

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

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PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
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1987

on May 22nd this year will not be possible unless the law is enacted as emergency legislation; and

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

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

Sec. 1. 1 MRSA §127 is enacted to read:

§127. Maine Merchant Marine Day

The Governor shall annually issue a proclamation setting aside May 22nd as Maine Merchant Marine Day. The proclamation shall invite and urge the people of the State to observe the day in schools and other suitable places with appropriate ceremony and study. The Maine Maritime Academy and the Department of Educational and Cultural Services may make appropriate information available to the people and the schools within the limits of their budgets.

The purpose of commemorating the United States Merchant Marines is to recognize the courage and heroism of merchant mariners who have served the nation in times of national emergencies. Merchant mariners have valiantly served the nation during periods of international conflict by serving as combatant crews on Letters of Marque during the Revolutionary War and the War of 1812 and on armed vessels during the Civil War. In World War I and World War II, they served on ships equipped with naval armament while transporting supplies and troops between the home front and war fronts. Thousands of merchant mariners have been killed, captured or injured in the defense of the nation.

Sec. 2. 20-A MRSA §405, sub-§8 is enacted to read:

8. Maine Merchant Marine Day. Maine Merchant Marine Day is May 22nd as established in Title 1, section 127.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective May 20, 1987.

CHAPTER 141

H.P. 1075 — L.D. 1458

AN ACT to Recodify the Public Utilities Law.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the statutes governing public utilities affect the vital interests of the people of Maine; and

Whereas, it is likely that the First Regular Session of the 113th Legislature will enact some legislation affecting public utilities; and

Whereas, the laws will be clearer if that new legislation is prepared with reference to the new, recodified Title 35-A; and

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

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

PART A

Sec. 1. 22 MRSA §3602 is enacted to read:

§3602. Telecommunication services for the deaf, hearing impaired and speech impaired

1. Money for telecommunication typewriters. The Bureau of Rehabilitation within the Department of Human Services, pursuant to any appropriation of money to the bureau for telecommunication typewriters for the deaf, hearing impaired and speech impaired, shall, upon request, provide up to 50% of the cost of telecommunication typewriters to any organization or municipality that makes available the remaining funds for this equipment in a manner satisfactory to the Director of the Bureau of Rehabilitation.

2. Telecommunications Equipment Fund. A Telecommunications Equipment Fund is established. The Division of Deafness in the Bureau of Rehabilitation may accept any gifts or grants for the purposes of this section. These, and any authorized appropriations shall be deposited in the fund, and disbursed in accordance with this section. The fund may be used for purchase, lease, upgrading, installation, maintenance and repair of special telecommunications equipment for the deaf, hearing impaired or speech impaired. The Division of Deafness under the Bureau of Rehabilitation may draw on the fund in accordance with the Telecommunications Equipment Plan required under subsection 3.

3. Telecommunications Equipment Plan. The Division of Deafness shall develop a plan to make special telecommunications equipment available to deaf, hearing impaired and speech impaired persons and to distribute money from the Telecommunications Equipment Fund. The plan shall be developed by the Division of Deafness annually, not later than January 1st, in accordance with the rule-making procedures in Title 5, chapter 375. The plan shall provide for the expenditure of money from the fund for the benefit of deaf, hearing im-

paired and speech impaired persons for the purchase, lease, upgrading, installation, maintenance and repair of special telecommunications equipment capable of serving their needs. Persons who are profoundly deaf or speech impaired so that they cannot use the telephone for expressive or receptive communications, as verified by a written report from an otologist, audiologist or physician are eligible for the assistance from the fund. The plan shall include specific criteria that will govern the priorities assigned to various persons who need this equipment. The criteria shall take into account household income, degree of impairment, need for emergency communications, living arrangements and other factors deemed relevant by the Division of Deafness.

Sec. 2. 23 MRSA c. 410, first 2 lines, are repealed and the following enacted in their place:

PART 5

DEPARTMENT OF TRANSPORTATION

CHAPTER 410

DEPARTMENT OF TRANSPORTATION

Sec. 3. 23 MRSA c. 411, first 2 lines, are repealed and the following enacted in their place:

PART 6

WATERBORNE TRANSPORTATION

CHAPTER 411

MAINE STATE FERRY ADVISORY BOARD

Sec. 4. 23 MRSA Pt. 7 is enacted to read:

PART 7

RAILROADS

CHAPTER 601

DEFINITIONS AND MISCELLANEOUS

§5001. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

1. Railroad. "Railroad" includes every commercial, interurban and other railway and each and every branch and extension thereof by whatsoever power operated, together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures and equipment and all other real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property.

2. Railroad company. "Railroad company" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any railroad for compensation within this State.

3. Steam railroad or steam railroad company. "Steam railroad" or "steam railroad company" means any railroad or terminal company, however chartered, using steam as its motive power or using Diesel engines; and the terms "electric railroad" or "electric railroad company" means any railroad or terminal company using electricity as its motive power.

4. Transportation of persons. "Transportation of persons" includes every service in connection with or incidental to the safety, comfort and convenience of the person transported and the receipt, carriage and delivery for that person and his baggage.

5. Transportation of property. "Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage and handling, and the transmission of credit by express or telegraph companies.

§5002. Liability of railroads for payment of laborers

Every railroad company, in making contracts for the building of its road, shall require sufficient security from the contractors for the payment of all labor thereafter performed in constructing the road by persons in their employment. The company is liable to the laborers employed for labor actually performed on the road if they, within 20 days after the completion of the labor, in writing, notify its treasurer that they have not been paid by the contractors, but the liability terminates unless the laborer commences an action against the company within 6 months after giving the notice.

§5003. Collection of judgment against foreign lessee

When any foreign railroad company, which is or has been doing business in this State as the lessee of any railroad, refuses or neglects for 60 days after demand to pay and discharge any judgment recovered by any person against the company owning that leased road for damages to the property of the person by the doings, misdoings or neglects of the foreign company, its agents or servants, which judgment belongs to the foreign company to pay and discharge, the Superior Court, on complaint, may compel payment thereof by the foreign corporation and make, pass and enforce all necessary orders, decrees and processes for the purpose.

§5004. Judgment creditor may have remedy against lessors

When any judgment is recovered and the foreign company neglects, for 60 days, to satisfy it, the judgment

creditor may have a civil action against the foreign company for the recovery of the amount of the judgment, with interest and costs.

CHAPTER 603

ORGANIZATION

§5071. Approval of location; proceedings

Every corporation organized under this Title, Title 13-A, or former Title 35, before commencing the construction of its road, shall present to the Department of Transportation a petition for approval of location, defining its courses, distances and boundaries accompanied with a map of the proposed route; with a profile of the line on the relative scales of profile paper in common use; and with a report and estimate prepared by a skillful engineer from actual survey. The department shall, on presentation of that petition, appoint a day for hearing and the petitioners shall give such notice as the department deems reasonable and proper, in order that all persons interested may have an opportunity to appear and object. If the department, after hearing the petition, approves the proposed location, the corporation may proceed with the construction, provided they first file with the clerk of the county commissioners of each county through which the road passes a plan of the location of the road, defining its courses, distances and boundaries, and a copy of the plan with the department. The location filed shall not vary, except to avoid expense of construction, from the route first presented to the department. The location, together with any variation made in that location, shall be filed within 2 years from the time when the articles of incorporation are filed in the office of the Secretary of State. The Department of Transportation, upon written application, may extend the time of filing the variations in its discretion. No railroad may be made across tide waters where vessels can navigate without first obtaining special permission of the Legislature.

§5072. Location; subscribers' objections; proceedings

The railroad shall be located within the time and substantially according to the description of its charter and the location shall be filed with the county commissioners, who shall endorse the time of filing thereon and order that location recorded. When a corporation, by its first location, fails to acquire the land actually embraced in its roadway, or the location as recorded is defective or uncertain, it may, at any time, correct and perfect its location and file a new description. In that case, it is liable in damages, by reason of the new or amended location, only for land embraced therein for which the owner had not previously been paid. Railroad charters, whenever granted, limiting the time within which the railroad must be completed do not affect the portion completed within that time and all charters under which railroads have been constructed for a portion of the line authorized are confirmed and made valid as to that portion.

CHAPTER 605

MANAGEMENT AND OPERATION

SUBCHAPTER I

FARES AND TOLLS

§5121. Fares and tolls established

Any railroad corporation may establish and collect for its sole benefit, fares, tolls and charges upon all passengers and property conveyed and transported on its railroad, at such rates as may be determined by the directors of the railroad corporation and shall have a lien on its freight therefor, and may from time to time regulate by its directors the use of its road. The rates of fares, tolls, charges and regulations are at all times subject to alteration by the Legislature or by such officers or persons as the Legislature may appoint for the purpose, anything in the charter of the corporation to the contrary notwithstanding.

§5122. Rights of ticket holders

No railroad company may limit the right of a ticket holder to any given train, but the ticket holder may travel on any train, whether regular or express, and may stop at any of the stations along the line of the road at which the trains stop. The ticket shall be good for passage for one year from the day it was first issued. Railroad companies may sell excursion, return or other special tickets at less than the regular rates of fare, to be used only as provided on the ticket.

§5123. Railroad tickets; cancellation and exchange

Section 5122 shall not prevent railroad corporations from establishing necessary rules and regulations for the cancellation of tickets and exchange of partially used tickets, but the rules and regulations shall be publicly posted at each ticket office and on all passenger trains and, when practicable, printed upon the tickets. Any ticket or check given in exchange for the unused portion of a partially used ticket continues in force for the full term of the original ticket, as provided in section 5122.

§5124. Sale of limited tickets

No person, other than a duly authorized agent of the railroad company issuing a railroad ticket, may sell, offer for sale or loan any railroad ticket limited to the use of a person or persons specified on the ticket at the time of its issuance by the railroad company, under a penalty of not less than \$10 nor more than \$100, for each offense, to be recovered on complaint.

§5125. Evading payment of fare or riding freight train

No person is entitled to transportation over a steam railroad or upon any ferry or in a taxicab or public automobile, who does not on demand first pay the estab-

lished fare. Whoever, while being transported over any steam railroad, ferry or in a taxicab or public automobile, willfully refuses on demand to pay the established fare and whoever fraudulently evades payment of the established fare by giving a false answer, by traveling beyond the place to which he has paid or by leaving a train, ferry, taxicab or public automobile without paying the established fare, whether that fare is demanded or not, forfeits not less than \$5 nor more than \$20, to be recovered on complaint. No person, without right, may loiter or remain or place or cause to be placed any property or obstruction on the right-of-way of a railroad corporation or on land owned by a railroad corporation adjoining or adjacent to its right-of-way or, without right, may board or attempt to board or remain on any railroad freight train, freight car, caboose, locomotive or work equipment. Any person violating this portion of this section is guilty of a Class E crime.

SUBCHAPTER II

SERVICES

§5141. Intersecting roads

Railroads intersecting or crossing each other shall be deemed, for all business purposes, connecting roads.

§5142. Trains crossing at same hour; exchange of baggage

When railroads cross each other and passenger trains are due at the crossing at the same hour, the train first arriving shall wait for the arrival of the other, if it comes within 20 minutes. Each shall afford suitable opportunity for passengers desiring to change with their baggage from one train to the other. The superintendent, conductor and engineer of the road violating this provision forfeits to the State for each offense not less than \$10 nor more than \$50, to be recovered on complaint.

§5143. Equal facilities to all expresses

Every railroad operating in the State shall furnish reasonable and equal facilities and accommodations to all persons engaged in express business for transportation of themselves, agents, servants, merchandise and other property; for the use of their stations, buildings and grounds; and for exchanges at points of junction with other roads, under a penalty of not more than \$500, to be recovered by indictment and are liable to the aggrieved party in a civil action for damages.

§5144. Discontinuance of service

No railroad or railroad company may discontinue service to any point served prior to January 1, 1982, unless the railroad or railway company has filed with the Department of Transportation and with any municipality affected by the discontinuance of service and, in the case where service is discontinued solely to one shipper, with that shipper, a written notice of intention to dis-

continue that service. The written notice shall be given at least 30 days prior to discontinuing the service. This section does not apply to any railroad corporation engaged in interstate commerce while and so long as that corporation is required by federal law to make application to and procure consent from the Interstate Commerce Commission as a condition precedent to any such abandonment of property or discontinuance of service as is contemplated in this section.

SUBCHAPTER III

SHARES, COUPONS AND MORTGAGES

§5151. Shares

Shares in the capital of railroad corporations are personal estate and may be transferred in the same manner and with the same rights as shares in other corporations are transferred.

§5152. Rights of coupon holders

When coupons for interest issued with bonds are, for a valuable consideration, detached and assigned by delivery, the assignee may maintain a civil action upon them in his own name against the corporation engaging to pay them.

§5153. Trustees; vacancies; elections affirmed; decrees enforced

When a railroad corporation mortgages its franchise for the payment of its bonds or coupons and trustees are appointed by the corporation, by special law or by the mortgage, the bondholders, at a regular meeting called for the purpose and notified as provided may, from time to time, elect by ballot new trustees to fill vacancies, when no other method for filling vacancies is specifically provided in the appointment, special law or mortgage. Any party interested may present the proceedings of the meeting to the Superior Court. The court shall appoint a time of hearing and order such notice to parties interested as it deems proper, and may affirm the elections and make and enforce any decrees necessary for the transfer of the trust property to the new trustees. The decrees shall be filed with the clerk of the judicial court where the hearing is had and be recorded by him.

§5154. Breach of mortgage; meeting of bondholders

The neglect of the corporation to pay any overdue bonds or coupons secured by a mortgage, for 90 days after presentment and demand on the treasurer or president of the corporation, is a breach of the conditions of the mortgage. Upon such a breach, the trustees shall call a meeting of the bondholders, by publishing the time and place of the meeting for 3 weeks successively in the state paper and in some paper in the county where the road lies, the last publication to be at least one week before the time of the meeting.

§5155. One vote for every \$100 of bonds

At such a meeting and all others, each bondholder present shall have one vote for each \$100 of bonds held by him or represented by proxy. They may organize by the choice of a moderator and clerk and determine whether the trustees shall take possession of the road and manage and operate it in their behalf.

§5156. Trustees taking possession have corporate powers

If the bondholders so determine, the trustees shall take possession of the road and all other property covered by the mortgage and have all the rights and powers and be subject to all the obligations of the directors and corporation of the road and may prosecute and defend suits in their own name as trustees.

§5157. Receipts and expenditures; trustees not liable; road surrendered

The trustees shall keep an accurate account of the receipts and expenditures of the road and exhibit it, on request, to any officer of the corporation or other person interested. They shall, from the receipts, keep the road, buildings and equipment in repair, furnish such new rolling stock as is necessary and the balance, after paying running expenses, shall be applied to the payment of any damages arising from misfeasance in the management of the road and after that, according to the rights of parties under the mortgage. They are not personally liable except for malfeasance or fraud. When all overdue bonds and coupons secured by the mortgage are paid, they shall surrender the road and other property to the parties entitled to them.

§5158. Bondholders' meetings; reports; compensation and instructions for trustees

The trustees shall annually, and at other times on written request of 1/5 of the bondholders in amount, call a meeting of the bondholders in the manner prescribed in the bylaws of the corporation for calling a meeting of stockholders and report to them the state of the property, the receipts, expenses and the application of the funds. At the meeting, the bondholders may fix the compensation of the trustees; instruct them to contract with the directors of the corporation or other competent party to operate the road while the trustees have the right of possession, if approved by the bondholders at a regular meeting, otherwise not exceeding 2 years and to pay them the net earnings; or may give them any other instruction that they deem advisable; and the trustees shall conform thereto, unless inconsistent with the terms of the trust.

SUBCHAPTER IV

FORECLOSURE AND REDEMPTION
OF MORTGAGES§5161. Railroad mortgages foreclosed

The trustees, on application of 1/3 of the bondholders in amount to have railroad mortgage foreclosed, shall immediately give notice thereof, by publishing it 3 weeks successively in the state paper and in some paper, if any, in each county into which the road extends, stating the date and conditions of the mortgage, the claims of the applicants under it, that the conditions of the mortgage have been broken and that for that reason they claim a foreclosure. They shall cause a copy of the notice and the name and date of each newspaper containing it to be recorded in the registry of deeds in every such county within 60 days from the first publication. Unless, within 3 years from the first publication, the mortgage is redeemed by the mortgagors or those claiming under them or equitable relief as in cases of the redemption of mortgage lands is sought, founded on payment or a legal tender of the amount of overdue bonds and coupons or containing an averment that the complainants are ready and willing to redeem on the rendering of an account, the right of redemption shall be forever foreclosed.

§5162. Overdue bonds and coupons for record

Each holder of overdue bonds or coupons shall present them to the trustees at least 30 days before the right of redemption expires, to be recorded by them. That right is not lost by the nonpayment of any claims not so presented. The parties having the right to redeem shall have free access to the record of the claims.

§5163. Secured creditors become corporation and trustees shall convey to it

The foreclosure of the mortgage shall inure to the benefit of all the holders of bonds, coupons and other claims secured thereby. They, their successors and assigns are constituted a corporation as of the date of the foreclosure, for all the purposes and with all the rights and powers, duties and obligations of the original corporation by its charter. The trustees shall convey to that new corporation by deeds all the right, title and interest which they had by the mortgage and the foreclosure, and thereupon they shall be discharged. If they neglect or refuse so to convey, the court, on application for equitable relief, may compel them to do so.

§5164. First meeting of new corporation; name; possession and use of mortgaged property

The new corporation may call its first meeting in the manner provided for calling the first meeting of the original corporation, and may use for that purpose the old name, or by a notice, signed by one or more of the bondholders, setting forth the time, place and purpose of the meeting, a copy of which is to be published in a newspaper in the county, if any, otherwise in the state paper, 7 days before the meeting. At that meeting, it may adopt a new name by which it shall be known. It may take and hold the possession and have the use of the mortgaged property, although an action for equita-

ble relief to redeem is pending, and it may become a party defendant to the action. This section applies to all corporations mentioned in section 5185.

§5165. Vote to redeem prior mortgage and assessments

If any part of the property or franchise is subject to a prior mortgage, the new corporation, at a legal meeting called for that purpose, may vote to redeem the property or franchise and make an assessment on all holders of stock, certificates for fractions of stock, bonds or coupons in the corporation in proportion to their amounts. The directors shall immediately assess the sum and fix a time and place for the payment of it to the treasurer, who shall publish notice accordingly 6 weeks successively in some newspaper, if any, in each of the counties where the road extends, the last publication to be at least 2 weeks before the time fixed for payment.

§5166. Sale of stock for nonpayment; rights of delinquent stockholders

If any person fails to pay his assessment within the time fixed, the treasurer shall sell enough of his stock at auction to pay the same, with 12% interest and the cost of advertising and selling, by first publishing notice of the sale 3 weeks successively in a newspaper printed in the county where the sale is to be, if any, and if not, in an adjoining county. Upon sale the president and treasurer shall issue a new certificate of stock to the purchaser and the delinquent stockholder shall surrender his certificate to be canceled and may have a new one for his unsold shares. If he held bonds, coupons or certificates for fractions of stock, he shall not be entitled to commute them or to receive any dividends on them until he has paid his assessment, with 12% interest.

§5167. Application of funds

The directors shall apply the money realized from the assessments solely to the redemption of the prior mortgage until it is fully paid and then all the property, rights and interests secured by the mortgage vest in the new corporation.

§5168. Redemption of prior mortgages by junior mortgages

When a subsequent mortgage of a railroad, its franchise or any part of its other property contains no provision for a sale, or contains a conditional provision depending on the application of a majority in amount of the claims secured thereby and no such application has been made to the trustees, the holder of the mortgage may redeem a prior mortgage on the same property which is under process of foreclosure at any time before it becomes absolute and hold it in trust for those who contributed thereto in proportion to the amount paid by each.

§5169. Meeting regarding redemption of prior mortgages; contribution

For such a purpose, the trustees of the subsequent mortgage, on application of one or more persons interested in the mortgage, made 6 months prior to the absolute foreclosure of the prior mortgage and on payment of reasonable expenses to be incurred thereby, shall call a meeting of all interested and publish a notice of the meeting, stating the time, place and purpose, 3 weeks successively in the state paper and such other papers as they think proper. If at that meeting, or one called by the trustees without application, the holders of a majority of the interests there represented vote to redeem the prior mortgage, each one may contribute his proportion to the redemption. The trustees shall give immediate notice of the vote by publishing it as above and shall in the notice state the time and place of payment and the amount to be paid on each \$100 as nearly as may be. If anyone fails to pay his proportion, any other person interested in the subsequent mortgage may pay it and succeed to all his rights except as otherwise provided.

§5170. Anyone interested in subsequent mortgage may redeem

If no meeting is called or it is voted not to redeem, one or more of the persons interested in the subsequent mortgage may pay to the trustees the amount required to redeem the prior mortgage, and the trustees shall redeem it accordingly and then hold it in trust for the person so paying.

§5171. Delinquents pay proportion and rights restored; new corporation

When a prior mortgage has been redeemed in either mode, and all persons interested in the subsequent mortgage have not paid their proportions, the trustees shall publish a notice 10 weeks successively in the state paper, the first publication not to be until the right of redeeming the prior mortgage would have expired, that delinquents may pay the same to them or their agents, with 12% interest, within one year from the first publication of the notice. Any person so paying has the same rights as if he had paid originally and those not paying are barred. Money so paid shall be divided ratably to those who advanced the redemption money and they may become a new corporation and new certificates of stock or fractions of stock may be issued in the manner and with the rights, powers and obligations provided.

§5172. Redemption by stockholders of old corporation

When a prior mortgage is redeemed, any number of the stockholders of the old corporation may redeem it within 2 years thereafter by paying to the trustees of the subsequent mortgage the amount paid, with 10% interest, and the amount secured by the subsequent mortgage due to those who had contributed to redeem the prior mortgage, after deducting the net earnings of the road or adding the net deficiencies, if operated by the trustees of the subsequent mortgage. The stockholders may demand of the trustees an accurate account of the receipts and expenditures and amount due on the mort-

gage and have the same remedies for a failure as in case of mortgages of real estate. After the redemption, the redeeming stockholders have all the rights of those from whom they redeemed.

§5173. Noncontributors; notice; rights

The stockholders, redeeming, shall give notice to the stockholders who have not contributed to the redemption and the latter shall have the same rights as provided in the case of bondholders.

§5174. Extension of redemption time after foreclosure commenced

The persons interested in a prior mortgage on which a foreclosure is commenced, at a meeting called for the purpose, may extend the time of redemption. Thereupon the trustees of the mortgage, by a suitable writing, delivered to the party entitled to redeem, shall extend the time accordingly.

SUBCHAPTER V

RIGHTS OF PURCHASERS UNDER SALE

§5181. Purchasers at sale have rights of original corporation; redemption

When the franchise of a railroad and its road, wholly or partly constructed, or the right of redeeming the same from a mortgage, are sold by a decree of court by a power of sale in a mortgage, or on execution, the purchasers have all the rights, powers and obligations of the corporation under its charter and may form a new corporation in the manner provided. If the original corporation or those claiming under it have a right to redeem, they may do so in the manner provided for the redemption of mortgaged real estate, but shall pay, in addition to the amount of the sale and interest, the reasonable expenditures made by the new corporation in completing, repairing and equipping the road, and in the purchase of necessary property, after deducting the net earnings.

§5182. Succession to rights and obligations of original corporation

The trustees of bondholders or other parties under contract with them operating a railroad and all corporations formed in the modes provided have the same rights, powers and obligations as the old corporation had by its charter and the general laws. All rights and privileges are subject to amendment, alteration or repeal by the Legislature and to all the general laws concerning railroads, notwithstanding anything to the contrary in the original charter.

§5183. Original corporation continues, to close business, and for actions

The original corporation shall exist, after the foreclosure of the mortgage, for the sole purpose of closing

its unsettled business and the right of action against it or its stockholders is not impaired. In actions founded on any of the bonds or coupons secured by the mortgage, the proportional actual value of the property taken under the mortgage shall be deducted.

§5184. Courts have jurisdiction of all disputes

The Supreme Judicial Court and the Superior Court, in addition to the jurisdiction specifically conferred by this chapter, have jurisdiction of all other matters in dispute, arising under this chapter relating to trustees, mortgages and the redemption and foreclosure of mortgages; but not to take away any rights or remedies that any party has and may elect to enforce by any civil action. In all proceedings relating to trustees or to mortgages, their foreclosure and redemption, not otherwise specifically provided for, the law relating to trusts and mortgages of real estate may be applied.

§5185. Application of provisions to mortgages of corporations given to trustees, as if legally foreclosed

This subchapter and subchapters III and IV apply to and include all mortgages of franchises, lands, property, hereditaments and rights of property of every kind whatever, whether previously given or to be given by any corporation to trustees, to secure the payment of scrip or bonds of the corporation, in all cases in which the principal of the scrip or bonds has been due and payable for more than 3 years, and remains unpaid in whole or in part, or on which no interest has been paid for more than 3 years, in the same way and to the same extent as if the mortgage had been legally foreclosed, subject to all rights of redemption, as provided in section 5165. The holders of the scrip or bonds shall have the benefit of this subchapter and subchapters III and IV and all the rights and powers of the corporation under its charter and may form a new corporation in the manner provided in this chapter whenever the holders of the scrip or bonds to an amount exceeding 1/2 of the same so elect in writing. Any subsequent foreclosure, in any method provided by law, of the mortgage given to secure the bonds or scrip, shall inure at once for the benefit of the corporation and vest in the corporation the title acquired by the foreclosure.

§5186. Holders of unpaid scrip and bonds may foreclose mortgages

A corporation formed by the holders of the scrip or bonds, or if no such corporation has been formed, the holders of not less than a majority of the scrip or bonds, may commence a civil action to foreclose the mortgage and the court may decree a foreclosure thereof, unless the arrears are paid within such time as the court orders.

§5187. Capital stock of new corporation; value of shares; no further assessment

The capital stock of the new corporation shall be equal to the amount of unpaid bonds and overdue coupons secured by the mortgage, taken at their face value at the time of the organization of the new corporation, together with the amount required to redeem any prior mortgage and shall be divided into shares of \$100 each. All stock issued shall be taken and considered as paid for in full and shall not be liable to further assessment. No person, taking or holding the stock, may by reason of the taking or holding be liable for the debts of the corporation.

§5188. Organization certificate filed with Secretary of State

Whenever a corporation is organized under section 5163, 5181 or 5185, or under any other law by which a return is not specifically required, the corporation shall file with the Secretary of State a certificate signed and sworn to by the president, treasurer and a majority of the directors of that corporation, setting forth the name of the corporation and all facts as to that organization which are necessary to give full information in relation to that organization. The organization of that corporation shall date from, and it shall have the authority and rights of a corporation, only after filing the certificate.

§5189. New corporation may buy right of redemption

Any corporation formed under this chapter by the holders of railroad bonds may acquire, by purchase, the right of redemption under the mortgage securing the bonds.

§5190. When franchise lost; action for dissolution

Whenever any railroad corporation, by foreclosure of a mortgage or in any other method authorized by law, has finally parted with its franchise to construct, operate and maintain the railroad described in its charter, any stockholder may maintain a civil action in the Superior Court for the winding up of the affairs and dissolution of that corporation. In such case the court shall order such notice to all parties interested as it may deem proper and proceed according to the usual course of civil actions. No trustee may be appointed, except upon motion of some party to the proceedings and then only in the discretion of the court.

CHAPTER 607

REAL ESTATE

§6001. Land bought or taken

A railroad corporation, for the location, construction, repair and convenient use of its road, may purchase or take and hold, as for public uses, land and all materials in and upon it. Through woodland and forest the land so taken shall not exceed 6 rods in width unless necessary for excavation, embankment or materials and through all land other than woodland and forest, the land so taken shall not exceed 4 rods in width unless necessary for ex-

cavation, embankment or materials.

§6002. Land for improvements; proceedings

Any railroad corporation may purchase or take and hold, as for public uses, additional land or rights in land, at any time required for improving the alignment or grades of its road, for double tracking its road, for protecting the tracks against erosion of adjoining or adjacent land or against the action of the elements, or reasonably necessary in the enhancement of public safety at dangerous curves or crossings; and land or rights therein, for borrow, ballast and gravel pits, necessary tracks, side-tracks, spur tracks, freight or passenger yards, stations, station grounds, approaches to stations and station grounds and to other facilities furnished by the railroad for public use, coal sheds, woodsheds, water tanks, repair shops, car, engine, freight and section houses, section dwelling houses and storage warehouses, or other structures, which the Department of Transportation, after hearing, finds to be reasonably required in the safe, economical and efficient operation of the railroad and in rendering of adequate service to the public. If the owner or owners of that land do not consent, if the parties do not agree as to the necessity for the taking or as to the area to be taken or if the parties are unable to agree as to the fair value of the land, the corporation may make written application to the Department of Transportation requesting its approval of the taking by the railroad corporation for any such public uses, describing the land and appurtenances and naming the persons interested. The department shall then appoint a time for a hearing near the premises and require notice to be given to the persons interested, as they may direct, at least 14 days before that time. The department shall then view the premises; hear the parties; determine how much, if any, of the real estate should be taken for the reasonable accommodation of the traffic, the safe operation of the railroad and the appropriate business of the corporation; and enter an order containing a definite description of the real estate and furnish the corporation with a true copy of the order. When a certified copy of the order is filed with the registry of deeds in the county where the land lies, the land shall be deemed and treated as taken. When land is held by a tenant for life and the reversion is contingent as to the persons in whom it may vest on the termination of the life estate, that fact shall be stated in the application and the department shall, in addition to the notice to the tenant for life, give notice by publication to all others interested, in such manner as it deems proper.

§6003. Change in location

Any railroad corporation may make any changes in the location of its road which it deems necessary or expedient and the changes shall be recorded where the original location was required by law to be recorded.

§6004. Land taken for change

Any railroad corporation may purchase, or take and

hold as for public uses, land and materials necessary for making any changes authorized by section 6003, in the manner authorized by its charter or the general provisions of law and may cross highways and town ways in accordance with the law regulating those crossings.

§6005. Limitation of right to enter or take land

The land taken shall not be entered upon, except to make surveys, before the location has been filed and the damages estimated and secured as provided. No railroad corporation may take, without consent of the owners, meetinghouses, dwelling houses or public or private burying grounds.

§6006. Branch tracks

Any railroad corporation may locate, construct and maintain branch railroad tracks to any railroad station of another corporation or to connect with another railroad or to any mills, mines, quarries, gravel pits, log landing or yard, warehouses and storehouses, airports, piers, docks, shipyards, educational institutions or manufacturing establishments erected, or in process of erection, in any town or township through which the main line of that railroad is constructed, but not within any city without the consent of the city government and for that purpose the corporation shall have all the powers and rights granted and be subject to all the duties imposed upon it by its charter.

§6007. Estimate of damages; guardian; security for costs

For real estate taken pursuant to section 6002, the owners are entitled to damages to be paid by the corporation. The corporation shall attempt to settle the amount of damages, with the consent of the owners, within 60 days from the date of the taking. If all parties do not agree on the amount of damages, they shall be estimated by the county commissioners on written application by either party. The county commissioners shall estimate the damages within one year of the date application is made. When no estimate is made within that time, the owner may maintain a civil action or have any remedy provided. The guardian of a person incapable of giving a valid conveyance whose land is taken may settle and give a valid release for damages. Persons having any interest in that land have the rights and remedies of owners to the extent of their interest. When requested by the owner, the commissioners shall require the corporation to give security for the payment of damages and costs by depositing, at its risk, with the clerk, specie, notes or obligations of a state or public corporation or other security satisfactory to the party requiring it. When entitled to it, so much of any specie so deposited shall be paid to him as will satisfy his judgment. Notes or obligations so deposited shall be delivered to the officer having a warrant of distress, to be by him sold as personal property is sold on execution, to satisfy the warrant and fees and any balance shall be paid to the treasurer of the corporation. When it neglects for more

than 30 days to give the security required, the owner is entitled to the remedies by injunction.

§6008. Petitions for assessment of damages

In all cases of petition to the commissioners of any county praying for the assessment of damages on account of any railroad corporation having taken lands in the county, the notice to the adverse party of the time and place of the hearing shall be a personal notice of 14 days or by publication of the petition and order of notice on the petition in some newspaper published in said county, 2 weeks successively, the last publication to be 14 days before the hearing.

§6009. Cattle guards and passes; double damages

The county commissioners shall order the corporation to make and maintain such cattle guards, cattle passes and farm crossings as they think reasonable and prescribe the time and manner of making them and consider this work in awarding pecuniary damages. If the corporation after 48 hours' notice in writing to its president or superintendent neglects to commence the work or complete it within a reasonable time, the owner may apply to the Superior Court and the court, after due notice to the corporation, shall issue all necessary processes to enforce the specific performance of the orders or restrain it by injunction or the party interested may recover, in a civil action, double the damage that he has sustained by the neglect.

§6010. Award of damages; terms and conditions

The county commissioners in awarding damages for land or other property taken by any railroad company may, on the application of the railroad company, prescribe such terms and conditions, in all respects, for the use of the land or property taken, by the owners of the land or property and the railroad company respectively, as will secure the best accommodation of the owners and the proper and convenient use of the land or property by the railroad company. In case of appeal by either party, the only question in issue shall be the amount or measure of damages on the terms and conditions imposed by the commissioners.

§6011. Commissioners' report of damages and rights of parties; notice

The county commissioners shall at a regular session make a report of their general estimate of damages, stating specifically the terms and conditions imposed by them, the rights and obligations of each party and the elements of damage as provided for land taken for highway purposes under section 154, subsections 2, 3 and 4, and cause it to be recorded. Their clerk shall then make out a notice to each person, stating the amount of damages awarded to him and the elements of damage, which shall be served by an officer on those resident in the State and upon others, if any, by a publication 3 weeks successively in a newspaper printed in the county,

if any or, if not, in the state paper. The expense of notices shall be added to the costs of the proceedings and paid accordingly.

§6012. Appeals; notice and proceedings

Any person, aggrieved by the decision or judgment of the county commissioners in relation to damages for land taken for railroad purposes, may appeal to the Superior Court to be held in the county where the land is situated, within 30 days after the report of the commissioners is made, which court shall determine the damages by a committee of reference if the parties so agree or by a verdict of its jury and shall render judgment and issue execution for the damages recovered, with costs to the party prevailing in the appeal. No committee or jury shall alter the requirements in the report of the commissioners. The appellants shall, when the appeal is taken, include in the complaint a statement setting forth substantially the facts of the case and shall give written notice of appeal with a copy of the complaint to the opposite party. An appeal may be taken to the Law Court as in other actions.

§6013. Deposit of damages, interest and costs

When the proceedings are closed, the corporation may deposit with the clerk the amount of damages, with interest from the time when the estimation was recorded, and legal costs, in full satisfaction therefor, unless a demand had been previously made and payment neglected.

§6014. When damages not paid

When the damages remain unpaid for more than 30 days after they are due and demanded, equitable relief may be requested by the person entitled to them, praying for an injunction against the use or occupation of his land taken. If proceedings for an estimation of damages are not commenced within 3 years and the owner of the land requests equitable relief, the court may estimate the damages, decree their payment and issue an execution. The court, after summary notice to the corporation and upon proof of the facts may, without any bond filed, issue an injunction prohibiting the use and occupation until all damages and costs are paid. If payment has not been made within 90 days, a permanent injunction may be issued; and all rights acquired by taking the land and all rights of property in and to whatever has been placed upon it cease and the owner may maintain an action for its recovery and protection.

§6015. Service of process and notice

Service of process and notice may be made as process is served in other actions. Service of an injunction issued against any person, whether a party to the action or not, may be made upon him and he shall be liable to all the penalties and consequences provided for a breach of it.

§6016. Breach of injunction

The court may order persons violating the injunction, after service or using the land, to show cause at a time fixed, why a decree should not be entered and execution issued against them individually and their goods and estate, for the damages, interest, costs and for additional damages and costs for breach of the injunction. Upon service and return of the order, the court may enter such decree as is just and equitable against those persons and issue execution accordingly or may proceed against them as for breach of injunction in other civil actions.

§6017. Station grounds not to be taken by another company

No railroad corporation may take the grounds occupied by any other railroad company and necessary for its use for station purposes, without its consent. When application is made to take those grounds, the Department of Transportation, upon notice and hearing, shall determine whether the land proposed to be taken is necessary or not and whether any public necessity requires it to be taken.

§6018. Use of passenger stations

Whenever any railroad passenger station is erected or maintained in any city or town in this State, any railroad corporation having or using a track or passenger station within that city or town may run its passenger trains to and from the station, over any railroad track or tracks leading to the station, and use the same for the purpose of delivering and receiving through passengers, under such reasonable terms and regulations and over such tracks as may be agreed upon by the owner of the station, the railroad whose tracks are used in running to and from the same and the railroad corporation so desiring its use for that purpose and, in case of disagreement, upon petition, notice and hearing, the Department of Transportation shall fix and determine those terms, tracks and rules. No corporation which denies, in any proceedings, the authority of the Department of Transportation to proceed and make the determination, or which refuses to abide by its decision rendered in the proceedings, may avail itself of this section.

§6019. Loitering about or soliciting passengers

No person may loiter or remain, without right, within any car or station house of a railroad corporation or upon the platform or grounds adjoining that station after being requested to leave by any railroad officer. No person or driver or owner of any automobile or other vehicle may solicit passengers in any station or on the station grounds or wharves of any railroad corporation in competition with that railroad corporation without a written permit signed by an officer of the corporation authorized to issue the permit. Whoever violates any provision of this section shall be punished by a fine of not more than \$100.

§6020. Law posted

The officers of all railroad corporations shall cause a copy of section 6019 to be posted in a conspicuous place at the several stations along the line of their roads.

§6021. Fences; liability for injuries

Where a railroad passes through enclosed or improved land, or woodlots belonging to a farm, legal and sufficient fences shall be made on each side of the land taken therefor, before the construction of the road is commenced, and the fences shall be maintained and kept in good repair by the corporation. For any neglect of that duty during the construction of the road, and for injuries thereby occasioned by its servants, agents or contractors, the directors are jointly and severally personally liable. For any subsequent neglect, the corporation shall be fined a sum sufficient to make or repair the fence, to be recovered by indictment and expended by an agent appointed by the court.

§6022. Line fences built on notice of abutter

The owner of any enclosed or improved land or woodlot belonging to a farm abutting upon any railroad, which is finished and in operation, may at any time between the 20th day of April and the end of October give written notice to the president, treasurer or any of the directors of the corporation owning, controlling or operating that railroad that the line fence against his land has not been built, or if built, that the fence is defective and needs repair. If the corporation neglects to build or repair the fence for 30 days after receiving notice, it forfeits to the owner \$100, to be recovered in a civil action.

§6023. Injuring fences or turning animals into railroad enclosure

Whoever takes down or intentionally injures any fence erected to protect the line of any railroad or turns any horse, cattle or other animal upon or within the enclosure of that railroad shall be punished by a fine of not less than \$10 nor more than \$100 or by imprisonment for not less than 10 days nor more than 6 months.

§6024. Company liable for trespasses on adjoining land

The corporation is liable for trespasses and injuries to lands and buildings adjoining or in the vicinity of its road committed by a person in its employment or occasioned by its order, if the party injured within 60 days after the injured gives notice to the corporation; but its liability does not extend to acts of willful and malicious trespass. The person committing a trespass is also liable.

§6025. No title to lands of railroads by adverse possession

No title to any real estate or any interest in real estate may be acquired against any railroad corporation by adverse possession, however exclusive or long continued.

CHAPTER 609

MAINE STATE RAILROAD POLICE ACT

§6071. Short title

This chapter shall be known and may be cited as the "Maine State Railroad Police Act."

§6072. Definitions

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

1. Qualified person. "Qualified person" means a person who:

A. Has met all the education and training requirements as outlined under Mandatory Training Law, Title 25, section 2805; and

B. Is of good moral character and has no record of conviction of a serious crime.

The qualification and in-service training requirements of paragraph A do not apply to any individual who was employed on a full-time basis by a railroad as a police officer on October 24, 1977.

2. Railroad; railroads; railway company. "Railroad," "Railroads" or "railway company" or any combination of those terms means a corporation engaged as a common carrier in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Interstate Commerce Commission.

§6073. Appointment

The Commissioner of Public Safety may commission and rescind the commissions of all railroad police officers in the State. The commissioner may commission and rescind the commissions of railroad police officers recommended and appointed by the chief police officer, or in his absence the chief operating officer of any railroad located wholly or partially within the State. Railroad police officers shall be qualified persons as defined in section 6072, subsection 1, and are subject to the existing rules of the commissioner. Nothing contained in this Act may relieve any railroad from any civil liability for acts of a policeman in exercising or attempting to exercise the powers conferred by this Act.

§6074. Oath of office

Each policeman so appointed and commissioned shall, before entering upon the duties of his office, take an oath of office administered by the Commissioner of Public Safety.

§6075. Powers

Each policeman may, in all cases in which the rights of the appointing railroad are involved, exercise within this State all powers, including the powers of arrest and the carrying of firearms, for the reasonable purpose of his office.

§6076. Disposition of persons arrested

The keepers of jails, lockups and station houses in any county, city or town, shall receive all persons arrested by railroad police for the commission of any offense against the laws of this State, or the ordinances of any city or town, to be dealt with according to law and persons arrested shall be received by keepers of jails, lockups or station houses and those persons have the same status as other persons arrested by any other police or peace officer of this State.

§6077. Carrying of shield

Each policeman so appointed and commissioned shall, when on duty, carry a shield or star with the words "Police," "Railroad Police" or "Railway Police" and the name of the appointing railroad inscribed on the shield. The shield or star shall be of uniform design. This shield or star shall be worn in plain view when in uniform. The policeman shall also carry, when on duty, an identification card issued by the appointing railroad.

§6078. Compensation and training

The railroad to which each railroad police officer is assigned shall be responsible for the compensation and financial cost of training of railroad police officers.

§6079. Reciprocity

In order to more effectively carry out the purposes of this Act, the Governor of this State, referred to as the empowering State, may enter into a reciprocal agreement with the governor of any other state, referred to as the reciprocal state, subject to any regulations prescribed under that agreement, empowering a railroad policeman with the right to perform any police function that can be lawfully exercised by a police officer of the reciprocal state relating to the detection and apprehension of any person committing an offense or offenses against the empowering or the reciprocal state, but only to the extent that the offense is, or offenses are, committed on property owned, operated or maintained by the appointing railroad or committed against property owned or in the possession of that railroad.

§6080. Termination of authority

Upon termination of employment of any railroad policeman, the powers of that policeman shall cease and terminate. Within 10 days after the termination, the appointing railroad shall, through its designated chief police officer or, in the absence of a chief police officer,

its chief operating officer, file a notice of termination of employment of that individual with the Commissioner of Public Safety.

CHAPTER 611

SAFETY PROVISIONS

§7001. Brakemen

No train of passenger cars, moved by steam, may be run without one trusty and skillful brakeman to every 2 cars.

§7002. Danger signals, where disconnected cars left on track; penalty

No car disconnected from a train may be left or permitted to remain standing on the main track of any railroad, unless accompanied by danger signals, such as flagging by day and lanterns by night, placed at such distances from the obstruction on the main line of the road as will insure safety to and from moving trains. The signals shall be in the charge of and constantly attended by employees of the corporation owning or operating the road.

A railroad corporation violating any provision of this section forfeits for each offense, \$100 to the State, to be recovered in a civil action or by complaint and indictment; and the Attorney General shall prosecute for that violation.

§7003. Railroad liable for damages from locomotive fire; entitled to benefit of any insurance

When a building or other property is injured by fire communicated by a locomotive engine, the corporation using it is responsible for that injury and it has an insurable interest in the property along the route for which it is responsible, and may procure insurance on that property. The corporation shall be entitled to the benefit of any insurance upon such property effected by the owner of the property less the premium and expense of recovery. The insurance shall be deducted from the damages, if recovered before the damages are assessed or, if not, the policy shall be assigned to the corporation which may maintain an action on the policy, or prosecute, at its own expense, any action already commenced by the insured, in either case with all the rights which the insured originally had.

§7004. Intoxication of railroad employees on duty

Whoever, having charge of a locomotive engine or acting as conductor, brakeman, motorman or switchman, is intoxicated while employed on a railroad shall be punished by a fine of not more than \$100 or by imprisonment for not more than 6 months.

§7005. Negligence of employees

Any person employed in conducting trains, who is guilty of negligence or carelessness causing an injury, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months; but the corporation employing him is not thereby exempt from responsibility.

§7006. No liability for death of person walking on road

No railroad corporation is liable for the death of a person walking or being on its road contrary to law or to its valid rules.

§7007. Penalty for being on track or bridge or entering track with team

Whoever, without right, stands or walks on a railroad track or bridge or passes over such a bridge except by railroad conveyance forfeits not less than \$5 nor more than \$20, to be recovered by complaint. Whoever, without right, enters upon any railroad track with any team, or any vehicle however propelled or drives any team or propels any vehicle upon any railroad track shall be punished by fine of not less than \$50 or by imprisonment for not less than 30 days.

§7008. Posting of law

A printed copy of section 7007 shall be kept posted in a conspicuous place in every railroad passenger station; for failure to post, the corporation forfeits not more than \$100 for every offense.

§7009. Stranger entering or leaving moving train; liability of corporation not affected

Any person, other than a servant or employee of the road, or a passenger holding a ticket for a passage over the road, or mail agent or expressman, who gets upon or leaves any steam engine, tender or car at any place outside of a railroad station while that engine, tender or car is in motion, shall be punished by a fine of not more than \$10 or by imprisonment for not more than 30 days. This provision does not affect the liability of any railroad corporation for injuries or damages caused by the fault or negligence of the corporation or its servants.

§7010. Changing switch or lights

Whoever, without authority, alters, changes or in any manner interferes with any safety switch or switch lights on any railroad shall be punished by a fine of not less than \$100 or by imprisonment for not less than 60 days.

§7011. Injuring or tampering with signals

Whoever intentionally and without right injures, destroys or molests any signal of a railroad corporation, or any line, wire, post, lamp or other structure or mechanism used in connection with any signal on a railroad or

destroys, or in any manner interferes with the proper working of, any signal on a railroad, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 2 years.

§7012. Location of railroad near station of another company

No railroad company may construct or maintain a track or run an engine or cars on a street or highway so near any station of another railroad as to endanger the safety and convenient access to and use of that station for ordinary station purposes.

§7013. Interference with performance of duty

Obstruction or interference with the performance of any act authorized or required in this chapter is declared to be a misdemeanor and any person convicted of the same shall be punished by a fine of not more than \$20 or by imprisonment for not more than 30 days. Jurisdiction over each such offense is conferred on the District Court.

§7014. Orders

The Superior Court is given full jurisdiction to enforce compliance with any order issued prior to January 1, 1982, by the Public Utilities Commission or any order issued by the Department of Transportation under this chapter. It is the duty of the Department of Transportation to see that the rights of the public under this chapter are fully protected.

CHAPTER 613

MUNICIPAL AID TO CONSTRUCTION§7081. Construction aid; proceedings

A city or town by a 2/3 vote, at any legal meeting called for the purpose, may raise by tax or loan, from time to time or all at once, a sum not exceeding in all 5% on its regular valuation for the time being, to aid in the construction of railroads in such manner as it deems proper and for that purpose may contract with any person or railroad corporation. At the meetings the legal voters shall ballot, those in favor of the proposition voting "Yes," and those opposed voting "No." The ballots cast shall be sorted, counted and declared in open town meeting and recorded and the clerk shall make return of the ballots to the municipal officers who shall examine the return and, if 2/3 of the ballots cast are in favor of the proposition, the officers shall proceed to carry the proposition into effect.

§7082. Payment of loan

A city or town raising money by loan or under authority conferred by special Act of the Legislature shall raise and pay or fund besides the interest, each year after the third, not less than 3% of the principal. Any city or town

receiving money, bonds, certificates of indebtedness or other evidence of debt in consideration of exchange, release or sale of its securities held to indemnify the city or town for having loaned its credit or issued its bonds in aid of any railroad shall hold that money, bonds, certificates of indebtedness or other evidence of debt, or the proceeds thereof as a trust fund to liquidate the outstanding liabilities so long as they may continue.

§7083. Call for meetings in cities and proceedings

Meetings for the purposes set out in this chapter in cities shall be called by the municipal officers, on the order of the common council, like meetings for the election of city officers and the council shall set forth in their order the substance of the proposition to be inserted in the warrant. At the meetings, the voters shall vote in wards by ballot, those in favor of the proposition in the warrant voting "Yes," and those opposed voting "No," and the ballots cast shall be sorted, counted and declared in open ward meeting and recorded. The clerks shall make returns of the ballots to the municipal officers who shall examine them. If 2/3 of the ballots cast are in favor of the proposition, the officers shall proceed to carry it into effect. Lists of voters for use at the meetings shall be prepared in the same manner as for meetings for elections of town or city officers and the lists shall be used at all meetings held under this section and section 7081.

§7084. Only one vote a year on same question

Whenever a city or town has voted at any legal meeting upon any question of loaning its credit to, or taking stock in, or in any way aiding any person or corporation, the city or town shall not vote again upon the same subject, except at its annual meetings.

§7085. Town agents may vote on town stock

When a city or town holds stock in a railroad, the municipal officers, or an agent appointed by them in writing, may vote at any meeting of the corporation.

§7086. Citizens eligible as directors

Whenever any city or town in the State, in its corporate capacity, holds 1/5 or more of the shares in the capital stock of any railroad incorporated by the Legislature, any citizen of the city or town, being a freeholder and resident, is eligible as a director of the railroad company.

Sec. 5. 35 MRSA, as amended, is repealed.

Sec. 6. 35-A MRSA is enacted to read:

TITLE 35-A

PUBLIC UTILITIES

PART I

PUBLIC UTILITIES COMMISSION

CHAPTER 1

ORGANIZATION, GENERAL POWERS AND DUTIES

§101. Statement of purpose

The purpose of this Title is to ensure that there is a regulatory system for public utilities in the State which is consistent with the public interest and with other requirements of law. The basic purpose of this regulatory system is to assure safe, reasonable and adequate service at rates which are just and reasonable to customers and public utilities.

§102. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.

1. Commission. "Commission" means the Public Utilities Commission.

2. Commissioner. "Commissioner" means one of the members of the Public Utilities Commission.

3. Corporation. "Corporation" includes municipal and quasi-municipal corporations.

4. Customer. "Customer" includes any person, government or governmental division which has applied for and is granted service or which is responsible for payment of the service.

5. Electric utility. "Electric utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any electric plant for compensation within this State, except where electricity is generated on or distributed by the producer through private property alone solely for its own use or the use of its tenants and not for sale to others. "Electric utility" includes, but is not limited to, rural electrification cooperatives organized under chapter 37, subchapters I to III, generation and transmission cooperatives organized under chapter 37, subchapter IV, municipal power districts organized under chapter 39 and the Maine Municipal and Rural Electrification Cooperative Agency organized under chapter 41.

6. Electric plant. "Electric plant" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of electricity for light, heat or power, for public use, and all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power for public use.

7. Ferry. "Ferry" includes every person, its lessees,

trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any vessel and which is subject to commission's jurisdiction under chapter 51.

8. Gas utility. "Gas utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any gas plant for compensation within this State, except where gas is made or produced on and distributed by the maker or producer through private property alone solely for its own tenants and not for sale to others, or where the gas is sold in liquid form in individual containers or is delivered in bulk in liquid form to a central tank that serves less than 10 customers and no portion of which is located in a public place.

9. Gas plant. "Gas plant" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of gas for light, heat or power.

10. Natural gas pipeline utility. "Natural gas pipeline utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court owning or operating for compensation within this State any pipeline, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of natural gas, or any person or corporation which has applied to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity or to the Public Utilities Commission for a certificate of authorization to operate a natural gas pipeline within the State.

11. Person. "Person" includes a corporation, partnership, limited partnership, association, trust, estate or natural person.

12. Public heating utility. "Public heating utility" includes every person, their lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing a plant for the purpose of selling heat to the general public, but shall not include any of the persons, their lessees, trustees, receivers or trustees appointed by any court, who sells heat to a limited number of persons not in excess of 75,000 square feet of direct radiation or its equivalent.

13. Public utility. "Public utility" includes every gas utility, natural gas pipeline utility, electric utility, telephone utility, telegraph utility, water utility, public heating utility and ferry, as those terms are defined in this section and each of those utilities is declared to be a public utility. "Public utility" does not include the operation of a radio paging service, as that term is defined in this section. Nothing in this subsection precludes the jurisdiction, control and regulation by the commission pursuant to private and special act of the Legislature.

14. Radio common carrier. "Radio common carrier"

means a telephone utility that communicates solely by use of radio.

15. Radio paging service. "Radio paging service" is a service provided by a communication common carrier engaged in rendering signaling communication. Signaling communication is one-way communication from a base station to a mobile or fixed receiver, or to multipoint mobile or fixed receivers by audible or subaudible means, for the purpose of activating a signaling device in the receiver or communicating information to the receiver, whether or not the information is to be retained in record form. It is limited to the following types of communications.

A. An optical readout paging service is one which communicates a message to a receiver which displays the message on an optical or tactile readout, either in a permanent form or a temporary form.

B. A tone only paging service is one which activates an aural, visual or tactile signaling device when received.

C. A tone-voice paging service is one which transmits tone to activate a signaling device and audio circuit in the addressed receiver, following which a voice-grade signal is transmitted, to be amplified by the audio circuit.

16. Rate design stability. "Rate design stability" means the implementation of interclass cost allocation or intraclass rate design changes to any existing customer class, of the magnitude or on such a schedule as to not be seriously adverse to the existing class of customers.

17. Telegraph utility. "Telegraph utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing any telegraph line for compensation within this State.

18. Telegraph line. "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments and appliances and real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate communication by telegraph, whether such communication is accomplished with or without the use of transmission wires.

19. Telephone utility. "Telephone utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing any telephone line for compensation within this State.

20. Telephone line. "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments and appliances, specifically including telecommunications equipment for customers with special needs subject to the provision of section 7504, and all other real estate, fix-

tures and personal property owned, controlled, operated or managed in connection with or to facilitate communication by telephone, whether that communication is accomplished with or without use of transmission wires.

21. Vessel. "Vessel" includes every boat which is owned, controlled, operated or managed for public use in the transportation of persons or property for compensation within this State.

22. Water utility. "Water utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing any water works for compensation within this State.

23. Water works. "Water works" includes all reservoirs, tunnels, shafts, dams, dikes, head gates, pipes, flumes, canals, structures and appliances, and all real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment or measurement of water for municipal and domestic use.

§103. Establishment of commission; powers and duties; seal and office

1. Establishment. There is established the Public Utilities Commission which shall consist of 3 members.

2. Powers and duties. The commission has the following powers and duties.

A. All public utilities are subject to the jurisdiction, control and regulation of the commission and to this Title.

B. The commission shall set the basic policies of the Public Utilities Commission and shall regulate public utilities in accordance with this Title.

3. Seal and office. The commission shall have a seal and be provided with office space.

§104. Implied powers

The provisions of this Title shall be interpreted and construed liberally to accomplish the purpose of this Title. The commission has all implied and inherent powers under this Title, which are necessary and proper to execute faithfully its express powers and functions specified in this Title.

§105. Appointment and term

1. Appointment. The Governor shall appoint 3 members to the Public Utilities Commission. The appointments shall be subject to review by the joint standing committee of the Legislature having jurisdiction over public utilities and to confirmation by the Legislature.

Members of the commission shall devote full time to their duties.

2. Term. The commissioners shall serve for terms of 6 years.

A. Each term shall end on March 31st of the 6th year of the term. The terms shall be staggered so that one ends in 1987 and every 6 years thereafter, one ends in 1989 and every 6 years thereafter, and one ends in 1991 and every 6 years thereafter.

B. A commissioner may continue to serve beyond the end of this term until a successor is appointed and qualified.

C. Any vacancy occurring in the commission shall be filled by appointment for the unexpired portion of the term.

§106. Chairman of the Public Utilities Commission

The following provisions apply to the chairman of the Public Utilities Commission.

1. Appointment. The Governor shall designate one member of the commission as chairman.

2. General duties. The chairman shall:

A. Be the principal executive officer of the commission in carrying out its policies;

B. Preside at meetings of the commission; and

C. Be responsible for the expedient organization of the commission's work.

3. Hearings. For any particular hearing or series of hearings before the commission, the chairman may assign himself or another commissioner to attend.

4. Acting chairman. When absent one working day or more, the chairman shall name another commissioner to act as chairman.

§107. The Public Utilities Commission staff

The following provisions shall apply to the commission's staff.

1. Appointment. The commission shall appoint:

A. An administrative director, a director of finance, a director of technical analysis and a director of consumer assistance;

B. With the approval of the Attorney General, a general counsel; and

C. An assistant administrative director.

2. Salary and conditions of employment. Salaries and conditions of employment of employees of the commission shall be as follows.

A. The general counsel, the administrative director, the assistant administrative director, the director of finance, the director of technical analysis, the director of consumer assistance and the assistant to the director of consumer assistance shall serve at the pleasure of the commission and their salaries shall be set by the commission within the ranges established by Title 2, section 6-A.

B. The compensation of the staff attorney, seasonal legal researcher, financial analyst, chief utility accountant and utility accountant III positions shall be fixed by the commission with the approval of the Governor, but the compensation shall not in the aggregate exceed the total amount appropriated or allocated in the commission's budget.

C. The salaries of the other subordinate officials and employees of the commission, other than those of the general counsel, the administrative director, the assistant administrative director, the director of finance, the director of technical analysis, the director of consumer assistance, the assistant to the director of consumer assistance and the staff attorney, financial analyst, chief utility accountant and utility accountant III positions, shall be subject to the Civil Service Law, except as provided in paragraph D.

D. The seasonal legal researcher positions are not subject to the Civil Service Law.

E. The commissioners and all employees shall receive actual expenses when traveling on official business.

3. Commission's access to staff. Each commissioner may have access to the Public Utilities Commission staff and to any information available to the commission, subject to the Maine Administrative Procedure Act, Title 5, section 9055.

4. Delegation of powers and duties to the staff. The commission may delegate to its staff such powers and duties as the commission finds proper. All delegations existing as of the effective date of this section are valid.

5. Administrative director's duties. The administrative director:

A. Shall keep a record of the proceedings of the commission which shall be open to inspection at all times; and

B. May certify all official acts of the commission, administer oaths and issue subpoenas, processes, notices, orders and other documents necessary to the performance of the commission's duties.

6. Assistant administrative director's duties. The

assistant administrative director shall assist the director in the performance of his duties and in the absence of the director shall have the same power as the director.

7. Commission counsel. The commission may employ counsel in any proceeding, investigation or trial.

8. Dismissal. After successful completion of a probationary period, the employees occupying the positions of staff attorney, financial analyst, chief utility accountant and utility accountant III may be dismissed, suspended or otherwise disciplined only for cause.

§108. Commission action; quorum

A majority of the duly appointed commissioners shall constitute a quorum and the act or decision of a majority of commissioners present, if at least a quorum is present, shall be the act or decision of the commission in any formal proceeding before the commission.

§109. Conflicts of interest

In addition to the limitations of Title 5, section 18, the following limitations apply to prevent conflicts of interest.

1. Public utilities. No member or employee of the commission shall:

A. Have any official or professional connection or relation with any public utility operating within this State;

B. Hold any stock or securities in any public utility operating within this State;

C. Render a professional service against any such public utility; or

D. Be a member of a firm which renders service against any such public utility.

2. Appointment to civil office. No commissioner may hold any other civil office of profit or trust under the Federal Government or State Government except the office to notary public.

3. Political party. No commissioner may serve on or under a committee of a political party.

§110. Removal of commissioner

Any willful violation of this Title by a commissioner shall constitute sufficient cause for his removal by the Governor, on the address of both branches of the Legislature or by impeachment pursuant to the Constitution of Maine, Article IX, Section 5.

§111. Rules; assistance

The commission may adopt rules and may employ assistance to carry out its responsibilities under this Title.

§112. Power to obtain information

1. Investigation of management of business. The commission may inquire into the management of the business of all public utilities and shall keep itself informed as to the manner and method in which each is conducted.

2. Facilities and information to be furnished. Every public utility shall furnish the commission with:

A. All reasonable facilities for the prompt and faithful discharge of its duties; and

B. All information necessary to perform its duties and carry into effect this Title. If it is unable to furnish the information, it shall give a good and sufficient reason for the failure, and the reason for the failure shall be verified by an officer, owner or agent of the public utility and returned to the commission at its office within the time fixed by the commission.

3. Inspection of books and papers; confidentiality. The following provisions apply to inspection of books and papers.

A. The commission or any commissioner or any person employed by it for that purpose, may upon demand inspect and copy the books, accounts, papers, records and memoranda of any public utility in relation to its business and affairs.

B. A person other than a commissioner must produce his authority to make an inspection.

C. A person employed by the commission to inspect utilities documents may not divulge information ascertained by inspection except:

(1) To the commission; or

(2) Under direction of the commission.

D. Any person who violates this subsection is guilty of a Class E crime.

4. Production of documents; failure to obey. The commission may require the production of documents as follows.

A. The commission may require, by order or subpoena to be served on any public utility in the same manner that a summons is served in a civil action in the Superior Court, the production of any books, accounts, papers, records or verified copies of them kept by a public utility or within the control of a public utility in any office or place within or outside the State, so that an examination may be made by the commission or under its direction.

B. A public utility or its agent who fails to comply with an order or subpoena commits a civil violation for which a forfeiture of not less than \$50 nor more than \$500 may be adjudged for each offense. Each day of noncompliance constitutes a separate offense.

§113. Management audit

1. Audit. The commission may require the performance of a management audit of the operations of any public utility in order to determine:

A. The degree to which a public utility's construction program evidences planning adequate to identify realistic needs of its customers;

B. The degree to which a public utility's operations are conducted in an effective, prudent and efficient manner judged by the standards prevailing in the utility industry;

C. The degree to which a public utility minimizes or avoids inefficiencies which otherwise would increase costs to customers; or

D. Any other consideration which the commission finds relevant to rate setting under chapter 3, sections 301 and 303.

2. Independent auditor. The commission may have a management audit performed by an independent auditor. If the commission finds it reasonable and necessary to have the audit performed, it may:

A. Select the independent auditor;

B. Require a public utility to pay for the costs of a management audit of its operations; and

C. Require the public utility to execute a contract with the independent auditor.

3. Costs. The full cost of the management audit shall be recovered from ratepayers. In ordering an audit, the commission shall consider the impact of the cost of the audit upon the ratepayers and other alternatives that are available.

§114. Utility personnel records

1. Confidential. The following records of public utilities are confidential and, except as otherwise provided in subsection 3, are excluded from the books, accounts, papers, records, memoranda, documents and information otherwise available to the commission under this Title and may not be open to public inspection:

A. Materials prepared for and used specifically in the examination or evaluation of applicants for positions with a public utility, including working papers, research materials, records and examinations;

B. Records containing the following:

- (1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (2) Performance evaluations and personal references;
- (3) Information pertaining to the credit worthiness of a named employee;
- (4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; or
- (5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations or any other information or materials that may result in disciplinary action; or

C. Other information to which access by the general public is prohibited by law.

2. Compliance. Failure or refusal by any public utility or any officer, agent or attorney of any public utility to comply with any order, data request or subpoena calling for the production of those records other than an order issued pursuant to subsection 3, shall not serve as the basis for any civil or criminal fine, penalty or forfeiture.

3. In camera inspection. Upon request by the commission staff, the Public Advocate or intervenor in a matter before the commission or upon the commission's own motion and for good cause shown, the commission may order a public utility to produce for in camera inspection by the commission or hearing examiner the records designated confidential under subsection 1. The employee whose records are the subject of such a request shall be notified by the commission of the request and shall be given the opportunity to be heard before an order to produce is issued. If the commission or hearing examiner determines after in camera inspection that a record is reasonably relevant to the matter before it and that production of the record is not unjust or unlawful and that the materiality of the record outweighs any harm to the employee from its disclosure, the commission or hearing examiner may order that the record be made a part of the discovery or evident aspects of the proceedings, subject to the terms and conditions that are just, due consideration being given to the privacy interests of the employee involved.

§115. Enforcement of state laws

The following provisions apply to the enforcement of state laws.

1. Commission's duties. The commission shall:

A. Inquire into any neglect or violation of state laws by a public utility doing business within the State;

B. Inquire into any neglect or violation of state laws by the officers, agents, employees or any person operating the plant of a public utility;

C. Enforce this Title and all other laws relating to public utilities; and

D. Report all violations of this Title and all other laws relating to public utilities to the Attorney General.

2. Duties of the Attorney General and district attorneys. Upon the request of the commission, the Attorney General or the district attorney of the proper county shall:

A. Aid in any investigation, hearing or trial conducted under this Title; and

B. Institute and prosecute all proceedings for the enforcement of this Title and of all other state laws relating to public utilities and to the punishment of violations.

3. Forfeitures and penalties. The following provisions apply to forfeitures and penalties.

A. A complaint for the recovery of a forfeiture or penalty may be made by the commission or one of its members.

B. A suit to recover any forfeiture or penalty may be brought in the name of the State in the Superior Court in the county where the main office of the public utility is located or in Kennebec County.

C. An action commenced by the commission shall be prosecuted by the Attorney General.

§116. Funding of the commission

1. Utilities subject to assessments. Every electric, gas, telegraph, telephone and water utility and ferry subject to regulation by the commission shall be subject to an assessment of not more than .25% on its intrastate gross operating revenues to produce no more than \$2,219,000 in revenues annually beginning in the 1987-88 fiscal year and not more than \$2,309,000 in revenues annually beginning in the 1988-89 fiscal year. The commission shall determine the assessments annually prior to May 1st and shall assess each utility for its pro rata share. Each utility shall pay the assessment charged to the utility on or before July 1st of each year. Any increase in the assessment that becomes effective subsequent to May 1st may be billed on the effective date of the act authorizing the increase.

A. The assessments charged to utilities under this section are just and reasonable operating costs for rate-making purposes.

B. For the purposes of this section, "intrastate gross operating revenues" means intrastate revenues de-

rived from filed rates, except revenues derived from sales for resale.

C. Gas utilities subject to the jurisdiction of the commission solely with respect to safety shall not be subject to any assessment until the commission has reviewed the scope and cost of that jurisdiction and an assessment or fee structure is authorized by the Legislature.

D. The commission may correct any errors in the assessments by means of a credit or debit to the following year's assessment rather than reassessing all utilities in the current year.

2. Legislative approval of budget. The assessments and expenditures provided in this section are subject to legislative approval in the same manner as the budget of the Public Utilities Commission is approved. The commission shall make an annual report in accordance with section 120 of its planned expenditures for the year and on its use of funds in the previous year. The commission shall also receive other funds as appropriated by the Legislature.

3. Deposit of funds. All revenues derived from assessments levied against utilities described in this section shall be deposited with the Treasurer of State in a separate account to be known as the Public Utilities Commission Regulatory Fund.

4. Use of funds. The Public Utilities Commission may use the revenues provided in accordance with this section to fund 43 employees and 2 seasonal legal researchers and to defray the costs incurred by the commission pursuant to this Title, including administrative expenses, general regulatory expenses, consulting fees and all other reasonable costs incurred to administer this Title.

5. Unexpended funds. Except as specified in this subsection, any amount of the funds that is not expended at the end of a fiscal year shall not lapse, but shall be carried forward to be expended for the purposes specified in this section in succeeding fiscal years; but any unexpended funds in excess of 7% of the total annual assessment authorized in subsection 1 shall, at the option of the commission, either be presented to the Legislature in accordance with subsection 2 for reallocation and expenditure for commission purposes, or used to reduce the utility assessment in the following fiscal year.

6. Violations. Any utility, subject to this section, that willfully fails to pay the assessments in accordance with this section commits a civil violation for which a forfeiture of not more than \$500 may be adjudged per day for which payment is not made following the due date.

7. Special assessment. Every utility subject to assessment pursuant to this section shall be subject to an additional assessment on its intrastate gross operating revenues to produce no more than \$250,000 in revenues

annually in fiscal years 1985-86 and 1986-87. The revenues produced from this assessment shall be used to make necessary improvements in the facilities housing the Public Utilities Commission at 242 State Street, Augusta, Maine. These funds shall be raised and accounted for in accordance with the provisions of the section in a separate Public Utilities Commission Facilities Fund, to which any interest on the funds collected shall accrue. The authority to issue assessments under this subsection shall terminate on June 30, 1987. The assessments charged to utilities under this subsection shall be deemed just and reasonable operating costs for amortization, with carrying costs, in the utility's next rate case, provided that case is filed before January 1, 1990. Any funds remaining in the fund after the improvements have been made will either be returned to the utilities or used to reduce the following year's Public Utilities Commission Regulatory Fund assessment.

§117. Reimbursement fund

1. Filing fees and expense reimbursements. All money collected by the commission in the form of filing fees, expense reimbursements ordered by the commission or payment for services, such as reproduction and distribution of copies of commission decisions and photocopying or for the use of facilities, shall be deposited with the Treasurer of State in an account to be known as the Public Utilities Commission Reimbursement Fund. This account is a continuous carrying account, with appropriate subaccounts, for reimbursement of commission expenses incurred in processing the associated matters or providing the associated services or facilities which generated the filing fee, payment or expense reimbursement and so much of the filing fee, payment or expense reimbursement as is allocated for these purposes and for refund of the unexpended portion of the filing fee.

2. State Controller's approval. All payments under this section shall be made to the commission after approval of the State Controller. In no event may the payments exceed the amounts received by the Treasurer of State from the Public Utilities Commission. Upon certification by the administrative director of the commission that certain amounts in the Public Utilities Commission Reimbursement Fund are not required by the commission, the Treasurer of State shall transfer the amounts to the General Fund.

3. Fines. Fines collected by the commission which do not constitute a reimbursement of commission expenses shall be deposited in the General Fund of the State Treasury.

§118. Participation with other regulatory bodies

The commission may participate with other state and federal public utility regulatory bodies, including the Federal Energy Regulatory Commission and the Federal Communications Commission, or their successors, in joint hearings and studies relating to mutually regulated utilities.

§119. Five-year review

Commencing with a review in 1985, the commission shall review the laws governing Public Utilities Commission operations and areas of jurisdiction every 5 years. Upon the review, the commission shall submit to the joint standing committee of the Legislature having jurisdiction over utilities legislation to remove any outdated provisions.

§120. Annual report

The commission shall report annually, before February 1st, to the joint standing committee of the Legislature having jurisdiction over public utilities on:

1. Budget. The commission's planned expenditures for the year and its use of funds in the previous year; and

2. Various fees. The waiver, exemption, receipt and expenditure of any filing fees, expenses, reimbursements or fines collected under this Title, on a case-by-case basis.

CHAPTER 3

RATES OF PUBLIC UTILITIES

§301. Safe facilities; just and reasonable rates

1. Facilities. Every public utility shall furnish safe, reasonable and adequate facilities and service.

2. Rates. The rate, toll or charge, or any joint rate made, exacted, demanded or collected by any public utility for production, transmission, delivery or furnishing of electricity, gas, heat or water; for communications service; or for transportation of persons or property within this State or for any service rendered or to be rendered in connection with any public utility, shall be just and reasonable.

3. Unreasonable rates prohibited. Every unjust or unreasonable charge for public utility service is prohibited and declared unlawful.

4. Determining rates. In determining just and reasonable rates, the commission:

A. Shall provide such revenues to the utility as may be required to perform its public service and to attract necessary capital on just and reasonable terms; and

B. May consider whether the utility is operating as efficiently as possible and is utilizing sound management practices.

§302. Limitations on rates

The following expenses, whether paid directly or indirectly, through reimbursement or otherwise, incurred by a public utility shall not be included or incorporated in operating expenses:

1. Contributions to political groups or candidates. Contributions or gifts to political candidates, political parties, political or legislative committees or any committee or organization working to influence referendum petitions or elections.

§303. Valuation of property for fixing rates

In determining just and reasonable rates, tolls and charges, the commission shall fix a reasonable value upon all the property of a public utility used or required to be used in its service to the public within the State and a fair return on that property. In fixing a reasonable value, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use and the prudent acquisition cost to the utility, less depreciation on each, and any other material and relevant factors or evidence, but the other factors shall not include current value. In making a valuation, the commission may consult reports, records or other information available to it in the office of any state office or board.

§304. Filing of schedules of rates, terms and conditions

Every public utility shall file with the commission, within a time to be fixed by the commission, schedules which shall be open to public inspection. The schedules shall show all rates, tolls and charges which the utility has established and which are in force at the time for any service performed by it within the State, or for any service in connection with or performed by any public utility controlled or operated by it or in conjunction with it. Every public utility shall file with and as part of its schedules all terms and conditions that in any manner affect the rates charged or to be charged for any service.

Public utility schedules which were formerly designated as rules shall be designated as terms and conditions. All such schedules to be filed with the commission shall be designated as terms and conditions.

§305. Public inspection of schedules

A copy of as much of the schedules as the commission determines necessary for the use of the public shall be printed in plain type and kept on file in every office of the public utility which is open to the public and where payments are made by the consumers, under such rules as the commission may prescribe.

§306. Schedule of joint rates

A schedule of joint rates or charges that is or may be in force between 2 or more public utilities shall be printed and filed with the commission and made open to the public in accordance with the provisions of this chapter.

§307. Changes in schedules; notice

No change may be made in any schedule, including schedules of joint rates, except upon 30 days' notice to

the commission, and all such changes must be plainly indicated upon existing schedules by filing new schedules in lieu of them 30 days prior to the time they are to take effect. The commission may, for good cause shown, allow changes upon less than the notice specified or modify the requirements of this section and section 308 in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

Without the approval of the commission, no utility may file a schedule or schedules for a general increase in rates pursuant to this section within one year of a prior filing for a general increase in rates pursuant to this section, unless the proceeding initiated by a prior filing was terminated without a final determination of the utility's revenue requirement. This requirement does not prevent any utility, at any time, from notifying the commission in advance, either voluntarily or in accordance with a commission requirement under this section, of its plans to file a general increase in rates. Nothing in this section may be construed to limit any utility's right, at any time, to petition pursuant to section 1322 for temporary rate relief. For the purpose of this paragraph, a "final determination of the utility's revenue requirement" means a decision on the merits of the utility's request after consideration of at least the utility's direct case in support of its request. The commission shall decide whether a final determination has been made in any specific case.

For the purposes of this section, a "general increase in rates" means any change in the rates, tolls and charges of the public utility, the effect of which is to increase the annual operating revenues of a public utility by more than 1%, provided that this term does not include a rate change made for the sole purpose of implementing a fuel cost adjustment rate, pursuant to section 3101 or section 4703 or a rate change made for the sole purpose of implementing an energy conservation adjustment rate, pursuant to section 3154.

The commission may, in its discretion, require the filing of information relating to the changes to be filed in a general increase in rates at the same time as the schedules are filed. The commission may require utilities, whose gross revenues exceed \$5,000,000 annually, to notify the commission, not more than 2 months in advance of filing a general increase in rates under this section, that such a filing is planned and to disclose the approximate amount of the increase, a general statement of the major issues that might be presented and the approximate rate of return the utility would be seeking.

§308. Filing of new schedules

Copies of all new schedules shall be filed in every office of a public utility where payments are made by customers 30 days prior to the time they are to take effect, unless the commission prescribes less time as provided in section 307.

§309. Adherence to rate schedules; change in form of schedules

1. Adherence to schedules. Except as otherwise provided in section 703, it is unlawful for any public utility to charge, demand, collect or receive, for any service performed by it within the State or for any service in connection with that performance, a greater or lesser compensation than is specified in such printed schedules as may at the time be in force, or to demand, collect or receive any rate, toll or charge not specified in the schedules. The rates, tolls and charges named in the schedule are the lawful rates, tolls and charges until they are changed as provided in this Title.

2. Exception. Notwithstanding subsection 1, when a public utility changes its rates, tolls or charges pursuant to any provision of this Title, the commission may for billing purposes, order that the change be applied to some or all service reflected in meter readings on or after the effective date of the change, or to such other period as it determines just and reasonable.

3. Form of schedules. The commission may prescribe such changes in the form in which the schedules are issued by any public utility as the commission finds to be expedient.

§310. Investigation of proposed changes in rates of public utilities; suspension pending investigation

1. Investigation of proposed rate changes. When the commission receives notice of any change proposed to be made in a schedule of rates filed with the commission under the provisions of law, it may at any time before the effective date of the change, either upon complaint or upon its own motion and after reasonable notice, hold a public hearing and make investigation as to the propriety of the proposed change. The hearing shall be held in accordance with section 1304. At any such hearing involving any change, the burden of proof to show that the change is just and reasonable is upon the public utility. After a hearing and investigation, the commission may make an order with reference to any new rate, joint rate, rental, toll, classification, charge, term, condition or form of contract or agreement proposed as would be proper in a proceeding initiated upon complaint or upon motion of the commission in any rate investigation. In implementing the order, the commission shall assure rate design stability.

2. Suspension pending investigation. Pending an investigation and order, the commission may at any time within the period preceding the effective date of the schedule suspend the operation of the schedule or any part of it, by filing with the schedule and delivering to the public utility affected a statement of its reasons for the suspension. The suspension shall not be for a longer period than 3 months from the effective date of the order of suspension, but if the investigation can not be concluded within a period of 3 months, the commission may in its discretion extend the time of suspension for 5

additional months.

3. Exception: Municipal and quasi-municipal water utilities and consumer-owned electric utilities. This section shall not apply to:

A. Municipal or quasi-municipal corporations which are water utilities within the definition of section 102, any provisions in any charter notwithstanding, and which elect to proceed pursuant to the terms of section 6104, unless by the express terms of section 6104, the provisions of this section are made applicable to those corporations; or

B. Consumer-owned electric utilities organized in accordance with chapter 35, unless by the express terms of chapter 35 the provisions of this section are made applicable to those districts.

§311. Comprehensive classification of service

The commission shall provide for a comprehensive classification of service for each public utility. The classification may take into account the quantity used, the time when used, the purpose for which used and any other reasonable consideration. Each public utility shall conform its schedules of rates, tolls and charges to the classification.

§312. Temporary rates during rate proceeding

During any proceeding initiated by a public utility by a filing pursuant to section 307 or 1302, the commission may temporarily approve any undisputed amounts of a requested rate increase or rate decrease. If the parties are unable to agree on an undisputed amount, any party, at any time after the cross-examination of the utility's direct case has been conducted and all parties have filed their direct cases, may request the commission to require the parties to provide a written statement of those issues that are being contested and an estimated dollar value of the extent of the disagreement between the utility and the other party on that issue. The commission, after examining the statements of issues presented, may determine an amount which is undisputed. The commission may include in the undisputed amount the amount put in question by any party other than the utility, if the commission determines that that party has no possibility of ultimately prevailing on that issue. The amounts temporarily approved shall be filed by the utility as a temporary schedule which shall be effective from the date of approval of the temporary schedule until the issuance of the final order in section 307 proceeding.

The utility shall notify each customer of the rate increase allowed under this section. The notice shall be mailed with the first bill mailed to each customer after the date of approval and shall state the following:

1. Amount of increase. The amount of increase allowed under this section;

2. Statement. The fact that that rate increase allowed under this section was undisputed or that although disputed it was approved by the commission, subject to partial or full refund if the commission in its final order approves an amount less than the increase allowed by the temporary rate schedule;

3. Amount of remaining disputed portion. The amount of the remaining disputed portion of the requested rate increase; and

4. Disputed portion will be decided. If available, an estimate of the date when the disputed portion will be decided.

CHAPTER 5

ACCOUNTING

§501. Uniform system of accounts

Every public utility shall keep and render to the commission in the manner and form prescribed by the commission, uniform accounts of all business transacted.

1. Other systems prohibited. No public utility may keep any books, accounts, papers or records of its business transacted other than those prescribed or approved by the commission. Nothing contained in this Title shall require any public utility engaged in interstate commerce to act contrary to the requirements of any federal law relating to public utilities engaged in interstate commerce.

2. Formulation of systems. In formulating a system of accounting for any class of public utilities, the commission shall consider any system of accounting established by any federal law, commission or department and any system authorized by the national association of the particular class of utilities.

§502. Forms

1. Forms of books and records. The commission shall prescribe the forms of all books, accounts, papers and records required to be kept. Every public utility shall keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission and shall comply with all directions of the commission relating to its books, accounts, papers and records.

2. Utilities with no property in the State. The requirements of this section do not apply to a public utility having no property located within this State.

3. Blank forms furnished. The commission shall prepare suitable blank forms for carrying out the purposes of this Title and shall, when necessary, furnish them to each public utility.

§503. Account of subsidiary business

Every public utility engaged directly or indirectly in any other subsidiary business shall, if ordered by the commission, keep and render separately to the commission the accounts of the subsidiary business in the manner and form set out in section 501, in which case all the provisions of this Title shall apply to the books, accounts, papers and records of the subsidiary business.

§504. Time for closing accounts; filing balance sheets

The following provisions apply to the accounts of public utilities.

1. Time for closing accounts. The accounts of all public utilities shall be closed annually on the 31st day of December unless the commission fixes a different date.

2. Filing of information. A balance sheet as of the date the account is closed shall be promptly taken from the account. Within 3 months after the account is closed the balance sheet together with other information as the commission may prescribe, shall be verified by an officer or owner of the public utility and filed with the commission.

3. Extension. The commission may, for good cause, extend the deadline set out in subsection 2 not exceeding one month and may excuse any public utility from filing its returns when the gross revenue of the utility does not exceed \$3,000.

§505. Audit of accounts

The commission shall provide for the examination and audit of all accounts and all items shall be allocated to the accounts in the manner prescribed by the commission.

§506. Inspection of books and records

The agents, accountants or examiners employed by the commission shall have authority inside or outside the State under the direction of the commission to inspect and examine the books, accounts, papers, records and memoranda kept by any public utility.

CHAPTER 7

REGULATION AND CONTROL OF PUBLIC UTILITIES

§701. Special privileges forbidden

1. Person furnishing facilities incident to service. No public utility may demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by the public utility in consideration of the person furnishing a part of the facilities incident to the service.

2. Renting facilities. Nothing in this section prohibits a public utility from renting any facilities incident to the production, transmission, delivery or furnishing of electricity, gas, heat or water or the conveyance of

telephone or telegraph messages and paying a reasonable rental for the facilities.

3. Furnishing appliances. Nothing in this section requires a public utility to furnish any part of the appliances which are situated in or upon the premises of any customer or user, except telephone station equipments upon the subscribers' premises, and unless otherwise ordered by the commission, meters and appliances for the measurement of any product or service.

4. Classifications of telephone service. Nothing in this section affects scheduled classifications of telephone service in which separate charges are made for facilities and for service or scheduled classifications of rural telephone service in which a portion of the facilities are regularly furnished by the user of the service.

§702. Unjust discrimination

1. Unjust discrimination. It is unlawful for a public utility to give any undue or unreasonable preference, advantage, prejudice or disadvantage to a particular person.

2. Solar energy. No public utility providing electric or gas service may consider the use of solar energy by a customer as a basis for establishing higher rates or charges for energy or service sold to the customer.

3. Service and facilities. Every public utility providing electric or gas service, upon reasonable notice, shall furnish to all persons who may apply for facilities and service, suitable facilities and service consistent with policies approved or established by the commission, without undue delay and without unreasonable discrimination.

§703. Rebates; discounts and discrimination

1. Free or special rates prohibited. No person may knowingly solicit, accept or receive any rebate, discount or discrimination in respect to any service rendered, or to be rendered by a public utility, or for any related service where the service is rendered free or at a rate less than named in the schedules in force, or where a service or advantage is received other than is specified.

2. Free and special rates allowed under certain circumstances. This Title does not prohibit:

A. A public utility from granting service at free or reduced rates for charitable or benevolent purposes or for national or civilian defense purposes;

B. A public utility from supplying water and service free or at reduced or special rates to any person, firm or corporation for fire protection purposes through or by means of any apparatus or appliances furnished, installed or maintained by the person, firm or corporation, provided it is approved by the commission; or

C. A public utility from making special rates for its

employees or in case of emergency service.

3. Existing contracts. The furnishing by a public utility of a product or service at the rates and upon terms and conditions provided for in a contract in existence January 1, 1913, may not be construed as constituting a discrimination or undue or unreasonable preference or advantage within the meaning specified. When any such contract or contracts are or become terminable by notice of a utility, the commission may order that the contract or contracts be terminated by the utility as and when directed by the order. It shall be lawful for a public utility to make a contract for a definite term subject to the commission's approval for its product or service, but the published rates shall not be changed during the term of the contract without the commission's consent.

4. Forfeiture. A person who violates this section commits a civil violation for which a forfeiture not to exceed \$1,000 shall be adjudged for each offense.

§704. Termination of utility services

The following provisions apply to termination of a customer's utility service.

1. Residential customers. The commission shall adopt and promulgate reasonable rules after a hearing concerning the termination or disconnection of any residential customer's service by an electric, gas, water or telephone utility of the State. These rules shall apply generally to all such utilities within the commission's jurisdiction and shall provide for adequate written notice by that utility to the residential customer that his utility bill has not been paid, and a notice of his prospective termination or disconnection and his right, prior to disconnection, to enter into reasonable installment payment arrangements with that utility; to settle any dispute concerning the proposed disconnection at an informal hearing with that utility and to appeal the results of that utility's decision to the commission. The rules shall also provide that there may be no termination or disconnection during a limited medical emergency and for a just and reasonable procedure regarding reconnections of utility service and deposit requirements.

2. Nonresidential customers. Each public utility shall file with the commission schedules containing its terms and conditions applicable to termination of utility services to any nonresidential customer, which terms and conditions shall be subject to the commission's power under this Title. Every public utility shall comply with its terms and conditions. The commission shall adopt rules which provide a procedure for resolution by the commission or its delegate of disputes as to whether a proposed termination by a public utility is in compliance with its terms and conditions. A public utility may not terminate service to a nonresidential customer if the commission or its delegate rules within 7 days of receipt of the request for ruling that the proposed termination is not in compliance with the utility's terms and conditions. If the rules authorize a delegate to resolve dis-

putes, the rule shall include a procedure for appeal of the decision to the commission.

3. Violation of rules. If the commission finds that a public utility has willfully or recklessly violated any substantive rule promulgated by the commission pursuant to the authority granted in this section, the commission may bring a complaint against the public utility before the Administrative Court as provided in Title 5, section 10051, subsection 4, except that the jurisdiction in the Administrative Court shall not include the issuance, renewal, denial or revocation of a license of a public utility. The Administrative Court may impose fines in accordance with Title 4, section 1156.

4. Property loss suffered by a customer. Upon a finding by the Administrative Court of a property loss suffered by a customer causally related to a violation by a public utility set out in subsection 3, the court may order the public utility to compensate the customer for the actual loss, less any set off for a balance found to be due the utility by the customer for unpaid utility service. That loss may not include consequential damages. No action for damages resulting from a termination which was in willful or reckless violation of the commissions rules may be commenced until at least 60 days after notice of a claim setting forth the nature of the termination and the damages suffered has been provided to the utility. That notice shall be provided to the utility in writing within 30 days of the termination.

§705. Utility deposits

The following provisions apply to deposits of utility customers:

1. Residential customers. No public utility may require any deposit of any residential customer without proof that the customer is likely to be a credit risk or to damage the property of the utility. That proof shall be furnished to the customer upon request. Absence of previous experience with the utility shall not be proof that the customer is a credit risk or threatens to damage utility property.

2. Nonresidential customers. Every public utility shall file with the commission schedules containing its terms and conditions for requiring a deposit from nonresidential customers, which terms and conditions shall be subject to the commission's power under this Title. Every public utility shall comply with its terms and conditions. The commission shall adopt rules which provide a procedure for resolution by the commission or its delegate of disputes as to whether a deposit being required by a public utility is in compliance with its terms and conditions. If the rules authorize a delegate to resolve disputes, the rules shall include a procedure for appeal of the decision to the commission.

3. Interest rate on deposits. The commission shall adopt reasonable rules, after hearing, to provide for a just and reasonable interest rate to be paid by the utility.

ty on any deposit of any customer.

§706. Tenants not liable for a landlord's utility bills

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Landlord" means any person who rents or leases land or structures to others for compensation or any person who manages or controls the property on behalf of another.

B. "Rental property" means property used or occupied by any tenant for which rent is paid to a landlord.

C. "Tenant" means any person who pays rent to any landlord for the use or occupation of any land or structure owned by another or who occupies or uses the property, regardless of whether the tenancy is subject to a written lease.

2. Disconnection of tenant. In every instance where the landlord has applied for and is granted utility service, the landlord is responsible for payment for that service with respect to any rental property. The utility may not demand payment from the tenant for utility service to the tenant because of the landlord's failure to pay for utility service rendered at the rental property. The utility may disconnect the tenant only after affording the tenant notice and opportunity to assume responsibility for future service in accordance with the rules of the commission.

3. Lien against the rental property. In addition to whatever other legal remedies the utility may have against the landlord who does not pay for utility service provided to rental property, the utility shall have a lien upon the rental property and on any interest the landlord has in the same, to secure payment for utility services to that property with costs.

4. Dissolution of the lien, lien certificate. This lien shall be dissolved unless within 90 days after the date on which the unpaid bill was served, the utility files in the registry of deeds for the county in which the property is located a lien certificate, setting forth the amount of the lien, the name of the landlord, a statement that a lien is claimed on the rental property to secure the payment of utility services, that a demand has been made for that payment and that payment has not been made. At the time of the recording of the lien certificate in the registry of deeds, the utility shall send a copy of the certificate to the landlord by certified mail, return receipt requested. This lien shall be dissolved unless, within 120 days after the unpaid bill was served, civil action to enforce the lien is brought in the District Court for the division where the rental property is located.

5. Enforcement of the lien. The proceedings in the District Court for enforcement of this lien shall be

governed by Title 10, sections 3256 to 3260, and 3263 and 3264.

6. Subsequent purchaser takes title free of lien. Any person who is a bona fide purchaser for value of rental property shall take title to that property free of the lien established under subsection 3 unless, before the purchaser's deed is recorded, the utility has filed the certificate set out in subsection 4. The interest of any mortgagee of rental property shall be affected by the lien established unless, before the mortgage is recorded, the utility has filed the certificate set out in subsection 4.

§707. Affiliated interests

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affiliated interest" means:

(1) Any person who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of a public utility;

(2) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (1);

(3) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by a public utility;

(4) Any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a public utility, provided that the person or group of persons beneficially owns more than 3% of the public utility's voting securities; or

(5) Any public utility of which any person defined in subparagraphs (1) to (4) is an affiliated interest.

B. "Transaction" means any dealings between a public utility and its affiliated interests as defined in paragraph A which affects, directly or indirectly, any accounting entry of the public utility, as prescribed pursuant to section 501.

C. "Voting security" means any security or any proprietary or other interest presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company.

2. Access to accounts and records. The commission may require the production of books, accounts, records, papers and memoranda of any affiliated interest which relates, directly or indirectly, to its transactions with a public utility. The commission may, in determining the reasonableness of utility rates, disallow all or a portion of the payments under any transaction, the account or

record of which is not made available to the commission.

3. Consent by commission. No public utility may extend or receive credit or make or receive a loan to or from an affiliated interest or make any contract or arrangement for the furnishing of management, supervision of construction, engineering, accounting, legal, financial or similar services, or for the furnishing of any service other than those enumerated with any affiliated interest until the commission finds that the contract or arrangement is not adverse to the public interest and gives the contract or arrangement its written approval.

A. Unless the commission disapproves it within 60 days of filing, a contract or arrangement filed with the commission under this section is deemed approved. The commission may, however, suspend the effective date of the contract or arrangement for an additional 60 days if necessary to enable the commission to complete its review of the contract or arrangement.

B. The commission may approve a contract or arrangement with an affiliated interest undertaken after October 24, 1977, subject to such terms, conditions and requirements as it determines necessary to safeguard the public interest. If the contract or arrangement is not consented to or approved by the commission as provided in this section, the commission may disallow, for rate-making purposes, payments or part of any such payments as the commission finds not to be in the public interest, and the commission may, after notice to the affected parties and opportunity for hearing, declare that contract or arrangement prospectively void. Unless otherwise invalid, that contract or arrangement shall remain in effect until declared prospectively void by an effective final order of the commission issued under this section no later than 90 days from the date of service of the notice.

C. The commission may, in the case of a utility or group of utilities, exempt from this section from time to time classes of transactions as it may specify by rule or order in advance and which in its judgment will not be adverse to the public interest.

D. Commission approval of a contract or arrangement under this section may not limit or restrict the powers of the commission in determining and fixing any rate, fare, toll, charge, classification, schedule or joint rate as provided in this Title.

4. Waiver. The commission may, by general rules, waive the requirements for filing and for approval of contracts and arrangements described in subsection 3 in cases of:

A. Contracts or arrangements made in the ordinary course of business for the employment of officers or employees;

B. Contracts or arrangements made in the ordinary

course of business for the purchase of services, supplies or other personal property;

C. Contracts or arrangements where the total obligation to be incurred does not exceed \$500;

D. The temporary leasing, lending or interchanging of equipment in the ordinary course of business in case of an emergency; and

E. Contracts made by a public utility with any person whose bid is the most favorable to the public utility.

However, if the commission finds that any public utility is abusing or has abused the waiver granted in this section in order to evade compliance with this section, the commission may require that public utility to file and receive the commission's approval of all such contracts as provided for in this section, but the general waiver shall remain in effect as to all other public utilities.

5. Violations. Any public utility or affiliated interest which willfully refuses access to books, accounts, records, papers and memoranda or fails to obtain consent as required by this section after notice by the commission of violation, commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged for each offense. Each day of violation constitutes a separate offense.

§708. Reorganizations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Reorganization" means any creation, organization, extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, of an affiliated interest as defined in section 707 accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of voting securities or property. The commission may decide what other public utility actions constitute a reorganization to which the provisions of this section apply. Reorganizations include any reorganization for which a proceeding for approval is pending before any state or federal agency or court on or after July 13, 1982. For purposes of this subsection, a reorganization does not include any proceeding under the federal antitrust laws or the transfer of voting securities by gift, devise or inheritance.

B. "Voting security" means any security presently entitling the owner or holder of any security to vote in the direction or management of the affairs of a company or any proprietary or other interest serving the same purposes.

2. Reorganization subject to commission approval.

Reorganization shall be subject to commission approval as follows.

A. Unless exempted by rule or order of the commission, no reorganization may take place without the approval of the commission. No reorganization may be approved by the commission unless it is established by the applicant for approval that the reorganization is consistent with the interests of the utility's ratepayers and investors. The commission shall rule upon all requests for approval of a reorganization within 60 days of the filing of the request for approval. If it determines that the necessary investigation cannot be concluded within 60 days, the commission may extend the period for a further period of no more than 120 days. In granting its approval, the commission shall impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of ratepayers. These conditions shall include provisions which assure the following:

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

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

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

(4) That the ability of the utility to provide safe, reasonable and adequate service is not impaired;

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

(6) That the utility's credit is not impaired or adversely affected;

(7) That reasonable limitations be imposed upon the total level of investment in nonutility business, except that the commission may not approve or disapprove of the nature of the nonutility business;

(8) That the commission has reasonable remedial power including, but not limited to, the power, after notice to the utility and all affiliated entities of the issues to be determined and the opportunity for an adjudicatory proceeding, to order divestiture of or by the utility in the event that divestiture is necessary to protect the interest of the utility,

ratepayers or investors. A divestiture order shall provide a reasonable period within which the divestiture shall be completed; and

(9) That neither ratepayers nor investors are adversely affected by the reorganization.

B. The commission may intervene on behalf of the State in any proceeding before any state or federal agency or court before which an application for approval of reorganization is pending. The commission may enter into any binding settlement related to any proceeding in which the commission has intervened and may exercise any powers or rights provided by that settlement and may enforce those powers or rights.

3. Waiver. The commission may, by general rule, exempt classes of reorganizations from the requirements of subsection 2.

4. Filing fee. Within 30 days after the application for approval of a reorganization is filed pursuant to subsection 2, the commission may order the applicant to pay a filing fee not to exceed \$50,000, if the commission determines that the application may involve issues which will necessitate significant additional costs to the commission. The applicant may request the commission to waive all or a portion of the filing fee. The commission shall rule on the request for waiver within 30 days. Notwithstanding any other provision of law, filing fees paid as required in this subsection shall be segregated, apportioned and expended by the commission for the purposes of processing the application. Any portion of the filing fee that is received from an applicant and is not expended by the commission to process the application shall be returned to the applicant.

§709. Insider transactions

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Insider" means any officer or employee who participates or has authority to participate in major policy-making functions of a public utility or of an affiliated interest, as defined in section 707, or any director or trustee of a public utility or of an affiliated interest.

B. "Insider transaction" means any dealings which affect, directly or indirectly, any accounting entry as prescribed pursuant to section 501 between a public utility and:

(1) An insider of the public utility;

(2) A person related to an insider of the public utility;

(3) Any other person where the transaction is made in contemplation of the person becoming an insider

of the public utility; or

(4) Any other person where the transaction inures to the tangible economic benefit of an insider or a person related to an insider.

C. "Person" means a corporation, partnership, limited partnership, business association, trust, estate or natural person.

D. "Person related to an insider" means:

(1) An insider's spouse;

(2) An insider's parent or stepparent, or child or stepchild; or

(3) Any other relative who lives in an insider's home.

2. Approval and disclosure of insider transactions. An insider transaction shall be specifically reviewed and approved by the public utility's board of directors or trustees, provided that when an insider transaction is part of a series of related transactions involving the same insider, approval of each separate transaction is not required so long as the public utility's board of directors or trustees has reviewed and approved each series of related transactions and the terms and conditions under which the transactions may take place. The minutes of the meeting at which approval is given shall indicate the nature of the transaction or transactions, that the review was undertaken and approval given and the names of individual directors or trustees who voted to approve or disapprove the transaction or transactions. In the case of negative votes, a brief statement of each dissenting director's or trustee's reason for voting to disapprove the proposed insider transaction or transactions shall be included in the minutes if its inclusion is requested by the dissenting director or trustee.

3. Information pertaining to insider transactions. Each public utility shall submit to the commission with its annual report a record of insider transactions requiring review and approval under subsection 2. Each public utility shall make readily available to the commission, upon request, all documents and other materials relied upon by the board in approving each insider transaction, including the name of the insider, the insider's positions or relationship that causes the person to be considered an insider, the date on which the transaction was approved by the board, the type of insider transaction and the relevant terms of the transaction, any other pertinent facts which serve to explain or support the basis for the board's decision and any statements submitted for the minutes or the file by directors or trustees who voted not to approve the transaction setting forth their reasons for the vote.

4. Discovery of insider relationship. When a public utility becomes aware of the existence of an insider relationship after entering into a transaction for which

approval would have been required under subsection 2, the public utility shall promptly report that transaction in writing to the commission.

5. Knowledge of proposed insider transaction. Any insider, having knowledge of an insider transaction between the public utility and that insider, a person related to that insider or any other person where the transaction inures to the tangible economic benefit of that insider or person related to that insider, shall give timely notice of the transaction to the public utility's board of directors or trustees.

6. Civil violation; forfeiture. A public utility or insider which willfully violates this section, commits a civil violation for which a forfeiture not to exceed \$1,000 shall be adjudged for each offense. Each day of violation constitutes a separate offense.

§710. Accidents investigated; reports

If an accident occurs upon the premises of a public utility or directly or indirectly arises from or is connected with its maintenance or operation, the following provisions apply.

1. Accidents resulting in loss of life. If the accident results in the loss of human life, the public utility shall file a report of the accident in accordance with subsection 4 and the commission shall cause an investigation of the accident to be made immediately.

2. Accidents resulting in personal injury or property damage. If the accident results in personal injury or damage to property, the public utility shall file a report of the accident in accordance with subsection 4 and the commission may investigate if in its judgment the public interest requires it.

3. Investigations. Investigations shall be made in compliance with the following provisions:

A. An investigation shall be held in the locality of the accident unless, for the greater convenience of those concerned, the commission orders it to be held at some other place. An investigation may adjourn from place to place as may be necessary and convenient.

B. The commission shall seasonably notify the public utility of the time and place of investigations.

C. The public utility shall have an opportunity to be heard during the investigation.

D. The commission may make such order or recommendation based on its investigation as in its judgment seems just and reasonable.

4. Filing accident reports. Every public utility shall file reports of accidents described in subsections 1 and 2 with the commission. Accident reports shall be filed in compliance with the commission's rules and in the man-

ner and form designated by the commission. Accidents resulting in loss of human life shall be reported immediately by telephone or telegraph followed by a detailed written report.

5. Reports not admitted as evidence in an action. No order or recommendation of the commission or accident report filed with the commission may be admitted as evidence in any action for damages based on or arising out of the loss of life or injury to person or property referred to in this section.

§711. Joint use of equipment

1. Joint use permitted. The commission may order that joint use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use when, after a hearing had upon its own motion or upon complaint of a public utility or cable television system affected, it finds the following:

A. That public convenience and necessity require the use by one public utility or cable television system of the conduits, subways, wires, poles, pipes or other equipment, or any part of them, on, over or under any street or highway and belonging to another public utility or cable television system;

B. That joint use will not result in irreparable injury to the owner or other users of the conduits, subways, wires, poles, pipes or other equipment or in any substantial detriment to the service; and

C. That the public utilities or cable television system have failed to agree upon the use or the terms and conditions or compensation for the use.

2. Liability of user. If joint use is ordered, the public utility or cable television system to whom the use is permitted shall be liable to the owner or other users of the conduits, subways, wires, poles, pipes or other equipment for damage that may result from its use to the property of the owner or other users.

3. Interests of cable television subscribers. Any actions taken or orders issued by the commission under this section shall take into account the interests of the subscribers of the affected cable television system, as well as the customers of the affected public utilities.

§712. Competitive bids

Any contract in excess of \$2,000 between a public utility and a contractor for the construction of facilities located on private property for the exclusive use of a private individual and for which the private individual is required to pay the total cost directly to the utility, shall be awarded by a system of competitive bidding. Unless there are valid reasons to the contrary, contracts shall be awarded to the lowest responsible bidder.

CHAPTER 9

APPROVAL OF STOCKS, BONDS AND NOTES BY PUBLIC UTILITIES COMMISSION

§901. Issuance of stocks, bonds and notes

Subject to the requirements of this chapter any public utility, organized and existing or incorporated under the laws of this State and doing business in the State, may issue stocks, bonds which may be secured by mortgages on its property, franchises or otherwise, notes or other evidences of indebtedness payable at periods of more than 12 months after the date of issuance, when necessary for:

1. Acquisition of property. The acquisition of property to be used for the purpose of carrying out its corporate powers;

2. Construction; facilities. The construction, completion, extension or improvement of its facilities;

3. Improvement; service. The improvement or maintenance of its service;

4. Refinancing. The discharge or lawful refunding of its obligations, including capital stock;

5. Reimbursement. Reimbursement of its treasury for money used for the acquisition of property, the construction, completion, extension or improvement of its facilities; for the discharge or lawful refunding of its obligations; and which actually were expended from income or from other money in the treasury of the corporation not secured by or obtained from the issue of stocks, bonds, notes or other evidences of indebtedness of the corporation; or

6. Other purposes. Any other lawful purpose.

§902. Commission authorization required

1. Order authorizing issuance. No public utility may make an issuance as described in section 901, except as provided in section 906, unless it has made a written application, setting forth information the commission may require and has secured from the commission an order authorizing the issue and the amount of the issue and stating that in the opinion of the commission the proceeds of the issuance of the stocks, bonds, notes or other evidences of indebtedness is required in good faith for purposes enumerated in section 901.

2. Matters which may be considered. In determining whether to grant its authorization, the commission may consider the reasonableness of the purpose or purposes for which the proceeds of the issue will be applied, other resources which the utility has available or may have available for those purposes, the justness and reasonableness of the estimated cost to the utility of the issue and the effect of the issue upon the utility's capital struc-

ture. The commission's decision shall be in writing and shall contain findings setting forth the reasons for the decision.

3. Procedure upon application. For the purpose of enabling the commission to determine whether it shall issue an order in accordance with subsection 1, the commission shall make such inquiries for investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it determines important in enabling it to reach a determination. The commission may determine whether and in what manner notice of the application shall be given and whether a hearing should be held. In view of the public interest in the prompt resolution of questions affecting the issuance of securities by public utilities, in cases in which a hearing is held or the application is contested, the commission shall issue its final order within 60 days of the filing of the application or 30 days of the close of hearing on the application, whichever first occurs, unless the commission makes an affirmative determination that additional time is necessary for a proper resolution of issues concerning the application and, notwithstanding any other provisions of law, shall establish such accelerated notice periods, schedules and limitations on hearings as may be necessary in furtherance of the resolution of those issues.

4. Approval of issuance not to affect rate-making powers. No order of the commission authorizing the issue of stocks, bonds, notes or other evidences of indebtedness may limit or restrict the powers of the commission in determining and fixing any rate, fare, toll, charge, classification, schedule or joint rate as provided in this Title.

§903. Stocks sold at less than par value

Every order authorizing the issue of stock shall, if it authorizes sale at less than par value, specify a minimum price at which the shares are to be sold. Any shares of stock, issued in accordance with such an order, shall be fully paid stock and not liable to any further call or payment, even though it may have been authorized for sale at less than its par value.

§904. Approval of stocks authorized, but not issued

The commission may at the request of any public utility approve the issue of any stocks, bonds, notes or other evidences of indebtedness authorized, but not issued.

§905. Validity of securities issued pursuant to order of commission

Any stocks, bonds, notes or other evidences of indebtedness issued or sold pursuant to or in reliance on and in accordance with any order, authorization or decision of the commission pursuant to this chapter, and at least 5 business days after the date of the order, authorization or decision, shall be valid, binding and enforceable in accordance with their terms, including the terms of any agreement, instrument or document under or pursuant to which the stocks, bonds, notes or other evidences

of indebtedness are issued, notwithstanding that the order, authorization or decision of the commission is later vacated, modified or otherwise held to be wholly or partly invalid, whether by the commission upon a petition for rehearing or reopening, or otherwise, or by a court, unless operation of the order, authorization or decision of the commission has been stayed or suspended by the commission or a court of competent jurisdiction prior to the issuance of the stocks, bonds, notes or other evidences of indebtedness.

§906. Commission authorization not required

1. Property and service outside the State. Except as provided in subsection 2 for electric utilities, notwithstanding any other provision of this chapter, a public utility is not required to apply to the commission for authority to issue stocks, bonds, notes or other evidences of indebtedness for the acquisition of property, for the purposes of carrying out its corporate powers, the construction, completion, extension or improvement of its facilities, or the improvement or maintenance of its service, outside the State.

2. Exception: Electric utilities. Notwithstanding subsection 1, this chapter shall apply to any domestic electric utility acquiring and operating utility facilities outside the State for the purpose of serving customers within the State.

§907. Municipal or quasi-municipal corporations

Without in any way restricting the general language of this chapter, this chapter shall be construed to authorize any municipal or quasi-municipal corporation referred to in this Title to issue, upon vote of its trustees or similar governing board, bonds, notes or other evidences of indebtedness for the purposes specified and subject to the approval of the commission. Notwithstanding the provisions of any legislative charter, the trustees or similar governing board of any such corporation may issue notes or other evidences of indebtedness payable at periods of less than 12 months after the date of issuance when necessary to carry out the purposes of the corporation, without securing authorization from the commission pursuant to this chapter.

§908. Additional requirements as to issuance

1. Commission's order recorded on utility's books. No public utility may issue any stocks, bonds, notes or other evidences of indebtedness, unless payable within one year from date of issuance, for money, property or services, in payment for them, either directly or indirectly, until the commission's authorizing order is recorded on the utility's books.

2. Commission consent for refund of indebtedness. No indebtedness may in whole or in part, directly or indirectly, be refunded by any issue of stocks or bonds or by any other evidence of indebtedness, running for more than 12 months, without the consent of the commission.

§909. Stock for organization purposes

Any public utility corporation at the time of its organization may issue for organization purposes, without the consent of the commission, not more than 6 shares of stock at par for cash or, if non-par stock, for the consideration of \$100 per share, these shares when issued to be a part of the total capital issue.

§910. Consent required for change of capital or purposes

1. Change of capital. No public utility may without the consent of the commission:

- A. Decrease its capital;
- B. Declare any stock, bond or scrip dividend; or
- C. Divide the proceeds of the sale of its own or any stock, bonds or scrip among stockholders.

2. Change of purpose. No change of purposes of a public utility, unless specifically chartered, becomes effective until:

- A. Approved by the commission; and
- B. A certificate of approval is filed with the Secretary of State within 20 days of the date it is approved.

§911. Approval of capital leases

No capital lease, entered into by a public utility for a term of more than 3 years, of property having a fair value the greater of \$50,000 or 1% of the public utility's total long-term debt is valid without the written approval of the commission. The commission's procedure and standards governing approval shall be similar to those which apply to applications under sections 901 and 902.

CHAPTER 13AUTHORIZATION OF SALES, LEASES,
AND MORTGAGES OF PROPERTY§1101. Authorization required

1. Utilities to secure authorization from the commission. A public utility must secure an order of authorization from the commission before it may:

A. Sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or part of its property that is necessary or useful in the performance of its duties to the public or its franchises, permits or rights under them;

B. Merge or consolidate its property, franchise or permits, or a part of them, with another public utility by any means, direct or indirect.

2. Failure to secure commission authorization. Every sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation made other than in

accordance with the order of the commission authorizing it is void.

3. Utilities exclusively outside the State. Nothing in this section applies to property, franchises, permits or rights of a utility owned and operated exclusively outside the State.

§1102. Property not necessary or useful to a utility's duties

Nothing in section 1101 prevents the sale, lease or other disposition by a public utility of property, which is not necessary or useful in the performance of its duties to the public. As to any purchaser of the property in good faith for value, the sale of property by a public utility shall be conclusively presumed to have been of property which is not necessary or useful in the performance of its duties to the public.

§1103. Transfer of utility stock

The following provisions apply to the acquisition of utility stock by another utility:

1. Commission authorization. No public utility may purchase, acquire, take or hold any part of the capital stock of any other public utility organized or existing under the laws of this State without the commission's authorization.

2. Transfer of stock void. Every assignment, transfer, contract or agreement for assignment or transfer of stock by or through a person or corporation or otherwise in violation of this section is void. No transfer that violates this section may be made on the books of a public utility.

§1104. Abandonment of property or service

1. Commission approval. No public utility may abandon all or part of its plant, property or system necessary or useful in the performance of its duties to the public, or discontinue the service which it is providing to the public by the use of such facilities, without first securing the commission's approval.

2. Terms and conditions. In granting its approval, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. A public utility abandoning all or part of its plant, property or system or discontinuing service pursuant to authority granted by the commission under this section is deemed to have waived all objections to the terms, conditions or requirements imposed by the commission in that regard.

CHAPTER 13PROCEDURE§1301. Substantial compliance

Substantial compliance by the commission with the requirements of this Title gives effect to all the commis-

sion's rules, orders and acts. The commission's rules, orders and acts may not be declared inoperative, illegal or void for an omission of a technical and immaterial nature.

§1302. Complaints

1. Filing a complaint. When a written complaint is made against a public utility by 10 persons aggrieved that the rates, tolls, charges, schedules or joint rate or rates of a public utility are in any respect unreasonable or unjustly discriminatory; that a regulation, measurement, practice or act of a public utility is in any respect unreasonable, insufficient or unjustly discriminatory; or that a service is inadequate or cannot be obtained, the commission, being satisfied that the petitioners are responsible, shall, with or without notice, investigate the complaint.

2. Processing of complaint. The commission, immediately upon the filing of a complaint, shall notify in writing the public utility complained of that a complaint has been made and of the nature of the complaint. The utility shall file its response to the complaint within 10 days of the date the notice of complaint is issued. After receipt of the response, if the commission is satisfied that the utility has taken adequate steps to remove the cause of the complaint or that the complaint is without merit, the complaint may be dismissed. If the complaint is not dismissed, the commission shall promptly set a date for a public hearing. The commission may allow for all parties to attempt to resolve the complaint to their mutual satisfaction. If a mutually satisfactory resolution does not appear to be forthcoming, the hearing shall be held on the complaint pursuant to section 1304. The commission may not enter an order affecting the rates, tolls, charges, schedules, regulations, measurements, practices or acts complained of without an opportunity for public hearing. In the absence of an informal disposition pursuant to Title 5, section 9053, the commission shall render a decision upon the complaint no later than 9 months after its filing.

3. Complaint by utility or commission. The commission may institute or any public utility may make complaint as to any matter affecting its own product, service or charges. The complaint shall be processed in accordance with subsection 2.

§1303. Investigations

1. Summary investigations. The commission may on its own motion, with or without notice, summarily investigate when it believes that:

- A. A rate or charge is unjust or unreasonable;
- B. A service is inadequate or cannot be obtained; or
- C. An investigation of any matter relating to a public utility should for any reason be made.

2. Formal investigation. If after the summary investigation, the commission is satisfied that sufficient grounds exist to warrant a formal public hearing as to the matters investigated, it shall give the interested public utility written notice of the matter under investigation. Seven days after the commission has given notice, it may set a time and place for a public hearing. The hearing shall be held in accordance with section 1304.

§1304. Public hearings

Public hearings conducted by the commission under this Title are subject to the following provisions.

1. Notice to utility. The commission shall notify the public utility and other interested persons it considers proper of the time and place of the formal public hearing as provided in Title 5, section 9052.

2. Notice to subscribers. If, after the commission has notified the public utility of the hearing as provided in this section or in section 310, it appears that the time, place and nature of the hearing will not be reasonably publicized by newspaper or otherwise, the following provisions apply.

A. The commission may upon written notice to the public utility require it to:

- (1) Give reasonable notice of the time and place of the hearing to each subscriber affected or to be affected by the subject of the hearing; or
- (2) File pertinent information as to the rates or service involved, including schedules of proposed rates, in the office of the clerk of the municipality where the subscribers reside.

B. The notice given by the public utility shall:

- (1) Be given by first class mail; and
- (2) Include a statement that pertinent information as to rates or service is on file in the office of the clerk of the municipality where the subscribers reside.

C. Nothing in this section relieves the utility from the provisions of section 3082.

3. Subpoenas. The commission may issue subpoenas to require the attendance and testimony of witnesses and the production of evidence relating to any fact at issue in the hearing.

4. Parties. A party to a hearing is entitled to be heard and to have the subpoenas issued by the commission in the manner described in Title 5, section 9060.

5. Commission authorized to act on an expedited basis. In proceedings pursuant to section 1302, 1303 or 1321, after reasonable notice and opportunity to be heard,

the commission may issue a temporary order pending the conclusion of the formal public hearing. In making the order, the commission shall consider the likelihood that it would be issued at the conclusion of the proceeding, the benefit to the public or affected customers compared to the harm to the utility or other customers of issuing the order and the public interest. Notwithstanding any other provisions of law, upon a written finding that the procedural requirements otherwise required by law will result in unreasonable harm to a utility, a customer or the public, the commission may establish accelerated notice periods, schedules and limitations on hearings as may be necessary to expedite consideration of the order.

§1305. Hearings; examiners

1. Commission's powers. Each of the commissioners, for the purposes of this Title, may:

- A. Hold hearings;
- B. Conduct investigations;
- C. Administer oaths;
- D. Certify to official acts;
- E. Issue subpoenas;
- F. Compel the attendance of witnesses and the production of books, accounts, papers, documents and testimony;
- G. Punish by fine and imprisonment for contempt; and
- H. Issue all processes necessary to the performance of the commission's duties.

2. Examiners. The commission may appoint examiners to serve at its pleasure. The commission shall fix the salary of the examiners. The examiners, being first duly sworn, have authority to:

- A. Administer oaths;
- B. Examine witnesses;
- C. Issue subpoenas;
- D. Require the production of books, accounts, papers, documents and testimony; and
- E. Receive evidence in any matter under the commission's jurisdiction.

The examiners also shall perform such other duties as may be assigned to them.

3. Evidence. Evidence taken and received by the examiners has the same effect as evidence taken and received by the commission and shall authorize commis-

sion action as though taken and received by it. When objection is made to the admissibility of evidence, examiners authorized to practice before the Supreme Judicial Court shall rule on the admissibility of evidence in accordance with the practice and rules of evidence in civil actions in the Superior Court.

4. Right to appeal. Either the examiner or the commissioner, who is the presiding officer at the hearing, shall at the outset of the hearing inform the public as to the steps necessary to preserve its right to appeal the final order or decision of the commission to the Supreme Judicial Court under the provisions of section 1320.

§1306. Decision

The following provisions apply to the commission's findings and decisions.

1. Unjust rates. If after a formal public hearing the commission finds that the rates, tolls, charges, schedules or joint rates are unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of this Title, it may fix and order substituted just or reasonable rate or rates, tolls, charges or schedules. In determining the justness and reasonableness of the order, the commission shall assure rate design stability.

2. Unjust term, condition, practice, act or service. If after a public hearing the commission finds that a term, condition, practice, act or service complained of is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of this Title or if it finds that a service is inadequate or that reasonable service cannot be obtained, the commission may by order establish or change terms, conditions, measurement, practice, service or acts, as it finds to be just and reasonable. In determining the justness and reasonableness of the order, the commission shall assure rate design stability.

3. Conformity to decision. Every public utility to which the order applies shall change its schedules on file to conform to the order.

4. Copies. Copies of the commission's order shall be:

- A. Certified by the administrative director; and
- B. Delivered to the public utility affected by it.

5. Effective date. The order shall take effect:

- A. After a copy is delivered to the public utility affected; and
- B. Within the time prescribed by the commission.

§1307. Enforcement of decisions

Upon application of the commission or of the Attorney General, the Superior Court has full jurisdiction to enforce the commission's order and to enforce the pub-

lic utilities' performance of the duties imposed on them by law, including the appointment of receivers, agents and special masters and providing them with adequate authority to carry the order of the courts and of the commission into effect.

§1308. Reparation or adjustment

The commission may order reparation or adjustment when it finds that an amount charged to or collected from a customer was not in accordance with the filed rate applicable to him or was based upon error. The customer shall attempt to settle any dispute concerning the alleged over charge or billing error at an informal hearing with the utility company prior to filing a complaint with the commission. If the customer is dissatisfied with the utility company's decision, the customer may appeal the decision to the commission. The commission may not order a rebate for a billing error or excessive charge that antedates the order for more than 6 years.

§1309. Adjustment of excessive rates

1. Complaint. The Commission may institute or any public utility may make complaint as to any matter affecting its own product, service or charges, with like effect as though made by any 10 persons, firms, corporations or associations.

2. Reparation or adjustment where utility admits excessive rate. The commission may authorize reparation or adjustment where the utility admits that a rate charged was excessive or unreasonable or collected through error, and where it further appears that the utility, within 90 days after the rendering of any service within the State under such rate, has filed a reduced rate in place of the rate which admittedly was excessive or unreasonable or collected through error.

3. Reduced rates; amount of reparation. The reduced rate published in accordance with this section shall continue in force one year unless sooner changed by the order or with the consent of the commission, and the amount of reparation which may be authorized by the commission shall not exceed the difference between the charges based on the reduced rate and the charges based on the rate canceled by the reduced rate.

4. Statute of limitations for complaints brought under this section. Within 2 years after the rendering of any service within the State by a public utility, for which service a rate, toll or charge is made by the utility, a person aggrieved may complain to the commission that the rate, toll or charge exacted for the service is unjustly discriminatory against him, either because it is higher than that charged by the same utility for the same service or service of similar value and cost rendered to other users or consumers, or because the utility has failed, without reasonable cause, to make a more favorable rate, toll or charge published by it for the same or similar service applicable to the user or consumer or to the class of users or consumers to which he belongs, or at the place

at which the service is rendered.

5. Complaint received within 6 months after reparation or adjustment ordered. Within 6 months after an order has been made authorizing reparation or adjustment under subsections 2 and 3, any person aggrieved may complain to the commission that he is entitled to reparation from the same utility because he paid the rates which the utility admits are excessive or reasonable or collected through error, provided the utility might lawfully have made the reparation on its own petition, and provided the person has made a written request for the utility to file its own petition for authority to make the reparation or adjustment not less than 30 days before filing a complaint with the commission.

6. Commission investigation to determine whether to hold a hearing. Upon receipt of a complaint, the commission shall investigate as it determines necessary to determine whether a hearing ought to be held.

7. Notice of hearing. The commission may order a hearing upon such notice to the utility as it determines just and reasonable.

8. Commission decision after hearing; refund. If, after the hearing, the commission decides that the complainant has been injured by paying rates which the utility admits are excessive, unreasonable or collected through error, it shall determine the sum that the utility ought to refund or repay to the complainant, which sum the utility has the right to refund.

9. Utility refusal or neglect to make refund; court action. If the utility refuses or neglects to make the refund within 30 days, the party aggrieved may maintain an action in the courts of the State to recover the amount. In the trial the findings of the commission shall be prima facie evidence of the truth of the facts found by it, and no utility may avail itself of the defense of the action that the service involved was in fact made on the published tariff rate in force at the time it was rendered.

10. Utility that complies may not be held liable. No utility making a refund upon the order of the commission or pursuant to judgment of the court may be liable for any penalty or forfeiture or subject to any prosecution under the laws of this State on account of making the refund.

§1310. Funding of intervenors by the commission

Notwithstanding sections 104, 111 and 112, the commission may not order compensation of intervenors by any utility except as authorized by this section. Compensation of intervenors may be ordered only to the extent that compensation is specifically required by the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq.

§1311. Practice and rules of evidence; process service

In all actions and proceedings arising under this Title, all processes shall be served and the practice and rules of evidence shall be the same as in civil actions in the Superior Court except as otherwise provided. Every sheriff or other officer empowered to execute civil processes may execute a process issued under this Title and shall receive the compensation prescribed by law for that service.

§1312. Witnesses and fees

1. Witnesses. Each witness who is ordered to appear before the commission shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the Superior Court. This provision does not apply to the employees, officers, directors, trustees and holders of more than 10% of the common stock of a public utility which is the subject of the commission's proceeding.

2. Fees. The State shall audit and pay the fees in the same manner as other state expenses are audited and paid upon the presentation of proper vouchers approved by the commission. There shall be deducted from the mileage allowed witnesses under this section who travel, or may travel, to and from the place of hearing on a pass or other form of free transportation, a sum equal to the fare to and from the place of hearing at the lowest published rates for single or return trip tickets.

§1313. Depositions

The following provisions apply to depositions.

1. Taking depositions. Depositions shall be taken in the manner prescribed by law for taking depositions in civil actions in the Superior Court.

2. Use of depositions. The commission or any party may use the deposition of witnesses in a formal public hearing.

§1314. Burden of proof

1. Party adverse to the commission. In all trials, actions and proceedings arising under this Title or growing out of the exercise of the authority granted to the commission, the burden of proof is on the party adverse to the commission or seeking to set aside any determination, requirement, direction or order of the commission complained of as unreasonable, unjust or unlawful.

2. Public utilities. In all original proceedings before the commission where an increase in rates, tolls, charges, schedules or joint rate is complained of, the burden of proof is on the public utility to show that the increase is just and reasonable.

§1315. Self-incrimination; immunity

1. Self-incrimination. In any proceeding before the commission, if a person refuses to answer questions or

produce evidence on the ground that he may be incriminated and if the commission staff, in writing, and with the written approval of the Attorney General, requests the commission to order that person to answer the questions or produce the evidence, the commission, after notice to the witness and a hearing, shall so order unless it finds to do so would be clearly contrary to the public interest.

2. Immunity. If, but for this section, the person would have had the right to withhold the answers given or the evidence produced by him, he may not be prosecuted or subjected to penalty or forfeiture for or on account of any transaction or matter which concerns the answers he gave or the evidence he produced in accordance with the order.

3. Failure to comply. If a person fails to answer questions or produce evidence as ordered by the commission, following notice and hearing, he is subject to the provisions of section 1502. A person may be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt that he commits in answering or failing to answer or in producing or failing to produce evidence in accordance with the order.

§1316. Testimony presented by employees of public utilities to legislative committees and to the Public Utilities Commission

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, expressed or implied, but does not include an independent contractor.

B. "Employer" means a public utility licensed to do business in this State with one or more employees.

C. "Legislative committee" means a joint standing committee or a joint select committee of the Legislature, a task force, commission or council or any other committee established by the Legislature and composed wholly or partly of Legislators for the purpose of conducting legislative business.

D. "Own time" means an employee's vacation or personal time, earned as a condition of employment.

2. Right to provide testimony. Every employee of a public utility has the right to represent himself and to testify before a legislative committee or the commission on his own time. No employee of a public utility who complies with this section may be denied the right to testify before a legislative committee or the commission.

3. Discharge of, threats to or discrimination against employees of public utilities for testimony presented to

legislative committees or the commission. Unless otherwise provided for, a supervisor may not discharge, threaten or otherwise discriminate against an employee of a public utility regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee, in compliance with this section, in good faith testifies before or provides information to a legislative committee or to the commission regarding the operation of the business of a public utility or because the employee brings the subject matter of the testimony or information to the attention of a person having supervisory authority.

This subsection does not apply to an employee who has testified before or provided information to a legislative committee or to the commission unless the employee has first brought the subject matter of the testimony or information in writing to the attention of a person having supervisory authority with the employer and has allowed the employer a reasonable time to address the subject matter of the testimony or information. If appropriate, the employer, shall respond in writing.

4. Exceptions. The protection created in subsection 3 does not apply to testimony which, upon reasonable inquiry by the employee, would be found to be false, slanderous, libelous or defamatory or to testimony which violates a term or condition of a collectively bargained agreement or to testimony which discloses trade secrets or corporate strategy, the disclosure of which would result in harm to the employer.

5. Civil actions for injunctive relief or other remedies. An employee of a public utility who alleges a violation of his rights under this section and who has made reasonable efforts to exhaust all grievance procedures, as provided for in the contract of employment or which otherwise may be available at his place of employment, may bring a civil action, including an action for injunctive relief, within 90 days after the occurrence of that alleged violation or after the grievance procedure or similar process terminates. The action may be brought in the Superior Court for the county where the alleged violation occurred, the county where the complainant resides or the county where the person against whom the civil complaint is filed resides. An employee must establish each and every element of his case by a preponderance of the evidence.

6. Remedies ordered by court. A court, in rendering a judgment in an action brought pursuant to this section, may order reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights or any combination of these remedies. A court may also award the prevailing party all or a portion of the costs of litigation, including reasonable attorneys' fees and witness fees, if the court determines that the award is appropriate.

7. Collective bargaining rights. This section does not diminish or impair the rights of a person under any collective bargaining agreement.

8. Jury trial; common-law rights. Any action brought under this section may be heard by a jury. Nothing in this section derogates any common-law rights of an employee or employer.

§1317. Appearance by officer or employee of corporation or partnership

Notwithstanding Title 4, section 807, the appearance of an authorized officer, employee or representative of a party in any hearing, action or proceeding before the commission in which the party is participating or desires to participate is not an unauthorized practice of law and is not subject to any criminal sanction. In order to facilitate the efficient processing of any proceeding, the commission may, in its discretion, require the appearance of counsel on behalf of the party.

§1318. Record of proceedings

1. Record. The commission shall keep a complete record of:

A. All proceedings before it;

B. Investigations; and

C. Formal public hearings.

2. Hearings reporter. The commission shall appoint, subject to the Civil Service Law, hearings reporters who shall take all testimony before the commission.

§1319. Certified copies of orders furnished

The commission shall furnish a certified copy under the commission's seal of its orders to any person who applies and pays for it as provided in the commission's rules. A certified copy of an order is evidence of the facts stated in it.

§1320. Review of commission action

The following procedures apply to an appeal of a decision of the commission.

1. Final decisions. An appeal from a final decision of the commission may be taken to the Law Court on questions of law in the same manner as an appeal taken from a judgment of the Superior Court in a civil action.

2. Parties. Any person who has participated in commission proceedings, and who is adversely affected by the final decision of the commission is deemed a party for purposes of taking an appeal.

3. Terms. Where a law or rule regulating the taking of an appeal from the Superior Court in a civil action uses the terms "the court," "the clerk," "the clerk of the courts," or a similar term, they shall for purposes of an appeal from the commission mean "the commission," "the administrative director of the commission," or other ap-

appropriate term, respectively.

4. Notice of appeal. The notice of appeal shall be accompanied by a brief statement of the nature of the proceeding before the commission, a copy of the decision, order or ruling complained of, a statement of the grounds upon which the order or ruling is claimed to be unlawful and a certificate that the attorney for the appellant is of the opinion that there is probable ground for the appeal as to make it a fit subject for judicial inquiry and that it is not intended for delay.

5. Additional court review. An appeal may also be taken in the same manner as an appeal under subsection 1, when the justness or reasonableness of a rate, toll or charge by any public utility or the constitutionality of any ruling or order of the commission is in issue, notwithstanding that the ruling or order is not final.

6. Law Court jurisdiction is exclusive. The Law Court has exclusive jurisdiction over appeals and requests for judicial review of final decisions and of rulings and orders subject to subsections 1 and 5, with the exception of the Superior Court's jurisdiction to review rules under Title 5, section 8058.

7. Stay. While an appeal under subsection 1 is pending, no injunction may issue suspending or staying any order of the commission and the appeal shall not excuse any person or corporation from complying with and obeying any order or decision or any requirement of any order or decision of the commission or operate in any manner to stay or postpone the enforcement of the order or decision, except in the cases and upon the terms as the commission orders. While an appeal under subsection 5 is pending final determination by the court, the Chief Justice, or in his absence any other justice, may enjoin or stay the effect of the ruling or order upon the terms and conditions as he determines proper.

8. Additional evidence. No evidence beyond that contained in the record of the proceedings before the commission may be introduced before the court, except that in cases where issues of confiscation or of constitutional right are involved, the court may order additional evidence it determines necessary for the determination of issues to be taken before the commission upon the terms and conditions the court determines proper. If the court orders additional evidence to be taken, the commission shall promptly hear and report that evidence to the court, so that the proof may be brought as nearly as reasonably possible down to the date of its report to the court. The commission may, after hearing the evidence, modify its findings as to facts and its original decision or orders by reason of the additional evidence so taken, and it shall file with the court that amended decision or orders and those modified or new findings. If the commission modifies or amends its original decision or orders, the appealing party or any other party aggrieved by the modified or amended decision or order may file with the court, within such time as the court may allow, a specification of errors claimed to have

been made by the commission in the modified decision or orders, which specifications or errors shall be considered by the court in addition to the errors asserted in the original complaint on appeal.

9. Certification of decision, costs. The result of the appeal shall be certified by the clerk of the Law Court to the administrative director of the commission and to the clerk of the Superior Court for Kennebec County. The prevailing party shall recover costs to be taxed by the Superior Court in accordance with the law for the taxation of costs on appeal in civil actions. Execution for these costs shall be issued from the Superior Court of Kennebec County in the same manner as in actions originating in the court. Double costs shall be assessed by the court upon any party whose appeal appears to the court not to be a fit subject for judicial inquiry or appears to be intended for delay.

§1321. Orders altered or amended

The commission may at any time rescind, alter or amend any order it has made including an order fixing any rate or rates, tolls, charges or schedules, provided it gives the public utility notice as provided in section 1304 and after opportunity to be heard as provided in section 1304. Certified copies of amended orders shall be served and take effect as provided for original orders.

§1322. Orders temporarily suspended, altered or amended

1. Orders temporarily amended. When the commission finds it necessary to prevent injury to a public utility's business or to the interest of the people, or if the commission finds there is an emergency, it may temporarily alter, amend or, with the public utility's consent, suspend existing rates, schedules or orders affecting any public utility.

2. Rates. Rates made under this section shall:

A. Apply to one or more of the utilities in the State or to any part of them as the commission directs; and

B. Take effect and remain in force as the commission prescribes.

§1323. Exhausting rights before commission; application to Legislature

No public utility may apply to the Legislature to grant it a right, privilege or immunity which the commission has power to grant it until the utility has exhausted its rights regarding its request before the commission.

In applying to the Legislature, the utility shall state in writing that it has applied to the commission for the right, privilege or immunity requested and that the commission has denied its application.

LIABILITY AND PENALTIESshall be adjudged for each offense.§1501. Utility liable for civil damages

If a public utility violates this Title, causes or permits a violation of this Title or omits to do anything that this Title requires it to do it may be liable in damages to the person injured as a result. Recovery under this section does not affect a recovery by the State of the penalty prescribed for the violation.

§1502. Contempt

Every public utility or person that fails to comply with an order, decision, rule, direction, demand or requirement of the commission or of a commissioner is in contempt of the commission and shall be punished by the commission for contempt in the same manner as contempt is punished by courts of record. Punishment for contempt is not a bar to and does not affect any other remedy prescribed in this Title, but is cumulative and in addition to other remedies.

§1503. Refusal to obey or comply

1. Officer, agent or employee of public utility. An officer, agent or employee of a public utility commits a civil violation for which a forfeiture not to exceed \$1,000 shall be adjudged for each offense if he:

A. Willfully fails or refuses to fill out and return any forms required by this Title;

B. Willfully fails or refuses to answer questions contained in the forms;

C. Willfully or knowingly gives a false answer to a question contained in the forms;

D. Willfully evades the answer to a question when he knows the answer;

E. Willfully fails or refuses, upon proper demand, to exhibit to the commission, a commissioner or authorized person, a book, paper, account, record or memorandum of a public utility which is in his possession or under his control;

F. Willfully fails properly to use and keep his system of accounting or any part thereof as prescribed by the commission; or

G. Willfully refuses to do anything in connection with the utility's system of accounting as directed by the commission.

2. Public utility. When the officer, agent or employee committing a civil violation as enumerated in subsection 1 acted in obedience to the direction, instruction or request of the public utility or of an owner or general officer of the public utility, the public utility commits a civil violation for which a forfeiture not to exceed \$1,000

§1504. Each day, distinct offense

Every day, during which a public utility or an officer, agent or employee of a public utility willfully fails to comply with an order of the commission or to perform a duty enjoined by this Title, constitutes a separate offense.

§1505. Illegal issue of stocks, bonds or notes

1. Offense. A director or officer of a public utility is guilty of illegally issuing stocks, bonds or notes if he knowingly, directly or indirectly issues or causes to be issued stocks, bonds, notes or other evidences of indebtedness contrary to this Title.

2. Penalty. Illegal issue of stocks, bonds or notes is a Class B crime.

§1506. Misappropriation of proceeds

1. Offense. A director or officer of a public utility is guilty of misappropriating proceeds if he knowingly applies the proceeds from the sale of stocks, bonds or notes to a purpose other than that specified in the commission's order.

2. Penalty. Misappropriation of proceeds is a Class B crime.

§1507. False statements as to issue of stocks, bonds or notes

1. Offense. An officer, owner or agent of a public utility is guilty of making false statements as to issue of stocks, bonds or notes if he:

A. Knowingly or willfully makes a false statement to secure the issue of stocks, bonds or other evidences of indebtedness;

B. Uses a false statement that is knowingly or willfully made, with knowledge of fraud, to procure the order or issue from the commission; or

C. Negotiates or causes to be negotiated stocks, bonds, notes or other evidences of indebtedness in violation of this Title.

2. Penalty. Making false statements as to issue of stocks, bonds or notes is a Class B crime.

§1508. Punishment where no penalty

A public utility which willfully violates a provision of this Title, does an act prohibited by it, fails or refuses to perform a duty enjoined upon it for which a penalty is not provided or fails or refuses to obey a lawful requirement or order made by the commission, commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged for each offense. The act, omission or

failure of an officer, agent or person acting for or employed by a public utility who is acting within the scope of his employment is deemed to be the act, omission or failure of the public utility.

§1509. Limitation on imposing penalty

An action which may result in the imposition of a civil or criminal penalty under this chapter shall be commenced within 5 years after the cause of action accrues.

CHAPTER 17

PUBLIC ADVOCATE

§1701. Appointment and staff

1. Appointment of the Public Advocate. The Public Advocate shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over public utilities and to confirmation by the Legislature, and shall serve at the pleasure of the Governor. Any vacancy shall be filled by similar appointment.

2. Staff of the Public Advocate. The staff of the Public Advocate shall consist of such other personnel, including staff attorneys, as the Public Advocate determines necessary to represent the using and consuming public, as required by subsection 1702. All such personnel shall be appointed, supervised and directed by the Public Advocate. The Public Advocate is not subject to the supervision, direction or control of the chairman or members of the commission.

3. Service. The professional employees of the Public Advocate shall serve at the pleasure of the Public Advocate; all other employees of the Public Advocate shall be subject to the Civil Service Law.

§1702. Duties

The duties and responsibilities of the Public Advocate are to represent the using and consuming public in matters within the jurisdiction of the commission, including, but not limited, to the following:

1. Review and recommendations. The Public Advocate may review, investigate and make appropriate recommendations to the commission with respect to:

A. The reasonableness of rates charged or proposed to be charged by any public utility;

B. The reasonableness and adequacy of the service furnished or proposed to be furnished by any public utility;

C. Any proposal by a public utility to reduce or abandon service to the public;

D. The issuance of certificates of public convenience

and necessity. Recommendations may include alternative analyses and plans as necessary;

E. Terms and conditions of public utilities;

F. Mergers and consolidations of public utilities;

G. Contracts of public utilities with affiliates or subsidiaries; and

H. Securities, regulations and transactions of public utilities.

2. Intervention. The Public Advocate may intervene in any proceeding before the commission related to the activities under subsection 1, when determined necessary by the Public Advocate.

3. Petition to initiate proceedings. The Public Advocate may petition the commission to initiate proceedings to review, investigate and take appropriate action with respect to the rates or service of any public utility when determined necessary by the Public Advocate.

4. Public complaints. The Public Advocate may investigate complaints affecting the using and consuming public generally, or particular groups, of consumers and, where appropriate, make recommendations to the commission with respect to these complaints.

5. Intervention on behalf of public. When determined necessary by the Public Advocate, in the interest of the using and consuming public, or any particular group of consumers, the Public Advocate may intervene and appear on their behalf in any proceedings before the commission, appeals from orders of the commission, or proceedings before state and federal agencies and courts in which the subject matter of the action affects the customers of any utility doing business in this State, except that the Public Advocate shall not intervene in any proceeding in which the commission staff is representing a position substantially similar to that of the Public Advocate, as determined by the Public Advocate.

6. Annual report. The Public Advocate shall prepare and submit an annual report of activities of the Public Advocate to the Governor and to the joint standing committee of the Legislature having jurisdiction over public utilities by August 1st of each year, with copies available to all legislators on request.

7. Assist customers of consumer owned electric utilities. The Public Advocate shall assist customers of consumer-owned electric utilities in reviewing proposed rate increases and preparing questions and testimony for public hearings and, on request of a customer and when determined necessary by the Public Advocate, intervene in the proceedings conducted in accordance with chapter 35.

§1703. Appeal from commission orders

The Public Advocate has the same rights of appeal from commission orders or decisions to which the Public Advocate has been a party as other parties to commission proceedings.

§1704. Legal representation

Notwithstanding the provisions of Title 5, section 191, the Public Advocate, or a staff attorney, may act as the counsel for the office of the Public Advocate. The Public Advocate may request the assistance of the Attorney General or employ private counsel for this purpose.

§1705. Relationship with the Attorney General

This section in no way limits the rights of the Attorney General to intervene before the commission or to appeal from commission orders or decisions.

§1706. Expert witnesses

The Public Advocate may employ expert witnesses and pay appropriate compensation and expenses to employ the witnesses.

§1707. Expenses of the Public Advocate

The Public Advocate, within established budgetary limits and as allowed by law, shall authorize and approve travel, subsistence and related necessary expenses of the Public Advocate or members of the staff of the Public Advocate, incurred while traveling on official business.

§1708. Information from utilities

Utilities shall provide to the Public Advocate copies of all reports and other information required to be filed with or which may be submitted to the commission, except to the extent that this requirement is waived, in writing, by the Public Advocate. The Public Advocate has the same right to request data as an intervenor in a proceeding before the commission, and, in addition, may petition the commission for good cause shown to be allowed such other information as may be necessary to carry out the purposes of this chapter.

§1709. Conflicts of interest

In addition to the limitations of Title 5, section 18, the Public Advocate or any employee of the Public Advocate may not have any official or professional connection or relation with, or hold any stock or securities in any public utility operating within this State; render any professional service against any such public utility; or be a member of a firm which renders any such service.

§1710. Restriction

Unless otherwise provided by law, the duties of the Public Advocate are restricted to those relating to matters within the jurisdiction of the commission. In the event that the selection of the commission is required

by law to be accomplished by any other method than appointment by the Governor, with confirmation by the Legislature, this chapter is repealed, and the staff and any balance in the budget of the Public Advocate shall be transferred to the commission for the remainder of the fiscal year, effective on the date when a quorum of the commission selected by the other method is qualified for office.

PART 2

PUBLIC UTILITIES

CHAPTER 21

ORGANIZATION, POWERS, SERVICE TERRITORY

§2101. Organization of certain public utility corporations

Corporations for the operation of telegraphs or telephones and for the purpose of making, generating, selling, distributing and supplying gas or electricity in any municipality, or 2 or more adjoining municipalities, within the State, may be organized under Title 13-A.

§2102. Approval to furnish service

The following provisions apply to furnishing service.

1. Approval required. Except as provided in subsection 2 and in section 4507, no public utility may furnish any of the services set out in section 2101 in or to any municipality in or to which another public utility is furnishing or is authorized to furnish a similar service without the approval of the commission.

2. Approval not required. Except as provided in section 2104, the commission's approval is not required for a public utility to furnish service in any municipality in which that public utility is furnishing service on October 8, 1967. Approval is not required for the operation of a radio paging service. Approval is not required for an electric utility to sell and distribute electricity to any other electric utility.

§2103. Electric utility and cooperative authorized to serve same area

After September 1, 1967, where a cooperative organized under chapter 37 and any other electric utility are serving or authorized to serve the same municipality, neither the cooperative nor the other utility may bring electrical service to a new location except as provided in this section.

1. Notice. The cooperative or utility must notify the other cooperative or utility and the commission, in writing, of the request by the party for electrical service, where bringing the service requires the extension of existing distribution facilities.

2. Filing objections. If, after notice, the other cooperative or utility opposes the bringing of electrical service to the new service location, within 7 days of receipt of the notice of proposed service, it shall:

A. File objections to the bringing of the electrical service with the commission; and

B. Send a copy of its objections to the utility or cooperative and to the party requesting electrical service.

3. Decision. If objections are filed, the commission shall immediately set a hearing date, and shall determine whether the cooperative or the other utility shall serve. If, after notice, either the cooperative or the utility fails to file its objections pursuant to subsection 2, it will be conclusively presumed that the cooperative or the utility, as the case may be, has consented to the furnishing of the service.

4. Temporary service pending a decision. Pending the final determination of the right to serve, the commission may order temporary service brought to the prospective new service location without prejudice to the rights of any party.

§2104. Commission approval required for gas companies to furnish service

No gas utility organized under Title 13-A may furnish its service in or to any municipality within the State, without the approval of the commission, even if no other gas utility is furnishing or is authorized to furnish a similar service. A gas utility providing service on January 1, 1982, shall have until January 1, 1983, to obtain the commission's approval to continue to furnish service.

§2105. Approval only after hearing

1. Approval only after hearing. Except as provided in subsection 2, no approval required by section 2102, 2103 or 2104 and no license, permit or franchise may be granted to any person to operate, manage or control a public utility named in section 2101 in a municipality where there is in operation a public utility engaged in similar service or authorized to provide similar service, until the commission has made a declaration, after public hearing of all parties interested, that public convenience and necessity require a 2nd public utility.

2. Declaration without hearing. The commission, may make a declaration without public hearing, if it appears that the utility serving or authorized to serve, the utility seeking approval from the commission to provide service and any customer or customers to receive service agree that the utility seeking approval to serve should provide service.

§2106. Transfer of approval for a radio common carrier

Consent granted by the commission under section

2102, or under section 2105, held by a radio common carrier may be assigned and transferred with the approval of the commission by holder of the approval. The commission may impose reasonable conditions upon granting its approval.

§2107. Approval only to Maine corporations

No approval required in section 2102, 2103 or 2104 to operate, manage or control a public utility may be granted after October 1, 1975, to a corporation unless it is duly organized under the laws of this State or authorized by those laws to do business in this State.

§2108. Corporations may hold real estate

Corporations organized under sections 2101 and 2109 may purchase, hold and convey real estate and personal property that are necessary for the purposes for which they are created.

§2109. Organization of electric corporations in areas not adequately served

1. Persons not receiving service at reasonable rates may form a corporation. Whenever any electric utility does not supply reasonable adequate electric service in a portion of the territory in which it is authorized to furnish service, 3 or more persons not receiving and unable to receive service in the territory, at reasonable rates, may themselves form a public utility corporation for the transmission, use and sale of electricity in the portion of the territory as may be designated by the commission.

2. Service to the newly organized corporation. The electric utility authorized to furnish service throughout the territory shall furnish the newly organized corporation with electric current sufficient for their needs, at reasonable rates to be prescribed by the commission. The current shall be furnished from the transmission lines of the electric utility most conveniently located for the purposes of the new corporation.

3. Articles of incorporation; methods of organization; fees. The articles of incorporation of the new corporation shall be in the form provided in Title 13-A, chapter 4. The methods of organization of the corporation shall be in harmony with the requirements of chapters 21 to 27 and Title 13-A, except that the fees to be paid to the State and the county in which the certificate is recorded shall not exceed \$10; \$2 to be paid to the register of deeds of the county for recording the certificate; \$3 to be paid to the Attorney General for approving the certificate of organization; and \$5 to be paid to the Treasurer of State for the use of the State when the certificate is filed with the Secretary of State.

§2110. Extension of service

A public utility organized by Private and Special Act of the Legislature may extend its service as follows.

1. Commission authorization. The commission may authorize a public utility organized by private and special act of Legislature to furnish or extend its service in, to or through a city or town notwithstanding any territorial limitations, express or implied, in the private and special act of the Legislature by which it was organized or under which it is enfranchised. Within 20 days after the commission's final authorization, the public utility shall file a certificate that shows the authorization with and pay \$20 to the Secretary of State. When the certificate is filed, the public utility's power to extend its service becomes effective.

2. The commission's powers and limitations. The commission's powers and limitations, made applicable under this section, are those applicable by law in like cases concerning public utilities organized under Title 13-A or any prior general corporation law.

CHAPTER 23

UTILITY FACILITIES IN THE PUBLIC WAY

§2301. Telegraph or telephone utilities and television corporations may construct lines

Except as limited, every corporation organized under section 2101 for the purpose of operating telegraphs or telephones and every corporation organized for the purpose of transmitting television signals by wire may construct, maintain and operate its lines upon and along the route or routes and between the points stated in its certificate of incorporation; and may, construct its lines and necessary erections and fixtures for them along, over, under and across any of the roads and streets and across or under any of the waters upon and along the route or routes subject to the conditions and under the restrictions provided in this chapter and chapter 25.

§2302. Corporations may lay pipelines for common carrier transportation

Every corporation organized under the general laws of the State and owning, controlling, operating or managing any pipeline within or through this State for the transportation as a common carrier for hire of oil, gas, gasoline, petroleum or any other liquids or gases may lay its pipelines and construct and maintain them in, along and under the roads and streets in any municipality, subject to the conditions and under the restrictions provided in this chapter and chapter 25.

§2303. Water utilities may lay pipelines

Every water utility organized under the general or special laws of this State and authorized to do public utility business in this State may lay its pipe in and under the roads and streets in any municipality in which it is authorized to supply water or through which it is necessary or convenient to lay the pipe to supply water from its source of supply to enable it to provide its service, subject to the conditions and under the restrictions provided in this chapter and chapter 25.

The installation and maintenance of a water utility plant by a utility in accordance with the location permit constitutes compliance by the utility with the requirements of section 2514.

A water utility shall comply with sections 2503, 2505, 2506 and 2512.

§2304. Gas utilities may lay pipelines

Every gas utility organized under section 2101 for the purposes named in that section may lay its pipes in, along and under the roads and streets in any municipality in which it is authorized to supply gas, subject to the conditions and restrictions provided in this chapter and chapter 25.

This section does not apply to state and state-aid highways maintained by the State.

§2305. Electric utilities may construct lines

Every electric utility may construct and maintain its lines in, upon, along, over, across and under the roads and streets in any municipality in which it is authorized to supply electricity or both, subject to the conditions and restrictions provided in this chapter and chapter 25.

No person except an electric utility may construct and maintain its lines with poles or other structures carrying electricity in, upon, along or under the roads, streets and public ways maintained by any municipality unless, in addition to meeting the requirements of section 2503, the applicable licensing authority finds that:

1. Compliance; National Electric Safety Code. Construction and maintenance of the line will comply with all applicable provisions of the National Electric Safety Code and the standard requirements of the utility from whom the owner proposes to take service;

2. Posting surety bonds. The applicant has posted with the licensing authority a surety bond in an amount sufficient to:

A. Protect the public from claims, demands and actions arising out of improper construction or maintenance of the line and unsafe conditions on the line; and

B. Ensure that the owner of the line, and his successors and assigns, will continue to properly maintain and repair the line and protect the public from harm; and

3. Duplication of electric facilities. The commission has found that the line will not constitute a duplication of electric facilities.

This section does not apply to state and state aid highways maintained by the State.

§2306. No taking property of another corporation without consent

No corporation organized under sections 2101 and 2109 may take, appropriate or use the location, pipes, lines, land or other property of any other person doing or authorized to do a similar business, without consent of the other person, except by Private and Special Act of the Legislature.

§2306-A. Permit required for person laying pipes and wires

No corporation organized under sections 2101 and 2109 may take, appropriate or use the location, pipes, lines, land or other property of any other person doing or authorized to do a similar business, without consent of the other person, except by Private and Special Act of the Legislature.

§2307. Public utilities may lay wires, pipes and cables under streets subject to municipal permit

Public utilities may, in any municipality, place their pipes and appurtenances, wires and cables and all conduits and other structures for conducting and maintaining the pipes, wires and cables under the surface of those streets and highways in which the utilities are authorized to obtain locations for their pipes and appurtenances, poles and wires, subject to the written permit of the licensing authority, as defined in section 2502 and subject to such rules as to location and construction as the municipal officers or the Department of Transportation may designate in their permit. A permit must be obtained under sections 2501 to 2508. Permits to open streets and highways for the purpose of relaying or repairing the pipes and appurtenances, wires, cables, conduits and other structures may be granted without notice.

§2308. Protection of utility facilities upon discontinuance of public ways

In proceedings for the discontinuance of public ways, public ways may be discontinued in whole or in part. The discontinuance of a town way shall be pursuant to Title 23, section 3026. Unless an order discontinuing a public way specifically provides otherwise, the public easement provided for in Title 23, section 3026, includes an easement for public utility facilities. A utility may continue to maintain, repair and replace its installations within the limits of the way or may construct and maintain new facilities within the limits of the discontinued way, if it is used for travel by motor vehicles, in order to provide utility service, upon compliance with the provisions of sections 2503, 2505, 2506, 2507 and 2508.

§2309. Existing locations valid

The location of all pipes, hydrants, wires and cables and all conduits and other structures for the conducting and maintaining of those pipes, hydrants, wires and cables over, under the surface of and in those streets and

highways in which those utilities authorized to obtain locations for their pipes, wires, hydrants and cables which have been located over, under the surface of and in the streets and highways prior to January 1, 1984, and which will be so located in accordance with this Title are declared legal and the same shall be legal structures in those streets and highways until their location has changed in any manner required or authorized by law.

§2310. Trespass on a utility pole

1. Trespass. A person commits trespass on a utility pole if, without the prior consent of the utility owning the pole, he places any object or makes any attachment on any utility pole, whether or not it is within the limits of a public way.

2. Violation; forfeiture. Trespass on a utility pole is a civil violation for which a forfeiture of not less than \$25 nor more than \$100 shall be adjudged.

§2311. Lines along railroads; application to Public Utilities Commission where disagreement

A person maintaining or operating a telephone or electric line may construct a line upon or along any railroad with the written permit of the person operating the railroad. If the person seeking to construct the line cannot agree with the parties operating the railroad, as to constructing lines along the railroad or as to the manner in which lines may be constructed upon, along or across the railroad, either party may apply to the commission, who, after notice to those interested, shall hear and determine the matter and make their award which shall be binding upon the parties. The person seeking to construct lines on the railroad shall pay the expenses of the hearing, except that if the commission finds that parties operating the railroad have unreasonably refused their consent, those parties shall pay the expenses.

CHAPTER 25

REGULATION OF FACILITIES IN
THE PUBLIC WAY§2501. Applicability

1. Applicability of chapter 25. All persons engaged in the business of the transmission of communications or electricity are subject to the duties, restrictions and liabilities prescribed in this chapter.

2. Applicability of section 2503. Except as otherwise provided, no person may construct facilities upon and along highways and public roads, without applying for and obtaining a written location permit from the applicable licensing authority under section 2503. Included within this requirement is every person operating telegraphs or telephones or transmitting television signals by wire; every person that owns, controls, operates or manages any pipeline within or through this State for the transportation as a common carrier for hire of oil,

gas, gasoline, petroleum or any other liquids or gases; every water utility and every person making, generating, selling, distributing and supplying gas or electricity; every water utility or sewer company, district or system privately or municipally owned; every municipally owned or operated fire alarm, police alarm or street lighting circuit or system; every cooperative organized under chapter 35; and any other person engaged in telecommunications or the transmission of heat, or electricity.

§2502. Definitions

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

1. Applicable licensing authority or licensing authority. "Applicable licensing authority" or "licensing authority" means:

A. The Department of Transportation, when the public way is a state, state aid or federal aid highway, except for state or state aid highways in the compact areas of municipalities having a population over 5,000;

B. The municipal officers or their designees, when the public way is a city street or town way or a state or state aid highway in the compact areas of municipalities having a population over 5,000; and

C. The county commissioners, for all other public ways.

2. Compact area. "Compact area" means an area within a municipality having a population over 5,000 where structures on land adjacent to the highway are nearer than 200 feet apart for a distance of 1/4 of a mile.

3. Facilities. "Facilities" means:

A. If under the surface of the public way, pipes, cables and conduits; and

B. If on or over the surface of the public way, poles, guys, hydrants, cables, wires and any plant or equipment located on or over the surface of the public way.

4. Federal-aid highway system. "Federal-aid highway system" consists of highways selected or designated by the United States Department of Transportation and approved by the United States Secretary, Department of Transportation, in accordance with United States Code, Title 23, Section 103.

§2503. Procedure for application for permit

1. Application. The application must be in writing and describe the facilities, the requested location, the minimum depth if an underground facility, the minimum height of any attached wires or cables, if above-ground facilities, all in the manner and form which the licensing

authority requires.

2. Notice. The applicant may give public notice of the application by publishing its description of the proposed facility once in a newspaper circulated in the municipality or municipalities encompassing the limits of the proposed location. The applicant shall send a copy of any application filed with the Department of Transportation to the municipal clerk of each municipality in which the facilities are located, or to the clerk of the county commissioners in the case of facilities within an unorganized township, except that the applicant may, without publication of its application, place its facility described in its application on receipt of a permit from the licensing authority as may be otherwise provided.

3. Objection. Objection to the application may be filed according to this subsection.

A. Any person owning property which abuts the applicable public way may file a written objection with the appropriate licensing authority within 14 days after publication by the applicant. The written objection shall state the reason for the objection. The written objection must be served by delivery in hand or by registered or certified mail.

B. If the applicant proceeds without publication of the application, any person owning property which abuts the applicable public way may file a written objection with the appropriate licensing authority within 90 days after installation of the facility described in the application. The written objection shall state the cause for the objection. The written objection must be served by delivery in hand or by registered or certified mail.

4. Hearing. The licensing authority, on receipt of a written objection, shall fix a time and place for hearing and shall give 7-days' notice of hearing by registered or certified mail to the applicant and any person filing law objections. The licensing authority's adjudication on the validity of the applicant's notice or procedures is final and conclusive. If the licensing authority finds its notice of hearing, the applicant's notice of application or the applicant's procedures defective, it may fix a new time and place for hearing, shall order appropriate notice to be published or defect corrected and shall adjourn the hearing to meet at the time and place fixed in its order.

5. Permits. The location permit shall specify the approximate location of the facility and the minimum depth of any pipes or conduits below, or the minimum height of any wires or cables above, the earth's surface. The licensing authority may specify in the permit other requirements determined necessary in the best interests of the public safety and use of the right-of-way so as not to obstruct use for public travel.

6. Liability. Installation and maintenance of the facility and its appurtenances in accordance with the terms of the permit and the provisions of chapter 23 and this

chapter relieve the applicant of liability to others by reason of location of its facility and appurtenances and no person has any right of recovery under Title 23, section 3655, because of the location, installation and maintenance and the applicant will be liable only for acts of negligence in the installation or maintenance of the facility and its appurtenances.

7. Alteration. After the facility is installed, the licensing authority may alter or amend the permit if the installation is determined to impair the highway improvement or interfere with the free and safe flow of traffic. The procedure for an applicant, or for the licensing authority under this subsection, to alter or amend the terms of a location permit after construction or installation of the facility is the same as for any original application for a permit.

8. Relocation. No location permit or alteration of any original location permit is required for relocation of the facility when the relocation is because of the construction, reconstruction or relocation of the way, except when required by federal law applicable to highways that have been designated for federal aid. The licensing authority, except in such cases of federal aid construction, shall issue a new location permit to evidence the legality of the relocation.

9. Replacement and additions. A new location permit is not required for the replacement of an existing facility or appurtenance or for additions to the facility and appurtenances made within the terms of the existing permit.

10. Service lines and improvements. An additional location permit is not required for any person to attach or install wires, cables or associated equipment, service lines or extensions to its facilities for which a permit has been issued or which are declared to be legal structures under this section, provided that these attachments or installations conform to the conditions of the permit. These attachments or installations are deemed legal structures.

11. Ordered and existing locations. No location permit is required for any facilities constructed in accordance with an order of the municipality issued in writing and signed by the municipal officers, or by county commissioners in the case of unorganized townships, and agreed to by the owner of the facilities. When installed in accordance with the order, the facilities are deemed legal structures.

No location permit is required for any facilities which existed within the limits of a private way before the legal acceptance of the private way as a public way and the facilities are deemed legal structures.

12. Records. The licensing authority shall maintain a record of all location permits issued and presently valid.

13. Appeals. Appeals from decisions shall be con-

ducted in the following manner.

A. The licensing authority shall give notice of their decision to the applicant and to any person filing objections as soon as practicable.

B. Any person aggrieved by a decision of the Department of Transportation or the county commissioners may appeal to the Superior Court in the manner provided in Title 23, sections 2063 to 2066, relating to highways.

C. In the case of municipalities, the decision of the municipal officers or their designees shall be filed with the clerk of the municipality within one week from the date of the decision. Within 2 weeks from the filing, any person aggrieved may appeal from their decision to the county commissioners by filing notice of appeal with a copy of the original petition and adjudication with the clerk of the municipality and with the clerk of the board of county commissioners.

(1) Once a person aggrieved files a notice of appeal of a revision made by a municipality, the municipal officers may review a decision previously made by them to reconsider the issues involved or they may act as a review board to evaluate a decision made by their designees. The municipal officers may alter decisions during the 2-week appeal period, but the person aggrieved retains the initiative to pursue the appeal if not satisfied with the altered decision.

(2) The county commissioners shall immediately entertain the appeal and give 2 weeks' notice of the time and place of hearing, which must be held within 30 days from the time the appeal is filed. The hearing may be adjourned from time to time, not exceeding 30 days in all, and the commissioners shall file their decision within 30 days from the time the hearing is closed and transmit a copy of it to the applicant, any other parties to the appeal and to the clerk of the municipality, who shall immediately record it.

14. Opening permits. Notwithstanding section 2303, 2502 or 2503, the applicant must procure opening permits before making any underground installation as provided in chapter 23 and Title 23, sections 54 and 3351 to 3359.

15. Agreement. The granting of a permit by the Department of Transportation, municipal officers or their designees or county commissioners, under this section, constitutes an agreement between the utility and the State or political subdivision of the State.

16. Rules. The Department of Transportation may adopt reasonable rules to administer this section. These rules may include procedures for application and issue of permits and the conduct of hearings.

17. Relocation in certain municipalities. The Department of Transportation has the exclusive rights, powers and duties of municipal officers under section 2517 when state, state aid and federal aid highways are affected, except for state and state aid highways in the compact areas of municipalities having a population over 5,000.

18. Rights of applicable licensing authority. Nothing in Title 30, section 2151, subsection 1, paragraph H, impairs the rights of the applicable licensing authority.

19. Legal effect. Existing facilities and appurtenances maintained and now in use within a public way, together with any facilities and appurtenances installed and maintained in accordance with this section are deemed legal structures and the party maintaining them is liable for maintaining them only for acts of negligence in the erection or maintenance of them. The failure of the licensing authority to grant or deny a permit for which application is made within 60 days of filing constitutes the issuance of a location permit.

20. Exclusive method. Compliance with this section by any person is the exclusive method of obtaining the rights and privileges conferred in this section and no person or cooperative may be required, with respect to the location of its facilities, to comply with or be subject to any other law, including, but not limited to, Title 30, chapter 240-A.

§2504. Use of facilities alone creates no legal right for continuance

No enjoyment by any person for any length of time of the privilege of having or maintaining its facilities in the public way, may give a legal right to the continued use of the enjoyment or raise any presumption of a grant of a legal right.

§2505. Damages; recovery of award and costs

An owner of land near or adjoining a highway or road along which lines are constructed, erected or altered in location or construction by any person may recover damages as follows.

1. Assessment of damages. If the owner's property is in any way injuriously affected or lessened in value, whether by occupation of the ground, or air or otherwise by the construction, alteration or location of a line, whether the owner is the owner of the fee in the way or not, he may within 6 months after the construction, alteration or location apply to the municipal officers to assess and appraise the damage.

2. Duties of municipal officers. Before entering upon the service, the municipal officers shall each be sworn to perform faithfully and impartially the following duties.

A. They shall on view make a just appraisal in writing of the loss or damage, including the elements

of damage as provided for land taken for highway purposes under Title 23, section 154, subsections 2, 3 and 4, if any, to the applicant.

B. They shall sign duplicates of the written appraisalment.

C. They shall on demand deliver one copy to the applicant and the other to the person constructing the line or his agent.

3. Award and costs. If damages are assessed and awarded to the land owner the person constructing the line shall pay them, with the costs of the appraisers. If the appraisers find that the applicant has suffered no damage, the landowner shall pay the costs of the appraisers.

4. Failure to pay award and costs. If the award and costs are not paid within 30 days after a written demand for them is served upon the person or any of his agents, the owner of land may bring a civil action to recover the award and costs in the Superior Court for the county in which the land is located. Full costs shall be allowed.

5. Municipal officers fees. Before entering upon the discharge of their duties under this section, the municipal officers may require the applicant to advance them their fees for one day and from day to day after they have entered upon the discharge of their duties.

§2506. Appeals; costs

Either party aggrieved by the assessment of damages may, within 20 days after the award, appeal to the Superior Court as follows.

1. Complaint and notice. When the appeal is taken the appellant shall:

A. Include in the complaint a statement setting forth substantially the facts of the case; and

B. Give written notice of the appeal with a copy of the complaint to the opposite party.

2. Decision. After entry, the matter shall be determined by a jury, or by the court by agreement of parties, in the same manner as other civil actions.

3. Costs. If the person constructing the line appeals and the award is not decreased, the person constructing the line shall pay the costs. If the applicant appeals and the award is not increased, the applicant shall pay the costs.

§2507. Permit required for person laying pipes and wires

No person may lay its pipes or place its wires under the surface of any road or street, or dig up or open the ground in a road or street, until it has obtained a written

permit in accordance with section 2503 from the applicable licensing authority. The permit must be signed by the municipal officers or the Department of Transportation and shall specify the roads and streets and the location in the roads or streets where the pipes or wires will be laid. The permit may not affect the right of any party to recover damages for any injury to persons or property by the doings of any person.

§2508. Permits to specify time and place of opening

Every permit for digging up and opening streets, roads and highways granted under this chapter must specify:

1. Time. The time during which the streets, roads or highways may remain open;
2. Place. The place where the opening may be made; and
3. Surface. The number of square yards of surface which may be disturbed.

§2509. Penalties

Any person who digs or makes an excavation in the paved portion of a street, road or highway without first obtaining a permit as required by section 2507, or who has obtained a permit and disturbs a greater area of surface than the permit specifies, commits a civil violation for which a forfeiture not to exceed \$25 may be adjudged for each offense.

§2510. Fees for excavation permits

The following provisions apply to fees for excavation permits.

1. Fees set by municipal officers. The municipal officers having the duty to maintain streets may establish a schedule of fees for granting permits for making an excavation within the paved portion of a street or highway. The schedule of fees may not exceed the reasonable cost of replacing the excavated pavement.
2. Payment of fee. The applicant shall pay to the treasurer of the municipality granting the permit the fees established by the municipal officers. The fees shall be regularly accounted for and shall constitute a special fund for the replacement of excavated pavement.

§2511. Filling and protecting openings

1. Filling openings. A person opening a street, road or highway pursuant to a permit granted under sections 2501 to 2509 shall completely fill up the opening. The filling shall be puddled or rammed as the nature of the soil requires and shall be completed within the time designated in the permit.

2. Fines. A person failing to comply with this section commits a civil violation for which a forfeiture not

to exceed \$50 may be adjudged for each offense.

3. Protecting pavement. A person shall protect the paving on either side of the opening with sheet piling or other means to prevent the escape of sand from underneath it.

4. Failure to protect pavement. In determining the number of square yards of paving disturbed, the municipal officers or their appointees shall include the area of paving adjoining the trench actually opened which in their opinion is required to be taken up and relaid because the pavement was not properly protected.

§2512. Improper work redone; penalty

If a person improperly repairs or fills an opening, the municipal officers or their appointees may have the work redone properly and shall keep an account of the cost of redoing this work.

A person in default shall pay a penalty equal to the cost of redoing the work plus 50%. After the work is completed and the cost of the work is determined, the municipality may not issue a new permit to a person in default until it has received, in addition to the fees provided in section 2510, the amount of the penalty provided in this section.

§2513. Relaying of pavement

When an excavation is made in a paved street, road or highway and the opening is filled as required by sections 2511 and 2512, the municipality or village corporation in which the opening was located shall relay the pavement. The cost of relaying the pavement including materials, labor and inspection shall be paid out of any funds in the special fund for this purpose.

§2514. Travel and trees not to be interfered with

1. Public travel. Every person in constructing and maintaining its poles, lines, fixtures and appliances in, along, over, under and across the roads and streets in which it may obtain locations and across or under the waters upon and along its route or routes may not obstruct the use of the roads and streets for public travel or interrupt the navigation of the waters.

2. Trees. No person, in connection with any of the activities specified in subsection 1 may injure, cut down or destroy any fruit tree or any tree or shrub standing and growing for the purposes of shade or ornament.

3. Bridges. This chapter and chapter 25 may not be construed to authorize the construction of a bridge across any of the waters of the State.

§2515. Liability; damages

Every corporation organized under sections 2101 and 2109 is liable in all cases to repay a municipality all sums

of money that the municipality is obliged to pay on a judgment recovered against it for damages caused by an obstruction, digging up or displacement of a way or street by the corporation, together with attorneys fees and expenses necessarily incurred in defending the municipality in the actions. The corporation shall:

1. Notice. Be notified of the commencement of any civil actions for damage; and

2. Right to defend. Have the right to defend the action at its own expense.

§2516. Permits for moving buildings, cutting wires, removing poles; expenses; damages

The following provisions apply to permits for moving buildings, cutting wires and removing poles.

1. Permit required to cut wires and remove poles. No person may cut, disconnect or remove the wires or poles of a telegraph, telephone or electric utility in order to move a building, alter, repair or improve a street, bridge or way, or for any other purpose unless that person:

A. Applies in writing to the municipal officers of the municipalities in which changes or alterations of wires or poles are desired, or in which a building is to be moved; and

B. Receives a written permit from the officers.

2. Hearings and notice. Upon receipt of the application, the municipal officers shall:

A. Fix a time and place for a hearing; and

B. Give reasonable notice of the hearing, including actual notice to any utility whose service may be interrupted or property interfered with.

3. Granting of permit and apportionment of expenses. Upon hearing, the municipal officers may grant a permit on such terms and conditions and make such apportionment of expenses as they determine best.

4. Permit for removal of wires or poles used by a utility for transmitting train orders or operating block signals. No wires or poles owned or used under contract by a utility for transmitting train orders or operating block signals may be cut, disconnected or removed unless:

A. The utility and the person desiring to cut, disconnect or remove the wires or poles first agree to the terms of the cutting, disconnection or removal; or

B. Upon application for a permit to the commission, actual notice to the utility and a hearing, the commission grants a permit authorizing the cutting, disconnection or removal. At the hearing, the commission may grant a permit on the terms and conditions and

apportion the expense arising under the permit as it determines best.

5. Offense. Whoever disconnects or removes wires or poles or moves any building on or over a public way without first obtaining the permit or violates any of the conditions of the permit is guilty of unauthorized removal of poles.

6. Penalty. Unauthorized removal of poles is a Class D crime.

7. Damages. If a way or bridge is damaged by the moving of a building, the municipal officers shall determine what proportion of the damage the owner of the building shall pay, and this amount may be recovered by the municipality in a civil action against the owner of the building.

§2517. Revocation of location; hearings

1. Revocation of pole location by municipal officers. When the municipal officers of a municipality having a population of more than 40,000 inhabitants, determine, after notice and hearing, that public safety and the public welfare require the revocation of a location for poles for conveying electricity or for the transmission of telephone or telegraph messages already erected in a public street or way other than a state or a state-aid highway outside the compact area and other than a federal-aid highway, they may revoke the location and order the poles removed. The person that owns the poles shall remove them within a reasonable time. Other suitable locations or the right to use other poles jointly shall be granted by the municipal officers to the person.

2. Notice and hearings. Before revoking a location or ordering the removal of any poles or wires, the municipal officers shall give public notice of the hearing as follows.

A. All persons interested shall be notified by publication in a newspaper circulated in the area, the last publication to be 14 days before the hearing.

B. Personal notice shall be given to the owners of the poles and wires at least 14 days before the hearing.

§2518. Joint use of poles

1. Municipality may order joint use of poles. Subject to the provisions of sections 711 and 8302, the municipal officers may, after notice and hearing, order any wires used for conveying electric current or the transmission of telephone or telegraph messages and attached to poles located in a public street or way of the municipality to be removed and attached to other poles, however owned and controlled, legally located in the public streets or ways, as the municipal officers may designate, provided in their judgment the change is practicable and can be made without unreasonably interfering with the business of any person. The municipal officers may establish

such regulations as they determine necessary for the joint use of the poles.

2. Cost of maintaining joint poles. If the parties using the joint poles cannot agree as to the proportionate share each will bear of the original cost and of the expense of maintaining the poles, or a proper annual rental for the use of the poles, the following provisions apply.

A. The municipal officers may, after hearing the parties, determine the proportionate part of the expense each party will justly bear or a proper rental.

B. The municipal officers shall give personal notice to each party 14 days before the hearing.

C. The owner of the poles may recover, in a civil action, from each party using the poles, his share of the cost and expense or the rental as determined by the municipal officers.

3. Orders and decisions of municipal officers. All orders and decisions of the municipal officers under this section shall be in writing and a record of them shall be made by the municipal clerk. The service of a copy of the order or decision, attested by the clerk, upon the parties affected by it is sufficient notice to the party affected to require compliance.

4. Exception: Long distance lines. This section does not apply to long distance telephone wires or lines of poles used to support them. For the purpose of this section a long distance telephone wire is a telephone wire that extends at least 20 miles in a direct line from a central office.

5. Appeals. A party aggrieved by an order or decision of the municipal officers relating to the joint use of poles; or by any regulation established by the municipal officers relating to the joint use of poles; by their decision as to his proportionate share of the original cost; the cost of maintaining the joint poles; or the annual rental for the use of the joint poles, may appeal from the order, decision or regulation at any time, within 10 days after service of notice of them, to the Superior Court in the county in which the municipality is located.

A. When an appeal is taken, the appellant shall:

(1) Include in the complaint a statement setting forth substantially the facts of the case, and the orders, decisions or regulations of the municipal officers from which he appeals and in what respect he is aggrieved by them; and

(2) Give written notice of the appeal with a copy of the complaint to the opposite party.

B. The presiding justice at the first term of the Superior Court shall appoint a committee comprised of 3 disinterested persons, not residents of the municipality named in the complaint, who shall, within 30

days after the appointment, after due notice and hearing:

(1) Affirm the orders or decisions of the municipal officers;

(2) Amend or modify the orders or decisions; or

(3) Make new and further orders, decisions or regulations governing the joint use of poles by any of the parties to the proceedings, or in relation to the proportionate share of the expense to be borne by each party using the joint poles, or the just and fair rental for the use of the poles.

C. The committee's report shall be filed with the clerk of the Superior Court. Upon being accepted by a Justice of the Superior Court the report is final and binding on all parties to the proceedings, except that questions of law arising under the proceedings may be reserved for decision by the Law Court.

D. A person affected by an order or decision of the municipal officers, who is not joined in the original complaint, may, on motion to the Superior Court, be joined in the complaint at any time before hearing by the committee appointed under this section.

§2519. Power and authority conferred are additional

The power and authority conferred on municipal officers under sections 2517 and 2518 are in addition to those vested in municipal officers under sections 2501 to 2507 and 2512. Nothing in sections 2517 and 2518 may be construed as giving to any party the right of appeal from the decisions, specifications, orders or permits, or alterations of the decisions, specifications, orders or permits of the municipal officers under this chapter and chapter 23 except as provided in section 2506.

§2520. Affixing wires and structures; consent of building owner required

Every person maintaining or operating a telephone or electrical line, or anyone who in any manner affixes, causes to be affixed or enters upon the property of another for the purpose of affixing a structure, fixture, wire or other apparatus to the building of another without the consent of the owner of the property or his lawful agent commits a civil violation for which a forfeiture not to exceed \$100 may be adjudged for each offense.

§2521. Fees of municipal officers

The municipal officers shall each receive \$2 a day for service performed under this chapter and chapter 23.

CHAPTER 27

INSPECTION OF METERS

§2701. Meters inspected and sealed

1. Inspection of meters. No person may furnish for use any gas, water or electric meter in any municipality in which there is a duly appointed and qualified inspector of meters, unless the inspector has first inspected, approved, marked and sealed the meter.

2. Testing accuracy of meters. Every person furnishing gas, water or electric current to consumers shall provide and keep upon its premises a proper apparatus to be approved and stamped by the inspector of meters for the municipality for testing and proving the accuracy of all gas, water and electric meters by which apparatus every meter furnished to a consumer shall be tested.

§2702. Appointment of inspectors

The officers of any municipality may annually appoint an inspector of meters, who shall:

1. Term. Serve for one year or until another is qualified in his stead, at a salary determined by the municipal officers; and

2. Duties. Have charge of the inspection of all gas, water and electric meters furnished for use in the municipality.

§2703. Duties of inspectors

The inspector of meters shall, upon written application as provided in section 2704 by a consumer of gas, water or electricity in the municipality inspect and ascertain the accuracy of any gas, water or electric meter. When the meter is found or made correct, the inspector shall stamp or mark it with a suitable device. This device shall be recorded in the office of the municipal clerk where the inspector was appointed.

§2704. Application for inspection; removal of faulty meter; expense of inspection

1. Application for inspection. If a consumer applies in writing to the municipal clerk for the inspection of his meter, and deposits with the clerk the fee fixed by the municipal officers for this service, the inspector shall inspect and test the meter.

2. Removal of faulty meter. If the meter is found to be incorrect to the extent of 4% if an electric meter or 2% if a gas or water meter, to the prejudice of the consumer, the inspector shall order the public utility furnishing the meter to remove the meter and to install in its place a meter which has been tested, approved, marked and sealed by an inspector of meters.

3. Expense of inspection. Upon finding an incorrect meter, the inspector shall give a certificate to the consumer, showing the result of the test. Upon presenting the certificate to the municipal clerk, the consumer shall receive the fee deposited with the clerk, and the public

utility furnishing the meter shall bear the expense of the inspection and shall pay to the treasurer of the municipality the fee required. All fees collected by the municipal clerk or treasurer shall be placed to the credit of the municipality to be used for municipal purposes.

§2705. Civil liability for damages to meters

Any person who commits any of the acts prohibited in Title 17-A, section 357-A, or who otherwise damages, destroys or tampers with property of a utility as provided in Title 17-A, section 805 or 806, is liable in a civil action to the utility owning the property affected. This liability shall be for all damages suffered by the utility including:

1. Service. The cost of utility services wrongfully used;

2. Repair. The cost of equipment repair or replacement, as necessary; and

3. Other costs. All other reasonable costs to the utility, including attorney fees and costs of undertaking and completing the investigation resulting in a determination of liability.

CHAPTER 29MAINE PUBLIC UTILITY FINANCING BANK ACT§2901. Title

This chapter shall be known and may be cited as the "Maine Public Utility Financing Bank Act."

§2902. Findings and declaration of purpose

It is declared to be in the public interest and to be the policy of the State:

1. To promote markets for borrowing. To foster and promote by all reasonable means the provision of adequate markets and costs for borrowing money by public utilities, for the financing of the provision, manufacture, generation, transmission and distribution of electricity, gas and water and for the financing of energy conservation measures and renewable energy resources designed to reduce the use of electricity and gas;

2. Creation of indebtedness. To assist those public utilities in fulfilling their needs for these purposes by creation of indebtedness and to the extent possible to encourage continued investor interest in the bonds of those public utilities as sound and preferred securities for investment; and

3. Encourage independent undertakings. To encourage its public utilities to continue independently the undertakings of subsection 1 and to assist them therein by making funds available at reduced interest costs for orderly financing of those undertakings particularly for

those public utilities not otherwise able readily to borrow for those purposes at reasonable rates of interest.

§2903. Definitions

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

1. Bank. "Bank" means the Maine Public Utility Financing Bank created by this chapter.

2. Bondholder or holder or noteholder. "Bondholder," "holder" or "noteholder" or any similar term when used with reference to a bond or note of the bank means any person who is the bearer of any outstanding bond or note of the bank registered to bearer or not registered, or the registered owner of any outstanding bond or note of the bank which is, at the time, registered to one other than the bearer.

3. Bonds. "Bonds" means bonds of the bank issued pursuant to this chapter.

4. Chapter. "Chapter" means the Maine Public Utility Financing Bank Act.

5. Fully marketable form. "Fully marketable form" means a public utility security duly executed and accompanied by an approving legal opinion of counsel of recognized standing in the field of public utility financing, whose opinions have been and are accepted by purchasers of like public utility bonds, provided that the public utility security so executed need not be printed or lithographed nor be in more than one denomination.

6. Notes. "Notes" means any notes of the bank issued pursuant to this chapter.

7. Public utility. "Public utility" means any electric utility, water utility or gas utility which is subject to the jurisdiction of the commission.

8. Public utility bond or utility bond. "Public utility bond" or "utility bond" means a bond, note or evidence of debt issued by a public utility located in or serving any inhabitants of the State and payable from rates, charges or other revenues.

9. Revenues. "Revenues" means all fees, charges, money, profits, payments of principal or of interest on utility bonds and other investments, gifts, grants, contributions, appropriations and all other income derived or to be derived by the bank under this chapter.

§2904. Creation of bank and membership

1. Creation of bank. There is established a public body corporate and politic to be known as the "Maine Public Utility Financing Bank." The bank is an instrumentality of the State exercising public and essential governmental functions and which has perpetual

succession. The exercise by the bank of the powers conferred by this Act is an essential governmental function of the State.

2. Commissioners. The bank shall be under the direction of a board of 5 commissioners comprised of the commissioners of the Maine Municipal Bond Bank who shall be commissioners ex officio.

3. Election and appointment of officers. The board of commissioners shall:

A. Elect one of its members as chairman and one as vice-chairman; and

B. Appoint an executive director who shall also serve as both secretary and treasurer.

4. Powers and quorum. The powers of the bank are vested in the commissioners in office from time to time and 3 commissioners of the bank constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the bank at any meeting by the affirmative vote of at least 3 commissioners of the bank. No vacancy in the office of commissioner of the bank impairs the right of a quorum of the commissioners to exercise all the powers and perform all the duties of the bank.

5. Security bonds. Before the issuance of any bonds or notes under this Act, each commissioner of the bank shall execute a surety bond in the penal sum of \$25,000 and the executive director of the bank shall execute a surety bond in the penal sum of \$50,000, each such surety bond to be conditioned upon the faithful performance of the duties of the office of the commissioner or executive director to be executed by a surety company authorized to transact business in the State as surety and to be approved by the Attorney General and filed in the office of the Secretary of State. At all times after the issuance of any bonds or notes by the bank, each commissioner of the bank and the executive director shall maintain those surety bonds in full force and effect. All costs of those surety bonds shall be borne by the bank.

6. Compensation and expenses. Each member of the board of commissioners shall receive \$50 per day for the time actually spent in the discharge or performance of his duties as a commissioner in addition to other compensation he may receive as a Commissioner of the Maine Municipal Bond Bank.

Each commissioner shall be reimbursed for his reasonable expenses incurred in carrying out his duties under this chapter. No officer or employee of the State forfeits his office or employment or any benefits or emoluments of that office or employment by accepting the office of commissioner of the bank or his services in the bank.

7. Executive director. The board of commissioners shall fix the duties and compensation of the executive

director. The executive director may:

A. Employ, upon approval of the board of commissioners, a general counsel, architects, engineers, accountants, attorneys, financial advisors or experts and such other or different officers, agents and employees as may be required; and

B. Determine their qualifications, terms of office, duties and compensation.

8. Subordinate staff. To the maximum extent feasible and consistent with the other obligations of the Maine Municipal Bond Bank, the executive director and all subordinate staff shall be drawn from the staff of the Maine Municipal Bond Bank and the facilities of the Maine Municipal Bond Bank shall be used or shared by the bank.

§2905. Lending and borrowing powers generally

1. Purchase of utility bonds. The bank, for the purposes authorized by this chapter, may lend money to public utilities by purchasing public utility bonds in full marketable form.

2. Purpose of loans. Loans to public utilities may be made for any purpose for which those public utilities may issue bonds and also may be made in connection with the financing of facilities, or any interest in facilities, located outside of the State if the facilities or the interest is reasonably related to the provision of public utility services to inhabitants of the State.

3. Bank may issue bonds and notes. The bank, for the purposes authorized by this chapter, may authorize and issue its bonds and notes payable solely from the revenues or funds available to the bank for those purposes, and to otherwise assist public utilities as provided in this chapter.

4. Bonds and notes issued not debt of state. Bonds and notes of the bank issued under this chapter are not in any way a debt or liability of the State and do not constitute a loan of the credit of the State or create any debts or liabilities on behalf of the State but all such bonds and notes, unless funded or refunded by bonds or notes of the bank, are payable solely from revenues or funds pledged or available for their payment as authorized in this chapter. Each bond and note shall contain on its face a statement to the effect that the bank is obligated to pay the principal or interest and redemption premium, if any, only from the revenues or funds pledged or available for those purposes and that neither the faith and credit nor the taxing power of the State is pledged for the payment of the principal of or the interest on those bonds or notes.

5. Expenses. All expenses incurred in carrying out the purposes of this chapter are payable solely from revenues or funds provided or to be provided under this chapter. Nothing in this chapter may be construed to

authorize the bank to incur any indebtedness or liability on behalf of or payable by the State.

§2906. Corporate powers

1. Powers. The bank, for carrying out the purposes of this chapter, has the following powers:

A. To sue and be sued;

B. To adopt and have an official seal and alter that seal at pleasure;

C. To make and enforce bylaws and rules for the conduct of its affairs and business and for use of its services and facilities;

D. To maintain an office at such place or places inside the State as it may determine;

E. To acquire, hold, use and dispose of its income, revenue, funds and money;

F. To acquire, rent, lease, hold, use and dispose of other personal property for its purposes;

G. To borrow money; to issue its negotiable bonds or notes; to provide for and secure the payment of its bonds and notes; to provide for the rights of the holders of them; and to purchase, hold and dispose of any of its bonds or notes;

H. To fix and revise from time to time and charge and collect fees and charges for the use of its services or facilities;

I. To accept gifts or grants of property, funds, money, materials, labor, supplies or services from the United States, this State or any other state, agencies or departments of the State, or from any political subdivision or any person to carry out the terms or provisions or make agreements with respect to any gifts or grants and to perform any acts necessary, useful, desirable or convenient in connection with procurement, acceptance or disposition of those gifts or grants;

J. To perform any acts and things authorized by this chapter under, through or by means of its officers, agents or employees or by contracts with any person;

K. To make, enter into and enforce all contracts or agreements necessary or desirable for the purposes of the bank or pertaining to any loan to a public utility or any purchase or sale of public utility bonds or other investments or to the performance of its duties and execution or carrying out of any of its powers under this chapter;

L. To purchase or hold public utility bonds at such prices and in such manner as the bank determines advisable and to sell public utility bonds acquired or held by it at such prices without relation to cost and in such

manner as the bank determines advisable;

M. To invest any funds or money of the bank not then required for loan to public utilities and for the purchase of public utility bonds in the same manner as permitted for investment of funds belonging to the State or held in the State Treasury, except as otherwise permitted or provided by this chapter;

N. To fix and prescribe any form of application or procedure to be required of a public utility for the purpose of any loan or the purchase of its public utility bonds and to fix the terms and conditions of any such loan or purchase and to enter into agreements with public utilities with respect to any such loan or purchase;

O. To contract with the Maine Municipal Bond Bank for the use of its staff, facilities or consultants, for temporary advances of funds or for any other matter, which contracts may provide for payment to the Maine Municipal Bond Bank for any goods or services received and for repayment of any temporary advances of funds made; and

P. To do all acts necessary, convenient or desirable to carry out the powers expressly granted or necessarily implied in this chapter.

§2907. Prohibited acts and limitation of powers

Nothing in this chapter permits or authorizes the bank to:

1. Loans. Make loans of money to any person other than a public utility or purchase securities issued by any person other than a public utility or for investment, except as provided in this chapter;

2. Banking business. Issue bills of credit; accept deposits of money for time or demand deposit; administer trusts; engage in any manner in, or in the conduct of, any private or commercial banking business; or act as a savings bank or savings and loan association;

3. Bank and trust company. Be or constitute a bank or trust company within the jurisdiction or under the control of the Bureau of Banking, the Superintendent of Banking, the Comptroller of the Currency of the United States or the United States Department of the Treasury;

4. Security business. Be or constitute a dealer in securities within the meaning of or subject to any securities law, securities exchange law or securities dealers law of the United States, of this State or of any other state or jurisdiction; or

5. Public utility. Be a public utility or own and operate for its own account, and not as part of a financing undertaken pursuant to this chapter, any public utility plant, system or facility.

§2908. Bonds and notes of the bank

1. Issuance of bonds; purposes. The bank may, from time to time, issue its bonds in such principal amounts as it determines necessary to provide funds for any purposes authorized by this chapter, including:

A. The making of loans;

B. The payment, funding or refunding of the principal of, or interest or redemption premiums on, any bonds issued by it whether the bonds or interest to be funded or refunded have or have not become due or subject to redemption prior to maturity in accordance with their terms;

C. The establishment or increase of the reserves to secure or to pay the bonds or interest on them; and

D. All other costs or expenses of the bank incident to and necessary or convenient to carry out its corporate purposes and powers.

2. Bonds are special obligations of the bank. Except as otherwise expressly provided in this chapter or by the bank, every issue of bonds shall be special obligations of the bank payable solely from the revenues or funds of the bank made available for the purpose and subject to any agreements with the holders of particular bonds pledging any particular revenues or funds. The bonds may be additionally secured by a pledge of any grants, subsidies, contributions, funds or money from the United States, this State or any political subdivision of the State, any person or a pledge of any income or revenues, funds or money of the bank from any source.

3. Issuance of notes. The bank may issue its notes for any corporate purpose of the bank from time to time, in such principal amounts as it determines necessary, and may renew or pay and retire or refund the notes from the proceeds of bonds or of other notes, or from any other funds or money of the bank available or to be made available for that purpose, in accordance with any contract between the bank and the holder of the notes and not otherwise pledged. The notes shall be issued in the same manner as bonds and the notes and the resolution or resolutions authorizing the notes may contain any provisions, conditions or limitations which the bonds or a bond resolution of the bank may contain. Unless provided otherwise in any contract between the bank and the holders of notes and unless the notes have been otherwise paid, funded or refunded, the proceeds of any bonds of the bank issued, among other things, to fund the outstanding notes, shall be held, used and applied by the bank to the payment and retirement of the principal of those notes and the interest due and payable. The bank may make contracts for the future sale from time to time of the notes, pursuant to which the purchaser shall be committed to purchase the notes from time to time on terms and conditions stated in the contracts, and the bank may pay such consideration as it determines proper for the commitments.

4. Bonds and notes are negotiable instruments. Whether or not the bonds or notes of the bank are of such form and character as to be negotiable instruments under the Uniform Commercial Code, Title 11, Article 8, the bonds and notes are negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, Title 11, Article 8, subject only to the provisions of the bonds and notes for registration.

5. Bonds or notes authorized by resolution. Bonds or notes of the bank shall be authorized by resolution of the bank and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such coupon or registered form, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places inside or outside the State and be subject to such terms of redemption, with or without premium, as the resolution or resolutions may provide.

6. Signature of officers. If any officer whose signature appears on the bonds, notes or bond coupons ceases to be an officer before the delivery of the bonds, notes or bond coupons, his signature is valid for all purposes as if he had remained in office.

7. Sale of bonds or notes. Bonds or notes of the bank may be sold at a public or private sale at a time and at a price determined by the bank.

8. No consent required for issuance. Bonds or notes of the bank may be issued under this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or acts than those proceedings, conditions or acts which are specifically required by this chapter.

9. Notes refunded or retired. The bank may from time to time issue its notes as provided under this chapter and pay and retire or fund or refund its notes from proceeds of bonds or of other notes, or from any other funds or money of the bank available or to be made available for this purpose in accordance with any contract between the bank and the holders of the notes. Unless provided otherwise in any contract between the bank and the holders of notes and unless the notes have been otherwise paid, funded or refunded, the proceeds of any bonds of the bank issued, among other things to fund outstanding notes, shall be held, used and applied by the bank to the payments and retirement of the principal of the notes and the interest due and payable on the notes.

§2909. Resolutions and indentures

In any resolution of the bank authorizing or relating to the issuance of any bonds or notes, the bank, in order to secure the payment of the bonds or notes and in addi-

tion to its other powers, shall have power by provisions in the resolution which constitute covenants by the bank and contracts with the holders of the bonds or notes to enter into any trust agreement or trust indenture with a corporate trustee, which may be any trust company or national banking association or state bank having the powers of a trust company inside or outside the State. The trust agreement, indenture or the resolution providing for the issuance of the bonds or notes may pledge or assign the revenues of the bank, and may contain provisions for protecting and enforcing the rights and remedies of the holder of such bonds and notes as may be reasonable and proper and not in violation of law, including the custody, safeguarding and application of all money. A trust agreement may set forth the rights and remedies of the holders of the bonds and notes and of the trustee, and may restrict the individual right of action by those holders. The bank may provide by the trust indenture for the payment of the proceeds of the bonds and notes and the revenues to the trustee under the trust indenture or other depository, and for the method of disbursement of those payments, with safeguards and restrictions as it may determine. All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expenses of the bank. If the bonds are secured by a trust indenture, the bondholder has no authority to appoint a separate trustee to represent them.

§2910. Intent of pledge

Any pledge of revenue or other money made by the bank is valid and binding from time to time when the pledge is made. The revenue or other money pledged and received by the bank is immediately subject to the lien of the pledge without any physical delivery of the revenue or other money or further act and the lien of any pledge is valid and binding as against all persons having claims of any kind in tort, contract or otherwise against the bank, irrespective of whether those persons have notice of the lien. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the bank.

§2911. Reserves and funds

1. Establishment. The bank may establish such reserves and such other funds or accounts as may be, in its discretion, necessary, desirable or convenient to further the accomplishment of the purposes of the bank or to comply with the provisions of any agreement made by or any resolution of the bank.

2. Investment. Money at any time in the reserve fund may be invested in the same manner as permitted for investment of funds belonging to the State or held in the treasury.

§2912. Personal liability

Neither the commissioners of the bank nor any person executing bonds or notes issued pursuant to this

chapter is liable personally on the bonds or notes by reason of the issuance of the bonds or notes.

§2913. Purchase of bonds and notes of bank

The bank may purchase bonds or notes of the bank out of any funds or money of the bank available for that purpose. The bank may hold, cancel or resell the bonds or notes subject to and in accordance with agreements with holders of its bonds or notes.

§2914. Bonds as legal investments and security

Notwithstanding any restrictions contained in any other law, the State and all public officers, governmental units and agencies; all national banking associations, state banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business; all insurance companies, insurance associations and other persons carrying on an insurance business; and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, money or other funds belonging to them or within their control in any bonds or notes issued by the bank pursuant to this chapter and the bonds or notes shall be authorized security for any and all public deposits.

§2915. Tax exemptions

All bonds and notes issued under this chapter are deemed to be held or issued in connection with essential public and governmental purposes and those bonds and notes so issued, their transfer and the income from them, including any profits made on their sale, are at all times exempt from taxation within the State.

§2916. Exemption of property from execution sale; actions to set aside resolutions

1. Bank property exempt. All property of the bank is exempt from levy and sale by virtue of an execution and no execution or other judicial process may issue against the bank's property nor may any judgment against the bank be a charge or lien upon its property; provided that nothing contained in this chapter applies to or limits the rights of the holder of any bonds or notes to pursue any remedy for the enforcement of any pledge or lien given by the bank on its revenues or other money.

2. Action to set aside resolution. An action or proceeding in any court to set aside a resolution authorizing the issuance of bonds or notes by the bank under this chapter or to obtain any relief upon the ground that the resolution is invalid must be commenced within 30 days after the adoption of the resolution by the bank. After the expiration of the period of limitation, no right of action or defense founded upon the invalidity of the resolution or any of its provisions may be asserted nor may the validity of the resolution or any of its provisions be open to question in any court on any ground.

§2917. Insurance or guaranty

The bank may obtain from any department or agency of the United States or the State or nongovernmental insurer any insurance or guaranty, to the extent available, as to the payment or repayment of interest or principal, or both, or any part of the interest or principal, on any bonds or notes issued by the bank, or on any public utility bonds purchased or held by the bank, pursuant to this chapter; and may enter into any agreement or contract with respect to any insurance or guaranty, except to the extent that the agreement or contract would in any way impair or interfere with the ability of the bank to perform and fulfill the terms of any agreement made with the holders of the bonds or notes of the bank.

§2918. Annual report

No later than the last day of December, the bank shall make an annual report of its activities for the preceding fiscal year to the Governor. Each report shall set forth a complete operating and financial statement covering its operations during the year. The bank shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants. The cost of the audit shall be considered an expense of the bank. The bank shall file a copy of the audit with the Treasurer of State.

§2919. Additional powers

In order to carry out the purposes and provisions of this chapter, the bank, in addition to any powers granted to it elsewhere in this chapter, may:

1. Loans. In connection with any loan to a public utility, consider the need, desirability or eligibility of the loan, the ability of the public utility to secure borrowed money from other sources and the costs of the loan and the particular public improvement or purpose to be financed;

2. Charges. Impose and collect charges for its costs and services in review or consideration of any proposed loan to a public utility or purchase of public utility bonds whether or not the loan has been made or the public utility bonds have been purchased;

3. Purchase. Fix and establish terms and provisions with respect to any purchase of public utility bonds by the bank, including dates and maturities of the bonds, provisions as to redemption or payment prior to maturity and other matters which in connection with such a purchase are necessary, desirable or advisable in the judgment of the bank;

4. Hearings. Conduct examinations and hearings and hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material for its information and necessary to carry out this chapter;

5. Insurance. Procure insurance against any losses in connection with its property, operations or assets in and from such amounts and from such insurers as it determines desirable; and

6. Modification. To the extent permitted under its contracts with the holders of bonds or notes of the bank, consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term of bond or note, contract or agreement of any kind to which the bank is a party.

§2920. Undertakings of depositories

All national banking associations or state banks, trust companies, savings banks, investment companies and other persons carrying on a banking business may give the bank a good and sufficient undertaking with sureties that are approved by the bank to the effect that the national banking association or state bank or banking institution as described faithfully keeps and pays over to the order of or upon the warrant of the bank or its authorized agent all funds that may be deposited with it by the bank and agreed interest on the funds under this chapter, at such times or upon such demands as are agreed with the bank or in lieu of such sureties, deposit with the bank or its authorized agent or any trustee or for the holders of any bonds, as collateral, such securities as the bank approves. The deposits of the bank may be evidenced by an agreement in such form and upon such terms and conditions as are agreed upon by the bank and the national banking association or state bank or banking institution.

§2921. Purchase of public utility securities

1. Authorizations of public utilities. Every public utility may:

A. Contract to pay interest on, or an interest cost per year for, money borrowed from the bank and evidenced by its public utility bond purchased by the bank;

B. Contract with the bank with respect to that loan or purchase and the contract shall contain the terms and conditions of the loan or purchase;

C. Pay fees and charges required to be paid to the bank for its services; and

D. Sell bonds to the bank on such terms and conditions as may be agreed to by it and the bank and approved by the commission.

2. Officers' signatures on bonds. If any officer whose signature appears on the public utility bonds ceases to be an officer before the delivery of those bonds, his signature is valid for all purposes, as if he had remained in office.

§2922. Remedies on default of public utility securities

In the event of default by a public utility in the payment of interest on, or principal of, any public utility bond owned or held by the bank as and when due and payable the bank shall proceed to enforce or cause to be enforced payment pursuant to applicable provisions of law of that interest or principal or other amounts then due and payable.

§2923. Purchase of anticipation notes

The bank may purchase notes of any public utility issued in anticipation of the sale of public utility bonds in an amount not exceeding at any one time the outstanding authorized amount of the public utility bonds. In connection with any such purchase of anticipation notes, the bank may by agreement with the public utility impose such terms, conditions and limitations as in its opinion are proper in the circumstances and for the purposes and security of the bank and the holders of its bonds or notes. The bank shall enforce all such rights, remedies and provisions of law as it has under this section or this chapter or as otherwise provided by law.

§2924. Budget

No later than June 1st each year, the bank shall prepare and file in the office of the Bureau of the Budget a budget of its operating expenses for the ensuing fiscal year. The budget shall be prepared on the basis of quarterly requirements so that it is possible to determine from the budget the operating expenses for each quarter of the year, and shall set forth the general categories of anticipated expenditures and the amount on account of each and shall include provision for reserve for contingencies and for over-expenditures. The budget may set forth such additional material as the bank may determine.

§2925. State services

1. State may render services to bank. All officers, departments, boards, agencies, divisions and commissions of the State, including, without limitation, the Maine Municipal Bond Bank, may render any services to the bank which are within the area of their respective governmental functions as established by law and which are requested by the bank.

2. State to comply with bank requests. All of the officers, departments, boards, agencies, divisions and commissions shall comply promptly with any reasonable request by the bank as to the making of any study or review as to desirability, need, cost or expense with respect to any public project, purpose or improvement or the financial feasibility of any project, purpose or improvement or the financial or fiscal responsibility or ability in connection with any project, purpose or improvement of any public utility making application for loan to the bank and for the purchase by the bank of public utility bonds.

3. Cost and expense of state services. At the re-

quest of the officer, department, board, agency, division or commission rendering the service, the bank shall pay for the cost and expense of services it has requested. The Maine Municipal Bond Bank may make temporary advances of funds to the bank from such funds as it determines are available and on such terms and conditions as it determines.

§2926. Agreements with financial institutions

1. Public utility bonds. The bank may enter into such agreements or contracts with any commercial banks, trust companies, banking or other financial institutions inside or outside the State as are necessary, desirable or convenient as determined by the bank, for rendering services to the bank in connection with:

A. The care, custody or safekeeping of public utility bonds or other investments held or owned by the bank;

B. The payment or collection of amounts due and payable as to principal or interest; and

C. The delivery to the bank of public utility bonds or other investments purchased by it or sold by it and may pay the cost of these services.

2. Bank may require security. The bank may also, in connection with services to be rendered by commercial banks, trust companies or banking or other financial institutions, as to the custody and safekeeping of any of its public utility bonds or investments, require security in the way of collateral bonds, surety agreements or security agreements in such form and in such amount as are necessary or desirable for the purpose of the bank, as determined by the bank.

§2927. Form of public utility securities and investments

All public utility or other investments of money of the bank permitted or provided for under this chapter shall at all times be purchased and held in fully marketable form, subject to provision for any registration in the name of the bank. All public utility bonds at any time purchased, held or owned by the bank shall upon delivery to the bank be accompanied by documentation, including approving legal opinion, certification and guaranty as to signatures, certification as to absence of litigation and such other or further documentation as shall from time to time be required in the municipal bond market.

§2928. Presumption of validity

After issuance, all bonds or notes of the bank are conclusively presumed to be fully authorized and issued under the laws of the State and any person or public utility is estopped from questioning their authorization, sale, issuance, execution or delivery by the bank.

§2929. Other laws

To the extent that this chapter is inconsistent with or in conflict with any private or special law, this chapter shall be effective and such other private or special law is of no effect.

It is not intended that the general laws relating to public utilities shall be in any way affected by this chapter.

§2930. Liberal construction of chapter

This chapter shall be construed liberally to effectuate the legislative intent and the purposes of this chapter.

PART 3

ELECTRIC POWER

CHAPTER 31

GENERAL PROVISIONS

SUBCHAPTER I

ELECTRIC RATES

§3101. Fuel adjustment clause

1. Applicability. Subsections 2 to 8 apply to electric utilities with total assets in excess of \$40,000,000. The commission shall promulgate reasonable rules governing the fuel adjustment clause of electric utilities with total assets less than \$40,000,000. These rules shall be consistent with the purposes of this section.

2. Fuel cost. Subject to the approval of the commission, each electric utility shall include as part of its base rates a reasonable cost for fuel to provide its customers with electricity. The cost of fuel shall include fuel consumed in the electric utility's generating stations and the cost of power purchased by the electric utility for use in this State, pursuant to rules promulgated by the commission under this section and in accordance with the requirements of subsection 4. The amount to be included in a utility's base rates shall be determined at the time of general rate adjustment under section 307 or 1303 and shall be based upon the utility's reasonable costs of fuel during the test year used for the rate adjustment.

3. Fuel cost adjustment. Notwithstanding the requirements of section 310, an electric utility shall adjust its electricity charges to customers to recover increases and to credit for decreases in the cost of fuel used in the generating and supplying of electricity subsequent to a general rate proceeding under section 307 or 1303, subject to the conditions of this section.

4. Scope of adjustment. Changes in the cost of fuel consumed in the electric utility's generating stations and changes in the cost of power purchased by the electric utility for use in this State constitute the only items subject to adjustment, pursuant to rules promulgated by the commission under this section. Those changes in the

cost of purchased power which are subject to that adjustment shall exclude all capacity charges, except that, to the extent the commission determines just and reasonable, capacity charges for power purchased from small power producers or cogenerators, as defined in chapter 33, may be included in the adjustment. Credits received by the utility for fuel or the fuel component of either purchased power or power sold to other utilities, including, but not limited to, credits associated with purchased energy or energy sold which are received from the savings fund of the New England Power Exchange shall be considered changes in the cost of fuel for the purposes of the fuel cost adjustment, pursuant to rules promulgated by the commission under this section.

5. Fuel adjustment rate applied uniformly to customers. The fuel cost adjustment established under this section shall be billed or credited at a single uniform rate per kilowatt hour for all customers of the electric utility.

6. Calculation and billing of fuel adjustment. The commission shall establish rules for the calculation and billing of fuel cost adjustments. The rules shall include, but shall not be limited to:

A. The fuel accounting method to be used to determine cost of fuel;

B. The fuel computation period and method of computation of fuel adjustment rate;

C. Definitions and components of fuel costs to be included in the fuel cost adjustment;

D. An appropriate method to amortize a utility's unrecovered reasonable fuel costs;

E. An appropriate method to credit customers for fuel cost overcharges; and

F. Reporting requirements to administer this section.

The commission may establish a fuel adjustment rate for a fuel computation period, based on projected kilowatt hour sales and fuel costs for that period, and make appropriate adjustments for overcharges or undercharges in customer bills in subsequent computation periods to account for the difference between the projected kilowatt hour sales and fuel costs and actual kilowatt hour sales and reasonable fuel costs.

7. Commission approval required. In no event may a fuel adjustment charge be billed to customers which has not been approved and ordered into effect by the commission pursuant to this section. Each electric utility shall file application for changes in its fuel adjustment rate in accordance with rules promulgated pursuant to this section. The commission shall issue public notice of the application and the opportunity to request a hearing within 7 days after the application is filed with the commission. The commission may render its decision on the application without holding a public hearing. If

a public hearing is held, the commission shall hold the first session within 45 days of the filing of the application. The commission shall render its decision on the application within 45 days of the close of the hearing, or within 45 days of receipt of the application, if no hearing is held. No electric utility may make application for changes in its fuel adjustment rate until a period of 90 days has elapsed from the filing of its last application, unless otherwise ordered by the commission.

8. Reports. The commission may require electric utilities to provide such reports and information as it determines necessary to administer this section.

§3102. Recovery of cost of canceled or abandoned electric generating facility

1. Determining rate-making treatment. In determining the rate-making treatment for a utility's investment in canceled or abandoned electric generating facilities, the commission shall balance the interests of the utility and ratepayers in a just and reasonable manner in each individual case. The commission may not permit a utility to recover in rates any costs incurred imprudently in relation to an investment in a canceled or abandoned electric generating facility.

2. Canceled or abandoned generating facilities. As used in this section, the term "canceled or abandoned generating facilities" means any electric generating facility canceled or abandoned by the owner or by the joint participants in the facility in accordance with the terms of applicable agreements or otherwise.

3. Exception. This section does not apply to any canceled or abandoned electric generating facility for which the commission has authorized a recovery of any portion of the costs of that facility from ratepayers prior to July 25, 1984.

4. This section not intended to indicate preference. Neither anything in this section nor the repeal of section 52-A of former Title 35 is intended to indicate a preference for any particular rate-making treatment of a utility's investment in a canceled or abandoned plant and the manner of the recovery, if any, of the investment shall be left to the commission's discretion.

5. Canceled plant recovery filing fee. Any utility requesting recovery in rates of its investment in a canceled or abandoned electric generating facility shall pay to the commission a filing fee of \$150,000 for each facility. The utility may request the commission to waive all or a portion of the filing fee. Filing fees paid as required in this section shall be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from any utility and is not expended by the commission for the purposes of this section shall be returned to the utility.

§3103. Minimum charge

1. Utilities required to provide minimum charge. Any electric utility serving more than 5,000 customers which has a residential rate combining energy and demand costs in a single rate which neither declines nor increases, but is flat as consumption increases shall recover its customer costs through the same rate. As part of that rate, each such electric utility shall provide for a minimum charge to include such an amount of kilowatt hours as the commission shall determine.

2. Billing of minimum charge. The minimum charge shall be billed to the customer in such a manner that all charges to the customer for residential service appear on the bill as a single item. This requirement does not prohibit separate information concerning the fuel cost adjustment, as defined in section 3101, from appearing on the statement.

SUBCHAPTER II

ENERGY PLANNING; CONSTRUCTION; PURCHASES

§3131. Definitions.

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Domestic electric utility. "Domestic electric utility" means any entity organized under the laws of this State to generate, transmit or distribute electricity.

2. Energy. "Energy" means an entitlement to energy for a period greater than 3 years.

3. Foreign electric utility. "Foreign electric utility" means any entity organized under the laws of a state other than this State, or a province of Canada, which is authorized under the laws of the state or province in which it is organized to generate, transmit or distribute electricity, or to own, operate or otherwise participate in utility facilities or interests in utility facilities.

3-A. Fuel conversion. "Fuel conversion" means conversion of a permanently installed generating facility of more than 1000 kilowatts to use a type of fuel different from that which the facility currently is equipped to use.

4. Generating capacity. "Generating capacity" means an entitlement to the output of 1,000 kilowatts or more of an electric generating facility or facilities for a period greater than 3 years.

5. Transmission capacity. "Transmission capacity" means an entitlement to transmission services over a transmission line with a capacity greater than 100 kilovolts for periods greater than 3 years.

6. Utility facility. "Utility facility" means an item of plant used or useful in the electric utility business, and includes, but is not limited to, such items of plant as

generating stations, transmission lines, office buildings and equipment and transportation equipment.

§3132. Construction of generating facilities and transmission lines prohibited without prior order of the commission

No electric utility may construct any generating facility or transmission line covered by subsections 1 or 2 or rebuild or relocate any transmission line as investigated by the commission under subsection 3 unless the commission has issued a certificate of public convenience and necessity approving construction.

1. Construction of generating facility and resulting line. Whenever any electric utility or utilities proposes to erect within this State a permanently installed generating facility of more than 1,000 kilowatts or any transmission line of 100 kilovolts or more, the construction of which is required as a result of the generating facility, the following provisions apply.

A. The utility or utilities shall file with the commission, no less than 3 months in advance of submitting its petition for approval of the proposed facility or lines, a notice of its intent to file the petition.

The notice of intent to file shall inform the commission of the location, size, type of facility, estimated cost and proposed construction schedule of the generating facility or lines, together with such other facts and details concerning the proposed facility or lines as the commission by rule prescribes.

B. The petition for approval of the proposed generating facility shall contain such information as the commission by rule prescribes.

C. The petition for approval shall be set down for public hearing.

D. The commission shall issue its order within 15 months after the petition is filed with the commission unless the period is either extended by agreement of all the parties or by the commission upon its determination that the party seeking the extension would, because of circumstances beyond that party's control for which it has no reasonable substitute, and be unreasonably disadvantaged unless the extension were granted, provided that the party to that time had prosecuted its case in good faith and with due diligence.

2. Line not resulting from construction of generating facility. Whenever any electric utility or utilities propose to erect within this State a transmission line carrying 100 kilovolts, or more, and the transmission line does not result from the construction of a generating facility pursuant to this section, the utility or utilities shall file a petition for the approval of the proposed line. The petition is subject to the requirements of subsection 1, paragraphs B and C. The commission shall issue its order within 6 months after the petition is filed unless this

period is extended as provided in subsection 1, paragraph D.

3. Transmission line rebuilding or relocation projects. Each electric utility shall file annually with the commission a schedule of transmission line rebuilding or relocation projects which it intends to carry out during the next 5 years concerning transmission lines that will become, or will remain at, voltages of 100 kilovolts or more. The schedule shall describe each project, showing the length, location and estimated cost.

If the commission determines that an investigation of any transmission line rebuilding or relocation project is warranted, it shall notify the electric utility within 60 days of the annual filing and the electric utility shall then be required to comply with the provisions of this section with respect to that project. The absence of commission notification requiring the utility to file a petition does not preclude such notification in subsequent years.

4. Map of proposed transmission line. The electric utility or utilities shall submit a map to the commission at least 14 days prior to a public hearing held by the commission as to the construction of a transmission line. The map shall:

A. Be available to the public at the offices of the commission; and

B. Indicate the proposed location and route of the transmission line and a description of any planned equipment and facilities to be placed there.

5. Commission approval of a proposed line. The commission may approve or disapprove all or portions of a proposed transmission line and shall make such orders regarding its character, size, installation and maintenance as are necessary, having regard for any increased costs caused by the orders.

6. Commission order; certificate of public convenience. In its order, the commission shall make specific findings with regard to the need for the proposed facilities. If the commission finds that a need exists, it shall issue a certificate of public convenience and necessity for the facilities. If the commission orders or allows the erection of the facilities, the order shall be subject to all other provisions of law and the right of any other agency to approve the facilities.

7. Environmental protection agency modification. If the commission has issued a certificate of public convenience and necessity for proposed transmission or generating facilities and the Board of Environmental Protection in an order under Title 38, section 484, makes a modification in the location, size, character or design of the facilities, the company shall:

A. Deliver a copy of the order to the commission; and

B. State the nature of the modifications and all cost

adjustments occasioned by the modifications to the cost of the proposed facilities relied upon by the commission in issuing its certificate of public convenience and necessity under this section.

8. Cost adjustments. If the cost adjustments specified in subsection 7 exceed the cost relied upon by the commission in the original proceeding under this section by more than 20% of the original cost, the utility may not proceed with any construction of the proposed facilities, the commission's original certificate of public convenience and necessity notwithstanding. The commission, upon notification of the cost increase, shall:

A. Reopen its original decision concerning the facilities;

B. Make specific findings with regard to the need for the facilities to the same extent and with the same authority as if the company's petition for approval were before it; and

C. Except as modified in this section, retain all authority granted to it under section 1321.

9. Filing fee; waiver of fee. When a petition is filed under this section, the electric utility or utilities involved shall pay to the commission an amount equal to 2/100 of 1% of the estimated cost to erect, rebuild or relocate the facility. The utility may, at the time of the filing of notice of its intent to file the petition, request the commission to waive all or a portion of the filing fee. The commission shall rule on the request for waiver within 60 days.

Filing fees paid as required under this subsection shall be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from any utility and is not expended by the commission to process the petition for a certification of public convenience and necessity shall be returned to the utility.

10. Exemption from filing fees. Notwithstanding any other requirement in this section, the commission may, by rule, exempt from filing fees applications concerning transmission lines not associated with a major new generating facility or construction of small generating facilities, the review of which does not place an unusual burden on the commission's budget.

§3133. Purchase of generating capacity, energy or transmission capacity or fuel conversion of generating facilities prohibited without prior order of the commission

1. Commission approval required for purchases and conversions. No electric utility may purchase any generating capacity, transmission capacity or energy or carry out a fuel conversion as defined in section 3131, unless the commission has issued a certificate of public convenience and necessity approving the purchase or conversion.

2. Notice of intent to file. The utility or utilities shall file with the commission, no less than 2 months in advance of submitting its petition for a certificate of public convenience and necessity for the proposed purchase or conversion, a notice of its intent to file the petition. The notice shall inform the commission of the terms of the proposed purchase or conversion and, after receiving the notice, the commission may, by rule or otherwise, require the petitioner to make available such additional information as it determines necessary. The commission may waive the requirement that at least 2 months advance notice be given. The commission shall rule on any request for waiver within 60 days. If there is then outstanding for the utility a long-range plan approved pursuant to section 3134, the utility need not provide an advance notice of its intent to file the petition.

3. Petition for certificate of public convenience and necessity. The petition for a certificate of public convenience and necessity shall contain such information as the commission may by rule prescribe.

4. Hearing. The petition shall be set down for public hearing.

5. Deadline for issuance of commission order. The commission shall issue its order within 12 months after the petition is filed. If there is then outstanding for the utility a long-range plan approved pursuant to section 3134, the commission shall issue its order within 9 months of filing.

6. Certificate of public convenience and necessity. The following provisions apply to the issuance of a certificate of public convenience and necessity.

A. In its order, the commission shall make specific findings with regard to the need for the purchase or conversion and, if the commission finds that a need exists, it shall issue a certificate of public convenience and necessity for the purchase or conversion.

B. In ruling upon a fuel conversion petition, the commission may consider the benefit to the public of any increased security of fuel supply which may result from the conversion.

C. The issuance of a certificate of public convenience and necessity establishes that, as of the date of issuance of the certificate, the decision by the utility to purchase or convert was prudent.

7. Exclusions. Nothing in this section applies to any purchases made by an electric utility from any cogenerator or small power producer, as defined in chapter 33.

8. Filing fee. When the petition is filed, the utility or utilities involved shall pay to the commission an amount equal to 2/100 of 1% of the estimated cost of the purchase or conversion. The utility or utilities may, at the time of the filing of notice of its intent to file the petition, request the commission to waive all or a portion

of the filing fee. The commission shall rule on the request for waiver within 60 days.

Filing fees paid as required by this subsection shall be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from any utility or utilities and is not expended by the commission to process the petition for a certification of public convenience and necessity shall be returned to the utility or utilities.

§3134. Long-range energy plan

1. Filing by electric utilities. Every electric utility whose total sales of electric energy for purposes other than resale exceeded 300,000,000-kilowatt hours during any calendar year may submit to the commission a long-range energy plan for the 15-year period subsequent to the date the plan is submitted. This plan shall:

A. Include the utility's annual peak-load forecasts, annual energy forecasts, projected annual fuel mix type and location of proposed generating facilities and alternatives, type and route of major proposed transmission lines and alternatives and an analysis of the cost and financing of the plan, together with such other information as the commission may by rule require; and

B. List and describe all the assumptions used by the utility in formulating the plan required by this section.

2. Hearing and decision. The commission shall set down for public hearing each long-range energy plan filed in accordance with subsection 1. Notice of the hearing and opportunity to intervene shall be provided in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, and the commission's rules of practice and procedure. The commission shall issue a decision approving, disapproving or modifying each plan within one year after the filing of such energy plan in accordance with this subsection. Each long-range energy plan as approved or modified by the commission shall constitute the energy plan of the filing utility and, unless altered as the result of judicial review or subsequently modified by commission order, shall represent the final finding of fact of the matters contained in the plan for the purposes of subsection 3.

3. Construction, purchase or conversion of electric generating facilities. If, at the time the commission issues an order granting a certificate of public convenience and necessity to a utility pursuant to section 3133, there is in existence a long-range energy plan for the utility approved or modified by the commission 2 years or less before the date of the order, the certificate shall not be granted unless the purchase or conversion conforms to that plan. The findings by the commission, as embodied in its order under subsection 2, shall to the extent relevant represent the commission's findings of fact of the matters contained in the order in any proceeding pursuant to section 3133 that is decided within 2 years from the date of the order.

§3135. Physical connection between lines of utilities authorized

1. Connection with feed lines. An electric utility may extend its lines to connect with the feed lines of any other electric utility generating and selling electricity. The generating utility shall furnish electricity if requested to the extent of its reasonable capacity and at reasonable rates, provided that the commission so orders upon application, after public hearing of all parties interested. The commission may fix such terms and conditions as will safeguard the rights and interests of both utilities.

Ten individuals who contemplate the organization of an electric utility may petition for a public hearing under this subsection. The commission may hold its hearing on the petition and make its order. If the petitioners organize an electric utility and begin business within one year, the order shall be effective to give authority to the electric utility.

2. Emergency connection and transport of energy. The commission, in the interest of public convenience and necessity, may order any utility which is principally engaged in the manufacture, transmission, distribution or sale of electricity directly to the public or to be used ultimately by the public to transport temporarily electricity over its transmission or distribution facilities at a reasonable charge and in a manner as the commission directs when the transmission will alleviate an electric power shortage within this State which exists by reason of an emergency.

Whenever the commission, upon its own motion or upon application of any electric utility, after due notice to all interested parties and an opportunity for a hearing, makes findings based upon substantial evidence that an emergency exists and that action is necessary and appropriate in the public interest and is not detrimental to the interests of investors and consumers, it may order a utility to establish physical connection of its transmission or distribution facilities with the facilities of one or more other utilities to sell electricity to, to exchange electricity with, to transmit or distribute electricity for any other utility for a temporary period.

The commission may not compel a company to sell, exchange, transmit or distribute electricity under this subsection when to do so would impair its ability to render adequate service to its customers or would require it to enlarge its generating facilities.

The commission may prescribe the terms and conditions of the arrangement to be made between the utilities affected by the order, including the compensation or reimbursement reasonably due to any of them, and, in the case of a new physical connection, the apportionment of costs between them or among them provided that a utility making application for or receiving the benefit of a connection which will inure to its sole benefit assumes the entire cost of the connection.

§3136. Electric utilities have eminent domain; approval

1. Land necessary for location of transmission lines carrying 5,000 volts. Any electric utility may take and hold by right of eminent domain lands and easements necessary for the proper location of its transmission lines which are designed to carry voltages of 5,000 volts or more and of necessary appurtenances, located within the territory in which the utility is authorized to do public utility business, in the same manner and under the same conditions as set forth in chapter 65.

2. Right of eminent domain not applicable. The right of eminent domain granted in subsection 1 does not apply to:

A. Lands or easements located within 300 feet of an inhabited dwelling;

B. Lands or easements on or adjacent to any developed or undeveloped water power;

C. Lands or easements so closely paralleling existing wire lines of other utilities that the proposed transmission lines would substantially interfere with service rendered over the existing lines, except with the consent of the owners; and

D. Lands or easements owned or used by railroad corporations.

3. Prior right to locate distribution lines and appurtenances in right-of-way limits of public way. Electric utilities may take and hold by right of eminent domain land or easements necessary for the proper location of their distribution lines and the necessary appurtenances, but only where the electric utilities had a prior right to locate their distribution lines and necessary appurtenances in the right-of-way limits of a public way and the body having jurisdiction over the public way has caused the electric utility to remove its distribution lines and appurtenant structures outside the right-of-way limits of the public way. This right does not apply to lands or easements as specified in subsection 2, paragraphs B, C and D.

4. Commission approval; environmental factors. A location to be taken by eminent domain for such transmission or distribution lines must be approved by the commission. Environmental factors to be considered for proper location of a transmission line are not subject to review by the commission when the location of the transmission line has received site location of development approval under Title 38, section 484.

§3137. Area within which domestic electric utility may generate and transmit electricity; taxation by other states

1. Domestic electric utility may generate and transmit electricity inside or outside this State. Notwithstanding any limitation imposed by its charter, each

domestic electric utility may generate and transmit electricity and acquire and operate anywhere inside or outside this State utility facilities or interests in utility facilities of any nature or form used or required to be used in its service to the public, provided that nothing in this section authorizes a utility to sell electricity in this State to any person or within any area, except as otherwise authorized by its charter or the general statutes of this State.

2. Legislative consent to application of laws of other states with respect to taxes. Legislative consent is given to the application of the laws of other states with respect to taxation, payments in lieu of taxes and the assessment of taxes or payments in lieu of taxes to any domestic electric utility which is acting outside this State under this section.

§3138. Joint ownership of facility; waiver of right to partition

Notwithstanding Title 14, chapter 719, any domestic electric utility or foreign electric utility that acquires or owns a joint or common interest with one or more other electric utilities or other persons in any property which is used or acquired for use as a utility facility may surrender or waive its right to have a partition by division or partition by sale of the property for a period which does not exceed the period for which the property is used or useful for electric utility purposes.

§3139. Powers of foreign electric utility

One or more foreign electric utilities may construct, purchase, own, control, operate, manage, mortgage, lease, sell, dispose of or otherwise participate in a utility facility or have interest in a utility facility or the product or service from a utility facility within this State in common or jointly with one or more domestic electric utilities owning, in the aggregate, not less than a majority interest in that utility facility, provided that nothing in this section authorizes a foreign electric utility to sell electricity at retail to customers located within this State.

§3140. Regulation of foreign electric utility

1. Foreign electric utility to notify commission before acting within this State. A foreign electric utility acting under section 3139 shall, before constructing, purchasing, owning, controlling, operating, managing or otherwise participating in a joint or common interest in a utility facility within this State:

A. Notify the commission in writing of the action to be taken by the utility; and

B. Provide any information reasonably required by the commission under section 3132.

2. Annual report of foreign electric utility. After giving notice under subsection 1, a foreign electric utility shall:

A. Annually file with the commission a copy of the annual report filed by it with the appropriate regulatory agency of the State where its operations are principally located; and

B. Furnish to the commission from time to time such other information with respect to its activities within this State as the commission may reasonably require.

3. Registered office and agent; service of process. A foreign electric utility acting under section 3139 shall:

A. Designate and continuously maintain in this State a registered office and a registered agent in accordance with Title 13-A, section 1212; and

B. Be subject to service of process, notice or demand as provided in Title 13-A, section 1212.

4. Certificate of agency with regulatory jurisdiction over foreign electric utility. Upon the filing with the commission of a certificate of the appropriate regulatory agency of the state of domicile or principal locus of a foreign electric utility, or of the United States, stating either that the agency has regulatory jurisdiction over the issuance of stocks, bonds or other evidences of indebtedness payable more than 12 months from date of issue by that foreign electric utility to finance a utility facility in this State or that the agency has general supervision of that foreign electric utility in the conduct of its electric utility business, that foreign electric utility shall not be deemed an "electric utility" as defined in section 102, subsection 5, merely by reason of the exercise by it of the authority granted in section 3139.

§3141. Taxation

1. Utility facilities owned by domestic electric utility. All utility facilities, real and personal, situated within this State and owned by a domestic electric utility are subject to assessment and taxation to the same extent and in the same manner as provided in Title 36.

2. Utility facilities owned by foreign electric utility. All utility facilities situated within this State and owned by a foreign electric utility other than a municipal or quasi-municipal corporation or other political subdivision of a state or province are subject to assessment and taxation to the same extent and in the same manner as though owned by a domestic electric utility.

3. Foreign utility facility that is a municipal or quasi-municipal corporation exempt from taxation. All utility facilities situated in this State and owned by a foreign electric utility that is a municipal or quasi-municipal corporation or other political subdivision of a state or province are exempt from taxation. In lieu of taxes the owner shall on or before September 1st of each year pay to the municipality where the utility facility lies the amount which would be assessable as property taxes if the utility facility were the property of a foreign electric utility other than a municipal or quasi-municipal corporation.

poration or other political subdivision of a state or province.

4. Procedures relating to payment in lieu of taxes. The assessment, abatement and appellate procedures and all other procedures relating to the payment in lieu of taxes shall be as provided in Title 36 with respect to taxes.

SUBCHAPTER III

ELECTRIC RATE REFORM ACT

§3151. Title

This subchapter shall be known and may be cited as the "Electric Rate Reform Act."

§3152. Policy and findings

The Legislature declares and finds that improvements in electric utility rate design and related regulatory programs have great potential for reducing the cost of electric utility services to consumers, for encouraging energy conservation and efficient use of existing facilities and for minimizing the need for expensive new electric generating and transmission capacity. It is the purpose of this chapter to:

A. Require the commission to relate electric rates more closely to the costs of providing electric service;

B. Encourage the commission to set electric rates to promote the maximum efficient utilization of natural energy resources existing in the State in order to promote the use of indigenous energy resources to the extent that this will reduce overall electric costs.

§3153. The Public Utilities Commission to develop proposals to improve electric utility rate design

The commission, as it determines appropriate, shall order electric utilities to develop and submit specific rate design proposals and related programs for implementing energy conservation techniques and innovations, either in conjunction with or independent of any rate-making proceeding pending before the commission. The proposals shall, as the commission determines, be designed to encourage energy conservation, minimize the need for new electrical generating capacity, and minimize costs of electricity to consumers, and shall include, but not be limited to, proposals which provide for the development and implementation of:

1. Load management. Load management techniques;

2. Marginal costs of service. Rates which reflect marginal costs of services at different voltages, times of day or seasons of the year and including long-run marginal costs associated with the construction of new electric generating facilities;

3. Policies. Policies which encourage economic use of fuel and which encourage the maximum efficient utilization of natural energy resources indigenous to the State;

4. Rates or regulatory policies. Rates or other regulatory policies which encourage electric utility system reliability; and

5. Utility financing of energy conservation. Electric utility financing or subsidization of capital improvements undertaken by ratepayers to conserve electricity used by the ratepayers in the future.

§3154. The Public Utilities Commission to require the necessary improvements

1. Rate design and conservation improvements. The commission shall mandate, after notice and hearing on the proposed schedule, a scheduled phasing-in of the improvements in electric utility rate design and related regulatory programs submitted and approved under section 3153 and is authorized to order utilities to implement electric utility rate design improvements approved by the commission on a temporary, pilot and experimental basis, affecting either a portion or all of any class of consumers of any utility as the commission may determine is appropriate to carry out the purposes of this subchapter, and order other energy conservation techniques, programs and innovations relating to electric utility service that, in the commission's judgment, are practicable, just and reasonably related to fulfilling the purposes of this chapter. In ordering any rate design improvements or any other programs for implementing energy conservation techniques and innovations referred to in section 3153, the commission shall consider rate design stability and shall assure the revenue requirements of the utility.

2. Initial cost recovery. In assuring the revenue requirements of the utility with respect to programs for implementing energy conservation techniques or innovations, the commission shall, upon petition, permit the utility to adjust rates to recover the reasonable incremental costs associated with implementing those programs to the extent that the costs are not already reflected in the utility's rates and provided that that adjustment does not result in rates that are unjust or unreasonable. The adjustment shall include reasonable costs of all programs ordered under this subchapter incurred as of the time of the adjustment and reasonable estimated costs of operating the conservation programs.

3. Rules. The commission shall adopt rules implementing the requirements of subsection 2. Notwithstanding any other provision of this Title, such rules may include:

A. Procedures to periodically reconcile or adjust any rate adjustment ordered under subsection 2 or similar costs reflected in the utility's existing rates;

B. Procedures which provide incentives and disincentives for the effective implementation of this subchapter; and

C. Procedures to provide for the financial cost or benefit of under-collection or over-collection.

4. Federal standards. On its own initiative or during a rate proceeding, and to the extent that is feasible, the commission shall consider and adopt the federal standards established in the United States Public Utility Regulatory Policies Act of 1978, Public Law 95-617. If, and to the extent that, the commission should decide not to adopt any of the federal standards referred to in this section, it shall set forth fully the facts and the rationale supporting the rejection of the standards.

5. Load management devices. The commission shall mandate, in any electric utility rate schedule approved or taking effect after January 1, 1983, a rate for any user who installs a load management device, approved by the commission, which reflects the savings to the utility resulting from the use of the device.

§3155. The Attorney General authorized to intervene before the commission to protect consumer interests

The Department of Attorney General may:

1. Make assessments. Make general factual assessments of the impact of proposed rate changes and other proposed regulatory actions upon all affected consumers;

2. Assist consumers. Assist consumers in the presentation of their positions before utility regulatory commissions;

3. Advocate position. Advocate, on its own behalf, a position which it determines represents the position most advantageous to consumers, taking into account developments in rate design reform; and

4. Obtain grants. Obtain grants pursuant to Public Law 94-385, Section 205(a), 42 United States Code, Section 6805 and the funds made available are to be in addition to, and not in substitution for, funds made available to that department from other sources.

SUBCHAPTER IV

OLDER CITIZENS ELECTRIC SERVICE POLICY

§3171. Title

This chapter shall be known and may be cited as the Older Citizens Electric Service Policy.

§3172. Policy

It is declared that it is a policy of the State to insure an adequate electric utility service to older citizens at

a price they can afford. Older citizens today face a special crisis in surviving under the constant increase in the cost of living and particularly in the cost of fuel and utility services. It is the purpose of lifeline electric service to alleviate the upward spiral in the cost of electric service to older citizens and at the same time to encourage as well as reward the conservation of scarce energy supplies by adopting the approach of constant per unit cost for the use of electricity. It is the policy of the State that older citizens be able to receive electric service for basic necessities of modern life, such as lighting and refrigeration, at a stable, fair and reasonable minimum cost and to encourage the reduction of electricity consumption for all other uses beyond such basic necessities.

SUBCHAPTER V

BULK POWER TRANSACTIONS AND WHEELING

§3181. Purchase and resale of electricity by Public Utilities Commission

1. Commission representation of the State. The commission when authorized by the Governor, shall represent the State in negotiating, contracting for and purchasing electricity generated outside of the State, and in reselling the purchased electricity to electric utilities serving this State when the commission determines that the purchases and resales will serve the energy needs of the State in a manner consistent with the public interest. As used in this section, the term "electricity" includes capacity.

2. Pricing of resales of electricity. All resales of electricity under this section shall be on a nonprofit basis without preference or discrimination, and may include, subject to the Governor's approval, costs incurred by the commission in its negotiating, contracting and purchasing activities under this section. If no purchase-sale agreement is made, the Governor is responsible for proposing a method of paying the costs he has approved in conjunction with the negotiations.

3. Resale of electricity to electric utilities outside the State. The commission may resell purchased electricity under this section to electric utilities operating outside of the State if the resale is reasonably incidental to the resale of power within the State.

4. Commission has implied powers to carry out this section. In addition, the commission may contract for the transmission of electricity purchased under this section to the place of resale and shall have all implied and incidental powers which are reasonably necessary and proper to enable it to carry out the purpose of this section.

5. Electric utility may not refuse to transmit electricity. No electric utility may refuse to transmit electricity purchased under this section via its facilities at reasonable rates if it has capability to transmit the energy.

§3182. Transmission or wheeling of electricity

1. Affiliated industrial enterprises. Upon the request of an industrial enterprise located in the State to transmit or wheel electricity to another industrial facility in the State owned in whole or in part by or otherwise affiliated with the enterprise, the electric utility shall enter into an agreement of not more than 30 years' duration to provide transmission or wheeling services subject to reasonable conditions and subject to the conditions of subsection 2.

2. Conditions. The conditions shall ensure that the fulfillment of the transmission or wheeling agreement is unlikely to result in a reasonably ascertainable uncompensated loss by or place an undue burden on the wheeling utility or its customers and will not unreasonably impair the ability of the wheeling utility to adequately serve its customers in the State.

In the event that the person requesting wheeling and the utility requested to transmit or wheel the electricity are unable to agree to any matter pertaining to transmission or wheeling services, the commission may require the utility to provide the transmission or wheeling services under such conditions as may be reasonable, for a period of time determined by the commission to be reasonable.

3. Wheeling to electric utilities. Subject to all other provisions of this Title, any person may petition the commission for an order requiring one or more electric utilities to transmit energy or energy and capacity from any utility, qualifying facility or other supplier of electricity to any utility. The commission may issue such an order if the proposed transmission or wheeling is in the public interest and meets reasonable conditions, including the conditions of subsection 2.

4. Capacity obligation. In the event a utility is required to provide transmission service under this section, the utility's obligation to provide electric service to the facility receiving the transmitted electricity shall cease, to the extent of the maximum level of electrical capacity demand met by that transmission.

CHAPTER 33

SMALL POWER PRODUCTION AND
COGENERATION§3301. Title

This chapter shall be known and may be cited as the "Small Power Production Act."

§3302. Purpose

The Legislature finds that it is in the best interest of the State to reduce the State's dependence upon fossil fuels for its energy needs. It is necessary to diversify energy producing systems and energy sources to ensure

an adequate and reliable supply of energy for Maine citizens. The Legislature further finds that the development of small energy production facilities using renewable resources and cogeneration facilities will have a significant and beneficial effect upon this State. The Legislature further finds that the replacement of fossil fuels by municipal solid waste reduces dependence upon fossil fuels, diversifies energy sources, reduces municipal costs and reduces the negative environmental effects of solid waste disposal.

The Legislature intends through this legislation to:

1. Encourage development. Encourage the development of energy producing systems using renewable resources; particularly abundant, indigenous, renewable resources or resources in close proximity to Maine; and

2. Promote existing use. Promote the more efficient use of existing energy systems particularly through the cogeneration of power.

§3303. Definitions

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

1. Associate. "Associate" means any person other than an electric utility that substantially participates in the ownership or operation of a cogeneration or small power production facility or any person that contracts to receive the thermal output of a cogeneration facility.

2. Cogenerator. "Cogenerator" means a municipality or person:

A. Owning or operating a facility which generates electricity and steam or other useful forms of energy which are used for commercial, industrial, heating or cooling purposes; and

B. Not primarily engaged in the generation or sale of electricity, other than the electricity generated at the cogeneration facility.

For purposes of this chapter, a cogenerator is considered not primarily engaged in the generation or sale of electricity if 50% or less of the equity interest in the cogeneration facility is owned by an electric utility, a subsidiary of an electric utility or an affiliate of an electric utility.

3. Existing transmission and distribution line improvement costs. "Existing transmission and distribution line improvement costs" means any costs the utility reasonably incurs for upgrading and improving transmission and distribution lines and related facilities that are already operable as part of that utility's existing power grid.

4. Interconnection costs. "Interconnection costs" means the reasonable costs incurred solely due to con-

necting the qualifying facility with the existing facilities of the electric utility purchasing the power. Interconnection costs do not include the costs of improvements to existing transmission and distribution lines.

5. Municipal solid waste. "Municipal solid waste" means solid waste emanating from domestic and commercial sources within the State over which municipalities are authorized to exercise control.

6. Municipal solid waste energy recovery facility. "Municipal solid waste energy recovery facility" means a "small power producer" as defined in this section, which depends upon municipal solid waste for at least 50% of its energy.

7. Qualifying facility. "Qualifying facility" means any small power producer or cogenerator as defined in this chapter.

8. Renewable resources. "Renewable resources" means resources that are capable of being reproduced, replenished or restored following the use of these resources and resources that are inexhaustible. Renewable resources shall include biomass, wood, water, waste, solid waste, as defined by Title 38, section 1303, solar energy and wind, but do not include, nuclear fuel sources, coal and oil.

9. Small power producer. "Small power producer" means a municipality or person owning or operating a power production facility with a power production capacity which, together with any other facilities located at the same site, does not exceed 80 megawatts of electricity and which depends upon renewable resources for its primary source of energy. For purposes of this chapter, a power producer is not considered a "small power producer" if more than 50% of the equity interest in the power production facility is owned by a electric utility, a subsidiary of a electric utility or an affiliate of a electric utility.

§3304. Control and regulation of generating facilities

Notwithstanding the definition of a public utility in section 102, a small power production facility and a cogeneration facility, as defined in section 3303, is not deemed a public utility and is not subject to control or regulation by the commission, except that the commission may treat all or a portion of the equity investment, whether direct or indirect, by an electric utility in a qualifying cogeneration facility or a qualifying small power production facility as public utility property for retail rate-making purposes. Commission determination and regulation of rates of electric utilities, which include purchases of power from a qualifying small power production facility or cogeneration facility, shall not be considered control or regulation of these facilities.

§3305. Sale of electricity

1. Authorized markets for electricity. Any small

power producer or cogenerator may sell electricity to any electric utility without prior approval or rate approval by the commission.

2. Use of electricity by the producer. Any small power producer or cogenerator may generate or distribute electricity through his private property solely for his own use, the use of his tenants or the use of, or sale to, his associates in a small power production or cogeneration facility and not for the use of or sale to others without approval or regulation by the commission.

3. Interconnections and existing transmission line improvements. A small power producer or cogenerator selling electricity to an electric utility shall be obligated to pay all reasonable interconnection costs. Any existing transmission and distribution line improvement costs incurred in order for the utility to utilize fully the power from a qualifying facility shall be equitably apportioned between the electric utility and the small power producer or cogenerator.

§3306. Transactions

1. Rate. The small power producer or cogenerator and the electric utility shall determine the rate paid by the electric utility for the purchase of electricity as described in this section.

2. Small power producer or cogenerator and public utility unable to agree. In the event that the small power producer or cogenerator and the electric utility are unable to agree to a contract for electricity, or to a price for the electricity purchased by the utility, or to an equitable apportionment of existing transmission and distribution line improvement costs, the commission shall require the utility to purchase the power at such rates and under such terms as the commission establishes by rule or order.

3. Competing petitions filed by small power producers. In the event competing petitions are filed by small power producers or cogenerators which are otherwise equivalent with respect to the standards set forth in section 3307, and implementing rules promulgated by the commission, the commission may give preference to any facility that is fueled primarily by municipal solid waste.

4. Apportionment of transmission and distribution line improvement costs. The commission shall base the equitable apportionment of existing transmission and distribution line improvement costs upon the benefits to the small power producer or cogenerator and the electric utility.

5. Commission decision on petition. The commission shall issue a decision within 6 months from receipt of a petition signed by a small power producer, cogenerator or electric utility for commission intercession.

6. Filing fee. The petitioner or petitioners request-

ing commission intercession shall pay to the commission an amount equal to \$1,000 per megawatt of capacity of the facility in issue. The petitioner or petitioners may request the commission to waive all or part of the filing fee. Notwithstanding any other provision of law, filing fees paid as required in this paragraph shall be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from any petitioner or petitioners and is not expended by the commission to process the request for intercession shall be returned to the petitioner or petitioners.

§3307. Review of rates

During a rate proceeding before the commission which involves the review of rates paid by an electric utility for electricity purchased by the utility from a small power producer or cogenerator, or upon petition to the commission in accordance with section 3306, the commission shall follow the standards prescribed in this section as the basis of the commission's decision pertaining to these rates.

1. Term of contract. Long-term contracts for the purchase of electricity by the electric utility from small power producers and cogenerators shall be encouraged in order to enhance the economic feasibility of small power production and cogeneration facilities.

2. Alternative cost of energy to the utility. The rates paid by an electric utility to a small power producer or cogenerator may not exceed, over the term of the power purchase contract, the cost to the electric utility of the electric energy which, but for the purchase from the cogenerator or small power producer, the utility would generate or purchase from another source. A determination of alternative energy costs to the utility shall include consideration of the cost of additional or existing generating capacity which could be displaced over the term of the contract as well as the cost of fuel and other operating expenses of electric energy production which a utility would otherwise incur in generating or purchasing power from another source.

3. Displacement of fossil fuel. Displacement of fossil fuel by the production of energy from renewable resources or by the more efficient use of energy by cogeneration shall be encouraged by contracts with and by rates paid to small power producers or cogenerators that make displacement feasible.

4. Availability and reliability of power. The rate charged by a small power producer or cogenerator for electricity produced shall reflect the reliability of the power with respect to the number of hours per day and days per year that it is available; the time of day and season of the year at which the electricity is made available; and the time of day, season of the year and the total need for power required by an electric utility.

§3308. Energy and capacity purchases from small power producers and cogenerators by electric utili-

ties affected by the filing of a petition in bankruptcy or for reorganization

1. Establishment of a purchase price for energy or energy and capacity delivered to a trustee or reorganized utility. If an electric utility which has entered into a power purchase contract with a small power producer or cogenerator for the purchase of energy or energy and capacity pursuant to section 3305, subsection 1 or section 3306, files for bankruptcy or for reorganization under the bankruptcy laws of the United States and, if the trustee in bankruptcy or debtor, receiver, examiner or any other party in possession and control of the assets of the electric utility rejects that power purchase contract pursuant to the United States Bankruptcy Code or any similar power or law, the trustee, debtor, receiver, examiner or other party in possession and control of the assets of the electric utility shall be obligated to continue to purchase without interruption from the small power producer or cogenerator whose contract was rejected any energy or energy and capacity which the small power producer or cogenerator makes available to it. If the power purchase contract is rejected, the avoided cost for the energy, or energy and capacity for the time period commencing on the date of the rejection and ending on the original expiration date of the rejected contract shall be the avoided cost determined for the period as if the determination were being made on the date on which the electric utility and small power producer or cogenerator entered into the rejected contract.

2. Nature of capacity contract. If a small power producer or cogenerator contracts to provide an electric utility with electric generating capacity, that portion of the power purchase contract which requires the delivery of the capacity shall not be executory in nature under the laws of the State once the small power producer or cogenerator has first made available to the electric utility the electric generating capacity. This section shall not be interpreted to mean that any other sections of such a contract are executory in nature.

3. Commission approval of rates of reorganized utility. At any time that the commission is requested or required to approve rates for an electric utility which has rejected a power purchase contract with a small power producer or cogenerator as a result of a bankruptcy or reorganization proceeding, or to approve rates of a person controlling and in possession of the assets of an electric utility which was a party to such a rejected contract, it shall not grant any rate approval; unless the electric utility or person seeking the rates includes within the rates provision for payment for all energy and capacity made available by a small power producer or cogenerator, either at the original contract rate or at the rate specified in subsection 1.

Any person who is obligated to comply with this section may not be permitted to operate as an electric utility in the State, unless it is in full compliance with this section.

CHAPTER 35

CONSUMER-OWNED ELECTRIC UTILITIES§3501. Definitions

1. “Consumer-owned electric utility.” For the purposes of this chapter, “consumer-owned electric utility” means any electric utility which is wholly owned by its consumers, including, but not limited to:

A. Any rural electrification cooperative organized under chapter 37;

B. Any electrification cooperative organized on a cooperative plan under the laws of the State;

C. Any municipal, plantation or quasi-municipal electric utility;

D. The electric portion of any municipal, plantation or quasi-municipal entity providing electric and other services; and

E. Any electric utility wholly owned by a municipality.

§3502. Procedures for changes in rates

Notwithstanding section 310, any consumer-owned electric utility which proposes to increase rates, tolls or charges by not more than 15% of the utility's annual operating revenues, may elect to set rates pursuant to this section and section 3503. These sections do not apply to fuel adjustment clauses as governed by section 3101.

1. Public hearing. No consumer-owned electric utility which elects to set rates under this section may file with the commission or increase any rate, toll or charge without first holding a public hearing at which the Public Advocate and any customer of the consumer-owned electric utility may present testimony and may question the officials present regarding the proposed increase.

2. Notification. The consumer-owned electric utility shall, at least 30 days prior to the hearing, publish a notice of the amount of the proposed rate increase, the percent of increase for each customer class and the hearing, including the date, time, place and purpose of the hearing at least twice in a newspaper of general circulation in the area encompassed by the consumer-owned electric utility. In addition, 60 days prior to the hearing, the consumer-owned electric utility shall notify the commission and the Public Advocate of its intent to increase rates, tolls or charges.

3. Ratepayer notification. Each consumer-owned electric utility shall give, at least 30 days prior to the public hearing, one notice to each of its ratepayers of:

A. The amount of the proposed rate increase;

B. The percent of increase for each customer class;

C. The customer's right to request information relating to the present and proposed rates;

D. The customer's right to an open and fair hearing and his right to further hearings before the commission;

E. The availability of assistance from the Public Advocate; and

F. The date, time and place of hearing.

4. Customer rights. At the commencement of each hearing held pursuant to this section, the consumer-owned electric utility shall inform those present of customer rights as specified in subsection 3 and that the rate increase may be investigated by the commission in accordance with subsection 8.

5. Supporting materials. The consumer-owned electric utility shall file a copy of all materials supporting the proposed increase with the commission and the Public Advocate, at least 30 days prior to the hearing. A copy of all material supporting the proposed increase shall be made available to customers for examination at the offices of the consumer-owned electric utility for at least 30 days prior to the hearing. The consumer-owned electric utility shall promptly provide any relevant additional material or information requested by a customer or by the commission or by the Public Advocate.

6. Filing changed rates. The consumer-owned electric utility shall file its changed rates with the commission within 30 days of the public hearing, but not sooner than 10 days following the public hearing. The commission may order the consumer-owned electric utility to correct any mathematical or clerical errors.

7. Effective date of rate change. Subject to the notice and waiver requirements of section 307, consumer-owned electric utilities electing to set rates under this section may establish an effective date for any rate change of at least one month, but not more than 9 months, from the date the rates are filed with the commission.

8. Authority to investigate rate changes. If, within 30 days of the public hearing, 10% of the customers of the consumer-owned electric utility or 750 customers, whichever is less, file with the utility and with the commission petitions requesting a review of the rate change by the commission, the rate change may be suspended, investigated, reviewed and changed by the commission in accordance with section 310, except that no suspension ordered issued by the commission pursuant to section 310 may be effective for a period greater than 9 months from the date the rate changes were filed.

9. Procedures for suspension of rate change. If the number of signatures on the petition is at least 750 or if the number of signatures on the petition equals or ex-

ceeds 10% of the customers indicated on the consumer-owned electric utility's most recent annual report on file with the commission, the commission may suspend the rate change pursuant to section 310. The commission shall notify the electric utility of the suspension.

10. Electric utility may challenge petitions. The electric utility shall have 10 days from the receipt of notice to notify the commission whether it intends to contest any aspect of the validity of the petition, after which it shall lose that right. If the electric utility notifies the commission in a timely fashion that it wishes to contest the validity of the petitions, the commission shall set the matter down for hearing. It shall hold the hearing and issue its decision on the validity of the petitions within 30 days of notification by the electric utility that it intends to contest the validity of the petitions. If the commission finds the petitions to be invalid, it shall lift its order of suspension. For the purposes of this section, "customer" means, in the case of residential accounts, any adult residing in a household where the utility's electric service is provided, and in the case of all other accounts where the utility's electric service is provided, a corporate officer, a partner or a proprietor. No one person may sign on behalf of more than one account unless receiving service at the account.

11. Review of rates under section 310. Nothing in this section prohibits a consumer-owned electric utility from petitioning the commission for review pursuant to section 310 in the first instance.

12. Frequency of rate increases. No consumer-owned electric utility may initiate a proceeding under this section for a general increase in its rates within one year of its most recent notification in accordance with subsection 3. For the purposes of this section, a "general increase in rates" means any change in the rates, tolls and charges of the electric utility, the effect of which is to increase the annual operating revenues of an electric utility by more than 1%, provided that this term does not include a rate change made for the sole purpose of implementing a fuel cost adjustment rate, pursuant to section 3101.

13. Penalty. If, upon the filing of a rate increase pursuant to this section, the commission finds that the utility has failed to comply with this section, the commission may suspend the rates for investigation pursuant to section 310. If there is a substantial procedural violation of this section, the commission may prohibit the utility from filing rates pursuant to this section in its next rate case.

§3503. Rates for consumer-owned electric utilities

1. Scope of section. Notwithstanding any other provision of law or any charter to the contrary and in addition to any charter or private and special laws creating or affecting any consumer-owned electric utility, the rate, toll or charge made, exacted, demanded or collected by the consumer-owned electric utility is governed by this

section.

2. Definition. As used in this section, the term "governing body" means the governing body of a consumer-owned electric utility.

3. Just and reasonable rates. The governing body shall establish and file rates, tolls and charges which are just and reasonable and which provide revenue as may be required for the consumer-owned electric utility to perform its public utility service and to attract necessary capital on just and reasonable terms.

4. Nondiscriminatory rates. The governing body shall establish and file rates which are nondiscriminatory and which are applied on a nondiscriminatory basis.

5. Purposes. The governing body may establish and file rates under this section to provide revenue for the following purposes, but no other:

A. To pay the current expenses for operating and maintaining the electric system and to provide for normal renewals and replacements;

B. To provide for the payment of the interest on the indebtedness created or assumed by the utility;

C. For consumer-owned electric utilities, except rural electrification cooperatives:

(1) To provide each year a sum equal to not less than 2% nor more than 10% of the term indebtedness represented by the issuance of bonds created or assumed by the utility, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of term indebtedness. The money set aside in this sinking fund and all interest accrued to this fund shall be devoted to the retirement of the term obligations of the utility and may be invested in such securities as savings banks in the State are allowed to hold;

(2) To provide for annual principal payments on serial indebtedness created or assumed by the utility; and

(3) To provide for a contingency reserve fund to reflect up to a 5% addition to yearly revenues over what is required to operate the electric utility. Any surplus in excess of 5% shall be used to offset future revenue requirements in the setting of rates. Any interest generated on these funds shall be deposited into the contingency reserve fund. The balance in the contingency reserve fund at the close of the utility's fiscal year shall not exceed 5% of the yearly revenues over what is required to operate the electric utility; and

D. For rural electrification cooperatives supplying or authorized to supply energy, to provide for a contingency reserve fund by providing rates to reflect an ad-

ditional amount no more than the amount of yearly long-term interest payments. The total accumulation of funds shall not exceed the level of equity required by the lender and in no case may exceed 25% of the long-term debt. Any surplus in excess shall be used to offset future revenue requirements in the setting of rates.

6. Penalty. If, as a result of investigation pursuant to section 310, 1302 or 1303, the commission finds that the utility has set rates pursuant to section 3502 which significantly exceed the limits of this section, the commission may order the utility to use any existing surplus to offset future revenue requirements and may suspend the utility's rights pursuant to section 3502 for a specified time period.

§3504. Treatment of certain small electric utilities

Upon request of a consumer-owned electric utility of not more than 150 customers, the commission may exempt the utility from any of the requirements of this Title and any commission rules with the exception of sections 3502 and 3503. The commission when promulgating rules shall take into account the effect of those rules on the consumer-owned utilities with not more than 150 customers and in doing so shall not impose unreasonable requirements.

§3505. Sunset provision

This section and sections 3501 to 3504 are repealed on June 30, 1989, pending review by the joint standing committee of the Legislature having jurisdiction over utilities and unless continued by legislative Act.

CHAPTER 37

RURAL ELECTRIFICATION COOPERATIVES

SUBCHAPTER I

GENERAL PROVISIONS

§3701. Short title

This chapter shall be known and may be cited as the "Rural Electrification Cooperative Enabling Act."

§3702. Purpose

Cooperative nonprofit membership corporations may be organized under this chapter for the purpose of supplying electricity and promoting and extending the use of electricity.

§3703. Definitions

As used in this chapter, unless the context otherwise indicates, the following words have the following meanings:

1. Person. "Person" means person as defined in section 102 or any public agency, state or political subdivision or agency of the State, or any body politic.

2. Rural electrification cooperative or cooperative. "Rural electrification cooperative or cooperative" means any corporation organized under this chapter or which becomes subject to this chapter in the manner provided.

§3704. Name

The name of a cooperative shall be distinct from the name of any other cooperative or corporation organized under the laws of, or authorized to do business in this State.

§3705. Refunds

Revenues of a cooperative for any fiscal year shall be applied as follows:

1. Expenses. To defray the expenses of the operation and maintenance of the facilities of the cooperative during the fiscal year;

2. Interest and obligations. To pay interest and principal obligations of the cooperative coming due in the fiscal year;

3. Reserve for construction of facilities. To finance or to provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

4. Reserve for working capital. To provide a reasonable reserve for working capital; and

5. Reserve for indebtedness. To provide a reserve for the payment of indebtedness of the cooperative in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year;

Any remaining revenues shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members, paid for during such fiscal year. Nothing in this section prohibits the payment by a cooperative of all or any part of its indebtedness prior to the date when it becomes due.

§3706. Nonliability of members for debts of cooperative

No member may be liable or responsible for any debts of the cooperative and the property of the members may not be subject to execution for the cooperative's debts. This section does not apply to a generation and transmission cooperative organized in accordance with subchapter IV.

§3707. Recordation of mortgages; effect

All after-acquired property of a cooperative or foreign corporation described or referred to as being mortgaged or pledged in a mortgage, deed of trust or other instrument is subject to the lien on that property immediately upon the acquisition of the property by the cooperative or foreign corporation, whether or not the property was in existence at the time of the execution of the mortgage, deed of trust or other instrument. Recordation of a mortgage, deed of trust or other instrument constitutes notice and otherwise has the same effect with respect to the after-acquired property owned by the cooperative or foreign corporation at the time of the execution of the mortgage, deed of trust or other instrument and described or referred to in the instrument as being mortgaged or pledged.

§3708. Fees

The Secretary of State shall charge and collect for filing articles of incorporation, articles of amendment, articles of consolidation or articles of conversion a fee of \$5, and for filing certificate of election to dissolve, articles of dissolution or certificate of change of principal office a fee of \$2.

§3709. Cooperatives are public utilities; jurisdiction of Public Utilities Commission

Cooperatives are public utilities and subject to this Title, notwithstanding any public or private and special laws to the contrary.

1. Commission to hear complaints. Any person who has been refused membership in or service by a cooperative or who is receiving inadequate service may complain to the commission which may, after hearing, upon finding that such service may reasonably be rendered, order the cooperative to provide the person with reasonably adequate service.

2. Unreasonable membership requirement. If the commission, after hearing, determines that a requirement of membership in a cooperative is unreasonable or unjust, it shall order the requirement repealed or not to be enforced.

§3710. Filing of articles

1. Articles filed by Secretary of State. Articles of incorporation, amendment, conversion or dissolution, when executed and acknowledged and accompanied by such affidavits as may be required by this chapter shall be presented to the Secretary of State for filing in the records of his office. If the Secretary of State determines that the articles presented conform to the requirements of this chapter he shall, upon the payment of the fees as provided in section 3708, file the articles in the records of his office.

2. Articles in effect upon filing. Upon the filing by

the Secretary of State the incorporation, amendment, conversion or dissolution provided for in the articles is in effect.

3. Application of this section to certificates of election to dissolve. This section applies to certificates of election to dissolve and affidavits executed in connection with the certificates pursuant to section 3755, subsection 2.

SUBCHAPTER IIORGANIZATION§3731. Incorporators

Five or more natural persons or 2 or more cooperatives may organize a cooperative in the manner provided in this subchapter.

This section does not apply to a generation and transmission cooperative organized in accordance with subchapter IV.

§3732. Articles of incorporation

1. Contents of articles. The articles of incorporation of a cooperative shall recite that they are executed pursuant to this chapter and shall state:

- A. The name of the cooperative;
- B. The address of its principal office;
- C. The names and addresses of the incorporators; and
- D. The names and addresses of its trustees.

2. Articles not inconsistent with this chapter. The articles of incorporation may contain any provisions not inconsistent with this chapter determined necessary or advisable for the conduct of its business.

3. Articles signed by incorporators. The articles shall be signed by each incorporator and acknowledged by at least 2 of the incorporators, or on their behalf, if they are cooperatives.

4. Purpose and corporate powers. It is not necessary to recite in the articles of incorporation of a cooperative the purpose for which it is organized or any of its corporate powers.

§3733. Bylaws

1. Trustees adopt first bylaws. The board of trustees shall adopt the first bylaws of a cooperative to be adopted following an incorporation, conversion or consolidation.

2. Members adopt, amend or repeal following bylaws. After the first bylaws have been adopted, the members shall adopt, amend or repeal the bylaws by the

affirmative vote of a majority of those members voting at a meeting of the members.

3. Contents of bylaws. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with its articles of incorporation.

§3734. Members

1. Incorporators are members. Each incorporator of a cooperative is a member of the cooperative, but no other person may become a member unless that person agrees to use electric energy or other services furnished by the cooperative when they are made available through its facilities.

2. Requirements of membership. Any member of a cooperative who agrees to use electric energy shall cease to be a member if he does not use electric energy supplied by the cooperative within 6 months after it is made available to him or if electric energy is not made available to him by the cooperative within 2 years after he becomes a member or such lesser period as the bylaws of the cooperative may provide.

3. Joint membership. A husband and wife may hold a joint membership in a cooperative.

4. Membership not transferable. Membership in a cooperative is not transferable, except as provided in the bylaws.

5. Additional qualifications. The bylaws may prescribe additional qualifications and limitations in respect to membership.

§3735. Meetings

1. Annual meetings. An annual meeting of the members of a cooperative shall be held at such time and place as provided in the bylaws.

2. Special meetings. Special meetings of the members may be called by the president, by the board of trustees, by any 3 trustees or by not less than 10% of the members.

3. Notice. Except as otherwise provided in this chapter, written or printed notice stating the time and place of each meeting of the members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than 10 days nor more than 25 days before the date of the meeting. If mailed, notice shall be deemed given when deposited in the United States mail with postage prepaid addressed to the member at his address as it appears on the records of the cooperative.

4. Quorum. Unless the bylaws prescribe the pre-

sence of a greater percentage or number of the members for a quorum, a quorum for the transaction of business at all meetings of the members of a cooperative, having not more than 1,000 members, shall be 5% of all members, present in person, and of a cooperative, having more than 1,000 members, shall be 50 members, present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

This subsection does not apply to a generation and transmission cooperative organized in accordance with subchapter IV. A quorum for such a cooperative shall be specified in the bylaws.

5. Voting. Each member shall be entitled to one vote on each matter submitted to a vote at a meeting of the members. Voting shall be in person, but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which such voting shall be permitted. No person may vote as proxy for more than 3 members at any meeting of the members.

§3736. Waiver of notice

Any person entitled to notice of a meeting may waive the notice in writing either before or after the meeting. If the person attends the meeting, his attendance constitutes a waiver of notice of the meeting, unless the person participates in the meeting solely to object to the transaction of any business because the meeting has not been legally called or convened.

§3737. Board of trustees

1. Number and qualifications. A board of not less than 5 trustees shall manage the business of a cooperative. Each trustee shall be a member of the cooperative or of another cooperative which is a member of the cooperative. The bylaws shall prescribe the number of trustees, their qualifications, other than those prescribed in this chapter, the manner of holding meetings of the board of trustees and of electing successors to trustees and of electing successors to trustees who resign, die or otherwise become incapable of acting.

2. Removal and salaries. The bylaws may provide for the removal of trustees from office and for the election of their successors. Trustees may not receive any salaries for their services as trustees and, except in emergencies, may not be employed by the cooperative in any capacity involving compensation without the approval of the members. The bylaws may provide that a fixed fee and expenses of attendance be allowed to each trustee for attendance at each meeting of the board of trustees.

3. Term of office. The trustees of a cooperative named in the articles of incorporation or conversion shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At

each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees to hold office until the next annual meeting of the members, except as otherwise provided in this chapter. Each trustee shall hold office for the term for which he is elected and until his successor is elected and qualified.

4. Staggered terms. Instead of electing the whole number of trustees annually, the bylaws may provide that the trustees be divided into either 2 or 3 classes, each class to be as nearly equal as possible. The term of office of trustees of the first class shall expire at the first annual meeting of members after their election, that of the 2nd class shall expire at the 2nd annual meeting after their election and that of the 3rd class, if any, shall expire at the 3rd annual meeting after their election. At each annual meeting after classification, the number of trustees equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the 2nd succeeding annual meeting, if there are 2 classes, or until the 3rd succeeding annual meeting, if there are 3 classes. No classification of trustees may be effective prior to the first annual meeting of members.

5. Quorum. A majority of the board of trustees shall constitute a quorum.

6. Joint membership. If 2 or more individuals hold a joint membership in a cooperative, only one of them, may be elected a trustee.

7. Powers. The board of trustees may exercise all of the powers of a cooperative not conferred upon the members by this chapter or its articles of incorporation or bylaws.

§3738. Districts

The bylaws may provide for the division of the territory served or to be served by a cooperative into 2 or more districts for any purpose, including, without limitation, the nomination and election of trustees and the election and functioning of district delegates. In such case, the bylaws shall prescribe the boundaries of the districts or the manner of establishing the boundaries, or the manner of changing the boundaries, and the manner in which the districts shall function. No member at any district meeting and no district delegate at any meeting may vote by proxy or by mail.

§3739. Officers

The officers of a cooperative shall consist of a president, vice-president, secretary and treasurer, who shall be elected annually by and from the board of trustees. When a person holding office ceases to be a trustee, he shall cease to hold office. The offices of secretary and of treasurer may be held by the same person. The board of trustees may elect or appoint other

officers, agents or employees as it determines necessary or advisable and shall prescribe their powers and duties. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

SUBCHAPTER III

POWERS

§3751. Powers generally

A cooperative may:

1. Sue. Sue in its corporate name;
2. Be sued. Be sued in its corporate name;
3. Seal. Adopt and alter a corporate seal;
4. Use of electricity. Generate, manufacture, purchase, acquire, accumulate and transmit electricity, and distribute, sell, supply and dispose of electricity to its members;
5. Use of electrical and plumbing appliances. Assist persons to whom electricity is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrical and plumbing appliances, equipment, fixtures and apparatus by financing, or otherwise; wire or cause to be wired the premises; and purchase, acquire, lease as lessor or lessee, sell, distribute, install and repair the electric and plumbing appliances, equipment, fixtures and apparatus;
6. Electric cold storage or processing plants. Assist persons to whom electricity is or will be supplied by the cooperative in constructing, equipping, maintaining and operating electric cold storage or processing plants, by financing or otherwise;
7. Acquire certain plants and equipment. Construct, purchase, lease as lessee or otherwise acquire; equip, maintain and operate; sell; assign; convey; lease as lessor; or mortgage, pledge or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric cold storage or processing plants, lands, buildings, structures, dams, plants and equipment and any other real or personal property, tangible or intangible, which is determined necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized. In the construction and operation of their facilities, cooperatives shall comply with all safety laws and regulations applicable to electric utilities;
8. Electric transmission and distribution lines. Construct, maintain and operate electric transmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including all roads, highways, streets, alleys, bridges and causeways, subject to chapters 23 and 25;

9. Franchises, licenses, rights and easements. Purchase, lease as lessee, or otherwise acquire; use and exercise, and sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses and easements;

10. Contract indebtedness. Borrow money and otherwise contract indebtedness; issue notes, bonds and other evidences of indebtedness; and secure the payment by mortgage, pledge or deed of trust, or any other encumbrance upon, any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues or income;

11. Member of other cooperatives. Become a member of other cooperatives or corporations or to own stock in them;

12. Bylaws. Adopt, amend and repeal bylaws;

13. Other consistent acts. Perform any other acts and have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

§3752. Amendment of articles

A cooperative may amend its articles of incorporation as follows.

1. Meeting and notice. The proposed amendment shall be presented to a meeting of the members. The proposed amendment shall be set forth in or attached to the notice of the meeting.

2. Approval. If the proposed amendment, with any changes, is approved by the affirmative vote of not less than 2/3 of those members voting on the amendment at the meeting, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice-president and its seal shall be affixed to the articles and attested by its secretary.

3. Contents of articles of amendment. The articles of amendment shall recite that they are executed pursuant to this chapter and shall state:

- A. The name of the cooperative;
- B. The address of its principal office; and
- C. The amendment to its articles of incorporation.

4. Affidavit. The president or vice-president executing the articles shall make and attach to the articles an affidavit stating that this section was complied with.

§3753. Change of location of principal office

A cooperative may, upon authorization of its board of trustees or its members, change the location of its principal office by filing a certificate reciting the change, ex-

ecuted and acknowledged by its president or vice-president under its seal, attested by its secretary, in the office of the Secretary of State.

§3754. Conversion of existing corporations

A corporation organized on a cooperative plan under the laws of this State and supplying or authorized to supply electric energy may be converted into a cooperative by complying with the following requirements and shall upon compliance be subject to this chapter with the same effect as if originally organized under this chapter.

1. Meeting and notice. The proposition for the conversion of the corporation into a cooperative and proposed articles of conversion shall be submitted to a meeting of the members or stockholders of the corporation. The proposed articles of conversion shall be attached to the notice of the meeting.

2. Approval. If the proposition for the conversion of the corporation into a cooperative and the proposed articles of conversion, with any amendments, are approved by the affirmative vote of not less than 2/3 of those members of the corporation voting on the articles at the meeting, or, if the corporation is a stock corporation, by the affirmative vote of the holders of not less than 2/3 of those shares of the capital stock of the corporation represented at the meeting and voting on the articles, articles of conversion shall be executed and acknowledged on behalf of the corporation by its president or vice-president and its seal shall be affixed to the articles and attested by its secretary.

3. Contents of articles of conversion. The articles of conversion shall recite that they are executed pursuant to this chapter and shall state:

- A. The name of the corporation and the address of its principal office prior to its conversion into a cooperative;
- B. The law or laws under which it was organized;
- C. A statement that the corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;
- D. Its name as a cooperative;
- E. The address of the principal office of the cooperative;
- F. The names and addresses of the trustees of the cooperative; and
- G. The manner in which members or stockholders of the corporation may or shall become members of the cooperative; and may contain any provisions not inconsistent with this chapter determined necessary or advisable for the conduct of the business of the cooperative.

4. Affidavit. The president or vice-president executing the articles shall make and attach to the articles an affidavit stating that this section was complied with. The articles of conversion shall be deemed to be the articles of incorporation of the cooperative.

§3755. Dissolution generally

1. When a cooperative has not commenced business. A cooperative which has not commenced business may be dissolved by delivery to the Secretary of State articles of dissolution which shall be executed and acknowledged on behalf of the cooperative by a majority of the incorporators and which shall state:

- A. The name of the cooperative;
- B. The address of its principal office;
- C. That the cooperative has not commenced business;
- D. That any sums received by the cooperative, less any part disbursed for expenses of the cooperative, have been returned or paid to those entitled to them;
- E. That no debt of the cooperative is unpaid; and
- F. That a majority of the incorporators elect that the cooperative is dissolved.

2. When cooperative has commenced business. A cooperative which has commenced business may be dissolved in the following manner.

A. The members at any meeting shall approve, by the affirmative vote of not less than 2/3 of those members voting on the proposal at the meeting, a proposal that the cooperative be dissolved.

B. Upon such approval, a certificate of election to dissolve, executed and acknowledged on behalf of the cooperative by its president or vice-president under its seal, attested by its secretary and stating the name of the cooperative; the address of its principal office; and that the members of the cooperative have duly voted that the cooperative be dissolved, shall, together with an affidavit made by its president or vice-president executing the certificate, stating that the statements in the certificate are true, be submitted to the Secretary of State for filing.

C. Upon the filing of the certificate and affidavit by the Secretary of State, the cooperative shall cease to carry on its business, except to the extent necessary for the winding up of its business, but its corporate existence shall continue until articles of dissolution have been filed by the Secretary of State.

3. Notice to creditors. The board of trustees shall immediately cause notice of the dissolution proceedings to be mailed to each known creditor of and claimant against the cooperative and to be published once a week

for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

4. Actions against the cooperative. All actions against the cooperative shall be commenced within one year from the date of filing the certificate of election to dissolve.

5. Winding up cooperative affairs. The board of trustees shall wind up and settle the affairs of the cooperative, collect sums owing to it, liquidate its property and assets, pay and discharge its debts, obligations and liabilities and perform all other acts required to wind up its business. After paying or discharging or adequately providing for the payment or discharge of all its debts, obligations and liabilities, the board of trustees shall, after one year from the date of filing the certificate to dissolve, distribute any remaining sums among its members and former members in proportion to the patronage of the respective members or former members during the 7 years next preceding the date of the filing of the certificate by the Secretary of State, or if the cooperative has not been in existence for that period, then during the period of its existence prior to the filing.

6. Articles of dissolution when a cooperative has commenced business. The board of trustees shall, upon the winding up of the cooperative, authorize the execution of articles of dissolution, which shall be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its seal shall be affixed to the articles and attested by its secretary. The president or vice-president executing the articles of dissolution shall make and attach to the articles an affidavit stating that the statements made in them are true. The articles of dissolution shall recite that they are executed pursuant to this chapter and shall state:

- A. The name of the cooperative;
- B. The address of its principal office;
- C. The date on which the certificate of election to dissolve was filed by the Secretary of State;
- D. That there are no actions or suits pending against the cooperative;
- E. That all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made for their payment or discharge; and
- F. That this section has been complied with.

SUBCHAPTER IV

GENERATION AND TRANSMISSION
COOPERATIVES

§3771. Organization of generation and transmission cooperatives

One or more cooperatives formed under this Title may organize and control a cooperative having as its principal purpose the generation, manufacture, purchase, acquisition, accumulation, transmission, sale, supply and disposal of electric energy. Such a cooperative shall have all of the powers of cooperatives formed under this Title.

§3772. Jurisdiction of Public Utilities Commission

Cooperatives formed under this subchapter are public utilities and subject to the requirements of this Title, except for those requirements of this chapter which are inconsistent with the operation of cooperatives formed under this subchapter, notwithstanding any public or private laws to the contrary. Those cooperatives require the authorization of the commission to transmit, sell, supply or dispose of electric energy to any member of the cooperative. That authorization may be granted by order or rule.

CHAPTER 39

MUNICIPAL ELECTRIC DISTRICTS

§3901. Short Title

This chapter shall be known and may be cited as the "Municipal Electric District Enabling Act."

§3902. Purpose

The purpose of each municipal power district formed under this chapter is to generate, supply or extend the efficient use of electricity for public purposes and for the health, welfare, comfort and convenience of the inhabitants of the district.

§3903. Formation of single-member district

A municipal power district may be formed under the following provisions.

1. By municipal officers. The municipal officers of any municipality may, by majority vote, determine that a municipal power district should be established under the terms of this chapter. If they make such a determination they shall call an election under subsection 3.

2. By petition. Ten percent of the legal voters of a municipality may petition the municipal officers to call an election, under subsection 3, for the purpose of forming a municipal power district.

3. Election. After a determination by the municipal officers, or upon petition in accordance with subsection 2, the municipal officers shall, at the next regular election or town meeting, or at a special election or town meeting called and held by them, submit the following question to the legal voters in accordance with their charter or Title 30, section 2061:

"Shall the (name of municipality) Power District be

created and incorporated under the Maine Revised Statutes, Title 35-A, chapter 39?"

4. Favorable vote. If a majority of the legal votes cast on this question favor incorporation, a municipal power district may be created for that municipality under this chapter upon declaration of the vote by the municipal officers, provided that the total number of votes cast for and against the incorporation equals or exceeds 40% of the total votes cast in that municipality for all candidates for Governor at the previous gubernatorial election. If not, the proposed district is not created at that time. Upon certification of a favorable vote by the municipal officers, the commission shall approve formation of the district if the commission finds that formation would be in conformance with the requirements of this Title. Upon approval by the commission, the district is created and the commission shall file certification of that approval with the Secretary of State.

§3904. Formation of multimember district

Two or more municipalities may form a multimember municipal power district under the following provisions.

1. By municipal officers. The municipal officers of each municipality may, by majority vote, determine that a municipal power district should be established under the terms of this chapter. If the municipal officers of every municipality involved make such a determination, they shall call an election under subsection 3.

2. Petition. Upon petition of 10% of the legal voters of each municipality, the municipal officers of those municipalities shall call an election, under subsection 3, for the legal voters of their respective municipalities for the purpose of forming a municipal power district.

3. Election. After a determination by the municipal officers or upon petition of the legal voters of each municipality wishing to form a district, the municipal officers shall, at the next regular election or town meeting, or at a special election or town meeting if the petition so requests, submit the following question to the legal voters of their respective municipalities in accordance with their charter or Title 30, section 2061:

"Shall the (name of municipalities) Power District be created and incorporated under the Maine Revised Statutes, Title 35-A, chapter 39?"

4. Favorable vote. If, in each municipality, a majority of the legal votes cast on this question favor incorporation, a municipal power district may be created for those municipalities under this chapter upon declaration of the vote of the municipal officers, provided that the total number of votes cast in each municipality for and against the incorporation equals or exceeds 40% of the total votes cast in the municipality for all candidates for Governor at the previous gubernatorial election. Upon certification of a favorable vote by the municipal officers, the commission shall approve formation of the district

if the commission finds that formation would be in conformance with the requirements of this Title. Upon approval by the commission, the district is created and the commission shall file certification of that approval with the Secretary of State.

§3905. Existing districts

Any quasi-municipal district organized under the private and special laws which is an electric utility within the meaning of section 102, may reorganize in accordance with this chapter. In addition to the methods of sections 3903 and 3904, the trustees may, by majority vote, petition the municipal officers for an election and those officers shall hold an election in accordance with those sections.

§3906. Organization of single-member district

A municipal power district shall be organized under the following provisions.

1. Trustee. Upon formation of a district under section 3903, all the affairs of the district shall be managed by a board of 3 trustees who must be residents of the district. They shall hold office as provided in subsection 2 and until their respective successors are elected and qualified. When any trustee ceases to be a resident of the district, his office as trustee becomes vacant. Trustees are subject to Title 30, section 2251, concerning conflict of interest.

2. Election. Within 60 days after the formation of a district, the municipal officers shall appoint the initial board of trustees, one member for a term of one year, one member for a term of 2 years and one member for a term of 3 years. Each year as the term of a trustee expires, the legal voters of the district, at an annual election, shall elect a successor to serve for a full term of 3 years. The annual election shall be held within the district concurrently with the election of the municipal officers. The trustees shall conspicuously post notice of the election in 2 public places within the district, not less than 7 days before the election. Any vacancy in the board shall be filled by the municipal officers for the unexpired term.

3. Meetings. As soon as convenient after each annual election, the trustees shall hold a meeting at the offices of the district, elect a chairman and clerk and adopt a corporate seal. They may choose a treasurer and all other officers and agents for the proper management of the affairs of the district. Other meetings of the trustees may be called by the chairman or by any 2 of the trustees. Trustees shall determine their own compensation. The trustees shall, in the bylaws, determine the number constituting a quorum, but in no event less than half of the total number of trustees.

§3907. Organization of multimember district

A municipal power district formed under section 3904

shall be organized under the following provisions.

1. Trustees. Upon formation of a district under section 3904, all the affairs of the district shall be managed by a board of trustees comprised of 2 trustees from each municipality. Trustees shall be residents of their respective municipalities. They shall hold office as provided in subsection 2 and until their respective successors are elected and qualified. When any trustee ceases to be a resident of his municipality, his office as trustee becomes vacant. Trustees are subject to Title 30, section 2251, concerning conflict of interest.

2. Election. Within 60 days after the formation of a district, the municipal officers of each municipality shall appoint 2 members to the initial board of trustees. The initial members shall agree, or determine by lot, the term of each so that, as nearly as possible, an equal number will serve for one year, an equal number for 2 years and an equal number for 3 years. Each year as the term of a trustee expires, the legal voters of that trustee's municipality, at an annual election, shall select a successor to serve for a full term of 3 years. The annual election shall be held concurrently with the election of municipal officers. The trustees shall conspicuously post notice of the election in 2 public places within each municipality of the district, not less than 7 days before the election. Any vacancy in the board shall be filled by the municipal officers for the unexpired term.

3. Meetings. As soon as convenient after each annual election, the trustees shall hold a meeting at the offices of the district, elect a chairman and clerk and adopt a corporate seal. They may choose a treasurer and all other officers and agents for the proper management of the affairs of the district. Other meetings of the trustees may be called by the chairman or by any 3 of the trustees, after prior notice to the public. Trustees shall determine their own compensation, not to exceed \$10 per meeting per trustee. A majority of trustees constitutes a quorum. The trustees shall conduct public hearings whenever they propose matters affecting rates, bylaws, service, an annual budget or their own compensation.

§3908. Powers of district

A district may:

1. Sue. Sue or be sued in its capacity as a district;
2. Electricity. Generate, manufacture, purchase, acquire, accumulate, transmit, distribute, sell, supply and dispose of electricity to individuals and corporations within the district;
3. Assist users. Assist persons who are or will be users of electricity supplied by the district in making repairs and energy saving improvements to improve energy efficiency in buildings;

4. Acquire plants and equipment. Construct, pur-

chase, lease, equip, maintain and operate electric transmission and distribution lines or systems, electric generating plants, lands, buildings, structures, dams, equipment and any other real or personal property, tangible or intangible which are determined necessary, convenient or appropriate to accomplish the purposes of this chapter;

5. Contract. Contract and be contracted with;

6. Gain access. Gain access, through its officers or agents, to all premises served by its transmission lines, poles and wires at all reasonable hours to ascertain the amount of electricity purchased;

7. Borrow money. Issue bonds and notes, including revenue obligation securities as otherwise authorized by this chapter, to such amounts as the commission may authorize for the purpose of raising the amount required to accomplish the purposes of this chapter. The bonds and notes may be of the date and denomination and payable at such times and places and bear such rate of interest as the district may authorize in accordance with the procedures of section 3909. The district may borrow money temporarily, for periods of less than one year, without vote of the inhabitants, except as provided in this chapter, in amounts which in the judgment of the trustees are necessary to accomplish the purposes of this chapter;

8. Bylaws. Make and enforce bylaws, rules for the conduct of the district affairs and business and for use of its services and facilities; and

9. Other consistent acts. Perform any other acts which may be necessary, convenient or appropriate to accomplish the purposes of this chapter.

§3909. Issuance of bonds and notes

1. Notice. In the event that the trustees vote to authorize bonds or notes for a period exceeding one year or for acquisition of any plant or equipment, they shall provide notice to the general public of the proposed bond or note issue and the purposes for which the debt is being issued. The notice shall be published at least once in a newspaper having general circulation in the district. The trustees shall give notice to each voter of the district by mail. No such debt may be incurred under the vote of the trustees until the expiration of 7 full days following the date on which the notice was first published and mailed.

2. District approval. The procedure for district approval of the issuance of bonds and notes is as follows.

A. For bonds or notes which singly or in the aggregate included in any one financing amount to \$150,000 or more, subject to adjustment relative to 1981 as the base year according to the annual Consumer Price Index, as published by the appropriate federal agency, the trustees shall call a special district

meeting for the purpose of permitting members of the public to express their views concerning the proposed amount of debt. That meeting shall also express approval or disapproval of the proposed amount of debt. If a majority of voters present and voting expresses disapproval of the amount of debt proposed by the trustees, the debt shall not be incurred and the vote of the trustees authorizing it shall be of no effect.

B. The procedure of paragraph A shall also be followed for debts in amounts smaller than the amount specified in paragraph A, if requested by petition of not less than 50 qualified voters of the district, filed with the clerk of the district before the expiration of 7 full days after publication of the public notice required under subsection 1.

§3910. Revenue obligation securities

A district created under this chapter shall be deemed a municipality for purposes of Title 10, chapter 110, subchapter IV, with respect to a qualifying electric generating system, electric distribution system, or both. The board of trustees are deemed to be municipal officers for purposes of that subchapter.

§3911. Eminent domain

A district may exercise the right of eminent domain under the same conditions and for the same purposes as other electric utilities under section 3136. Title to property acquired shall be taken in the name of the district.

§3912. Rates

All persons whether private, public or municipal, shall pay to the district the rates established by the trustees for the electricity used by them and the rates may not be unjustly discriminatory within the district. The rates shall be established in accordance with this chapter and shall provide for the following purposes only:

1. Payment of current expenses of operation and maintenance. To pay the current expenses for operating and maintaining the electric system, including the cost of fuel and to provide for normal renewals and replacements;

2. Payment of interest indebtedness. To provide for the payment of the interest on the indebtedness created or assumed by the utility;

3. Retirement of term indebtedness. To provide each year a sum equal to not less than 2% nor more than 10% of the term indebtedness represented by the issuance of bonds created or assumed by the utility, which sum shall be turned into a sinking fund and kept there to provide for the retirement of term indebtedness. The money set aside in this sinking fund shall be devoted to the retirement of the term obligations of the utility and may be invested in such securities as savings banks in

the State are allowed to hold; and

4. Principal payments on serial indebtedness. To provide for annual principal payments on serial indebtedness created or assumed by the utility.

§3913. Rate setting

Municipal power districts are public utilities and subject to this Title.

§3914. Quasi-municipal body

A municipal power district formed in accordance with this chapter is a quasi-municipal corporation within the meaning of the laws of this State, including, but not restricted to, Title 36, section 651.

§3915. Existing service areas

No municipal power district may serve as a public utility, as defined in section 102, without consent from the commission in accordance with section 2101.

CHAPTER 41

MAINE MUNICIPAL AND RURAL ELECTRIFICATION COOPERATIVE AGENCY ACT

SUBCHAPTER I

GENERAL PROVISIONS

§4101. Short Title

This chapter shall be known and may be cited as the "Maine Municipal and Rural Electrification Cooperative Agency Act."

§4102. Findings and declaration of necessity

It is found and declared that:

1. Supply necessary. An adequate, reliable and economical supply of electricity in the State is a necessity to the enjoyment of life and health by the people of the State and its absence would endanger the State, its people and its economy;

2. Development. The provision of a means of promoting the development of an adequate, reliable and economical supply of electricity is a matter of public and state concern, is a public purpose and is for the general good of the inhabitants of the State;

3. Deficiency. There exists a serious deficiency in the ability of various municipalities and rural electric cooperatives in the State presently providing electricity for sale at retail to finance the acquisition, construction and installation of generation, transmission and distribution facilities necessary to ensure an adequate,

reliable and economical supply of electricity, and that deficiency constitutes an exigency under which the Legislature may act;

4. Supply. The enactment of this chapter constitutes the most expedient way for the Legislature to provide a means for those municipalities and rural electric cooperatives to develop an adequate, reliable and economical supply of electricity; and

5. Public interest. The necessity of the public interest for the provisions enacted is declared as a matter of legislative determination.

§4103. Definitions

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

1. Agency. "Agency" means the Maine Municipal and Rural Electrification Cooperative Agency.

2. Cooperative. "Cooperative" means any corporation organized as of January 1, 1981, under chapter 37 or former Title 35, chapters 221 to 227 on a cooperative plan under the laws of the State and supplying or authorized to supply electricity.

3. Municipality. "Municipality" means any municipal, plantation or quasi-municipal electric, or electric and utility, corporation, or municipal electric, or electric and utility, system within the State which, as of January 1, 1981, was authorized to and engaged in the manufacture, generation, transmission, distribution, purchase or sale of electricity to the general public.

4. New England power pool. "New England power pool" means the relationship or organization created by the New England power pool agreement.

5. New England power pool agreement. "New England power pool agreement" means the contractual agreement between electric utilities which is open to all electric utilities, whether private or governmental, operating in New England, which provides for cooperation and joint participation in developing and implementing a regional bulk power supply of electricity, which constitutes the central dispatching and primary pooling arrangements for electric utilities in the New England states, and which has been permitted to become effective under the Federal Power Act by the Federal Power Commission.

6. Person. "Person" means person as defined in section 102 or any public agency, state or political subdivision or agency of the State, or any body politic of any nature organized and existing under the law of any state, the United States, any Province of Canada and also includes Canada, its provinces and all political subdivisions, departments, agencies and instrumentalities of Canada.

7. Project. "Project" means any plant, works, system or facilities inside or outside the State, and real and personal property of any nature or any interest in any of them, together with all parts of them and appurtenances to them, used or useful in the generation, production, transmission, distribution, purchase, sale, exchange or interchange of electricity and in the acquisition, extraction, conversion, transportation or storage or reprocessing of fuel of any kind for any purposes or an interest in, or the right to the use, services, output or capacity of a plant quota, works, system or facilities; provided that "project" does not include construction of nuclear generating facilities or the storage, reprocessing or transportation of nuclear fuel within the State.

8. Project cost. "Project cost" means, but is not limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment, extension or disposal of a project or part of a project, including:

A. The cost of studies, plans, specifications, surveys and estimates of costs and revenues relating to them;

B. The cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises and preparation of applications for them;

C. Administrative, legal, engineering and inspection expenses;

D. Financing fees, expenses and costs;

E. Working capital;

F. Initial fuel costs;

G. Interest on the bonds during the period of construction and for a reasonable period afterwards as may be determined by the agency;

H. Establishment of reserves for the payment of debt service, for renewals and replacements, for working capital, for operating expenses and for any other purposes determined reasonable and proper;

I. Prepayments under contracts for the purchase of capacity and output; and

J. All other expenditures of the agency incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment, extension or disposal of a project and the placing of the project into operation.

SUBCHAPTER II

ESTABLISHMENT AND ORGANIZATION

§4131. Creation of Maine Municipal and Rural Electrification Cooperative Agency

1. Establishment. The Maine Municipal and Rural Electrification Cooperative Agency, as established pursuant to Title 5, chapter 379, is a body politic and corporate and political subdivision of the State with the duties and powers set forth in this chapter. The agency is constituted as a public instrumentality and as a quasi-municipal corporation, and the exercise by the agency of the powers conferred by this chapter is held to be the performance of public and essential governmental functions of the State.

2. Powers. The powers of the agency shall be exercised by a board of directors.

3. Appointment of directors. Directors shall be appointed as follows.

A. The governing body or board of directors of any municipality and the board of trustees or directors of any cooperative shall each select a single director to serve on the board, provided that no director may be selected by more than one cooperative or municipality.

B. The Governor shall also appoint as a member a person who is not affiliated with any municipality or cooperative, as defined in section 4103, subsection 5, to represent the general public.

C. The Director of the Office of Energy Resources, or another employee of the Office of Energy Resources, as the director may from time to time designate in writing filed with the clerk of the agency, shall serve as a member of the board of directors.

4. Oath. Each director, before entering upon his duties, shall take and subscribe an oath to perform the duties of office faithfully, impartially and justly to the best of his ability. A record of the oaths shall be filed in the office of the Secretary of State.

5. Term. Directors shall serve for terms of 5 years each. The terms shall end on July 1st each year as follows: Two in 1982 and every 5 years thereafter; 2 in 1983 and every 5 years thereafter; 2 in 1984 and every 5 years thereafter; 2 in 1985 and every 5 years thereafter; and the balance if any in 1986 and every 5 years thereafter. Each director shall hold office until his successor is appointed and qualified. A director is eligible for reappointment.

6. Vacancy. Any vacancy in the office of director occurring other than by expiration of term shall be filled by a successor director, who shall serve for the remaining term of office so vacated.

7. Removal. Each director may be removed from office by the Governor for cause, after a public hearing, and may be suspended by the Governor pending the completion of the hearing.

8. Quorum. A majority, but not less than 3, of the directors then in office constitutes a quorum for the

transaction of any business or the exercise of any power of the agency. Action may be taken and motions and resolutions adopted by the agency at any meeting by the affirmative vote of a majority of directors of the agency then in office. No vacancy in the office of director of the agency may impair the right of a quorum of the directors to exercise all powers and take any action.

9. Bylaws. The board of directors of the agency shall adopt bylaws or other rules and regulations for the management of the affairs of the agency and carrying out the purposes of this chapter.

10. Officers. The board of directors shall also elect one of its member directors as chairman of the agency and shall also elect a treasurer and secretary who may be, but need not be, directors. It may elect other officers and agents as necessary to perform those acts commonly delegated to the officers and agents of a business corporation and shall set their compensation.

11. Voting; conflict of interest. A director or officer of the agency who is also an officer, employee or member of a legislative body of a municipality or other public body or the State may not be precluded from voting or acting on behalf of the agency on a matter involving the municipality or public body or the State. Neither shall service as a director or officer of the agency constitute a conflict of interest for an officer, employee or member of a municipality or public body or the State.

12. Agency existence. The agency and its existence shall continue as long as it has notes, bonds or other obligations or indebtedness outstanding, including notes, bonds or other obligations or indebtedness issued or incurred, and until its existence is terminated by law. The net earnings of the agency, beyond that necessary for retirement of its notes, bonds or other obligations or indebtedness or to implement the public purposes and programs authorized in this chapter, may not inure to the benefit of any person other than the State. Upon termination of the existence of the agency, title to all of the property owned by the agency, including any net earnings of the agency, shall vest in the State. The State reserves the right at any time to alter, amend, repeal or otherwise change the structure, organization, programs or activities of the agency, including the power to terminate the agency, subject to any limitation on the impairment of the obligation of any contract entered into by the agency.

§4132. General powers and duties

The agency has all the powers necessary or convenient to carry out this chapter, including, without limitation, those general powers provided a business corporation by the Maine Business Corporation Act, Title 13-A, and including, without limiting the generality of this paragraph, the power:

1. Acceptance, grants or gifts. To accept gifts or grants of property, funds, money, materials, labor, sup-

plies or services from the United States or from any person, and to carry out the terms or provisions or make agreements with respect to any gifts or grants, and to do any acts necessary, useful, desirable or convenient in connection with procuring acceptance or disposition of gifts or grants;

2. Acquisition. To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, tangible or intangible, including an interest in land of less than the fee;

3. Disposal of real or personal property. To sell, lease, mortgage, exchange, transfer or otherwise dispose of any real or personal property or interest in it, or to grant options for any of those purposes;

4. Assignment of revenues. To pledge or assign any money, fees, charges or other revenues of the agency and any proceeds derived by the agency from the sale of property, or from insurance or condemnation awards;

5. Authorization. To perform any act authorized by this chapter through its officers, agents or employees or by the contracts with any person, firm or corporation;

6. Borrow funds. To borrow money and issue its notes and bonds as provided in this chapter;

7. Purchase electricity. To purchase electricity and energy, including without limiting the generality of this section, all or a portion of the capacity and output of one or more specific projects;

8. Sale of electricity. To sell electricity and other products and services of electric power facilities to any person inside or outside the State or the United States. Utilities may purchase electricity sold by the agency, provided that nothing in this chapter authorizes resale of electricity purchased from the agency, except as otherwise authorized by law. This subsection does not allow retail sales to consumers or commercial and industrial users, except as otherwise provided by law;

9. Contracts. To contract for the use of transmission and distribution facilities owned by others for the delivery to the agency of electricity purchased by the agency and to purchasers of electric power and energy sold by the agency. These other owners may contract with the agency;

10. Other contracts. To contract with respect to the purchase, sale, delivery, exchange, interchange, wheeling, pooling, transmission or use of electricity and to otherwise participate in intrastate, interstate and international arrangements with respect to those matters, including the New England power pool, except that this power may not be exercised so as to conflict with or diminish in any way the powers and obligations of the commission under this Title regarding planning and entering into agreements for the supply of electricity;

11. Plan. Individually or jointly with any other person to plan, finance, acquire, construct, improve, purchase, operate, maintain, use, share costs of, own, lease, sell, dispose of or otherwise participate in projects or portions of projects, the product or service from them, securities or obligations issued or incurred in connection with the financing of them or research and development relating to them, inside or outside the State. The agency may also enter into and perform contracts with any person with respect to the powers set out in this subsection. If the agency acquires or owns an interest as a tenant in common with others in any projects, the surrender or waiver by the agency or by the other property owner of its right to partition the property for a period not exceeding the period for which the property is used or useful for electric utility purposes may not be invalid and unenforceable by reason of length of the period, or as unduly restricting the alienation of the property.

12. Apply for permits. To apply to the appropriate agencies of the State, other states, the United States, Canada, any of its provinces and any divisions, departments, agencies and instrumentalities of Canada, and to any other proper agency for permits, licenses, certificates or approvals which may be necessary, and to construct, maintain and operate projects in accordance with these licenses, permits, certificates or approvals;

13. Application to expend assistance. To apply and contract for and to expend assistance from the United States or other sources, whether in form of a grant or loan or otherwise;

14. Contract; administrative services. To contract for administrative services with any person;

15. Execution. To make and execute all contracts and agreements and other instruments necessary or convenient in the exercise of the powers and functions of the agency under this chapter; and

16. Other powers and duties. To perform all acts necessary, convenient or desirable to carry out the purposes of this chapter or the powers expressly granted or necessarily implied in this chapter.

§4133. Additional powers

1. Contracts. The agency may contract to sell, and municipalities, cooperatives, utilities and governmental units, agencies or other public bodies may contract to purchase, all or a portion of, the capacity and output of one or more specific projects, or may contract to sell or purchase electricity without designation as to source. Without limiting the generality of this subsection, such a contract may provide for planning, engineering, design, acquiring sites or options for sites and expenses preliminary or incidental to that project. Such a contract may:

A. Be for the life of a project or other term or for an indefinite period;

B. Provide for the payment of unconditional obligations imposed without regard to whether a project is undertaken, completed, operable or operating and despite the suspension, interruption, interference, reduction or curtailment of the output of a project;

C. Contain provisions for prepayment, nonunanimous amendment, arbitration, delegation, requirements, purchases, restraints on resale or other dealings, exclusive dealing, territorial division, pricing and other conduct or arrangements and other matters determined necessary or desirable to carry out its purposes. For the purposes of this section, the agency has the same status with respect to antitrust actions as has the government of the State; and

D. Provide for the creation of a committee of representatives of the municipalities, cooperatives and utilities purchasing electricity or services under such a contract, with such powers of supervision of the operation of the projects as the contract may provide which are not inconsistent with this chapter.

Such a contract may also provide, in the event of default by any party to the contract in the performance of its obligations under the contract, for the other parties, including municipalities and cooperatives, to assume the obligations and succeed to the rights and interests of the defaulting party, pro rata or otherwise as may be agreed upon in the contract.

2. Agreements. The agency may enter into any contract or agreement necessary, appropriate or incidental to the effectuation of its lawful purposes and the exercise of the powers granted by this chapter, including, without limitation, contracts or agreements for the purchase, sale, exchange, interchange, wheeling, pooling, transmission, distribution or storage of electricity and fuel of any kind in accordance with section 4103, subsection 9, inside and outside the State, in such amounts as it determines is necessary and appropriate to make the most effective use of its powers and to meet its responsibilities and with such persons, on such terms and for such period of time as its board of directors determines.

3. Debt limitation. Neither the obligations of the agency nor the obligations of any municipality under capacity and output contracts under this section may be included in computing the debt limitations of the municipalities. These obligations of municipalities shall be treated as expenses of operating their electric plants and shall constitute special obligations of these municipalities payable solely from the revenues and other money derived by them from their electric system or electric and utility systems. The liability of these municipalities from other funds is limited to obligations undertaken by them to pay for the electricity used by them.

4. Obligation. Municipalities and cooperatives are obligated to fix, revise and collect fees and charges for electricity and other services, facilities and commodities furnished or supplied through its electric system or

electric and utility system at least sufficient to provide revenues adequate to meet its obligations under any output and capacity contracts and to pay all other amounts payable from or constituting a charge and lien upon those revenues.

5. Conveyance of real or personal property. Any municipality or cooperative may convey, transfer or assign to the agency, with or without consideration, any real or personal property or interest in either, including a leasehold estate.

§4134. Acquisition of property

1. Eminent domain. The agency may acquire by the exercise of the power of eminent domain any real property, or any interest in real property, which it determines necessary for its purposes under this chapter, after the adoption by it of a resolution declaring the acquisition of the real property or interest in it described in the resolution is necessary for those purposes.

2. Restrictions. The agency shall exercise the power of eminent domain in the manner provided in Title 30, section 4807. References in Title 30, section 4807, to an urban renewal project and a renewal project area and the like are inapplicable. Notwithstanding Title 30, section 4807, subsection 2:

A. No facility for the generation, transmission or distribution of electricity owned by any person may be taken, except for the purpose of acquiring property or rights in it in order to permit the crossing of existing transmission or distribution facilities. In the event of a taking, the respective rights and obligations of the agency and the property owner shall, upon petition of either party, be determined by the commission.

B. No site for a project for which any utility or person had filed an application for preliminary permit, a license or application for exemption from the Federal Energy Regulatory Commission on or before November 1, 1977, may be taken until the time, if ever, that the application is denied, and no further renewals or appeals are available to the utility or person, or the utility or person abandons its application, permit or license; and

C. No property may be taken, except as may be necessary for the proper location of transmission or distribution lines and necessary appurtenances to them, unless the property is located within the territory in which a municipality or cooperative provides service or within one mile of the territory.

§4135. Tax exemption

1. Bonds or notes. All bonds, notes or other evidences of indebtedness issued under this chapter are issued by a political subdivision or a body corporate and politic of the State, and for an essential public and governmental purpose. Those bonds, notes or other evidences

of indebtedness and the interest on them and the income from them, including any profit on their sale, and all activities of the agency and fees, charges, funds, revenues, incomes and other money of the agency, whether or not pledged or available to pay or secure the payment of those bonds, notes or other evidences of indebtedness or interest on them, are exempt from all taxation, franchise fees or special assessments of whatever kind, except for transfer, inheritance and estate taxes.

2. Property taxes. All real and personal property acquired by the agency is subject to taxes to the same extent as real and personal property owned by other electric utilities.

§4136. Rules and rates

1. Rules. The agency may make and enforce rules consistent with the purpose of this chapter.

2. Rates. The agency may establish, levy and collect or may authorize by contract, franchise, lease or otherwise, the establishment, levying and collection of rents, rates and other charge:

A. For the services afforded by the agency or afforded by or in connection with any project or properties which it may construct, erect, acquire, own, operate or control or with respect to which it may have any interest or any right to capacity; and

B. For the sale of electricity or of generation or transmission capacity or service as it determines necessary, proper, desirable and reasonable.

Rents, rates and other charges shall be at least sufficient to meet the expenses of the agency, including operating and maintenance expenses, reasonable reserves, interest and principal payments, including payments into one or more sinking funds for the retirement of principal, and other requirements of any trust agreement or resolution and any additional amounts which must be realized in order to meet the requirements of any rate covenant imposed by any resolution or trust agreement authorizing and securing bonds, notes or other evidences of indebtedness. The agency may pledge its rates, rents and other revenues, or any part of them, as security for the repayment, with interest and redemption premiums, if any, of any money borrowed by it or advanced to it for any of its authorized purposes and as security for the payment of amounts due and owed by it under any contract.

§4137. Powers of municipalities and cooperatives

By resolution of its governing body, a municipality or cooperative may:

1. Director. Appoint a director to the board in accordance with section 4131;

2. Contracts. Contract with the agency for the

generation, manufacture, purchase, sale, exchange, distribution or transmission of electricity and other services on such terms and for such period of time as the resolution may provide;

3. Appropriation. Appropriate or provide revenues and other money derived by them from their electric departments or systems or, in the case of those municipalities having combined electric, water, sewer and other utility systems, the revenues derived from such combined systems under any contract with the agency; and

4. Other contracts. Make and execute all contracts, agreements and other instruments, and perform all acts necessary and convenient or desirable to carry out the purposes of this chapter or the powers expressly granted or necessarily implied in this chapter.

§4138. Construction contracts

The agency may contract for the planning, acquisition, construction, operation, maintenance, repair, extension and improvement of any project or may contract with other public or private owners of any project to perform these functions without preparing final plans and specifications in advance of construction or securing performance and payment bonds, except to the extent that the directors determine that these actions are desirable in furtherance of the purposes of this chapter. Except as otherwise provided by this section, no contract may be invalid or unenforceable by reason of nonperformance of the conditions required by any other law relating to public contracts. The agency shall adopt a procedure for awarding contracts relating to a project 50% or more of which is owned by the agency, which procedure may not be inconsistent with that of the State established in Title 5, chapters 153 and 155.

SUBCHAPTER III

FORM AND NATURE OF BONDS AND NOTES

§4151. Bonds and notes

1. Bonds and notes. The issuance of bonds, notes and other evidences of indebtedness is subject to the following.

A. The agency may, from time to time, issue its bonds, notes or other evidences of indebtedness in the principal amount as the agency determines is necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on bonds, notes or other evidences of indebtedness of the agency, establishment of reserves to secure the bonds, notes or other evidences of indebtedness and all other expenditures of the agency incident to and necessary or convenient to carry out its corporate purposes and powers. Without limiting the generality of this paragraph, the bonds, notes or other evidences of indebtedness may be issued for project costs or the agency's share of project costs.

B. The agency may, from time to time, issue notes, renew notes and bonds, pay notes, including the interest on them and, whenever it determines refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes.

C. Except as may otherwise be expressly provided by resolution of the agency, every issue of its bonds, notes or other evidences of indebtedness shall be general obligations of the agency, payable out of any revenue or money of the agency, subject only to any agreements with the holders of particular bonds, notes or other evidences of indebtedness pledging any particular revenues.

D. Bonds, notes or other evidences of indebtedness may be issued in accordance with this chapter.

E. The bonds, notes or other evidences of indebtedness shall be authorized by resolution of the agency, bear the date and mature at the time as the resolution may provide. The bonds may be issued as serial bonds payable in annual installments or as term bonds, or as a combination of them. The resolution may provide that the bonds, notes or other evidences of indebtedness bear interest at a given rate or may provide a method of determining a rate, be in certain denominations, in temporary, coupon or registered form, carry certain registration privileges, be executed in a given manner, payable in a given medium of payment, at a place inside or outside the State and subject to specified terms of redemption. The bonds, notes or other evidences of indebtedness of the agency may be sold by the agency, at public or private sale, at the price the agency determines.

2. Authorization. Any resolution authorizing any bonds, notes or other evidences of indebtedness or any issue of them, may contain provisions which shall be a part of the contract or contracts with the bond or note-holders, as to:

A. Pledging, mortgaging or granting a security interest in any real or personal property and all or any part of the revenues of the agency or any revenue-producing contract made by the agency with any person to secure the payment of the notes or bonds or of any issue of them subject to agreements with note-holders or bondholders that may then exist;

B. The custody, collection, securing, investment and payment of any revenues, assets, money, funds or property with respect to which the agency may have any rights or interest;

C. The rates or charges for electricity sold by, or services rendered by, the agency, the amount to be raised by the rates or charges and the use and disposition of any revenue;

D. The setting aside of reserves or sinking funds and their regulation and disposition;

E. Limitations on the purpose to which the proceeds of sale of bonds, notes or other evidences of indebtedness may be applied and the pledging of the proceeds to secure the payment of the bonds, notes or other evidences of indebtedness or of any issue of them;

F. Limitations on the issuance of additional bonds, notes or other evidences of indebtedness the terms upon which additional bonds, notes or other evidences of indebtedness may be issued and secured and the refunding of outstanding or other bonds, notes or other evidences of indebtedness;

G. The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of bonds, notes or other evidences of indebtedness the holders must consent and the manner in which consent may be given;

H. The vesting in a trustee or trustees, inside or outside the State, of such property, rights, powers and duties in trust as the agency may determine, which may include any of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this chapter and limiting or abrogating the right of the bondholders to appoint a trustee under this chapter or limiting the rights, powers and duties of the trustee;

I. Defining the act or omission to act which constitutes a default in the obligations and duties of the agency to the holders of the bonds, notes or other evidences of indebtedness and providing for the rights and remedies of the holders of the bonds, notes or other evidences of indebtedness in the event of such default, space including as a matter of right the appointment of a receiver, which rights and remedies may vary from those provided in section 4156; and

J. Any other matters, of like or different character, which in any way affect the security or protection of the holders of the bonds, notes or other evidences of indebtedness.

3. Pledges. Any pledge made by the agency is valid and binding from the time when the pledge is made. The revenue, money or property pledged and then received by the agency shall immediately be subject to the lien of the pledge without any physical delivery of it or further act. That pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether those parties have notice of it. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded.

4. Liability. Neither the directors nor executive officers of the agency nor any other person executing the bonds, notes or other evidences of indebtedness may be subject to any personal liability or accountability by rea-

son of the issuance of the bonds, notes or other evidences of indebtedness.

5. Agency; power. The agency, subject to whatever agreement with noteholders or bondholders as may then exist, may, out of any funds available for that purpose, purchase notes or bonds of the agency, which shall then be canceled.

6. Bonds or notes secured. In the discretion of the agency, the bonds, notes or other evidences of indebtedness may be secured by a trust indenture by and between the agency and a corporate trustee, which may be any trust company or bank having the power of a trust company inside or outside the State. The trust indenture may contain provisions for protecting and enforcing the rights and remedies of the noteholders or bondholders that may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the agency in relation to the exercise of its corporate powers and the custody, safeguarding and application of all money. The agency may provide by the trust indenture for the payment of the proceeds of the bonds or notes and the revenue to the trustee under the trust indenture or other depository and for the method of disbursement, with safeguards and restrictions as it may determine. All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expense of the agency. If the bonds or notes are secured by a trust indenture, the trust indenture may provide that the noteholders and bondholders may not appoint a separate trustee to represent them.

7. Negotiability of bonds or notes. Unless the agency expressly provides otherwise, a bond, note or other evidence of indebtedness issued under this chapter is fully negotiable for all purposes of the applicable provisions of Title 11 and each holder or owner of a bond or note, or any coupon appurtenant to a bond or note, by accepting the bond, note or coupon shall be conclusively deemed to have agreed that the bond, note or coupon is fully negotiable for those purposes.

8. Investment securities. All bonds, notes and interest coupons appertaining to them issued by the agency have all the qualities and incidents, including negotiability, unless the agency expressly provides otherwise, of investment securities under the applicable provisions of Title 11, article 8, but no provision of Title 11, article 9, respecting the filing of a financing statement to perfect a security interest shall be applicable to any pledge made or security interest created in connection with the issuance of the bonds, notes or coupons.

9. Signature; validity. If any director or executive officer of the agency whose signature appears on any notes, bonds or coupons ceases to be a director or executive officer before the delivery of the notes or bonds, the signature is valid for all purposes, as if he had remained in office until that delivery.

§4152. Presumption of validity

After issuance, all bonds or notes of the agency shall be conclusively presumed to be fully authorized and issued under the laws of the State and any person or governmental unit shall be stopped from questioning their authorization, sale, issuance, execution or delivery by the agency.

§4153. Federal insurance of guaranty; taxable bond option

1. Agency authorization. The agency may obtain from any department or agency of the United States or nongovernmental insurer any insurance or guaranty, to the extent available as to, of, or for, the payment or repayment of, interest or principal, or both, or any part of interest or principal, on any bonds, notes or other evidences of indebtedness issued by the agency, or on any municipal obligations of governmental units or cooperatives purchased or held by the agency, pursuant to this chapter; and notwithstanding any other provision of this chapter, enter into any agreement or contract with respect to any insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the agency to perform and fulfill the terms of any agreement made with the holders of the bonds or notes of the agency.

2. Interest. The agency may covenant and consent that the interest on certain of its bonds shall be includable under the United States Internal Revenue Code of 1954 or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders of them under the United States Internal Revenue Code or any subsequent law. Nothing contained in this chapter may be construed to covenant or consent or to authorize any covenant or consent to the application of any other provision of any other laws, federal or state, to the agency or its bonds or notes to the elimination or modification in any way of any other exemption, privilege or immunity of them, except to the extent that may be required to undertake projects outside of the State.

§4154. Refunding obligations; issuance

The agency may provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which have been issued under this chapter, including the payment of any cost of issuance of them, if any, redemption premium on them and any interest accrued or to accrue to the date of redemption of these obligations and for any corporate purpose of the agency. The issuance of the obligations, the maturities, and other details pertaining to them, the rights of their holders and the rights, duties and obligations of the agency in respect to them shall be governed by this chapter which relate to the issuance of obligations, insofar as

those provisions may be appropriate.

§4155. Refunding obligations; sale

Refunding obligations issued as provided in section 4154 may be sold or exchanged for outstanding obligations issued under this chapter and, if sold, the proceeds from them may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of those outstanding obligations. Pending the application of the proceeds of any refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of these refunding obligations or in the trust agreement securing them, to the payment of any interest on refunding obligations to be refunded or the trust agreement securing and any expenses in connection with refunding, such proceeds may be invested as specified in the resolution authorizing the obligations and any expenses in connection with refunding, such proceeds may be invested as specified in the resolution authorizing the obligations to be refunded or the trust agreement securing them. These investments shall mature or shall be subject to redemption by their holders, at the option of the holders, not later than the respective dates when the proceeds, together with the interest accruing on them, will be required for the purposes intended.

§4156. Remedies of bondholders and noteholders

1. Default. In the event that the agency defaults in the payment of principal or interest on any bonds or notes issued under this chapter after it becomes due, whether at maturity or upon call for redemption and the default continues for a period of 30 days, or in the event that the agency fails or refuses to comply with this chapter, or defaults in any agreement made with the holders of an issue of bonds, notes or other evidences of indebtedness of the agency, the holders of 25% in aggregate principal amount of the bonds or notes of the issue then outstanding, by instrument or instruments filed in the office of the Secretary of State and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of those bonds or notes for the purposes provided in this chapter.

2. Trustee; duties. The trustee appointed in subsection 1 may, and upon written request of the holders of 25% in principal amount of the bonds and notes then outstanding shall, in the trustee's own name:

A. Enforce all rights of the bondholders or noteholders, including the right to require the agency to fix and collect rates, fees and charges relating to projects or other obligations held by it adequate to carry out any agreement as to, or pledge of, the revenues of the agency and to require the agency to carry out any other agreements with the holders of the bonds or notes and to perform its duties under this chapter;

B. Enforce all rights of the bondholders or note-holders, including the right to take possession and control of the business and properties of the agency, operate and maintain the business, make any necessary repairs, renewals and replacements to them and fix, revise and collect fees and charges, so as to carry out any contract as to, or pledge of, revenues and require the agency to carry out and perform the terms of any contract with the holders of the bonds or notes or its duties under this chapter;

C. Bring suit upon all or any part of the bonds, notes or other evidences of indebtedness;

D. By action or suit, require the agency to account as if it were the trustee of an express trust for the holders of the bonds, notes or other evidences of indebtedness;

E. By action or suit, enjoin any acts which may be unlawful or in violation of the rights of the holders of the bonds, notes or other evidences of indebtedness; and

F. Declare all bonds, notes or other evidences of indebtedness due and payable and, if all defaults are made good, with the consent of the holders of 25% of the principal amount of the bonds or notes then outstanding, annul the declaration and its consequences.

The trustee shall, in addition to the powers set out in paragraphs A to F, possess all the powers necessary or appropriate for the exercise of any functions specifically set forth in this chapter or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

3. Notice. Before declaring the principal of bonds, notes or other evidences of indebtedness due and payable, the trustee shall first give 30 days' notice in writing to the Governor, the agency and the Department of Attorney General.

4. Action. The Superior Court of Kennebec County has jurisdiction of any suit, action or proceeding by the trustee on behalf of the bondholders or noteholders.

§4157. Credit of State and members of agency not pledged

Obligations issued under this chapter are not deemed to constitute a debt, liability or obligation of the State, any political subdivision other than the agency or any municipality or cooperative, nor may they be deemed to constitute a pledge of the faith and credit of the State, any political subdivision or any municipality or cooperative, but are payable solely from the revenues or assets of the agency. Each obligation issued by the agency shall contain on its face a statement to the effect that the agency is not obligated to pay the obligation or the interest on it, except from the revenues or assets pledged or otherwise available for those purposes and that

neither the faith and credit nor the taxing power of the State, any political subdivision other than the agency or any municipality or cooperative is pledged to the payment of the principal of or the interest of these obligations.

§4158. Notes and bonds as legal investment

The State and all public officers, governmental units and agencies of the State, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, all credit unions and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, money or other funds belonging to them or within their control in any bonds, notes or other evidences of indebtedness issued under this chapter, and the bonds, notes or other evidences of indebtedness are authorized security for any public deposits.

§4159. No impairment of obligation

The State pledges to and agrees with the holders of the bonds, notes and other evidences of indebtedness issued under this chapter that the State will not limit or restrict the rights vested in the agency to perform its obligations and to fulfill the terms of any agreement made with the holders of its bonds or notes. The State will not impair the rights and remedies of the holders until the bonds, notes and other evidences of indebtedness together with interest on them, and interest on any unpaid installments of interest, are fully met, paid and discharged. The agency may execute this pledge and agreement of the State in any agreement with the holders of the bonds, notes or other evidences of indebtedness.

SUBCHAPTER IV

MISCELLANEOUS PROVISIONS

§4171. Annual reports; audit

On or before 90 days after the end of each fiscal year, the agency shall submit a report of its activities for the preceding fiscal year to the Governor, the commission and the Legislature. Each report shall set forth a complete operating and financial statement covering its operations during the year, and shall contain a full and complete statement of the agency's anticipated budget and operations for the ensuing year. The agency shall cause an audit of its books and accounts to be made at least once in each fiscal year by certified public accountants. The cost shall be considered an expense of the agency and copies shall be filed with the Treasurer of State.

The State Auditor and his authorized representatives may at any time examine the accounts and books of the

agency, including its receipts, disbursements, contracts, sinking funds, investments and any other matters relating to its financial statements.

§4172. State services

All offices, departments, boards, agencies, divisions and commissions of the State may render any services to the agency as may be within the area of their respective governmental functions as fixed or established by law and as may be requested by the agency shall, at the request of the officer, department, board, agency, division or commission rendering the services, be met and provided for by the agency.

§4173. Jurisdiction of Public Utilities Commission

The agency is subject to the jurisdiction of the commission in the same manner as any other public utility; provided that, with respect to the approval of securities to be issued to finance the costs of a project or an interest in a project by the agency, upon the request of the agency, the commission shall approve, at one time, bonds which are sufficient to finance the agency's entire costs of the project even if the bonds are to be issued in series from time to time and even though the exact amount of the cost has not been finally determined and the approval may be of an undetermined or indefinite amount; as long as the project has been approved by the commission pursuant to section 3132 and provided that, with respect to the fixing of rates to be charged by the agency for electricity and other services, where the acquisition or construction of a project or any interest in a project is to be financed by the issuance of securities under this chapter secured by a pledge of revenues derived from contracts for the sale of power and energy, transmission and related services and such contracts as proposed provide for rate and charges to be set by a formula or formulas based upon costs incurred or to be incurred in connection with the financing and operation of the project, which may include reasonable reserves for the costs, if the commission determines that the formula and formulas are reasonably related to the costs, the commission shall issue an order approving the formula or formulas and no further approval by the commission of the rates and charges determined pursuant to the contracts shall be required.

§4174. Environmental regulation

The agency is subject to the jurisdiction of the Department of Environmental Protection and the Land Use Regulation Commission in the same manner as any other public utility.

§4175. Liberal construction

Neither this chapter nor anything contained in this chapter is a restriction or limitation upon any powers which the agency might otherwise have under any laws of the State and this chapter is cumulative to any such powers. This chapter provides a complete, additional

and alternative method for doing acts authorized by it and shall be regarded as supplemental and additional to powers conferred by other laws.

§4176. Inconsistent provisions of other laws superseded

Insofar as the provisions of this chapter are inconsistent with the provisions of any special act or any charter of any participating municipality, this chapter is controlling.

CHAPTER 43

NUCLEAR POWER GENERATING FACILITIES

SUBCHAPTER I

CONSTRUCTION

§4301. Findings and purpose

1. Investment in nuclear power plants. The Legislature finds that construction of a nuclear power plant is a major financial investment, which will have consequences for ratepayers for years to come. In the recent past, investments in nuclear power plants have caused severe financial strain on consumers and utilities.

2. Costs. The Legislature finds that there are many uncertain future costs associated with nuclear power plants, including the costs of low-level and high-level waste disposal, decommissioning and long-term care. These costs will be borne by the consumers.

3. Citizen participation. The purpose of this subchapter is to provide for citizen participation in any decision to construct a nuclear power plant within the State.

§4302. Referendum

1. Question submitted to voters. After review of the proposed plant by the commission in accordance with section 3132 or 3133, but prior to the construction of any nuclear power plant within the State, the question of approving that construction shall be submitted to the voters of the State in the manner prescribed by law for holding a statewide election. This question shall be submitted to the legal voters of the State at the next following statewide election. The city aldermen, town selectmen and plantation assessors of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, to vote on the acceptance or rejection of construction by voting on the following question:

"Do you approve construction of the nuclear power plant proposed for (insert locations)?"

2. Manner of voting and counting ballots. The legal voters of each city, town and plantation shall vote by ballot on this question and shall designate their choice by a cross or check mark placed within a corresponding

square below the words "Yes" or "No." The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the return and, if it appears that a majority of the legal voters are in favor of construction, the Governor shall proclaim that fact without delay.

3. Preparation of ballots. The Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this subchapter necessary to carry out the purpose of this referendum.

§4303. Notice; effective date of certificate; prohibition

Upon issuance of a certificate of public convenience and necessity under section 3132 or 3133 for any nuclear power plant within this State, the commission shall notify the Secretary of State. No certificate may be effective until 30 days after submission to the voters, as prescribed in section 4302. Construction may not commence on a plant without approval by the voters, as prescribed in section 4302.

SUBCHAPTER II

EMISSIONS AND SAFETY REPORTING

§4331. Purpose

The Legislature finds that nuclear power plants routinely release radioactive materials to the environment. These radioactive materials are generally released in a controlled manner and within the limits established by the United States Nuclear Regulatory Commission. Some of these releases have been unplanned, unscheduled and inadvertent. On occasion, they exceed technical specification limits. No firm evidence exists that these radioactive emissions do or do not present a genetic or long-term health risk. Most authorities agree that it should be assumed that radiation at any dose level has a finite risk. The Legislature finds, therefore, that the public welfare will be better protected if the public is fully informed on any release of radioactive materials to the environment.

§4332. Notice of emissions to the Commissioner of Human Services

1. Notice. The operator of any nuclear power plant in this State, or his designee, shall provide notice of the events covered by this section to:

- A. The public;
- B. The Commissioner of Human Services; and
- C. The Director of Civil Emergency Preparedness.

2. Events requiring notice. This notice shall be required as indicated for the following events:

A. Scheduled releases of radioactive materials, at least 24 hours before the release is planned to occur;

B. Unscheduled releases of radioactive materials, as soon as possible, but not more than 24 hours after the discovery of the release; and

C. Breakdowns or malfunctions of any safety related equipment that must be reported under the United States Code of Federal Regulations, Title 10, Part 21, as soon as possible, but not more than 24 hours after the discovery of the breakdown or malfunction.

3. Information required. The notice required by this section shall contain a description of the following:

A. The total amount of radioactivity released or planned to be released;

B. The estimated individual dose that may occur due to the event;

C. Weather conditions at the time of the release;

D. The area affected or anticipated to be affected by the event;

E. The equipment that malfunctioned, or the operator error or other condition that caused the release; and

F. The corrective actions taken.

§4333. Reports by the Commissioner of Human Services

1. Review and distribution of reports. The Commissioner of Human Services, or his designee, shall review and study the reports, if any, and consolidate them for distribution to the Public Utilities Commission, state agencies and public officials concerned with nuclear energy and interested members of the public. The report shall include an abstract written in a manner that is easily understood by the general public.

2. Reports of release that exceeds specification limits. Reports of release which exceed technical specification limits or result in overexposure to plant personnel or members of the public shall be reviewed expeditiously by the Commissioner of Human Services, or his designee, and a report shall be forwarded to the individuals and agencies as provided in this section.

§4334. Safety reporting; penalty

1. Reports. The operator of any nuclear power plant in this State shall submit annually by April 1st to the Public Utilities Commission, with a copy sent to the Bureau of Civil Emergency Preparedness, the Department of Environmental Protection, the Bureau of Health and the Maine State Library Bureau, a report which shall include the following information:

A. A list and summary description of any safety-related incidents at that nuclear power plant reported to the United States Nuclear Regulatory Commission during the previous calendar year, including a statement of the cause of the incident, its effects on human health and the environment, corrective measures which have been taken and the costs;

B. A list and summary description of those unresolved safety issues as defined by the United States Nuclear Regulatory Commission which pertain to that nuclear power plant and the status of resolution and implementation of those unresolved safety issues; and

C. A list and summary description of any unresolved safety issues which have been converted to regulation by the United States Nuclear Regulatory Commission for implementation at that nuclear power plant, together with the best available estimates of the cost and time required for that implementation.

2. Penalty. Any person who fails to comply with this chapter shall be subject to chapter 15.

3. Additional information. The operator may include in the report required under subsection 1 a list and summary description of any other safety-related problems judged by the operator to be significant. Notwithstanding subsection 2, failure to provide information under this subsection shall not be subject to penalty.

SUBCHAPTER III

DECOMMISSIONING

§4351. Short title; findings

This subchapter shall be known and may be cited as the "Nuclear Decommissioning Financing Act."

The Legislature has made the following findings.

1. Proper decommissioning is essential. The Legislature finds that timely proper decommissioning of any nuclear power plant beginning at the time of its closing is essential to protect public health, safety and the environment and that the cost of decommissioning will be significant.

2. Collection of funds to pay for decommissioning costs. To ensure that the customers who received the benefits of these facilities pay for these decommissioning costs, the Legislature finds that it is prudent for the State to require the licensee operating a nuclear power plant in the State to collect sufficient funds during the remaining useful life of the plant to pay for these costs.

3. Trust fund. The Legislature finds that the best way to ensure that the funds collected will be available when they are needed for decommissioning is to require that the funds be placed in a separate trust fund for each plant and invested by a trustee until they are needed for

decommissioning.

4. Decommissioning fund committee. The Legislature finds that it is in the public interest to have a decommissioning fund committee responsible for the prudent management of the trust fund. That committee may be established by the licensee, with Public Utilities Commission approval, or publicly established, but in either case would be subject to the requirements of this subchapter.

5. Taxes. The Legislature finds that funds set aside for decommissioning protect the people of the State and thus serve an essential governmental function, that payment of taxes on these funds would be an unreasonable and inappropriate burden on the ratepayers and that the income earned by the fund should be tax exempt and payments made to the fund by the licensee should be tax deductible.

6. Premature closing of plant. The Legislature finds that assurance is needed that funds will be available for the cost of decommissioning which would occur if a nuclear power plant is prematurely closed.

§4352. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Closing. "Closing" means the time at which a nuclear power plant ceases to generate electricity and is retired from active service.

2. Decommissioning. "Decommissioning" means the series of activities undertaken beginning at the time of closing of a nuclear power plant to ensure that the final disposition of the site or any radioactive components or material, but not including spent fuel, associated with the plant is accomplished safely, in compliance with all applicable state and federal laws. Decommissioning includes activities undertaken to prepare a nuclear power plant for final disposition, to monitor and maintain it after closing and to effect final disposition of any radioactive components of the nuclear power plant.

3. Decommissioning expenses. "Decommissioning expenses" means the following:

A. All reasonable costs and expenses of removing a nuclear power plant from service, including, without limitation, dismantling, mothballing, removing radioactive waste material except spent fuel to temporary or permanent storage sites, decontaminating, restoring and supervising the site, and any costs and expenses incurred in connection with proceedings before governmental regulatory authorities relating to the authorization to decommission the plant;

B. All costs of labor and services, including services of foremen, inspectors, supervisors, surveyors,

engineers, counsel and accountants, performed in connection with the decommissioning of the plant, and all costs of materials, supplies, machinery, construction equipment and apparatus acquired for or in connection with the decommissioning of the plant. It is understood that any amount, exclusive of proceeds of insurance, realized by a licensee as salvage on or resale of any machinery, construction equipment and apparatus, the cost of which was charged as a decommissioning expense, shall be treated as a deduction from the amounts otherwise payable on account of the cost of decommissioning of the plant; and

C. All overhead costs applicable to the plant during its decommissioning period, including, but not limited to, taxes, other than taxes on or in respect of income; licenses; excises and assessments; casualties; surety bond premiums and insurance premiums.

Without limiting the generality of this subsection, amounts expended or to be paid with respect to decommissioning a nuclear power plant shall constitute part of the decommissioning expenses if they are, or when paid will be, either properly chargeable to any account related to decommissioning of a nuclear power plant in accordance with the systems of accounts then applicable to the licensee, or properly chargeable to decommissioning of a nuclear power plant in accordance with then applicable regulations of the United States Nuclear Regulatory Commission, Federal Energy Regulatory Commission or any other regulatory agency having jurisdiction.

4. Decommissioning financing plan. "Decommissioning financing plan" means the plan approved by the commission under section 4353.

5. Decommissioning fund committee. "Decommissioning fund committee" means a committee established to have overall responsibility, as described in section 4354, for a decommissioning trust fund.

6. Decommissioning trust fund or fund. "Decommissioning trust fund" or "fund" means a trust fund set up as prescribed in sections 4353 and 4355 to hold money for the eventual purpose of paying decommissioning expenses.

7. Escrow account. "Escrow account" means an account established under commission rules to hold funds collected under an interim decommissioning financing plan promulgated under section 4353, subsection 5, until a decommissioning trust fund is established or to hold funds for other temporary purposes under this subchapter.

8. Licensee. "Licensee" means the holder of the operating permit from the United States Nuclear Regulatory Commission for a nuclear power plant.

9. Nuclear power plant or plant. "Nuclear power plant" or "plant" means a nuclear fission thermal power

plant situated in this State.

10. Owner. "Owner" means any electric utility which owns any portion of a nuclear power plant, whether directly or through ownership of stock in a company which owns any portion of a nuclear power plant or through membership in a holding company which owns any portion of a nuclear power plant or through other means.

11. Premature closing. "Premature closing" means the closing of a nuclear power plant before the projected date of decommissioning, as projected in the decommissioning financing plan under section 4353.

12. Prompt removal and dismantlement. "Prompt removal and dismantlement" means to immediately remove radioactive or radioactively contaminated material down to allowable residual levels which permit release of the property for unrestricted access.

13. Trustee. "Trustee" means a bank or trust company qualified to act as a fiduciary in this State.

§4353. Decommissioning financing plans; physical decommissioning plan

1. Submission of plans. Decommissioning financing plans shall be submitted as follows.

A. Any licensee receiving a certificate of public convenience and necessity under section 3132 for a nuclear power plant shall submit a decommissioning financing plan for the plant to the commission not less than one year prior to beginning commercial operation of the plant.

B. Any licensee operating a nuclear power plant on July 13, 1982, shall submit a proposed decommissioning financing plan for the plant to the commission as soon as possible, but not later than September 11, 1982, or such later date as the commission may consider appropriate.

2. Content of plan. A decommissioning financing plan submitted under subsection 1 shall include:

A. An estimate of the time of closing of the nuclear power plant;

B. An estimate of the cost of decommissioning the plant expressed in dollars current in the year the plan is prepared and based upon an engineering report issued any time within 3 years of the date the plan is submitted to the commission;

C. The share of the estimated decommissioning expenses attributed to each electric utility to which the plant supplies power;

D. Plans for periodic review and updating of the plan, including the cost of decommissioning estimated under

paragraph B, consistent with subsection 6;

E. Plans for establishing as soon as possible a decommissioning trust fund adequate to pay the cost estimated under paragraph B, consistent with subsection 4 and section 4355;

F. Plans and options for insuring against or otherwise financing any shortfall in the fund resulting from a premature closing of the nuclear power plant;

G. Reasonable assurance of responsibility in the event of insufficient assets in accordance with section 4356;

H. A general description of the stages by which decommissioning is intended to be accomplished, but only at the level of detail necessary to support the cost estimate of paragraph B;

I. If the licensee intends to establish its own decommissioning fund committee, a statement of its intent to do so, together with its proposed membership and a copy of the proposed decommissioning trust and its plan for implementing the trust and establishing the committee;

J. A fully executed decommissioning financing agreement between the licensee and each owner, evidencing each owner's acceptance of its respective share of the ultimate financial responsibility for decommissioning. In satisfaction of this requirement, the licensee may submit existing ownership agreements together with documentation from each owner of the applicability of the agreement to the case of financial responsibility for decommissioning; and

K. Any other information related to the financing of decommissioning which the commission requests.

3. Approval of plan. The plan shall be approved as follows.

A. The commission shall conduct a public hearing on the proposed decommissioning financing plan.

B. The commission shall approve the decommissioning financing plan if it finds that the licensee, in the judgment of the commission, has provided reasonable assurance that:

(1) The estimated time of closing of the nuclear power plant and the estimated cost of decommissioning are reasonable;

(2) The share of the estimated cost of decommissioning for each electric utility to which the plant supplies power is reasonable;

(3) The principal and income which will have accumulated in the decommissioning trust fund at the estimated time of closing the plant will be adequate

to cover the estimated cost of decommissioning, plus the expenses of administering the fund;

(4) The provisions of the proposed form of the decommissioning trust fund will ensure that the funds in the trust are judiciously invested and will adequately protect the funds until decommissioning is completed and, in the event the licensee proposes to establish its own decommissioning fund committee, that the licensee-established committee will ensure that the funds in the trust are judiciously invested and will adequately protect the funds until decommissioning is completed;

(5) The assets in the fund cannot be withdrawn unless approved by the decommissioning fund committee under section 4355, subsection 5, prior to completion of decommissioning;

(6) Contributions to the fund are equitably spread over the useful life of the plant to the extent feasible;

(7) The plans and options for insuring against or otherwise financing any shortfall in the fund resulting from a premature closing are adequate and reasonable;

(8) The owners are legally bound to accept their respective shares of the ultimate financial responsibility for decommissioning and the plan reflects full compliance with section 4356; and

(9) The plan will periodically be reviewed and revised to reflect more closely the costs and available techniques for decommissioning. This update shall occur at least every 5 years.

C. If the commission finds that the decommissioning financing plan does not meet the criteria under paragraph B, the commission shall reject the plan and order that it be modified as the commission determines necessary to meet those criteria.

D. The commission shall take final action on the proposed decommissioning financing plan within 180 days after the filing date. The filing date shall be the date when the commission notifies the applicant that the filing is complete. If the commission does not notify the applicant of any deficiencies in the information in the application within 60 days of receipt, the application shall be deemed complete as of the date of receipt.

E. If the licensee requested approval of a licensee-established decommissioning fund committee, the commission shall approve the plan, including the plans for implementing a licensee decommissioning fund committee and a decommissioning trust fund, with such modifications as the commission finds necessary to meet the criteria of paragraph B, but only if the commission finds that the plans will reasonably ensure that the responsibilities and duties of section 4354, subsection 6, will be carried out, that the funds will be

managed in order to ensure that they will be available when needed, and that the funds will only be used for decommissioning expenses and the costs of administering the trust fund.

4. Cost of decommissioning. Based upon the plan, the commission shall establish the cost of decommissioning of any nuclear power plant located in the State and shall establish a schedule of monthly payments into the decommissioning trust fund established for that plant as necessary and convenient to meet that cost of decommissioning at the time of closing. The cost of decommissioning shall not include the cost of final disposal of spent nuclear fuel. The schedule shall be established so that contributions received by the licensee are paid to the fund as soon after receipt as practicable. For purposes of cost estimates, the method of decommissioning shall be the method of prompt removal and dismantlement, unless the United States Nuclear Regulatory Commission or its successor requires another method. The commission shall periodically review the estimated cost of decommissioning in accordance with subsection 6 and based upon that review shall revise the schedule of monthly payments as necessary.

When establishing the cost of decommissioning under this subsection, the commission shall obtain from the licensee, for information purposes, a determination of any possible federal income tax liability related to funds collected for decommissioning purposes until a definitive final determination has been made by the Federal Government that no such liability exists. Notwithstanding any other provision of this subchapter, the licensee may collect additional funds to establish a segregated escrow account for payment of potential federal taxes, as approved by the Federal Energy Regulatory Commission. In the event that no final determination has been made by the Federal Government that no income tax liability exists related to funds collected for decommissioning, the licensee shall exercise all reasonable efforts to obtain such a determination. In no event shall the licensee pay any federal income tax liability amount from the decommissioning trust fund.

5. Plans required for operation. Decommissioning financing plans are required as follows.

A. No licensee which receives a certificate of public convenience and necessity may commence operation of a nuclear power plant, unless it has a decommissioning financing plan approved by the commission under subsection 3.

B. The commission shall promulgate an interim decommissioning financing plan by July 13, 1982, for any licensee which does not have a decommissioning financing plan approved under subsection 3. Payments shall commence immediately under the interim decommissioning financing plan and be deposited in an escrow account. That escrow account may be invested in investments permitted for the trust fund under section 4355, subsection 3, paragraph B. When a decom-

missioning plan is approved and a decommissioning trust fund established, the interim plan shall terminate and the money in that escrow account shall be transferred to the fund.

6. Periodic review of plan. Decommissioning financing plans for nuclear power plants shall be reviewed as follows.

A. If the commission approves a decommissioning financing plan under subsection 3, the commission shall, at least every 5 years and annually in the 5 years preceding scheduled closing, and annually thereafter until decommissioning is completed, review the financing plan to assess its adequacy. If changed circumstances make a more frequent review desirable or if the licensee requests it, the commission may review the plan after a shorter time interval. The review shall include, but not be limited to, the following considerations:

- (1) The estimated date of closing the plant;
- (2) The estimated cost of decommissioning;
- (3) The reasonableness of the method selected for cost estimate purposes;
- (4) The size and growth rate of the decommissioning trust fund, taking into account the effect of inflation; and
- (5) The adequacy of the plans for financing any shortfall required under subsection 2, paragraph F.

B. After review under paragraph A, the commission may, after public hearing, order such changes in the decommissioning financing plan as it determines necessary to make the plan comply with the criteria in subsection 3, paragraph B.

7. Physical decommissioning plan. At least 3 years prior to closing a nuclear power plant, the licensee shall submit a physical decommissioning plan to the Governor and the commission, with updates annually thereafter. In the event of premature closing, the plan shall be submitted as soon as possible.

The commission shall review the plan to ascertain its contents and determine under subsection 6 the adequacy of the decommissioning fund to pay for that plan, but the commission may not duplicate the health and safety review conducted by the United States Nuclear Regulatory Commission or its successor. The licensee shall file with the physical decommissioning plan a list of all decommissioning-related permits which it must receive from agencies of the State. The licensee shall update its filing annually to indicate the progress of any permit applications which it has undertaken before agencies of the State. The Public Utilities Commission shall transmit copies of this information to all agencies on the list of permits and shall place this information in a separate

file which shall be made available for public inspection. Those agencies shall inform the commission when they issue any licenses or permits or take any other final action. No licensee may decommission a nuclear power plant unless the physical decommissioning plan has been submitted to the commission.

§4354. Decommissioning fund committee

1. Establishment of decommissioning fund committee by the licensee. A decommissioning fund committee may be established for a particular nuclear power plant by the licensee operating that plant within one year after July 13, 1982. Upon a finding by the commission that this licensee-established decommissioning fund committee will be able to carry out the responsibilities and duties of subsection 6, that the fund will be managed in accordance with the requirements of section 4355 and that it is in the public interest, the commission may approve establishment of the committee by the licensee. At that time, the Governor may appoint a voting representative on the licensee-established decommissioning fund committee.

2. Establishment of a public decommissioning fund committee. In the event that the licensee elects not to establish its own decommissioning fund committee, or in the event that the commission fails to approve a decommissioning fund committee proposed by the licensee, or the commission elects to terminate that committee for good cause shown, a public decommissioning fund committee shall be established consisting of 7 members, including:

- A. The Treasurer of State, who shall act as chairman;
- B. A member nominated by the municipal officials of any municipality containing a nuclear power plant;
- C. Four members nominated by the Governor, including 2 from the financial community and 2 from the general public; and
- D. One member designated by the licensee.

3. Terms of public decommissioning fund committee members. Initially, the members appointed by the Governor shall draw lots for terms. There shall be a one-year term, a 2-year term, a 3-year term and a 5-year term. Thereafter, their terms shall be for 5 years. The municipal representative and the licensee's representative shall be named for 5-year terms. In the event of a vacancy, an interim appointment shall be made to fill the unexpired portion of the term. The Treasurer of State shall serve while holding that office. Other members shall serve until their replacements are sworn in.

4. Compensation. Members of the decommissioning fund committee shall receive compensation and be reimbursed for expenses as determined reasonable by the commission. They shall be paid from the decommissioning trust fund, for which services are rendered or ex-

penses incurred. Members of a licensee-established committee are not entitled to any compensation under this subsection.

5. Conflict of interest. Except for the licensee's representative and members of a licensee-established decommissioning fund committee, members of the committee shall have no direct or substantial indirect financial interest in any nuclear power plant covered by this subchapter in any company which owns directly or indirectly any portion of a nuclear power plant covered by this subchapter or in any institution involved in managing or handling a decommissioning trust fund.

6. Responsibilities and duties. Whether established by the licensee or otherwise, a decommissioning fund committee is responsible for the prudent management of the decommissioning trust fund in order to assure that the principal and income which will have accumulated in the fund at the time of closing the nuclear power plant for which it was established will equal the cost established in the decommissioning financing plan approved by the commission. The specific duties of a decommissioning fund committee are to:

- A. Appoint the trustee;
- B. Approve selection of other financial managers, if any, by the trustee;
- C. Establish investment policy;
- D. Evaluate investment policy and trustee performance;
- E. Establish procedures for expenditures from the fund for decommissioning and administrative expenses; and
- F. Perform other duties it finds necessary to carry out its responsibilities.

7. Report; audit. The decommissioning fund committee shall report annually to the Governor, the Legislature and the commission on its activities and the status of the decommissioning trust fund. It shall also report to the owners of any nuclear power plant in the State on its activities relating to that plant and on the status of the associated fund. The report shall contain a breakdown of all administrative expenses. A decommissioning fund committee shall cause an annual audit to be made of each decommissioning trust fund.

8. Separate committee for each plant. There shall be a separate decommissioning fund committee for each nuclear power plant covered by this subchapter. Members may serve on more than one decommissioning fund committee.

9. Modification. In the event and to the extent that it is necessary in order to establish the tax exempt status of payments to or income of the decommissioning

trust fund, the decommissioning fund committee shall, subject to the approval of the commission, modify its structure and procedures, including if necessary changing from any licensee-established trust committee established under subsection 1 to a public trust committee established under subsection 2, provided that no such modification may be contrary to the purpose for which the trust was established under this subchapter.

§4355. Decommissioning trust fund

1. Trustee. The decommissioning fund committee shall select a trustee or trustees to execute the policies set by the decommissioning fund committee and manage the money within a decommissioning trust fund in order to ensure that it will be available when needed and, insofar as possible, consistent with protection of the principal, so that it may grow to keep pace with inflation or faster. Preference may be given to financial institutions incorporated in the State if consistent with their fiduciary responsibility, but only if they meet the criteria for trustees established by the decommissioning fund committee. That committee may, by a majority vote of its entire membership, change trustees at any time. Any trustee shall be subject to the same duties and may exercise the same powers as trustees under Title 18-A, article VII, and the provisions of the decommissioning trust to the extent that they are not inconsistent with this subchapter. The trustee may appoint subsidiary financial managers, subject to approval by the decommissioning fund committee. Any fees charged by the trustee shall be subject to review by the commission.

2. Tax exemptions. The following tax exemptions apply to the decommissioning trust fund.

A. Payments to a decommissioning trust fund shall be considered a necessary operating expense of the licensee and shall be tax deductible for state income tax purposes. All income of the fund shall be exempt from state income taxation, as long as the fund is to be used exclusively for the purposes of decommissioning and the licensee may not use the fund for any other purpose.

B. Payments to a decommissioning trust fund are deemed to be a necessary operating expense to the licensee and exempt from federal income tax. It is the legislative intent that all income of the fund be exempt from federal income taxation.

3. Restrictions. The following restrictions apply to the decommissioning trust fund.

A. All funds collected by any licensee for decommissioning shall be immediately segregated from the company's assets and amounts not subject to refund or required to pay tax liabilities shall be transferred to the trustee for placement in the decommissioning trust fund established for the licensee's plant. Amounts collected for decommissioning, but subject to refund or required to pay tax liabilities, shall be deposited in a

separate escrow account.

B. The assets in a decommissioning trust fund may be invested only in secure assets as follows:

(1) The bonds, notes, certificates of deposit or other obligations issued or guaranteed by the United States or by any agency or instrumentality of the United States;

(2) The bonds, notes, certificates of deposit or other obligations issued or guaranteed by any state or by any agency, instrumentality or political subdivision of any state, provided that securities are rated within the 2 highest grades by any rating service approved by the Superintendent of Banking;

(3) The bonds and other obligations of any United States corporation, provided that they are rated within the 2 highest grades by any rating service approved by the Superintendent of Banking; or

(4) Until a definitive final determination has been made by the Federal Government that the income of the fund is exempt from federal income taxation, the assets in the fund may be invested only in securities exempt from federal income taxation.

The assets in a fund shall not be invested in the securities of the owner of any nuclear power plant. The decommissioning fund committee may impose such other restrictions as it determines necessary or desirable.

C. Except as provided in section 4354, a decommissioning trust fund shall be administered only by persons not normally involved with operations of the licensee or any owner of a nuclear power plant within the State.

D. Neither the licensee nor any other owner of any nuclear power plant in the State may receive any benefit from funds remaining in the decommissioning trust fund after completion of decommissioning.

E. All income of a fund shall be accumulated and added to the principal of the fund, except as otherwise provided in subsection 5.

F. Any indenture of trust governing the decommissioning trust fund is subject to review and approval by the commission. That indenture of trust shall contain a provision that it shall be amended as necessary to conform to any future changes in state law or rule.

4. Contributions to the fund. The trustee of a decommissioning trust fund shall bill the licensee operating the nuclear power plant for which the fund was established and the licensee shall make payments to the trustee of the fund in amounts and on a schedule determined by the commission in accordance with section 4353, subsection 4.

5. Expenditures from the fund; payments for costs of decommissioning. At the time of decommissioning, the decommissioning fund committee shall authorize the trustee to make payments as necessary from the fund to the licensee to cover actual decommissioning expenses in accordance with the decommissioning plan authorized by the United States Nuclear Regulatory Commission or its successor. The decommissioning fund committee may not approve any withdrawal for this purpose prior to completion of decommissioning, unless the physical decommissioning plan has been received and reviewed by the commission under section 4353, subsection 7.

The decommissioning fund committee may authorize withdrawals from the fund as necessary to pay reasonable expenses for administering the fund. No other withdrawal may be made prior to the commencement of decommissioning without the approval of the commission and unless the withdrawal is for the purpose of paying reasonable expenses related to decommissioning.

6. Expenditure of money remaining after decommissioning. Upon termination of decommissioning, the commission shall conduct a final audit of the decommissioning trust fund. The commission may by rule, if the public interest requires, establish a decommissioning contingency reserve at that time. If there are assets remaining in the fund attributable to a given plant, after its decommissioning has been completed, those assets shall be returned, in proportion to their payments, to the owners and any other persons who originally made payments to the licensee for decommissioning purposes in accordance with the order or orders of any regulatory agency having jurisdiction. No portion of the remaining assets in a fund may accrue to the benefit of the licensee.

An electric utility in the State which receives remaining decommissioning funds under this subchapter shall distribute the funds equitably, under the guidance of the commission, to its customers.

7. Commission review for licensee-established committee. Notwithstanding any other section of this subchapter, if the decommissioning fund committee is established by the company under section 4354, subsection 1, withdrawals from the fund shall be reviewed and approved by the commission. No withdrawal may be approved, except for the purpose of paying reasonable expenses related to decommissioning or to the administration of the fund.

8. Separate fund for each plant. There shall be a separate decommissioning trust fund for each nuclear power plant covered by this subchapter. The assets of these funds shall not be commingled in any way.

§4356. Responsibility for decommissioning

1. Decommissioning trust fund. In the first instance, the cost of decommissioning shall be paid from the decommissioning trust fund established for the plant being decommissioned.

2. Licensee responsible. If the assets of the decommissioning trust fund are insufficient to pay for the cost of decommissioning, the licensee shall be responsible for the additional cost.

3. Insufficient assets. If the assets of the licensee are insufficient to cover the remaining cost of decommissioning after the decommissioning trust fund is exhausted, the owners are jointly and severally liable for the safe and proper decommissioning of that nuclear power plant. If, under this subsection, any in-state owner pays decommissioning expenses in excess of its ownership share in the plant, that owner shall have a cause of action to recover that excess from the other owners. The Department of the Attorney General shall assist in bringing such an action.

4. State not financially responsible; protective action. The State shall have no financial responsibility for decommissioning. If the Governor finds that, because of inadequate action by the responsible parties in carrying out decommissioning, protective action is reasonably required to protect the public health and safety, the State may undertake that action. In that case, the Department of the Attorney General shall bring action against the fund, the licensee and the owners to recover the cost of that protective action. Expenses incurred by the Department of the Attorney General in bringing that action shall be paid from the decommissioning trust fund.

5. Additional expense in rates. The commission shall include, as an allowable operating expense, in calculation of authorized rates, additional decommissioning funds actually supplied by an electric utility in the State, to the extent these are just and reasonable.

§4357. Procedure, liability and penalties incorporated by reference; construction

To the extent that they are not in conflict with this chapter, chapters 13 and 15 apply to this chapter. This subchapter shall be construed liberally in order to achieve the purposes stated in this chapter.

§4358. Cost of review

The licensee shall submit to the commission, with the initial filing or upon a subsequent formal review of a decommissioning financing plan under this subchapter, a filing fee as determined by the commission, but not to exceed \$50,000, in order to assist in covering the cost of review by the commission. Within one year after establishment of a decommissioning fund under this subchapter, the licensee may recover the licensing fee from the fund. Money received from the filing fee shall be segregated, apportioned and expended by the commission for the purposes stated in this section, with a report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. Any unexpended funds from the filing fee shall be transferred to the decommissioning trust fund after approval of the plan.

§4359. Enforcement

All provisions of this subchapter shall be enforced by the Department of the Attorney General, with the cost of enforcement paid from the decommissioning trust fund.

SUBCHAPTER IV

SPENT FUEL AND HIGH-LEVEL
WASTE REQUIREMENTS§4371. On-site storage of spent fuel assemblies; limitations

After July 1, 1992, no nuclear fission thermal power plant licensee may store or maintain in on-site spent fuel element pools or other on-site temporary storage facilities any spent nuclear fuel which was removed from the nuclear reactor core more than 3 years previously.

§4372. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Construction. "Construction" means the installation of permanent equipment or structures.

2. High-level radioactive waste. "High-level radioactive waste" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from that liquid waste that contains fission products in sufficient concentrations; and other highly radioactive material that the United States Nuclear Regulatory Commission, consistent with existing law, determines by rule to require permanent isolations.

3. Nuclear power plant. "Nuclear power plant" means a nuclear fission thermal power plant.

4. Technology or means for the disposal of high-level nuclear waste. "Technology or means for the disposal of high-level nuclear waste" means a method for the permanent and terminal disposal of high-level nuclear waste. It does not necessarily require that facilities for the application of such technology and means be available at the time the commission makes its findings. This disposition does not necessarily preclude the possibility of an approved process for retrieval of such waste.

§4373. Certification required prior to construction of nuclear power plants

No construction may commence on a nuclear power plant, until the Public Utilities Commission has certified it under this subchapter.

§4374. Conditions for certification of nuclear power plants

The commission may certify a nuclear power plant if it finds that:

1. Federal Government identification and approval of technology. The Federal Government, through its authorized agency, has identified and approved a demonstrable technology or means for the disposal of high-level nuclear waste;

2. Waste storage facilities operational. Specific facilities with adequate capacity to contain high-level nuclear waste are in actual operation, or will be in operation, at the time the nuclear power plant being certified requires the means for the disposal of high-level nuclear waste; and

3. Proposal for disposal is in conformity. The disposal of high-level nuclear waste proposed for any nuclear power plant to be certified according to this subchapter is in full conformity with the technology approved by the authorized agency of the Federal Government.

§4375. Commission action upon petition

Upon petition of any person, the commission shall within a reasonable time conduct public hearings and make specific findings as to the conditions set forth in section 4374.

§4376. Commission and other agency action if certification not granted

If the conditions of section 4374 have not been met, the commission may continue to receive and process applications for certification, but may not certify a nuclear power plant. Any other governmental entity which grants necessary permits, licenses, approvals or authorizations for construction of a nuclear power plant may process and grant those permits, licenses, approvals or authorizations, subject to the commission's granting of certification under this chapter.

SUBCHAPTER V

SPENT FUEL DISPOSAL TRUST FUND§4391. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Licensee. "Licensee" means the holder of the operating permit from the United States Nuclear Regulatory Commission for a nuclear power plant.

2. Nuclear power plant or plant. "Nuclear power plant" or "plant" means a nuclear fission thermal power plant.

3. Owner. "Owner" means any electric utility which owns any portion of a nuclear power plant, whether directly or indirectly, through ownership of stock in a company which owns any portion of a nuclear power plant, through membership in a holding company which owns any portion of a nuclear power plant or through other means.

4. Spent nuclear fuel disposal. "Spent nuclear fuel disposal" means the activities undertaken to safely dispose of spent nuclear fuel offsite and in compliance with all applicable state and federal laws.

5. Trustee. "Trustee" means a fiduciary as defined under Title 18-A, section 1-201, which fiduciary shall administer the spent fuel disposal trust funds subject to sections 4392 and 4393 and in accordance with Title 18-A, article VII.

6. Trust fund or fund. "Trust fund" or "fund" means a trust fund established as set out in section 4392 to hold money for the eventual purpose of spent nuclear fuel disposal.

§4392. Spent Nuclear Fuel Disposal Trust Fund

1. Established. Any licensee operating a nuclear power plant in this State shall establish a segregated Spent Nuclear Fuel Disposal Trust Fund in accordance with this subchapter for the eventual disposal of spent nuclear fuel resulting from the use of that fuel before April 7, 1983. The licensee shall make payments into the fund in accordance with a schedule based on sound financial practices designed to accumulate sufficient money to make the payments to the United States Department of Energy in the manner described in subsection 5. The licensee shall also review the schedule at least annually to determine if the level of deposits in the fund remains reasonably capable of accumulating appropriate money for application to these payments.

2. Financing agreement. The licensee shall file with the commission a fully executed spent nuclear fuel financing agreement between the licensee and each owner, evidencing each owner's acceptance of its respective share of the ultimate financial responsibility for spent nuclear fuel. In satisfaction of this requirement, the licensee may submit existing ownership agreements, together with documentation from each owner, of the applicability of the agreement to the case of financial responsibility for spent nuclear fuel.

3. Trustee. The licensee shall select a trustee or trustees to manage the money within the fund to ensure that it will be available when needed. Preference may be given to financial institutions incorporated in the State if such a determination can be made consistent with the fiduciary responsibility of the trustees. The licensee may change trustees at any time upon appropriate notice. Trustees shall be subject to the same duties and may exercise the same powers as trustees under Title 18-A, article VII, to the extent that they are not incon-

sistent with this subchapter. The trustee may appoint subsidiary financial managers, subject to the approval of the licensee.

4. Restrictions. The following restrictions apply to the fund.

A. The fund shall be segregated from the licensee's assets and administered by an independent trustee in accordance with this subchapter.

B. The fund may be invested only in secure assets with maturity no later than the announced or reasonably projected date for the making of the payments required under this section, as follows:

(1) Bonds, notes or other obligations issued or fully guaranteed by the full faith and credit of the Federal Government or by any agency or instrumentality of the United States;

(2) Bonds, notes or other obligations issued or fully guaranteed by the full faith and credit of any agency, instrumentality or political subdivision of any state, provided that the investment security is rated within the 2 highest grades by any rating service approved by the Superintendent of Banking;

(3) Bonds and other obligations of any corporation organized under the laws of the United States or any state, provided that at the time of purchase the investment security is rated within the 2 highest grades by any rating service approved by the Superintendent of Banking; and

(4) Money Market Funds or similar investment vehicle of the trustee's choice, but only as a temporary investment where it is not practical to invest any amount in the fund in the investments described in subparagraphs (1) to (3).

C. The funds shall not be invested in the securities of the owner of any nuclear power plant.

D. Income to the fund shall be reinvested for the benefit of the fund or used to pay the reasonable expenses of administration of the fund.

5. Expenditures from the fund. The trustee shall make payments from the fund to the United States Department of Energy in accordance with the United States Nuclear Waste Policy Act of 1982 and any contract between the licensee and the department under that Act for the disposal of all spent nuclear fuel used prior to April 7, 1983.

6. Sunset. After payment of all fees in accordance with subsection 5, the trustee shall report to the commission and, upon certification by the commission, the fund shall be dissolved expeditiously and this subchapter is repealed.

7. Assets remaining in the fund. Any assets remaining in the fund at the time of dissolution shall be returned, in proportion to their payments, to the owners and any other persons who originally made payments to the licensee for the fund. Any amounts returned to the electric utilities within the State will be subject to ultimate rate treatment by the commission. No portion of the remaining assets in the fund may accrue to the benefit of the licensee.

§4393. Report; audit

1. Initial report. The licensee shall report to the commission upon the establishment of the fund. That report shall include the relevant trust agreement, spent nuclear fuel disposal contract and other appropriate documentation.

2. Annual reports. The trustee of the fund shall report at least annually to the licensee on the status of the fund. The licensee shall report the information in reasonable detail annually to the Governor and the commission. The reports shall contain a reasonable itemization of all administrative expenses.

3. Audit. The licensee shall cause an annual audit to be made of the fund.

PART 4

GAS

CHAPTER 45

NATURAL GAS PIPELINE UTILITIES

§4501. Declaration of policy

It is declared that the business of transporting natural gas within the State by interstate or intrastate natural gas pipeline utilities affects the public interest and that the health, safety and welfare of the inhabitants of the State require regulation in matters relating to the transportation of natural gas to the extent provided in this chapter.

§4502. Organization; power to construct and operate pipelines

1. Organization of corporations to construct pipelines. Corporations for the purpose of constructing and operating natural gas pipelines may be organized under Title 13-A. Following organization under Title 13-A, the corporation has all the other rights, privileges and immunities of a legal corporation organized under Title 13-A, except as they are inconsistent with this chapter.

2. Interstate and intrastate pipelines. A natural gas pipeline utility, organized under the laws of this State or of any other state or of the United States to construct and operate an interstate natural gas pipeline, which holds a certificate of public convenience and necessity

issued under federal law, authorizing it to construct and operate natural gas pipeline and appurtenant facilities within this State, or to construct and operate an intrastate natural gas pipeline, which has obtained authorization from the commission to construct and operate such intrastate natural gas pipeline or pipelines and appurtenant facilities, may, upon compliance with this chapter, purchase, hold and convey real estate and personal property for the purposes for which it was created.

§4503. Filing certificate of public convenience

At least 30 days before beginning construction of an interstate natural gas pipeline within this State, the corporation shall file with the Secretary of State a certified copy of the certificate of public convenience and necessity issued to it under the Federal Natural Gas Act or, if the pipeline is intrastate, a certificate exhibiting the commission's authorization.

§4504. Eminent domain

Upon the filing of the certificate of public convenience and necessity or authorization of the commission, as required in section 4503, if the commission determines that a taking by eminent domain is necessary under the conditions and procedures set out in sections 6701 to 6704 relative to condemnation by water districts, a natural gas pipeline utility that has complied with this chapter and, in the case of a foreign corporation with Title 13-A, chapter 12, may take and hold by right of eminent domain lands or rights in lands that are necessary to the safe, economical and efficient operation of the pipeline and to providing adequate service to the public, under the same procedures and conditions as set forth in chapter 67.

Environmental factors to be considered for proper location of a natural gas pipeline are not subject to review by the commission when the location of the transmission line has received site location of development approval under Title 38, section 484.

Nothing in this section authorizes a corporation to take by eminent domain property or facilities of another public utility, used or acquired for use in the performance of a public duty, unless expressly authorized in this section or by an Act of the Legislature.

§4505. Exemption from eminent domain

1. Owner's consent required. No natural gas pipeline utility may take, without the owner's consent:

- A. Meeting houses;
- B. Dwelling houses; or
- C. Public or private burying grounds.

2. Public lands. No natural gas pipeline utility may take by eminent domain lands or rights in:

- A. A public street or highway;
- B. A public park or reservation;
- C. Other public property; or
- D. The location of a railroad or public utility.

3. Pipeline constructed under or through public property. A natural gas pipeline utility may construct a natural gas pipeline under or through a public highway or street, public park or reservation or other public property if the method, plans and specifications for construction have been approved by the authority having jurisdiction over the maintenance of the public highway or street, public park or reservation or other public property and the authority has granted a written location permit to the corporation in accordance with section 2302. The natural gas pipeline utility has all the rights, privileges and duties arising out of section 2302 to the extent they apply to a natural gas pipeline utility formed under this chapter.

4. Pipelines constructed over or across a railroad or public utility. A natural gas pipeline utility may construct a natural gas pipeline over or across the location of a railroad or public utility by agreement with the railroad or public utility or, in the event of failure to agree, with the commission's approval and in a place and manner and under conditions determined by the commission. All work on the property or a railroad or public utility must be done under the supervision and to the satisfaction of the railroad or public utility, but at the natural gas pipeline utility's expense.

§4506. Construction requirements

1. Soil requirements. A natural gas pipeline must be laid at least 24 inches below the surface of the soil. The soil above the pipeline must be graded to the level of the adjacent land and left in good working condition unless otherwise agreed to by the natural gas pipeline utility and the property owner.

2. Damage to growing crops. The natural gas pipeline utility shall pay for any damage to growing crops caused by the construction, operation, maintenance, repair or reconstruction of a natural gas pipeline.

3. Driveways, drains, pipes and wires left in good condition. Driveways, drains, water pipes and other service pipes or wires located on land on which a natural gas pipeline is constructed shall be left in as good condition as they were prior to the construction, maintenance, repair or reconstruction of the pipeline, except when the natural gas pipeline utility and the owner of the property or right-of-way agree otherwise.

4. Closing right-of-way prohibited. No driveway or right-of-way over the land on which a natural gas pipeline is located may, except during the construction, maintenance, repair or reconstruction of the pipeline, be

closed for passage, except by agreement between the natural gas pipeline utility and the owner of the property or right-of-way.

5. Buildings. A building erected by a natural gas pipeline utility shall conform in its method of construction with the building laws or regulations in force in the location in which it is erected, and the exterior design of the building shall conform to the extent possible with the general architectural standards of buildings in the locality.

§4507. Franchise area; restricted sale

A natural gas pipeline utility may not supply or sell natural gas to any person within the franchise area of another utility, which is authorized by the State to transmit or sell gas within the franchise area, except to that other utility, unless the other utility consents to the sale or the commission permits the sale, after notice and hearing.

§4508. Powers and authority of Public Utilities Commission

1. Natural gas pipeline utilities subject to commission's authority. A natural gas pipeline utility organized to construct or operate an interstate natural gas pipeline, which holds a certificate of public convenience and necessity issued under the Federal Natural Gas Act authorizing it to construct or operate a natural gas pipeline and appurtenant facilities within the State, or an intrastate natural gas pipeline utility, which has obtained authorization from the commission, is subject to the authority of the commission.

2. Commission rules and limitation on commission authority. The commission may make necessary rules with respect to the natural gas pipeline utility's pipeline, equipment and manner of operation as they relate to the safety of the public and of the utility's employees, provided that the commission's authority is not inconsistent with or in violation of the Federal Natural Gas Act, as amended, or any rules, orders, regulations or certificates of public convenience and necessity issued under that Act.

3. Power to effectuate policies of this chapter. To effectuate the policies and provisions of this chapter and when determined necessary to obtain uniformity in the formulation, administration and enforcement of any order or rule issued under this chapter, or promulgated by an agency of the United States, pertaining to the regulating or handling of natural gas, the commission may:

- A. Confer, cooperate and enter into compacts with the agency;
- B. Avail itself of records and facilities of the authority and make records and facilities available to the agency;
- C. Conduct joint investigations and hold joint hearings;

D. Issue orders and rules jointly or concurrently with, or complementary to those issued by, the agency; and

E. Collaborate with the agency and others in the development and operation of measures for the increased safety of the transportation and distribution of natural gas within the State.

§4509. Application of this Title

A natural gas pipeline utility is subject to all provisions of this Title as far as applicable and to the orders and rules adopted and promulgated by the commission under the authority of this Title.

§4510. Submission of plans to commission

Not less than 30 days before the solicitation of bids for construction or installation or, if bids are not solicited, not less than 30 days before actual construction or installation, the natural gas pipeline utility shall submit to the commission information concerning the engineering design of its pipeline and the standards of construction which it proposes to follow and any other information the commission determines necessary, so that it may determine whether the public safety and the safety of the utility's employees are being protected. If the commission finds that any part of the engineering design does not conform to the minimum standards of the American Standard Code of Pressure Piping, promulgated by the American Standards Association of New York, or that the condition of any part of the equipment or the manner of operating it are dangerous to the public safety or the employees' safety, it shall make an order to remedy the nonconformity or dangerous condition and furnish a copy of the order to the utility.

§4511. Submission of map to commission

A natural gas pipeline utility, as soon as it has definitely established a route, but in any event not less than 30 days before the commencement of actual construction or installation, shall submit to the commission and to the governing body of each municipality through which it is proposed that the route shall pass, for their information, a map approved as to form by the commission that clearly sets forth the proposed route.

§4512. Compliance with orders

A natural gas pipeline utility subject to this chapter shall comply immediately with any proper order of the commission.

1. Failure to comply. A natural gas pipeline utility that fails to comply with an order commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged for each offense.

2. Damages. In addition to the forfeiture provided in subsection 1, a natural gas pipeline utility that fails to comply with an order of the commission shall reimburse any person whose property is damaged as a result

of the failure for the amount of the property damage; and be liable in double damages for any injury resulting to a person from the failure.

§4513. Interstate and foreign commerce not affected

No provision of this chapter or of any order or rule under this chapter applies to or may be construed to apply to interstate or foreign commerce, except as far as the provision is effective pursuant to the Constitution of the United States under the laws of the United States.

§4514. Standing of utility in filing for permits

1. Utilities may file for license and permit. When a natural gas pipeline utility, which intends to operate within this State, has filed for either a certificate of public convenience and necessity to be issued under the Federal Natural Gas Act or, in the case of an intrastate gas pipeline company, has filed for the necessary authorization from the commission, that utility may file and process an application for any license, permit or order necessary to obtain all governmental approvals with regard to the location, construction, completion and operation of that pipeline within this State. The effective date of the license, permit, order or governmental approval which is granted or issued may be conditioned upon or suspended until the issuance of the certificate of public convenience and necessity or commission authorization.

2. Application to Department of Environmental Protection before certificate is issued. If a natural gas pipeline utility applies to the Department of Environmental Protection for any required licenses or approvals before it is issued a certificate of public convenience and necessity under the Federal Natural Gas Act or authorization by the commission, it shall file a bond with the Department of Environmental Protection payable to the department in a form satisfactory to the Commissioner of Environmental Protection. The Commissioner of Environmental Protection shall determine the amount of the bond which may not exceed \$50,000. The bond shall be conditioned to require the applicant to reimburse the department for its costs incurred in processing any application in the event that the applicant does not receive a certificate of public convenience and necessity as described in this section.

3. Notification of landowners. A natural gas pipeline utility which applies for site location of development approval under Title 38, chapter 3, subchapter I, article 6, shall:

A. Prior to filing a notification under Title 38, section 483, provide notice to each owner of real property upon whose land the applicant proposes to locate a natural gas pipeline by registered mail, postage prepaid at the land owner's last known address as contained in the applicable tax assessor's record; and

B. File, with the town clerk of each municipality through which the pipeline is proposed to be located, a map demonstrating the intended approximate loca-

tion of the pipeline within the municipality.

The applicant may not be required to provide notice of its intent to construct a natural gas pipeline other than as set forth in this subsection.

4. Company not excused from obtaining proprietary rights. Nothing in this section excuses a natural gas pipeline utility or other entity from obtaining appropriate proprietary rights in state-owned land prior to the construction or operation of a pipeline within this State.

§4515. Injunctive relief

A natural gas pipeline utility operating or acting in violation of a statute or rule or order of the commission may be enjoined from the operation or action upon complaint addressed to the Superior Court and brought by the commission. Whenever practicable, the commission shall notify a natural gas pipeline utility against whom an action for injunctive relief is contemplated and afford it an opportunity to present its views and, except in the case of a knowing and willful violation, shall afford it reasonable opportunity to comply. Failure to notify and afford such an opportunity does not preclude the granting of appropriate relief.

§4516. Civil violation

1. Violation of this Title. A natural gas pipeline utility that violates any provision of this Title relating to safety of pipeline facilities or transportation of gas or any rule issued under this Title commits a civil violation for which a forfeiture not to exceed \$1,000 for each violation may be adjudged. Each day of violation constitutes a separate offense.

2. Maximum civil forfeiture. The maximum civil forfeiture may not exceed \$200,000 for any related series of violations.

3. Determining amount of forfeiture. The commission may compromise a civil forfeiture. In determining the amount of the penalty or the amount agreed upon in compromise, the commission shall consider the following:

A. The appropriateness of the forfeiture to the size of the business of the natural gas pipeline utility;

B. The gravity of the violation; and

C. The good faith of the natural gas pipeline utility in attempting to comply after notification of a violation.

4. Payment of forfeiture. The amount of the forfeiture, or the amount agreed upon in compromise, may be:

A. Deducted from any sums owing by the State to the natural gas pipeline utility; or

B. Recovered in a civil action in the state courts.

5. Limitation on imposing forfeiture. Any action which may result in the imposition of a civil forfeiture pursuant to this section must be commenced within 5 years after the cause of action accrues.

CHAPTER 47

GAS UTILITIES

§4701. Gas utilities authorized to deal in natural gas

Any gas utility is authorized to buy, sell, furnish, transport, store, distribute, dispose of or otherwise deal in natural gas and a mixture of natural gas and manufactured gas and their by-products, to the same extent and with the same rights, privileges and limitations conferred or imposed upon it with respect to manufactured gas, and within the same territorial limitations within which it is authorized to deal in manufactured gas.

§4702. Safety jurisdiction only over certain gas utilities

A gas utility owning, controlling, operating or managing a central tank system or a petroleum gas system that serves 10 or more customers or any portion of which is located in a public place is subject to the jurisdiction of the commission solely with respect to safety.

§4703. Cost of gas adjustment

1. Cost of gas. Subject to the approval of the commission, each gas utility shall include as part of its base rates a reasonable cost for the gas which it supplies to its firm customers who receive uninterrupted service on a year-round basis. The cost of gas shall include the cost of the gas purchased by the company for use in the State, pursuant to rules promulgated by the commission under this section. The amount to be included in a utility's base rates shall be determined at the time of general rate adjustment under section 307 or 1303 and shall be based upon the utility's reasonable costs of gas during the test year used for the rate adjustment.

2. Cost of gas adjustment for firm and nonfirm customers. Notwithstanding the requirements of section 310 and subject to the conditions of this section, a gas utility shall adjust its gas charges to its firm customers to reflect increases and decreases in the price of gas that occur after a general rate proceeding under sections 307 and 1303. For purposes of this section, a "firm customer" means a customer which receives uninterrupted service on a year-round basis. The rates charged to nonfirm customers shall include a cost of gas as determined by the commission and the total rate charged to nonfirm customers shall be subject to the approval of the commission.

3. Scope of adjustment. Changes in the cost of gas purchased by the gas utility for use in the State shall constitute the only items subject to adjustment, pursuant to rules promulgated by the commission under this section, provided that the commission may credit against

the cost of gas any and all profits received by the gas utility from sales of gas to interruptible customers to the extent that the revenues exceed the actual costs of the interruptible sales.

4. Cost of gas adjustment rate applied uniformly to firm customers. The cost of gas adjustment established under this section shall be billed or credited at a single uniform rate per 100 cubic feet of gas or therms for all firm customers of the gas utility.

5. Rules for calculation and billing of cost of gas adjustment. Within 120 days following the effective date of this section, the commission shall establish rules for the calculation and billing of cost of gas adjustments. The rules shall include, but not be limited to:

A. The accounting method to be used to determine the cost of gas;

B. The computation period and method of computation of the cost of gas adjustment rate;

C. Definitions and components of gas costs to be included in the cost of gas adjustment;

D. An appropriate method to amortize a utility's unrecovered reasonable gas costs;

E. An appropriate method to credit customers for gas cost overcharges; and

F. Reporting requirements to administer this section.

The commission may establish a cost of gas adjustment rate for a computation period based on projected gas sales and gas costs for that period, and make appropriate adjustments for overcharges or undercharges in customer bills in subsequent computation periods to account for the difference between the projected gas sales and costs and actual gas sales and reasonable gas costs.

6. Commission approval required. A utility may not bill customers for a cost of gas adjustment charge which has not been approved and ordered into effect by the commission pursuant to this section. Each gas utility shall file application for changes in its cost of gas adjustment rate in accordance with rules promulgated under this section. The commission shall issue public notice of the application and the opportunity to request a hearing within 7 days after the application is filed with the commission. The commission may render its decision on the application without holding a public hearing. If a public hearing is held, the commission shall hold the first session within 45 days of the filing of the application. The commission shall render its decision on the application within 45 days of the close of the hearing, or within 45 days of receipt of the application if no hearing is held. No gas utility may make application for changes in its cost of gas adjustment rate until a period of 90 days has elapsed from the filing of its last application, unless otherwise ordered by the commission.

7. Reports. The commission may require gas utilities to provide such reports and information as it determines necessary to administer this section.

§4704. Injunctive relief

A gas utility operating or acting in violation of a statute or rule or order of the commission may be enjoined from the operation or action upon complaint addressed to the Superior Court and brought by the commission. Whenever practicable, the commission shall notify a gas utility against whom an action for injunctive relief is contemplated and afford it an opportunity to present its views and, except in the case of a knowing and willful violation, shall afford it reasonable opportunity to comply. Failure to notify and afford such an opportunity does not preclude the granting of appropriate relief.

§4705. Civil forfeiture

1. Violation of this Title. A gas utility that violates any provision of this Title relating to safety of pipeline facilities or transportation of gas or any rule issued under this Title commits a civil violation for which a forfeiture not to exceed \$1,000 for each violation may be adjudged. Each day of violation constitutes a separate offense.

2. Maximum civil forfeiture. The maximum civil forfeiture may not exceed \$200,000 for any related series of violations.

3. Determining amount of forfeiture. The commission may compromise a civil forfeiture. In determining the amount of the forfeiture or the amount agreed upon in compromise, the commission shall consider the following:

A. The appropriateness of the forfeiture to the size of the business of the gas utility;

B. The gravity of the violation; and

C. The good faith of the gas utility in attempting to comply after notification of a violation.

4. Payment of forfeiture. The amount of the forfeiture, or the amount agreed upon in compromise, may be:

A. Deducted from any sums owing by the State to the gas utility; or

B. Recovered in a civil action in the state courts.

5. Limitation on imposing forfeiture. Any action which may result in the imposition of a civil forfeiture pursuant to this section must be commenced within 5 years after the cause of action accrues.

PART 5

FERRIES

CHAPTER 51

REGULATION OF FERRIES IN CASCO BAY

§5101. Certificate of public convenience and necessity

No person may, directly, by lease or other arrangement transport passengers or property by vessel, for compensation, between the mainland of Cumberland County and Peak's Island, Great Diamond Island, Little Diamond Island, Long Island, Chebeague Island, Bailey Island or Cliff Island, or between the islands, without obtaining a certificate of public convenience and necessity from the commission authorizing the transportation. Any person who must obtain a certificate is a ferry subject to the jurisdiction of the commission with respect to the service which requires authority. The commission shall specify in the certificate the business and operation of the ferry and shall attach to it at the time of issuance and from time to time after issuance reasonable terms, conditions and limitations as it determines necessary to maintain adequate transportation to these islands.

§5102. Application of this Title

All ferries are subject to this Title and to the orders and rules adopted and promulgated by the commission under the authority of this Title, provided that ferries are not subject to the jurisdiction of the commission with respect to safety.

§5103. Service, rates and schedules

All ferries shall maintain adequate service to the islands of Casco Bay as set out in section 5101 under rules promulgated by the commission as to rates and schedules.

1. Rates. The rates for transportation of property established by the commission's rules shall be comparable to rates established for the comparable services of other authorized ferries in the State.

2. Schedules. The commission, when promulgating rules as to schedules, shall take into consideration the daily service needs of the inhabitants of the islands of Casco Bay as set out in section 5101.

§5104. Exception for ferries carrying commodities in bulk

Nothing in this chapter applies to the transportation of commodities in bulk. This exception applies only in case of commodities in bulk which are loaded and carried without wrappers or containers and received and delivered without transportation mark or count, except that carriers of petroleum fuels in bulk may also transport other products and accessories integral to the operation of motor vehicles and boats when they are included as part of the bulk shipment. The transporting of a commodity in motor vehicles, whether commercial or private-

ly owned, upon a vessel may not be construed as a bulk movement of those commodities.

§5105. Medical emergency

In the case of a medical emergency, transportation may be supplied by a person who has not been issued a certificate of public convenience and necessity.

§5106. Temporary certificate of public convenience and necessity

Subject to the provisions of this chapter, the commission may issue a temporary certificate of public convenience and necessity to other persons to better serve the needs of the residents of the islands of Casco Bay as set out in section 5101.

§5107. Violation of this chapter; penalty

1. Offense. Whoever violates this chapter is guilty of unlawfully operating a ferry in Casco Bay.

2. Penalty. Unlawful operation of a ferry in Casco Bay is a Class E crime.

3. Injunction. In addition to any other remedy provided in this chapter for the enforcement of this chapter or any rule, order or decision of the commission issued with relation to the operations of a ferry covered by this chapter, the Superior Court has jurisdiction upon complaint filed by the commission to enjoin a person from committing an act prohibited by this chapter or prohibited by a rule, order or decision of the commission in relation to the operation of transportation facilities in Casco Bay. It is the intention of the Legislature that the commission may seek an injunction under this section without first resorting to another form of administrative proceeding or procedure as a condition precedent to the granting of the injunction.

§5108. Radar requirements on vessels operating in Casco Bay

Every person subject to the rules of the commission in conjunction with the transport of 6 or more passengers by vessel, for compensation, between or among the islands of Casco Bay and the mainland shall, after appropriate action by the commission acting pursuant to section 5109, provide an operable radar device on each vessel operated by the person which carries 6 or more passengers and shall provide a person qualified to operate the radar device in accordance with all federal rules relating to the operation of federally licensed passenger carrying vessels.

§5109. Standards; promulgation; enforcement

1. Rules for use of radar devices; standards. The commission shall adopt rules relating to the use and installation of radar devices in the vessels referred to in section 5108. These rules shall include, but need not be

limited to, the specification of standards for the radar devices and the qualifications of those persons responsible for the proper operation of the radar devices.

2. Time for compliance. The commission, subsequent to the promulgation of those standards, shall allow a reasonable time not to exceed 180 days for initial compliance.

3. Enforcement; revocation of certificate of public convenience and necessity. The commission may enforce section 5108 and this section or any of the rules promulgated under them in the same manner and with the same effect as it may enforce this Title.

The commission may revoke the certificate of public convenience and necessity of any person who does not comply with the commission's order.

PART 6

WATER

CHAPTER 61

GENERAL PROVISIONS AND RATES

§6101. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

1. Governing body. "Governing body" means the governing body of a municipal or quasi-municipal water utility.

2. Service line. "Service line" means the pipeline, including the meter and other appurtenances, extending from a water main to the building or other premises served.

3. Water district. "Water district" means any district, including any multipurpose district, created by the private and special laws of the State to perform the functions of a water utility.

4. Water main extension. "Water main extension" means an extension of the pipeline, including associated appurtenances, from an existing water main to serve a previously unserved location or a location served by a seasonal main.

§6102. Filing with commission plans for construction or improvements of water systems

Any water utility, before commencing construction of a new water system or a major addition to or alteration of an existing water system, shall file with the commission, in accordance with the commission's rules, plans and specifications for the construction, additions or alteration in order to obtain the advice of the commission as to cost, method of financing and adherence to proper en-

gineering standards.

§6103. Authority for taxation under default

1. Issuance of a warrant. If there is a default in the payment of the principal of, or interest on, a note, bond or other evidence of indebtedness issued by a water district created by special Act of the Legislature, the trustees, directors or managing board of the district shall, unless the default is cured, issue their warrant immediately to those portions of the municipality or municipalities which constitute the district.

2. Form of warrant. The form of the warrant shall be reasonably similar to the warrant used by the Treasurer of State for real estate taxes.

3. Assessment and collection of taxes. In the warrant for payment of the sum, the assessors in each municipality shall assess the sum allocated to the municipality or portion of the municipality upon the taxable estates within the municipality or portion of the municipality and shall commit their assessment to the constable or collector of the municipality, who shall have all authority, powers and duty to collect the taxes as is vested by law to collect state, county and municipal taxes.

4. Allocation if district is composed of more than one municipality. If the district is composed of more than one municipality or portion of a municipality, the trustees shall make the allocation on a basis resulting in a uniform rate applied to 100% of the state valuation on all taxable property within the water district.

5. Treasurer to pay tax within 30 days. Within 30 days after the date fixed by the municipalities on which their taxes are due, the treasurer of the municipality shall pay the tax assessed to the treasurer of the district.

6. Section not effective until approved by municipality. This section may not take effect until it or former Title 35, section 3211, has been approved at a regular or special meeting by a majority of the legislative body of the municipality or municipalities which constitute the district. The appropriate municipal official shall declare the action of the legislative body, file a certificate of it with the Secretary of State and with the clerk of the district.

§6104. Municipal and quasi-municipal water utilities subject to suspension, investigation, hearing and rate substitution

1. Application of this section. Notwithstanding section 310, municipal and quasi-municipal corporations which are water utilities are subject to the suspension, investigation, hearing and rate substitution provisions of section 310 under the conditions specified in this section.

2. Utilities which elect to set rates under this section. Municipal and quasi-municipal water utilities

which elect to set rates under this section may not file with the commission or increase any rate, toll or charge without first holding a public hearing at which any customer may testify and may question the officials present regarding the proposed increase.

3. Notice of proposed rate increase and hearing. The municipal or quasi-municipal water utility shall, at least 14 days prior to the hearing, publish a notice of the proposed rate increase and the hearing, including the date, time, place and purpose of the hearing, in a newspaper of general circulation in the area encompassed by the municipal or quasi-municipal water utility and give one notice of the proposed rate increase and the date, time and place of the hearing to each of its customers. The published and individual notices shall include a statement describing the amount of the increase and the percentage increase for each customer class and copies shall be sent to the commission at least 14 days prior to the hearings.

4. Notice that rate increase may be investigated by commission. At the commencement of each hearing held pursuant to this section, the municipal or quasi-municipal water utility shall inform those present that the rate increase may be investigated by the commission in accordance with this section.

5. Filing changed rates. The water utility shall file its changed rates with the commission within 30 days of the public hearing, but not sooner than 10 days following the public hearing.

6. Effective date established for rate change. Subject to the notice and waiver requirements of section 307, water utilities electing to set rates under this section may establish an effective date for a rate change of at least one month, but not more than 9 months, from the date the rates are filed with the commission.

7. Authority to investigate rate changes. If, within 30 days of the public hearing, 15% of the customers of the municipal or quasi-municipal water utility or 1,000 customers, whichever is less, file with the treasurer of the utility and with the commission petitions demanding a review of the rate changes by the commission, the rate change may be suspended, investigated, reviewed and changed in accordance with section 310, except that no suspension order issued by the commission pursuant to section 310 may be effective for a period greater than 9 months from the date the rate changes were filed.

8. Procedure for suspension of rate change. If the number of signatures on the petitions is 1,000 or if the number of signatures on the petitions equals or exceeds 15% of the customers indicated on the water utility's most recent annual report on file with the commission, the commission may suspend the rate change pursuant to section 310. The commission shall notify the water utility of the suspension.

9. Water utility may challenge petitions. The water

utility has 10 days from receipt of notice to notify the commission whether it intends to contest any aspect of the validity of the petitions, after which it shall lose that right. If the water utility notifies the commission in a timely fashion that it wishes to contest the validity of the petitions, the commission shall schedule a hearing. It shall hold the hearing and issue its decision on the validity of the petitions within 30 days of notification by the water utility that it intends to contest the validity of the petitions. If the commission finds the petitions to be invalid, it shall lift its order of suspension.

10. Review of rates under section 310. Nothing in this section prohibits a municipal or quasi-municipal water utility from petitioning the commission for review pursuant to section 310 in the first instance.

11. Correction of errors. Upon review of a rate filing made pursuant to this section, the commission may order the municipal or quasi-municipal water utility to correct mathematical or clerical errors.

§6105. Rates for municipal and quasi-municipal water utilities

1. Scope of section. Notwithstanding any other provision of this Title or any charter to the contrary and in addition to any charter or private and special laws creating or affecting a municipal or quasi-municipal water utility, the rate, toll or charge made, exacted, demanded or collected by a municipal water or quasi-municipal water utility is governed by this section.

2. Just and reasonable rates. The governing body shall establish and file rates, tolls or charges which are just and reasonable and which provide revenue as may be required to perform its public utility service and to attract necessary capital on just and reasonable terms.

3. Uniform rates. The governing body shall establish and file rates which are uniform within the territory supplied whenever the installation and maintenance of mains and the cost of service is substantially uniform. If, for any reason, the cost of construction and maintenance or the cost of service in a section of the territory exceeds the average, the governing body may establish and file higher rates for that section, but these higher rates shall be uniform throughout that section.

4. Purposes. The governing body may establish and file rates under this section to provide revenue for the following purposes, but no other:

A. To pay the current expenses for operating and maintaining the water system and to provide for normal renewals and replacements;

B. To provide for the payment of the interest on the indebtedness created or assumed by the utility;

C. To provide each year a sum equal to not less than 2% nor more than 10% of the term indebtedness

represented by the issuance of bonds created or assumed by the utility, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of term indebtedness. The money set aside in this sinking fund shall be devoted to the retirement of the term obligations of the utility and may be invested in such securities as savings banks in the State are allowed to hold;

D. To provide for annual principal payments on serial indebtedness created or assumed by the utility; and

E. To provide for a contingency reserve fund allowance by providing rates to reflect up to a 5% addition to yearly revenues over what is required to operate the water company.

If this allowance results in an excessive surplus, rates may be set which use the excess to offset future revenue requirements. The commission shall adopt rules which define excessive surplus resulting from the allowance, set forth uses of funds in that portion of the surplus which is not excessive, including the retirement of debt where economic, and provide that funds in the surplus which are excessive be returned to customers in the form of temporary rate adjustments, credits or reduction in rates.

§6106. Apportionment of costs for water main extensions or service lines

1. Investment. The governing body of a municipal or quasi-municipal water utility may choose to make no investment in a water main extension or service line and may require persons requesting a water main extension or service line to advance to the utility the full cost of construction, including associated appurtenances required solely as a result of the construction of the water main extension or service line and used solely for the operation of the main extension or service line. Apportionment of the costs among customers shall be determined by the commission by rule.

2. Assessments. The governing body may assess the full cost of water main extensions on all property that abuts the water main in accordance with rules promulgated by the governing body. The owner of any property which is not hooked up to the water system may defer payment of the assessment until it is hooked up. The governing body by rule may exempt appropriate classes of property from the assessment and may provide for payment of an assessment over a period of time.

3. Review by elected local officials. If the governing body is not an elected body, any decision to make no investment under subsection 1 or to assess under subsection 2 must first be endorsed by the municipal officers of the municipality or municipalities involved, prior to filing with the commission.

§6107. System development charge

1. System development charge authorized. In addition to section 6105, the governing body of a municipal water or quasi-municipal water utility may establish and file, pursuant to section 310 or 6104, a system development charge which is just and reasonable to provide funds to finance capital outlays for water system expansion caused by an increase in demand for service.

2. Commission review. If a municipal or quasi-municipal water utility elects to institute a system development charge, it shall file the proposed charge and a description of the basis of the charge with the commission not less than 90 days before the effective date of the charge. The commission shall investigate the system development charge under section 1303 to determine whether it is just and reasonable.

3. Use of funds. The funds generated by the system development charge shall be deposited into a special account of the municipal or quasi-municipal water utility dedicated to finance capital outlays for water system expansion caused by an increase in demand for service. The funds from the special account shall be used only for the purpose of financing the expansion of the system and shall not be used for the repair or replacement of existing facilities unless the replacement is required as a result of increased demand for service. The system development charge shall not be treated as income of the municipal or quasi-municipal water utility nor shall it be considered part of the rates established and filed pursuant to section 6105.

4. Assessment of charge. The system development charge may be assessed upon all customers of the municipal or quasi-municipal water utility that require new connections to the water system, excluding fire service, as of or after the effective date of that charge and upon all existing customers who substantially expand their demand for water service as of or after the effective date of that charge.

5. Water conservation programs. Before a system development charge may be instituted, the municipal or quasi-municipal water utility must report to the commission its efforts in implementing water conservation programs. The utility shall state what combination of system development charges and new conservation programs will allow the utility to meet growing demand in the least costly manner.

6. Review by elected local officials. If the governing body is not an elected body, any system development charge proposed under this section must first be endorsed by the municipal officers of the municipality or municipalities involved, prior to filing with the commission.

CHAPTER 63

WATER DISTRICTS

§6301. Short title; purpose

This chapter shall be known and may be cited as the "Maine Water District Act." The purpose of this chapter is to provide minimum guidelines to the water districts chartered under private and special laws of the Legislature. These guidelines will provide more public participation and more accountability for water districts, and encourage the maximum degree of local control consistent with protection of health and economic welfare of the citizens.

§6302. Formation of districts

The formation of water districts under the private and special laws to provide public drinking water supplies is encouraged. The question of the formation of the proposed district shall be submitted to the voters residing within it for approval by majority vote.

§6303. Trustees

1. Authorization. All of the affairs of a water district shall be managed by an elected board of trustees which shall consist of not less than 3 trustees, but no municipality nor unorganized territory within a water district may have less than one trustee. Trustees shall serve for a term specified in the charter, but not longer than 3 years.

2. Nominations and elections. Nominations and elections shall be conducted in accordance with the laws relating to municipal elections, except that in the unorganized townships, nominations and elections shall be conducted by the county commissioners.

3. Organization of board of trustees. Within one week after each annual election, the trustees shall meet for the purpose of electing a chairman, treasurer and clerk from among them to serve for the ensuing year and until their successors are elected and qualified. The trustees, from time to time, may choose and employ, and fix the compensation of, any other necessary officers and agents who shall serve at their pleasure. The treasurer shall furnish bond in the sum and with sureties as approved by the trustees. The district shall pay the cost of the bond.

At this original meeting, the trustees shall organize by electing from their own members a chairman and a clerk, and adopting a corporate seal and electing a treasurer who may or may not be a trustee. The trustees may adopt and establish bylaws consistent with the laws of this State and necessary for their own convenience and the proper management of the affairs of the district, and perform other acts within the powers delegated to them by law.

The trustees shall be sworn to the faithful performances of their duties, which shall include the duties of any member who serves as clerk or clerk pro tem. They shall make and publish an annual report, including a report of the treasurer.

4. Trustees' compensation. The trustees shall receive compensation as recommended by them and approved by a majority of the municipal officers of the municipality, including compensation for any duties they perform as officers, as well as for their duties as trustees. For districts serving more than one municipality, any change in the compensation received by the trustees for any duties they perform within the district shall be recommended by them and approved by majority vote of the municipal officers in each municipality in municipalities representing a majority of the population within the district. Certification of the vote shall be recorded with the Secretary of State and recorded in the bylaws. Their compensation for duties as trustees shall be on the basis of such specific amount as may be specified in the bylaws, for each meeting actually attended and reimbursement for travel and expenses, with the total not to exceed such specific amount as may be specified in the bylaws. Compensation schedules in effect on January 1, 1982, shall continue in effect until changed.

5. Trustees' retirement. Trustees who have not been members of the Maine State Retirement System prior to January 1, 1982, as a result of their selection as trustees, and who are not full-time employees, shall not be eligible to join the retirement system as a result of their selection as trustees. For purposes of determining a water district trustee's eligibility to be a member of the Maine State Retirement System prior to January 1, 1982, the provisions of the appropriate governing charter in effect at the time of the trustee's application for membership shall control.

§6304. Issuance of bonds and notes

1. Notice to general public and rate payers. In the event that the trustees vote to authorize bonds or notes, the estimated cost of which, singly or in the aggregate included in any one financing, is \$150,000 or more adjusted, relative to 1981 as the base year according to the annual Consumer Price Index, as defined in Title 5, section 17001, subsection 9, the trustees shall provide notice to the general public of the proposed bond or note issue and the purposes for which the debt is being issued. The notice shall be published at least once in a newspaper having general circulation in the district. The trustees shall give notice to each ratepayer by mail.

No debt may be incurred under the vote of the trustees until the expiration of 7 full days following the date on which the notice was first published and mailed. Prior to the expiration of the period, the trustees shall call a special district meeting for the purpose of permitting the collection of testimony from the public concerning the amount of debt so authorized.

2. Voters approval or disapproval of debt. Except for indebtedness to fund projects specifically mandated by the State Government and Federal Government, for debts in excess of the amount specified in this section, if requested by petition of not less than 50 voters of the district or 5% of the voters, whichever is greater, filed

with the clerk of the district on or before the date of the meeting, the meeting shall express approval or disapproval of the amount of debt so authorized. If a majority of voters present and voting expresses disapproval of the amount of debt authorized by the trustees, the debt shall not be incurred and the vote of the trustees authorizing it shall be void.

§6305. Liens

Except as otherwise provided in section 706, no water district may include in its charter any provision providing a lien against the property for nonpayment of assessments or rates. The district may seek judgment, including a lien in court, in the same manner as any other creditor.

§6306. Conformity with private and special laws

This chapter governs all water districts formed on or after January 1, 1982. This chapter does not apply to water districts formed before January 1, 1982, except that section 6303, subsections 4 and 5, apply to those districts. Any portion of the charter of those districts which is contrary to those subsections is repealed.

§6307. Legislative amendment of charter

Each year, on or before April 15th, the joint standing committee of the Legislature having jurisdiction over public utilities shall report out legislation entitled "AN ACT to Amend the Charters of Various Water Districts Organized under the Private and Special Laws." Amendments to water district charters shall generally be included in that Act. Prior to acting upon any proposed water district charter amendment, the joint standing committee shall obtain written comments from the municipalities that lie in whole or in part within the district.

§6308. Long-term indebtedness of water districts

The commission may establish reasonable terms upon which water districts shall extinguish their long-term indebtedness, notwithstanding any terms, conditions or limitations, either expressed or implied, in the special Act of the Legislature under which the district was organized or in any special Act of the Legislature under which it is franchised. Nothing in this section gives the commission the authority to alter the terms of any existing obligations of a water district.

CHAPTER 65

PROPERTY TAKEN FOR PUBLIC USE AND ASSESSMENT OF DAMAGES

§6501. Rights of parties as to procedure

1. Locations and damages. All locations made and all damages assessed for the taking of property by the exercise of the right of eminent domain shall be made

and assessed and the rights of the parties shall be as stated in this chapter, notwithstanding anything contained in the act granting the right.

2. Water utilities may exercise right of eminent domain. Water utilities may exercise the right of eminent domain for obtaining sources of supply and locations for storage and for the protection of them and locations for transmission and distribution of water to the public under this chapter and chapter 69.

3. Exceptions. This chapter does not apply to:

A. Property taken by the United States, the State of Maine, a county or municipality of the State, a quasi-municipal corporation or steam railroad corporation; and

B. Property which, when taken, is being or is necessary to be used by the owner in the performance of a public duty.

§6502. Proceedings before entry; location and map; description

1. Description. All property taken by eminent domain shall, before it is entered upon for any purpose except to make surveys, be located by a description, signed by the party taking the property. The description shall:

A. Describe in detail the property taken;

B. Give the names of the owners; and

C. Be accompanied by a map showing the property as described.

2. Filing location and map. The party taking the property shall file the location and map with the county commissioners of the county where the property is located, who shall:

A. Endorse the time of filing on the location and map; and

B. Order the location recorded.

3. Recording location. The taker shall record the location in the registry of deeds of the county or registry district where the property is located.

4. Personal notice given to mortgage holder. When there is a recorded mortgage covering any portion of the land taken, which has been recorded within 40 years of the taking and bears no record of discharge, satisfaction or release, the taker shall give personal notice to the owner of record of the mortgage by sending to the mortgage holder's residence, if known, otherwise to the residence or address set forth in the record, by registered mail, a written notice of the taking which shall contain a description of the property taken and the name of the owner.

5. Description corrected. When for any reason the taker fails to acquire the property authorized to be taken and which is described in the location, or the location recorded is defective or uncertain, the taker may, at any time, correct and perfect the location and file a new description.

6. Liability of taker. If a description is corrected under subsection 5, the taker is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the taker shall not be liable for any acts which would have been justified if the original taking had been valid.

§6503. Damages for property owners; security

1. Owners entitled to damages. The owners are entitled to damages for all property taken by eminent domain as if the land were taken for highway purposes under Title 23, chapter 3.

2. Application procedure. Upon written application of either party made within 3 years after the taking, the county commissioners shall estimate the damages and the taker shall pay the damages.

3. Commencement of new proceedings. If proceedings commenced fail for causes not affecting the merits, new proceedings may be commenced within one year. When no estimate is made within this time, the owner may maintain a civil action or have any remedy provided.

4. Guardian may give release, interested persons. The guardian of a person incapable of giving a valid conveyance whose property is taken may settle and give a valid release for damages. Persons having an interest in the property have the rights and remedies of owners to the extent of their interest.

5. Owner may request security. When requested by the owner, the county commissioners shall require the taker to give security for the payment of damages and costs by depositing at its risk, with the clerk, within 30 days, specie, notes or obligations of a state or public corporation, or other security satisfactory to the county commissioners.

6. Satisfaction of judgment. When the owner is entitled to it, he shall be paid as much of the specie deposited as will satisfy his judgment. Notes or obligations deposited by the taker shall be delivered to the officer having a warrant of distress, to sell as personal property is sold on execution, to satisfy the warrant and fees. Any balance shall be paid to the taker.

§6504. Petition to county commissioners; notice to adverse party

1. Notice of hearing on petition. A person who petitions the county commissioners for the assessment of damages on account of property taken by emi-

nent domain shall notify the adverse party of the time and place of the hearing on the petition by:

A. Giving the adverse party personal notice 14 days before the hearing; or

B. Publishing the petition and order of notice in a newspaper that is published in the county, 2 weeks successively, the last publication being 14 days before the hearing.

§6505. Terms and conditions for property taken

1. Accommodation of the owner and taker. The county commissioners in awarding damages for property taken by eminent domain, upon the application of the taker, may prescribe terms and conditions, for the use of the property taken, that will best accommodate the owner and the taker.

2. Appeal. In the case of appeal by either party, the only question in issue shall be the amount or measure of damages on the terms and conditions imposed by the commissioners.

§6506. County commissioners' report

1. Contents of the report. The county commissioners shall, at a regular meeting, make a report of their general estimate of damages and cause it to be recorded. In their report, the commissioners shall state specifically:

A. The terms and conditions imposed by them; and

B. The rights and obligations of each party.

2. Notice of damage award. After the report has been recorded, the county commissioners' clerk shall prepare a notice to each person, stating the amount of damages awarded to him. An officer shall serve the notice on those residing in the State. Notice to others shall be by publication 3 weeks successively in a newspaper printed in the county. If there is no newspaper printed in the county, the notice shall be published in a newspaper of general circulation in the area where the property is located.

3. Expense of notice. The expense of the notice shall be added to the costs of the proceedings which the taker shall pay.

§6507. Appeals

1. Aggrieved person may appeal within 30 days of report. A person aggrieved by the county commissioners' decision as to damages for property taken may appeal to the Superior Court in the county where the property is situated, within 30 days from the date the commissioners' report is made.

2. Complaint and notice of appeal. The appellant

shall:

A. Include in the complaint a statement setting forth substantially the facts of the case; and

B. Give written notice of the appeal with a copy of the complaint to the opposite party.

3. Court to determine amount of damages. The court shall determine the amount of damages by a committee of reference if the parties agree or by a jury verdict. The court shall render judgment and issue execution.

4. Recovery of costs. The parties may recover costs as follows.

A. If the owner appeals and the damage finally recovered is not more than the county commissioners' award, the taker shall recover costs from the time of appeal, otherwise the owner shall recover costs.

B. If the taker appeals and the damage finally recovered is not less than the county commissioners' award, the owner shall recover costs from the time of appeal, otherwise the taker shall recover costs.

5. Additional review. An appeal may be taken to the Law Court as in other actions.

§6508. Deposit of awards

When the proceedings are closed, the taker may deposit with the clerk of the court the amount of damages awarded with interest to the time of deposit, which shall be in full satisfaction of all claims, unless a demand has been made previously and payment neglected.

§6509. Damages remaining unpaid; proceedings

1. Damages unpaid for more than 30 days. When the damages remain unpaid for more than 30 days after they are due and demanded or the security is not deposited, the owner may file in the Superior Court a complaint praying for an injunction against the use or occupation of his property taken.

2. Proceedings for damages not commenced within 3 years. If proceedings for an estimation of damages are not commenced within 3 years and the owner of the property files a complaint for them, the court may estimate the damages, decree their payment and issue an execution for the amount.

3. Court may issue an injunction prohibiting use. The court, after summary notice to the taker and upon proof of the facts, may, without any bond filed, issue an injunction prohibiting his use and occupation until he pays all damages and costs. If payment has not been made within 90 days, the court may issue a permanent injunction and all rights acquired by taking the property cease and the owner may maintain an action

for its recovery and protection.

§6510. Service of injunction

1. Injunction may be served on a person who is not a party. An injunction issued against a person may be served on that person whether or not he is a party to the action and he shall be liable to all the penalties and consequences provided for a breach of the injunction.

2. Violation of injunction. The court may order a person who violates the injunction, after service, or who uses the property to show cause at a time fixed why a decree should not be entered and execution issued against him and his goods and estate for the damages, interest, costs and for additional damages and costs for breach of the injunction.

3. Court may enter decree. Upon service and return of the order, the court may enter a decree that is just and equitable against the person and issue execution accordingly or may proceed against him for breach of injunction.

§6511. Failure to apply for assessment not a waiver

The property owner's failure to apply for the assessment of damages within 3 years may not be held to be a waiver by him of compensation for property taken by eminent domain.

§6512. Proceedings to correct defect in taking by eminent domain

When a taking or attempted taking by eminent domain has been adjudged defective either from formal errors in proceedings or substantial error, judgment of ouster or writ of possession shall be stayed as follows.

1. Formal errors. If the error is a formal error in proceedings, the judgment or writ shall be stayed until the utility exercising the right of eminent domain has an opportunity to retake pursuant to the act conferring the right.

2. Substantial error. Failure to provide, in an act expressly conferring the right of eminent domain, for an act necessary to carry out the taking is a substantial error and the plaintiff shall be given judgment of title. If the error is substantial, the judgment of ouster or writ of possession shall be stayed until remedial legislation is passed at the session of the Legislature following the rendition of judgment and a new taking had pursuant to the amended Act.

3. New taking; civil action not stayed. The new taking shall be had within 90 days from the rendition of the judgment when the error is merely formal and within 6 months from the adjournment of the Legislature following the rendition of judgment when the error is substantial. Nothing in this section precludes or stays a civil action for damages, and the owner of the land may

maintain a civil action for damages as if in possession.

CHAPTER 67

CONDEMNATION BY WATER DISTRICTS

§6701. Necessity of taking determined

The owner of property which is subject to appropriation for public purposes by a water utility may, upon hearing, have the commission determine the necessity of the appropriation.

§6702. Proceedings

The owner of the property may, within 30 days after the beginning of condemnation proceedings, file with the commission a petition for a decision as to the necessity of the appropriation. A copy of the petition and order of notice, attested by the administrative director, shall be served on the defendant.

§6703. Proceedings before commissioners

1. Hearing. The commissioners shall fix a time for a hearing, inside the county where the property is situated, and give written notice of the hearing to the owner and to the water utility seeking to acquire the property. At the hearing, all parties in interest shall be heard either in person or by attorney, and witnesses may be summoned by either party and attendance compelled as before other judicial tribunals.

2. Burden of proof. The burden of proof to show the necessity of the particular taking rests on the party seeking to acquire the property.

3. Commission's decision. The decision of a majority of the commissioners is final as to questions of fact.

§6704. Condemnation proceedings by district or water utility

Upon the commencement of condemnation proceedings, the utility seeking to acquire property, unless otherwise provided by law, may file a petition asking that the necessity of the taking be determined. After the petition is filed, the proceedings shall be the same as in the case of a petition by the landowner.

§6705. Validation of proceedings

All plans and descriptions of land and all descriptions of other property taken by a water utility for its purposes and uses filed in the office of the county commissioners of the county where the land or other property is situated prior to March 9, 1889, are valid and legal for all purposes of taking.

§6706. Water utility line crossing railroad right-of-way

Wherever a line or main of a water utility is located

and about to be constructed across the right-of-way of a railroad, unless the officers of the water utility agree with the corporation operating the railroad as to the place, manner and conditions of the crossing, the commission upon petition of either party, after notice and hearing, shall determine the place, manner and conditions of the crossing. All the work within the limits of the railroad shall be done under the supervision of the officers of the corporation operating the railroad and to the satisfaction of the commission. The water utility shall bear the expense of the work. The commission shall report its decision in the same manner as in the case of highways located across railroads and subject to the same right of appeal.

CHAPTER 69

AQUEDUCTS

§6901. Meetings of proprietors for incorporation

1. Application for warrant. Any persons who agree in writing to be proprietors of an aqueduct for conveying fresh water into or within a town, or to be proprietors of funds for establishing an aqueduct, may apply in writing to a notary public for the county in which a portion of the aqueduct is situated or is proposed to be made. The application shall:

A. State the name and description of their association;

B. State the objects of their proposed meeting; and

C. Request the notary to issue a warrant to one of the applicants, directing him to call a meeting.

2. Issuance of the warrant. The notary may, upon receiving the application, issue a warrant which shall state the time, place and object of the meeting.

3. Notice of the meeting. The proprietor to whom the warrant is directed shall give notice of the meeting by posting the substance of the warrant, with his notice attached, at least 7 days before the meeting in a public place in every town in which a portion of the aqueduct is or is proposed to be made.

§6902. Proprietors to be a corporation

The proprietors assembled under the warrant and their successors and assigns shall be a corporation and shall choose any number of directors and other officers to manage their business, and a clerk, who shall be sworn and shall record all bylaws, votes and other proceedings of the corporation, in books provided and kept by the clerk, open to the inspection of any person appointed by the Legislature for that purpose. The corporate name shall be the name stated in the application. The proprietors may at any legal meeting agree on the manner of calling future meetings.

§6903. Authority of directors; enforcement of assessments

The directors shall designate one of their number president and may make assessments on the proprietors of the shares in the aqueduct or funds as they find necessary. If a proprietor fails to pay an assessment for 30 days after notice, the directors may maintain a civil action in their corporate name to recover that amount or may sell, at auction, as many of his shares as are sufficient to pay it, with necessary charges. The directors shall give notice of the sale of the shares by:

1. Advertising in newspaper. Advertising in a newspaper circulated in the county for 3 successive weeks; or

2. Posting in public place. Posting notifications of the sale, at least 20 days before the sale, in at least 2 public places in each municipality in which the aqueduct is, or is proposed, to be made.

The directors shall pay any surplus money from the sale to the owner of the share sold.

§6904. Registry of shares and transfers

At or immediately after the first meeting, the clerk shall enter in the books the names of the proprietors and the shares owned by each. The clerk shall enter the subsequent transfer of shares within 3 months after it is made in the form and for such fees as the directors order. No person may be a proprietor whose share or interest is not entered in the books.

§6905. Powers of proprietors; manner of voting

The proprietors have one vote for each share and may vote by proxy. With the written consent of the municipal officers, they or any person may dig up or open a road to lay their pipes or to repair or extend their aqueduct, but not so as to inconvenience travel.

§6906. Attachment and execution; possessions; redemption; revival of judgment

Shares in the corporation are personal estate and may be attached on a writ and sold on execution for the debts of the holders, like shares in other corporations. The franchise, fixtures, pipes, fountains and interests in lands of the corporations are liable to attachment and sale on execution, as personal property, for their corporate debts; but the purchaser at the sale may not interfere with the possession of the corporation for 2 months after the sale. Within that time, the corporation may redeem the franchise and property by paying the sum for which they were sold with interest; but if the corporation does not redeem them, the purchaser shall have the same rights under the franchise and to the property as the corporation had. Any creditor of the corporation, whose execution has been satisfied by an ineffectual sale of the franchise or property, may revive the judgment

by motion.

§6907. Municipality may use pipes in case of fire

A municipality where an aqueduct is located may put conductors into its pipes and draw water, free of expense, to extinguish fire in a burning building, if the conductors are secured so that water may be drawn only for that purpose.

§6908. Construction of powers after dissolution; enforcement of judgment

All contracts made by or with the aqueduct corporation are in force after its dissolution. The last shareholders shall have a corporate capacity and may prosecute and defend suits respecting the contracts, commenced within 6 years after the dissolution or after the cause of action accrued. If no corporate property can be found to satisfy the judgments and they are not satisfied within 6 months, the creditors may satisfy them from the private property of the shareholders as if the judgment had been against them in their private capacity.

§6909. Proprietors are tenants in common of remainder

If the aqueduct corporation owns any estate in its dissolution, the proprietors shall be tenants in common of the estate in proportion to the shares or interest which they hold in its stock.

§6910. Injury to aqueduct penalized

Whoever maliciously injures an aqueduct or any of its appurtenances commits a civil violation for which a forfeiture not to exceed \$20 may be adjudged and is liable in a civil action, brought by the aqueduct corporation, to pay treble damages.

PART 7

TELECOMMUNICATIONS

CHAPTER 71

GENERAL PROVISIONS

§7101. Telecommunications policy; universal telephone service

The Legislature declares and finds that the 50-year effort to bring affordable, universally available telephone service to the public has served the State well; universal telephone service has contributed to the State's economic, social and political integration and development; the public benefits from universal telephone service because each telephone subscriber receives a more valuable service when virtually anyone else in the State can be called; and a significant rate increase may threaten universal service by forcing some Maine people to discontinue their telephone service. It is the policy of the

State that telephone service shall continue to be universally available, especially to the poor, at affordable rates.

§7102. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

1. Emergency. "Emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.

2. Party line. "Party line" means a subscribers' line telephone circuit, consisting of 2 or more main telephone stations connected with the circuit, each station with a distinctive ring and telephone number.

CHAPTER 73

TELEPHONE RATES

§7301. Telephone charges for local calls from pay telephones

The rate charged by a telephone utility for a local telephone call made from a public or semipublic pay telephone shall be the same throughout its service territory for calls of equal duration.

§7302. Toll call rates for the deaf, hearing impaired and speech impaired

1. Rate reduction. The commission shall establish a 70% rate reduction for intrastate toll calls from deaf and hearing impaired and speech impaired persons who must rely on teletypewriters for residential telephone communications.

2. Customers qualifying for the reduction. To qualify for the reduction, a customer must file an affidavit, on a form approved by the Department of Human Services, Division of Deafness, with the telephone utility, stating that, due to deafness or hearing impairment or speech impairment, he or a member of the household must rely on a teletypewriter for telephone communications, and that the equipment is connected or acoustically coupled to his telephone.

§7303. Mandatory local measured telephone service prohibited

1. Mandatory measured service. Mandatory local measured telephone service is prohibited in the State.

2. Traditional flat rate local service. The commission shall establish rates for telephone companies which will preserve traditional flat rate local telephone service at as low a cost as possible, allowing for unlimited local exchange calling for a single monthly fee as the standard phone service in the State for both business and residential customers. Flat rate service with unlimited local calling shall be described by the telephone com-

pany as the "standard" service in all its communications with the public and the commission. Any other local calling service shall be described as an "optional" service.

3. Standard. In any proceeding before the Supreme Judicial Court or the commission to review the reasonableness and lawfulness of a local telephone rate approved by the commission, it shall be presumed that any rate which results in less than 3/4 of the residential customers maintaining standard flat rate service in those exchanges offering optional measured service is in violation of subsection 2, requiring the commission to establish a rate structure which will preserve traditional flat rate local telephone service at as low a cost as possible. The presumption established in this subsection may be overcome by clear and convincing evidence that no reasonable alternative rate could be implemented which will maintain 3/4 of the residential customers as standard flat rate customers.

CHAPTER 75

SERVICE

§7501. Directories

1. Customer information included in directory. When a telephone utility publishes a directory of names, addresses and telephone numbers for distribution to its customers or others, it shall, at the request of a customer, include in the directory:

- A. The full name of the customer;
- B. The first name of one other person bearing the customer's last name;
- C. The customer's address; and
- D. The customer's telephone number.

2. No additional charge; this section published in directory. A telephone utility may not make an additional charge to comply with this section, provided that the names are listed in the manner set out in this section. A telephone utility shall publish a copy of this section in each telephone directory distributed to a customer.

§7502. Telephone directory errata lists

1. List to be provided. Every telephone utility operating in this State, if ordered by the commission, shall provide the customers within a directory area with an errata list of all people in the directory area whose names have been omitted through telephone utility error from the white pages of the telephone directory. The errata list shall:

- A. Include the name, address and telephone number of each person who is eligible under this section;

B. Be compiled within the first 2 months subsequent to the delivery of the telephone directory; and

C. Be included in the bills sent to telephone customers in the area served by that directory for a period of 2 months.

2. Omission at request of customer. Nothing in this chapter prohibits a telephone utility from omitting a listing at the request of a customer.

§7503. Public telephone service for disabled persons

1. Placement of coin telephone. All coin telephones placed after September 14, 1979, in a public place, or an area to which the public is invited, which are intended for use by the public, shall be placed at a height and in a position which permits their use by physically disabled persons, as defined in Title 25, sections 2701 and 2702, respectively.

2. Violations. Any person violating this section commits a civil violation for which a forfeiture of not more than \$500 may be adjudged for each telephone which is not placed in accordance with this section.

§7504. Special telephone equipment

The commission shall retain jurisdiction over the sale or lease of volume control and low-speed power telephone equipment and of bone conductor receivers, pursuant to section 103, until it makes an affirmative finding, based on full consideration of an evidentiary record, that there are adequate retail outlets in the State to ensure affordable and competitive pricing of this equipment and its availability in sufficient quantities to satisfy the current and projected demand for that equipment by customers with hearing or speech impairments. The commission shall have discretion not to regulate any person whose share of the total market in the State of volume control or low-speed power telephone equipment or of bone conductor receivers is considered not to be substantial.

CHAPTER 77

EMERGENCY USE OF TELEPHONE PARTY LINES

§7701. Emergency use of party lines; refusal to surrender; penalty

1. Surrender of party line required. Any person using a party line shall surrender it on request to another person who needs the line to report a fire or summon police, medical or other aid in case of emergency.

2. Offense. A person is guilty of unlawful interference with a party line if he:

A. Willfully refuses to surrender the use of a party line to another person in accordance with subsection 1; or

B. Requests the use of a party line on pretext that an emergency exists, knowing that an emergency does not exist.

3. Penalty. Unlawful interference with a party line is a Class E crime.

CHAPTER 79

TELEPHONE AND TELEGRAPH LINES

§7901. Telephone and telegraph lines

1. Connection between the lines of 2 or more utilities. Whenever the commission, after a hearing, finds that a physical connection can reasonably be made between the lines of 2 or more telephone utilities or 2 or more telegraph utilities whose lines can be made to form a continuous line of communication by the construction and maintenance of suitable connections for the transfer of messages or conversations and that public convenience and necessity will be served by the connection, or finds that 2 or more telegraph or telephone utilities have failed to establish joint rates, tolls or charges for service by or over their lines, and that joint rates, tolls or charges ought to be established, the commission may, by its order:

A. Require that the connection be made, except where the purpose of the connection is primarily to secure the transmission of local messages or conversations between points within the same city or town;

B. Require that conversations be transmitted and messages transferred over the connection under such rules as the commission may establish; and

C. Prescribe through lines and joint rates, tolls and charges to be made and to be used, observed and enforced in the future.

2. Division of costs between utilities. If the telephone or telegraph utilities do not agree upon the division between them of the cost of the physical connection or connections or the division of the joint rates, tolls or charges established by the commission over the through lines, the commission may, after further hearing, establish the division by supplemental order.

§7902. Lines along highways and across waters

Every telegraph or telephone utility or person transmitting television signals by wire may, except as limited, construct, maintain and operate its lines upon and along the routes and between the points stated in its certificate of incorporation; and may, subject to the conditions and under the restrictions provided in this Title, construct its lines along, over, under and across any of the roads and streets and across or under any of the waters upon and along the routes, with all necessary erections and fixtures.

§7903. Connection with other telephone and telegraph lines

Every telegraph or telephone utility in the State may, upon such terms as may be agreed upon by the contracting parties, subject to the control of the commission:

1. Connect lines. Connect its lines with those of any other like utility;
2. Sell or lease lines. Sell or lease its lines and property, in whole or in part, to any other like utility; and
3. Purchase or lease lines. Purchase or lease the lines and property, in whole or in part, of any like utility.

§7904. Land for public use

Every telegraph or telephone utility in the State may purchase, or take and hold as for public uses, land necessary for the construction and operation of its lines. Land may be taken and damages for it may be estimated, secured, determined and paid as provided for water utilities by sections 6502 to 6512.

CHAPTER 81

DUTIES OF TELEGRAPH UTILITIES§8101. Liability for delays and errors; falsifying or divulging contents of dispatch

1. Delays and errors. A person or company owning or using a telegraph line, wholly or partly in the State, is liable for the whole amount paid on a dispatch if there is an error or unnecessary delay in writing out, transmitting or delivering the dispatch within its delivery limits, making it less valuable to the person interested in it. The operator or agent shall transmit all dispatches in the order in which they are received, under a penalty of \$100 to be recovered by the person whose dispatch is intentionally postponed.

2. Penalty for falsifying contents of dispatch. An operator or agent who intentionally falsifies a dispatch commits a civil violation for which a forfeiture of not less than \$20 nor more than \$100 may be adjudged. In case of his avoidance or inability to pay the judgment, his employer must pay the sum.

3. Penalty for divulging contents of dispatch. An operator or agent is guilty of divulging the contents of a private dispatch if he intentionally divulges any part of the contents of a private dispatch entrusted to him for transmission or delivery. Intentionally divulging the contents of a dispatch is a Class E crime.

§8102. Liability for fraud; common law liabilities

Nothing in this chapter exonerates telegraph operators, agents, clerks or other officers from liability for fraud committed or attempted by means of telegraphic

communication or the utility from any liability existing at common law for the neglect or wrong doing of the utility or its agents.

CHAPTER 83

CABLE TELEVISION COMPANIES§8301. Public Utilities Commission regulation

Cable television companies, to the extent they offer services like those of telephone utilities subject to regulation by the commission, shall be subject to the commission's jurisdiction over rates, charges and practices, as provided in this Title.

§8302. Pole attachments

Where a cable television system and public utility have failed to agree on the joint use of poles or other equipment or on the terms and conditions or compensation for the use, the matter shall be subject to section 711.

CHAPTER 85

RADIO PAGING SERVICE§8501. Separate accounting required

Any public utility which operates a radio paging service shall either maintain a separate set of accounting records with respect to that service or establish a separate subsidiary, the creation of which shall be subject to commission approval and conditions under section 708, subsection 2. The commission may exempt a public utility from this requirement for good cause shown.

Sec. 7. PL 1981, c. 660, §4, is repealed.

Sec. 8. P&SL 1885, c. 495, §10, as repealed and replaced by P&SL 1963, c. 174, §1, is repealed.

Sec. 9. P&SL 1885, c. 495, §12, as enacted by P&SL 1963, c. 174, §2, is repealed.

Sec. 10. **Purpose of recodification.** It is the purpose of this Act to restate and recodify the Maine Revised Statutes, Title 35. The primary purposes are to reorganize the body of law contained in Title 35 into a more logical format; to delete obsolete provisions of Title 35; and to clarify some of the more archaic and older provisions of Title 35. The purpose of this recodification is not to produce any significant change in the rights, powers or duties of state agencies, utilities and others subject to Title 35. The absence from the enactment of Title 35-A of an explicit incorporation of any judicial interpretation of a provision of Title 35 shall not be construed as an indication of rejection by the Legislature of that interpretation. Neither shall the absence from the enactment of Title 35-A of an explicit rejection of a judicial interpretation of a provision of Title 35 be con-

strued as an indication of Legislative acceptance of that interpretation.

PART B

Sec. 1. 4 MRSA §1151, sub-§2, as amended by PL 1985, c. 748, §1, and c. 771, §1, is repealed and the following enacted in its place:

2. Licensing jurisdiction. Except as provided in Title 5, section 10004; Title 10, section 8003-A; Title 29; and Title 35-A, section 3132, the Administrative Court shall have exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General, to revoke or suspend licenses issued by the agency, and shall have original jurisdiction upon complaint of a licensing agency to determine whether renewal or reissuance of a license of that agency may be refused. The Administrative Court shall have original concurrent jurisdiction to grant equitable relief in proceedings initiated by an agency or the Department of the Attorney General alleging any violation of a license or licensing laws or rules.

Notwithstanding any other provisions of law, no licensing agency may reinstate or otherwise affect a license suspended, revoked or modified by the Administrative Court pursuant to a complaint filed by the Attorney General, without the approval of the Attorney General.

Sec. 2. 5 MRSA §200-B, as amended by PL 1985, c. 393, is further amended to read:

§200-B. Authority of Attorney General to request telephone records

Whenever the Attorney General, a deputy attorney general or a district attorney has reasonable grounds to believe that the services of a public utility, subject to the jurisdiction of the Maine Public Utilities Commission, as defined in Title 35 35-A, section 45 102, subsections 17 and 19 16 and 18, furnished to a person or to a location, is being or may be used for, or to further, an unlawful purpose, he may demand, in writing, all the records in the possession of such that public utility relating to such that service. Upon a showing of cause to any Justice of the Supreme Judicial Court or the Superior Court or Judge of the District Court, the justice or judge shall approve the demand. Such The showing shall be by the affidavit of any law enforcement officer. Upon receipt of such a demand, approved by such a justice or judge, such the public utility shall forthwith deliver to the person making the request all the records or information in compliance with the demand. If the person making request demands that the public utility not release the fact of the request or that records will be or have been supplied, the public utility shall not, without court order, release such the fact or facts. No such public utility or employee thereof may be criminally or civilly responsible for furnishing any records or information in compliance with the demand.

Sec. 3. 5 MRSA §10051, sub-§1, as amended by PL 1985, c. 748, §3, is further amended to read:

1. Jurisdiction. Except as provided in section 10004; Title 10, section 8003; Title 29; and Title 35 35-A, section 3132, the Administrative Court shall have exclusive jurisdiction upon complaint of any agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by the agency and shall have original jurisdiction upon complaint of an agency to determine whether renewal or reissuance of a license of that agency may be refused.

Sec. 4. 5 MRSA §10051, sub-§4, as enacted by PL 1983, c. 683, §1, is amended to read:

4. Violations. The Administrative Court shall have exclusive jurisdiction to hear complaints of the Public Utilities Commission for violations of Title 35 35-A, section 314 704.

Sec. 5. 5 MRSA §12004, sub-§7, ¶A, sub-¶(10), is repealed and the following enacted in its place:

(10) <u>Maine Public Utility Financing Bank, Board of Commissioners</u>	<u>Legislative per diem</u>	<u>35-A MRSA §2904</u>
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Sec. 6. 5 MRSA §12004, sub-§8, ¶A, sub-¶(22), is repealed and the following enacted in its place:

(22) <u>Public Utilities</u>	<u>Board of Directors, Maine Municipal and Rural Electrification Cooperative Agency</u>	<u>Not Authorized</u>	<u>35-A MRSA §4131</u>
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Sec. 7. 10 MRSA §963-A, sub-§13, ¶B, as enacted by PL 1985, c. 344, §7, is amended to read:

B. For a system which does generate electricity, an energy generating system which uses biomass, peat, solar, waste, water and related dams, wind, wood or coal, and which is owned, in whole or in part, by an individual, municipality, corporation or other governmental entity or business association which qualifies as a cogenerator or small power producer under Title 35 35-A, chapter 172 33.

Sec. 8. 10 MRSA §1063, sub-§2, ¶¶H and I, as enacted by PL 1981, c. 476, §2, are amended to read:

H. In the case of water supply system projects:

- (1) That the project will result in substantial public benefits;
- (2) That the issuance of securities for the project has been reviewed and approved by the Public Utilities Commission in accordance with Title 35 35-A,

Chapter 9, sections 901 to 910 and 6508; and

(3) The Public Utilities Commission and the Department of Human Services have certified that all permits, licenses and approvals required from those departments have been issued or granted or that none are required, and until a location permit from the applicable licensing authority has been issued or it is determined that none is required. Any subsequent enlargement of or addition to the project, for which approval is sought from the authority, shall also require certification by the Public Utilities Commission and the Department of Human Services;

I. In the case of an energy generating system project or energy distribution project which is intended to produce or distribute energy for sale to any person, municipality, firm, corporation or the State that the issuance of securities for the project has been reviewed and approved by the Public Utilities Commission in accordance with Title 35 35-A, chapter 9, sections 901 to 910 and 6508;

Sec. 9. 12 MRSA §602, sub-§12 is amended to read:

12. Eminent domain. When land is taken by eminent domain, the proceedings for such purpose shall be in accordance with Title 35 35-A, chapter 263: 65;

Sec. 10. 12 MRSA §668, as amended by PL 1979, c. 541, Pt. A, §125, is further amended to read:

§668. Manner of acquisition by eminent domain

Any acquisition of property by the bureau by eminent domain pursuant to section 667 shall be made in the manner provided in Title 35 35-A, chapter 263: 65.

Sec. 11. 12 MRSA §4757, 2nd ¶, as amended by PL 1975, c. 771, §155, is further amended to read:

The board shall cause a copy of such decree to be recorded in the registry of deeds for the county in which the wetland is situated. After a decree has been entered providing that any such order of the board shall not apply to the wetland involved in the appeal, the board may, after causing an appraisal to be made, negotiate for the purchase of such wetland, if it deems that acquisition of the same is necessary for the purposes of section 4751 and Title 38, sections 471 to 478. If purchase, or a written agreement therefor, has not been effected within 60 days after negotiations have begun, and the board determines that an emergency situation exists which would cause an immediate threat to the public safety, health and welfare, to the protection of public or private property, or to public or private salt water supplies, or to the conservation of wildlife or freshwater estuarine or marine fisheries, the board shall declare that the public exigency requires the taking of such wetland, and, with the consent of the Governor, may acquire in behalf of the State the fee of such wetland or any lesser interest therein by eminent domain, the proceedings for such taking

to be in accordance with Title 35 35-A, chapter 263: 65.

Sec. 12. 13 MRSA §332 is amended to read:

§332. Mortgages

Title 35, sections 1091 to 1139 23, chapter 605, subchapters IV and V, shall apply to and include all mortgages of franchises, lands or other hereditaments or of all of them heretofore or hereafter given by any corporation to trustees to secure scrip or bonds of said corporation. The holder of said scrip or bonds shall have the benefit of all said sections, whether the said mortgages have been or may be foreclosed in the manner provided by Title 35, section 1091 23, section 5161, or in any other legal manner, and to the extent of and with reference to the property covered by the mortgage. The new corporation, when organized, shall have the rights and privileges of the original corporation.

Sec. 13. 13-B MRSA §201, sub-§2, ¶B, as amended by PL 1979, c. 129, §94, is further amended to read:

B. Cooperatives, as that term is used in Title 13, section 1771, et seq; credit unions, as defined in Title 9-B, section 131; rural electrification cooperatives, as that term is used in Title 35 35-A, section 2801 et seq chapter 37, subchapters I, II and III; consumers' cooperatives, as that term is used in Title 13, section 1501 et seq; and fish marketing associations, as that term is used in Title 13, section 2001 et seq.

Sec. 14. 17 MRSA §2510, sub-§1, ¶B, as enacted by PL 1981, c. 355, is amended to read:

B. Public utilities in maintaining adequate facilities in emergencies in compliance with Title 35 35-A, section 51 301;

Sec. 15. 20-A MRSA §15705, sub-§10, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

10. Acquire land; eminent domain. Acquire in the name of the authority, by purchase or otherwise, on the terms and conditions and in the manner it deems proper, or by the exercise of the power of eminent domain, land or property rights. Using eminent domain, the authority may not take more than 25 acres for one project. In using eminent domain, the authority shall be governed by Title 35 35-A, chapter 263: 65;

Sec. 16. 23 MRSA §54, as amended by PL 1971, c. 593, §22, is further amended to read:

§54. Highway openings

Wherever highways maintained by the State are affected, whether ~~said~~ the highways are situated in cities, towns or plantations, the department shall have all and the same rights, powers and duties in connection therewith as are granted to cities in city streets by sections 3351 to 3359, and to cities and towns by Title 35 35-A,

sections ~~2346~~ 2306 and ~~2349~~ 2310. Whenever the opening fee provided by section 3354 or by Title ~~35~~ 35-A, section ~~2351~~ 2312, has been paid to the department and a permit for digging up and opening a highway maintained by the State has been issued by the department, the holder of said permit shall be entitled to make the opening described therein without the payment of fees to the city or town or village corporation in which the street, road or highway to be opened is situated.

Sec. 17. 23 MRSA §255, 3rd ¶ is amended to read:

"Utility," as used in this section, ~~shall mean~~ means and ~~include~~ includes any public utility under the jurisdiction of the Public Utilities Commission and any corporation which owns and operates a telephone or telegraph system or an oil pipe line system and which is subject to the jurisdiction of the Federal Communications Commission or Interstate Commerce Commission and any municipality or any quasi-municipal body operating a utility service such as a fire or police alarm line, street lighting, sewerage or water pipes and any rural electrification cooperative which is subject to Title ~~35~~ 35-A, chapters ~~221 to 227~~ chapter 37, subchapters I, II and III.

Sec. 18. 23 MRSA §651, 4th ¶ is amended to read:

Wherever, on or along public highways, ditches or drains have existed for a period of 20 years or longer, which cause water to be flowed away from the highway, there shall be a conclusive presumption that easements for such flowage from such ditches or drains exist, but only to the extent of the original flowage. This paragraph ~~shall~~ does not apply in the cases protected by Title ~~35~~ section ~~1221~~ section 6025.

Sec. 19. 23 MRSA §1967, sub-§4, as enacted by PL 1981, c. 595, §3, is amended to read:

4. Authority for transfers of interest in land to the authority. All counties, cities, towns and other political subdivisions or municipalities and all public agencies and commissions of the State, and all public service corporations and districts, notwithstanding any contrary provisions of law, may lease, lend, grant or convey to the authority, upon its request, upon such terms and conditions as the proper authorities of the counties, cities, towns, political subdivisions, other municipalities, agencies, commissions, public service corporations and districts deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality other than the regular and formal action of the authorities concerned, any real or personal property or rights therein which may be necessary or convenient to the effectuation of the authorized purposes of the authority, including real and personal property or rights therein already devoted to public use. As used in this subsection, the term "public service corporation" includes every public utility as defined in Title ~~35~~ 35-A, section 102, subsection 13, and every corporation referred to in Title 13-A.

Sec. 20. 23 MRSA §2903, as amended by PL 1971, c. 593, §§19 and 20, is further amended to read:

§2903. Maintenance of railroad crossings already laid out

Notwithstanding any section of Title ~~35~~, chapter ~~51~~ Part 7, in case of ways already laid out which cross over or under any railroad track or tracks and not at grade, the allocation of the expense of maintaining so much thereof as is within the limits of such railroad shall be determined, de novo, as provided by section 2902, by the Department of Transportation upon application to it by any corporation whose track is or tracks are so crossed, or upon application by the municipal officers of any town in which the crossing is located, or upon application by the Department of Transportation.

Sec. 21. 23 MRSA §2928, as enacted by PL 1981, c. 456, Pt. A, §81, is amended to read:

§2928. Railroad company may enter private property

For the purpose of creating and maintaining the fair view mentioned in sections 2921 to 2927 or for the purpose of improving the view at one or more angles, any steam railroad company subject to this chapter may enter upon private property and remove any embankment or other obstruction except a dwelling house. The owner of the property is entitled to damages, and may have the damages estimated and paid in a manner provided in Title ~~35~~, chapter ~~51~~ chapter 607, and there is the same right of appeal as given in that chapter.

Sec. 22. 23 MRSA §4220, as enacted by PL 1977, c. 341, §2, is amended to read:

§4220. Prior orders and rules effective

All rules, ~~regulations~~, orders and decrees in effect prior to the effective date of this Act October 24, 1977, which were issued by the Public Utilities Commission pursuant to the provisions in former Title 35, which provisions are embraced in this subchapter, shall remain in full force and effect until the Commissioner of Transportation has acted pursuant to applicable provisions of this subchapter.

Sec. 23. 24-A MRSA §2338, sub-§2, ¶C, as enacted by PL 1985, c. 372, Pt. B, §5, is amended to read:

C. If the State as a market is found to be noncompetitive, the Public Advocate, as appointed under Title ~~35~~ 35-A, section ~~1-A~~ sections 1701 to 1710, may be a party to proceedings under Title 39, section 22-D, relating to rates. A filing requesting that proceeding shall pay a filing fee as provided under section 2350, subsection 3, paragraph B.

Sec. 24. 24-A MRSA §2350, sub-§3, ¶B, as enacted by PL 1985, c. 372, Pt. B, §5, is amended to read:

B. The Public Advocate, as appointed under Title ~~35~~ ~~35-A, section 1-A~~ sections 1701 to 1710, shall be a party to proceedings under Title 39, section 22-D, relating to rates for the Accident Prevention Account or Safety Pool.

Sec. 25. 29 MRSA §242, sub-§1, ¶C, as amended by PL 1981, c. 698, §129, is further amended to read:

C. Used for the carrying of passengers for hire and

(1) Operating under chapter 25, ~~or under Title 35, chapter 91 or 97~~; or

(2) Operating, regularly or seasonally, in interstate commerce, over regular routes between any point or points in this State and any point or points in any other state or between any point or points in any adjacent foreign country and any point or points in this State more than 15 miles from the place of entry into this State, shall pay double the registration fee provided in paragraph A. Except that notwithstanding any other provisions in sections 242 to 245, an owner or operator of interstate motor buses used for the transportation of passengers for hire, operating a fleet of 2 or more motor buses under the authority of the Interstate Commerce Commission and the Public Utilities Commission, shall register and pay registration fees, as scheduled in sections 242 to 245, for that number of motor buses of the owner or operator as the proportion which the mileage of all such motor buses of the owner or operator, operated in this State bears to the total mileage of all such motor buses of the owner or operator operated both within and without the State in accordance with the owner or operator or his or its predecessor's operation of the preceding year, and the Secretary of State is authorized to promulgate such rules and regulations as may be necessary to effectuate such apportionment. Motor vehicles owned by residents of any state, province or foreign country, where residents of this State registering motor vehicles are required to pay double the fee charged against resident owners, shall pay double the fee provided in paragraph A, whether for private use or for livery or hire.

Sec. 26. 29 MRSA §831, as amended by PL 1985, c. 658, §1, is further amended to read:

§831. Insurance for vehicles for hire

The Secretary of State shall not register any motor vehicle rented or leased on plans commonly known as U-Drive, Drive Yourself or Driverless Car plans nor any motor vehicle used for livery or hire, except as provided in ~~Title 35, section 1510~~ Title 35-A, section 2708, and no person, firm or corporation may operate or cause to be operated upon any public highway in this State any such motor vehicle, until the owner or owners thereof shall have procured insurance or a bond, having a surety company authorized to transact business in this State

or 2 individuals as sureties thereon, in the amount of \$20,000 because of bodily injury or death to any one person, and subject to the limit respecting one person, in the amount of \$40,000 because of bodily injury to or death to 2 or more persons in any one accident, and in the amount of \$10,000 because of injury to and destruction of property in any one accident, which insurance or bond shall be approved by the Secretary of State and shall indemnify the insured against any legal liability for personal injury, the death of any person or property damage, which injury, death or damage may result from or have been caused by the operation of the motor vehicle described in the contract of insurance or such bond. The Secretary of State shall not approve the policy or bond unless it provides primary coverage for the operator as well as the owner.

Sec. 27. 29 MRSA §1553, as amended by PL 1981, c. 698, §132, is further amended to read:

§1553. Effect of rule or code

A provision of this Title, excepting this subchapter, shall continue to be of force and effect only until superseded by a rule, ~~regulation~~ or code adopted pursuant to the Vehicle Equipment Safety Compact and as provided in section 1554. Any such rule, ~~regulation~~ or code shall specify the provision or provisions of existing statute being superseded in accordance with and as required by this subchapter. Any such provision or provisions are repealed, effective on the date when the rule, ~~regulation~~ or code superseding such provision or provisions becomes effective pursuant to the Vehicle Equipment Safety Compact. A rule, ~~regulation~~ or code, or any part thereof of a rule or code, which shall be is inconsistent with rules ~~and regulations~~ adopted by either the Bureau of State Police Public Safety or the Department of Transportation under chapter 25, Title 35, ~~chapters 1 to 17 and the Department of Transportation under chapter 91 or 97~~ or by the Interstate Commerce Commission under Part II of the Interstate Commerce Act of 1935 as amended Ex Parte No. MC — 40, shall not apply to motor vehicles subject to regulation by the Bureau of State Police, Department of Transportation or by the Interstate Commerce Commission, respectively.

Sec. 28. 29 MRSA §2241, sub-§1, ¶I, as repealed and replaced by PL 1983, c. 480, Pt. A, §33, is amended to read:

I. Has failed to appear in court on the day specified, either in person or by counsel, after being ordered to do so to answer any violation of chapter 25 ~~or Title 35, chapter 91 or 97~~;

Sec. 29. 29 MRSA §2711, sub-§1, as enacted by PL 1981, c. 469, §2, is amended to read:

1. General penalty. Any person, firm or corporation, or any officer, agent or employee of any corporation, who violates, orders, authorizes or knowingly permits a violation of any of the provisions of this chapter, or any rule

issued by the bureau pursuant to the authority of this chapter, or issued by the Public Utilities Commission and remaining in effect pursuant to this chapter, is guilty of a Class E crime.

If any such person, after being ordered to appear in court to answer any violation of this chapter or any rule issued by the bureau or by the Public Utilities Commission and remaining in effect pursuant to this chapter, fails to appear in court on the day specified, either in person or by counsel, the court shall notify the Secretary of State, who shall, pursuant to chapter 17, at the expiration of 10 days after mailing the person, postage prepaid, a notice of his intention to do so, suspend or revoke his license to operate any motor vehicle subject to regulation under this chapter, if licensed in this State, or suspend or revoke his right to operate any motor vehicle subject to regulation under this chapter, if licensed in this State, or suspend or revoke his right to operate any motor vehicle subject to regulation under this chapter in this State, and suspend or annul the registration of the motor vehicle operated or owned by that person so ordered to appear, if the motor vehicle is registered in this State, and the suspension, annulment or revocation shall continue in effect until that person appears in court as ordered.

If any carrier holding a permit from the bureau has been required to appear in any court, through its appointed lawful agent or attorney, and fails to comply with or satisfy any lawful order or judgment of the court issued pursuant to this chapter, the court shall notify the bureau, which shall immediately suspend the permit held by the carrier until such time as the carrier complies with or satisfies the order or judgment. In the case of such failure by a carrier holding a certificate issued under ~~Title 35, section 1505 or holding~~ or a license issued under ~~Title 35, section 1643 chapter 25~~, the court shall notify the Department of Transportation, which shall immediately suspend the certificate or license until such time as the carrier complies with or satisfies the order or judgment.

Sec. 30. 29 MRSA §2713, sub-§3, ¶A, as amended by PL 1985, c. 350, §1, is further amended to read:

A. There shall be allocated to the Department of Public Safety for State Police up to \$1,100,000 annually from the fund to carry out the statutory duties of the bureau imposed by this chapter and Title 35 35-A and for related activities.

Sec. 31. 30 MRSA §4882, sub-§1, as enacted by PL 1977, c. 617, is amended to read:

1. Relocating utility facilities; expenses. Any public utility, as defined in ~~Title 35 35-A, section 15 102, sub-section 13~~, that is required to move or relocate its facilities from or in any traveled way because of the requirements of a development plan, as defined in section 4881, subsection 2, which is approved after the effective date of this Act pursuant to the procedures

established for the approval of development plans shall not be required to install the relocated or any new facilities underground at its own expense, but shall be reimbursed from federal funds provided to implement these plans for the costs of placing utility facilities underground. The relocation costs subject to reimbursement shall not exceed the cost of underground installation less the cost of providing the same service with the same capacity through a new overhead system.

A. In determining the amount of reimbursement, in the first instance, the public utility shall itemize for the administering authority of the development plan, the components of the utility's relocation costs and the cost of providing the same service with the same capacity through a new overhead system. In the event there is disagreement with respect to the reimbursement, the disagreement shall be submitted to the Public Utilities Commission which, after notice and hearings, shall determine the amount of the reimbursement.

B. The difference in costs, if any, between the underground and new overhead construction, shall qualify for reimbursement to the administering authority from the Federal Government to the fullest extent allowed by law. In the event that federal moneys are not available to refund a public utility for relocating its facilities as described in this section, the relocation costs shall be considered ordinary costs of business for rate-making purposes.

Sec. 32. 30 MRSA §4982, next to last ¶, as repealed and replaced by PL 1971, c. 574, §1, is amended to read:

Each year prior to such submission to the municipal officers, the board of directors of the district, by a 2/3 vote of its entire membership, shall establish a formula for contributions to be made by each municipality in order to defray any projected deficit, and the formula and estimated amount of such contribution required from each municipality shall be shown in said estimates filed with the municipal officers of each municipality. Such formula shall be based upon such items as route mileage, profit or loss resulting from such service to the municipality, population and such other factors as the board of directors deem relevant. In the event the board of directors is unable to establish the formula by securing a 2/3 vote of its entire membership, it shall, on or before November 1st, petition the Public Utilities Commission as provided and shall include with its submission of said estimates to the municipal officers of each municipality a statement that a formula has not been established but that a petition has been made to the Public Utilities Commission for findings and a decision with respect to a formula. In the event a municipality refuses to accept a formula submitted to it on or before November 1st as established by the board of directors, the municipal officers of such municipality shall, within 30 days after such submission, notify the board of directors of such refusal and the board of directors shall, on or before December 15th, petition the Public Utilities Commission as

provided. Upon the filing of a petition by the district, the Public Utilities Commission, after notice to all the municipalities comprising the district and a hearing, shall consider the formula and make its findings and decision with respect thereto within 60 days from the date of the filing of the petition by the district. Said findings and decision of the Public Utilities Commission shall be binding upon the district and the municipalities. The district or any municipality may appeal from the findings and decision of the Public Utilities Commission in accordance with Title 35 35-A, section 303 1320.

Sec. 33. 32 MRSA §3302, sub-§1, ¶A, as enacted by PL 1977, c. 469, §6, is amended to read:

A. Plumbing by regular employees of public utilities as defined in Title 35 35-A, section 15 102, when working as such;

Sec. 34. 36 MRSA §1484, sub-§3, ¶C, as amended by PL 1983, c. 828, §3, is further amended to read:

C. If the motor vehicle is owned by a corporation or a partnership, the excise tax shall be paid in the following manner.

(1) If it is a corporation or partnership other than one described in subparagraph (2), the excise tax shall be paid to the place in which the registered or main office of that organization is located, except that if the organization has an additional permanent place, or places, of business where motor vehicles are customarily kept, the tax on these vehicles shall be paid to the place where such permanent place of business is located. The temporary location of an office and the stationing of vehicles in connection with a construction project of less than 24 months duration is not considered to constitute a permanent place of business. In the case of a foreign corporation or partnership not maintaining a place of business within the State, the excise tax shall be paid to the State.

(2) In the case of corporations described in Title 35 35-A, ~~section 2301~~ sections 2101 to 2104, any excise taxes owed shall be paid to the place in which the registered or main office of that organization is located.

(3) If a municipality, county or motor vehicle owner feels the excise tax has been improperly levied under the authority of this paragraph, the owner, county or municipality may request a determination of this question by the State Tax Assessor. The State Tax Assessor's determination shall be binding on all parties. Any party may seek review of the determination in accordance with the Maine Rules of Civil Procedure, Rule 80-B.

Sec. 35. 37-B MRSA §504, sub-§1, as enacted by PL 1983, c. 460, §3, is amended to read:

1. Land acquisition. The director may acquire by eminent domain in accordance with Title 35 35-A, chapter 263 65 and with approval of the Governor, or by purchase, gift or otherwise, real estate in fee simple, or any interest therein, for use as a Veterans' Memorial Cemetery. The land shall not exceed 200 acres in area and shall be located near the center of population of the State.

Sec. 36. 38 MRSA §484, 4th ¶, as amended by PL 1977, c. 696, §343, is further amended to read:

In case of a permanently installed power generating facility of more than 1,000 kilowatts or a transmission line carrying 100 kilovolts or more proposed to be erected within this State by an electrical company or companies, the proposed development, in addition to meeting the requirements of subsections 1 to 4, shall also have been approved by the Public Utilities Commission under Title 35 35-A, section 13-A 3132.

Sec. 37. 38 MRSA §932 is amended to read:

§932. Eminent domain; assessment of damages

Any person, firm or corporation authorized and empowered to build, maintain and operate pipes, conduits, penstocks, tunnels and canals under section 931 is further authorized and empowered to exercise the right of eminent domain by taking and holding as for public uses in the manner and subject to the limitations prescribed in Title 35 35-A, section 3242 6502, such lands and rights-of-way as such person, firm or corporation may require for such purposes when the water which will be stored, retained and discharged through the use of such pipes, conduits, penstocks, tunnels and canals will be devoted to public uses. All proceedings relating to damages caused by the building, maintaining and operating of said pipes, conduits, penstocks, tunnels and canals shall be ascertained and determined in the same manner as prescribed in ~~said Title 35 35-A~~, sections 3243 to 3252 6503 to 6512.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect July 1, 1987.

Effective July 1, 1987.

CHAPTER 142

H.P. 13 — L.D. 11

AN ACT to Deny Certain State Funds to Any Person Who Refused to Register Under the United States Military Selective Services Act.

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

20-A MRSA c. 433 is enacted to read: