



132nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2025

Legislative Document

No. 1210

S.P. 499

In Senate, March 20, 2025

An Act to Regarding Renewable Electricity Generation by Hydropower Projects

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 FARRIN of Somerset.
Cosponsored by Representative DUCHARME of Madison and
Senators: CYRWAY of Kennebec, STEWART of Aroostook, TIMBERLAKE of
Androscoggin, Representatives: DEBRITO of Waterville, POIRIER of Skowhegan,
RUDNICKI of Fairfield.

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. Water quality certification of hydropower projects; department**
4 **considerations.** Notwithstanding any provision of law to the contrary, for the purposes of
5 water quality certification of hydropower projects under the Federal Water Pollution
6 Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications
7 to these hydropower projects under section 636, in determining whether to issue or deny
8 certification for the proposed project, the department shall consider the effect of issuing or
9 denying certification on the State's renewable energy, decarbonization and economic
10 development policies and goals; the environmental and economic benefits to the State of
11 the hydroelectric generation provided by the project; and, taking those factors into
12 consideration, whether issuance of certification for the project is permissible
13 notwithstanding the project's effect on wildlife habitat and aquatic life within the waters
14 affected by the project, including affected waters downstream of the project.

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

17 **1. Approval.** Approve the proposed project upon such terms and conditions as are
18 appropriate and reasonable to protect and preserve the environment and the public's health,
19 safety and general welfare, including the public interest in replacing oil with hydroelectric
20 energy. In determining whether to approve or disapprove a proposed project, or the terms
21 and conditions upon which the project will be approved, in addition to satisfying the
22 approval criteria in section 636, the department shall consider the effect of approving or
23 disapproving the project on the State's renewable energy, decarbonization and economic
24 development policies and goals; the environmental and economic benefits to the State of
25 the hydroelectric generation provided by the project; and, taking those factors into
26 consideration, whether approval of the project is permissible notwithstanding the project's
27 effect on wildlife habitat and aquatic life within the waters affected by the project, including
28 affected waters downstream of the project. These The terms and conditions that may be
29 imposed by the department upon approval of the proposed project may include, but are not
30 limited to:

31 A. Establishment of a water level range for the body of water impounded by a
32 hydropower project;

33 B. Establishment of instantaneous minimum flows for the body of water affected by a
34 hydropower project; and

35 C. Provision for the construction and maintenance of fish passage facilities.

36 When the proposed project involves maintenance, reconstruction or structural alteration at
37 an existing hydropower project and when the proposed project will not alter historic water
38 levels or flows after its completion, the department may impose temporary terms and
39 conditions of approval relating to paragraph A or paragraph B but may not impose
40 permanent terms and conditions that alter historic water levels or flows;

41 **Sec. 3. 38 MRSA §635-B,** as amended by PL 2009, c. 270, Pt. D, §6, is further
42 amended to read:

43 **§635-B. Procedures for water quality certification**

1 Issuance of a water quality certificate required under the Federal Water Pollution
2 Control Act, Section 401, is coordinated for the applicant under this subarticle by the
3 Commissioner of Environmental Protection. The issuance of a water quality certificate is
4 mandatory in every case where the department approves an application for a permit or
5 general permit under this subarticle. An application for a tidal energy demonstration
6 project under section 636-A that is accepted as complete by the department serves as an
7 application for water quality certification for the proposed project pursuant to the Federal
8 Water Pollution Control Act, Section 401, 33 United States Code, Section 1341. The
9 department shall issue or deny certification at the same time it approves or disapproves the
10 proposed project, taking into consideration the factors specified in section 464, subsection
11 14. If issued, the certification must state that there is a reasonable assurance that the project
12 will not violate applicable water quality standards. The coordination function of the
13 department with respect to water quality certification does not include any proceedings or
14 substantive criteria in addition to those otherwise required by this subarticle.

15 SUMMARY

16 This bill amends the laws regulating the Department of Environmental Protection's
17 process for approving or disapproving a permit for a hydropower project and for issuing or
18 denying a water quality certification for a hydropower project as required under the Federal
19 Water Pollution Control Act. It requires the department, in determining whether to approve
20 or deny a permit, or issue or deny a water quality certification, to consider the effect of that
21 approval, disapproval, issuance or denial on the State's renewable energy, decarbonization
22 and economic development policies and goals; the environmental and economic benefits
23 to the State of the hydroelectric generation provided by the project; and, taking those factors
24 into consideration, whether approval of the permit or issuance of the certification for the
25 project is permissible notwithstanding the project's effect on wildlife habitat and aquatic
26 life within the waters affected by the project, including affected waters downstream of the
27 project.