

MAINE STATE LEGISLATURE

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L.D. 1644

Date: 3-21-12

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MINORITY

ENERGY, UTILITIES AND TECHNOLOGY

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STATE OF MAINE

SENATE

125TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT “**B**” 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:

COMMITTEE AMENDMENT

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 §1043, sub-§2, ¶O,** as enacted by PL 2011, c. 261, §4, is
5 amended to read:

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

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

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

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

33 (a) Whether the individuals or entities obligated to repay the obligations
34 have demonstrated sufficient revenues from the project or from other sources
35 to repay the obligations and a reasonable probability that those revenues will
36 continue to be available for the term of the revenue obligation securities;

37 (b) Whether the applicant demonstrates a reasonable probability that the
38 project will continue to operate and provide the public benefits projected to
39 be created for the term of the revenue obligation securities;

40 (c) Whether the applicant's creditworthiness is demonstrated by factors such
41 as its historical financial performance, management ability, plan for
42 marketing its product or service and ability to access conventional financing;

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

28 This paragraph is repealed January 1, 2018.

29 **Sec. 3. 10 MRSA §1044, sub-§13** is enacted to read:

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

35 **Sec. 4. 10 MRSA §1053, sub-§6, ¶A**, as amended by PL 2011, c. 261, §6, is
36 further amended to read:

37 A. The sum of ~~\$330,000,000~~ \$180,000,000 consisting of not more than
38 ~~\$275,000,000~~ \$150,000,000 for loans and up to ~~\$55,000,000~~ \$30,000,000 for use of
39 bond proceeds to fund capital reserve funds for revenue obligation securities issued

