicant
24 under this subarticle by the Department of Environ-
25 mental Protection. The issuance of a water quality
26 certificate shall be mandatory by the commissioner or
27 the director of the commission, within 5 working days
28 of the applicants' request, in every case where the
29 board approves an application under this subarticle
30 and that certificate shall state that there is a rea-
31 sonable assurance that the project will not violate
32 the applicable water quality standards. The coordi-
33 nation function of the department with respect to wa-
34 ter quality certification shall not include any pro-
35 ceedings or substantive criteria in addition to those
36 otherwise required by this subarticle. If the com-
37 missioner or director fails to issue the certificate,
38 the federal certification requirements of the United
39 States Water Pollution Control Act, Section 401 shall
40 be waived.

41 Sec. 3. 38 MRSA §637 is enacted to read:

42 §637. Review of rules

1 Rules adopted by the board pursuant to this
2 subarticle shall be immediately submitted to the
3 joint standing committee of the Legislature having
4 jurisdiction over natural resources for review and
5 may not become effective until 91 days after the ad-
6 jourment of the next regular session of the Legisla-
7 ture which adjourns after their submission.

8 **Sec. 4. Retroactivity.** Because this Act is in-
9 tended to reaffirm as clearly as possible the intent
10 of the Legislature in enacting the Maine Waterway De-
11 velopment and Conservation Act, it shall apply retro-
12 actively to all permits issued under the Maine Re-
13 vised Statutes, Title 38, section 630, and to all
14 hydropower water quality certificate applications
15 which have been before the Board of Environmental
16 Protection or the Maine Land Use Regulation Commis-
17 sion. A prior board or commission action inconsistent
18 with the requirement of mandatory issuance of a water
19 quality certificate is void.

20 STATEMENT OF FACT

21 This new draft makes it clear that in evaluating
22 new hydroelectric impoundments that will have the
23 characteristics of lakes, the Great Pond classifica-
24 tion, Class GP-A, will be applied to determine wheth-
25 er the impoundment will meet state water quality
26 standards. This new draft ensures that hydroelectric
27 projects will not be denied water quality certifica-
28 tion solely because the dissolved oxygen in parts of
29 the impoundment may fall below appropriate river
30 standards.

31 This new draft also transfers the authority to
32 issue the required federal water quality certificate
33 from the Maine Board of Environmental Protection to
34 the commissioner and from the Land Use Regulation
35 Commission to the director. This shift in responsi-
36 bility will hopefully ensure that the clear legisla-
37 tive mandate of this new draft and the "one-stop"
38 concept for the issuance of a hydropower permit is
39 finally carried out. As the board has demonstrated
40 its unwillingness to carry out the clear and
41 unequivocal legislative direction, the commissioner

1 will be required and expected to do so. For the same
2 reason, this new draft delays the effective date of
3 any rule proposed to implement the process of issuing
4 hydropower permits, including any emergency rule or
5 procedural policy. This delay will allow the Legisla-
6 ture to review any proposed rule to ensure its con-
7 sistency with legislatively established policies.

8 Finally, this new draft clearly states that the
9 provisions of this new draft are really nothing more
10 than a forceful restatement of the Legislature's
11 original purpose and intent in enacting the
12 "one-stop" hydropower permit issuance laws. To ac-
13 complish this purpose, the new draft is expressly
14 made retroactive.

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