

MAINE STATE LEGISLATURE

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(New Draft of S.P. 119, L.D. 334)
FIRST REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document

No. 1499

S.P. 574

In Senate, May 8, 1985

Reported by Senator Andrews of Cumberland from the Committee on Utilities and printed under Joint Rule 2. Original bill sponsored by Senator Baldacci of Penobscot. Cosponsored by Representative Richard of Madison, Representative Paradis of Old Town and Representative Weymouth of West Gardiner.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-FIVE

AN ACT to Simplify and Clarify the Public
Utilities Commission's Authority Over
Utility Issuance of Stocks, Bonds and
Notes.

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

Sec. 1. 35 MRSA §171, sub-§1 is amended to read:

1. Conditions precedent to issuance generally.
Any public utility, now organized and existing or hereafter incorporated under and by virtue of the laws of this State and doing business in ~~the~~ this State, may issue stocks, bonds which may be secured by mortgages on its property, franchises or otherwise, notes or other evidences of indebtedness, payable at periods of more than 12 months after the date thereof of issuance, when necessary for the acquisition of property to be used for the purpose of carrying out its corporate powers, the construction, com-

1 pletion, extension or improvement of its facilities,
2 or for the improvement or maintenance of its service,
3 or for the discharge or lawful refunding of its obli-
4 gations, including capital stock, or to reimburse its
5 treasury for moneys used for the acquisition of prop-
6 erty, the construction, completion, extension or im-
7 provement of its facilities, for the discharge or
8 lawful refunding of its obligations, and which actu-
9 ally were expended from income or from other moneys
10 in the treasury of the corporation not secured by or
11 obtained from the issue of stocks, bonds, notes or
12 other evidences of indebtedness of such corporation,
13 or for any other lawful purposes, provided and not
14 otherwise, that upon written application, setting
15 forth such information as the commission may require,
16 there shall have been secured from the commission an
17 order authorizing such issue and the amount thereof
18 and stating that in the opinion of the commission the
19 sum of the capital to be secured by the issue of said
20 stocks, bonds, notes or other evidences of indebted-
21 ness is required in good faith for purposes enumer-
22 ated in this section. In determining whether to
23 grant its authorization, the commission may consider
24 the reasonableness of the purpose or purposes for
25 which the proceeds of the issue shall be applied,
26 other resources which the utility has available or
27 may have available for those purposes, the justness
28 and reasonableness of the estimated cost to the util-
29 ity of the issue and the effect of the issue upon the
30 utility's capital structure. The commission decision
31 shall be in writing and shall contain findings set-
32 ting forth the reasons for the decision. Every such
33 order authorizing the issue of stock shall, if autho-
34 rized to be sold at less than its par value, specify
35 a minimum price at which the shares so authorized are
36 to be sold, and any and all shares of stock, issued
37 in accordance with such an order, shall be fully paid
38 stock and not liable to any further call or payment
39 thereon, notwithstanding it may have been authorized
40 for sale at less than its par value, ~~but chapters 1~~
41 ~~to 17 shall not apply to any stocks or bonds or other~~
42 ~~evidences of indebtedness heretofore lawfully autho-~~
43 ~~rized and issued.~~ The commission may at the request
44 of any public utility approve the issue of any
45 stocks, ~~or bonds heretofore bonds, notes or other ev-~~
46 ~~idences of indebtedness~~ authorized but not issued.
47 For the purpose of enabling the commission to deter-

1 mine whether it shall issue such an order, the com-
2 mission shall make such inquiries for investigation,
3 hold such hearings and examine such witnesses, books,
4 papers, documents or contracts as it may deem of im-
5 portance in enabling it to reach a determination. The
6 commission may determine whether and in what manner
7 notice of the application shall be given and whether
8 a hearing should be held. In view of the public in-
9 terest in the prompt resolution of questions affect-
10 ing the issuance of securities by public utilities,
11 in cases in which a hearing is held or the applica-
12 tion is contested, the commission shall issue its fi-
13 nal order within 60 days of the filing of the appli-
14 cation or 30 days of the close of the hearing on the
15 application, whichever first occurs, unless the com-
16 mission makes an affirmative determination that addi-
17 tional time is necessary for a proper resolution of
18 issues concerning the application and, notwithstand-
19 ing any other provisions of law, shall establish such
20 accelerated notice periods, schedules and limitations
21 on hearings as may be necessary in futherance there-
22 of. No order of the commission authorizing the issue
23 of any stocks, bonds, notes or other evidences of in-
24 debtedness shall may limit or restrict the powers of
25 the commission in determining and fixing any rate,
26 fare, toll, charge, classification, schedule or joint
27 rate as provided in chapters 1 to 17 this Title. No
28 public utility shall may be required to apply to the
29 commission for authority to issue stocks, bonds,
30 notes or other evidences of indebtedness for the ac-
31 quisition of property, for the purposes of carrying
32 out its corporate powers, the construction, comple-
33 tion, extension or improvement of its facilities, or
34 the improvement or maintenance of its service outside
35 the State, and this proviso shall apply to section
36 172.

37 Sec. 2. 35 MRSA §171, sub-§2 is repealed.

38 Sec. 3. 35 MRSA §171, sub-§2-A is enacted to
39 read:

40 2-A. Validity of securities issued pursuant to
41 order of commission. Any stocks, bonds, notes or oth-
42 er evidences of indebtedness issued or sold pursuant
43 to or in reliance on and in accordance with any or-

1 der, authorization or decision of the commission pur-
2 suant to this section, and at least 5 business days
3 after the date of the order, authorization or deci-
4 sion, shall be valid, binding and enforceable in ac-
5 cordance with their terms, including the terms of any
6 agreement, instrument or document under or pursuant
7 to which the stocks, bonds, notes or other evidences
8 of indebtedness are issued, notwithstanding that the
9 order, authorization or decision of the commission is
10 later vacated, modified or otherwise held to be whol-
11 ly or partly invalid, whether by the commission upon
12 a petition for rehearing or reopening, or otherwise,
13 or by a court, unless operation of the order, autho-
14 rization or decision of the commission has been
15 stayed or suspended by the commission or a court of
16 competent jurisdiction prior to the issuance of the
17 stocks, bonds, notes or other evidences of indebted-
18 ness.

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STATEMENT OF FACT

2 The purpose of this new draft is to retain the
3 present statutory standard for a determination by the
4 Public Utilities Commission as to whether to approve
5 a public utility stock or bond issue while retaining
6 from the bill the expanded list of factors the com-
7 mission may consider before rendering its decision.
8 The new draft contains a broad range of factors which
9 the commission may take into consideration in decid-
10 ing whether to approve the financing, but no standard
11 on which to base its decision.

12 This new draft also deletes from the bill the re-
13 quirement that the commission specify all the pur-
14 poses for which the proceeds of a utility stock or
15 bond issue may be used. With the large number of
16 utilities under the commission's jurisdiction and the
17 cumbersome accounting required, this would be an ex-
18 pensive administrative burden on both the commission
19 and the utilities.

20 The new draft also provides for expedited treat-
21 ment of public utility financings by the commission,
22 recognizing the need to complete the stock or bond
23 issue before market conditions change.

24 Finally, the new draft repeals an obsolete sec-
25 tion applying to railroads, also validates utility
26 stocks and bonds which have been approved by the com-
27 mission upon their issuance, unless the commission's
28 approval has been stayed or suspended by the commis-
29 sion or a court. This permits the utility to complete
30 the stock or bond issue without waiting for the
31 30-day appeal period to expire, while preserving the
32 right of aggrieved parties to question the approval
33 on appeal.

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