

# MAINE STATE LEGISLATURE

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L.D. 1644

Date: 3-21-12

(Filing No. S- 461 )

**MAJORITY**

**ENERGY, UTILITIES AND TECHNOLOGY**

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE**

**SENATE**

**125TH LEGISLATURE**

**SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ **A** ” to S.P. 543, L.D. 1644, Bill, “An Act To Expand the Availability of Natural Gas to Maine Residents”

Amend the bill by striking out everything after the title and before the summary and inserting the following:

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

**Whereas**, there are energy distribution system projects that will likely move forward within the next 6 months to take advantage of the summer and fall construction seasons; and

**Whereas**, the Finance Authority of Maine will need to implement the provisions of this Act prior to June 2012 to facilitate financing support for energy distribution system projects in 2012; and

**Whereas**, without immediate enactment, this legislation may not take effect in time to affect this year's construction season; and

**Whereas**, the availability of natural gas to large users and other consumers will potentially save tens of millions of dollars per year and losing a construction season and delaying projects will result in a significant lost opportunity; and

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

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

**Sec. 1. 10 MRSA §962, sub-§2**, as amended by PL 1985, c. 344, §5, is further amended to read:

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1           **2. Revenue obligation securities.** Issue revenue obligation securities to finance  
2 eligible projects, except that revenue obligation securities may not be issued for energy  
3 distribution system projects after January 1, 2018 pursuant to section 1044, subsection 13;

4           **Sec. 2. 10 MRSA §963-A, sub-§12,** as amended by PL 2011, c. 261, §1, is  
5 further amended to read:

6           **12. Energy distribution system project.** "Energy distribution system project"  
7 means an energy distribution system owned, in whole or in part, by an individual,  
8 municipality, corporation or other governmental entity or business association and that  
9 uses biomass, peat, solar, waste, water and related dams, wind, wood, or coal or that  
10 distributes or transmits oil, biofuels, propane, compressed natural gas, liquefied natural  
11 gas or natural gas or that distributes or transmits natural gas.

12           **Sec. 3. 10 MRSA §1043, sub-§2, ¶O,** as enacted by PL 2011, c. 261, §4, is  
13 amended to read:

14           O. In the case of an energy distribution system project regulated by the Public  
15 Utilities Commission with respect to rates or terms of service or that requires, for  
16 construction or operation, authorization or certification from the commission, the  
17 following conditions are met.

18                   (1) The energy distribution system project has received all authorizations or  
19 certifications from the Public Utilities Commission necessary for construction  
20 and operation of the project. The authority may issue a certificate of approval for  
21 a project that has received conditional approvals or certifications from the  
22 commission, except that the authority's certificate becomes legally effective only  
23 upon fulfillment of the conditional provisions of the commission's certificates or  
24 approvals. If the commission has approved rates to be charged by the project or  
25 has issued a certificate of public convenience and necessity for the project, the  
26 authority shall take into consideration any findings and conclusions of law of the  
27 commission, including any findings and conclusions pertaining to the need for  
28 the project and the financial viability of the project.

29                   (2) The authority has reviewed and considered any comments provided by the  
30 Director of the Governor's Office of Energy Independence and Security and the  
31 Public Advocate.

32                   (3) The authority has determined that the applicant is creditworthy and that there  
33 is a reasonable likelihood that the revenue obligation securities will be repaid  
34 through the revenues of the project and any other sources of revenues and  
35 collateral pledged to the repayment of those securities. In order to make these  
36 determinations, the authority shall consider such factors as it considers necessary  
37 and appropriate in light of the special purpose or other nature of the business  
38 entity owning the project and the specific purposes of the project to measure and  
39 evaluate the project and the sufficiency of the pledged revenues to repay the  
40 obligations, including, but not limited to:

41                           (a) Whether the individuals or entities obligated to repay the obligations  
42 have demonstrated sufficient revenues from the project or from other sources

- 1 to repay the obligations and a reasonable probability that those revenues will  
2 continue to be available for the term of the revenue obligation securities;
- 3 (b) Whether the applicant demonstrates a reasonable probability that the  
4 project will continue to operate and provide the public benefits projected to  
5 be created for the term of the revenue obligation securities;
- 6 (c) Whether the applicant's creditworthiness is demonstrated by factors such  
7 as its historical financial performance, management ability, plan for  
8 marketing its product or service and ability to access conventional financing;
- 9 (d) Whether the applicant meets or exceeds industry average financial  
10 performance ratios commonly accepted in determining creditworthiness in  
11 that industry;
- 12 (e) Whether the applicant demonstrates that the need for authority assistance  
13 is due to the reduced cost and increased flexibility of the financing for the  
14 project that result from authority assistance and not from an inability to  
15 obtain necessary financing without the capital reserve fund security provided  
16 by the authority;
- 17 (f) Whether collateral securing the repayment obligation is reasonably  
18 sufficient under the circumstances;
- 19 (g) Whether the proposed project enhances the opportunities for economic  
20 development;
- 21 (h) The effect that the proposed project financing has on the authority's  
22 financial resources;
- 23 (i) The financial performance of similar projects;
- 24 (j) The need for the project, as determined by the Public Utilities  
25 Commission and as indicated by any comments provided by the Director of  
26 the Governor's Office of Energy Independence and Security, other public  
27 officials and members of the public;
- 28 (k) The nature and extent of customer commitment to use the project or the  
29 fuel or energy the project distributes or transmits; ~~and~~
- 30 (l) The cost advantages to end users of the fuel or energy to be distributed or  
31 transmitted by the project, to the extent those advantages may affect market  
32 penetration by the project; and
- 33 (m) The nature and extent of the applicant's equity contribution to payment  
34 of the costs of the project; such a contribution may not be less than 25% of  
35 the expected cost of the project.

36 This paragraph is repealed January 1, 2018.

37 **Sec. 4. 10 MRSA §1044, sub-§13** is enacted to read:

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**13. Limitation.** The authority may not issue revenue obligation securities for energy distribution system projects unless the authority issued a certificate of approval for the energy distribution system project before January 1, 2018. Notwithstanding this subsection, revenue refunding securities may be issued to refund any outstanding revenue obligation securities.

**Sec. 5. 10 MRSA §1053, sub-§6, ¶A,** as amended by PL 2011, c. 261, §6, is further amended to read:

A. The sum of ~~\$330,000,000~~ \$180,000,000 consisting of not more than ~~\$275,000,000~~ \$150,000,000 for loans and up to ~~\$55,000,000~~ \$30,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for electric rate stabilization projects or loans for energy distribution system projects, ~~except that the authority's maximum financial liability for any energy distribution system project may not exceed the limits established annually by the authority;~~

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

**SUMMARY**

This amendment is the majority report. This amendment strikes the bill. It expands the definition of "energy distribution system project" for the purpose of receiving financing assistance from the Finance Authority of Maine to include systems that distribute or transmit oil, biofuels, propane, compressed natural gas or liquefied natural gas. It requires energy distribution system projects regulated by the Public Utilities Commission to provide at least a 25% equity contribution to the cost of the project in order to receive a certificate of approval from the Finance Authority of Maine. This amendment decreases the total debt obligation limit for securities to fund energy distribution system projects from \$330,000,000 to \$180,000,000 and removes the Finance Authority of Maine's authority to set limits for these types of securities annually. Finally, this amendment prohibits the Finance Authority of Maine from issuing revenue obligation securities for energy distribution system projects after January 1, 2018, unless a certificate of approval was issued before that date.