

# MAINE STATE LEGISLATURE

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W. of S.

L.D. 1518

(Filing No. H-444 )

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
116TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1119, L.D. 1518, Bill, "An Act to Bring State Water Quality Law into Compliance with Federal Requirements"

Amend the bill in section 1 in subsection 2-A in paragraph B in subparagraph (2) in the 4th line (page 1, line 36 in L.D.) by inserting after the following: "implementing" the following: 'cost-effective and'

Further amend the bill in section 1 in subsection 2-A by striking out all of paragraph E (page 2, lines 6 to 12 in L.D.) and inserting in its place the following:

'E. If the board adopts a proposal to enact a designated use under paragraph A, subparagraph (1) or to remove a designated use or adopt a subcategory of a designated use under paragraph A, subparagraph (2), it shall forward that proposal to the joint standing committee of the Legislature having jurisdiction over natural resources matters at the next regular session of the Legislature. The board may not forward any other recommendation to the Legislature under this subsection. The Legislature has sole authority to make changes in the designated uses of the waters of the State, including the creation of a subcategory of a designated use.

F. For the purposes of this subsection, "designated use" means the use specified in water quality standards for each water body or segment under sections 465 to 465-C and sections 467 to 470 whether or not that use is being attained. A designated use includes its associated habitat characteristic under sections 465 to 465-C.'

Further amend the bill by striking out all of section 2 and inserting in its place the following:

**COMMITTEE AMENDMENT**

1  
2       Sec. 2. 38 MRSA §464, sub-§9, as enacted by PL 1991, c. 813,  
Pt. A, §1, is amended to read:

4           9. Existing hydropower impoundments managed as great ponds;  
6       habitat and aquatic life criteria. For the purposes of water  
quality certification under the Federal Water Pollution Control  
8       Act, Public Law 92-500, section 401, as amended, and licensing of  
10       modifications under section 636, a the hydropower project located  
on the water body referenced in section 467, subsection 7,  
12       paragraph C, subparagraph (1), division (b-1) is deemed to have  
met the habitat characteristics and aquatic life criteria in the  
existing impoundments if:

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

16           B. The project creates an impoundment that remains  
18       classified under section 465-A after ~~the effective date of~~  
~~this subsection~~ June 30, 1992;

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

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

32       All other hydropower projects with impoundments in existence on  
the effective date of this subsection that remain classified  
34       under section 465-A after ~~the effective date of this subsection~~  
June 30, 1992 and that do not attain the habitat and aquatic life  
36       criteria of that section must, at a minimum, satisfy the aquatic  
life criteria contained in section 465, subsection 4, paragraph C.

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

44       Sec. 3. 38 MRSA §466, sub-11-A is enacted to read:

46           11-A. Use attainability analysis. "Use attainability  
analysis" means a structured scientific assessment of the factors  
48       affecting the attainment of a designated use in a water body.  
The assessment may include consideration of physical, chemical,  
50       biological and economic factors.

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Sec. 4. 38 MRSA §467, sub-§7, ¶C, as repealed and replaced by PL 1989, c. 764, §7, is amending by enacting sub-¶(1), division (b-1):

(b-1) From its confluence with Chesuncook Lake to Ripogenous Dam - Class GPA as modified by section 464, subsection 9.

**FISCAL NOTE**

The Board of Environmental Protection will incur some minor additional costs to hold additional public hearings regarding water quality issues. These costs can be absorbed within the board's existing budgeted resources.'

**STATEMENT OF FACT**

This amendment adds a phrase from federal regulation regarding cost-effective best management practices that was inadvertently not included in the original bill.

The amendment also adds language to clearly state that the Board of Environmental Protection is only to make a recommendation to the Legislature under the use attainability analysis procedure if it has adopted a proposal to add or change the designated uses of the State's waters in accordance with the Maine Revised Statutes, Title 38, section 464, subsection 2-A.

This amendment also moves the definition of the term "designated use" from the general definitions section of state water quality law to the proposed subsection regarding use attainability analysis procedures.

This amendment applies the subcategory of designated uses for aquatic life and related habitat created by Public Law 1992, chapter 813, Part A to the impoundment of the Ripogenous hydroelectric project. This action is taken following approval by the federal Environmental Protection Agency on March 25, 1993 of a downgrade of water quality standards for the impoundment based on a use attainability analysis conducted jointly by the Bowater Corporation and the Department of Environmental Protection.

With this amendment, the bill is fully responsive to the objections raised by the Environmental Protection Agency in its letter of January 14, 1993 disapproving Public Law 1992, chapter

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 1119, L.D. 1518

2 813, Part A, not chapter 814 as stated in the statement of fact  
in the original bill.

Reported by the Committee on Energy and Natural Resources  
Reproduced and distributed under the direction of the Clerk of the  
House  
5/26/93 (Filing No. H-444)