



# 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.