

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1071

H.P. 789

House of Representatives, March 6, 2007

### An Act Regarding Energy-generating Facilities

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Reference to the Committee on Utilities and Energy suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative ADAMS of Portland.  
Cosponsored by Senator BARTLETT of Cumberland and  
Representatives: BABBIDGE of Kennebunk, BERRY of Bowdoinham, EATON of Sullivan,  
EBERLE of South Portland, FLETCHER of Winslow, MacDONALD of Boothbay,  
MIRAMANT of Camden, RINES of Wiscasset.

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

2 **Sec. 1. 38 MRSA §480-A**, as enacted by PL 1987, c. 809, §2, is amended to read:

3 **§480-A. Findings; purpose**

4 The Legislature finds and declares that the State's rivers and streams, great ponds,  
5 submerged lands, fragile mountain areas, freshwater wetlands, significant wildlife habitat,  
6 coastal wetlands and coastal sand dunes systems are resources of state significance.  
7 These resources have great scenic beauty and unique characteristics, unsurpassed  
8 recreational, cultural, historical and environmental value of present and future benefit to  
9 the citizens of the State and that uses are causing the rapid degradation and, in some  
10 cases, the destruction of these critical resources, producing significant adverse economic  
11 and environmental impacts and threatening the health, safety and general welfare of the  
12 citizens of the State.

13 The Legislature further finds and declares that there is a need to facilitate research,  
14 develop management programs and establish sound environmental standards that will  
15 prevent the degradation of and encourage the enhancement of these resources. It is the  
16 intention of the Legislature that existing programs related to Maine's rivers and streams,  
17 great ponds, submerged lands, fragile mountain areas, freshwater wetlands, significant  
18 wildlife habitat, coastal wetlands and sand dunes systems continue and that the  
19 Department of Environmental Protection provide coordination and vigorous leadership to  
20 develop programs to achieve the purposes of this article. The well-being of the citizens  
21 of this State requires the development and maintenance of an efficient system of  
22 administering this article to minimize delays and difficulties in evaluating alterations of  
23 these resource areas.

24 The Legislature further finds and declares that the cumulative effect of frequent  
25 minor alterations and occasional major alterations of these resources poses a substantial  
26 threat to the environment and economy of the State and its quality of life.

27 **Sec. 2. 38 MRSA §480-B, sub-§7**, as amended by PL 1999, c. 243, §11, is  
28 further amended to read:

29 **7. Permanent structure.** "Permanent structure" means any structure constructed or  
30 erected with a fixed location or attached to a structure with a fixed location for a period  
31 exceeding 7 months each year, including, but not limited to, causeways, piers, docks,  
32 concrete slabs, piles, marinas, retaining walls and buildings. A floating structure attached  
33 to submerged land by means of an anchor for a period exceeding 7 months each year is  
34 considered a permanent structure.

35 **Sec. 3. 38 MRSA §480-B, sub-§8**, as enacted by PL 1987, c. 809, §2, is amended  
36 to read:

37 **8. Protected natural resource.** "Protected natural resource" means coastal sand  
38 dune system, coastal wetlands, submerged lands, significant wildlife habitat, fragile  
39 mountain areas, freshwater wetlands, great ponds or rivers, streams or brooks, as these  
40 terms are defined in this article.

1           **Sec. 4. 38 MRSA §480-B, sub-§11** is enacted to read:

2           **11. Submerged lands.** "Submerged lands" has the same meaning as in Title 12,  
3 section 1801, subsection 9.

4           **Sec. 5. 38 MRSA §630, first ¶**, as enacted by PL 1983, c. 458, §18, is amended  
5 to read:

6           This subarticle may be cited and referred to in proceedings and agreements as the  
7 "Maine ~~Waterway~~ Hydropower Development and Water Resources Conservation Act."

8           **Sec. 6. 38 MRSA §632, sub-§3**, as enacted by PL 1983, c. 458, §18, is amended  
9 to read:

10           **3. Hydropower project.** "Hydropower project" means any development ~~which that~~  
11 utilizes the flow of water as a source of electrical or mechanical power or ~~which that~~  
12 regulates the flow of water for the purpose of generating electrical or mechanical power.  
13 A hydropower project development includes all powerhouses, dams, water conduits,  
14 transmission lines, water impoundments, roads and other appurtenant works and  
15 structures that are part of the development and, in the case of tidal power projects, also  
16 includes all turbines, foundations and any other fixed or floating structures that are part of  
17 the development.

18           **Sec. 7. 38 MRSA §632, sub-§4** is enacted to read:

19           **4. Tidal power project.** "Tidal power project" means a hydropower project that  
20 converts the energy of tidal action into electricity.

21           **Sec. 8. 38 MRSA §633, sub-§1**, as affected by PL 1989, c. 890, Pt. A, §40 and  
22 amended by Pt. B, §182, is further amended to read:

23           **1. Permit required.** ~~No~~ A person may not initiate construction or reconstruction of  
24 a hydropower project, ~~or~~ structurally alter a hydropower project in ways that change  
25 water levels or flows above or below the a dam or structurally alter a tidal power project,  
26 without first obtaining a permit from the department.

27           **Sec. 9. 38 MRSA §634, sub-§1**, as repealed and replaced by PL 1989, c. 309, §3  
28 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §183, is further amended to  
29 read:

30           **1. Coordinated permit review.** Permits required under the following laws are not  
31 required by any state agency for projects reviewed or exempted from review under this  
32 subarticle: natural resource protection laws, chapter 3, subchapter ~~1~~ 1, article 5-A; site  
33 location of development laws, chapter 3, subchapter ~~1~~ 1, article 6; and land use regulation  
34 laws, Title 12, chapter 206-A. Notwithstanding section 654, the department may attach  
35 reasonable conditions consistent with this subarticle concerning the operation of  
36 hydropower projects. The commissioner shall give written notice to the Commissioner of  
37 Inland Fisheries and Wildlife and the Commissioner of Marine Resources of the intent of  
38 any applicant for a permit to construct a dam or a tidal power project.

1       **Sec. 10. 38 MRSA §635, sub-§3**, as affected by PL 1989, c. 890, Pt. A, §40 and  
2 amended by Pt. B, §184, is further amended to read:

3       **3. Hearing.** Schedule a hearing on the proposed project. A hearing must be held  
4 prior to the department's approval or disapproval of any proposed tidal power project.  
5 Any hearing held under this subsection must follow the notice requirements and  
6 procedures for an adjudicatory hearing under Title 5, chapter 375, subchapter IV 4. After  
7 a hearing is held under this subsection, the department shall make findings of facts and  
8 issue an order approving or disapproving the proposed project, as provided in subsections  
9 1 and 2.

10       **Sec. 11. 38 MRSA §636, sub-§7, ¶A**, as amended by PL 1989, c. 309, §5, is  
11 further amended to read:

12       A. Whether the project will result in significant benefit or harm to soil stability,  
13 coastal and inland wetlands or, the natural environment of any surface waters and  
14 their shorelands or submerged lands;

15       **Sec. 12. 38 MRSA §636, sub-§7, ¶E**, as amended by PL 1989, c. 309, §6, is  
16 further amended to read:

17       E. Whether the project will result in significant flood control benefits or flood  
18 hazards; ~~and~~

19       **Sec. 13. 38 MRSA §636, sub-§7, ¶F**, as amended by PL 1989, c. 309, §6, is  
20 further amended to read:

21       F. Whether the project will result in significant hydroelectric energy benefits,  
22 including the increase in generating capacity and annual energy output resulting from  
23 the project, and the amount of nonrenewable fuels it would replace; and

24       **Sec. 14. 38 MRSA §636, sub-§7, ¶G-1** is enacted to read:

25       G-1. Whether, in the case of a tidal power project, the project will result in  
26 significant benefit or harm to marine resources, as defined in Title 12, section 6001,  
27 or to submerged or intertidal lands.

28       **Sec. 15. Evaluation of laws and rules related to permits for tidal energy**  
29 **projects.** The Department of Environmental Protection, in collaboration with the Public  
30 Utilities Commission, the Executive Department, State Planning Office, the Department  
31 of Marine Resources, the Department of Conservation and the Atlantic Salmon  
32 Commission, shall conduct a comprehensive review of the laws and regulations  
33 governing the permitting of hydropower projects for the purpose of identifying  
34 appropriate changes to these laws and rules to reflect the legal, policy and technical issues  
35 presented by the development of tidal power and tidal energy generating facilities in the  
36 State. The Department of Environmental Protection shall coordinate this review with any  
37 similar activities it is conducting under the State Enhancement Grant Program of the  
38 National Oceanographic and Atmospheric Administration, Office of Ocean and Coastal  
39 Resource Management. No later than January 1, 2008, the Department of Environmental  
40 Protection shall submit a report on the results of the review, including recommendations,

1 suggested legislation and proposed rule changes, to the Joint Standing Committee on  
2 Utilities and Energy, the Joint Standing Committee on Marine Resources and the Joint  
3 Standing Committee on Natural Resources. After reviewing the report, the Joint Standing  
4 Committee on Utilities and Energy is authorized to submit legislation related to the  
5 permitting of tidal power projects to the Second Regular Session of the 123rd Legislature.

6

## SUMMARY

7 This bill amends the laws governing the state permit process and requirements  
8 permits for hydropower projects to address their application to hydropower projects that  
9 use tidal energy to produce electricity. The bill requires that the Department of  
10 Environmental Protection conduct an adjudicatory hearing prior to the approval or  
11 disapproval of a tidal power project. The bill also clarifies the existing hydropower  
12 project approval criteria to account for the potential impacts of tidal power projects on  
13 marine resources and submerged or intertidal lands. The bill requires the Department of  
14 Environmental Protection to lead a review of laws and rules governing the permitting of  
15 hydropower projects to make recommendations to amend these laws and rules to reflect  
16 the legal, policy and technical issues presented by the development of tidal energy  
17 projects and issue a report by January 1, 2008. The bill authorizes the Joint Standing  
18 Committee on Utilities and Energy to submit legislation related to the permitting of tidal  
19 power projects to the Second Regular Session of the 123rd Legislature following its  
20 review of the report. Finally, this bill also adds references to submerged lands in the  
21 natural resources protection laws.