

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
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lating any law governing the conduct of billing aggregators or service providers or from engaging in, or continuing, any conduct or practice indicating a lack of fitness to engage in the business of a billing aggregator or service provider;

F. Has, within the last 10 years, pleaded guilty or nolo contendere to, or been convicted of, any crime indicating a lack of fitness to engage in the business of a billing aggregator or service provider;

G. Is the subject of any of the following orders currently effective that were issued within the last 5 years:

(1) An order by a state or federal agency, entered after notice and opportunity for hearing, denying, suspending or revoking the person's license or registration as a service provider or billing aggregator, or the substantial equivalent of those terms, as defined in this section;

(2) A cease and desist order issued by any state or federal agency with general authority to enforce laws prohibiting unfair or deceptive acts or practices in a trade or business or with specific authority to regulate billing aggregators or service providers;
or

(3) An order entered by a court of competent jurisdiction or entered after notice and an opportunity for hearing by any state or federal occupational licensing agency denying, suspending, revoking or restricting the person's occupational license as a result of allegations of misconduct. This subparagraph also applies when the denial, suspension, revocation or restriction of the license is pursuant to a consent agreement between the person and the licensing agency, whether or not the agency also issued an order; or

H. Has, within the last 5 years, entered into a consent agreement with a state or federal enforcement or regulatory agency in which the person agreed to discontinue engaging in one or more practices alleged by the agency to have been an unfair or deceptive act or practice.

Sec. 45. 35-A MRSA §7107, sub-§5, as enacted by PL 1999, c. 59, §1 and affected by §3, is amended to read:

5. Enforcement authority. In addition to any authority the commission may have pursuant to other

law, the commission may enforce this section in accordance with this subsection.

A. In an adjudicatory proceeding, the commission may impose an administrative penalty upon the following entities for the following violations:

(1) A service provider who provides or charges for an unauthorized service;

(2) A service provider or billing aggregator who is required to be registered under subsection 2 and who is not properly registered pursuant to that subsection;

(3) A billing agent who knowingly bills on behalf of a service provider who is required to be registered under subsection 2 and who is not properly registered pursuant to that subsection at the time the billing agent's bill is generated; and

(4) A billing agent that fails to comply with any of the requirements of subsection 4.

B. The amount of any administrative penalty imposed under paragraph A may not exceed \$1,000 per violator for violations arising out of the same incident or complaint and must be based on:

(1) The severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts;

(2) The history of previous violations; ~~and~~

(3) The amount necessary to deter future violations-;

(4) Good faith attempts to comply after notification of a violation; and

(5) Such other matters as justice requires.

~~Penalties collected by the commission under this subsection must be deposited in the General Fund.~~

See title page for effective date.

CHAPTER 506

S.P. 86 - L.D. 163

An Act To Provide Energy Opportunities to Northern Maine

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

Whereas, the funds previously allocated to the Northern Maine Transmission Corporation Fund in the Finance Authority of Maine are essential to the viability of and to finance essential economic development in northern Maine; and

Whereas, it is necessary that funding modifications be made as soon as possible to ensure the continuous availability of funds to carry out the Northern Maine Transmission Corporation's essential public functions; 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. 10 MRSA §963-A, sub-§49-H, as reallocated by RR 1999, c. 1, §11, is amended to read:

49-H. Transmission facilities project. "Transmission facilities project" means a project approved by the Northern Maine Transmission Corporation, as established in section 9202, to carry out the purposes of chapter 1003 or any electric transmission, gas transmission, energy transfer or electric generation facility, including necessary appurtenances, otherwise proposed to the authority to benefit northern Maine.

Sec. 2. 10 MRSA §1043, sub-§2, ¶J, as amended by PL 1999, c. 484, §6, is further amended to read:

J. In the case of major business expansion projects, the applicant is creditworthy and there is a strong likelihood that the revenue obligation securities will be repaid through the revenues of the project and any other sources of revenues and collateral pledged to the repayment of those securities. In order to make this determination, the authority shall consider such factors as it considers necessary to measure and evaluate the sufficiency of the pledged revenues to repay the obligations, including:

(1) Whether individuals or entities obligated to repay the obligations have demonstrated sufficient revenues from the project or from other sources to repay the obligations, and a strong probability that those revenues will continue to be available for

the term of the revenue obligation securities;

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

(3) Whether the applicant demonstrates that the benefits projected to be created by the project are enhanced through the use of financing assistance from the authority;

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

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

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

(7) Whether collateral securing the repayment obligation is reasonably sufficient under the circumstances.

Financing assistance for any one major business expansion project may not exceed \$25,000,000 in loan amount. The authority may establish, pursuant to rules adopted in accordance with Title 5, chapter 375, subchapter H 2, application procedures, approval criteria and reasonable fees for major business expansion projects; ~~and~~

Sec. 3. 10 MRSA §1043, sub-§2, ¶K, as enacted by PL 1999, c. 484, §7, is amended by amending subparagraph (8) to read:

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

Sec. 4. 10 MRSA §1043, sub-§2, ¶L is enacted to read:

L. In the case of transmission facilities projects, the applicant is creditworthy and there is a strong likelihood that the revenue obligation securities will be repaid through the revenues of the project and any other source of revenues and collateral pledged to the repayment of those securities. In order to make this determination, the authority shall consider such factors as it considers necessary and appropriate in light of the special purpose or other nature of the business entity owning the project to measure and evaluate the project and the sufficiency of the pledged revenues to repay the obligations, including:

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

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

(3) Whether the applicant demonstrates that the benefits projected to be created by the project are enhanced through the use of financing assistance from the authority;

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

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

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

(7) Whether collateral securing the repayment obligation is reasonably sufficient under the circumstances;

(8) Whether the proposed project enhances the opportunities for economic development;

(9) The effect that the proposed project financing has on the authority's financial resources; and

(10) Whether the Northern Maine Transmission Corporation, as established in section 9202, has recommended the project.

Upon request by the authority, state agencies, including but not limited to the Public Utilities Commission, shall provide necessary assistance to the authority in evaluating the feasibility of the project and its importance for northern Maine. In providing assistance, the Public Utilities Commission shall consider whether the proposed project enhances the competitiveness of the wholesale and retail energy market; how the proposed project is likely to affect energy prices for Maine residents; whether the proposed project will augment or enhance the reliability and stability of the grid; and whether there is likely to be a long-term need for the product as produced by the proposed project.

The authority may establish, pursuant to rules adopted in accordance with Title 5, chapter 375, subchapter 2, application procedures, approval criteria and reasonable fees for transmission facilities projects. Rules adopted by the authority under this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. In addition, the authority may require the applicant to pay the reasonable costs of an evaluation of the project risks by an independent consultant. If the authority directs the applicant to pay for such an independent evaluation of the project, the authority shall make every reasonable effort, in its discretion, to minimize the cost of the evaluation and any delay such an evaluation may cause in authority action.

The authority may not finance any project involving an electric transmission line capable of operating at 69 kilovolts or more unless the Public Utilities Commission has issued a certificate of public convenience for the construction of the line pursuant to Title 35-A, section 3132.

Sec. 5. 10 MRSA §1053, sub-§6, as repealed and replaced by PL 1999, c. 531, Pt. G, §1, is amended to read:

6. Securities outstanding. The principal amount of revenue obligation securities the authority may have outstanding at any one time, to which subsection 5 is stated to apply in the trust agreement or other document, may not exceed an aggregate

principal amount equal to ~~\$777,000,000~~ \$877,000,000 as follows:

A. The sum of \$330,000,000 consisting of not more than \$275,000,000 for loans and up to \$55,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for electric rate stabilization projects;

B. The sum of \$120,000,000 consisting of not more than \$100,000,000 for loans and up to \$20,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for major business expansion projects;

C. The sum of \$57,000,000 consisting of not more than \$45,000,000 for loans and up to \$12,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to workers' compensation residual market mechanism projects;

D. The sum of \$150,000,000 less the aggregate outstanding balance of mortgage loans secured by capital reserve funds pursuant to section 1032 for all other revenue obligation securities issued pursuant to this subchapter; ~~and~~

E. The sum of \$120,000,000 consisting of not more than \$100,000,000 for loans and up to \$20,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for paper industry job retention projects; ~~and~~

F. The sum of \$100,000,000 consisting of not more than \$85,000,000 for loans and up to \$15,000,000 for use of bond proceeds to fund capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for transmission facilities projects as defined in section 963-A, subsection 49-H.

The amount of revenue obligation securities issued to refund securities previously issued may not be taken into account in determining the principal amount of securities outstanding, as long as proceeds of the refunding securities are applied as promptly as possible to the refunding of the previously issued securities. In computing the total amount of revenue obligation securities of the authority that may at any time be outstanding for any purpose, the amounts of the outstanding revenue obligation securities that have been issued as capital appreciation bonds or as similar instruments are valued as of any date of calculation at their then current accreted value rather than their face value.

Sec. 6. 10 MRSA §9202, sub-§1, as enacted by PL 1999, c. 513, §6, is amended to read:

1. Establishment and purpose. The Northern Maine Transmission Corporation is established as a body corporate and politic and public instrumentality of the State. The corporation is a special purpose corporation formed and managed as a subsidiary of the authority. The exercise by the corporation of the powers conferred by this chapter ~~shall be~~ is deemed the performance of essential public functions. The purpose of the corporation is to ~~examine the need for and viability of and to finance, permit, construct, own and operate electric transmission lines necessary to connect electric utilities in the northern region of the State with the transmission grid of the United States in a manner adequate, in the opinion of the authority, to allow customers serviced by those electric utilities to receive the benefits of service similar to all other electric customers in this State.~~

A. Evaluate electric transmission interconnections between northern Maine and the rest of the United States and Canada, the transmission of natural gas or other energy resources in northern Maine and the construction of additional electric generation facilities in or adjacent to northern Maine; and

B. Examine the need for and viability of and, in its discretion, finance, permit, construct, own in whole or in part, operate or otherwise facilitate the construction or operation of:

(1) Electric transmission lines necessary to connect electric utilities in northern Maine with the transmission grid of the United States or Canada; or

(2) Facilities for the transmission of natural gas and generation or production and transfer of any other energy resources in the northern region of the State.

Sec. 7. 10 MRSA §9202, sub-§§1-A and 1-B are enacted to read:

1-A. Construction; other approvals. This chapter may not be interpreted to exempt the construction, ownership or operation of any project or facility from any approval required by law or rule, including but not limited to any approval required pursuant to Title 35-A, chapter 21, or to alter the franchise rights of any transmission and distribution utility.

The corporation may not finance, permit, construct, own in whole or in part or operate any electric transmission line capable of operating at 69 kilovolts or more unless the Public Utilities Commission has issued a certificate of public convenience for the

construction of the line pursuant to Title 35-A, section 3132.

1-B. Records disclosure and confidentiality. Records of the corporation, as a subsidiary of the authority, are subject to the disclosure and confidentiality provisions governing the records of the authority under section 975-A.

Sec. 8. 10 MRSA §9203, sub-§3, as enacted by PL 1999, c. 513, §6, is amended to read:

3. Acceptance of proposals for connections. The corporation shall request and receive proposals from public and private entities to finance, permit, construct or operate any natural gas or electric transmission lines necessary to connect electric the facilities of any transmission and distribution utilities and natural gas customers in the northern part of the State with the transmission grid of and natural gas transmission system outside of northern Maine in the United States or Canada, and may approve those proposals if they are in keeping with the intent of this chapter. If the corporation approves a project, the authority may separately consider providing financing for the project pursuant to section 1053, subsection 6, paragraph F if the proponent of the project submits a completed application to the authority.

Sec. 9. 10 MRSA §9203, sub-§§4, 5 and 6 are enacted to read:

4. Conduct studies. The corporation may conduct or fund such studies, including, but not limited to, feasibility studies, as may be necessary and convenient to the performance of its duties.

5. Rulemaking. The corporation may adopt any rule, including rules establishing its bylaws, necessary or useful for carrying out any of its powers or duties. Rules adopted under this subsection may provide for fees charged for review of project applications. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

6. Contracts. The corporation may enter into contracts with the authority for the provision of administrative and underwriting services.

Sec. 10. 10 MRSA §9204, sub-§2, as enacted by PL 1999, c. 513, §6, is amended to read:

2. Administrative expenses. Costs and expenses of maintaining, servicing and administering the fund and of performing any powers or duties under this chapter may be paid out of amounts in the fund.

Sec. 11. 35-A MRSA §2102, sub-§2-A, as enacted by PL 1999, c. 513, §7, is repealed.

Sec. 12. 35-A MRSA §3132, sub-§2, as amended by PL 1999, c. 398, Pt. A, §46 and affected by §§104 and 105, is further amended to read:

2. Construction of transmission line. Except as otherwise provided in subsection 3-A, whenever any transmission and distribution utility or utilities propose to erect within this State a transmission line capable of operating at 100 kilovolts, or more, or a transmission line capable of operating at 69 kilovolts or more that is proposed to be financed, permitted, constructed, owned in whole or in part or operated by the Northern Maine Transmission Corporation pursuant to Title 10, chapter 1003 or financed by the Finance Authority of Maine pursuant to Title 10, section 1053, subsection 6, paragraph F, the utility or utilities or project proponent shall file a petition for the approval of the proposed line. The petition for approval of the proposed transmission line must contain such information as the commission by rule prescribes. The petition for approval must be set down for public hearing. The commission shall issue its order within 6 months after the petition is filed unless this period is extended either 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, 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.

At the time of filing of a petition for approval of a proposed line under this section, the utility shall send a copy of the petition by certified mail to the municipal officers of the municipality or municipalities in which the line is to be located.

Sec. 13. 35-A MRSA §3132, sub-§§2-A and 2-B are enacted to read:

2-A. Other projects requiring approval. The commission shall by rule or order adopt standards and procedures for processing an application from an applicant that is not a transmission and distribution utility for a certificate of public convenience and necessity under this section for a transmission line capable of operating at 69 kilovolts or more that is proposed to be financed, permitted, constructed, owned in whole or in part or operated by the Northern Maine Transmission Corporation pursuant to Title 10, chapter 1003 or financed by the Finance Authority of Maine pursuant to Title 10, section 1053, subsection 6, paragraph F. Except as the commission determines otherwise appropriate, the standards and procedures must conform as far as possible with those that would apply to an application from a transmission and distribution utility. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2-B. Standards for certain projects. The commission may deny a certificate of public convenience and necessity for a transmission line capable of operating at 69 kilovolts or more that is proposed to be financed, permitted, constructed, owned in whole or in part or operated by the Northern Maine Transmission Corporation pursuant to Title 10, chapter 1003 or financed by the Finance Authority of Maine pursuant to Title 10, section 1053, subsection 6, paragraph F upon a finding that the line is reasonably likely to adversely affect any transmission and distribution utility or its customers.

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

Effective June 26, 2003.
