R. of S.

L.D. 2159

(Filing No. S-752)

STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 848, L.D. 2159, Bill, "An Act Related to Hydropower Relicensing Standards"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

PART A

Sec. A-1. 38 MRSA §464, sub-§9 is enacted to read:

9. Existing hydropower impoundments managed as great ponds; habitat and aquatic life criteria. For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, section 401, as amended, and licensing of modifications under section 636, a hydropower project is deemed to have met the habitat characteristics and aquatic life criteria in the existing impoundments if:

A. The project is in existence on the effective date of this subsection;

B. The project creates an impoundment that remains classified under section 465-A after the effective date of this subsection;

C. The project creates an impoundment that is subject to water level fluctuations that have an effect on the habitat and aquatic life in the littoral zone so that the habitat and aquatic life differ significantly from that found in an unimpounded great pond; and

D. The existing impounded waters are able to support all species of fish indigenous to those waters and the structure and function of the resident biological community in the impounded waters is maintained.

All other hydropower projects with impoundments in existence on the effective date of this subsection that remain classified under section 465-A after the effective date of this subsection and that do not attain the habitat and aquatic life criteria of that section must, at a minimum, satisfy the aquatic life criteria contained in section 465, subsection 4, paragraph C.

When the actual water quality of the impounded waters attain any more stringent characteristic or criteria of those waters' classification under section 465-A that water quality must be maintained and protected.

Sec. A-2. Legislative findings and intent; impacts of existing great ponds impoundments. Section 1 of this Part clarifies the Legislature's intent that waters subject to significant level fluctuations in existing human-constructed great pond impoundments are not subject to habitat and aquatic life standards that were not intended to apply to such situations. In determining whether the habitat and aquatic life in any such impoundment meet the requirements of this Part, the Legislature intends that changes in the habitat and aquatic life caused by construction and operation of the impoundment must be recognized. Furthermore, the operation of other existing GPA-classified hydroelectric impoundments may affect habitat and aquatic life in a manner not experienced by natural great ponds. The Legislature recognizes that, in both of these cases, it is not feasible to restore the habitat and aquatic life in these impoundments to their original condition or to require changes in the operation of these projects that would result in attainment of the natural habitat standard for great ponds. Section 1 also clarifies the Legislature's intent to retain the designated use of hydroelectric generation while ensuring that the quality of water in these great pond impoundments does not prevent the other designated uses of those waters from being attained.

PART B

Sec. B-1. 38 MRSA §464, sub-§10 is enacted to read:

10. Existing hydropower impoundments managed under riverine classifications; habitat and aquatic life criteria. For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, section 401, as amended, and the licensing of modifications under section 636, hydropower projects in existence on the effective date of this

subsection, the impoundments of which are classified under section 465, are subject to the provisions of this subsection in recognition of some changes to aquatic life and habitat that have occurred due to the existing impoundments of these projects.

A. Except as provided in paragraphs B and D, the habitat characteristics and aquatic life criteria of Classes A and B are deemed to be met in the existing impoundments classified A or B of those projects if:

(1) The impounded waters achieve the aquatic life criteria of section 465, subsection 4, paragraph C.

B. The habitat characteristics and aquatic life criteria of Classes A and B are not deemed to be met in the existing impoundments of those projects referred to in paragraph A if:

(1) Reasonable changes can be implemented that do not significantly affect existing energy generation capability; and

(2) Those changes would result in improvement in the habitat and aquatic life of the impounded waters.

If the conditions described in subparagraphs (1) and (2) occur, those changes must be implemented and the resulting improvement in habitat and aquatic life must be achieved and maintained.

C. If the conditions described in paragraph B, subparagraphs (1) and (2) occur at a project in existence on the effective date of this subsection, the impoundment of which is classified C, the changes described in paragraph B, subparagraphs (1) and (2) must be implemented and the resulting improvement in habitat and aquatic life must be achieved and maintained.

D. When the actual water quality of waters affected by this subsection attains any more stringent characteristic or criteria of those waters' classification under sections 465, 467 and 468, that water quality must be maintained and protected.

Sec. B-2. Legislative findings and intent; impacts of existing impoundments. Section 1 of this Part clarifies that waters classified A or B that are physically affected by existing human-constructed impoundments are not subject to habitat and aquatic life standards that were only intended to apply to unaffected, free-flowing water. The Legislature recognizes that it is not feasible to restore the habitat and aquatic life of the

impounded waters to their original condition or to require significant changes in the operation of these projects that would result in attainment of the standards for free-flowing water. However, it is the intent of the Legislature that if reasonable project changes can be made that would not significantly affect energy generating capability and would improve habitat and aquatic life, those changes must be made. Such changes must also be made at existing projects with impoundments classified C. Section 1 clarifies the Legislature's intent to retain the designated use of hydroelectric generation while ensuring that the quality of water in these impoundments does not become a limiting factor in achieving the other designated uses of those waters.

Notwithstanding the applicability of this Part to water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, section 401, as amended, for purposes of any other proceeding involving FERC Project No. 2389, the "Edwards Dam," this part is not a legislative finding on the feasibility or desirability of restoring the habitat and aquatic life of the waters impounded by the Edwards Dam to their original condition.

PART C

Sec. C-1. 38 MRSA §464, sub-§11 is enacted to read:

11. Downstream stretches affected by existing hydropower projects. Hydropower projects in existence on the effective date of this subsection that are located on water bodies referenced in section 467, subsection 4, paragraph A, subparagraphs (1-A) and (5-A), and section 467, subsection 12, paragraph A, subparagraphs (6-B) and (6-D) are subject to the provisions of this subsection.

For the purposes of water quality certification of hydropower projects under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications to these hydropower projects under section 636, the habitat characteristics and aquatic life criteria of Class A are deemed to be met in the waters immediately downstream of and measurably affected by the projects listed in this subsection if the criteria contained in section 465, subsection 4, paragraph C are met.

Sec. C-2. Legislative findings and intent; downstream impacts of existing hydroelectric projects. Section 1 of this Part clarifies that, for applicants seeking a license from the Federal Energy Regulatory Commission for certain existing hydroelectric or storage projects, specifically, the "Moosehead

Project" FERC Docket No. 2671-002; the "Wyman Project" FERC Docket No. 2329-005; the "Bonny Eagle Project" FERC Docket No. 2519-005 and the "Skelton Project" FERC Docket No. 2527-002, and for applicants seeking a license for a structural modification of these existing hydropower projects, the waters immediately downstream of and measurably affected by the project are not subject to habitat and aquatic life standards that were intended to apply only to unaffected, free-flowing water. The Legislature recognizes that it is not feasible to restore the habitat and aquatic life of the listed downstream waters to their original condition or to require changes in the operation of these projects that would result in attainment of the standards for unaffected free-flowing water. Section 1 clarifies the Legislature's intent to retain the designated use of hydroelectric generation while ensuring that the quality of water in these stretches does not become a limiting factor in achieving the other designated uses of those waters.

PART D

Sec. D-1. 38 MRSA §464, sub-§4, ¶H is enacted to read:

H. A hydropower project, as defined by section 632, constructed after the effective date of this paragraph may cause some change to the habitat and aquatic life of the project's impoundment and the waters immediately downstream of and measurably affected by the project, so long as the habitat and aquatic life criteria of those waters' classification under sections 465, 465-A, 467, and 468 are met. This paragraph does not constitute any change in the criteria for habitat and aquatic life under sections 465 and 465-A.

Sec. D-2. Legislative findings and intent; permissible water quality impact. The Legislature recognizes that there is a range of impact on habitat and aquatic life permissible under each of the water quality classifications as long as the substantive requirements of the narrative standards for habitat and aquatic life for each classification are fully achieved. These requirements are increasingly stringent as one moves from the lowest classes to the highest classes. By the enactment of this Part, the Legislature intends no substantive change in any of these narrative criteria.

PART E

Sec. E-1. 38 MRSA §467, sub-§4, ¶A, as repealed and replaced by PL 1989, c. 228, §2, is amended to read:

4. Kennebec River Basin.

A. Kennebec River, main stem.

~~(1)---From--Moosehead--Lake,--including--east--and--west outlets,-to-a-point-1,000-feet-below-the-lake---Class-A.~~

(1-A) From the east outlet of Moosehead Lake to a point 1,000 feet below the lake - Class A.

(1-B) From the west outlet of Moosehead Lake to a point 1,000 feet below the lake - Class A.

(2) From a point 1,000 feet below Moosehead Lake to its confluence with Indian Pond - Class AA.

(3) From Harris Dam to a point located 1,000 feet downstream from Harris Dam - Class A.

(4) From a point located 1,000 feet downstream from Harris Dam to its confluence with the Dead River - Class AA.

(5) From its confluence with the Dead River to the ~~Route--201A--bridge--in--Anson-Madison--except--for--Wyman Lake~~ confluence with Wyman Lake, including all impoundments - Class A.

(5-A) From the Wyman Dam to its confluence with the impoundment formed by the Williams Dam - Class A.

(5-B) From the confluence with the Williams impoundment to the Route 201A bridge in Anson-Madison, including all impoundments - Class A.

(6) From the Route 201A bridge in Anson-Madison to the Fairfield-Skowhegan boundary, including all impoundments - Class B.

(7) From the Fairfield-Skowhegan boundary to its confluence with Messalonskee Stream, including all impoundments - Class C.

(8) From its confluence with Messalonskee Stream to the Sidney-Augusta boundary, including all impoundments - Class B.

(9) From the Sidney-Augusta boundary to the Father John J. Curran Bridge in Augusta, including all impoundments - Class C.

(10) From the Father John J. Curran Bridge in Augusta to a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point - Class C. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use ~~shall~~ must be maintained.

(11) From a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point, to a line across the southwesterly area of Merrymeeting Bay formed by an extension of the Brunswick-Bath boundary across the bay in a northwesterly direction to the westerly shore of Merrymeeting Bay and to a line drawn from Chop Point in Woolwich to West Chop Point in Bath - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use ~~shall~~ must be maintained.

Sec. E-2. 38 MRSA §467, sub-§4, ¶E, as repealed and replaced by PL 1989, c. 228, §2, is amended to read:

E. Messalonskee Stream Drainage.

(1) Messalonskee Stream, main stem.

(a) From the outlet of Messalonskee Lake to its confluence with the Kennebec River, including all impoundments except Rice Rips Lake - Class C.

(2) Messalonskee Stream, tributaries - Class B.

Sec. E-3. 38 MRSA §467, sub-§12, ¶A, as amended by PL 1991, c. 499, §17, is further amended to read:

A. Saco River, main stem.

(1) From the Maine-New Hampshire boundary to its confluence with the impoundment of the Swan's Falls Dam - Class A.

(2) From its confluence with the impoundment of the Swan's Falls Dam to a point located 1,000 feet below the Swan's Falls Dam - Class A.

(3) From a point located 1,000 feet below the Swan's Falls Dam to its confluence with the impoundment of the Hiram Dam - Class AA.

(4) From its confluence with the impoundment of the Hiram Dam to a point located 1,000 feet below the Hiram Dam - Class A.

(5) From a point located 1,000 feet below the Hiram Dam to its confluence with the Little Ossipee River - Class AA.

~~(6) From its confluence with the Little Ossipee River to its confluence with Swan Pond Stream - Class A.~~

(6-A) From its confluence with the Little Ossipee River to the West Buxton Dam, including all impoundments - Class A.

(6-B) From the West Buxton Dam to its confluence with the impoundment formed by the Bar Mills Dam - Class A.

(6-C) From its confluence with the impoundment formed by the Bar Mills Dam to the confluence with the impoundment formed by the Skelton Dam - Class A.

(6-D) From Skelton Dam to its confluence with the impoundment formed by the Cataract Project Dams - Class A.

(6-E) From the confluence with the impoundment formed by the Cataract Project Dams to its confluence with Swan Pond Stream, including all impoundments - Class A.

(7) From its confluence with Swan Pond Stream to tidewater - Class B.

Sec. E-4. 38 MRSA §467, sub-§15, ¶C, as repealed and replaced by PL 1991, c. 66, Pt. A, §15, is amended by amending subparagraph (2) to read:

(2) Aroostook River, tributaries, those waters lying within the State - Class A unless otherwise specified.

(a) All tributaries of the Aroostook River entering below the confluence of the Machias River that are not otherwise classified - Class B.

(b) Little Machias River and its tributaries - Class A.

(c) Little Madawaska River and its tributaries, including Madawaska Lake tributaries above the Route 161 bridge in Stockholm - Class A.

(d) Machias River, from the outlet of Big Machias Lake to the Garfield Plantation-Ashland boundary - Class AA.

(e) Millinocket Stream, from the outlet of Millinocket Lake to its confluence with Munsungan Stream - Class AA.

(f) Munsungan Stream, from the outlet of Little Munsungan Lake to its confluence with Millinocket Stream - Class AA.

(g) Presque Isle Stream and its tributaries above its confluence with, but not including, the North Branch of the Presque Isle Stream - Class A.

(h) St. Croix Stream from its confluence with Hall Brook in T.9, R.5, W.E.L.S. to its confluence with the Aroostook River - Class AA.

~~(i) Squa Pan Stream and its tributaries above the B&A Railroad bridge - Class A.~~

~~(i) The Legislature recognizes that at certain times the waters of Squa Pan Stream may not meet either the antidegradation standards of section 464, subsection 4, paragraph F, or the water quality classification standards of section 465 due to the operation of the Squa Pan Hydro Project as a generator of hydroelectric peaking power. The Legislature further finds that there are currently no available modifications or alterations to the operation of this existing hydro project that would allow water quality standards to be met while allowing the Squa Pan Hydro Project to continue as a source of peaking power or to be altered and otherwise used as a source of power. Accordingly, the board may not consider the impact to the waters of the Squa Pan Stream caused by the operation of Squa Pan Hydro Project in the production of hydroelectric power in determining whether these waters satisfy any designated uses of water quality standards set forth in section 464, subsection 4, paragraph F or section 465. As used in this subdivision, "operation of the Squa Pan Hydro Project" means the~~

~~actual,--established--use--of--that--project's operation-since-January-4,-1965.~~

(j) Squa Pan Stream from the outlet of Squa Pan Lake to its confluence with the Aroostook River - Class C.

(k) Limestone Stream from the Long Road bridge to the Canadian border - Class C.

Sec. E-5. 38 MRSA §467, sub-§16, ¶A, as enacted by PL 1985, c. 698, §15, is amended to read:

A. Salmon Falls River, main stem.

(1) From the outlet of Great East Lake to tidewater, those waters lying within the State, including all impoundments - Class B.

Sec. E-6. 38 MRSA §468, sub-§8, as repealed and replaced by PL 1989, c. 764, §21, is amended to read:

8. Washington County. Those waters draining directly or indirectly into tidal waters of Washington County, including impoundments of the Pennamaquan River, with the exception of the Dennys River Basin, the East Machias River Basin, the Machias River Basin, the Narraguagus River Basin and the Pleasant River Basin - Class B unless otherwise specified.

A. Jonesboro.

(1) Chandler River and its tributaries above the highway bridge on Route 1 - Class A.

B. Whiting.

(1) Orange River and its tributaries above the highway bridge on Route 1 - Class A.

Sec. E-7. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies to all proceedings pending before the Department of Environmental Protection on or after March 29, 1992.

STATEMENT OF FACT

Part A of this bill clarifies provisions of law governing the water quality standards for existing impoundments that are classified as GPA waters.

Part B of this bill clarifies provisions of law governing the water quality standards for existing impoundments that are classified as A, B or C waters.

Part C of this bill clarifies provisions of law governing the water quality standards for the waters immediately downstream that are measurably affected by the existing hydropower projects listed in section 2. In making the findings in section 2, the Legislature has relied on the information contained in public filings by the owners of these projects for water quality certification by the Department of Environmental Protection.

Part D of this bill clarifies the intent of the narrative standards provided in statute for habitat and aquatic life as those are applied to new hydropower projects. All impoundments cause changes in the habitat and aquatic life in the impoundment and affected waters downstream. The purpose of this section is to clarify the existing statutes and to recognize that changes in habitat or aquatic life due to human activity may be consistent with the existing water quality standards provided that the resulting diversity and abundance of aquatic life and the composition of the resulting aquatic community meet the requirements of the applicable classification.

Part E of this bill makes classification changes on specific water bodies. These changes correct errors made in previous reclassifications. These include mainstem river impoundments mistakenly classified currently as great ponds and segments upgraded beyond attainable levels given existing discharges. This part also makes changes in the geographic definition of certain river stretches.

In addition, with specific regard to Squa Pan Stream, the State has determined and other interested parties have agreed that: (1) the hydropower project on this stream (FERC Docket No. 2368-001) should remain a source of hydroelectric peaking power; (2) certain operational changes and environmental enhancements should be implemented in order to improve aquatic life habitat in the stream; and (3) the stream should be reclassified from "Class A" to "Class C." Section E-4 implements the third component of that agreement.

Finally, Section E-7 provides for the application of the changes in this Act to all proceedings before the Department of Environmental Protection, whether pending on or filed after the effective date of this Act.

Reported by Senator Titcomb for the Committee on Energy and Natural Resources. Reproduced and Distributed Pursuant to Senate Rule 12.
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