

MAINE STATE LEGISLATURE

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(Governor's Bill)
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1961

H. P. 1871

House of Representatives, February 26, 1980

Referred to the Committee on Energy and Natural Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk of the House

Presented by Mr. Elias of Madison.

Cosponsors: Mrs. Post of Owl's Head, Mrs. Mitchell of Vassalboro and Mr. Gillis of Calais.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT to Adopt the Maine Municipal and Rural Electrification Cooperative Agency Act.

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

35 MRSA Part 9 is enacted to read:

PART 9

MAINE MUNICIPAL AND RURAL ELECTRIFICATION COOPERATIVE AGENCY ACT

CHAPTER 303

GENERAL PROVISIONS

§ 3361. Short title

Chapters 303 to 309 may be cited as the "Maine Municipal and Rural Electrification Cooperative Agency Act."

§ 3362. Findings and declaration of necessity

It is found and declared that:

1. **Supply necessary.** An adequate, reliable and economical supply of electric power and energy in the State is a necessity to the enjoyment of life and health by the people of the State and that the absence thereof would endanger the State, its people and its economy;

2. **Development.** The provision of a means of promoting the development of an adequate, reliable and economical supply of electric power and energy is a matter of public and state concern, is a public purpose and is for the general good of the inhabitants of the State;

3. **Deficiency.** There exists a serious deficiency in the ability of various municipalities and rural electric cooperatives in the State presently providing electric power and energy for sale at retail to finance the acquisition, construction and installation of generation, transmission and distribution facilities necessary to ensure an adequate, reliable and economical supply of electric power and energy, and that deficiency constitutes an exigency under which the the Legislature may act;

4. **Supply.** The enactment of this Act constitutes the most expedient way for the Legislature to provide a means for those municipalities and rural electric cooperatives to develop an adequate, reliable and economical supply of electric power and energy;

5. **Agency.** It is necessary, to accomplish the objective and purpose of this Act, that the agency in implementation of this Act be authorized to engage in conduct which may be anti-competitive or contrary to prohibitions of federal or state antitrust laws, and, accordingly, it is the intent and policy of this Act to displace competition with respect to those powers authorized in this Part to be exercised by the agency; and

6. **Public interest.** The necessity of the public interest for the provisions enacted is declared as a matter of legislative determination.

§ 3363. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

1. **Act.** "Act" means the Maine Municipal and Rural Electrification Cooperative Agency Act.

2. **Agency.** "Agency" means the Maine Municipal and Rural Electrification Cooperative Agency.

3. **Bonds.** "Bonds" means revenue bonds, notes and other evidences of obligation of the agency issued under this Part.

4. **Cooperative.** "Cooperative" means any corporation organized as of January 1, 1980, under chapters 221 to 227 or on a cooperative plan under the laws of the State and supplying or authorized to supply electric energy.

5. **Municipality.** "Municipality" means any municipal or quasi-municipal electric corporation, or municipal electric system, within the State which, as of January 1, 1980, was authorized to and was engaged in the manufacture, generation, transmission, distribution, purchase or sale of electricity to the general public.

6. **New England power pool.** "New England power pool" means the relationship or organization created by the New England power pool agreement.

7. **New England power pool agreement.** "New England power pool agreement" means the contractual agreement between electric utilities which is open to all electric utilities, whether private or governmental, operating in New England, which provides for cooperation and joint participation in developing and implementing a regional bulk power supply of electricity, which constitutes the central dispatching and primary pooling arrangement for electric utilities in the New England states, and which has been permitted to become effective under the Federal Power Act by the Federal Power Commission.

8. **Person.** "Person" means any natural person, firm, association, corporation, not-for-profit corporation, business trust, partnership, public agency, state or political subdivision or agency thereof, or any body politic of any nature organized and existing under the law of any state, the United States, any Province of Canada and also includes the Dominion of Canada, its provinces and all political subdivisions, departments, agencies and instrumentalities thereof.

9. **Project.** "Project" means any plant, works, system or facilities within or without the State, and real and personal property of any nature or any interest in any of them, together with all parts of them and appurtenances to them, used or useful in the generation, production, transmission, distribution, purchase, sale, exchange or interchange of electric energy and in the acquisition, extraction, conversion, transportation, storage or reprocessing of fuel of any kind for any such purposes or any interest in, or the right to the use, services, output or capacity of any such plant, works, system or facilities.

10. **Project cost.** "Project cost" means, but is not limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment, extension, decommissioning or disposal of any project or part thereof, including:

- A. The cost of studies, plans, specifications, surveys and estimates of costs and revenues relating thereto;
- B. The cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises and preparation of applications thereof;
- C. Administrative, legal, engineering and inspection expenses;
- D. Financing fees, expenses and costs;
- E. Working capital;

F. Initial fuel costs;

G. Interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the agency;

H. Establishment of reserves for the payment of debt service, for renewals and replacements, for working capital, for operating expenses and for any other purposes deemed reasonable and proper;

I. Prepayments under contracts for the purchase of capacity and output; and

J. All other expenditures of the agency incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment, extension, decommissioning or disposal of any project and the placing of the same in operation.

11. State. "State" means the State of Maine.

12. Utility. "Utility" means any public utility subject to Part 1.

CHAPTER 305

ESTABLISHMENT AND ORGANIZATION

§ 3371. Creation of Maine Municipal and Rural Electrification Cooperative Agency

1. Establishment. The Maine Municipal and Rural Electrification Cooperative Agency is created, declared and established to be a body politic and corporate and a political subdivision of the State with the duties and powers set forth in this Act, to carry out this Act. The agency is constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the agency of the powers conferred by this Act shall be deemed and held to be the performance of an essential governmental function of the State.

2. Powers. The powers of the agency shall be exercised by a board of directors. The board shall consist of directors appointed by the Governor in the following manner. The governing body or board of directors of any municipality and the board of trustees or directors of any cooperative may submit a list or lists of 3 or more natural persons as recommendations to the Governor for appointment to the agency's board of directors and the Governor, in his discretion, shall appoint one such person as a director of the agency from the list or lists submitted to him by the governing body or board of directors of each municipality and one such person as a director of the agency from the list or lists submitted to him by the board of trustees or directors of each cooperative; provided, that no 2 directors shall have been recommended by the same cooperative or municipality.

Each director, before entering upon his duties, shall take and subscribe an oath to perform the duties of office faithfully, impartially and justly to the best of his ability. A record of such oaths shall be filed in the office of the Secretary of State.

Of the directors who are first appointed by the Governor, 2 directors shall be appointed for a term ending July 1, 1981; 2 directors shall be appointed for a term ending July 1, 1982; 2 directors shall be appointed for a term ending July 1, 1983; 2 directors shall be appointed for a term ending July 1, 1984; and the balance, if any, of the directors shall be appointed for a term ending July 1, 1985. Their successors shall serve for terms of 5 years each. Each director shall hold office until his successor has been appointed and qualified. A director shall be eligible for reappointment. Any vacancy in the office of director occurring other than by expiration of term shall be filled by a successor director, who shall serve for the remaining term of office so vacated. Each director may be removed from office by the Governor, for cause, after a public hearing and may be suspended by the Governor, pending the completion of the hearing.

3. **Quorum.** A majority, but no fewer than 3, of the directors then in office shall constitute a quorum for the transaction of any business or the exercise of any power of the agency. Action may be taken and motions and resolutions adopted by the agency at any meeting thereof by the affirmative vote of a majority of directors of the agency then in office. No vacancy in the office of director of the agency may impair the right of the quorum of the directors to exercise all powers and take any action. The board of directors of the agency shall adopt bylaws or other rules and regulations for the management of the affairs of the agency and carrying out the purposes of this Act. The board of directors as shall also elect one of its member directors chairman of the agency and shall also elect a treasurer and secretary who may be, but need not be, directors. It may elect other officers and agents as necessary to perform those acts commonly delegated to the officers and agents of a business corporation and shall set their compensation.

4. **Voting.** Despite any law or charter provision to the contrary, a director or officer of the agency who is also an officer, employee or member of a legislative body of a municipality or other public body or the State shall not thereby be precluded from voting or acting on behalf of the agency on a matter involving the municipality or public body or the State. Neither shall service as a director or officer of the agency constitute a conflict of interest for an officer, employee or member of a municipality or public body or the State.

5. **Agency existence.** The agency and its existence shall continue as long as it shall have notes, bonds or other obligations or indebtedness outstanding, including notes, bonds or other obligations or indebtedness hereafter issued or incurred, and until its existence is terminated by law. The net earnings of the agency, beyond that necessary for retirement of its notes, bonds or other obligations or indebtedness or to implement the public purposes and programs authorized in this Act, shall not inure to the benefit of any person other than the State. Upon termination of the existence of the agency, title to all of the property owned by the agency, including any net earnings of the agency, shall vest in the State. The State reserves the right at any time to alter, amend, repeal or otherwise change the structure, organization, programs or activities of the agency, including the power to terminate the agency, subject to any limitation on the impairment of the obligation of any contract or contracts entered into by the agency.

§ 3372 General powers and duties

The agency shall have all of the powers necessary or convenient to carry out this Act, including without limitation those general powers provided a business corporation by the Maine Business Corporation Act, Title 13-A, and including, without limiting the generality of this paragraph, the power:

1. **Acceptance; grants or gifts.** To accept gifts or grants of property, funds, money, materials, labor, supplies or services from the United States of America or from any person, and to carry out the terms or provisions or make agreements with respect to any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with procuring acceptance or disposition of gifts or grants;
2. **Acquisition.** To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, tangible or intangible, including an interest in land of less than the fee;
3. **Disposal of real or personal property.** To sell, lease, mortgage, exchange, transfer or otherwise dispose of any real or personal property or interest in them, or to grant options for any of those purposes;
4. **Assignment of revenues.** To pledge or assign any money, fees, charges or other revenues of the agency and any proceeds derived by the agency from the sale of property, or from insurance or condemnation awards;
5. **Authorization.** To do anything authorized by this Act through its officers, agents or employees or by contracts with any person, firm or corporation;
6. **Borrow funds.** To borrow money and issue its notes and bonds as provided in this Act;
7. **Purchase energy.** To purchase electric power and energy, including without limiting the generality of the foregoing, all or a portion of the capacity and output of one or more specific projects;
8. **Sale of energy.** To sell electric power and energy and other products and services to any person within or without the State. Utilities are authorized to purchase electric power and energy sold by the agency, provided that nothing in this Act shall be construed to authorize resale of electric power and energy purchased from the agency, except as otherwise authorized by law;
9. **Contracts.** To contract for the use of transmission and distribution facilities owned by others for the delivery to the agency of electric power and energy purchased by the agency and to purchasers of electric power and energy sold by the agency. These other owners are authorized to enter into these contracts with the agency;
10. **Other contracts.** To contract with respect to the purchase, sale, delivery, exchange, interchange, wheeling, pooling, transmission or use of electric power

and energy and to otherwise participate in intrastate, interstate and international arrangements with respect to those matters, including the New England power pool, except that this power may not be exercised so as to conflict with or diminish in any way the powers and obligations of the Public Utilities Commission under this Title regarding planning and entering into agreements for the supply of electric power and energy;

11. Plan. Individually or jointly with any other person or persons to plan, finance, acquire, construct, improve, purchase, operate, maintain, use, share costs of, own, lease, sell, dispose of or otherwise participate in projects or portions of projects, the product or service from them, securities or obligations issued or incurred in connection with the financing of them, or research and development relating to them, within or outside the State. The agency may also enter into and perform contracts with any person with respect to the foregoing. If the agency acquires or owns an interest as a tenant in common with others in any projects, the surrender or waiver by the agency or by the other property owner of its right to partition the property for a period not exceeding the period for which the property is used or useful for electric utility purposes shall not be invalid and unenforceable by reason of length of the period, or as unduly restricting the alienation of the property;

12. Apply for permits. To apply to the appropriate agencies of the State, other states, the United States, Canada, any of its provinces and any divisions, departments, agencies and instrumentalities thereof, and to any other proper agency for permits, licenses, certificates or approvals which may be necessary, and to construct, maintain and operate projects in accordance with these licenses, permits, certificates or approvals;

13. Application to expend assistance. To apply and contract for and to expend assistance from the United States or other sources, whether in form of a grant or loan or otherwise;

14. Contract; administrative services. To contract for administrative services with any person;

15. Execution. To make and execute all contracts and agreements and other instruments necessary or convenient in the exercise of the powers and functions of the agency under this Act; and

16. Other powers and duties. To do all things necessary, convenient or desirable to carry out the purposes of this Act or the powers expressly granted or necessarily implied in this Act.

§ 3373. Additional powers

1. Contracts. The agency may contract to sell, and municipalities, cooperatives and utilities may contract to purchase, all or a portion of the capacity and output of one or more specific projects, or without designation as to source, including, without limiting the generality of the foregoing, contracts

providing, for planning, engineering, design, acquiring sites or options for sites and expenses preliminary or incidental to that project. Such a contract may:

- A. Be for the life of a project or other term or for an indefinite period;
- B. Provide for the payment of unconditional obligations imposed without regard to whether a project is undertaken, completed, operable or operating and despite the suspension, interruption, interference, reduction or curtailment of the output of a project;
- C. Contain provisions for prepayment, nonunanimous amendment, arbitration, delegation and other matters deemed necessary or desirable to carry out its purposes; and
- D. Provide for the creation of a committee of representatives of the municipalities, cooperatives and utilities purchasing power and energy or services under such a contract with such powers of supervision of the operation of the project as the contract may provide which are not inconsistent with this Act.

Such a contract may also provide, in the event of default by any party to the contract in the performance of its obligations under the contract, for the other parties, including municipalities and cooperatives, to assume the obligations and succeed to the rights and interests of the defaulting party, pro rata or otherwise as may be agreed upon in the contract.

2. **Agreements.** The agency may enter into any contract or agreement necessary, appropriate or incidental to the effectuation of its lawful purposes and the exercise of the powers granted by this Act, including, without limitation, contracts or agreements for the purchase, sale, exchange, interchange, wheeling, pooling, transmission, distribution or storage of electrical energy, and fuel of any kind for any such purposes, within and without the State, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities and with such persons, on such terms and for such period of time as its board of directors determines. Any such contract or agreement may include provisions for requirement purchases, restraints on resale or other dealings, exclusive dealing, pricing, territorial division and other conduct or arrangements which may have an anticompetitive effect.

3. **Debt limitation.** Neither the obligations of the agency nor the obligations of any municipality under capacity and output contracts hereunder may be included in computing the debt limitations of the municipalities. These obligations of municipalities shall be treated as expenses of operating their electric plants and shall constitute special obligations of these municipalities payable solely from the revenues and other moneys derived by them from their electric departments or systems. The liability of these municipalities from other funds is limited to obligations undertaken by them to pay for the electric power and energy used by them.

4. **Obligation.** Municipalities and cooperatives shall be obligated to fix, revise

and collect fees and charges for electric power and energy and other services, facilities and commodities furnished or supplied through its electric department or system at least sufficient to provide revenues adequate to meet its obligations under any such output and capacity and to pay all other amounts payable from or constituting a charge and lien upon those revenues.

5. Conveyance of real or personal property. Any municipality or cooperative may convey, transfer or assign to the agency with or without consideration, any real or personal property or interest in either, including a leasehold estate.

§ 3374. Acquisition of property

1. Eminent domain. The agency may acquire by the exercise of the power of eminent domain any real property, or any interest therein, which it may deem necessary for its purposes under this Act after the adoption by it of a resolution declaring the acquisition of the real property or interest therein described in the resolution is necessary for those purposes.

2. Restrictions. The agency shall exercise the power of eminent domain in the manner provided in Title 30, section 4807, as amended from time to time. References in Title 30, section 4807, to an urban renewal project and a renewal project area and the like are inapplicable. Notwithstanding Title 30, section 4807, subsection 2:

A. No facility for the generation, transmission or distribution of electric power and energy owned by any person may be so taken except for the purpose of acquiring property or rights in it in order to permit the crossing of existing transmission or distribution facilities; and

B. No site for a project for which any utility or person had filed an application for preliminary permit or a license from the Federal Energy Regulatory Commission on or before November 1, 1977, may be so taken until such time, if ever, that the application is denied, and no further renewals or appeals are available to the utility, or the utility or person abandons its application, permit or license.

§ 3375. Tax exemption

1. Bonds or notes. All bonds or notes issued under this Act are issued by a political subdivision or a body corporate and politic of the State, and for an essential public and governmental purpose. Those bonds and notes, and the interest on them and the income from them, including any profit on their sale, and all activities of the agency and fees, charges, funds, revenues, incomes and other moneys of the agency, whether or not pledged or available to pay or secure the payment of those bonds or notes, or interest on them, are exempt from all taxation, franchise fees or special assessments of whatever kind except for transfer, inheritance and estate taxes.

§ 3376. Rules and rates

1. Rules. The agency may make and enforce rules and regulations consistent with the purpose of this Act.

2. Rates. It may establish, levy and collect or may authorize by contract, franchise, lease or otherwise, the establishment, levying and collection of rents, rates and other charges:

A. For the services afforded by the agency or afforded by or in connection with any project or properties which it may construct, erect, acquire, own, operate or control, or with respect to which it may have any interest or any right to capacity thereof; and

B. For the sale of electric energy or of generation or transmission capacity or service as it may deem necessary, proper, desirable and reasonable.

Rents, rates and other charges shall be a least sufficient to meet the expenses of the agency, including operating and maintenance expenses, reasonable reserves, interest and principle payments, including payments into one or more sinking funds for the retirement of principal, and other requirements of any trust agreement or resolution and any additional amounts which must be realized in order to meet the requirements of any rate covenant imposed by any resolution or trust agreement authorizing and securing bonds or notes. The agency may pledge its rates, rents and other revenues, or any part of them, as security for the repayment, with interest and redemption premiums, if any, of any moneys borrowed by it or advanced to it for any of its authorized purposes and as security for the payment of amounts due and owing by it under any contract.

§ 3377 Additional powers of municipalities and cooperatives

By resolution of its governing body, a municipality or cooperative may:

1. List. Within 30 days after the effective date of this Act, submit a list of 3 natural persons as recommendations to the Governor for appointment to the board of directors of the agency;

2. Contracts. Enter into contracts with the agency for the generation, manufacture, purchase, sale, exchange, distribution or transmission of electric energy and other services on such terms and for such period of time as the resolution may provide;

3. Appropriation. Appropriate or provide revenues and other moneys derived by them from their electric departments or systems, or in the case of those municipalities having combined electric, water, sewer and other utility systems, the revenues derived from such combined systems under any contract with the agency; and

4. Other contracts. Make and execute all contracts, agreements and other instruments, and do all things necessary and convenient or desirable to carry out the purposes of this Act or the powers expressly granted or necessarily implied in this Act.

§ 3378. Construction contracts

The agency may contract for the planning, acquisition, construction, operation, maintenance, repair, extension and improvement of any project, or may contract with other public or private owners of any project or perform these functions, without advertising for bids, preparing final plans and specifications in advance of construction or securing performance and payment bonds, except to the extent that the directors determine that these actions are desirable in furtherance of the purposes of this Act. Except as otherwise provided by this section, no contract shall be invalid or unenforceable by reason of nonperformance of the conditions required by any other law relating to public contracts.

CHAPTER 307
FORM AND NATURE
OR BONDS AND NOTES

§ 3381. Bonds and notes

1. Bonds and notes. The issuance of bonds and notes are subject to the following provisions.

A. The agency may, from time to time, issue its notes and bonds in such principal amount as the agency determines to be necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the agency, establishment of reserves to secure the notes and bonds and all other expenditures of the agency incident to and necessary or convenient to carry out its corporate purposes and powers. Without limiting the generality of the foregoing, such bonds and notes may be issued for project costs or the agency's share of project costs.

B. The agency shall have the power, from time to time, to issue notes, to renew notes and bonds, to pay notes, including the interest on them and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes.

C. Except as may otherwise be expressly provided by resolution of the agency, every issue of its notes and bonds shall be general obligations of the agency, payable out of any revenues or moneys of the agency, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

D. Bonds and notes may be issued in accordance with this Act.

E. The notes and bonds shall be authorized by resolution or resolutions of the agency, shall bear such date or dates and shall mature at such time or times as the resolution or resolutions may provide. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination of

them. The resolution or resolutions may provide that the notes and bonds bear interest at a given rate or rates or may provide a method of determining a rate of rates, be in certain denominations, be in temporary, coupon or registered form, carry certain registration privileges, be executed in a given manner, be payable in a given medium of payment, at a place or places within or without the State and be subject to specified terms of redemption. The notes and bonds of the agency may be sold by the agency, at public or private sale, at such price or prices as the agency shall determine.

2. Authorization. Any resolution or resolutions authorizing any notes or bonds or any issue of them may contain provisions, which shall be a part of the contract or contracts with the bond or noteholders, as to:

A. Pledging, mortgaging or granting a security interest in any real or personal property and all or any part of the revenues of the agency or any revenue producing contract made by the agency with any person to secure the payment of the notes or bonds or of any issue of them subject to such agreements with noteholders or bondholders as may then exist;

B. The custody, collection, securing, investment and payment of any revenues, assets, money, funds or property with respect to which the agency may have any rights or interest;

C. The rates or charges for electric energy sold by, or services rendered by, the agency, the amount to be raised by the rates or charges and the use and disposition of any or all revenue;

D. The setting aside of reserves or sinking funds and their regulation and disposition;

E. Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and the pledging of the proceeds to secure the payment of the notes or bonds or of any issue of them;

F. Limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;

G. The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto and the manner in which consent may be given;

H. The vesting in a trustee or trustees, within or without the State, of such property, rights, powers and duties in trust as the agency may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this Act and limiting or abrogating the right of the bondholders to appoint a trustee under this Act or limiting the rights, powers and duties of the trustee;

I. Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the agency to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; provided that the rights and remedies shall not be inconsistent with the general laws of the State and other provisions of this Act; and

J. Any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

3. Pledges. Any pledge made by the agency is valid and binding from the time when the pledge is made. The revenues, moneys or property so pledged and thereafter received by the agency shall immediately be subject to the lien of the pledge without any physical delivery of it or further act. That pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether those parties have notice of it. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded.

4. Liability. Neither the directors nor executive officers of the agency nor any other person executing the notes or bonds may be subject to any personal liability or accountability by reason of the issuance of the notes or bonds.

5. Agency; power. The agency, subject to whatever agreement with noteholders or bondholders as may then exist, shall have the power, out of any funds available for that purpose, to purchase notes or bonds of the agency, which shall then be canceled.

6. Notes or bonds secured. In the discretion of the agency, the notes or bonds may be secured by a trust indenture by and between the agency and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without the State. The trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the noteholders or bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the agency in relation to the exercise of its corporate powers and the custody, safeguarding and application of all moneys. The agency may provide by the trust indenture for the payment of the proceeds of the notes or bonds and the revenues to the trustee under the trust indenture or other depository and for the method of disbursement, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expense of the agency. If the notes or bonds are secured by a trust indenture, the noteholders and bondholders may not appoint a separate trustee to represent them.

7. Negotiability of bonds or notes. Any law to the contrary notwithstanding, unless the agency shall expressly provide otherwise, a bond or note issued under this Act is fully negotiable for all purposes of the applicable provisions of Title 11 and each holder or owner of a bond or note, or of any coupon appurtenant to a bond

or note, by accepting the bond or note or coupon shall be conclusively deemed to have agreed that the bond, note or coupon is fully negotiable for those purposes.

8. **Investment securities.** Any provision of this Act or of any other law or any recitals in any bonds or notes issued under this Act to the contrary notwithstanding, all bonds, notes and interest coupons appertaining to them issued by the agency shall have and are declared to have all the qualities and incidents, including negotiability, unless the agency shall expressly provide otherwise, of investment securities under the applicable provisions of Title 11, Article 8, but no provision of Title 11, Article 9, respecting the filing of a financing statement to perfect a security interest shall be applicable to any pledge made or security interest created in connection with the issuance of the bonds, notes or coupons.

9. **Signature; validity.** In case any of the directors or executive officers of the agency whose signatures appear on any notes or bonds or coupons cease to be directors or executive officers before the delivery of the notes or bonds, the signatures are, nevertheless, valid and sufficient for all purposes, the same as if those directors or executive officers had remained in office until that delivery.

§ 3382. **Presumption of validity**

After issuance, all bonds or notes of the agency shall be conclusively presumed to be fully authorized and issued under the laws of the State and any person or governmental unit shall be stopped from questioning their authorization, sale, issuance, execution or delivery by the agency.

§ 3383. **Federal insurance of guaranty; taxable bond option**

1. **Agency authorization.** The agency is authorized and empowered to obtain from any department or agency of the United States or nongovernmental insurer any insurance or guaranty, to the extent now or hereafter available, as to, or of, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any bonds or notes issued by the agency, or on any municipal obligations of governmental units or cooperatives purchased or held by the agency, pursuant to this Act; and notwithstanding any other provisions of this Act, to enter into any agreement or contract whatsoever with respect to any such insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the agency to perform and fulfill the terms of any agreement made with the holders of the bonds or notes of the agency.

2. **Interest.** The agency may covenant and consent that the interest on certain of its bonds shall be includable under the United States Internal Revenue Code of 1954, or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders thereof under the United States Internal Revenue Code or any subsequent law. Nothing contained in this Act shall be construed to covenant or consent or to authorize any covenant or consent to the application of any other provision of any other laws, federal or

state, to the agency or to its bonds or to the elimination or modification in any way of any other exemption, privilege or immunity thereof, except to the extent that may be required to undertake projects outside of the State.

§ 3384. Refunding obligations; issuance

The agency may provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which have been issued under the provisions of this Act, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of those obligations and for any corporate purpose of the agency. The issuance of the obligations, the maturities and other details pertaining to them, the rights of their holders and the rights, duties and obligations of the agency in respect to them shall be governed by this Act which relate to the issuance of obligations, insofar as those provisions may be appropriate.

§ 3385. Refunding obligations; sale

Refunding obligations issued as provided in section 3384 may be sold or exchanged for outstanding obligations issued under this Act and, if sold, the proceeds from them may be applied, in addition to any other authorized purposes to the purchase, redemption or payment of those outstanding obligations. Pending the application of the proceeds of any refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of these refunding obligations or in the trust agreement securing them, to the payment of any interest on refunding obligations and any expenses in connection with refunding, such proceeds may be invested as specified in the resolution authorizing the obligations to be refunded or the trust agreement securing them. These investments shall mature or shall be subject to redemption by their holders, at the option of the holders, not later than the respective dates when the proceeds, together with the interest accruing on them, will be required for the purposes intended.

§ 3386. Remedies of bondholders and noteholders

1. Default. In the event that the agency defaults in the payment of principal or of interest on any bonds or notes issued under this Act after they become due, whether at maturity or upon call for redemption and the default continues for a period of 30 days, or in the event that the agency fails or refuses to comply with this Act, or defaults in any agreement made with the holders of an issue of bonds or notes of the agency, the holders of 25% in aggregate principal amount of the bonds or notes of the issue then outstanding, by instrument or instruments filed in the office of the Secretary of State and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of those bonds or notes for the purposes provided in this Act.

2. Trustee; duties. The trustee appointed in subsection 1 may, and upon written request of the holders of 25% in principal amount of the bonds or notes then outstanding shall, in the trustee's own name:

A. Enforce all rights of the bondholders or noteholders, including the right to require the agency to fix and collect rates, fees and charges relating to projects or other obligations held by it adequate to carry out any agreement as to, or pledge of, the revenues of the agency and to require the agency to carry out any other agreements with the holders of the bonds or notes and to perform its duties under this Act;

B. Enforce all rights of the bondholders or noteholders, including the right to take possession and control of the business and properties of the agency, to operate and maintain the same, to make any necessary repairs, renewals and replacements to them and to fix, revise and collect fees and charges, so as to carry out any contract as to, or pledge of revenues and to require the agency to carry out and perform the terms of any contract with the holders of the bonds or notes or its duties under this Act;

C. Bring suit upon all or any part of the bonds or notes;

D. By action or suit, require the agency to account as if it were the trustee of an express trust for the holders of the bonds or notes;

E. By action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds or notes; and

F. Declare all bonds or notes due and payable and, if all defaults shall be made good, then with the consent of the holders of 25% of the principal amount of the bonds or notes then outstanding to annul the declaration and its consequences.

The trustee shall, in addition to the powers set out in paragraphs A to F, possess all the powers necessary or appropriate for the exercise of any functions specifically set forth in this Act or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

Before declaring the principal of bonds or notes due and payable, the trustee shall first give 30-days' notice in writing to the Governor, to the agency and to the Attorney General.

The Superior Court of Kennebec County shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of the bondholders or noteholders.

§ 3387. Credit of State and members of agency not pledged

Obligations issued under this Act shall not be deemed to constitute a debt or liability or obligation of the State or of any political subdivision other than the agency or of any municipality or cooperative, nor shall they be deemed to constitute a pledge of the faith and credit of the State or of any such political subdivision or of any municipality or cooperative, but shall be payable solely from the revenues or assets of the agency. Each obligation issued by the agency shall contain on its face a statement to the effect that the agency is not obligated to pay the same nor the interest on it except from the revenues or assets pledged or otherwise available for those purposes and that neither the faith and credit nor the taxing power of the State or of any political subdivision other than the agency or of

any municipality or cooperative is pledged to the payment of the principal of or the interest on these obligations.

§ 3388. Notes and bonds as legal investments

Notwithstanding any other law, the State and all public officers, governmental units and agencies of the State, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, all credit unions and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or notes issued under this Act and the bonds or notes are authorized security for any and all public deposits.

CHAPTER 309

MISCELLANEOUS PROVISIONS

§ 3391. Annual reports; audit

On or before 90 days after the end of each fiscal year, the agency shall submit a report of its activities for the preceding fiscal year to the Governor, the Public Utilities Commission and the Legislature. Each report shall set forth a complete operating and financial statement covering its operations during the year, and shall contain a full and complete statement of the agency's anticipated budget and operations for the ensuing year. The agency shall cause an audit of its books and accounts to be made at least once in each fiscal year by certified public accountants; the cost shall be considered an expense of the agency and copies shall be filed with the Treasurer of State.

The State Auditor and his duly authorized representatives may at any time examine the accounts and books of the agency, including its receipts, disbursements, contracts, sinking funds, investments and any other matters relating to its financial statements.

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§ 3392. State services

All officers, departments, boards, agencies, divisions and commissions of the State are authorized and empowered to render any and all of such services to the agency as may be within the area of their respective governmental functions as fixed or established by law and as may be requested by the agency. The cost and expense of any services requested by the agency shall, at the request of the officer, department, board, agency, division or commission rendering such services, be met and provided for by the agency.

§ 3393. Public Utilities Commission jurisdiction

The agency shall not be subject to the regulatory jurisdiction of the Public Utilities Commission.

§ 3394. Jurisdiction of Public Utilities Commission

Any municipal energy agency created under this Act shall be subject to the jurisdiction of the Public Utilities Commission in the same manner as a public utility; provided that, with respect to the approval of securities to be issued to finance the costs of a project or an interest therein by an agency, upon the request of the agency, the commission shall approve at one time bonds which are sufficient to finance the agency's entire costs of the project even if such bonds are to be issued in series from time to time and even though the exact amount of the cost has not been finally determined and the approval may be of an undetermined or indefinite amount; and provided that, with respect to the fixing of rates to be charged by an agency for power and energy and other services, where the acquisition or construction of a project or any interest therein is to be financed by the issuance of securities under this Act secured by a pledge of revenues derived from contracts for the sale of power and energy, transmission and related services and such contracts as proposed provide for rates and charges to be set by a formula or formulas based upon costs incurred or to be incurred in connection with the financing and operation of the project, which may include reasonable reserves for the costs, then if the commission determines that the formula and formulas are reasonably related to the costs, the commission shall issue an order approving the formula or formulas and no further approval by the commission of the rates and charges determined pursuant to the contracts shall be required.

STATEMENT OF FACT

The Maine Municipal and Rural Electric Cooperative Agency Act (the "Act") is intended to help alleviate the serious deficiency which exists in the ability of various municipalities and rural electric cooperatives in the State presently providing electric power and energy for sale at retail to finance the acquisition, construction and installation of hydroelectric and other generating facilities and transmission and distribution facilities necessary to ensure an adequate, reliable and economical supply of electric power and energy. In order to alleviate this deficiency, the Act is intended to allow municipalities and rural electric cooperatives to finance such necessary facilities through a single financing vehicle, so as to reduce the costs of financing and operation and to make larger and more cost-efficient financings feasible.

The Act creates a Maine Municipal and Rural Electric Cooperative Agency (the "agency") which is empowered to assist municipalities and rural electric cooperatives by, among other things, borrowing money and issuing notes and bonds for the purposes enumerated in the Act purchasing and selling electric power and energy, contracting for the use of transmission and distribution facilities, acquiring or constructing facilities for the generation, production,

transmission, distribution, purchase, sale, exchange or interchange of electric energy and other purposes. The powers of the agency will be exercised by a board of directors appointed by the Governor.

Municipalities which were authorized, as of January 1, 1980, to engage in the manufacture, generation, transmission, distribution, purchase or sale of electricity to the general public, and were so engaged, and electric cooperatives organized as of January 1, 1980, are authorized to contract with the agency to accomplish the purposes of the Act.