

MAINE STATE LEGISLATURE

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MINORITY REPORT

L.D. 2085

DATE: *January 25, 2002* (Filing No. S-405)

UTILITIES AND ENERGY

Reported by:

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STATE OF MAINE SENATE 120TH LEGISLATURE SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" to S.P. 751, L.D. 2085, Bill, "An Act Relating to the Transfer to GNE, LLC of Certain Privileges Bestowed by the Legislature upon Great Northern Paper, Inc."

Amend the bill by striking out everything after the title and before the concept draft summary and inserting in its place the following:

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the State has granted certain rights, privileges, immunities and franchises to Great Northern Paper, Inc. and its predecessors in interest, through a series of private and special laws, including, but not limited to, the authority to build, own, operate and maintain paper production facilities, and to construct, own and operate dams and hydroelectric and related facilities for the purpose of generating and transmitting electricity; and

Whereas, there is ambiguity regarding the extent to which the rights, privileges, immunities and franchises granted by the State to Great Northern Paper, Inc. and its predecessors in interest, other than those otherwise granted to a corporation under the Maine Revised Statutes, Title 13-A, are transferable or deemed to be transferable in connection with the sale or other conveyance by Great Northern Paper, Inc., or its successors in interest, of its dams and hydroelectric and related facilities located in the State; and

Whereas, the waters of the State of Maine are owned in perpetuity by the State in trust for the people of the State; and

COMMITTEE AMENDMENT

2 **Whereas**, Great Northern Paper, Inc. has entered into an
agreement to sell its dams and hydroelectric and related
facilities, with an anticipated closing in January 2002; and

4 **Whereas**, the sale of the dams and hydroelectric and related
6 facilities will benefit the pulp and paper production and related
facilities that are located in the towns of Millinocket and East
8 Millinocket, and the Katahdin region will benefit from the
operation of and capital investment, both present and future, in
10 the dams and hydroelectric and related facilities; and

12 **Whereas**, the Legislature finds that the Katahdin region will
benefit by an increase in the electric transmission line capacity
14 serving the region; and

16 **Whereas**, GNE, LLC intends to seek permits to invest
approximately \$92,000,000 over 20 years to improve the dams and
18 hydroelectric and related facilities and to seek permits
expeditiously to invest approximately \$16,000,000 to increase to
20 130 megawatts the electric transmission line capacity connected
to the dams and hydroelectric and related facilities and serving
22 the Katahdin region; and

24 **Whereas**, the sale of the dams and hydroelectric and related
facilities will result in a capital gain to Great Northern Paper,
26 Inc., on which it will pay state income tax; and

28 **Whereas**, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
30 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
32 safety; now, therefore,

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

36 **Sec. 1. Authority to transfer corporate rights.** Great Northern
Paper, Inc. and its assigns, designees, transferees and any other
38 successors to any of the rights, privileges, immunities or
franchises that have been granted by private and special law to
40 Great Northern Paper, Inc. and its predecessors in interest, may,
in connection with the sale, mortgage or other conveyance of any
42 interest in its dams and hydroelectric and related facilities,
referred to in this Act as "hydropower facilities," sell or
44 transfer any such rights, privileges, immunities or franchises
related to the hydropower facilities, and, notwithstanding any
46 private and special law to the contrary, but subject to all other
applicable provisions of law, including, but not limited to, the
48 Maine Revised Statutes, Title 35-A, sell or transfer and transmit
electricity to any 3rd parties. Nothing in this paragraph may

2 be construed to affect or limit any rights, privileges,
immunities or franchises granted by private and special law to or
4 obligations, conditions or limitations imposed upon Great
Northern Paper, Inc. and its predecessors in interest with
respect to anything other than the hydropower facilities.

6
8 In connection with the closing of the sale of the hydropower
facilities by Great Northern Paper, Inc., Great Northern Paper,
10 Inc. shall enter into an agreement allowing Great Northern Paper,
Inc. to purchase for a 10-year period, with an option to purchase
12 for another 5 years, an amount of electricity that is not less
than the amount of electricity generated by the hydropower
14 facilities. If such an agreement is not entered into, Great
Northern Paper, Inc. may not sell or transfer, pursuant to the
16 authority granted under this section, any of the rights,
privileges, immunities or franchises that have been granted by
18 private and special law to Great Northern Paper, Inc. and its
predecessors in interest and may not, pursuant to the authority
granted under this section, sell, transfer or transmit
20 electricity to any 3rd party.

22 The holder of any license issued under Part I of the Federal
Power Act, 18 United States Code, Sections 791a - 825r, for the
24 Hydropower Facilities shall provide to the Governor and the
Legislators representing the districts located within the
26 counties of Penobscot, Piscataquis and Aroostook written notice
of any of the following events sent by certified mail, and shall
28 provide the notified persons with an opportunity to meet and
discuss any resulting impacts to the Katahdin region, in any of
30 the following circumstances: prior to the filing of any
application to transfer any such license; prior to the filing of
32 any notification required by the Hart-Scott-Rodino Antitrust
Improvements Act of 1976, 15 United States Code, Section 18a with
34 respect to the Hydropower Facilities; and no later than 10 days
after the cessation of all paper production at either the paper
36 production facility in Millinocket or the paper production
facility in East Millinocket for a period of at least 90 days,
38 referred to in this Act as a "Paper Mill Closing." If the holder
of any such license fails to comply with the requirements of this
40 paragraph, the holder of the license may not sell or transfer,
pursuant to the authority granted under this Act, any of the
42 rights, privileges, immunities or franchises that have been
granted by private and special law to Great Northern Paper, Inc.
44 and its predecessors in interest and may not, pursuant to the
authority granted under this Act, sell, transfer or transmit
46 electricity to any 3rd party.

48 The authorizations granted and the obligations, conditions
and limitations imposed under this Act are pursuant and subject
50 to the State's ownership of the waters of the State.

2 **Sec. 2. Conditions and limitations.** Within the period beginning
4 at commencement of operation of increased electric transmission
6 line capacity serving the Katahdin region and ending 15 years
8 after the transfer to GNE, LLC of the Hydropower Facilities, if
10 there is a Paper Mill Closing the owner of the Hydropower
12 Facilities shall pay an annual amount of \$75,000 to the economic
14 development body serving the Katahdin region, as identified by
16 the Department of Economic and Community Development, for each
18 Paper Mill Closing. Payments cease upon the resumption of paper
production at the affected mill. For purposes of this section,
"increased electric transmission line capacity serving the
Katahdin region" means any electric transmission lines that will
allow the continuous transmission of electricity generated by the
Hydropower Facilities to or from any consumer other than the
paper production facility in Millinocket or the paper production
facility in East Millinocket and having a capacity to transmit in
excess of 70 megawatts.

20 The owner of the Hydropower Facilities and the owner of the
22 paper production facility in Millinocket or the paper production
24 facility in East Millinocket may not enter into any agreement or
26 understanding with each other under which the owner of the paper
28 production facility in Millinocket or the paper production
30 facility in East Millinocket receives revenue from the sale of
32 electricity from the Hydropower Facilities and there is a Paper
34 Mill Closing for the purpose of allowing or increasing the sale
36 of the electricity from the Hydropower Facilities to any other
38 purchaser or entity or into the wholesale electric market. If
40 the owner of the paper production facility in Millinocket or the
42 paper production facility in East Millinocket enters into such an
44 agreement or understanding, the owner of the paper production
46 facility shall pay to the Treasurer of State, upon the Paper Mill
Closing, an amount equal to the value of all tax credits or
reimbursements relating to property associated with that paper
production facility received by the owner pursuant to the Maine
Revised Statutes, Title 36, chapter 915 after the effective date
of this Act. If the owner of the Hydropower Facilities enters
into such an agreement or understanding, the owner of the
Hydropower Facilities may not sell or transfer, pursuant to the
authority granted under section 1 of this Act, any of the rights,
privileges, immunities or franchises that have been granted by
private and special law to Great Northern Paper, Inc. and its
predecessors in interest and may not sell, transfer or transmit,
pursuant to the authority granted under section 1 of this Act,
electricity to any 3rd party.

48 By January 15th of each even-numbered year beginning in 2004
50 and continuing until 2012, Great Northern Paper, Inc.,
representatives of all unions representing workers at paper

2 production facilities in Millinocket and East Millinocket and the
owners of the Hydropower Facilities shall prepare a report on the
3 status of the paper production facilities, the Hydropower
4 Facilities and the agreement allowing Great Northern Paper, Inc.
to purchase electricity for a 10-year period, with an option to
5 purchase for another 5 years. The report must include a copy of
6 this Act and be submitted to the Executive Director of the
7 Legislative Council for distribution to the joint standing
8 committee of the Legislature having jurisdiction over utilities
9 matters.
10

12 The joint standing committee of the Legislature having
jurisdiction over utilities matters may report out legislation
14 relating to the hydropower facilities to the 125th and 126th
Legislatures.
16

18 **Sec. 3. P&SL 1969, c. 62 is repealed.**

20 **Sec. 4. P&SL 1997, c. 71 is repealed.**

22 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.'

24 Further amend the bill by inserting at the end before the
concept draft summary the following:
26

28 'FISCAL NOTE

30 Transferring the charter rights to facilitate the sale of a
certain hydroelectric facility may increase current or future
32 General Fund revenue if a capital gain is realized depending on
the seller's current or future corporate income tax position.
34 Whether any such revenue might be in excess of budgeted estimates
can not be determined at this time.
36

38 The additional costs associated with identifying economic
development bodies serving the Katahdin region can be absorbed by
the Department of Economic and Community Development utilizing
40 existing budgeted resources.'

42 SUMMARY

44 This amendment, which is the minority report of the Joint
46 Standing Committee on Utilities and Energy, facilitates the
pending sale of Great Northern Paper, Inc.'s Hydroelectric
48 Facilities by allowing Great Northern Paper, Inc. and its
successors to transfer to 3rd parties any or all charter rights
50 related to Great Northern Paper, Inc.'s Hydroelectric Facilities,

COMMITTEE AMENDMENT "b" to S.P. 751, L.D. 2085

2 and confirms Great Northern Paper, Inc.'s authority to sell power
3 on the same basis as any other person engaged in the business of
4 selling electricity and to clarify that the purchaser of Great
5 Northern Paper, Inc.'s dams and hydroelectric and related
6 facilities will have that ability. The amendment also requires
7 notification and an opportunity to meet with the Governor and
8 area Legislators, upon the occurrence of certain events that
9 would affect the Katahdin region.

10 The amendment requires certain payments to be made to the
11 economic development body serving the Katahdin region if, during
12 a defined 15-year period, certain new transmission lines are
13 built and there is a Paper Mill Closing. The amendment prohibits
14 any agreement or understanding between the owner of the
15 Hydropower Facilities and the owner of either paper mill under
16 which the owner of a mill receives revenue from the sale of
17 electricity from the Hydropower Facilities and there is a paper
18 mill closing for the purpose of allowing or increasing the sale
19 of the electricity from the Hydropower Facilities to any other
20 purchaser or entity or into the wholesale electric market.

22 The amendment repeals certain obsolete provisions of Private
23 and Special Law relating to authorizations for certain entities
24 to sell power or transmit energy from the Hydropower Facilities.

26 The amendment also requires certain reports to be made to
27 the joint standing committee of the Legislature having
28 jurisdiction over utilities and energy matters and authorizes the
29 committee to report out legislation relating to the hydropower
30 facilities to the 125th and 126th Legislatures.