

Proposed Amendment to: LD 1646, An Act To Restore Local Ownership and Control of Maine's Power Delivery Systems

NOTE:

Changes to Sec. 1 through Sec. 6 of the printed LD shown as follows:

New language is in "**bold**";

New language in headings is in *bold italics*;

Removed language is in "~~strikeout~~".

Sec 7 is all new language added in the amendment. It is shown in regular text.

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

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

36.

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

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

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

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

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

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

Sec. 4. 35-1 MRSA §3502, is amended to read:

Notwithstanding section 310, any consumer-owned transmission and distribution utility, **except for the Maine Power Delivery Authority established in Chapter 40**, that proposes to increase rates, tolls or charges by not more than 15% of the utility's annual operating revenues or proposes to decrease rates, tolls or charges in any amount may elect to set rates pursuant to this section and section 3503.

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Presented by Rep. Berry (07.22.20)**

Sec. 5. 35-A MRSA c. 40 is enacted to read:

CHAPTER 40

MAINE POWER DELIVERY AUTHORITY

§ 4001. Definitions

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

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

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

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

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

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

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

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

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

§ 4002. Maine Power Delivery Authority established; board members

The Maine Power Delivery Authority is established to provide for its customer-owners in this State reliable electric transmission and distribution services ~~at the lowest possible cost and stable~~ **electric transmission and distribution rates in accordance with this chapter and to support the State in meeting its climate goals in accordance with Title 38, chapter 3-A.**

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

The board is composed of ~~10~~ **13** members, **including 6 members** appointed by the Governor and confirmed by the ~~Legislature~~ **Senate and 7 elected members**, all of whom must be residents of the State. ~~One member must be a residential consumer of electricity, one member must be a representative of a commercial consumer of electricity and one member must be a representative of an industrial consumer of electricity. No more than 5 of the members may be members of the same political party. The Governor shall appoint members as follows:~~

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

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

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

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

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

A. The 6 members appointed by the Governor must have relevant expertise as follows:

(1) One member with expertise in utility law or regulation;

(2) One member with expertise in economics or utility finance;

(3) One member with expertise in utility management, planning or engineering;

(4) One member with expertise in clean energy or the environment;

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

(6) One member with expertise in the needs of electricity consumers.

B. Each of the 7 elected members must meet the qualification and residency requirements for a member of the House of Representatives as specified in the Maine Constitution, Article IV, Part First, section 4. Each elected member must be a customer of an investor-owned transmission and distribution utility in the State or a customer-owner of the Maine

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Power Delivery Authority. Each elected member must represent five of the State’s 35 State Senate Districts, as defined in Title 21-A, section 1203-B, as follows:

- (1) One member representing State Senate Districts 1 through 5;**
- (2) One member representing State Senate Districts 6 through 10;**
- (3) One member representing State Senate Districts 11 through 15;**
- (4) One member representing State Senate Districts 16 through 20;**
- (5) One member representing State Senate Districts 21 through 25;**
- (6) One member representing State Senate Districts 26 through 30; and**
- (7) One member representing State Senate Districts 31 through 35.**

The commission shall adopt rules governing the election of members of the board and shall consult with the Secretary of State in developing the rules. Rules adopted under this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

2. Term of office. Members of the board serve for 6-year terms except for members of the first board as provided in this subsection.

A. ~~A~~ An appointed member of the board serves for a term of 6 years except that appointed members of the first board serve as follows, determined by lot by those members after their appointment: 4 2 members serve 6-year terms, 3 2 members serve 4-year terms and 3 2 members serve 2-year terms. A An appointed member serves until the end of the member's term or until the member's successor has been appointed, whichever is later.

B. An elected member of the board serves for a term of 6 years except that elected members of the first board serve as follows, determined by lot by those members after their election: 3 members serve 6-year terms, 2 members serve 4-year terms and 2 members serve 2-year terms

If there is a vacancy in the board, it must be filled in the same manner described in subsection 1 and the person appointed or elected to fill a vacancy serves for the unexpired term of the member whose vacancy the person is filling. Members may be reappointed or reelected.

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

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

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§ 4003. Powers and duties

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

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

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

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

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

5. Acquisition of utility facilities and property. ~~Within one year of appointment of the first board, the~~ **The authority shall purchase, or acquire by the exercise of the right of eminent domain, all utility facilities in the State owned or operated or held for future use by any investor-owned transmission and distribution utility, except that the board, by vote of at least 8 members, may extend the period by 12 months in accordance with this subsection.** The board may also purchase or assume **acquire by the exercise of the right of eminent domain in accordance with this subsection, any other utility property should it determine such an acquisition to be in the interest of its customer-owners. The board shall finance the purchase or acquisition of utility facilities or property under this subsection by issuing debt in accordance with chapter 9. The board may not purchase or take by eminent domain any utility facilities or property under this subsection until 24 months after the effective date of this chapter or 6 months after the first meeting of the board, whichever is**

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later, except that the board, by vote of at least 10 members may establish a later date before which any acquisition of utility facilities or property may be executed.

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

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

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

A. Within 6 months after the first meeting of the board, the authority shall:

(1) Identify the utility facilities and any other utility property in the State owned or operated or held for future use by any investor-owned transmission and distribution utility to be purchased by the authority;

(2) Determine a purchase price offer to be made for the utility facilities and other utility property; and

(3) Deliver notice of the purchase price offer, including detailed description of the utility facilities and other utility property to be purchased, to the investor-owned utility that owns, operates or holds for future use the subject utility facilities and property.

B. After the receipt of a notice of the purchase price offer under paragraph A, subparagraph (3), an investor-owned utility may, within 30 days of the date of receipt, submit a counter offer to the board. If the board rejects the counter offer, within 30 days of the date of receipt of the rejection, an investor-owned utility may, petition with the Superior Court of Kennebec County to determine and order an alternative purchase price for the subject utility facilities or property in accordance with this paragraph. After the filing of a petition by an investor-owned utility under this paragraph, the Superior Court judge, shall, as expeditiously as possible:

(1) Select, in consultation with the authority and the petitioner, a referee or referees with relevant expertise and capabilities to determine a recommended purchase price for the utility facilities and property;

(2) Complete a trial or hearing, as appropriate, for the presentation of evidence to referees, who shall submit a recommended purchase price to the judge; and

(3) Render a decision and order the purchase price to be paid by the authority to the petitioner for the subject utility facilities and property.

The decision of the Superior Court under this subparagraph is appealable to the Law Court as in any civil action.

C. The taking of utility facilities and property by the authority is governed by this paragraph:

(1) If a petition is filed under paragraph B, the authority may, after any appeals are resolved, take the subject utility facilities and property identified in paragraph A by eminent domain at the final price rendered by the courts, in the same manner and under the same conditions as set forth in chapter 65; or

(2) If a petition is not filed under paragraph B, the authority may take the subject utility facilities and property identified in paragraph A by eminent domain at the purchase price offer, in the same manner and under the same conditions as set forth in chapter 65.

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

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

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

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

B. Notwithstanding any other provision of this chapter or any other provision of law to the contrary, the authority is subject to **the following in the same manner as an investor-owned utility: section 310; section 3104; section 3132 subsection 2-D; sections 3132-A, 3132-B,**

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3232-C and section 3132-D; section 3144; section 3210-C, subsections 3, 7 and 11; sections 3212 and 3212-A; and section 3214, subsection 2-A;

§ 4004. Rates

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

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

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

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

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

§ 4006. Governmental function

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

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§ 4007. Termination of the authority

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

§ 4008. Accountability, transparency and reporting

The authority is subject to the same standards of governmental review and freedom of access as the Public Utilities Commission. By April 15th of each year, **beginning in 2023**, the authority shall submit an **annual** report to the joint standing committee of the Legislature having jurisdiction over utilities matters summarizing ~~present and future~~ **the activities and the performance of the authority in meeting its obligations to its ratepayers and employees during the preceding calendar year and its plans for the current year and subsequent 5 years.**

Sec. 6. Review of laws and report. The Public Utilities Commission shall examine all laws that may be affected by this Act or need to be changed as a result of this Act, including laws governing the Maine Power Delivery Authority and laws relating to investor-owned transmission and distribution utilities that may be eliminated as a result of this Act. The commission shall determine any modifications to laws that may be necessary or appropriate as a result of this Act or to effectuate the purposes of this Act and shall submit proposed legislation **to implement those modifications** to the Joint Standing Committee on Energy, Utilities and Technology no later than January 15, ~~2020~~ **2022**. The Joint Standing Committee on Energy, Utilities and Technology may report out a bill relating to the subject matter of this Act to the Second Regular Session of the ~~129th~~ **130th** Legislature.

Section 7 is all new language.

Sec. 7. Transition board established. The Maine Power Delivery Authority Transition Board referred to in this section as “the transition board” is established to prepare for and assist in the establishment and initial operation of the Maine Power Delivery Authority, established in Title 35-A, Chapter 40.

1. The transition board is composed of 11 voting members, 5 appointed by the Governor, 3 appointed by the President of the Senate, and 3 appointed by the Speaker of the House of Representatives. Members of the transition board may not have a personal association, economic or fiduciary interest that would be affected by a recommendation, decision, or other matter handled by the board. Members of the transition board must have relevant expertise or represent a specific interest as follows:

- A. One member with expertise in utility law or regulation;
- B. One member with expertise in economics or utility finance;
- C. One member with expertise in utility management or planning;

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- D. One member with expertise in clean energy or the environment;
- E. One member with expertise in the needs of organized labor;
- F. One member with expertise in the needs of electricity consumers; and
- G. At least one member with expertise in tax-exempt organizations.

2. All appointments must be made no later than 30 days following the effective date of this Act. Once all appointments have been made the transition board shall elect from its members a chair and a vice-chair. When the appointment of all members has been completed, and the chair and vice-chair of the transition board have been elected, the chair shall call and convene the first meeting of the transition board. If 30 days or more after the effective date of this Act a majority but not all appointments have been made, the transition board may elect a chair and vice-chair from its existing members, and the transition board may meet and conduct its business.

3. Six members of the board constitute a majority and a quorum. The vice-chair shall serve as acting chair in the absence of the chair. All decisions of the board must be made by a majority vote of the board.

4. The board shall conduct due diligence studies, evaluate the net public benefits and develop a business plan for the authority. The board shall submit reports on the results of these tasks in accordance with subsection 5:

A. The board shall complete the following due diligence studies relating to the Maine Power Development Authority:

- (1) A study of the future capital expenditure needs of the State’s transmission and distribution system;
- (2) A study to evaluate the finance and tax issues related to the authority, including but not limited to: finance and tax-related obstacles or opportunities in the initial acquisition of investor-owned utilities and the transition to a consumer-owned utility; recommendations for optimizing the financial and capital structure of the authority; and a tax strategy to mitigate costs and maximize both short- and long-term benefits;
- (3) A study to analyze and recommend a competitive procurement process and an optimal contractual arrangement for an independent contractor to manage and operate the authority, including but not limited to identification of appropriate performance standards for the contractor; and
- (4) A study of regional and federal systems, regulations and requirements that affect the transition to the authority as a consumer-owned utility, including but not limited to: membership in regional transmission organizations; obligations with respect to the

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Federal Energy Regulatory Commission; and opportunities to maximize regional and local transmission network service savings.

B. The board shall evaluate and develop estimates of the net public benefits of the establishment and operation of the authority compared to the continued operation of the investor-owned transmission and distribution utilities, based on a range of scenarios and assumptions regarding acquisition costs, comparative capital costs and grid investment levels;

C. The board shall create a recommended outline for a transition plan and a business plan to guide the Maine Power Delivery Authority, established in Title 35-A, Chapter 40, in the transition, development and early operations of the authority. The outline for the transition plan must, at a minimum, include: a timeline for the transition including specific objectives or benchmarks; identification of individuals or entities responsible for each objective or benchmark; and potential variations and contingencies for the transition. The outline for the business plan must, at a minimum, provide: a description of the authority; an overview of its objectives and mission; an outline of necessary operations procedures; a description of the management and organizational structure; and an outline and analysis of the financial plan for the authority; and

In fulfilling its duties under this subsection, the board shall work with the Maine Climate Council, established in Title 38, section 577-A, to minimize the duplication of work already being performed and coordinate regarding future grid-related capital expenditure needs for the state.

5. The board shall submit the following reports to the Joint Standing Committee of the Legislature having jurisdiction over energy and utility matters:

A. The First Report, due December 2021, including the reports of the due diligence studies, as outlined in subsection 4, paragraph A, and the determination of net public benefits as outlined in subsection 4, paragraph B;

B. The Second Report, due April 2022, including the business plan required in subsection 4, paragraph C, and any updates to the due diligence studies or determination of net public benefits from the First Report in paragraph A; and

C. The Final Report, due December 2022, summarizing any updates to the information in the Second Report and any responses to requests for further information from members of the Joint Standing Committee of the Legislature having jurisdiction over energy and utility matters.

The Joint Standing Committee of the Legislature having jurisdiction over energy and utility matters may, after receipt of each report under this subsection, submit legislation for the presentation to the Second Regular Session of the 130th Legislature or the First Regular Session of the 131st Legislature to amend, delay or abandon the creation and implementation of the Maine Power Delivery Authority.

6. Members of the board are eligible for the Legislative Per Diem and Expenses available to the Maine Power Delivery Authority Board as established in Title 5, Section 12004-G, subsection 36.

7. Staff assistance shall be provided to the board by the Maine Office of the Public Advocate. The Office of the Public Advocate shall hire staff or independent contractors as necessary for the board to conduct its work. Staff assistance shall be funded by a one-time assessment of each Maine investor

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owned transmission and distribution utility on its gross operating revenues to produce sufficient revenue for expenditures of the Office of the Public Advocate for contracted services and administrative costs associated with the transition. Revenue produced from the assessments must be deposited in the Public Advocate Regulatory Fund and used only for purposes specified in this section. Maine Office of the Public Advocate must obtain input from and participation from the board in developing requests for proposals, in review of bids and in review of draft deliverables prepared by contractors.

SUMMARY

This amendment makes the following changes to the bill:

1. Amends and clarifies the purpose of the Maine Power Delivery Authority to improve reliability, stabilize rates, help Maine to meet the state’s climate goals;

2. Changes the composition and requirements of members of the board of the authority as follows to shift from a 10 person appointed board to a 13 person board including 6 appointed members and 7 elected members. The amendment requires the 6 appointed members to have specific types of relevant experience or expertise. It requires elected members to meet the qualification and residency requirements of members of House of Representatives and specifies that each elected member represent 5 State Senate districts;

3. Amends the provisions in the bill regarding the acquisition of the utility facilities and property of the investor-owned utilities by the authority as follows:

A. It specifies that no purchase or taking may occur until 24 months after the law takes effect or 6 months after the first meeting of the board, whichever is later and allows the board to extend that time by a majority vote; in comparison, the bill required the acquisition to occur within 12 months of the establishment of the board; and

B. The amendment provides a process through the courts to determine a price for the acquisition of the utility facilities and property by the authority. This process may be initiated by an investor-owned utility within 30 days of receiving a purchase price offer from the authority. The amendment authorizes the authority to take the subject facilities and property at the price determined by the court after any appeals have been resolved;

4. Specifies that the authority is subject to laws governing regulation of rates, investment planning and construction in the same manner as investor-owned utilities are regulated;

5. Clarifies that the authority is fully required to make payments in lieu of taxes to any municipality, county or other political subdivision to which an investor-owned utility, whose facilities or the authority has acquired, paid taxes in the same amount of those taxes as if the utility had continued to own the property of facilities; and

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6. Establishes the Maine Power Delivery Authority Transition Board and outlines the composition and operation of the board; directs the Maine Office of the Public Advocate to provide staff assistance to the board; directs the board to conduct due diligence studies, evaluate the net public benefits and develop a business plan for the Maine Power Delivery Authority; directs the board to coordinate its efforts with a Maine Climate Council; and directs the board to submit reports to the Joint Standing Committee of the Legislature having jurisdiction over energy and utility matters in a series of reports, the First Report due December 2021, the Second Report due April 2022, and the Final Report due December 2022.