

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1687

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S.P. 552

In Senate, May 7, 2019

### **An Act Regarding the Water Quality Certification of Graham Lake on the Union River**

(AFTER DEADLINE)

(EMERGENCY)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator LUCHINI of Hancock.  
Cosponsored by Representative GROHOSKI of Ellsworth and  
Senator: CARSON of Cumberland, Representatives: GRAMLICH of Old Orchard Beach,  
TUCKER of Brunswick.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** Graham Lake in the City of Ellsworth is an impoundment lake that is  
4 created by a privately owned dam for the purpose of generating electricity; and

5           **Whereas,** the water level of the lake can fluctuate substantially depending on the  
6 dam owner's need to generate electricity and other seasonal factors; and

7           **Whereas,** there are many recreational users of the lake and waterfront homes with  
8 docks that in the past several years have been left dry due to extremely low water levels;  
9 and

10          **Whereas,** the next recreation season is likely to commence well before the  
11 expiration of the 90-day period; and

12          **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
13 the meaning of the Constitution of Maine and require the following legislation as  
14 immediately necessary for the preservation of the public peace, health and safety; now,  
15 therefore,

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

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

18           C-1. For the purposes of water quality certification under the Federal Water  
19 Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing of  
20 modifications under section 636, Graham Lake, located in the Union River, main  
21 stem, is deemed to have met the habitat characteristics and aquatic life criteria in the  
22 existing impoundment if that habitat and aquatic life satisfy the aquatic life criteria  
23 contained in section 465, subsection 3, paragraph C, except that habitat and aquatic  
24 life in the portions of the water body affected by annual drawdowns of up to 4 feet  
25 may reflect the effects of such drawdowns, based on a use attainability analysis  
26 conducted by the board pursuant to subsection 2-A.

27           **Sec. 2. Volitional upstream fish passage for Ellsworth Lake and Graham**  
28 **Lake.** For the purposes of water quality certification of the multistation hydropower  
29 facility at the Ellsworth Hydroelectric Project, Federal Energy Regulatory Commission  
30 Project Number 2727, under the Federal Water Pollution Control Act, Public Law 92-  
31 500, Section 401, as amended, and licensing of modifications under the Maine Revised  
32 Statutes, Title 38, section 636, and any other licensing proceeding affecting the project,  
33 the failure to install a volitional upstream fish passage for anadromous fish species at  
34 Ellsworth Lake Dam and Graham Lake Dam within 10 years of federal relicensure of the  
35 project constitutes a revocation of a water quality certification under the Federal Water  
36 Pollution Control Act, Public Law 92-500, Section 401. For purposes of this section,  
37 "volitional upstream fish passage" means a fish passage in which a fish swims upstream  
38 past an obstruction under the fish's own volition rather than being trapped and hauled  
39 around the obstruction by means other than the fish's own volition.

