



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1275

S.P. 396

In Senate, March 23, 2011

An Act To Amend the Laws Governing the Activity of Certain Nonprofit Corporations

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

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.

Secretary of the Senate

Presented by Senator HOBBS of York.

Cosponsored by Representative TUTTLE of Sanford and

Senators: RECTOR of Knox, SAVIELLO of Franklin, Representatives: CORNELL du HOUX of Brunswick, CRAY of Palmyra, DION of Portland, DUNPHY of Embden, LIBBY of Waterboro, MARTIN of Eagle Lake.

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

2 **Sec. 1. 13-B MRSA §404, sub-§1, ¶A**, as enacted by PL 1977, c. 525, §13, is
3 amended to read:

4 A. Comply with the requirements of sections 104 and 106 and, in the case of the
5 articles of incorporation for a nonprofit corporation exercising operating or
6 administrative authority over the operation of high-voltage electric transmission
7 facilities within this State, section 404-A;

8 **Sec. 2. 13-B MRSA §404-A** is enacted to read:

9 **§404-A. Nonprofit corporations exercising operating authority over high-voltage**
10 **electric transmission lines**

11 **1. Filing conditions.** The Secretary of State may not file articles of incorporation
12 under section 404 for a nonprofit corporation exercising operating or administrative
13 authority over the operation of high-voltage electric transmission facilities within this
14 State unless the Secretary of State determines that the nonprofit corporation satisfies the
15 requirements of this section in addition to the other requirements of this chapter. The
16 nonprofit corporation must demonstrate that it has an open and transparent governance
17 structure designed to protect the public's interest. In evaluating whether the nonprofit
18 corporation has met this requirement, the Secretary of State shall consider, among other
19 factors, the following:

20 A. Whether all meetings of its board of directors are conducted as public proceedings
21 in accordance with Title 1, chapter 13, subchapter 1, and all records of the
22 corporation are available for public inspection as public records in accordance with
23 Title 1, chapter 13, subchapter 1, with the exception of records that fall within an
24 exception to the definition of "public records" under Title 1, section 402, subsection
25 3;

26 B. Whether members of the board of directors are selected through a process of
27 public nomination and election;

28 C. Whether the board of directors includes one or more representatives of consumers
29 of electricity; and

30 D. Whether the rates, tariffs, rules, practices and activities of the nonprofit
31 corporation are established by a process designed to ensure that such rates, tariffs,
32 rules, practices and activities are just and reasonable.

33 The Secretary of State shall take into account any determination of the Public Utilities
34 Commission as to whether the nonprofit corporation has an open and transparent
35 governance structure designed to protect the public's interest.

36 **Sec. 3. 13-B MRSA §1201, sub-§1**, as enacted by PL 1977, c. 525, §13, is
37 amended to read:

38 **1. Authorization needed.** Except as provided in section 1215, ~~no~~ a foreign
39 corporation shall may not carry on activities in this State until it ~~shall have~~ has been

1 authorized to do so as provided in this chapter, or as provided by some other public law
2 of this State. ~~A~~ Except as provided in section 1202, subsection 3, a foreign corporation
3 ~~shall~~ may not be denied authority to carry on activities in this State solely because the
4 laws of the jurisdiction of its incorporation differ from the laws of this State with respect
5 to the organization and internal affairs of the corporation. For purposes of this chapter,
6 exercising operating or administrative authority over the operation of high-voltage
7 electric transmission facilities within this State constitutes carrying on activities in this
8 State.

9 **Sec. 4. 13-B MRSA §1202, sub-§3** is enacted to read:

10 **3. Foreign corporations exercising operating authority over high-voltage**
11 **electric transmission facilities; special certificate required.** A foreign corporation
12 exercising operating or administrative authority over the operation of high-voltage
13 electric transmission facilities within this State must comply with the requirements of this
14 subsection in addition to the other requirements of this chapter in order to carry on its
15 activities in this State. As part of its application to carry on its activities in this State, the
16 corporation must file a certificate signed by a duly authorized officer affirming that the
17 corporation has an open and transparent governance structure designed to protect the
18 public's interest, including that the corporation agrees to and will comply with the
19 following:

20 A. That all meetings of its board of directors are conducted as public proceedings in
21 accordance with Title 1, chapter 13, subchapter 1 and all records of the corporation
22 are available for public inspection as public records in accordance with Title 1,
23 chapter 13, subchapter 1, with the exception of records that fall within an exception
24 to the definition of "public records" under Title 1, section 402, subsection 3;

25 B. That members of the board of directors are selected through a process of public
26 nomination and election;

27 C. That the board of directors includes one or more representatives of consumers of
28 electricity; and

29 D. That the rates, tariffs, rules, practices and activities of the corporation are
30 established by a process designed to ensure that such rates, tariffs, rules, practices and
31 activities are just and reasonable.

32 Upon receipt of the certificate, the Secretary of State shall evaluate whether the applicant
33 foreign corporation has an open and transparent governance structure designed to protect
34 the public's interest. In performing this evaluation, the Secretary of State shall also
35 consider factors including any determination of the Public Utilities Commission as to
36 whether the foreign corporation has an open and transparent governance structure
37 designed to protect the public's interest. The Secretary of State may not accept for filing
38 an application from a foreign corporation exercising authority over high-voltage electric
39 transmission facilities within the State for authority to carry out its activities in this State
40 unless the Secretary of State concludes that the applicant foreign corporation has an open
41 and transparent governance structure designed to protect the public's interest.

42 **Sec. 5. 13-B MRSA §1203, sub-§1**, as enacted by PL 1977, c. 525, §13, is
43 amended to read:

1 **1. Filing of application for authorization to carry on activities.** Upon filing by the
2 Secretary of State of the application for authority and in the case of a foreign corporation
3 governed by section 1202, subsection 3, meeting all the requirements of section 1202,
4 subsection 3, the foreign corporation shall must be authorized to carry on activities in this
5 State, and may carry on any activities:

6 A. ~~Which~~ That it is authorized to carry on in the jurisdiction of its incorporation;
7 and

8 B. ~~Which~~ That may be carried on by a domestic corporation organized under this
9 Act, unless in its application for authority, the corporation expressly limited itself to a
10 lesser number or type of activities, in which case the corporation may carry on the
11 affairs to which it so limited its application if such affairs qualify under this
12 paragraph and paragraph A.

13 **Sec. 6. 13-B MRSA §1301, sub-§1, ¶D,** as enacted by PL 2007, c. 323, Pt. B,
14 §27 and affected by Pt. G, §4, is amended to read:

15 D. A brief statement of the character of the activities in which the domestic or
16 foreign corporation is actually engaged in this State, if any; ~~and~~

17 **Sec. 7. 13-B MRSA §1301, sub-§1, ¶E,** as enacted by PL 2007, c. 323, Pt. B,
18 §27 and affected by Pt. G, §4, is amended to read:

19 E. The address of its principal office, wherever located; and

20 **Sec. 8. 13-B MRSA §1301, sub-§1, ¶F** is enacted to read:

21 F. In the case of a corporation exercising operating or administrative authority over
22 the operation of high-voltage electric transmission facilities within this State, a
23 certificate signed by a duly authorized officer affirming that the corporation has an
24 open and transparent governance structure designed to protect the public's interest,
25 including that the corporation agrees to and will comply with the following:

26 (1) That all meetings of its board of directors are conducted as public
27 proceedings in accordance with Title 1, chapter 13, subchapter 1 and all records
28 of the corporation are available for public inspection as public records in
29 accordance with Title 1, chapter 13, subchapter 1, with the exception of records
30 that fall within an exception to the definition of "public records" under Title 1,
31 section 402, subsection 3;

32 (2) That members of the board of directors are selected through a process of
33 public nomination and election;

34 (3) That the board of directors includes one or more representatives of
35 consumers of electricity; and

36 (4) That the rates, tariffs, rules, practices and activities of the corporation are
37 established by a process designed to ensure that such rates, tariffs, rules, practices
38 and activities are just and reasonable.

1

SUMMARY

2 This bill requires a nonprofit corporation exercising operating or administrative
3 authority over the operation of high-voltage electric transmission facilities within this
4 State to demonstrate that it has an open and transparent governance structure designed to
5 protect the public's interest in order for the Secretary of State to file such corporation's
6 articles of incorporation. The bill provides factors the Secretary of State shall consider in
7 evaluating such a showing. The bill also requires a corporation exercising operating or
8 administrative authority over the operation of high-voltage electric transmission facilities
9 within this State to include a certification in its annual report that it has an open and
10 transparent governance structure designed to protect the public's interest. The bill also
11 provides that carrying on activities includes operating high-voltage transmission lines
12 within the State. The bill also provides that a foreign corporation exercising operating or
13 administrative authority over the operation of high-voltage electric transmission facilities
14 within this State must file a certificate signed by a duly authorized officer affirming that
15 the corporation has an open and transparent governance structure designed to protect the
16 public's interest and that it will meet certain criteria in order to obtain authority to carry
17 on its activities in this State. The bill also clarifies that a foreign corporation is not
18 authorized to carry on activities in this State unless the Secretary of State has filed an
19 application for authority by such corporation meeting all the requirements of the Maine
20 Revised Statutes, Title 13-B, section 1202.