

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 376, L.D. 507, Bill, "An Act to Conform Maine Water Quality Law with Federal Requirements"

Amend the bill by striking out all of sections 2 to 4 and inserting in their place the following:

Sec. 2. 38 MRSA §464, sub-§4, ¶F, as enacted by PL 1985, c. 698, §15, is amended to read:

F. The anti-degradation antidegradation policy of the State shall be governed by the following provisions.

~~(1) Existing-in-stream-water-uses-and-the-level-of water-quality-necessary-to-protect-those-existing-uses shall-be-maintained-and-protected.-As-used-in-this paragraph,--"existing--in-stream--water--uses"--means significant,--well-established-uses--that--have--actually occurred-on-a-water-body-on-or-after-November-28, 1975.--Factual-determinations-of-what-constitutes-an existing-in-stream-use-on-a-particular-water-body and-the-extent-of-allowable-impact-on-the-existing-use shall-be-made-on-a-case-by-case-basis-by-the-board.~~
Existing in-stream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. Existing in-stream water uses are those uses which have actually occurred on or after November 28, 1975, in or on a water body whether or not the uses are included in the standard for classification of the particular water body.

Determinations of what constitutes an existing in-stream water use on a particular water body shall be made on a case-by-case basis by the Board. In making its determination of uses to be protected and maintained, the Board shall consider designated uses for that water body and:

(a) Aquatic, estuarine and marine life present in the water body;

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(b) Wildlife that utilize the water body;

(c) Habitat, including significant wetlands, within a water body supporting existing populations of wildlife or aquatic, estuarine or marine life, or plant life that is maintained by the water body;

(d) The use of the water body for recreation in or on the water, fishing, water supply, or commercial activity that depends directly on the preservation of an existing level of water quality. Use of the water body to receive or transport waste water discharges is not considered an existing use for purposes of this antidegradation policy; and

(e) Any other evidence which, for divisions (a), (b) and (c), demonstrates their ecological significance because of their role or importance in the functioning of the ecosystem or their rarity and, for division (d), demonstrates its historical or social significance.

(1-A) The board may only issue a waste discharge license pursuant to section 414-A, or approve a water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, when the board finds that:

(a) The existing in-stream use involves use of the water body by a population of plant life, wildlife, or aquatic, estuarine or marine life, or as aquatic, estuarine, marine, wildlife, or plant habitat, and the applicant has demonstrated that the proposed activity would not have a significant impact on the existing use. For purpose of this division, significant impact means:

(i) Impairing the viability of the existing population, including significant impairment to growth and reproduction or an alteration of the habitat which impairs viability of the existing population; or

(b) The existing in-stream use involves use of the water body for recreation in or on the water, fishing, water supply or commercial enterprises that depend directly on the preservation of an existing level of water quality and the applicant has demonstrated that the proposed activity would

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not result in significant degradation of the existing use.

The board shall determine what constitutes a population of a particular species based upon the degree of geographic and reproductive isolation from other individuals of the same species.

If the board fails to find that the conditions of this subparagraph are met, water quality certification, pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, is denied.

(2) Where high quality waters of the State constitute an outstanding national resource, that water quality shall be maintained and protected. For purposes of this paragraph, the ~~term "high quality waters" means~~ following waters shall be considered outstanding national resources: those water bodies in national and state parks and wildlife refuges, ~~;~~ public reserved lands; and those ~~river segments listed in Title 12, section 403~~ water bodies classified as Class AA and SA waters pursuant to section 465, subsection 1; section 465-B, subsection 1; and listed under sections 467, 468 and 469.

(3) The board may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, if the standards of classification of the water body and the requirements of this paragraph will be met.

(4) Where the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality shall be maintained and protected. The board shall recommend to the Legislature that that water be reclassified in the next higher classification.

(5) The board may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the United State States Clean Water Act, Section 401, Public Law 92-500, as amended, which would result in lowering the existing quality of any water body after making a finding, following opportunity for public participation, that the action is necessary to achieve important economic or social benefits to the State and when the action is in conformance with subparagraph 3 (3). That finding must be made following procedures established by rule of the board.

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Sec. 3. 38 MRSA §634, sub-§1, as amended by PL 1985, c. 772, §2, is repealed and the following enacted in its place:

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: natural resource protection laws, chapter 3, subchapter I, article 5-A; site location of development laws, chapter 3, subchapter I, article 6; and land use regulation laws, Title 12, chapter 206-A. Notwithstanding section 654, the board may attach reasonable conditions consistent with this subarticle concerning the operation of hydropower projects. The board shall give written notice to the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources of the intent of any applicant for a permit to construct a dam.

Sec. 4. 38 MRSA §635-B is enacted to read:

§635-B. Procedures for water quality certification

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 Environmental Protection. The issuance of a water quality certificate shall be mandatory in every case where the board approves an application under this subarticle. The board shall issue or deny certification at the same time it approves or disapproves the proposed project. If issued, the certification shall state that there is a reasonable assurance that the project will not violate applicable water quality standards. The coordination function of the department with respect to water quality certification shall not include any proceedings or substantive criteria in addition to those otherwise required by this subarticle.'

Further amend the bill by striking out all of section 8 and inserting in its place the following:

'Sec. 8. 38 MRSA §636, sub-§8 is enacted to read:

8. Water quality. There is reasonable assurance that the project will not violate applicable state water quality standards, including the provisions of section 464, subsection 4, paragraph F, as required for water quality certification under the United States Water Pollution Control Act, Section 401. This finding is required for both the proposed impoundment and any affected classified water bodies downstream of the proposed impoundment.

A. Notwithstanding section 464, subsection 2, the board shall reclassify the waters of the proposed impoundment to Class GPA if the board finds:

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3 (1) There is a reasonable likelihood that the proposed impoundment will thermally stratify;

5 (2) The proposed impoundment will exceed 30 acres in surface area;

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9 (3) The proposed impoundment will not have any upstream direct discharges except cooling water; and

11 (4) The proposed impoundment will not violate section 464, subsection 4, paragraph F.

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15 **FISCAL NOTE**

17 It is anticipated that all costs resulting from this
19 legislation would be absorbed by the Department of Environmental Protection using existing resources.'

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23 **STATEMENT OF FACT**

25 This amendment resolves differences between the State and
27 the United States Environmental Protection Agency over Maine's water quality law. The amendment also provides adequate guidance to the Board of Environmental Protection on implementation of the State's antidegradation policy for water quality.

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31 The amendment retains sections 1, 5, 6 and 7 of the original bill.

33 Section 2 is amended to provide a procedure for the Board of
35 Environmental Protection to employ in determining which uses of Maine's waters require protection under the antidegradation policy. The board is directed to consider the species using the water body, the habitat in the water body and recreational and other human uses of the water body. The board is further
39 directed to consider the ecological, historical and social significance of these factors.

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43 Section 2 also provides standards for the board to use in evaluating the impact of a project on the existing uses identified by the board.

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47 Section 2 also includes provisions related to rivers which are "outstanding national resources." These provisions were previously included in Legislative Document 1236.

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51 Section 3 corrects cross-references to several environmental laws which were changed during the Second Regular Session of the 113th Legislature. A portion of the original statutory language

COMMITTEE AMENDMENT "A" to H.P. 376, L.D. 507

1 in the Maine Revised Statutes, Title 38, section 634, subsection,
2 1, is moved to Title 38, section 635-B by section 4 of this
3 amendment.

5 Section 1 of the original bill and amended sections 4 and 8
6 amend the state water quality law and hydropower licensing law to
7 conform with federal requirements and to better coordinate the
8 state hydropower licensing process with the process for state
9 issuance of water quality certification under the United States
Water Pollution Control Act, Section 401.

Reported by the Committee on Energy and Natural Resources
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House
5/25/89

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