

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act Regarding Energy-generating Facilities

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

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

§ 480-A. Findings; purpose

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Coordinated permit review. Permits required under the following laws are not required by any state agency for projects reviewed or exempted from review under this subarticle: natural resource protection laws, chapter 3, subchapter 11, article 5-A; site location of development laws, chapter 3, subchapter 11, article 6; and land use regulation laws, Title 12, chapter 206-A. Notwithstanding section 654, the department may attach reasonable conditions consistent with this subarticle concerning the operation of hydropower projects. The commissioner shall give written notice to the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources of the intent of any applicant for a permit to construct a dam or a tidal power project.

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

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

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

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

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

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

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

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

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

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

Sec. 15. Evaluation of laws and rules related to permits for tidal energy projects. The Department of Environmental Protection, in collaboration with the Public Utilities Commission, the Executive Department, State Planning Office, the Department of Marine Resources, the Department of Conservation and the Atlantic Salmon Commission, shall conduct a comprehensive review of the laws and regulations governing the permitting of hydropower projects for the purpose of identifying appropriate changes to these laws and rules to reflect the legal, policy and technical issues presented by the development of tidal power and tidal energy generating facilities in the State. The Department of Environmental Protection shall coordinate this review with any similar activities it is conducting under the State Enhancement Grant Program of the National Oceanographic and Atmospheric Administration, Office of Ocean and Coastal Resource Management. No later than January 1, 2008, the Department of Environmental Protection shall submit a report on the results of the review, including recommendations, suggested legislation and proposed rule changes, to the Joint Standing Committee on Utilities and Energy, the Joint Standing Committee on Marine Resources and the Joint Standing Committee on Natural Resources. After reviewing the report, the Joint Standing Committee on Utilities and Energy is authorized to submit legislation related to the permitting of tidal power projects to the Second Regular Session of the 123rd Legislature.

SUMMARY

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