



**House
Legislative
Analysis
Section**

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**HYDROELECTRIC POWER
GENERATORS**

House Bill 4784

Sponsor: Rep. Susan Munsell

**Committee: Conservation, Environment,
and Great Lakes**

Complete to 9-25-95

A SUMMARY OF HOUSE BILL 4784 AS INTRODUCED 5-6-95

House Bill 4784 would amend the Natural Resources and Environmental Protection Act (MCL 324.3106b) to limit the state's regulation of hydroelectric power generating facilities.

Legislative finding. The bill contains a statement of legislative findings and declarations, stating that "hydroelectric power generating projects are comprehensively regulated by the Federal Energy Regulatory Commission" and that "the state should not duplicate federal regulatory efforts except as is clearly necessary to protect the environment and the public health, safety and welfare." The bill further declares that hydroelectric power generating facilities provide all of the following: i) a stable source of energy; ii) power that is a primary source of renewable energy; iii) recreational opportunities by increasing the width of water bodies and regulating the depth of those waters; and iv) flood control. Finally, the bill states that dams with 35 feet or less of dam head and hydroelectric power generating facilities of five megawatts or less are different in nature than larger dams and hydroelectric power generating facilities, and that these types of facilities have only a "de minimus" environmental impact and do not significantly impact fish populations in the rivers where they are located.

Limits on state regulation. The bill specifies circumstances under which the state (the Department of Natural Resources or its successor agency with responsibility for issuing water quality certificates) would be required to issue water quality certificates to owners and operators of a dam, or a hydroelectric power generating facility associated with a dam. Where the owner or operator received an exemption from federal licensure under the Federal Energy Regulatory Commission's regulations under the Federal Power Act before December 1, 1995, the state would not be allowed to require the owner or operator to conduct, participate in, or complete any aquatic, biological, hydrogeological, or geological studies, except as listed below. Further, the state would be prohibited from requesting or suggesting to any federal agency that such a dam or facility be required to conduct or participate in any other studies.

Where the facility in question was required to get a water quality certificate under the Federal Power Act, the state would be required to follow certain procedures as to the application for and issuance of such a certificate.

For a dam with a dam head of 15 feet or less that operates as a "run-of-river" hydroelectric power generating facility, the bill states that the owner or operator of the

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facility would automatically be entitled to receive a water quality certificate from the state without condition within 45 days of the receipt of an application that included an affidavit indicating that facility met the requirements of this provision. The owner or operator could not be required conduct or participate in any aquatic, biological, hydrogeological, or geological studies in order to receive the certificate.

For a dam with a dam head of more than 15 feet and less than 35 feet that operates as a "run-of-river" hydroelectric power generating facility, the owner or operator of the facility would be entitled to receive a water quality certificate from the state upon meeting the following requirements. The facility would have to conduct biweekly tests for dissolved oxygen and temperature for three consecutive months from May through October upstream at every meter of depth in the impoundment, upstream beyond the impact of impoundment at mid-depth, and downstream in the discharge mid-range of the facility. The data from these tests would have to have been completed within two years before the date the application was submitted to the state. The bill would state that the dissolved oxygen and temperature testing required under this provision would be the only testing data required for the issuance of a water quality certificate. If the results of these tests met the established water quality standards, then no additional monitoring could be required, and the owner or operator could not be required to conduct or participate in aquatic, biological, hydrogeological, or geological studies or any further water quality studies. Further, if the results did not meet the established standards due to storm water run-off or "other reason unrelated to the operation of the project", no additional monitoring could be required. The state would be required to either issue a certificate or inform the applicant of any deficiencies within 45 days of the application. If the water discharge from a facility was found not to be in compliance with the requirements of this provision, the state would be required to issue a water quality certificate contingent upon approval of a plan to meet the applicable water quality standards within 60 days following the state's response.

For other hydroelectric power generating facilities, the issuance of a water quality certificate would have to be based solely on compliance with applicable water quality standards established in rules promulgated under the act, and could not be predicated on performing aquatic, biological, hydrogeological, or geological studies. The determination of whether the water discharge of a facility met the standards would be based on testing that could not exceed 12 months, if the dam was in normal operation during that period. The state would be required to either issue a certificate or inform the applicant of any deficiencies within 45 days of the application. If the water discharge from a facility was found not to be in compliance with the requirements of this provision, the state would be required to issue a water quality certificate contingent upon approval of a plan to meet the applicable water quality standards within 60 days following the state's response.

Appeals. An owner or operator of a facility could appeal an action or inaction of the state under the bill, and the dispute would be treated as a contested case hearing under the Administrative Procedures Act. While an appeal was pending, a facility could continue to generate power until the exhaustion of all available appellate rights. Further, while an appeal was pending, the state would be prohibited from notifying or requesting any federal or appellate authority to suggest that a facility discontinue generating power until the exhaustion of all appellate rights.