

# MAINE STATE LEGISLATURE

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(New Title)  
New Draft of S. P. 83, L. D. 191

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 1870

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S. P. 539

In Senate, June 8, 1977

Reported by Senator Carpenter of Aroostook, from Committee on Public Utilities. Sent down for concurrence and ordered printed under Joint Rules No. 2.

MAY M. ROSS, Secretary

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT to Regulate Affiliated Interests of Public Utilities.**

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

Sec. 1. 35 MRSA § 104, as amended by PL 1975, c. 400, is repealed and the following enacted in its place:

§ 104. **Affiliated interests**

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms shall have the following meanings.

A. "Affiliated interest" means:

(1) Any person who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of a public utility;

(2) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (1);

(3) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by a public utility; or

(4) Any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a public utility, provided

that the person or group of persons beneficially owns more than 3% of the public utility's voting securities.

B. "Person" means a corporation, partnership, limited partnership, business association, trust, estate or natural person.

C. "Transaction" means any dealings between a public utility and its affiliated interests as defined in paragraph A which affects, directly or indirectly, any accounting entry of the public utility, as prescribed pursuant to section 53.

2. Access to accounts and records. The commission may require the production of books, accounts, records, papers and memoranda of an affiliated interest which relates, directly or indirectly, to its transactions with a public utility. The commission may, in determining the reasonableness of utility rates, disallow all or a portion of the payments under such transaction, the account or record of which is not made available to the commission.

3. Consent by commission. No public utility shall extend or receive credit or make or receive a loan to or from an affiliated interest or make any contract or arrangement for the furnishing of management, supervision of construction, engineering, accounting, legal, financial or similar services, or for the furnishing of any service other than those enumerated with any affiliated interest unless and until such contract or arrangement shall have been found by the commission not to be adverse to the public interest and shall have received its written approval.

Any such contract or arrangement filed with the commission hereunder shall be deemed approved unless the commission disapproves such within 60 days of filing. The commission may suspend the effective date of the contract on arrangement for an additional 30 days if a hearing is deemed necessary to take action on the contract or arrangement.

The commission may approve a contract or arrangement undertaken subsequent to the effective date of this Act, subject to such terms and conditions as it deems necessary to safeguard the public interest. If such contracts or arrangements are not consented to or approved by the commission as provided in this section, the commission may disallow, for rate-making purposes, payments or such part of any such payments thereunder as the commission finds not to be in the public interest.

The commission shall, in the case of any utility or groups of utilities, have the power to exempt herefrom, from time to time, such classes of transactions as it may specify by rule or regulation in advance and which in its judgment will not be adverse to the public interest.

Commission approval of any such contract or arrangement under this section shall not limit or restrict the powers of the commission in determining and fixing any rate, fare, toll, charge, classification, schedule or joint rate as provided in chapters 1 to 17.

4. Waiver. The commission may, by general rules applicable alike to all public utilities affected thereby promulgated within 90 days from the effective date of this section, waive the filing and necessity for approval of contracts and arrangements described in subsection 3 in cases of:

- A. Contracts or arrangements made in the ordinary course of business for the employment of officers or employees;
- B. Contracts or arrangements made in the ordinary course of business for the purchase of services, supplies or other personal property;
- C. Contracts or arrangements where the total obligation to be incurred thereunder does not exceed \$500;
- D. The temporary leasing, lending or interchanging of equipment in the ordinary course of business or in case of an emergency; and
- E. Contracts made by a public utility with any person whose bid is the most favorable to the public utility; however, if the commission finds that any public utility is abusing or has abused the waiver herein granted in order to evade compliance with this section, the commission may require such public utility to file and receive the commission's approval of all such contracts as hereinbefore provided, but the general waiver herein shall remain in full force and effect as to all other public utilities.

5. Violation; penalty. If any public utility or an affiliated interest of a public utility willfully refuses access to books, accounts, records, papers and memoranda or fails to obtain consent as required by this section after notice by the commission of violation, it shall forfeit and pay into the State Treasury not more than \$1,000 for each offense, to be recovered in a civil action in the name of the State. Every day during which any public utility or affiliated interest violates this section shall constitute a separate and distinct offense.

Sec. 2. 35 MRSA § 104-A is enacted to read:

§ 104-A. Insider transactions

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms shall have the following meanings.

A. "Insider" means any officer or employee who participates or has authority to participate in major policy-making functions of a public utility or of an affiliated interest, as defined in section 104, or any director or trustee of a public utility or of an affiliated interest.

B. "Insider transaction" means any dealings which affect, directly or indirectly, any accounting entry as prescribed pursuant to section 53 between a public utility and:

- (1) An insider of the public utility;
- (2) A person related to an insider of the public utility;
- (3) Any other person where the transaction is made in contemplation of such person becoming an insider of the public utility; or
- (4) Any other person where the transaction inures to the tangible economic benefit of an insider or a person related to an insider.

C. "Person" means a corporation, partnership, limited partnership, business association, trust, estate or natural person.

**D. "Person related to an insider" means:**

- (1) An insider's spouse;
- (2) An insider's parent or stepparent, or child or stepchild; or
- (3) Any other relative who lives in an insider's home.

2. Approval and disclosure of insider transactions. An insider transaction shall be specifically reviewed and approved by the public utility's board of directors or trustees, provided that when an insider transaction is part of a series of related transactions involving the same insider, approval of each separate transaction is not required so long as the public utility's board of directors or trustees has reviewed and approved the entire series of related transactions and the terms and conditions under which such transactions may take place. The minutes of the meeting at which approval is given shall indicate the nature of the transaction or transactions, that such review was undertaken and approval given, and the names of individual directors or trustees who voted to approve or disapprove the transaction or transactions. In the case of negative votes, a brief statement of each dissenting director's or trustee's reason for voting to disapprove the proposed insider transaction or transactions shall be included in the minutes if its inclusion is requested by the dissenting director or trustee.

3. Information pertaining to insider transactions. Each public utility shall submit to the commission with its annual report a record of insider transactions requiring review and approval under subsection 2. Each public utility shall make readily available to the commission, upon request, all documents and other materials relied upon by the board in approving each insider transaction, including the name of the insider, the insider's position or relationship that causes such person to be considered an insider, the date on which the transaction was approved by the board, the type of insider transaction and the relevant terms of the transaction, any other pertinent facts which serve to explain or support the basis for the board's decision, and any statements submitted for the minutes or the file by directors or trustees who voted not to approve the transaction setting forth their reasons for such vote.

4. Discovery of insider relationship. When a public utility becomes aware of the existence of an insider relationship after entering into a transaction for which approval would have been required under subsection 2, the public utility shall promptly report such transaction in writing to the commission.

5. Knowledge of proposed insider transaction. Any insider, having knowledge of an insider transaction between the public utility and:

- A. That insider;
- B. A person related to that insider; or
- C. Any other person where the transaction inures to the tangible economic benefit of that insider or person related to that insider,

shall give timely notice of such transaction to the public utility's board of directors or trustees.

6. **Violation; penalty.** If any public utility or insider willfully violates this section, it shall forfeit and pay into the State Treasury not more than \$1,000 for each offense, to be recovered in a civil action in the name of the State. Each day during which any public utility or insider violates this section shall constitute a separate and distinct offense.

#### STATEMENT OF FACT

The intent of this new draft is to provide the Public Utilities Commission with the authority to review and investigate transactions between public utilities and affiliated interests of public utilities. In many cases, an out-of-state parent company or affiliated interest of a public utility contracts with or has an agreement with a public utility in Maine to provide management services or other services. In some cases, the transaction between the public utility and the affiliated interest is not in the public interest. Management services and other services can be procured from sources other than affiliated interests at much lower cost than the price charged by affiliated interests. A number of out-of-state parent firms have exacted corporate income taxes at the rate of 48% from public utilities in Maine, but the parent firms have either paid no federal corporate income tax or a very low rate.

The intent of the new draft therefore, is to provide the Public Utilities Commission with the authority to investigate the transactions between public utilities and affiliated interests. The new draft allows the commission to disallow unreasonable costs incurred by public utility contracts with affiliated interests for rate-making purposes in order to protect the public interest.