

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document

No. 1761

H.P. 1263

House of Representatives, February 6, 2014

**An Act To Ensure That Large Public Utility Reorganizations
Advance the Economic Development and Information Access Goals
of the State**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND

Clerk

Presented by Representative HOBBS of Saco.

Cosponsored by Senator JACKSON of Aroostook and

Representatives: BERRY of Bowdoinham, CAREY of Lewiston, Speaker EVES of North Berwick, GILBERT of Jay, STUCKEY of Portland, TIPPING-SPITZ of Orono, Senator:

President ALFOND of Cumberland.

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

2 **Sec. 1. 35-A MRSA §708, sub-§2, ¶A,** as enacted by PL 1987, c. 141, Pt. A, §6,
3 is repealed.

4 **Sec. 2. 35-A MRSA §708, sub-§2, ¶¶A-1 and A-2** are enacted to read:

5 A-1. Unless exempted by rule or order of the commission, a reorganization in which
6 any of the public utilities that are parties to the proposed transaction has gross annual
7 state revenues exceeding \$50,000,000 may not take place without the approval of the
8 commission.

9 (1) Before approving a reorganization in which any of the public utilities that are
10 parties to the proposed transaction has gross annual state revenues exceeding
11 \$50,000,000, the commission must find that the proposal will:

12 (a) Advance the economic development and information access goals of the
13 State as set forth in section 7101, subsections 2 and 4 to the extent applicable
14 to the type of public utilities involved;

15 (b) Result in short-term and long-term economic benefits to ratepayers;

16 (c) Be consistent with the interests of the public utility's investors; and

17 (d) Be consistent with the interests of the public utility's employees.

18 (2) In granting its approval under subparagraph (1), the commission shall impose
19 such terms, conditions or requirements as in its judgment are necessary to ensure
20 that the reorganization provides an affirmative benefit to the public. These
21 conditions must include provisions that ensure:

22 (a) That the commission has reasonable access to books, records, documents
23 and other information relating to the public utility or any of its affiliates,
24 except that the commission may not have access to trade secrets unless
25 access is essential to the protection of the interests of ratepayers or investors.
26 The commission shall afford trade secrets and other information such
27 protection from public disclosure as is provided in the Maine Rules of Civil
28 Procedure;

29 (b) That the commission has all reasonable powers to detect, identify, review
30 and approve or disapprove all transactions between affiliated interests;

31 (c) That the public utility's ability to attract capital on reasonable terms,
32 including the maintenance of a reasonable capital structure, is not impaired;

33 (d) That the ability of the public utility to provide safe, reasonable and
34 adequate service is not impaired;

35 (e) That the public utility continues to be subject to applicable laws,
36 principles and rules governing the regulation of public utilities;

37 (f) That the public utility's credit is not impaired or adversely affected;

- 1 (g) That reasonable limitations are imposed upon the total level of
2 investment in nonutility business, except that the commission may not
3 approve or disapprove of the nature of the nonutility business;
- 4 (h) That the commission has reasonable remedial power, including, but not
5 limited to, the power, after notice to the public utility and all affiliated
6 entities of the issues to be determined and the opportunity for an adjudicatory
7 proceeding, to order divestiture of or by the public utility in the event that
8 divestiture is necessary to protect the interests of the public utility, ratepayers
9 or investors. A divestiture order must provide a reasonable period within
10 which the divestiture must be completed;
- 11 (i) That ratepayers, the public utility's investors and the public utility's
12 employees are not adversely affected by the reorganization;
- 13 (j) That the reorganization does not result in the subsidization by the public
14 utility of activities that are not connected to the provision of public utility
15 services to ratepayers;
- 16 (k) That the reorganization is not likely to have a significant adverse effect
17 on competition in those markets over which the commission has jurisdiction;
- 18 (l) That the reorganization is not likely to result in any adverse rate impact
19 on the public utility's retail customers; and
- 20 (m) That the reorganization does not adversely affect the location and the
21 accessibility of the public utility's management and operations and does not
22 adversely affect the proportion and number of the public utility's employees
23 who reside in the State.

24 A-2. Unless exempted by rule or order of the commission, a reorganization of a
25 public utility other than a public utility subject to paragraph A-1 may not take place
26 without the approval of the commission.

27 (1) The reorganization of a public utility other than a public utility subject to
28 paragraph A-1 may not be approved by the commission unless it is established by
29 the applicant for approval that the reorganization is consistent with the interests
30 of the public utility's ratepayers and investors. The commission shall rule upon a
31 request for approval of a reorganization under this subparagraph within 60 days
32 of the filing of the request for approval. If it determines that the necessary
33 investigation cannot be concluded within 60 days, the commission may extend
34 the period for a further period of no more than 120 days.

35 (2) In granting its approval under subparagraph (1), the commission shall impose
36 such terms, conditions or requirements as in its judgment are necessary to protect
37 the interests of ratepayers. These conditions must include provisions that ensure:

38 (a) That the commission has reasonable access to books, records, documents
39 and other information relating to the public utility or any of its affiliates,
40 except that the commission may not have access to trade secrets unless
41 access is essential to the protection of the interests of ratepayers or investors.
42 The commission shall afford trade secrets and other information such

- 1 protection from public disclosure as is provided in the Maine Rules of Civil
2 Procedure;
- 3 (b) That the commission has all reasonable powers to detect, identify, review
4 and approve or disapprove all transactions between affiliated interests;
- 5 (c) That the public utility's ability to attract capital on reasonable terms,
6 including the maintenance of a reasonable capital structure, is not impaired;
- 7 (d) That the ability of the public utility to provide safe, reasonable and
8 adequate service is not impaired;
- 9 (e) That the public utility continues to be subject to applicable laws,
10 principles and rules governing the regulation of public utilities;
- 11 (f) That the public utility's credit is not impaired or adversely affected;
- 12 (g) That reasonable limitations are imposed upon the total level of
13 investment in nonutility business, except that the commission may not
14 approve or disapprove of the nature of the nonutility business;
- 15 (h) That the commission has reasonable remedial power, including, but not
16 limited to, the power, after notice to the public utility and all affiliated
17 entities of the issues to be determined and the opportunity for an adjudicatory
18 proceeding, to order divestiture of or by the public utility in the event that
19 divestiture is necessary to protect the interests of the public utility, ratepayers
20 or investors. A divestiture order must provide a reasonable period within
21 which the divestiture must be completed; and
- 22 (i) That neither ratepayers nor investors are adversely affected by the
23 reorganization.

24 **Sec. 3. 35-A MRSA §708, sub-§4**, as enacted by PL 1987, c. 141, Pt. A, §6, is
25 amended to read:

26 **4. Filing fee.** Within 30 days after the application for approval of a reorganization is
27 filed pursuant to subsection 2, the commission may order the applicant to pay a filing fee
28 not to exceed \$50,000; if the commission determines that the application may involve
29 issues ~~which~~ that will necessitate significant additional costs to the commission except
30 that, in the case of a public utility subject to subsection 2, paragraph A-1, the commission
31 may order the applicant to pay a filing fee not to exceed \$100,000. The applicant may
32 request the commission to waive all or a portion of the filing fee. The commission shall
33 rule on the request for waiver within 30 days. Notwithstanding any other provision of
34 law, filing fees paid as required in this subsection ~~shall~~ must be segregated, apportioned
35 and expended by the commission for the purposes of processing the application. Any
36 portion of the filing fee that is received from an applicant and is not expended by the
37 commission to process the application ~~shall~~ must be returned to the applicant.

38 **Sec. 4. 35-A MRSA §1101, sub-§1-A** is enacted to read:

39 **1-A. Standard of approval for sales, mergers and consolidations of large public**
40 **utilities.** Before authorizing a sale, merger, consolidation or other disposition of property
41 subject to subsection 1 in which any of the public utilities that are parties to the proposed

1 transaction has gross annual state revenues exceeding \$50,000,000, the commission must
2 find that the proposal:

3 A. Advances the economic development and information access goals of the State as
4 set forth in section 7101, subsections 2 and 4 to the extent applicable to the type of
5 public utilities involved;

6 B. Results in short-term and long-term economic benefits to ratepayers;

7 C. Is consistent with the interests of the public utility's investors; and

8 D. Is consistent with the interests of the public utility's employees.

9 The commission shall impose such terms, conditions or requirements as in its judgment
10 are necessary to ensure that the transaction provides an affirmative benefit to the public.
11 These conditions must include provisions that ensure that the transaction meets each of
12 the factors set forth in section 708, subsection 2, paragraph A-1, subparagraph (2).

13 **Sec. 5. 35-A MRSA §1103, sub-§1-A** is enacted to read:

14 **1-A. Standard of approval for sales of large public utilities.** Before authorizing a
15 sale or other disposition of stock subject to subsection 1 in which any of the public
16 utilities that are parties to the proposed transaction has gross annual state revenues
17 exceeding \$50,000,000, the commission must find that the proposal:

18 A. Advances the economic development and information access goals of the State as
19 set forth in section 7101, subsections 2 and 4 to the extent applicable to the type of
20 public utilities involved;

21 B. Results in short-term and long-term economic benefits to ratepayers;

22 C. Is consistent with the interests of the public utility's investors; and

23 D. Is consistent with the interests of the public utility's employees.

24 The commission shall impose such terms, conditions or requirements as in its judgment
25 are necessary to ensure that the transaction provides an affirmative benefit to the public.
26 These conditions must include provisions that ensure that the transaction meets each of
27 the factors set forth in section 708, subsection 2, paragraph A-1, subparagraph (2).

28 **Sec. 6. Application.** Notwithstanding the Maine Revised Statutes, Title 1, section
29 302, this Act applies to any decision made by the Public Utilities Commission on or after
30 the effective date of this Act, including decisions made in proceedings pending at the
31 time this Act takes effect.

32 SUMMARY

33 This bill requires the Public Utilities Commission to approve a sale, merger,
34 consolidation or reorganization involving a public utility with gross annual state revenues
35 greater than \$50,000,000 only when it is satisfied that the proposal will advance the
36 economic development and information access goals of the State, result in economic
37 benefits to ratepayers and be consistent with the interests of investors and public utility
38 employees. The bill also allows the commission to charge a filing fee of up to \$100,000

1 to an applicant for reorganization when the applicant is a public utility that has gross
2 annual state revenues greater than \$50,000,000. In the case of a public utility with gross
3 annual state revenues totaling \$50,000,000 or less, the standard under this bill is the same
4 standard as is currently applicable.