HOUSE . . . . . No. 107

Accompanying the sixth recommendation of the Executive Office of Energy Resources (House, No. 101). Energy.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Five.

AN ACT FURTHER STREAMLINING HYDROPOWER LICENSING PROCEDURES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 164 of the General Laws is hereby amended by striking out section 69H½ in its entirety and inserting in place thereof, the following new section:

Section 69H½. For the purpose of this section, the following words shall have the following meanings, unless the context otherwise requires:

"Federal Energy Regulatory Commission", the federal hydropower licensing and permitting agency or its successor.

"Hydropower generating facility", any electric or mechanical power generating unit whose power source is water flow and which is not a facility as defined in section sixty-nine G.

"Permitting and licensing agencies", all agencies, authorities, and departments of the commonwealth, and local conservation commissions, whose approval, order, order of conditions, permit, license, certificate, or permission in any form is required prior to or for construction of a hydropower generating facility, except the secretary of environmental affairs acting under the provisions of sections sixty-two to sixty-two H, inclusive, of chapter thirty and shall include, but not be limited to, the department of environmental quality engineering including the division of water pollution control, the department of environmental management, the department of fisheries, wildlife and recreational vehicles, the conservation commission with jurisdiction over the proposed site,

24 the Massachusetts Historical Commission, the department of pub-
25 lic utilities, and any other agency, authority, or department of the
26 commonwealth, county, city or town government, as may be from
27 time to time so designated by the Energy Facilities Siting Council.
28 Said council shall coordinate the permitting and licensing of
29 hydropower generating facilities by simplifying requirements for
30 permits and licenses and shall promulgate rules and regulations to
31 carry out the requirements of this section.
32 Said council, after consultation with the permitting and licens-
33 ing agencies, shall establish a preliminary notification form and
34 other forms to be employed by such agencies for permitting and
35 licensing review of proposed hydropower generating facilities.
36 These forms shall include all information required by the permit-
37 ting and licensing agencies to make decisions on hydropower
38 projects while minimizing duplication of information required for
39 such agencies and for federal licensing. In order to reduce duplica-
40 tion and burdensome filing requirements the council shall provide
41 whenever practicable and desirable to effect the purposes of this
42 section, that such forms utilize the basic Federal Energy Regula-
43 tory Commission application and shall make provision for devel-
44 opers to respond to state filing requirements by reference to their
45 Federal Energy Regulatory Commission application. No other
46 forms shall be required by these agencies for permitting and licens-
47 ing review of hydropower generating facilities.
48 The council shall provide that developers must commence the
49 state permitting process and file the preliminary notification form
50 required under such process no later than sixty days after such
51 hydropower developer has filed for a license or exemption with the
52 Federal Energy Regulatory Commission. The council may waive
53 this filing deadline upon the demonstration by the developer that
54 such filing would prejudice an attempt to obtain priority of appli-
55 cation with the Federal Energy Regulatory Commission or upon a
56 showing of other good cause, as the council shall determine. A
57 developer who seeks a waiver of this filing requirement may seek
58 the council's confidential determination as to whether cause exists
59 for the granting of such a waiver.
60 Prior to the submission of any application to any of the permit-
61 ting and licensing agencies, the developer of a proposed hydro-
62 power generating facility shall file a preliminary notification form

63 with all the permitting and licensing agencies and said council.
64 Such preliminary notification form shall be deemed the first
65 agency application for the purposes of notification under section
66 sixty-two A of chapter thirty. Within thirty days after publication
67 of the notification forms prescribed by the secretary of environ-
68 mental affairs under said section sixty-two A, said council and the
69 secretary of environmental affairs shall convene a meeting of the
70 permitting and licensing agencies, all agencies which may provide
71 financial assistance, other interested persons or parties, including
72 federal regulatory agencies, and the developer. At such meeting,
73 the permitting and licensing agencies shall consult with the devel-
74 oper and shall determine the information, data and studies
75 required in addition to the forms specified for compliance with the
76 provisions of the permitting and licensing agencies in resolving
77 disputes between the developer and the permitting and licensing
78 agencies concerning the form, content, level of detail and sche-
79 dules of such requirements.
80 At the option of a developer or licensing and permitting agency
81 and upon request to the council, a second meeting of all interested
82 parties including the developer, permitting and licensing agencies,
83 federal regulatory agencies and other interested parties and per-
84 sons shall be convened for the purposes of reviewing a revised
85 application and forms and other changes made subsequent to the
86 initial meeting. Such second meeting may be held at the project
87 site, at a department of environmental quality engineering regional
88 office, or at the Boston offices of the council or other state agency,
89 whichever shall be deemed most reasonable by the council.
90 Prior to the submission of any notification form to any and all of
91 the permitting and licensing agencies, the council shall require the
92 project proponent to file a proposed notification form and shall
93 determine whether such notification form is substantially com-
94 plete in meeting with the various filing requirements of the permit-
95 ting and licensing agencies asserting jurisdiction over the project.
96 The council shall make a determination, no later than ten days
97 after receiving such proposed application, whether or not it is
98 complete. The council may reject an application which is patently
99 deficient or it may accept it but recommend to the project propo-
100 nent that supplementary information be included that would
101 improve and expedite the permitting and licensing agencies' review

102 process. The council shall inform the project proponent in writing
103 of its action within ten days of submission of the proposed
104 application.

105 All licensing and permitting agencies asserting jurisdiction over
106 the hydropower project shall notify the council when informa-
107 tional requirements have been satisfied. At such time the council
108 shall establish a single deadline for all agency action, such deadline
109 to be no later than ninety days after receipt of the appropriate
110 completed forms and any other additional requirements of this
111 section. In the event that a developer has been required to file an
112 environmental impact report pursuant to section sixty-two B of
113 chapter thirty, the council shall set a single deadline for agency
114 action no later than ninety days after receipt of such forms or thirty
115 days after issuance of the statement of adequacy of the final
116 environmental impact report, as required by section sixty-two C of
117 chapter thirty, whichever is later. Prior to either such deadline as
118 the case may be, each of the permitting and licensing agencies shall
119 determine whether or not to issue, approve, or grant any applica-
120 tion, permit, license, certificate, or other evidence of approval.
121 Notwithstanding other provisions of this section, the department
122 of environmental quality engineering shall act on a request for a
123 final order of the department within the time limitations specified
124 in section forty of chapter one hundred and thirty one.

125 Any party aggrieved by the action, or failure to act, of the
126 permitting and licensing agencies pursuant to this section may
127 appeal to said council within ten days of final agency action or
128 failure to act except that any party aggrieved by the action, or
129 failure to act, of a local conservation commission must first appeal
130 such action or failure to act to the regional office of the department
131 of environmental quality engineering in the manner otherwise
132 provided by the general laws. Failure of an aggrieved party to
133 exhaust all administrative remedies open to the party shall not be
134 grounds to prevent an appeal to the council pursuant to this
135 section.

136 Failure to exercise such right of appeal shall not be deemed a
137 waiver of the right to judicial appeal of an action or failure to act of
138 the permitting and licensing agencies. Said council shall hold a
139 hearing and may consider jointly all pending appeals and shall
140 issue a written decision and order on such appeals considered

141 within ninety days of the appeal. Such decision shall be based upon
142 the energy needs, cost, environmental impact and policies of
143 encouraging hydropower development as stated in this Act, and
144 shall for all purposes, including judicial appeal, be deemed equi-
145 valent to final licensing or permitting agency action of the approv-
146 al, permit, license, certificate or permission which is the subject of
147 the appeal. Any party who is aggrieved by the decision of said
148 council may seek judicial review in the manner provided by chap-
149 ter thirty A.

1 SECTION 2. Hydropower generating facilities, as defined in
2 this act, shall not be subject to any license, permit or approval
3 under any of the provisions of chapter 91 of the General Laws.

1 SECTION 3. The Energy Facilities Siting Council shall con-
2 duct rulemaking proceedings pursuant to section 2 of chapter 30A
3 of the General Laws to determine whether there exists a class or
4 classes of hydropower projects whose environmental impacts are
5 insignificant and may provide for the exemption of such projects
6 from the requirements of the prelicensing conference provision of
7 section 69H½ of chapter 164 of the General Laws, and to allow
8 such projects to utilize such abbreviated informational forms and
9 procedures as the council may determine will ensure the expedi-
10 tious licensing of such projects without impairment of the public
11 interest. In determining whether there exists a class or classes of
12 hydropower generating facilities appropriate for exemption or
13 expedited review the council shall consider especially those pro-
14 jects which by virtue of their extremely small size or installed
15 generating capacity or location on a conduit or other man-made
16 watercourse may have minimal impacts on the natural environ-
17 ment.
18 The council may provide that such hydropower generating pro-
19 jects which satisfactorily demonstrate compliance with the criteria
20 for exemption, if any, shall be exempt from all other state and local
21 agency and departmental reviews notwithstanding any other pro-
22 vision of the general or special laws to the contrary.

1 SECTION 4. The council may promulgate such rules and regu-
2 lations as are necessary to promote the purposes of this Act.

SECTION 5. No provision of this act shall apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be permitted under the provisions of the constitution and laws of the United States.

SECTION 6. The provisions of this act are severable, and if any provision hereof shall be held invalid in any circumstances, such invalidity shall not affect any other provisions or circumstances. This act shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this act, all steps shall be taken which are necessary to meet constitutional requirements.

SECTION 7. This act shall be interpreted liberally to effect the purposes set forth in this act except that nothing in this act shall be construed as conferring jurisdiction over issues or matters not now within the jurisdiction of the Energy Facilities Siting Council or other state and local agencies and departments except when specifically provided or by necessary implication.

SECTION 8. This act shall take effect upon its passage.