

MAINE STATE LEGISLATURE

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Amendment Name: Amendment CA (H-845) (LD 1646 2020)

Date: 8/20/2020

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Date: (Filing No. H-)

ENERGY, UTILITIES AND TECHNOLOGY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1181, L.D. 1646, “An Act To Restore Local Ownership and Control of Maine's Power Delivery Systems”

Amend the bill by striking out the title and substituting the following:

'An Act To Explore Pathways to Increased Consumer Ownership of Maine's Energy Future'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 35-A MRSA §10105, sub-§8 is enacted to read:

8. Energy storage systems; generation assets. The trust may acquire, hold or dispose of any real or personal property that is part of or connected to an energy efficiency measure or system, an energy storage system or generation assets as consistent with the purposes of this chapter. For the purposes of this subsection, "energy storage system" has the same meaning as in section 3481, subsection 6 and "generation assets" has the same meaning as in section 3201, subsection 10.

Sec. 2. Notification of transmission and distribution utility sale; Public Utilities Commission inquiry. The Public Utilities Commission shall open an inquiry to examine and make recommendations regarding a process to provide timely notification to all entities authorized to own a transmission and distribution plant in the State of any proposed sale of an investor-owned transmission and distribution utility and to provide the opportunity for the notified entities to bid on the sale. The commission shall submit a report on the results of this inquiry to the joint standing committee of the Legislature having jurisdiction over energy and utility matters by March 15, 2021. The joint standing committee of the Legislature having jurisdiction over energy and utility matters may, after receipt of the report under this section, submit legislation related to the report to the First Regular Session of the 130th Legislature.

Sec. 3. Least-cost capital provider; Public Utilities Commission inquiry. The Public Utilities Commission shall open an inquiry to examine and make recommendations

COMMITTEE AMENDMENT

1 regarding a process or pilot program to finance capital investment in and ownership of a
2 new transmission and distribution plant by a least-cost capital provider at a lower cost to
3 ratepayers than available from the transmission and distribution utility and to compensate
4 transmission and distribution utilities for performance in planning, building, maintaining
5 and operating the new plant rather than for taxable equity investment. The commission
6 shall submit a report on the results of this inquiry to the joint standing committee of the
7 Legislature having jurisdiction over energy and utility matters by March 15, 2021. The
8 joint standing committee of the Legislature having jurisdiction over energy and utility
9 matters may, after receipt of the report under this section, submit legislation related to the
10 report to the First Regular Session of the 130th Legislature. For the purpose of this section,
11 "least-cost capital provider" means a tax-exempt 3rd-party entity able to finance and own
12 a transmission and distribution plant in the State.

13 **Sec. 4. Consumer Ownership Evaluation Task Force.** The Consumer Ownership
14 Evaluation Task Force, referred to in this section as "the task force," is established to
15 evaluate and provide recommendations regarding the establishment and operation of a
16 consumer-owned transmission and distribution utility to replace the investor-owned
17 transmission and distribution utilities in the State. The task force shall specifically evaluate
18 the proposal for the creation of the Maine Power Delivery Authority as presented in L.D.
19 1646, An Act To Restore Local Ownership and Control of Maine's Power Delivery
20 Systems, during the First Regular Session of the 129th Legislature with the amendment
21 presented by Representative Seth Berry to the Joint Standing Committee on Energy,
22 Utilities and Technology dated July 22, 2020, and may also consider and evaluate
23 variations or alternatives to that proposal that would achieve the same purposes.

24 **1. Members.** Notwithstanding Joint Rule 353, the task force is composed of 13
25 members, including 9 voting members and 4 nonvoting members, as follows:

26 A. Three public members, who serve as voting members of the task force, appointed
27 by the Governor as follows:

- 28 (1) One member with expertise in utility law or regulation;
29 (2) One member with expertise in utility management, planning or engineering;
30 and
31 (3) One member with expertise in large-scale energy generation or supply markets;

32 B Three public members, who serve as voting members of the task force, appointed
33 by the President of the Senate as follows:

- 34 (1) One member with expertise in medium-to-small-scale clean energy
35 development or financing;
36 (2) One member with expertise in the needs of lower-income or otherwise
37 disadvantaged consumers; and
38 (3) One member with expertise in the needs of business consumers;

39 C. Three public members, who serve as voting members of the task force, appointed
40 by the Speaker of the House as follows:

- 41 (1) One member with expertise in economics or utility finance;

1 (2) One member with expertise in the development of telecommunications systems
2 using shared utility infrastructure or of consumer-owned utilities; and

3 (3) One member with expertise in the needs of organized labor;

4 D. Two members of the Senate, who serve as nonvoting members of the task force,
5 appointed by the President of the Senate, including members from each of the 2 parties
6 holding the largest number of seats in the Legislature; and

7 E. Two members of the House of Representatives, who serve as nonvoting members
8 of the task force, appointed by the Speaker of the House, including members from each
9 of the 2 parties holding the largest number of seats in the Legislature.

10 Members of the 129th Legislature appointed pursuant to paragraph D or E serve on the task
11 force until the task force submits a final report in accordance with subsection 10.

12 Members of the task force may not have a personal economic or fiduciary interest that
13 would be affected by a recommendation, decision or other matter handled by the task force
14 and must sign an affidavit in accordance with subsection 2.

15 **2. Affidavit.** Prior to conducting any business as a member of the task force, a member
16 must have filed with the Maine Commission on Governmental Ethics and Election
17 Practices a sworn affidavit stating that the member:

18 A. Has not, in the 5 years prior to appointment, performed work for or held direct
19 financial interest in any transmission and distribution utility in the State, or its parent
20 company or affiliate; and

21 B. Agrees to refrain, for 5 years following appointment, from any activity by which
22 the member, the member's family or the member's employer could profit from the
23 consideration of, transition to or operations of any consumer-owned or investor-owned
24 transmission and distribution utility in the State.

25 The Maine Commission on Governmental Ethics and Election Practices shall, to the extent
26 practicable within existing resources, make a standard form affidavit available to the
27 members of the task force for the purposes of this subsection.

28 **3. Chair and vice-chair.** Notwithstanding Joint Rule 353, the task force shall elect
29 from its voting members a chair and a vice-chair. The vice-chair shall serve as acting chair
30 in the absence of the chair.

31 **4. Appointments; convening.** All appointments to the task force must be made no
32 later than 30 days following the effective date of this legislation. When the appointment
33 of all members has been completed, and the chair and vice-chair of the task force have been
34 elected, the chair shall call and convene the first meeting of the task force. Notwithstanding
35 Joint Rule 353, if 30 days or more after the effective date of this legislation a majority of
36 appointments but not all appointments have been made, the task force may meet and
37 conduct its business. The task force may conduct up to 5 meetings to complete its work.

38 **5. Quorum.** Notwithstanding Joint Rule 353, 5 voting members of the task force
39 constitute a majority and a quorum. All decisions of the task force must be made by a
40 majority vote of the task force.

41 **6. Duties.** To the extent that the task force receives sufficient funding under subsection
42 8, the task force shall:

- 1 A. Complete the following due diligence studies:
- 2 (1) A review of publicly available projections for the future capital expenditure
- 3 needs of the State's transmission and distribution system;
- 4 (2) A study to evaluate the finance and tax issues related to transitioning to a
- 5 consumer-owned transmission and distribution utility, including but not limited to:
- 6 finance and tax-related obstacles or opportunities in the initial acquisition of
- 7 investor-owned transmission and distribution utilities and the transition to a
- 8 consumer-owned transmission and distribution utility; recommendations for
- 9 optimizing the financial and capital structure; and a tax strategy to mitigate costs
- 10 and maximize both short-term and long-term benefits;
- 11 (3) A study to analyze and recommend a competitive procurement process and an
- 12 optimal contractual arrangement for an independent contractor to manage and
- 13 operate a consumer-owned transmission and distribution utility, including but not
- 14 limited to identification of appropriate performance standards for the contractor;
- 15 and
- 16 (4) A study of regional and federal systems, regulations and requirements that
- 17 affect the transition to a consumer-owned transmission and distribution utility,
- 18 including but not limited to: membership in regional transmission organizations;
- 19 obligations with respect to the Federal Energy Regulatory Commission;
- 20 opportunities to maximize regional and local transmission network service savings;
- 21 and recommendations with respect to the optimal relationship of the proposed
- 22 authority to ISO New England, Inc.;
- 23 B. Develop a recommended transition plan outline for the potential consumer-owned
- 24 transmission and distribution utility. The transition plan outline must, at a minimum,
- 25 include: a timeline for the transition including specific objectives or benchmarks;
- 26 identification of individuals or entities responsible for each objective or benchmark;
- 27 and potential variations and contingencies for the transition;
- 28 C. Develop a recommended business plan outline for the potential consumer-owned
- 29 transmission and distribution utility. The business plan outline must, at a minimum,
- 30 provide: a description of the consumer-owned transmission and distribution utility; an
- 31 overview of its objectives and mission; an outline of necessary operations procedures;
- 32 a description of the management and organizational structure; and an outline and
- 33 analysis of the financial plan for the consumer-owned transmission and distribution
- 34 utility; and
- 35 D. Determine whether or not it is in the public interest to transition to consumer
- 36 ownership for all transmission and distribution utilities in the State and make a
- 37 recommendation based on that determination, including specific recommendations for
- 38 next steps, within its final report under subsection 10. The determination required
- 39 under this paragraph must be based on:
- 40 (1) An assessment of the risks and rewards of the transition plan outline and
- 41 business plan outline developed in accordance with paragraphs B and C; and
- 42 (2) An evaluation of the short-term and long-term net public benefits of the
- 43 transition to and operation of a consumer-owned transmission and distribution
- 44 utility as compared to the continued operation of investor-owned transmission and

1 distribution utilities in the State. The evaluation of net public benefits must
2 consider a range of scenarios and assumptions regarding acquisition costs,
3 comparative capital costs and grid investment levels.

4 **7. Assistance.** The task force shall coordinate with and may request staffing,
5 administrative and other assistance from the following governmental entities as needed,
6 and these entities are authorized to assist the task force to the extent possible within existing
7 resources:

8 A. The Governor's Energy Office, established in the Maine Revised Statutes, Title 2,
9 section 9;

10 B. The Finance Authority of Maine, established in Title 10, section 964;

11 C. The Public Utilities Commission, established in Title 35-A, section 103;

12 D. The Public Advocate, appointed pursuant to Title 35-A, section 1701;

13 E. The Efficiency Maine Trust, established in Title 35-A, section 10103;

14 F. The Maine Climate Council, established in Title 38, section 577-A; and

15 G. The Office of Treasurer of State.

16 **8. Funding.** The task force shall seek funding contributions from one or more
17 not-for-profit organizations of its selection to fund its duties under subsection 6, including
18 any contracted services under subsection 9. The task force shall publicly disclose any
19 funding or other assistance provided to it by a not-for-profit organization and indicate the
20 name of the organization on any report or product produced with such assistance. All
21 funding is subject to approval by the Legislative Council in accordance with its policies. If
22 sufficient contributions to fund the duties of the task force have not been received within
23 90 days after the effective date of this Act, no meetings are authorized and no expenses of
24 any kind may be incurred or reimbursed.

25 **9. Contracted assistance.** To the extent that the task force receives sufficient funding
26 under subsection 8, the task force may contract for staffing, consulting or other services
27 from an independent entity as it determines necessary and appropriate to complete its work.
28 The task force may seek assistance from the Public Utilities Commission to conduct a
29 competitive solicitation, including the issuance of a request for proposals, to contract for
30 services from an independent entity under this section.

31 **10. Reports.** Notwithstanding Joint Rule 353, the task force shall submit an interim
32 status report, no later than March 15, 2021, and a final report no later than November 30,
33 2021, to the joint standing committee of the Legislature having jurisdiction over energy
34 and utility matters. The final report must include the results of the due diligence studies,
35 transition and business plan outlines, the evaluation of net public benefits and any
36 additional recommendations or conclusions of the task force regarding the transition to a
37 consumer-owned transmission and distribution utility. The joint standing committee of the
38 Legislature having jurisdiction over energy and utility matters may, after receipt of the
39 reports under this subsection, submit legislation related to the reports to the First or Second
40 Regular Session of the 130th Legislature.'

41 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
42 number to read consecutively.

SUMMARY

This amendment strikes and replaces the bill and does the following:

1. It authorizes the Efficiency Maine Trust to acquire, hold or dispose of any real or personal property that is part of or connected to an energy efficiency measure or system, an energy storage system or generation assets as consistent with the purposes of the trust under the Maine Revised Statutes, Title 35-A, chapter 97.

2. It directs the Public Utilities Commission to open an inquiry to examine and make recommendations regarding a process to provide timely notification to entities authorized to own a transmission and distribution plant in the State of any proposed sale of an investor-owned transmission and distribution utility and to provide the opportunity for the notified entities to bid on the sale and requires the commission to submit a report on the results of this inquiry to the joint standing committee of the Legislature having jurisdiction over energy and utility matters by March 15, 2021.

3. It directs the Public Utilities Commission to open an inquiry to examine and make recommendations regarding a process or pilot program to finance capital investment in and ownership of a new transmission and distribution plant by a least-cost capital provider at a lower cost to ratepayers and to compensate transmission and distribution utilities for performance in planning, building, maintaining and operating the new plant rather than for taxable equity investment. It requires the commission to submit the results of this inquiry to the joint standing committee of the Legislature having jurisdiction over energy and utility matters by March 15, 2021.

4. It establishes the Consumer Ownership Evaluation Task Force to evaluate and provide recommendations regarding the establishment and operation of a consumer-owned transmission and distribution utility to replace the investor-owned transmission and distribution utilities in the State. The task force is composed of 13 members, including 9 voting public members appointed by the Governor, President of the Senate and Speaker of the House and 4 nonvoting members: 2 members of the Senate appointed by the President of the Senate and 2 members of the House appointed by the Speaker of the House. The duties of the task force include:

A. Conducting due diligence studies including a review of publicly available projections for the future capital expenditure needs of the State's transmission and distribution system; a study to evaluate the finance and tax issues related to transitioning to a consumer-owned transmission and distribution utility; a study to analyze and recommend a competitive procurement process and an optimal contractual arrangement for an independent contractor to manage and operate a consumer-owned transmission and distribution utility; and a study of regional and federal systems, regulations and requirements that affect the transition to a consumer-owned transmission and distribution utility;

B. Developing a recommended outline for a transition plan for a potential consumer-owned transmission and distribution utility;

C. Developing a recommended business plan outline for a potential consumer-owned transmission and distribution utility; and

D. Determining whether or not it is in the public interest to transition to consumer ownership for all transmission and distribution utilities in the State and making a

1 recommendation based on that determination. The determination must be based on an
2 assessment of the risks and rewards of the transition plan and business plan outlines
3 and an evaluation of the short-term and long-term net public benefits of the transition
4 to and operation of a consumer-owned transmission and distribution utility.

5 The task force is directed to coordinate with, and may request assistance from, certain
6 governmental entities in the conduct of its work. It is required to seek funding contributions
7 from one or more not-for-profit organizations to fund its work. To the extent sufficient
8 funding is secured from one or more not-for-profit organizations, the task force is
9 authorized to contract for staffing, consulting or other services from an independent entity
10 to complete its work.

11 The task force is required to submit an interim status report no later than March 15,
12 2021 and a final report no later than November 30, 2021 to the joint standing committee of
13 the Legislature having jurisdiction over energy and utility matters. The joint standing
14 committee of the Legislature having jurisdiction over energy and utility matters may, after
15 receipt of the reports under this subsection, submit legislation related to the reports to the
16 First or Second Regular Session of the 130th Legislature.

17 **FISCAL NOTE REQUIRED**

18 **(See attached)**



129th MAINE LEGISLATURE

LD 1646

LR 138(02)

An Act To Restore Local Ownership and Control of Maine's Power Delivery Systems

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Energy, Utilities and Technology

Fiscal Note Required: Yes

Fiscal Note

Legislative Cost/Study

Current biennium cost increase - Other Special Revenue Funds

Legislative Cost/Study

The general operating expenses of this study/task force are projected to be \$1,695 in fiscal year 2020-21 and \$1,218 in fiscal year 2021-22. An estimated \$6,190 is available in fiscal year 2020-21 in the Legislature's budget for legislative studies as well as balances from prior years for this purpose. Whether these amounts are sufficient to fund all studies will depend on the number of studies authorized by the Legislative Council and the Legislature. The task force is authorized to contract for staffing, consulting or other services to complete its work. Whether or not these costs will be incurred will depend on the total amount of funds received by the task force and accepted by the Legislative Council. This fiscal estimate assumes the agencies listed in subsection 7 will provide staff support in the absence of additional funding beyond the funding needed to reimburse legislative members for their attendance.

Fiscal Detail and Notes

Any costs resulting from the Public Utilities Commission (PUC) initiating an inquiry related to notification of authorized entities of any proposed sale of an investor-owned transmission and distribution utility and to provide the opportunity to bid on the sale are anticipated to be minor and can be absorbed within existing budgeted resources. The PUC has indicated that a second inquiry regarding a process or pilot program to finance capital investment in and ownership of new transmission and distribution plant by a least-cost capital provider and to compensate transmission and distribution utilities for certain planning, building, maintaining and operating activities of a new plant would require specialized consulting assistance to provide a complete and comprehensive report in time for consideration in the next legislative session. No estimate of these costs is made at this time. Without this consulting assistance the PUC can only solicit public comments on the issues and provide a report that discusses the comments received and the questions raised.

Additional costs to the Office of the State Treasurer and the PUC associated with providing assistance to the task force can be absorbed within existing budgeted resources. The additional cost to the Finance Authority of Maine to provide the task force with insight and/or information on financing, if requested, can be absorbed within existing budgeted resources.