

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1275

S.P. 396

In Senate, March 23, 2011

### **An Act To Amend the Laws Governing the Activity of Certain Nonprofit Corporations**

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Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.

Secretary of the Senate

Presented by Senator HOBBS of York.  
Cosponsored by Representative TUTTLE of Sanford and  
Senators: RECTOR of Knox, SAVIELLO of Franklin, Representatives: CORNELL du HOUX  
of Brunswick, CRAY of Palmyra, DION of Portland, DUNPHY of Embden, LIBBY of  
Waterboro, MARTIN of Eagle Lake.

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

2 **Sec. 1. 13-B MRSA §404, sub-§1, ¶A**, as enacted by PL 1977, c. 525, §13, is  
3 amended to read:

4 A. Comply with the requirements of sections 104 and 106 and, in the case of the  
5 articles of incorporation for a nonprofit corporation exercising operating or  
6 administrative authority over the operation of high-voltage electric transmission  
7 facilities within this State, section 404-A;

8 **Sec. 2. 13-B MRSA §404-A** is enacted to read:

9 **§404-A. Nonprofit corporations exercising operating authority over high-voltage**  
10 **electric transmission lines**

11 **1. Filing conditions.** The Secretary of State may not file articles of incorporation  
12 under section 404 for a nonprofit corporation exercising operating or administrative  
13 authority over the operation of high-voltage electric transmission facilities within this  
14 State unless the Secretary of State determines that the nonprofit corporation satisfies the  
15 requirements of this section in addition to the other requirements of this chapter. The  
16 nonprofit corporation must demonstrate that it has an open and transparent governance  
17 structure designed to protect the public's interest. In evaluating whether the nonprofit  
18 corporation has met this requirement, the Secretary of State shall consider, among other  
19 factors, the following:

20 A. Whether all meetings of its board of directors are conducted as public proceedings  
21 in accordance with Title 1, chapter 13, subchapter 1, and all records of the  
22 corporation are available for public inspection as public records in accordance with  
23 Title 1, chapter 13, subchapter 1, with the exception of records that fall within an  
24 exception to the definition of "public records" under Title 1, section 402, subsection  
25 3;

26 B. Whether members of the board of directors are selected through a process of  
27 public nomination and election;

28 C. Whether the board of directors includes one or more representatives of consumers  
29 of electricity; and

30 D. Whether the rates, tariffs, rules, practices and activities of the nonprofit  
31 corporation are established by a process designed to ensure that such rates, tariffs,  
32 rules, practices and activities are just and reasonable.

33 The Secretary of State shall take into account any determination of the Public Utilities  
34 Commission as to whether the nonprofit corporation has an open and transparent  
35 governance structure designed to protect the public's interest.

36 **Sec. 3. 13-B MRSA §1201, sub-§1**, as enacted by PL 1977, c. 525, §13, is  
37 amended to read:

38 **1. Authorization needed.** Except as provided in section 1215, ~~no~~ a foreign  
39 corporation shall may not carry on activities in this State until it ~~shall have~~ has been

1 authorized to do so as provided in this chapter, or as provided by some other public law  
2 of this State. ~~A~~ Except as provided in section 1202, subsection 3, a foreign corporation  
3 ~~shall~~ may not be denied authority to carry on activities in this State solely because the  
4 laws of the jurisdiction of its incorporation differ from the laws of this State with respect  
5 to the organization and internal affairs of the corporation. For purposes of this chapter,  
6 exercising operating or administrative authority over the operation of high-voltage  
7 electric transmission facilities within this State constitutes carrying on activities in this  
8 State.

9 **Sec. 4. 13-B MRSA §1202, sub-§3** is enacted to read:

10 **3. Foreign corporations exercising operating authority over high-voltage**  
11 **electric transmission facilities; special certificate required.** A foreign corporation  
12 exercising operating or administrative authority over the operation of high-voltage  
13 electric transmission facilities within this State must comply with the requirements of this  
14 subsection in addition to the other requirements of this chapter in order to carry on its  
15 activities in this State. As part of its application to carry on its activities in this State, the  
16 corporation must file a certificate signed by a duly authorized officer affirming that the  
17 corporation has an open and transparent governance structure designed to protect the  
18 public's interest, including that the corporation agrees to and will comply with the  
19 following:

20 A. That all meetings of its board of directors are conducted as public proceedings in  
21 accordance with Title 1, chapter 13, subchapter 1 and all records of the corporation  
22 are available for public inspection as public records in accordance with Title 1,  
23 chapter 13, subchapter 1, with the exception of records that fall within an exception  
24 to the definition of "public records" under Title 1, section 402, subsection 3;

25 B. That members of the board of directors are selected through a process of public  
26 nomination and election;

27 C. That the board of directors includes one or more representatives of consumers of  
28 electricity; and

29 D. That the rates, tariffs, rules, practices and activities of the corporation are  
30 established by a process designed to ensure that such rates, tariffs, rules, practices and  
31 activities are just and reasonable.

32 Upon receipt of the certificate, the Secretary of State shall evaluate whether the applicant  
33 foreign corporation has an open and transparent governance structure designed to protect  
34 the public's interest. In performing this evaluation, the Secretary of State shall also  
35 consider factors including any determination of the Public Utilities Commission as to  
36 whether the foreign corporation has an open and transparent governance structure  
37 designed to protect the public's interest. The Secretary of State may not accept for filing  
38 an application from a foreign corporation exercising authority over high-voltage electric  
39 transmission facilities within the State for authority to carry out its activities in this State  
40 unless the Secretary of State concludes that the applicant foreign corporation has an open  
41 and transparent governance structure designed to protect the public's interest.

42 **Sec. 5. 13-B MRSA §1203, sub-§1**, as enacted by PL 1977, c. 525, §13, is  
43 amended to read:

1           **1. Filing of application for authorization to carry on activities.** Upon filing by the  
2 Secretary of State of the application for authority and in the case of a foreign corporation  
3 governed by section 1202, subsection 3, meeting all the requirements of section 1202,  
4 subsection 3, the foreign corporation shall ~~shall~~ must be authorized to carry on activities in this  
5 State, and may carry on any activities:

6           A. ~~Which~~ That it is authorized to carry on in the jurisdiction of its incorporation;  
7 and

8           B. ~~Which~~ That may be carried on by a domestic corporation organized under this  
9 Act, unless in its application for authority, the corporation expressly limited itself to a  
10 lesser number or type of activities, in which case the corporation may carry on the  
11 affairs to which it so limited its application if such affairs qualify under this  
12 paragraph and paragraph A.

13           **Sec. 6. 13-B MRSA §1301, sub-§1, ¶D,** as enacted by PL 2007, c. 323, Pt. B,  
14 §27 and affected by Pt. G, §4, is amended to read:

15           D. A brief statement of the character of the activities in which the domestic or  
16 foreign corporation is actually engaged in this State, if any; ~~and~~

17           **Sec. 7. 13-B MRSA §1301, sub-§1, ¶E,** as enacted by PL 2007, c. 323, Pt. B,  
18 §27 and affected by Pt. G, §4, is amended to read:

19           E. The address of its principal office, wherever located; and

20           **Sec. 8. 13-B MRSA §1301, sub-§1, ¶F** is enacted to read:

21           F. In the case of a corporation exercising operating or administrative authority over  
22 the operation of high-voltage electric transmission facilities within this State, a  
23 certificate signed by a duly authorized officer affirming that the corporation has an  
24 open and transparent governance structure designed to protect the public's interest,  
25 including that the corporation agrees to and will comply with the following:

26           (1) That all meetings of its board of directors are conducted as public  
27 proceedings in accordance with Title 1, chapter 13, subchapter 1 and all records  
28 of the corporation are available for public inspection as public records in  
29 accordance with Title 1, chapter 13, subchapter 1, with the exception of records  
30 that fall within an exception to the definition of "public records" under Title 1,  
31 section 402, subsection 3;

32           (2) That members of the board of directors are selected through a process of  
33 public nomination and election;

34           (3) That the board of directors includes one or more representatives of  
35 consumers of electricity; and

36           (4) That the rates, tariffs, rules, practices and activities of the corporation are  
37 established by a process designed to ensure that such rates, tariffs, rules, practices  
38 and activities are just and reasonable.

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## SUMMARY

2 This bill requires a nonprofit corporation exercising operating or administrative  
3 authority over the operation of high-voltage electric transmission facilities within this  
4 State to demonstrate that it has an open and transparent governance structure designed to  
5 protect the public's interest in order for the Secretary of State to file such corporation's  
6 articles of incorporation. The bill provides factors the Secretary of State shall consider in  
7 evaluating such a showing. The bill also requires a corporation exercising operating or  
8 administrative authority over the operation of high-voltage electric transmission facilities  
9 within this State to include a certification in its annual report that it has an open and  
10 transparent governance structure designed to protect the public's interest. The bill also  
11 provides that carrying on activities includes operating high-voltage transmission lines  
12 within the State. The bill also provides that a foreign corporation exercising operating or  
13 administrative authority over the operation of high-voltage electric transmission facilities  
14 within this State must file a certificate signed by a duly authorized officer affirming that  
15 the corporation has an open and transparent governance structure designed to protect the  
16 public's interest and that it will meet certain criteria in order to obtain authority to carry  
17 on its activities in this State. The bill also clarifies that a foreign corporation is not  
18 authorized to carry on activities in this State unless the Secretary of State has filed an  
19 application for authority by such corporation meeting all the requirements of the Maine  
20 Revised Statutes, Title 13-B, section 1202.