

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1503

S.P. 528

In Senate, April 20, 2017

**An Act To Amend Criteria for Issuing a Certificate of Approval for
Certain Projects under the Finance Authority of Maine Act**

(EMERGENCY)

Submitted by the Finance Authority of Maine pursuant to Joint Rule 204.
Reference to the Committee on Labor, Commerce, Research and Economic Development
suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator VOLK of Cumberland.

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,** it is likely that applicants will seek financing for projects using the
4 Revenue Obligation Securities Program before this Act takes effect if it is not enacted on
5 an emergency basis; and

6 **Whereas,** if this Act is not enacted on an emergency basis, applicants could obtain
7 financing without sufficient credit safeguards to protect against the calling upon the moral
8 obligation of the State, leading to undue losses to the State; and

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

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

14 **Sec. 1. 10 MRSA §1043, sub-§2, ¶O,** as amended by PL 2015, c. 504, §3, is
15 further amended to read:

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

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

32 (2) The authority has reviewed and considered any comments provided by the
33 Director of the Governor's Energy Office and the Public Advocate.

34 (3) The authority has determined that the applicant is creditworthy and that there
35 is a ~~reasonable~~ strong likelihood that the revenue obligation securities will be
36 repaid through the revenues of the project and any other sources of revenues and
37 collateral pledged to the repayment of those securities. In order to make these
38 determinations, the authority shall consider such factors as it considers necessary
39 and appropriate in light of the special purpose or other nature of the business
40 entity owning the project and the specific purposes of the project to measure and

1 evaluate the project and the sufficiency of the pledged revenues to repay the
2 obligations, including, but not limited to:

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

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

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

13 (d) Whether the applicant meets or exceeds industry average financial
14 performance ratios commonly accepted in determining creditworthiness in
15 that industry;

16 (e) Whether the applicant demonstrates that the need for authority assistance
17 is due to the reduced cost and increased flexibility of the financing for the
18 project that result from authority assistance and not from an inability to
19 obtain necessary financing without the capital reserve fund security provided
20 by the authority;

21 (f) Whether collateral securing the repayment obligation is reasonably
22 sufficient under the circumstances;

23 (g) Whether the proposed project enhances the opportunities for economic
24 development;

25 (h) The effect that the proposed project financing has on the authority's
26 financial resources;

27 (i) The financial performance of similar projects;

28 (j) The need for the project, as determined by the Public Utilities
29 Commission and as indicated by any comments provided by the Director of
30 the Governor's Energy Office, other public officials and members of the
31 public;

32 (k) The nature and extent of customer commitment to use the project or the
33 fuel or energy the project distributes, transmits or generates;

34 (l) The cost advantages to end users of the fuel or energy to be distributed,
35 transmitted or generated by the project, to the extent those advantages may
36 affect market penetration by the project; and

37 (m) The nature and extent of the applicant's equity contribution to payment
38 of the costs of the project; such a contribution may not be less than 25% of
39 the expected cost of the project.

40 This paragraph is repealed January 1, 2020.

