

MAINE STATE LEGISLATURE

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No. 1442

H.P. 1036

House of Representatives, April 24, 2013

An Act To Establish a Pilot Natural Gas Utility District in Maine

(EMERGENCY)

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative NADEAU of Winslow.
Cosponsored by Senator LACHOWICZ of Kennebec and
Representatives: BECK of Waterville, COTTA of China, FOWLE of Vassalboro, HOBBS of Saco, LONGSTAFF of Waterville, McCABE of Skowhegan, NUTTING of Oakland,
POULIOT of Augusta.

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

3 **Whereas,** the creation and organization of the Kennebec Valley Gas District are
4 urgently needed to ensure the prompt and timely delivery of a continuous supply of
5 natural gas to consumers within the City of Waterville and the Town of Winslow and in
6 any nearby communities voting to join the Kennebec Valley Gas District; and

7 **Whereas,** the establishment of other municipal natural gas districts throughout the
8 State is needed for similar reasons and purposes; and

9 **Whereas,** the City Council of Waterville and the Town Council of Winslow have
10 approved the establishment of the Kennebec Valley Gas District to promote, control and
11 administer the provision and distribution of natural gas to the City of Waterville and the
12 Town of Winslow; to provide the economic benefits from such natural gas availability to
13 the communities, businesses and citizens of the Kennebec Valley Gas District; and to
14 encourage energy efficiency, cogeneration and economic development; and

15 **Whereas,** the Waterville Development Corporation has approved expenditures of
16 funds for establishing the Kennebec Valley Gas District; and

17 **Whereas,** action must be taken promptly to provide for the provision of natural gas
18 to the citizens of the district; and

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

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

24 **PART A**

25 **Sec. A-1. Kennebec Valley Gas District.** Pursuant to the Maine Revised
26 Statutes, Title 30-A, section 2604, subsection 3, there is created within the City of
27 Waterville and the Town of Winslow and up to and including 4 nearby communities
28 voting to join the district, referred to in this Act as "the towns," the Kennebec Valley Gas
29 District, referred to in this Act as "the district," a quasi-municipal corporation, for the
30 purpose of exercising all powers and performing all duties of a public utility in
31 connection with or incidental to the management of a regional natural gas and power
32 district, which is empowered to cogenerate and distribute electric power, and to the
33 operation of the district within Kennebec County. The district is a public utility pursuant
34 to Title 35-A, chapter 21 and has all the powers and duties granted to public utilities and
35 is subject to the powers and purview of the Public Utilities Commission. The district
36 shall exclusively provide for the supply and distribution of natural gas to the citizens,
37 organizations and businesses of the district and is empowered to negotiate with suppliers
38 of natural gas for the supply and provision of natural gas to the district.

1 **Sec. A-2. Board of directors.** All of the affairs of the district are managed by a
2 board of directors, referred to in this Act as "the board," composed of no more than 5
3 directors who are elected, one each, by a plurality vote by the legal voters of the Town of
4 Winslow and by the legal voters of each town that has voted to join the district and 2 who
5 are appointed by the City Council of Waterville. At the first election of the board
6 staggered terms must be established by random selection for the directors from each
7 town: one director serves for a term that expires at the annual town meeting one year after
8 the date of the annual town meeting at which the director was elected; one director serves
9 for a term that expires at the annual town meeting 2 years after the date of the annual
10 town meeting at which the director was elected; one director serves for a term that expires
11 at the annual town meeting 3 years after the date of the annual town meeting at which the
12 director was elected; one director serves for a term that expires at the annual town
13 meeting 4 years after the date of the annual town meeting at which the director was
14 elected; and one director serves for a term that expires at the annual town meeting 5 years
15 after the date of the annual town meeting at which the director was elected. One director
16 from the City of Waterville serves for a term that expires at the city council meeting one
17 year after the date of the city council meeting at which the director was appointed, and
18 the other director from the City of Waterville serves for a term that expires at the city
19 council meeting 2 years after the date of the city council meeting at which the director
20 was appointed. After the initial elections and appointments, directors serve for a term of
21 5 years. A director from the City of Waterville or from a town that has joined the district
22 is appointed at the city council meeting or elected at the general election in the year the
23 office becomes vacant pursuant to the same schedule pursuant to this section. For a board
24 that has an even number of directors, if there is a tie vote on any matter, one of the
25 directors from the City of Waterville shall break the tie by casting an additional vote.

26 **Sec. A-3. Vacancies on board of directors.** Vacancies occurring on the board
27 are filled by appointment by the municipal officers of the town or city where the vacancy
28 occurred, and any appointee serves only until the next annual town meeting or city
29 council meeting when a successor is elected or appointed to fill the vacancy for the
30 unexpired term, unless the term expires at the next annual town meeting or city council
31 meeting and then election or appointment is as provided under section 2 of this Part. All
32 directors whether duly elected or appointed are eligible for reelection, but a municipal
33 officer of the City of Waterville or of a town is not eligible to be a director. The election
34 or appointment of a director as a municipal officer of a city or town terminates the term
35 of that director, and the vacancy caused by the termination is filled as provided in this
36 section.

37 **Sec. A-4. Compensation.** A director is not entitled to compensation for services,
38 except that compensation for a director may be provided by a legal vote of the municipal
39 officers of each member city or town.

40 **Sec. A-5. Treasurer; chair.** The board shall elect a treasurer and chair from
41 among its members to serve terms established by the board and serve until their
42 respective successors are elected and qualified. The board shall fix the compensation for
43 the treasurer.

1 **Sec. A-6. Annual audit.** An annual audit must be made of the district's accounts
2 within 60 days after the end of each fiscal year. The audit must be made by an individual
3 or firm recognized as a competent auditor by training and experience or by a qualified
4 public accountant.

5 **Sec. A-7. Annual report of directors.** At the end of each fiscal year and
6 following the audit pursuant to section 5 of this Part, the board shall make a detailed
7 report that includes the activities, receipts and expenditures, the financial and physical
8 condition and any other matters of the district, including how the board is fulfilling its
9 duties and obligations. The report must also include the auditor's report and be filed with
10 the municipal officers of the towns and published in the annual reports of the towns.

11 **Sec. A-8. Rules.** The board has the authority to adopt rules for the management
12 and operation of the district, subject to the rules of the Public Utilities Commission.

13 **Sec. A-9. Powers.** All powers, rights and privileges incidental or necessary to the
14 accomplishment of the purposes of this Act are granted to the district. The district is
15 granted the right to merge with another public utility created and operating under the laws
16 of the State by a 2/3 vote of the board at a meeting duly called for that purpose and
17 subject to the rules of the Public Utilities Commission. The district is also granted the
18 power to engage in the cogeneration of electric power through the use of natural gas,
19 which the district may control and distribute either by the district directly or through
20 agreements with a natural gas provider with which the district has contracted for the
21 provision of natural gas to the citizens, organizations and businesses of the district.

22 **Sec. A-10. Borrowing.** The district is authorized to borrow money by the
23 issuance of its general obligation securities for its utility for any purpose allowed by law.
24 All borrowing must be approved by the board. Bonds and notes must be signed by the
25 chair and treasurer of the board, except that coupons need be signed by only the treasurer.

26 **Sec. A-11. Current operating expenses.** The district by vote of its board is
27 authorized to borrow money for current operating expenses and to issue for that
28 borrowing bonds and notes of the district not to exceed \$800,000. The bonds and notes
29 must be paid within 5 years from their date of issuance and are legal obligations of the
30 district and are legal investments for savings banks.

31 **Sec. A-12. Money of the district.** All money received from the district's natural
32 gas works and other receipts, notes, bonds or other sources in connection with the district
33 must be deposited in banks or depositories as the board determines, in accounts entitled
34 "Kennebec Valley Gas District," and all withdrawals from the accounts must be over or
35 upon the orders or warrants of the board and must be directed to the treasurer. The
36 treasurer shall execute and carry out all orders and warrants.

37 **Sec. A-13. Directors; establish rates.** All individuals, partnerships, firms and
38 corporations, whether private, public or municipal, shall pay the rate established by the
39 board for the natural gas or power used by them. The rates for the natural gas or power
40 supplied must be uniform within the territory supplied by the district wherever the
41 installation and maintenance of natural gas or transmission lines and apparatus for

1 distribution of natural gas or other power and the cost of service are substantially
2 uniform. This section does not preclude the board, with the approval of the Public
3 Utilities Commission, from establishing higher rates in situations in which for any reason
4 the cost of construction and maintenance or the cost of service exceeds the average, but
5 the higher rates must be uniform throughout the part of the territory where they apply.
6 All rates are subject to the approval of the Public Utilities Commission and are
7 established to provide revenue for the following purposes:

8 1. To pay the current expenses of operating and maintaining the natural gas and
9 power systems, including all usual and ordinary repairs, replacements and improvements;

10 2. To provide for the payment of interest on the indebtedness of the district;

11 3. To provide each year a sum equal to not less than 2 1/2% nor more than 4% of the
12 book value of the depreciable assets of the district determined as of the close of the
13 preceding fiscal year, which must be turned into a sinking fund and used to provide for
14 repairs, replacements and improvements to the natural gas and power systems; and

15 4. To provide and accumulate from year to year reasonable surplus funds to carry out
16 the general purposes of the district, as may be necessary or desirable in the sole discretion
17 of the board. At the option of the board, any accumulated surplus may be deposited in
18 the sinking fund under this section.

19 **Sec. A-14. Subject to Public Utilities Commission.** Nothing contained in this
20 Act is intended to repeal nor may be construed as repealing any existing statute. All
21 rights and duties set forth in this Act must be exercised and performed in accordance with
22 the applicable provisions of the Maine Revised Statutes, Title 35-A.

23 **Sec. A-15. Superintendent appointment; removal.** The board may appoint a
24 superintendent of the district. The superintendent is selected solely on the basis of the
25 superintendent's administrative qualifications with special preference to actual experience
26 in or knowledge of utility operations. The board shall determine the superintendent's
27 compensation.

28 The superintendent holds office for an indefinite term unless otherwise specified by
29 contract. The superintendent may be removed or suspended for cause by the board in
30 accordance with the following procedures.

31 1. The board shall prepare a written preliminary resolution for the board action
32 setting forth the specific reasons for the proposed removal, a copy of which must be
33 delivered to the superintendent within 10 days of its completion.

34 2. The superintendent may, within 20 days of receiving the resolution, reply in
35 writing and may request a public or private hearing.

36 3. Upon receiving a request for a hearing, the board shall hold a hearing not earlier
37 than 10 days and not later than 30 days after the request is filed.

38 4. After the hearing or at the expiration of the time permitted the superintendent to
39 request a hearing, if no request is made, the board may adopt or reject the resolution.

1 5. The board may suspend the superintendent from duty in the preliminary
2 resolution, but the superintendent's salary may not be affected until the final resolution
3 has been adopted.

4 **Sec. A-16. Incidental powers granted.** All powers, rights and privileges
5 incidental or necessary to the accomplishment of the purposes of this Act are granted to
6 the district.

7 **Sec. A-17. Procedure to join district.** A town that does not belong to the
8 district may be included in the district if the town votes by a majority vote at a meeting
9 legally called and held to join the district. The town meeting must be called, advertised
10 and conducted according to the law relating to municipal elections, except that the
11 registrar of voters is not required to prepare, nor the clerk to post, a new list of voters, and
12 for the purpose of registration of voters the registrar of voters must be in session on the
13 secular day next preceding the regular or special meeting. The municipal clerk shall
14 prepare the ballots on which the following question must appear:

15 "Do you favor the Town of (insert name of town) joining the Kennebec
16 Valley Gas District?"

17 The voters shall indicate their choice by a cross or check mark placed below the word
18 "Yes" or "No."

19 The town becomes part of the district immediately upon its acceptance by a vote of
20 2/3 of the voters voting in the election, as long as the total number of votes cast equals or
21 exceeds 15% of the total votes cast for all candidates for Governor in the town at the
22 preceding gubernatorial election. Failure of approval by the necessary percentage of
23 voters at any meeting does not prevent a subsequent meeting or meetings from being held
24 for the same purpose. The result of the vote must be declared by the municipal officers of
25 the town, and due certification must be filed by the town clerk with the Secretary of State.

26 PART B

27 **Sec. B-1. Public Utilities Commission to study and recommend.** The
28 Public Utilities Commission shall study and make recommendations to the joint standing
29 committee of the Legislature having jurisdiction over utility matters by December 2, 2015
30 regarding the need for further enactment of legislation to facilitate or promote the
31 purposes of the establishment of municipal natural gas utility districts in the State.

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

34 SUMMARY

35 This bill establishes the Kennebec Valley Gas District, which is a pilot natural gas
36 utility district.

37 The bill also requires the Public Utilities Commission to study and make
38 recommendations to the joint standing committee of the Legislature having jurisdiction

1 over utility matters by December 2, 2015 regarding the need for further enactment of
2 legislation to facilitate or promote the purposes of the establishment of municipal natural
3 gas utility districts in the State.