

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1621

H.P. 1167

House of Representatives, May 10, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'Ed Pert'.

EDWIN H. PERT, Clerk

Presented by Representative ROLDE of York.

Cosponsored by Representative RUHLIN of Brewer, Representative CARTER of Winslow and Representative JACQUES of Waterville.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

**An Act to Ensure Notification and Participation by the Public in
Licensing and Relicensing of Hydroelectric Dams and to Further
Ensure the Equal Consideration of Fisheries and Recreational Uses in
Licensing and Relicensing.**

(AFTER DEADLINE)



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

3 **Sec. 1. 38 MRSA §634, sub-§1, as amended by PL 1985, c. 772,**
5 **§2, is further amended to read:**

7 1. **Coordinated permit review.** Permits required under the
9 following laws shall not be required by any state agency for
11 projects reviewed or exempted from review under this subarticle:
13 Land use regulation laws, Title 12, sections 681 to 689; stream
15 alteration laws, Title 12, sections 7776 to 7780; great ponds
17 laws, sections 391 to 394; alteration of coastal wetlands laws,
19 sections 471 to 478; and site location of development laws,
21 sections 481 to 490. Notwithstanding section 654, the board may
23 attach reasonable conditions consistent with this Act concerning
25 the operation of hydropower projects. The board shall give
27 written notice to the Commissioner of Inland Fisheries and
29 Wildlife and the Commissioner of Marine Resources of the intent
31 of any applicant for a permit to construct a dam.

33 Issuance of a water quality certificate required under the United
35 States Water Pollution Control Act, Section 401, shall be
37 coordinated for the applicant under this subarticle by the
39 Department of Environmental Protection. The issuance of a water
41 quality certificate shall be mandatory in every case where the
43 board approves an application under this subarticle unless the
45 board has found that the applicant has not demonstrated that
47 under section 636, subsection 7, paragraph G, that the project or
49 discharge will not result in significant harm to water quality or
51 will not violate applicable water quality standards. The
 commissioner or director shall issue or deny this certificate
 based on the board's finding pursuant to section 636, subsection
 7, paragraph G, within 5 working days of the applicant's request
 or the issuance of a permit. If issued, the certificate shall
 state that there is a reasonable assurance that the project will
 not violate the 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. If the commissioner or director fails to act on
 the certificate, the federal certification requirements of the
 United States Water Pollution Control Act, Section 401, shall be
 waived.

43 For all existing hydropower projects located in Maine currently
45 licensed under the Federal Power Act, and for all proposed
47 hydropower projects requiring a license to operate under the
49 Federal Power Act, the Board of Environmental Protection shall
51 deny any request to issue a water quality certificate pursuant to
 the United States Water Pollution Control Act, Section 401,
 unless the applicant for the certification demonstrates to the
 board that:

1 A. After notice and opportunity for public comment, the
3 applicable state fisheries agencies and the Department of
5 Environmental Protection have adopted a comprehensive fish
7 passage plan for the watershed in which the applicant's
9 project resides. This plan shall ensure fish passage at all
11 dams in the watershed and shall include an analysis of
13 minimum water flows, drawdowns and impoundments, upstream
15 fish passage, downstream fish passage, attraction flows,
17 habitat, spawning grounds, recreational uses and public
19 access.

21 B. The applicant is prepared to adopt and implement the
23 measures necessary to meet the fish passage requirements of
25 the comprehensive plan as they relate to hydropower projects
27 owned, operated or controlled by the applicant.

29 Sec. 2. 38 MRSA c. 5, sub-c. I, art. 1, sub-art. 1-C is enacted to
31 read:

33 SUBARTICLE 1-C

35 PUBLIC PARTICIPATION IN THE LICENSING AND
37 RELICENSING OF HYDROELECTRIC DAMS

39 §640. Public participation

41 For all existing hydropower projects located in Maine
43 currently licensed under the Federal Power Act, and for all
45 proposed hydropower projects requiring a license to operate under
47 the Federal Power Act, all state agencies that review, comment on
49 and consult in the proposed studies, plans, terms and conditions
51 in the course of licensing or relicensing these projects,
53 including the State Planning Office, the Department of
55 Environmental Protection, the Department of Inland Fisheries and
57 Wildlife and the Department of Marine Resources, shall take the
59 following steps to ensure that interested members of the public
61 are informed of, and allowed to participate in, the review and
63 comment process.

65 1. Publication. At the commencement of the consultation,
67 review and comment process, the state agencies involved shall
69 publish notification of this fact, informing the public of the
71 issues anticipated to be involved in the licensing or relicensing
73 process, the timetable for processing of the license and the
75 opportunities the public has to comment on and participate in the
77 process. The notice shall be designed to reach the widest
79 possible audience, including all persons that have contacted the
81 agencies with an interest in this matter and all potentially
83 interested persons.

85 2. Written notification of states. During the entire
87 consultation process and including the filing of the license

1 application under the Federal Power Act, the state agencies shall
3 inform in writing all members of the public that have indicated
5 an interest in the particular licensing process of the status of
7 that process, including all requirements that the agencies may be
9 placing upon the license applicant. That information shall be
11 provided no less than once every 4 months.

13
15 3. Public comment. The state agencies shall provide
17 meaningful opportunities for public comment on the plans,
19 studies, terms and conditions that the members of the public
21 believe should be recommended by the agencies for inclusion in
23 the license.

25
27 4. Release of public information. All information
29 submitted to the agencies by the applicants for a license under
31 the Federal Power Act shall constitute a public record pursuant
33 to Title 1, section 402. Release of this information to members
35 of the public shall be governed by Title 1, section 408.

STATEMENT OF FACT

23 Currently, a large number of hydropower generating dams
25 throughout the State are in the process of being relicensed by
27 the Federal Energy Regulatory Commission (FERC), pursuant to the
29 Federal Power Act. The decisions made during the course of this
31 licensing process have the potential to significantly improve
33 certain fisheries and recreational resources that have been
35 detrimentally affected by the operation of these dams in the
past. The Federal Power Act mandates the use of comprehensive
planning to ensure equal consideration of fisheries and
recreational uses when issuing a federal license. Under FERC
procedure, state agencies play an important role in recommending
to FERC what terms and conditions should be included in these
licenses. This bill intends to ensure public participation and
equal consideration of fisheries and recreational uses.