

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

—
S.P. 543 - L.D. 1644

An Act To Expand the Availability of Natural Gas to Maine Residents

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

Whereas, there are energy distribution system projects that will likely move forward within the next 6 months to take advantage of the summer and fall construction seasons; and

Whereas, the Finance Authority of Maine will need to implement the provisions of this Act prior to June 2012 to facilitate financing support for energy distribution system projects in 2012; and

Whereas, without immediate enactment, this legislation may not take effect in time to affect this year's construction season; and

Whereas, the availability of natural gas to large users and other consumers will potentially save tens of millions of dollars per year and losing a construction season and delaying projects will result in a significant lost opportunity; 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 §962, sub-§2, as amended by PL 1985, c. 344, §5, is further amended to read:

2. Revenue obligation securities. Issue revenue obligation securities to finance eligible projects, except that revenue obligation securities may not be issued for energy distribution system projects after January 1, 2018 pursuant to section 1044, subsection 13;

Sec. 2. 10 MRSA §963-A, sub-§12, as amended by PL 2011, c. 261, §1, is further amended to read:

12. Energy distribution system project. "Energy distribution system project" means an energy distribution system owned, in whole or in part, by an individual, municipality, corporation or other governmental entity or business association and that uses biomass, peat, solar, waste, water and related dams, wind, wood, or coal or that distributes or transmits oil, biofuels, propane, compressed natural gas, liquefied natural gas or natural gas ~~or that distributes or transmits natural gas.~~

Sec. 3. 10 MRSA §1043, sub-§2, ¶O, as enacted by PL 2011, c. 261, §4, is amended to read:

O. In the case of an energy distribution system project regulated by the Public Utilities Commission with respect to rates or terms of service or that requires, for construction or operation, authorization or certification from the commission, the following conditions are met.

(1) The energy distribution system project has received all authorizations or certifications from the Public Utilities Commission necessary for construction and operation of the project. The authority may issue a certificate of approval for a project that has received conditional approvals or certifications from the commission, except that the authority's certificate becomes legally effective only upon fulfillment of the conditional provisions of the commission's certificates or approvals. If the commission has approved rates to be charged by the project or has issued a certificate of public convenience and necessity for the project, the authority shall take into consideration any findings and conclusions of law of the commission, including any findings and conclusions pertaining to the need for the project and the financial viability of the project.

(2) The authority has reviewed and considered any comments provided by the Director of the Governor's Office of Energy Independence and Security and the Public Advocate.

(3) The authority has determined that the applicant is creditworthy and that there is a reasonable 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 these determinations, 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 and the specific purposes of the project to measure and evaluate the project and the sufficiency of the pledged revenues to repay the obligations, including, but not limited to:

(a) 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 reasonable probability that those revenues will continue to be available for the term of the revenue obligation securities;

(b) Whether the applicant demonstrates a reasonable 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;

- (c) 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;
- (d) Whether the applicant meets or exceeds industry average financial performance ratios commonly accepted in determining creditworthiness in that industry;
- (e) 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;
- (f) Whether collateral securing the repayment obligation is reasonably sufficient under the circumstances;
- (g) Whether the proposed project enhances the opportunities for economic development;
- (h) The effect that the proposed project financing has on the authority's financial resources;
- (i) The financial performance of similar projects;
- (j) The need for the project, as determined by the Public Utilities Commission and as indicated by any comments provided by the Director of the Governor's Office of Energy Independence and Security, other public officials and members of the public;
- (k) The nature and extent of customer commitment to use the project or the fuel or energy the project distributes or transmits; ~~and~~
- (l) The cost advantages to end users of the fuel or energy to be distributed or transmitted by the project, to the extent those advantages may affect market penetration by the project; and
- (m) The nature and extent of the applicant's equity contribution to payment of the costs of the project; such a contribution may not be less than 25% of the expected cost of the project.

This paragraph is repealed January 1, 2018.

Sec. 4. 10 MRSA §1044, sub-§13 is enacted to read:

13. Limitation. The authority may not issue revenue obligation securities for energy distribution system projects unless the authority issued a certificate of approval for the energy distribution system project before January 1, 2018. Notwithstanding this subsection, revenue refunding securities may be issued to refund any outstanding revenue obligation securities.

Sec. 5. 10 MRSA §1053, sub-§6, ¶A, as amended by PL 2011, c. 261, §6, is further amended to read:

A. The sum of ~~\$330,000,000~~ \$180,000,000 consisting of not more than ~~\$275,000,000~~ \$150,000,000 for loans and up to ~~\$55,000,000~~ \$30,000,000 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 or loans for energy distribution system projects, ~~except that the authority's maximum financial liability for any energy distribution system project may not exceed the limits established annually by the authority;~~

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

In House of Representatives, 2012

Read twice and passed to be enacted.

..... Speaker

In Senate, 2012

Read twice and passed to be enacted.

..... President

Approved 2012

..... Governor