

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1646

H.P. 1181

House of Representatives, April 25, 2019

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

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

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative BERRY of Bowdoinham.
Cosponsored by President JACKSON of Aroostook and
Representatives: DOUDERA of Camden, GROHOSKI of Ellsworth, HUBBELL of Bar
Harbor, KESSLER of South Portland, RYKERSON of Kittery, Senators: LIBBY of
Androscoggin, MOORE of Washington, WOODSOME of York.

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

2 **Sec. 1. 5 MRSA §12004-G, sub-§36** is enacted to read:

3 **36.**

4 <u>Public Utilities</u>	<u>Maine Power</u>	<u>Legislative Per</u>	<u>35-A MRSA §4002</u>
5	<u>Delivery Authority</u>	<u>Diem and Expenses</u>	
6	<u>Board</u>		

7 **Sec. 2. 35-A MRSA §3501, sub-§1, ¶¶D and E**, as amended by PL 1999, c.
8 398, Pt. A, §85 and affected by §§104 and 105, are further amended to read:

9 D. The portion of any municipal or quasi-municipal entity providing transmission
10 and distribution services; ~~and~~

11 E. Any transmission and distribution utility wholly owned by a municipality; and

12 **Sec. 3. 35-A MRSA §3501, sub-§1, ¶F** is enacted to read:

13 F. The Maine Power Delivery Authority established in chapter 40.

14 **Sec. 4. 35-A MRSA c. 40** is enacted to read:

15 **CHAPTER 40**

16 **MAINE POWER DELIVERY AUTHORITY**

17 **§4001. Definitions**

18 As used in this chapter, unless the context otherwise indicates, the following terms
19 have the following meanings.

20 **1. Authority.** "Authority" means the Maine Power Delivery Authority established in
21 section 4002.

22 **2. Board.** "Board" means the Maine Power Delivery Authority Board established in
23 Title 5, section 12004-G, subsection 36.

24 **3. Cost of service.** "Cost of service" means the total amount that must be collected
25 by the authority to recover its costs but does not include any return on capital investment
26 unless a return is required as security for debt service.

27 **4. Customer-owner.** "Customer-owner" means a person to whom the authority
28 provides electricity.

29 **5. Generating source.** "Generating source" means a machine or device that
30 produces electric energy by any means.

1 **6. Previous franchisee.** "Previous franchisee" means an individual or entity having
2 any title or interest in any property, rights, easements or interests authorized to be
3 acquired by the authority under this chapter.

4 **7. Utility facility.** "Utility facility" means an item of plant used or useful in
5 providing transmission and distribution utility service and includes, but is not limited to,
6 transmission lines, office buildings, equipment and transportation equipment.

7 **8. Utility property.** "Utility property" means any tangible or intangible asset,
8 liability, obligation, plan, proposal, share, agreement or interest of a utility; any facility in
9 development or planning by the utility as of January 1, 2019; and, without limitation, the
10 entire utility and any part or portion of the utility.

11 **§4002. Maine Power Delivery Authority established; board members**

12 The Maine Power Delivery Authority is established to provide for its
13 customer-owners in this State reliable electric transmission and distribution services at
14 the lowest possible cost in accordance with this chapter.

15 **1. Governance; board.** The authority is created as a body corporate and politic and
16 a public instrumentality of the State and is governed by the Maine Power Delivery
17 Authority Board in accordance with this section.

18 The board is composed of 10 members, appointed by the Governor and confirmed by the
19 Legislature, all of whom must be residents of the State. One member must be a
20 residential consumer of electricity, one member must be a representative of a commercial
21 consumer of electricity and one member must be a representative of an industrial
22 consumer of electricity. No more than 5 of the members may be members of the same
23 political party. The Governor shall appoint members as follows:

24 A. Five members residing in the service territory of the State that was served by the
25 investor-owned transmission and distribution utility serving the largest number of
26 customers in the State on January 1, 2000;

27 B. Two members residing in the territory of the State that was served by the
28 investor-owned transmission and distribution utility serving the 2nd largest number
29 of customers in the State on January 1, 2000;

30 C. One member residing in the territory of the State that was served by the investor-
31 owned transmission and distribution utility serving the 3rd largest number of
32 customers in the State on January 1, 2000;

33 D. One member chosen from a list of at least 2 proposed members provided by an
34 organization representing the consumer-owned transmission and distribution utilities
35 in the State, other than the authority, serving at least 1,000 customers each; and

36 E. One member chosen from a list of at least 2 proposed members provided by the
37 executive board of a bona fide labor organization or an association of employees
38 representing at least 10% of the workforce employed by transmission and distribution
39 utilities in the State.

1 **2. Term of office.** A member of the board serves for a term of 6 years except that
2 members of the first board serve as follows, determined by lot by those members after
3 their appointment: 4 members serve 6-year terms, 3 members serve 4-year terms and 3
4 members serve 2-year terms. A member serves until the end of the member's term or
5 until the member's successor has been appointed, whichever is later. If there is a vacancy
6 in the board, it must be filled in the same manner described in subsection 1 and the person
7 appointed to fill a vacancy serves for the unexpired term of the member whose vacancy
8 the person is filling. Members may be reappointed.

9 **3. Quorum and chair.** Six members of the board constitute a majority and a
10 quorum. The board shall elect from its members a chair and a vice-chair. The vice-chair
11 shall serve as acting chair in the absence of the chair.

12 **4. Voting.** All decisions of the board must be made by a majority vote of the board.

13 **§4003. Powers and duties**

14 **1. Powers; generally.** The authority is a consumer-owned transmission and
15 distribution utility and has all the powers and duties of a transmission and distribution
16 utility under this Title, as affected by the provisions of chapter 35, within the service
17 territories of the investor-owned transmission and distribution utilities whose utility
18 facilities it acquires under this chapter.

19 **2. Limits on authority; generating property.** The authority may not own or
20 operate a generating source or purchase electric capacity or energy from a generating
21 source, except as the commission may approve in order to allow the authority to maintain
22 or improve system reliability.

23 **3. Operations.** The authority shall contract by means of a competitive public
24 solicitation the services of a qualified nongovernmental entity, referred to in this section
25 as "the contractor," to provide operations and administrative services.

26 **4. Employees.** The employees of the contractor retained to operate the authority's
27 facilities are considered private employees, with all the rights and responsibilities of
28 private employees. The contractor shall hire any person who was an employee of the
29 investor-owned transmission and distribution utility at the time the authority acquired the
30 investor-owned transmission and distribution utility who is a qualified, nonexempt
31 employee subject to collective bargaining agreements of the acquired investor-owned
32 transmission and distribution utility, to the extent of the contractor's need for personnel to
33 provide sound operation, and shall retain these employees for a period of 5 years after
34 first beginning operations. If otherwise qualified, any such employee may not be
35 terminated as a result of the 5-year period expiring. The contractor shall honor and
36 maintain the terms of any collective bargaining agreements in effect at the time the
37 authority acquired the investor-owned transmission and distribution utility for the
38 remaining term of any collective bargaining agreement, except that, when 2 or more
39 contracts exist, the employees' wages, salaries and benefits must be made reasonably
40 equal to the higher of those provided in the contracts or must exceed those previously
41 paid by the acquired investor-owned transmission and distribution utility.

1 Upon the conclusion of a contract pursuant to subsection 3, the authority, in soliciting for
2 a new contract, shall give preference to service providers who agree to maintain or
3 improve the terms of the collective bargaining agreement in existence on the conclusion
4 of the prior contract.

5 **5. Acquisition of utility property.** Within one year of appointment of the first
6 board, the authority shall purchase all utility facilities in the State owned or operated or
7 held for future use by any investor-owned transmission and distribution utility, except
8 that the board, by vote of at least 8 members, may extend the period by 12 months. The
9 board may also purchase or assume any other utility property should it determine such an
10 acquisition to be in the interest of its customer-owners. The board shall finance the
11 purchase by issuing debt in accordance with chapter 9.

12 A. The authority shall pay to the previous franchisee the net book value of the utility
13 facilities and any utility property, as reported in the most recent report prior to the
14 effective date of this chapter by the investor-owned transmission and distribution
15 utility to the commission or to the Federal Energy Regulatory Commission, unless the
16 authority and the previous franchisee mutually agree on a different purchase amount.

17 B. A final decision of the authority to offer a price for utility facilities and any utility
18 property may be appealed by a previous franchisee to the Law Court in the same
19 manner as an appeal taken from a judgment of the Superior Court in a civil action.

20 C. If a final purchase of any utility facilities and any utility property has not been
21 accomplished within one year of the appointment of the first board, or within 12
22 months after that date if the board extends the date in accordance with this
23 subsection, the authority may take the utility facilities and any utility property by
24 eminent domain in the same manner and under the same conditions as set forth in
25 chapter 65.

26 **6. Regional transmission.** The service territories of the authority initially remain in
27 the transmission system to which they belonged on the effective date of this chapter until
28 changed by majority vote of the board.

29 **7. Name.** The authority may adopt an alternative or abbreviated name for business
30 purposes.

31 **8. Consumer-owned transmission and distribution utilities; application.** This
32 subsection controls the treatment of consumer-owned transmission and distribution
33 utilities and the application of law to the authority.

34 A. This chapter may not be construed to affect the powers, authorities or
35 responsibilities of any consumer-owned transmission and distribution utility existing
36 on the effective date of this chapter or created after that date. The authority may not
37 oppose the extension of the service territory of a consumer-owned transmission and
38 distribution utility existing prior to the effective date of this chapter to include the
39 entirety of a municipality in which the consumer-owned transmission and distribution
40 utility provides electric service as long as the authority is reasonably compensated for
41 the assets and appurtenances required.

1 B. Notwithstanding any other provision of this chapter to the contrary, the authority
2 is subject to section 3104; section 3210-C, subsections 3, 7 and 11; sections 3212 and
3 3212-A; and section 3214, subsection 2-A.

4 **§4004. Rates**

5 The rates and all other charges of the authority must be sufficient to pay in full the
6 cost of service, including the cost of debt and any payments in lieu of taxation. No debt
7 or liability of the authority is a debt or liability of the State or any agency or
8 instrumentality of the State other than the authority, and neither the State nor any agency
9 or instrumentality of the State other than the authority guarantees any debt or liability of
10 the authority.

11 **§4005. Tax-exempt; payments in lieu of taxes**

12 **1. Tax exemptions.** The authority is a public municipal corporation within the
13 meaning and for the purposes of Title 36, section 651, and the property of the authority is
14 exempt from taxation to the extent provided in that section. Notwithstanding any other
15 provision of law, income of the authority, as a public instrumentality, is exempt from all
16 taxation or assessment by the State or any political subdivision of the State.

17 All bonds, notes and other evidences of indebtedness issued by the authority in
18 accordance with chapter 9 are legal obligations of the authority, and the authority is a
19 quasi-municipal corporation within the meaning and for the purposes of Title 30-A,
20 section 5701. All bonds, notes and other evidences of indebtedness issued by the
21 authority are legal investments for savings banks in this State and are exempt from state
22 income tax.

23 **2. Payments in lieu of taxes.** Rates charged by the authority must include sufficient
24 amounts to allow the authority to make payments in lieu of taxes in accordance with this
25 subsection. The authority, to the extent its revenues exceed current expenditures and any
26 necessary reserves in any fiscal year, shall make payments in lieu of taxes with respect to
27 its utility facilities or property to any municipality, county or other political subdivision to
28 which an investor-owned transmission and distribution utility whose utility facilities the
29 authority acquired pursuant to this chapter paid taxes and in the same amount as those
30 taxes would have been if the investor-owned transmission and distribution utility
31 continued to own the property or utility facilities. If the authority owns and manages a
32 service territory formerly franchised to an investor-owned transmission and distribution
33 utility for at least one month during fiscal year 2019-20 or fiscal year 2020-21, for each
34 such month, the authority also shall make timely payment in lieu of taxes to the State in
35 the amount of 1/12 of the most recent, full-year taxes paid to the State by the investor-
36 owned transmission and distribution utility. Such payment to the State must be reduced
37 by any amount paid in lieu of taxes pursuant to this subsection.

38 **§4006. Governmental function**

39 The authority, as a public instrumentality, performs a governmental function in the
40 carrying out of the provisions of this chapter, but no debt or liability of the authority may
41 be considered a debt or liability of the State.

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§4007. Termination of the authority

The authority may not be dissolved or cease operations except by authorization of law and only if all debt and liabilities of the authority have been paid or a sufficient amount for the payment of all debt and liabilities has been placed in an irrevocable trust for the benefit of the holders of the debt.

§4008. Accountability, transparency and reporting

The authority is subject to the same standards of governmental review and freedom of access as the Public Utilities Commission. By April 15th of each year, the authority shall submit a report to the joint standing committee of the Legislature having jurisdiction over utilities matters summarizing present and future activities and the performance of the authority in meeting its obligations to its ratepayers and employees.

Sec. 5. Review of laws and report. The Public Utilities Commission shall examine all laws that may be affected by this Act or need to be changed as a result of this Act, including laws governing the Maine Power Delivery Authority and laws relating to investor-owned transmission and distribution utilities that may be eliminated as a result of this Act. The commission shall determine any modifications to laws that may be necessary or appropriate as a result of this Act or to effectuate the purposes of this Act and shall submit proposed legislation to the Joint Standing Committee on Energy, Utilities and Technology no later than January 15, 2020. The Joint Standing Committee on Energy, Utilities and Technology may report out a bill relating to the subject matter of this Act to the Second Regular Session of the 129th Legislature.

SUMMARY

This bill creates the Maine Power Delivery Authority as a consumer-owned utility to acquire and operate all transmission and distribution systems in the State currently operated by the investor-owned transmission and distribution utilities known as Central Maine Power Company and Emera Maine.