

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 336

H.P. 241

House of Representatives, February 12, 2013

An Act Relating to Clean Water Certification by the Department of Environmental Protection

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SHAW of Standish.
Cosponsored by Senator PLUMMER of Cumberland and
Representatives: BRIGGS of Mexico, DAVIS of Sangerville, ESPLING of New Gloucester,
EVANGELOS of Friendship, McCLELLAN of Raymond, VOLK of Scarborough, Senators:
HASKELL of Cumberland, THOMAS of Somerset.

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

2 **Sec. 1. 38 MRSA §464, sub-§14** is enacted to read:

3 **14. Legislative approval of water quality certification for hydropower projects.**

4 The department or the Maine Land Use Planning Commission, referred to in this section
5 as "the commission," may not approve a water quality certification pursuant to the
6 Federal Water Pollution Control Act, 33 United States Code, Section 1341 for an existing
7 or a proposed hydropower project, as defined in section 632, subsection 3, unless the
8 department or commission submits the proposed water quality certification to the
9 Legislature in accordance with this subsection and the certification is approved by the
10 Legislature.

11 A. When considering approval of a water quality certification for an existing or a
12 proposed hydropower project, the department or commission shall proceed with the
13 approval process to the point of, but not including, final approval. At that point,
14 known as "provisional approval," the department or commission shall submit the
15 provisionally approved certification to the Legislature for review and authorization
16 for final approval as provided in this subsection.

17 B. At the time the department or commission provisionally approves a water quality
18 certification for an existing or a proposed hydropower project, the department or
19 commission shall submit to the Executive Director of the Legislative Council 20
20 copies of:

21 (1) The full text of the provisionally approved water quality certification; and

22 (2) A concise summary of the content of the water quality certification.

23 C. When the Executive Director of the Legislative Council receives the provisionally
24 approved water quality certification, the executive director shall notify the Revisor of
25 Statutes, who shall draft an appropriate legislative instrument to allow for legislative
26 review and action upon the provisionally approved water quality certification during
27 the legislative session. The Secretary of the Senate and the Clerk of the House shall
28 place the legislative instrument on the Advance Journal and Calendar for suggested
29 referral to the joint standing committee of the Legislature having jurisdiction over
30 environmental and natural resources matters. After floor action on referral of the
31 legislative instrument to committee is completed, the Secretary of the Senate and the
32 Clerk of the House shall send copies of the provisionally approved water quality
33 certification and related information to each member of the committee.

34 D. The joint standing committee of the Legislature having jurisdiction over
35 environmental and natural resources matters shall review each provisionally approved
36 water quality certification referred to it and, in its discretion, may hold public
37 hearings on that certification. A public hearing under this paragraph must be
38 advertised in the same manner as required by legislative rules then in effect for
39 advertisement of public hearings on proposed legislation. The committee's review
40 must include, but is not limited to, a determination of whether the department or
41 commission exceeded the scope of its authority in provisionally approving the water
42 quality certification.

- 1 E. After reviewing a provisionally approved water quality certification referred to it
2 by the Legislature, the joint standing committee of the Legislature having jurisdiction
3 over environmental and natural resources matters shall recommend:
- 4 (1) That the Legislature authorize the final approval of the certification;
5 (2) That the Legislature authorize the final approval of the certification with
6 certain specified amendments; or
- 7 (3) That final approval of the certification be disapproved by the Legislature.

8 **Sec. 2. Retroactivity.** Notwithstanding the Maine Revised Statutes, Title 1,
9 section 302, this Act applies retroactively to August 1, 2011.

10 **SUMMARY**

11 This bill adds an additional step to the process for Department of Environmental
12 Protection and Maine Land Use Planning Commission approval of water quality
13 certifications for existing and proposed hydropower projects. The bill requires the
14 department or commission to submit provisionally approved water quality certifications
15 to the Legislature for review and approval by the joint standing committee of the
16 Legislature having jurisdiction over environmental and natural resources matters and the
17 Legislature. The review process is similar to legislative review of major substantive
18 rules. The provisions of the bill apply retroactively to August 1, 2011.