Maine Revised Statutes

Title 35-A: PUBLIC UTILITIES HEADING: PL 1987, c. 141, Pt. A, §6 (new)

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Title 35-A: PUBLIC UTILITIES HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

Part 1: PUBLIC UTILITIES COMMISSION HEADING: PL 1989, C. 502, PT. A, §123 (RP)

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 and for other entities subject to this Title that is consistent with the public interest and with other requirements of law and to provide for reasonable licensing requirements for competitive electricity providers. The basic purpose of this regulatory system as it applies to public utilities subject to service regulation under this Title is to ensure safe, reasonable and adequate service, to assist in minimizing the cost of energy available to the State's consumers and to ensure that the rates of public utilities subject to rate regulation are just and reasonable to customers and public utilities. [2013, c. 369, Pt. F, §1 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A2 (AMD). 1999, c. 398, §§A104,105 (AFF). 2011, c. 623, Pt. D, §2 (AMD). 2013, c. 369, Pt. F, §1 (AMD).

§102. DEFINITIONS

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

2-A. **Competitive service provider.** "Competitive service provider" means a competitive electricity provider as defined in section 3201, subsection 5.

[1999, c. 398, Pt. A, §3 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Customer.** "Customer" includes any person, government or governmental division which has applied for, been accepted and is currently receiving service from a public utility.

[1987, c. 628, §1 (RPR) .]

4-A. **Dark fiber provider.** "Dark fiber provider" means a person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing federally supported dark fiber that:

A. Offers its federally supported dark fiber on an open-access basis without unreasonable discrimination as confirmed in a schedule of rates, terms and conditions filed for informational purposes with the commission; [2009, c. 612, §1 (NEW).]

B. Is required to conduct its business subject to restrictions established and enforced by the Federal Government pursuant to Title VI of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009) and to grant security interests to the Federal Government under that Act; and [2009, c. 612, §1 (NEW).]

C. Does not transmit communications for compensation inside this State. [2009, c. 612, §1 (NEW).]

[2009, c. 612, §1 (NEW) .]

4-B. **Federally supported dark fiber.** "Federally supported dark fiber" means one or more strands within a bundle of fiber-optic cable through which an associated light signal or light communication transmission must be provided to provide communications service, but excluding the electronic equipment required in order to render the fiber capable of transmitting communications, the construction of which is financed in whole or in part with funds provided by a grant awarded before January 1, 2010 by the United States Department of Commerce, National Telecommunications and Information Administration pursuant to the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009).

[2009, c. 612, §2 (NEW) .]

5. **Electric utility.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §4 (RP) .]

6. **Electric plant.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §5 (RP) .]

6-A. **Excluded electric plant.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §6 (RP) .]

6-B. **Federal interconnection rights and obligations.** "Federal interconnection rights and obligations" means the rights and obligations of a telecommunications entity under 47 United States Code, Sections 251 and 252 or any other provision of federal law or regulation governing telecommunications network facility interconnection or wholesale access rights and obligations to the extent the rights and obligations under the federal law or regulation may be regulated or overseen by the commission.

[2011, c. 623, Pt. A, §1 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

7-A. **Gas marketer.** "Gas marketer" means an entity that sells natural gas to retail consumers in the State.

[1999, c. 143, §1 (NEW) .]

8. **Gas utility.** "Gas utility" includes every person, that person's lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any gas plant for compensation within this State, except when 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 when the gas is sold solely for use in vehicles fueled by natural gas or to a liquid gas system that serves fewer than 10 customers as long as no portion of the liquid gas system is located in a public place or that serves a single customer if the liquid gas system is located entirely on the customer's premises. "Gas utility" does not include a gas marketer whose business in the State is restricted to selling natural gas to retail consumers and who does not provide natural gas transmission or distribution service.

[1999, c. 718, §14 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

9-A. **Mobile telecommunications services.** "Mobile telecommunications services" means telecommunications services licensed by the Federal Communications Commission for mobile use.

[1991, c. 342, §1 (NEW) .]

9-B. **Incumbent local exchange carrier.** "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that on February 8, 1996 provided telephone exchange service in the area and:

A. On February 8, 1996 was deemed to be a member of the exchange carrier association pursuant to 47 Code of Federal Regulations, Section 69.601(b); or [2011, c. 623, Pt. A, §2 (NEW).]

B. Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph A. [2011, c. 623, Pt. A, §2 (NEW).]

[2011, c. 623, Pt. A, §2 (NEW) .]

9-C. **Interconnected voice over Internet protocol service.** "Interconnected voice over Internet protocol service" means a service that enables real-time, 2-way voice communications; requires a broadband connection from the user's location; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

[2011, c. 623, Pt. A, §2 (NEW) .]

9-D. **Interexchange carrier.** "Interexchange carrier" means any person, association, corporation or other entity that provides intrastate interexchange telecommunications services, including a local exchange carrier that provides interexchange service.

[2011, c. 623, Pt. A, §2 (NEW) .]

9-E. **Local exchange carrier.** "Local exchange carrier" means any person that is engaged in the provision of telephone exchange service or exchange access. "Local exchange carrier" does not include a person insofar as that person is engaged in the provision of a commercial mobile service under 47 United States Code, Section 332(c), unless the commission by rule determines that the Federal Communications

Commission includes such service in the definition of the term. "Local exchange carrier" does not include a person insofar as that person is engaged in the provision of interconnected voice over Internet protocol service unless the person is providing provider of last resort service. "Local exchange carrier" does not include a person insofar as the person is a dark fiber provider.

[2011, c. 623, Pt. A, §2 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

11. **Person.** "Person" includes a corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, trust, estate, any other legal entity or natural person.

[1997, c. 707, §1 (AMD) .]

11-A. **Provider of last resort service.** "Provider of last resort service" has the same meaning as in section 7201.

[2011, c. 623, Pt. A, §3 (NEW) .]

12. **Public heating utility.**

[1999, c. 579, §2 (RP) .]

12-A. **Public switched telephone network.** "Public switched telephone network" means the network of equipment, lines and controls assembled to establish communication paths between calling and called parties in North America.

[2011, c. 623, Pt. A, §4 (NEW) .]

13. **Public utility.** "Public utility" includes every gas utility, natural gas pipeline utility, transmission and distribution utility, telephone utility, water 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, or mobile telecommunications services unless only one entity or an affiliated interest of that entity, as defined in section 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency spectrum assigned by the Federal Communications Commission to provide mobile service to the service area. "Public utility" includes a smart grid coordinator as defined in section 3143, subsection 1, paragraph B.

Nothing in this subsection precludes:

A. The jurisdiction, control and regulation by the commission pursuant to private and special act of the Legislature; [1991, c. 342, §2 (RPR).]

B. The commission's jurisdiction and control over and regulation of a public utility that provides, in addition to other services, radio paging service or mobile telecommunications services; [1991, c. 342, §2 (RPR).]

C. The commission's jurisdiction and control over and regulation of basic exchange telephone service offered by a provider of mobile telecommunications services if, after investigation and hearing, the commission determines that the provider is engaged in the provision of basic exchange telephone service; and [1991, c. 342, §2 (RPR).]

D. Negotiations for, or negates agreements or arrangements existing on the effective date of this paragraph relating to, rates, terms and conditions for interconnection provided by a telephone utility to a company providing radio paging or mobile telecommunications services. [1991, c. 342, §2 (RPR).]

[2009, c. 539, §1 (AMD) .]

14. **Radio common carrier.** "Radio common carrier" means an entity that provides communications services primarily by use of radio or other wireless means.

[1991, c. 342, §3 (AMD) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

B. A tone only paging service is one which activates an aural, visual or tactile signaling device when received. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

16-A. **Self generation.** "Self generation" means the generation of electricity for the use of an entity that owns, leases, operates, controls or manages, in whole or in part, generation assets, as defined in section 3201, subsection 10, provided that the electricity is not transmitted over transmission and distribution plant, as defined in subsection 20-A.

[1999, c. 398, Pt. A, §8 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

17. **Telegraph utility.**

[1995, c. 225, §3 (RP) .]

18. **Telegraph line.**

[1995, c. 225, §3 (RP) .]

18-A. **Telephone service.** "Telephone service" is the offering of a service that transmits communications by telephone, whether the communications are accomplished with or without the use of transmission wires.

[2003, c. 153, §2 (NEW) .]

18-B. **Telephone exchange service.** "Telephone exchange service" means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and that is covered by an exchange service charge, or comparable service provided through a system of switches, transmission equipment or other facilities, or combination thereof, by which a subscriber can originate and terminate a telecommunications service.

[2011, c. 623, Pt. A, §5 (NEW) .]

19. **Telephone utility.** "Telephone utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court, that provides telephone service for compensation inside this State. "Telephone utility" also includes a dark fiber provider. "Telephone utility" does not include any person or entity that is excluded from the definition of "public utility" as defined in subsection 13, subject to the provisions of subsection 13, paragraphs A to C.

[2009, c. 612, §3 (AMD) .]

20. **Telephone line.**

[2003, c. 153, §3 (RP) .]

20-A. **Transmission and distribution plant.** "Transmission and distribution plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the transmission, distribution or delivery of electricity for light, heat or power for public use and includes all conduits, ducts and other devices, materials, apparatus and property for containing, holding or carrying conductors used, or to be used, for the transmission or distribution of electricity for light, heat or power for public use.

[1999, c. 398, Pt. A, §9 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

20-B. **Transmission and distribution utility.** "Transmission and distribution utility" means a person, its lessees, trustees or receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission and distribution plant for compensation within the State, except where the electricity is distributed by the entity that generates the electricity through private property alone solely for that entity's own use or the use of the entity's tenants and not for sale to others.

[1999, c. 398, Pt. A, §9 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

21-A. **Voice service provider.** "Voice service provider" means any person providing, directly or indirectly, 2-way voice communications service for compensation in this State. "Voice service provider" does not include a dark fiber provider.

[2011, c. 623, Pt. A, §6 (NEW) .]

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, including any aqueduct organized under former Title 35, chapter 261 and any of its predecessors.

[1987, c. 490, Pt. C, §2 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

24. **Wholesale competitive local exchange carrier.** "Wholesale competitive local exchange carrier" means a local exchange carrier, other than an incumbent local exchange carrier, that provides a wholesale telecommunications service but does not provide telephone exchange service to a retail subscriber.

Subsection 24 as enacted by PL 2011, c. 590, §1 is REALLOCATED TO TITLE 35-A, SECTION 102, SUBSECTION 25)

[2011, c. 623, Pt. A, §7 (NEW) .]

25. (REALLOCATED FROM T. 35-A, §102, sub-§24) **Zero-based budgeting.** "Zero-based budgeting" means a method of budgeting in which programs and activities are justified for a budgetary period using cost-benefit analysis without regard to the amount that was budgeted for those programs and activities in a prior budgetary period.

[2011, c. 2, §37 (RAL) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C2 (AMD). 1987, c. 613, §1 (AMD). 1987, c. 628, §1 (AMD). 1991, c. 342, §§1-3 (AMD). 1993, c. 178, §1 (AMD). 1995, c. 225, §§2,3 (AMD). 1997, c. 707, §1 (AMD). 1997, c. 710, §§1-3 (AMD). 1997, c. 710, §10 (AFF). 1999, c. 143, §§1,2 (AMD). 1999, c. 398, §§A3-9 (AMD). 1999, c. 398, §§A104,105 (AFF). 1999, c. 579, §§2,3 (AMD). 1999, c. 718, §14 (AMD). 2003, c. 153, §§1-3 (AMD). 2009, c. 539, §1 (AMD). 2009, c. 612, §§1-3 (AMD). RR 2011, c. 2, §37 (COR). 2011, c. 590, §1 (AMD). 2011, c. 623, Pt. A, §§1-7 (AMD).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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

A. All public utilities and certain other entities as specified in this Title are subject to the jurisdiction, control and regulation of the commission and to applicable provisions of this Title. [2011, c. 623, Pt. D, §3 (AMD).]

B. The commission shall set the basic policies of the Public Utilities Commission and shall regulate public utilities in accordance with this Title. [1987, c. 141, Pt. A, §6 (NEW).]

C. The commission shall oversee the activities of competitive service providers to the extent provided in this Title. [1999, c. 398, Pt. A, §10 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

D. The commission shall oversee and manage the Emergency Services Communication Bureau established under Title 25, chapter 352. [2003, c. 359, §5 (NEW).]

[2011, c. 623, Pt. D, §3 (AMD) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A10 (AMD). 1999, c. 398, §§A104,105 (AFF). 2003, c. 359, §5 (AMD). 2011, c. 623, Pt. D, §3 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

B. A commissioner may continue to serve beyond the end of this term until a successor is appointed and qualified. [1987, c. 141, Pt. A, §6 (NEW).]

C. Any vacancy occurring in the commission shall be filled by appointment for the unexpired portion of the term. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§106. CHAIRMAN OF THE PUBLIC UTILITIES COMMISSION

The following provisions apply to the chairman of the Public Utilities Commission. [1987, c. 141, Pt. A, §6 (NEW).]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **General duties.** The chairman shall:

A. Be the principal executive officer of the commission in carrying out its policies; [1987, c. 141, Pt. A, §6 (NEW).]

B. Preside at meetings of the commission; and [1987, c. 141, Pt. A, §6 (NEW).]

C. Be responsible for the expedient organization of the commission's work. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§107. THE PUBLIC UTILITIES COMMISSION STAFF

The following provisions apply to the commission's staff. [2009, c. 122, §7 (AMD).]

1. **Appointment.** The commission shall appoint:

A. An administrative director, a director of telephone and water utility industries, a director of electric and gas utility industries and a director of consumer assistance; [2011, c. 420, Pt. A, §30 (AMD).]

B. With the approval of the Attorney General, a general counsel; and [1987, c. 141, Pt. A, §6 (NEW).]

C. An assistant administrative director. [1987, c. 141, Pt. A, §6 (NEW).]

[2011, c. 420, Pt. A, §30 (AMD) .]

2. **Salary and conditions of employment.** Salaries and conditions of employment of employees of the commission are as follows.

A. The general counsel, the administrative director, the assistant administrative director, the director of telephone and water utility industries, the director of electric and gas utility industries and the director of consumer assistance serve at the pleasure of the commission and their salaries must be set by the commission within the ranges established by Title 2, section 6-A. [2011, c. 420, Pt. A, §31 (AMD).]

B. The compensation of the staff attorney and utility analyst positions are fixed by the commission with the approval of the Governor, but the compensation may not in the aggregate exceed the total amount appropriated or allocated in the commission's budget. [1993, c. 118, §1 (AMD).]

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 telephone and water utility industries, the director of electric and gas utility industries, the director of consumer assistance and the staff attorney and utility analyst positions, are subject to the Civil Service Law. [2011, c. 420, Pt. A, §32 (AMD).]

D. [1993, c. 118, §3 (RP).]

E. The commissioners and all employees receive actual expenses when traveling on official business. [2009, c. 122, §7 (AMD).]

[2011, c. 420, Pt. A, §§31,32 (AMD) .]

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 Title 5, section 9055.

[2009, c. 122, §7 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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

A. Shall keep a record of the proceedings of the commission, which must be open to inspection at all times; and [2009, c. 122, §7 (AMD).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[2009, c. 122, §7 (AMD) .]

6. **Assistant administrative director's duties.** The assistant administrative director shall assist the director in the performance of the director's duties and in the absence of the director has the same power as the director.

[2009, c. 122, §7 (AMD) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1993, c. 589, §2 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 631, §3 (AMD). 1993, c. 118, §§1-3 (AMD). 1993, c. 589, §2 (AMD). 1997, c. 586, §§2,3 (AMD). 2003, c. 606, §§1,2 (AMD). 2007, c. 482, §5 (AMD). 2009, c. 122, §7 (AMD). 2011, c. 420, Pt. A, §§30-32 (AMD).

§108. COMMISSION ACTION; QUORUM; NOTICE

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 614, §1 (AMD). 1993, c. 36, §1 (RP).

§108-A. COMMISSION ACTION; QUORUM; NOTICE

A majority of the duly appointed commissioners constitutes a quorum and the act or decision of a majority of commissioners present, if at least a quorum is present, is the act or decision of the commission in any formal proceeding before the commission. [1993, c. 36, §2 (NEW).]

Notwithstanding Title 1, section 406, the commission is required to give notice of public proceedings only if the commission will deal with the expenditure of public funds or if the commission will make any of the following decisions in proceedings before it: a decision to initiate rulemaking or to adopt or modify a rule pursuant to Title 5, chapter 375, subchapter II; a decision making an advisory ruling pursuant to Title 5, chapter 375, subchapter III; a decision to commence an adjudicatory proceeding, an interim decision in an adjudicatory proceeding that will affect the substantive or procedural rights of any party, or a final decision at the conclusion of an adjudicatory proceeding, all pursuant to Title 5, chapter 375, subchapter IV; or a decision in any other proceeding pursuant to this Title or the commission's rules that requires commission approval or decision. In addition, if the commission is participating as a party in a proceeding before a federal agency and the commission will adopt a position in that federal proceeding, the commission shall give to other parties from the State who are participating in the federal proceeding notice of the public proceeding at which the commission may adopt that position. [1993, c. 36, §2 (NEW).]

SECTION HISTORY
1993, c. 36, §2 (NEW).

§108-B. LACK OF QUORUM; TEMPORARY APPOINTMENT

If the commission is unable to maintain a quorum for reasons as described in subsection 1, the Governor shall appoint 3 alternate commissioners who may serve as temporary commissioners in accordance with this section. [2013, c. 554, §1 (NEW).]

1. **Selection of alternate commissioners.** If 2 or more commissioners, due to a conflict of interest, disability or other reason, are unable to serve in a proceeding, which results in the commission being unable to maintain a quorum as provided under section 108-A, the commission shall report this information to the Governor and post this information on its publicly accessible website. Once the Governor is notified of the lack of a quorum for a particular proceeding, the Governor shall appoint 3 alternate commissioners, each of whom may serve as a temporary commissioner in that particular proceeding. All appointed alternate commissioners must be retired judges or justices who are subject to review by the joint standing committee of the Legislature having jurisdiction over public utilities matters and to confirmation by the Legislature. Once the alternate commissioners are confirmed by the Legislature, the commission shall, in a transparent

manner, randomly assign from the alternate commissioners one alternate commissioner to be the first alternate commissioner, one alternate commissioner to be the 2nd alternate commissioner and one alternate commissioner to be the 3rd alternate commissioner and send this information to the Governor. Following the receipt of this information, the Governor shall appoint alternate commissioners as temporary commissioners in the assigned order, until the number of temporary commissioners needed to reach a quorum is reached. If, for good cause, an alternate commissioner is unable to serve as a temporary commissioner, the Governor shall appoint the next assigned alternate as a temporary commissioner.

[2013, c. 554, §1 (NEW) .]

2. **Service for duration of proceeding.** Once appointed as a temporary commissioner to serve in a proceeding, the temporary commissioner shall serve for the length of time for which there is otherwise no quorum for the proceeding.

[2013, c. 554, §1 (NEW) .]

3. **Compensation.** In the event of a temporary appointment under this section, the commission shall provide administrative support to the temporary commissioner and compensate the temporary commissioner for the hours spent at the commission working on a proceeding at an hourly rate that is computed by dividing the annual salary of a commissioner, established in Title 2, section 6-A, subsection 2, by 2,080 hours.

[2013, c. 554, §1 (NEW) .]

4. **Authority.** A temporary commissioner appointed pursuant to this section is subject to all laws applicable to and has such authority with respect to the proceeding as a commissioner. An alternate commissioner who is not appointed as a temporary commissioner has no authority with respect to any proceedings of the commission.

[2013, c. 554, §1 (NEW) .]

SECTION HISTORY
2013, c. 554, §1 (NEW).

§109. CONFLICTS OF INTEREST

In addition to the limitations of Title 5, section 18, the following limitations apply to prevent conflicts of interest. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Public utilities.** A member or employee of the commission may not:

A. Have any official or professional connection or relation with any public utility or competitive service provider operating within this State; [1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

B. Hold any stock or securities in any public utility or competitive service provider operating within this State; [1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

C. Render a professional service against any such public utility or competitive service provider; or [1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

D. Be a member of a firm that renders service against any such public utility or competitive service provider. [1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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 of notary public.

[2009, c. 2, §97 (COR) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A11 (AMD). 1999, c. 398, §§A104,105 (AFF). RR 2009, c. 2, §97 (COR).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§111. RULES; ASSISTANCE

The commission may adopt rules and may employ assistance to carry out its responsibilities under this Title. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. The provisions of this subsection do not apply to any telephone utility other than a provider of provider of last resort service with respect to the provision of provider of last resort service.

[2011, c. 623, Pt. A, §8 (AMD) .]

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 [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

The provisions of this subsection do not apply to any telephone utility other than a provider of provider of last resort service with respect to the provision of provider of last resort service.

[2011, c. 623, Pt. A, §8 (AMD) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

B. A person other than a commissioner must produce his authority to make an inspection. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

D. Any person who violates this subsection is guilty of a Class E crime. [1987, c. 141, Pt. A, §6 (NEW).]

The provisions of this subsection do not apply to any telephone utility other than a provider of provider of last resort service with respect to the provision of provider of last resort service.

[2011, c. 623, Pt. A, §8 (AMD) .]

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 or its agent 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. [2003, c. 505, §7 (AMD).]

B. [2003, c. 505, §8 (RP).]

C. Subject to the requirements of the United States Constitution and the Constitution of Maine and upon a finding that there is probable cause to believe that a public utility is altering, amending, removing or destroying any of its books, accounts, papers or records in an attempt to frustrate an investigation of the commission, a Judge of the District Court or a Justice of the Peace, at the request of the commission and without notice, may issue a search warrant requiring seizure of those documents that are necessary for the commission to discharge its duties. [1993, c. 165, §1 (NEW).]

The provisions of this subsection do not apply to any telephone utility other than a provider of provider of last resort service with respect to the provision of provider of last resort service.

[2011, c. 623, Pt. A, §8 (AMD) .]

5. **Telephone utilities.** Every telephone utility, dark fiber provider, voice service provider and wholesale competitive local exchange carrier shall provide to the commission upon request or order information relevant to the commission's implementation or enforcement of any provision of state or federal law or rule to which the telephone utility, dark fiber provider, voice service provider or wholesale competitive local exchange carrier is subject and over which the commission exercises authority or jurisdiction. A telephone utility, dark fiber provider, voice service provider or wholesale competitive local exchange carrier that fails to comply with a commission order directing the production of information relevant to the commission's

implementation or enforcement of a provision of state or federal law or rule to which the telephone utility, dark fiber provider, voice service provider or wholesale competitive local exchange carrier is subject and over which the commission exercises authority or jurisdiction is in violation of this subsection.

[2011, c. 623, Pt. A, §8 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1993, c. 165, §1 (AMD). 2003, c. 505, §§7,8 (AMD). 2011, c. 623, Pt. A, §8 (AMD).

§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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

C. The degree to which a public utility minimizes or avoids inefficiencies which otherwise would increase costs to customers; or [1987, c. 141, Pt. A, §6 (NEW).]

D. Any other consideration which the commission finds relevant to rate setting under chapter 3, sections 301 and 303. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. Require a public utility to pay for the costs of a management audit of its operations; and [1987, c. 141, Pt. A, §6 (NEW).]

C. Require the public utility to execute a contract with the independent auditor. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Telephone utilities.** This section does not apply to any telephone utility other than a provider of provider of last resort service. The commission may not conduct or require a management audit under subsection 1 or 2 of a provider of provider of last resort service unless the commission finds that there is no less burdensome means of obtaining the information sought to be obtained in the management audit and:

A. The provider has filed for an increase in provider of last resort service rates; [2011, c. 623, Pt. A, §9 (NEW).]

B. The provider has filed for an increase in funding from a state universal service fund under section 7104; or [2011, c. 623, Pt. A, §9 (NEW).]

C. The commission, following an investigation, finds that the provider's provider of last resort service quality has declined in a manner contrary to the public interest. [2011, c. 623, Pt. A, §9 (NEW).]

[2011, c. 623, Pt. A, §9 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2011, c. 623, Pt. A, §9 (AMD).

§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; [1987, c. 141, Pt. A, §6 (NEW).]

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 [1987, c. 141, Pt. A, §6 (NEW).]

C. Other information to which access by the general public is prohibited by law. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§115. ENFORCEMENT OF STATE LAWS

The following provisions apply to the enforcement of state laws. [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

C. Enforce this Title and all other laws relating to public utilities; and [1987, c. 141, Pt. A, §6 (NEW).]

D. Report all possible criminal violations of this Title and all other laws relating to public utilities to the Attorney General. [2003, c. 505, §9 (AMD).]

[2003, c. 505, §9 (AMD) .]

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 [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Administrative penalties.** Unless otherwise provided, the following provisions apply to administrative penalties.

A. A complaint for the enforcement of an administrative penalty may be made by the commission. [2003, c. 505, §10 (AMD).]

B. A suit to enforce any administrative 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. [2003, c. 505, §10 (AMD).]

C. An action commenced by the commission must be prosecuted by the Attorney General. [1999, c. 398, Pt. A, §12 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[2003, c. 505, §10 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A12 (AMD). 1999, c. 398, §§A104,105 (AFF). 2003, c. 505, §§9,10 (AMD).

§116. FUNDING OF THE COMMISSION

1. **Entities subject to assessments.** Every transmission and distribution, gas, telephone and water utility and ferry subject to regulation by the commission and every qualified telecommunications provider is subject to an assessment on its intrastate gross operating revenues to produce sufficient revenue for expenditures allocated by the Legislature for the Public Utilities Commission Regulatory Fund established pursuant to this section. The budget for the Public Utilities Commission Regulatory Fund is subject to legislative review and approval in accordance with subsection 2. The portion of the total assessment applicable to each category of public utility or qualified telecommunications provider is based on an accounting by the commission of the portion of the commission's resources devoted to matters related to each category. The commission shall develop a reasonable and practicable method of accounting for resources devoted by the commission to matters related to each category of public utility or qualified telecommunications provider. Assessments on each public utility or qualified telecommunications provider within each category must be based on the utility's or qualified telecommunications provider's gross intrastate operating revenues. The commission shall determine the assessments annually prior to May 1st and assess each utility or qualified telecommunications provider for its pro rata share for expenditure during the fiscal year beginning July 1st. Each utility or qualified telecommunications provider shall pay the assessment charged to the utility or qualified telecommunications provider 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 and qualified telecommunications providers under this section are just and reasonable operating costs for rate-making purposes. [2011, c. 623, Pt. B, §1 (AMD).]

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

(1) In the case of all utilities except telephone utilities, revenues derived from filed rates except revenues derived from sales for resale;

(2) In the case of a telephone utility, all intrastate revenues, except revenues derived from sales for resale, whether or not the rates from which those revenues are derived are required to be filed pursuant to this Title; and

(3) In the case of a qualified telecommunications provider, all intrastate revenues except revenues derived from sales for resale. [2013, c. 600, §1 (RPR).]

C. Gas utilities subject to the jurisdiction of the commission solely with respect to safety are not subject to any assessment. [1995, c. 1, §29 (COR).]

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 or qualified telecommunications providers in the current year. [2011, c. 623, Pt. B, §1 (AMD).]

E. The commission may exempt utilities or qualified telecommunications providers with annual intrastate gross operating revenues under $50,000 from assessments under this section. [2011, c. 623, Pt. B, §1 (AMD).]

For purposes of this section, "qualified telecommunications provider" means a provider of interconnected voice over Internet protocol service that paid any assessment under this subsection, whether voluntarily, by agreement with the commission or otherwise, prior to March 1, 2012.

[2013, c. 600, §1 (AMD) .]

2. **Committee recommendations; legislative approval of budget.** The commission shall submit its budget recommendations, using a zero-based budgeting process or other process or method directed by the State Budget Officer, as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666. The commission shall make a presentation of its budget recommendations contained in any current services budget legislation and any supplemental budget legislation to the joint

standing committee of the Legislature having jurisdiction over public utilities matters. The joint standing committee of the Legislature having jurisdiction over public utilities matters shall review the commission's recommendations and make recommendations to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs regarding the budget of the commission, including but not limited to all expenditures from the fund established pursuant to this section. 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. In addition to the assessments authorized under this section, the commission may also receive other funds as appropriated or allocated by the Legislature.

[2011, c. 590, §2 (AMD) .]

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

[2011, c. 623, Pt. B, §2 (AMD) .]

4. **Use of funds.** The Public Utilities Commission may use the revenues provided in accordance with this section 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.

[2007, c. 240, Pt. P, §1 (AMD) .]

5. **Unexpended funds.** Any amount of the funds that is not expended at the end of a fiscal year does not lapse, but is carried forward to be expended for the purposes specified in this section in succeeding fiscal years.

[2005, c. 135, §2 (AMD) .]

6. **Violations.**

[2003, c. 505, §11 (RP) .]

7. **Special assessment.**

[1991, c. 343, §4 (RP) .]

8. **Public Advocate assessment.** Every utility or qualified telecommunications provider subject to assessment under this section is subject to an additional annual assessment on its intrastate gross operating revenues to produce sufficient revenue for expenditures allocated by the Legislature for operating the Office of the Public Advocate. The portion of this assessment applicable to each category of public utility or qualified telecommunications provider is based on an accounting by the Public Advocate of resources devoted to matters related to each category. The Public Advocate shall develop a reasonable and practicable method of accounting for resources devoted by the Public Advocate to matters related to each category of public utility or qualified telecommunications provider. Assessments on each public utility or qualified telecommunications provider within each category must be based on the utility's or qualified telecommunications provider's gross intrastate operating revenues. The revenues produced from this assessment are transferred to the Public Advocate Regulatory Fund and may only be used to fulfill the duties specified in chapter 17. The assessments charged to utilities and qualified telecommunications providers under this subsection are considered just and reasonable operating costs for rate-making purposes. The Public Advocate shall develop a method of accounting for staff time within the Office of the Public Advocate. All professional and support staff shall account for their time in such a way as to identify the percentage of time devoted to public utility and qualified telecommunications provider regulation and the percentage of time devoted to other duties that may be required by law.

A. The Public Advocate shall submit its budget recommendations, using a zero-based budgeting process or other process or method directed by the State Budget Officer, as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666. The assessments and expenditures provided in this section are subject to legislative approval. The Public Advocate shall make an annual report of its planned expenditures for the year and on its use of funds in the previous year. The Public Advocate may also receive other funds as appropriated by the Legislature. [2011, c. 590, §3 (AMD).]

B. The Public Advocate may use the revenues provided in accordance with this section to fund the Public Advocate and 9 employees and to defray the costs incurred by the Public Advocate pursuant to this Title, including administrative expenses, general expenses, consulting fees and all other reasonable costs incurred to administer this Title. [1999, c. 259, §3 (AMD).]

C. [1993, c. 633, §3 (AFF); 1993, c. 633, §1 (RP).]

C-1. Funds that are not expended at the end of a fiscal year do not lapse but must be carried forward to be expended for the purposes specified in this section in succeeding fiscal years. [2005, c. 135, §3 (AMD).]

D. [2003, c. 505, §12 (RP).]

[2011, c. 590, §3 (AMD); 2011, c. 623, Pt. B, §3 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 631, §§4,5 (AMD). 1989, c. 58, §§1,2 (AMD). 1989, c. 571, §A3 (AMD). 1989, c. 875, §§E44,45 (AMD). 1991, c. 9, §§E19-21 (AMD). 1991, c. 343, §§1-4 (AMD). 1991, c. 528, §CC2 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §CC2 (AMD). 1993, c. 118, §4 (AMD). 1993, c. 174, §1 (AMD). 1993, c. 633, §§1,2 (AMD). 1993, c. 633, §3 (AFF). RR 1995, c. 1, §29 (COR). 1995, c. 225, §4 (AMD). 1995, c. 368, §L1 (AMD). 1995, c. 665, §O1 (AMD). 1997, c. 424, §§B4,5 (AMD). 1997, c. 586, §4 (AMD). 1997, c. 643, §J1 (AMD). 1997, c. 719, §1 (AMD). 1999, c. 259, §3 (AMD). 1999, c. 398, §C1 (AMD). 2001, c. 28, §1 (AMD). 2001, c. 136, §1 (AMD). 2003, c. 272, §§1,2 (AMD). 2003, c. 505, §§11,12 (AMD). 2005, c. 3, §J1 (AMD). 2005, c. 135, §§1-3 (AMD). 2007, c. 16, §§1, 2 (AMD). 2007, c. 240, Pt. P, §1 (AMD). 2007, c. 478, §1 (AMD). 2007, c. 539, Pt. KK, §13 (AMD). 2011, c. 590, §§2, 3 (AMD). 2011, c. 623, Pt. B, §§1-3 (AMD). 2013, c. 600, §1 (AMD).

§117. REIMBURSEMENT FUND

1. **Filing fees expense; reimbursements and payment for services.** All money collected by the commission in the form of filing fees, expense reimbursements ordered by the commission or payment for services shall be deposited with the Treasurer of State in an account to be known as the Public Utilities Commission Reimbursement Fund. Services for which the commission receives payment include the reproduction and distribution of copies of commission decisions, agenda and dockets, photocopying and the use of facilities. 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, expense reimbursement or payment. So much of the filing fee, expense reimbursement or payment as may be required by the commission is allocated for these purposes and for the refund of the unexpended portion of the filing fee.

[1989, c. 159, §1 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Administrative penalties.** Except as provided in this subsection, all administrative penalties collected by the commission must be deposited into the Public Utilities Commission Reimbursement Fund.

A. The commission may use amounts collected as administrative penalties and deposited in the Public Utilities Commission Reimbursement Fund to reimburse the commission for additional expenses associated with the enforcement activities that resulted in the collection of the penalty. If the Department of Public Safety, Office of the State Fire Marshal undertakes an investigation of a gas explosion event pursuant to Title 25, section 2394, subsection 1 involving a gas utility or a natural gas pipeline utility subject to the jurisdiction of the commission, the commission, at the request of the State Fire Marshal, may reimburse the Office of the State Fire Marshal for its additional expenses associated with that investigation. [2011, c. 27, §2 (AMD).]

B. After deducting any amount used pursuant to paragraph A, the commission may, to the extent practicable and in as equitable and fair a manner as possible, apply administrative penalties, along with any accrued interest, in accordance with this paragraph. The commission shall seek to apply the amount in a manner that benefits those customers affected or potentially affected by the violation, if they can reasonably be identified or, if the commission determines this application of the amount to be impractical or unreasonable, in a manner that benefits the class or group of customers affected or potentially affected by the violation. In order to achieve the purposes of this paragraph, the commission may apply the funds:

(1) In the form of a direct payment or credit to the customers or group or class of customers affected or potentially affected by the violation resulting in the administrative penalty;

(2) To supplement a low-income assistance or outreach program that the commission determines would benefit customers affected or potentially affected by the violation resulting in the administrative penalty;

(3) To supplement the conservation program fund established pursuant to section 10110, subsection 7;

(4) To supplement the telecommunications education access fund established pursuant to section 7104-B; or

(5) To supplement any other program or fund that the commission determines would benefit customers affected or potentially affected by the violation.

Amounts applied pursuant to this paragraph to supplement an existing program or fund may not result in a reduction in other funding provided for the program or fund unless the reduction is outside the commission's control and the commission finds that application of the penalty amount to the fund or program is the most appropriate use of the penalty and the net effect will be an increase in total funding available to the program or fund.

In any final order issued by the commission approving or denying the application of administrative penalties to benefit any person affected or potentially affected by the violation, the commission shall make specific findings of fact supporting the commission's decision, including findings supporting any amount the commission approves as well as findings supporting the commission's denial of amounts requested by any person. [2011, c. 27, §2 (AMD).]

[2011, c. 27, §2 (AMD) .]

4. **Budget approval.** The commission shall submit its budget recommendations for the Public Utilities Commission Reimbursement Fund as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666.

[1997, c. 424, Pt. B, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 159, §1 (AMD). 1997, c. 424, §B6 (AMD). 2003, c. 505, §13 (AMD). 2005, c. 432, §1 (AMD). RR 2009, c. 2, §98 (COR). 2011, c. 27, §2 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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: [1987, c. 141, Pt. A, §6 (NEW).]

1. **Budget.** The commission's planned expenditures for the year and its use of funds in the previous year, including the expenditures from the Public Utilities Commission Regulatory Fund as established pursuant to section 116;

[1999, c. 584, §1 (AMD) .]

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;

[1999, c. 584, §1 (AMD) .]

3. **Regional issues.** The commission's efforts undertaken in accordance with its authority under this Title to promote and protect consumer interests through participation in and presentations before regional entities and federal agencies with jurisdiction over regional marketplaces that affect the State's consumers. The commission must provide an assessment of staffing requirements to undertake these responsibilities;

[2001, c. 137, §1 (AMD) .]

4. **Rural issues.** The commission's efforts undertaken in accordance with its authority under this Title to ensure that rural areas of this State are not disadvantaged as utility industries are restructured and competitive markets developed. The commission shall identify any rural issues that it has determined may require legislative action;

[2009, c. 122, §8 (AMD) .]

5. **Telephone exemptions.** The commission's activities undertaken pursuant to its authority to grant exemptions to providers of provider of last resort service from certain portions of this Title;

[2011, c. 623, Pt. D, §4 (AMD) .]

6. **Significant developments.** Any significant developments in the utility sectors or other areas of commission oversight; and

[2009, c. 122, §10 (NEW) .]

7. **Other.** All other subjects that the commission is required to include in the annual report pursuant to law.

[2009, c. 122, §11 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 9, §E22 (AMD). 1999, c. 584, §1 (AMD). 2001, c. 137, §§1,2 (AMD). 2009, c. 122, §§8-11 (AMD). 2011, c. 623, Pt. D, §4 (AMD).

§121. MODEL CODE

(REPEALED)

SECTION HISTORY
2003, c. 645, §6 (NEW). 2005, c. 350, §15 (AMD). 2007, c. 699, §19 (AMD). 2009, c. 261, Pt. A, §15 (AMD). MRSA T. 35-A, §121, sub-§3 (RP).

§122. ENERGY INFRASTRUCTURE CORRIDORS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT REPEALED 7/30/17)
(WHOLE SECTION TEXT EFFECTIVE UNTIL 7/30/17)

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

A. "Department" means the Department of Environmental Protection. [2007, c. 656, Pt. A, §3 (NEW).]

B. "Energy infrastructure" includes electric transmission and distribution facilities, natural gas transmission lines, carbon dioxide pipelines and other energy transport pipelines or conduits. "Energy infrastructure" does not include:

(1) Generation interconnection transmission facilities;

(2) Energy generation facilities; or

(3) Electric transmission and distribution facilities or energy transport pipelines that cross an energy infrastructure corridor or are within an energy infrastructure corridor for a distance of less than 5 miles. [2009, c. 655, Pt. A, §2 (AMD).]

C. "Energy infrastructure corridor" means a geographic area within the State designated in accordance with this section for the purposes of siting energy infrastructure. "Energy infrastructure corridor" includes statutory corridors and petitioned corridors. [2009, c. 655, Pt. A, §2 (AMD).]

D. "Generation interconnection transmission facility" has the same meaning as in section 3132, subsection 1-B. [2007, c. 656, Pt. A, §3 (NEW).]

D-1. "Petitioned corridor" means an energy infrastructure corridor designated by the commission in accordance with subsection 2. [2009, c. 655, Pt. A, §2 (NEW).]

E. "Potential developer" means a person that can demonstrate to the commission the financial and technical capability to engage in the development and construction of energy infrastructure. [2009, c. 655, Pt. A, §2 (AMD).]

F. "Project" means the development or construction of energy infrastructure within an energy infrastructure corridor. [2007, c. 656, Pt. A, §3 (NEW).]

F-1. "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person who submitted the information and would make available information not otherwise publicly available. [2009, c. 655, Pt. A, §2 (NEW).]

F-2. "Searsport-Loring corridor" means the real estate, real property rights and easements and infrastructure associated with the pipeline existing on the effective date of this paragraph and associated easement corridor extending from Searsport to the former Loring Air Force Base in Limestone, Maine, as granted and conveyed by the United States Air Force to the Loring Development Authority of Maine in 2005, together with such additional rights, property, easement scope and physical rights of way as may have been or may be acquired, as are necessary to effectuate the intent of the parties to the leases, easements and agreements existing on the effective date of this paragraph and as may be reasonably necessary or desirable to further develop the Searsport-Loring corridor as a statutory corridor for use pursuant to subsection 1-B. [2009, c. 655, Pt. A, §2 (NEW).]

F-3. "State-owned" means owned by the State or by a state agency or state authority. [2009, c. 655, Pt. A, §2 (NEW).]

F-4. "Statutory corridor" means an energy infrastructure corridor designated under subsection 1-A. [2009, c. 655, Pt. A, §2 (NEW).]

G. "Tribe" includes the Penobscot Nation, as defined in Title 30, section 6203, subsection 10; the Passamaquoddy Tribe, as defined in Title 30, section 6203, subsection 7; the Houlton Band of Maliseet Indians, as defined in Title 30, section 6203, subsection 2 and the Aroostook Band of Micmacs, as defined in Title 30, section 7202, subsection 1. [2007, c. 656, Pt. A, §3 (NEW).]

[2009, c. 655, Pt. A, §2 (AMD) .]

1-A. **Statutory corridors designated.** The following areas are designated as statutory corridors:

A. The Interstate 95 corridor, including that portion of Interstate 95 designated as the Maine Turnpike, in accordance with the provisions of subsection 1-C; [2009, c. 655, Pt. A, §2 (NEW).]

B. The Interstate 295 corridor; and [2009, c. 655, Pt. A, §2 (NEW).]

C. The Searsport-Loring corridor, subject to the following provisions.

(1) The Searsport-Loring corridor may be used, developed and expanded for energy infrastructure consistent with any leases, easements or other agreements in effect on the effective date of this subsection. It is not a statutory corridor until the expiration or termination of such leases, easements or other agreements.

(2) The executive director of the Loring Development Authority of Maine shall notify the Interagency Review Panel under subsection 1-B when any leases, easements or other agreements in effect on the effective date of this subsection affecting or otherwise pertaining to the Searsport-Loring corridor have expired or otherwise terminated. [2009, c. 655, Pt. A, §2 (NEW).]

[2009, c. 655, Pt. A, §2 (NEW) .]

1-B. **Use of statutory corridors; Interagency Review Panel.** The Interagency Review Panel, as established in Title 5, section 12004-G, subsection 30-D and referred to in this subsection as "the panel," shall oversee the use of statutory corridors in accordance with this section.

A. The panel includes the following members:

(1) The Director of the Governor's Energy Office within the Executive Department or the director's designee;

(2) The Commissioner of Administrative and Financial Services or the commissioner's designee;

(3) The commissioner of each department or the director of any other state agency or authority that owns or controls land or assets within the statutory corridor under consideration or that commissioner's or director's designee;

(4) Four members of the public appointed by the Governor in accordance with this subparagraph, subject to review by the joint standing committee of the Legislature having jurisdiction over utilities and energy matters and to confirmation by the Senate:

(a) One member with expertise in energy and utilities selected from candidates nominated by the President of the Senate;

(b) One member with expertise in real estate or finance selected from candidates nominated by the President of the Senate;

(c) One member representing industrial or commercial energy consumers selected from candidates nominated by the Speaker of the House; and

(d) One member representing residential energy consumers selected from candidates nominated by the Speaker of the House.

Public members serve 3-year terms, except that a vacancy must be filled for the unexpired portion of the term. A public member serves until a successor is appointed. A public member may serve a maximum of 2 consecutive terms. Compensation of public members is as provided in Title 5, section 12004-G, subsection 30-D;

(5) The Public Advocate; and

(6) The Director of the Governor's Office of Policy and Management within the Executive Department or the director's designee. [2013, c. 360, §1 (AMD).]

B. The panel shall identify an initial range of value for the use of state-owned land or assets within a statutory corridor. The initial range of value must be determined by a professional appraiser who meets the qualifications of paragraph F. [2009, c. 655, Pt. A, §2 (NEW).]

C. The panel shall establish and implement a regular process for soliciting, accepting and evaluating energy infrastructure proposals for use of a statutory corridor. As part of this process, the panel shall provide public notice of the availability of the statutory corridor for energy infrastructure development, a description of the type of development anticipated in the statutory corridor and the opportunity for potential developers to submit proposals for use of the statutory corridor. [2009, c. 655, Pt. A, §2 (NEW).]

D. The panel shall evaluate and render a decision on an energy infrastructure proposal for use of a statutory corridor in accordance with subsection 1-D. The decision must be approved by the Governor prior to the entry by the State into a binding contract for use of a statutory corridor pursuant to this section. [2013, c. 360, §2 (AMD).]

E. If a proposal is accepted pursuant to subsection 1-D, the panel may enter into negotiations with the potential developer who submitted the proposal regarding a long-term occupancy agreement with the State for the use of the statutory corridor, in accordance with this paragraph.

(1) The panel shall negotiate the terms of the occupancy agreement, including but not limited to the length of the agreement and compensation to the State for use of the statutory corridor and any conditions of use. In negotiating the occupancy agreement, the panel shall take into account existing legal commitments, contractual obligations, reasonable investment-backed expectations and relevant prior state investments, when applicable.

(2) Compensation to the State may be in the form of payments made on an annual basis or the functional or financial equivalent, discounted prices for energy products or services, partial ownership by the State of the energy infrastructure on the basis of the value of the statutory corridor in proportion to the energy infrastructure as a whole, or other appropriate form. The terms of compensation may include provisions for periodic adjustment of the compensation to the State over time and reimbursement of costs to any state agency or authority that owns or controls land or assets within the statutory corridor.

(3) Negotiation of compensation to the State must be based on at least one independent appraisal performed by a professional appraiser in accordance with paragraph F. An independent appraisal performed under this subparagraph must, at a minimum, consider the costs that will be avoided by the potential developer, including but not limited to the costs of acquisition, lease or rental of private land, the costs of property taxes on private land, the costs of surveying, appraisal, environmental, engineering and other work necessary for use of private land, the costs of time and potential conflict regarding the use of private land, the unique and limited nature of the state-owned land or asset, the revenues estimated to be generated by the use of the state-owned land or asset and other relevant factors.

(4) Any occupancy agreement entered into under this section for the use of any portion of the Interstate 95 corridor that is designated as the Maine Turnpike must comply with the memorandum of agreement between the Department of Transportation and the Maine Turnpike Authority pursuant to subsection 1-C. [2009, c. 655, Pt. A, §2 (NEW).]

F. The panel shall contract for the services of a professional appraiser or appraisers to assist the panel in its duties under this subsection. The professional appraiser contracted under this paragraph must:

(1) Have demonstrated experience in the valuation and evaluation of utility corridors or transportation corridors;

(2) Hold a professional designation from a nationally recognized organization of appraisers; and

(3) Be licensed by this State as a certified general real property appraiser in accordance with Title 32, section 14035 or hold a comparable license from another state.

The cost of the services of a professional appraiser who provides services in accordance with this paragraph must be paid by potential developers submitting proposals for use of the corridor under this subsection in proportion to the amount of time spent by the appraiser on each potential developer's proposal. Payments for appraisal costs collected from potential developers may be expended for the costs of appraisal services and to pay member expenses as authorized under Title 5, section 12004-G, subsection 30-D. [2013, c. 360, §3 (AMD).]

G. The following proprietary information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use, is confidential within the meaning of Title 1, section 402, subsection 3, paragraph A and may not be released by the panel or the state agency or authority involved:

(1) Proprietary information in the possession of the state agency or authority; and

(2) Proprietary information in the possession of the panel or a professional appraiser assisting the panel. [2009, c. 655, Pt. A, §2 (NEW).]

H. No later than February 1st of each year, the panel shall provide a written report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters that documents the activities of and actions taken by the panel under this subsection during the previous calendar year. [2009, c. 655, Pt. A, §2 (NEW).]

I. The panel may adopt rules to implement this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 655, Pt. A, §2 (NEW).]

[2013, c. 360, §§1-3 (AMD) .]

1-C. **Maine Turnpike Authority; memorandum of agreement; approval of occupancy agreements.** The Maine Turnpike Authority shall negotiate the terms of and enter into a memorandum of agreement with the Department of Transportation, consistent with paragraph A, to govern the conditions under which the Maine Turnpike Authority will grant an occupancy agreement for use of Maine Turnpike Authority property as part of the Interstate 95 statutory corridor. The Maine Turnpike Authority shall approve the terms of any occupancy agreement for use of Maine Turnpike Authority property within the Interstate 95 corridor that is consistent with the memorandum of agreement.

A. The terms of the memorandum of agreement must provide for:

(1) Application of reasonable engineering standards of the Maine Turnpike Authority to the location and design of energy infrastructure on Maine Turnpike Authority property within the Interstate 95 statutory corridor;

(2) The right of the Maine Turnpike Authority to review and approve all construction, reconstruction, expansion, improvement, maintenance or operation of energy infrastructure on Maine Turnpike Authority property as part of the Interstate 95 statutory corridor in accordance with reasonable engineering standards of the Maine Turnpike Authority. The Maine Turnpike Authority may not unreasonably withhold approval under this subparagraph;

(3) The right of the Maine Turnpike Authority to require relocation or reconfiguration of any portion of energy infrastructure and all related installations on Maine Turnpike Authority property within the Interstate 95 statutory corridor at the sole cost of the owner of the energy infrastructure so affected when and to the extent that such relocation or reconfiguration is reasonably necessary for the construction, reconstruction, expansion, improvement, maintenance or operation of the Maine Turnpike;

(4) The right of the Maine Turnpike Authority to regulate access to Maine Turnpike Authority property within the Interstate 95 statutory corridor in a reasonable manner that is consistent with the safe and proper administration of the Maine Turnpike as a limited access highway; and

(5) Reimbursement to the Maine Turnpike Authority of any reasonable costs it may incur in relation to use of the Maine Turnpike as part of the Interstate 95 statutory corridor, including, but not limited to, reasonable costs of review and inspection of design, construction, maintenance or repair of energy infrastructure and related operational costs, including, but not limited to, those for traffic control and other measures that are required to accommodate construction, maintenance or repair of energy infrastructure. [2009, c. 655, Pt. A, §2 (NEW).]

B. The Maine Turnpike Authority shall take all reasonable precautions, without forgoing or redesigning projects that it considers necessary or convenient for operation of the Maine Turnpike, to avoid material interference with the development of energy infrastructure on Maine Turnpike Authority property as part of the Interstate 95 statutory corridor. [2009, c. 655, Pt. A, §2 (NEW).]

[2009, c. 655, Pt. A, §2 (NEW) .]

1-D. **Energy infrastructure proposal; decision criteria.** The deciding authority shall evaluate and render a decision on an energy infrastructure proposal in accordance with this subsection. For the purposes of this subsection, "deciding authority" means the Interagency Review Panel acting under subsection 1-B, paragraph D and subject to the approval of the Governor, or the Public Utilities Commission acting under subsection 5-A or section 3132, subsection 6-A.

A. The deciding authority may approve an energy infrastructure proposal only if the deciding authority finds that the proposal:

(1) Materially enhances or does not harm transmission opportunities for energy generation within the State;

(2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the value of those rates, prices or costs but for the proposed energy infrastructure development or, if the deciding authority is unable to determine to its satisfaction the impact of the proposal on rates, prices or costs, the owner or operator of the proposed energy infrastructure agrees to pay annually an amount of money, determined by the deciding authority, to reduce rates, prices or costs over the life of the proposed energy infrastructure; and

(3) Is in the long-term public interest of the State, based on a determination made in accordance with paragraph B. [2009, c. 655, Pt. A, §2 (NEW).]

B. The deciding authority shall determine whether an energy infrastructure proposal is in the long-term public interest of the State. In making that determination, the deciding authority shall, at a minimum, consider the extent to which the proposal:

(1) Materially enhances or does not harm transmission opportunities for energy generation within the State;

(2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the expected value of those electric rates or other energy prices or costs but for the proposed energy infrastructure development;

(3) Increases long-term economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;

(4) Ensures efficient use of the statutory corridor through collocation of energy infrastructure, collaboration between energy infrastructure developers and the preservation of options for future uses;

(5) Minimizes conflict with the public purposes for which the state-owned land or asset is owned and any management plans for the land or asset within the statutory corridor and, when necessary, mitigates unavoidable impacts;

(6) Limits and mitigates the effects of energy infrastructure on the landscape, including but not limited to using underground installation when economically and technically feasible;

(7) Increases the energy reliability, security and independence of the State; and

(8) Reduces the release of greenhouse gases. [2009, c. 655, Pt. A, §2 (NEW).]

[2013, c. 360, §4 (AMD) .]

2. **Designation of petitioned corridors.** The commission may, upon petition, designate petitioned corridors in accordance with this subsection.

A. The commission may designate a petitioned corridor only by rule. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

(1) The rulemaking to designate a petitioned corridor must include a public hearing in which any member of the public may submit oral or written testimony or comments, which must be incorporated into the rule-making record in accordance with Title 5, section 8052, subsection 1. The

commission shall provide an opportunity for examination of the petitioner at a rule-making hearing. The commission shall allow for written comments by any member of the public up to 7 days prior to the hearing. The commission shall allow a second round of written comments to be filed within 10 days of the hearing or within such longer time as the commission may direct.

(2) In any rulemaking regarding the designation of a petitioned corridor, the commission shall address all written comments, including those submitted pursuant to subsection 3, and state its rationale for adopting or rejecting any proposals or recommendations contained in those written comments.

(3) A designation of a petitioned corridor must be based on substantial evidence in the record of the rule-making hearing. [2009, c. 655, Pt. A, §2 (AMD).]

B. The commission may commence a proceeding to designate a petitioned corridor only upon the filing of a petition for the designation of a petitioned corridor by the Office of the Public Advocate, the Executive Department, Governor's Energy Office or a potential developer. [2011, c. 655, Pt. MM, §15 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

C. The commission shall dismiss a petition for the designation of a petitioned corridor filed under this subsection if, on the basis of a preliminary review, the commission determines that the petition:

(1) Does not contain sufficient information to support the designation of a petitioned corridor; or

(2) Was filed by a person other than a person listed in paragraph B. [2009, c. 655, Pt. A, §2 (AMD).]

D. The commission may designate a petitioned corridor only if the commission finds, after consultation with state agencies and other entities as required under subsection 3, that a statutory corridor, a previously designated petitioned corridor or an abandoned railroad corridor owned or controlled by the Department of Transportation cannot meet the needs of the proposed energy infrastructure and that the future development of energy infrastructure within the petitioned corridor is reasonably likely to be:

(1) In the public interest, including, but not limited to, consideration of:

(a) Encouraging collocation of energy infrastructure;

(b) Enhancing the efficient utilization of existing energy infrastructure; and

(c) Limiting impacts on the landscape; and

(2) Consistent with environmental and land use laws and rules of the State. A finding that the future development of energy infrastructure within the petitioned corridor is reasonably likely to be consistent with environmental and land use laws and rules of the State under this paragraph has no evidentiary value in a subsequent consolidated environmental permit proceeding undertaken by the department pursuant to subsection 6. [2009, c. 655, Pt. A, §2 (AMD).]

E. In designating a petitioned corridor, the commission shall limit the geographic area of the petitioned corridor to an area no greater in breadth and scope than is necessary to achieve the purposes of this section. [2009, c. 655, Pt. A, §2 (AMD).]

F. The commission may not designate a petitioned corridor in any of the following lands:

(1) Houlton Band Trust Land, as defined in Title 30, section 6203, subsection 2-A;

(2) Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6;

(3) Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9;

(4) Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2;

(5) Lands that constitute a park as defined in Title 12, section 1801, subsection 7 and Baxter State Park;

(6) Federally owned land; and

(7) The Maine Turnpike, as described in Title 23, section 1964, subsection 9. [2009, c. 655, Pt. A, §2 (AMD).]

[2011, c. 655, Pt. MM, §15 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

3. **Petitioned corridors; notification and consultation prior to designation.** Prior to designating a petitioned corridor under subsection 2, the commission shall, at a minimum, notify, consult with and accept comments from:

A. The department; [2007, c. 656, Pt. A, §3 (NEW).]

A-1. A state agency that owns or controls land or assets within the proposed corridor, within a statutory corridor or within a previously designated petitioned corridor; [2009, c. 655, Pt. A, §2 (NEW).]

A-2. The Department of Transportation regarding potential use of abandoned railroad corridors owned or controlled by the department; [2009, c. 655, Pt. A, §2 (NEW).]

B. Appropriate state and federal energy and natural resources protection agencies, as specified by rules adopted pursuant to subsection 9; [2007, c. 656, Pt. A, §3 (NEW).]

C. The municipalities in which the petitioned corridor would be located; [2009, c. 655, Pt. A, §2 (AMD).]

D. The Maine Land Use Planning Commission and the counties in which the petitioned corridor would be located, if the petitioned corridor, or any portion of the petitioned corridor, would be located within unorganized or deorganized territories of the State; and [2009, c. 655, Pt. A, §2 (AMD); 2011, c. 682, §38 (REV).]

E. A tribe, if the petitioned corridor, or any portion of the petitioned corridor, would be located on land of a tribe other than those lands specified in subsection 2, paragraph F. [2009, c. 655, Pt. A, §2 (AMD).]

[2009, c. 655, Pt. A, §2 (AMD); 2011, c. 682, §38 (REV) .]

4. **Use of corridors; certificate and permit required.**

[2009, c. 655, Pt. A, §2 (RP) .]

4-A. **Use of energy infrastructure corridors; requirements.** Development or construction of energy infrastructure within an energy infrastructure corridor is governed by this subsection.

A. A person may not engage in development or construction of energy infrastructure within a statutory corridor, unless:

(1) The person has entered into an occupancy agreement with the Interagency Review Panel in accordance with subsection 1-B and, if applicable, with the Maine Turnpike Authority in accordance with subsection 1-C, and in compliance with applicable state and federal rules, regulations and laws;

(2) The department has issued a consolidated environmental permit for the project in accordance with subsection 6; and

(3) If the project is a transmission line that requires a certificate of public convenience and necessity under section 3132, the commission has issued a certificate of public convenience and necessity for the transmission line. [2009, c. 655, Pt. A, §2 (NEW).]

B. A person may not engage in development or construction of energy infrastructure within a petitioned corridor, unless:

(1) The department has issued a consolidated environmental permit for the project in accordance with subsection 6;

(2) The commission has issued a corridor use certificate for the project in accordance with subsection 5-A; and

(3) If the project is a transmission line that requires a certificate of public convenience and necessity under section 3132, the commission has issued a certificate of public convenience and necessity approving the transmission line. [2009, c. 655, Pt. A, §2 (NEW).]

[2009, c. 655, Pt. A, §2 (NEW) .]

5. **Corridor use certificate.**

[2009, c. 655, Pt. A, §2 (RP) .]

5-A. **Corridor use certificate.** Whenever a person proposes to develop or construct energy infrastructure within a petitioned corridor, that person shall file with the commission a petition for a corridor use certificate. The petition for the corridor use certificate must contain such information as the commission by rule requires. The commission shall process a petition for a corridor use certificate in an adjudicatory proceeding. The commission shall evaluate and render a decision on any petition for a corridor use certificate in accordance with subsection 1-D. A certificate issued under this subsection must specify the terms and conditions of use of the petitioned corridor. The commission shall establish by rule procedures to minimize duplicative filing and review requirements for the corridor use certificate for any transmission line that requires a certificate of public convenience and necessity under section 3132. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 655, Pt. A, §2 (NEW) .]

6. **Environmental review; consolidated environmental permit.** Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure corridor, that person shall file with the department an application for a consolidated environmental permit. The department may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. A consolidated environmental permit issued by the department takes the place of any other permits or licenses that the department would otherwise require for the proposed project. [2007, c. 656, Pt. A, §3 (NEW).]

B. The application for a consolidated environmental permit must contain such information as the department requires, including, but not limited to, all studies and documentation necessary to determine whether the proposed project is in compliance with the environmental laws of the State administered by the department. [2007, c. 656, Pt. A, §3 (NEW).]

C. The applicant for a consolidated environmental permit shall pay a fee no greater than the total amount of fees that would be required if individual permits were obtained by the applicant rather than the consolidated environmental permit and reimburse the department for any additional costs of regulatory review, including expenses for outside peer review or other consultants or experts assisting the department in its review. Outside review of applications under this subsection is governed by Title 38, section 344-A, except that the Commissioner of Environmental Protection is not required to obtain the consent of the applicant to enter into an agreement with an outside reviewer or require that the costs of the outside review be reimbursed by the applicant. [2009, c. 655, Pt. A, §2 (AMD).]

D. The department shall issue its decision on an application for a consolidated environmental permit within a timeframe specified by department guideline. The decision may specify approval, denial or approval in part and denial in part. A proposed project may not be undertaken if it is denied in whole or in part by the department. [2009, c. 655, Pt. A, §2 (AMD).]

E. Upon issuance of a consolidated environmental permit, the department shall certify to the commission that the permit has been issued and whether the proposed project complies, in part or in whole, with the environmental laws of the State administered by the department and whether other agencies and

programs that are required by law to issue separate approvals for some or all aspects of the project have taken final agency action on those matters requiring their separate approval. [2007, c. 656, Pt. A, §3 (NEW).]

F. The department shall enforce the terms of the consolidated environmental permit. [2007, c. 656, Pt. A, §3 (NEW).]

G. The terms of the consolidated environmental permit may require additional submissions by the permit holder, studies and approvals with conditions. [2007, c. 656, Pt. A, §3 (NEW).]

[2009, c. 655, Pt. A, §2 (AMD) .]

6-A. **Revenues.** Except as otherwise provided by subsection 1-C or any other law, including the Constitution of Maine, revenues generated from the use of state-owned land and assets within energy infrastructure corridors must be deposited in the energy infrastructure benefits fund established in Title 5, section 282, subsection 9.

[2009, c. 655, Pt. A, §2 (NEW) .]

6-B. **Revenue from energy infrastructure corridors.** Notwithstanding subsection 6-A, 20% of the revenues generated from the use of statutory corridors designated under subsection 1-A, paragraphs A and B owned by the Department of Transportation within energy infrastructure corridors must be deposited into the Secondary Road Program Fund established in Title 23, section 1803-C and 80% of the revenues must be deposited into the energy infrastructure benefits fund established in Title 5, section 282, subsection 9.

[2013, c. 369, Pt. A, §1 (AMD) .]

7. **Eminent domain.** This subsection grants and limits certain rights of eminent domain with respect to energy infrastructure corridors.

A. The eminent domain authority of a transmission and distribution utility within an energy infrastructure corridor is governed by section 3136. [2007, c. 656, Pt. A, §3 (NEW).]

B. Subject to approval by the commission, a person that is not a transmission and distribution utility that receives a certificate of public convenience and necessity under section 3132 or a corridor use certificate under subsection 5-A to develop energy infrastructure within an energy infrastructure corridor may take and hold by right of eminent domain lands and easements within that corridor necessary for the proper location of the energy infrastructure covered by the certificate of public convenience and necessity or the corridor use certificate in the same manner and under the same conditions as set forth in chapter 65. The right of eminent domain granted in this paragraph does not apply to:

(1) Lands or easements located within 300 feet of an inhabited dwelling;

(2) Lands or easements on or adjacent to any developed or undeveloped water power;

(3) Lands or easements so closely paralleling existing wire lines of other utilities or existing energy transport pipelines that the proposed energy infrastructure would substantially interfere with service rendered over the existing lines or pipelines, except with the consent of the owners;

(4) Lands or easements owned or used by railroad corporations, except as authorized pursuant to section 2311;

(5) Lands or easements owned by the State or an agency or authority of the State; and

(6) Transmission and distribution plant that is owned, controlled, operated or managed by a transmission and distribution utility on the effective date of this section. [2009, c. 655, Pt. A, §2 (AMD).]

C. The commission may take and hold by right of eminent domain lands and easements within an energy infrastructure corridor in accordance with this paragraph, notwithstanding any transmission and distribution utility ownership of the lands or easements.

(1) The commission may exercise the authority under this paragraph only in an adjudicatory proceeding upon a petition by the Office of the Public Advocate or the Executive Department, Governor's Energy Office demonstrating that such action is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor. A determination by the commission that the exercise of eminent domain under this paragraph is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor constitutes reviewable final agency action.

(2) The amount of any lands or easements taken by the commission pursuant to this subsection may be no greater than is required to avoid the harm to electricity consumers identified under subparagraph (1).

(3) The right of eminent domain granted in this paragraph does not apply to personal property, fixtures or improvements that constitute transmission and distribution plant or an energy transport pipeline.

(4) The commission may exercise the right of eminent domain for the purposes of this paragraph in the same manner and under the same conditions as set forth in chapter 65. For the purposes of the exercise of eminent domain authorized by this paragraph, the commission is both a person and the State.

(5) The commission is authorized to assess transmission and distribution utilities to the extent necessary to obtain sufficient funds to pay for lands and easements taken pursuant to this subsection.

(6) The commission, in an adjudicatory proceeding upon petition by the Office of the Public Advocate or the Executive Department, Governor's Energy Office, may transfer or convey to any person or state agency or authority lands and easements once acquired, except that a transmission and distribution utility or the owner of an energy transport pipeline whose lands or easements were taken pursuant to this paragraph must be given the first opportunity to acquire the lands or easements to the extent necessary or useful in the performance of its duties as a transmission and distribution utility or an owner of an energy transport pipeline.

(7) The commission shall report on the circumstances of any taking by eminent domain to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters during the next regular session of the Legislature following the acquisition of lands or easements by eminent domain. [2011, c. 655, Pt. MM, §16 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

[2011, c. 655, Pt. MM, §16 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

8. **Utility service territory.** Nothing in this section modifies existing restrictions on entities providing service within a public utility's service territory provided under chapter 21.

[2007, c. 656, Pt. A, §3 (NEW) .]

9. **Rules.**

[2009, c. 655, Pt. A, §2 (RP) .]

10. **Repeal.** This section is repealed July 30, 2017.

[2013, c. 360, §5 (AMD) .]

SECTION HISTORY

2007, c. 656, Pt. A, §3 (NEW). 2009, c. 655, Pt. A, §2 (AMD). 2011, c. 652, §13 (AMD). 2011, c. 652, §14 (AFF). 2011, c. 655, Pt. MM, §§14-16 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 682, §38 (REV). 2013, c. 360, §§1-5 (AMD). 2013, c. 369, Pt. A, §1 (AMD).

§122. ENERGY INFRASTRUCTURE CORRIDORS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT REPEALED 7/30/17)
(WHOLE SECTION TEXT EFFECTIVE UNTIL 7/30/17)

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

A. "Department" means the Department of Environmental Protection. [2007, c. 656, Pt. A, §3 (NEW).]

B. "Energy infrastructure" includes electric transmission and distribution facilities, natural gas transmission lines, carbon dioxide pipelines and other energy transport pipelines or conduits. "Energy infrastructure" does not include:

(1) Generation interconnection transmission facilities;

(2) Energy generation facilities; or

(3) Electric transmission and distribution facilities or energy transport pipelines that cross an energy infrastructure corridor or are within an energy infrastructure corridor for a distance of less than 5 miles. [2009, c. 655, Pt. A, §2 (AMD).]

C. "Energy infrastructure corridor" means a geographic area within the State designated in accordance with this section for the purposes of siting energy infrastructure. "Energy infrastructure corridor" includes statutory corridors and petitioned corridors. [2009, c. 655, Pt. A, §2 (AMD).]

D. "Generation interconnection transmission facility" has the same meaning as in section 3132, subsection 1-B. [2007, c. 656, Pt. A, §3 (NEW).]

D-1. "Petitioned corridor" means an energy infrastructure corridor designated by the commission in accordance with subsection 2. [2009, c. 655, Pt. A, §2 (NEW).]

E. "Potential developer" means a person that can demonstrate to the commission the financial and technical capability to engage in the development and construction of energy infrastructure. [2009, c. 655, Pt. A, §2 (AMD).]

F. "Project" means the development or construction of energy infrastructure within an energy infrastructure corridor. [2007, c. 656, Pt. A, §3 (NEW).]

F-1. "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person who submitted the information and would make available information not otherwise publicly available. [2009, c. 655, Pt. A, §2 (NEW).]

F-2. "Searsport-Loring corridor" means the real estate, real property rights and easements and infrastructure associated with the pipeline existing on the effective date of this paragraph and associated easement corridor extending from Searsport to the former Loring Air Force Base in Limestone, Maine, as granted and conveyed by the United States Air Force to the Loring Development Authority of Maine in 2005, together with such additional rights, property, easement scope and physical rights of way as may have been or may be acquired, as are necessary to effectuate the intent of the parties to the leases, easements and agreements existing on the effective date of this paragraph and as may be reasonably necessary or desirable to further develop the Searsport-Loring corridor as a statutory corridor for use pursuant to subsection 1-B. [2009, c. 655, Pt. A, §2 (NEW).]

F-3. "State-owned" means owned by the State or by a state agency or state authority. [2009, c. 655, Pt. A, §2 (NEW).]

F-4. "Statutory corridor" means an energy infrastructure corridor designated under subsection 1-A. [2009, c. 655, Pt. A, §2 (NEW).]

G. "Tribe" includes the Penobscot Nation, as defined in Title 30, section 6203, subsection 10; the Passamaquoddy Tribe, as defined in Title 30, section 6203, subsection 7; the Houlton Band of Maliseet Indians, as defined in Title 30, section 6203, subsection 2 and the Aroostook Band of Micmacs, as defined in Title 30, section 7202, subsection 1. [2007, c. 656, Pt. A, §3 (NEW).]

[2009, c. 655, Pt. A, §2 (AMD) .]

1-A. **Statutory corridors designated.** The following areas are designated as statutory corridors:

A. The Interstate 95 corridor, including that portion of Interstate 95 designated as the Maine Turnpike, in accordance with the provisions of subsection 1-C; [2009, c. 655, Pt. A, §2 (NEW).]

B. The Interstate 295 corridor; and [2009, c. 655, Pt. A, §2 (NEW).]

C. The Searsport-Loring corridor, subject to the following provisions.

(1) The Searsport-Loring corridor may be used, developed and expanded for energy infrastructure consistent with any leases, easements or other agreements in effect on the effective date of this subsection. It is not a statutory corridor until the expiration or termination of such leases, easements or other agreements.

(2) The executive director of the Loring Development Authority of Maine shall notify the Interagency Review Panel under subsection 1-B when any leases, easements or other agreements in effect on the effective date of this subsection affecting or otherwise pertaining to the Searsport-Loring corridor have expired or otherwise terminated. [2009, c. 655, Pt. A, §2 (NEW).]

[2009, c. 655, Pt. A, §2 (NEW) .]

1-B. **Use of statutory corridors; Interagency Review Panel.** The Interagency Review Panel, as established in Title 5, section 12004-G, subsection 30-D and referred to in this subsection as "the panel," shall oversee the use of statutory corridors in accordance with this section.

A. The panel includes the following members:

(1) The Director of the Governor's Energy Office within the Executive Department or the director's designee;

(2) The Commissioner of Administrative and Financial Services or the commissioner's designee;

(3) The commissioner of each department or the director of any other state agency or authority that owns or controls land or assets within the statutory corridor under consideration or that commissioner's or director's designee;

(4) Four members of the public appointed by the Governor in accordance with this subparagraph, subject to review by the joint standing committee of the Legislature having jurisdiction over utilities and energy matters and to confirmation by the Senate:

(a) One member with expertise in energy and utilities selected from candidates nominated by the President of the Senate;

(b) One member with expertise in real estate or finance selected from candidates nominated by the President of the Senate;

(c) One member representing industrial or commercial energy consumers selected from candidates nominated by the Speaker of the House; and

(d) One member representing residential energy consumers selected from candidates nominated by the Speaker of the House.

Public members serve 3-year terms, except that a vacancy must be filled for the unexpired portion of the term. A public member serves until a successor is appointed. A public member may serve a maximum of 2 consecutive terms. Compensation of public members is as provided in Title 5, section 12004-G, subsection 30-D;

(5) The Public Advocate; and

(6) The Director of the Governor's Office of Policy and Management within the Executive Department or the director's designee. [2013, c. 360, §1 (AMD).]

B. The panel shall identify an initial range of value for the use of state-owned land or assets within a statutory corridor. The initial range of value must be determined by a professional appraiser who meets the qualifications of paragraph F. [2009, c. 655, Pt. A, §2 (NEW).]

C. The panel shall establish and implement a regular process for soliciting, accepting and evaluating energy infrastructure proposals for use of a statutory corridor. As part of this process, the panel shall provide public notice of the availability of the statutory corridor for energy infrastructure development, a description of the type of development anticipated in the statutory corridor and the opportunity for potential developers to submit proposals for use of the statutory corridor. [2009, c. 655, Pt. A, §2 (NEW).]

D. The panel shall evaluate and render a decision on an energy infrastructure proposal for use of a statutory corridor in accordance with subsection 1-D. The decision must be approved by the Governor prior to the entry by the State into a binding contract for use of a statutory corridor pursuant to this section. [2013, c. 360, §2 (AMD).]

E. If a proposal is accepted pursuant to subsection 1-D, the panel may enter into negotiations with the potential developer who submitted the proposal regarding a long-term occupancy agreement with the State for the use of the statutory corridor, in accordance with this paragraph.

(1) The panel shall negotiate the terms of the occupancy agreement, including but not limited to the length of the agreement and compensation to the State for use of the statutory corridor and any conditions of use. In negotiating the occupancy agreement, the panel shall take into account existing legal commitments, contractual obligations, reasonable investment-backed expectations and relevant prior state investments, when applicable.

(2) Compensation to the State may be in the form of payments made on an annual basis or the functional or financial equivalent, discounted prices for energy products or services, partial ownership by the State of the energy infrastructure on the basis of the value of the statutory corridor in proportion to the energy infrastructure as a whole, or other appropriate form. The terms of compensation may include provisions for periodic adjustment of the compensation to the State over time and reimbursement of costs to any state agency or authority that owns or controls land or assets within the statutory corridor.

(3) Negotiation of compensation to the State must be based on at least one independent appraisal performed by a professional appraiser in accordance with paragraph F. An independent appraisal performed under this subparagraph must, at a minimum, consider the costs that will be avoided by the potential developer, including but not limited to the costs of acquisition, lease or rental of private land, the costs of property taxes on private land, the costs of surveying, appraisal, environmental, engineering and other work necessary for use of private land, the costs of time and potential conflict regarding the use of private land, the unique and limited nature of the state-owned land or asset, the revenues estimated to be generated by the use of the state-owned land or asset and other relevant factors.

(4) Any occupancy agreement entered into under this section for the use of any portion of the Interstate 95 corridor that is designated as the Maine Turnpike must comply with the memorandum of agreement between the Department of Transportation and the Maine Turnpike Authority pursuant to subsection 1-C. [2009, c. 655, Pt. A, §2 (NEW).]

F. The panel shall contract for the services of a professional appraiser or appraisers to assist the panel in its duties under this subsection. The professional appraiser contracted under this paragraph must:

(1) Have demonstrated experience in the valuation and evaluation of utility corridors or transportation corridors;

(2) Hold a professional designation from a nationally recognized organization of appraisers; and

(3) Be licensed by this State as a certified general real property appraiser in accordance with Title 32, section 14035 or hold a comparable license from another state.

The cost of the services of a professional appraiser who provides services in accordance with this paragraph must be paid by potential developers submitting proposals for use of the corridor under this subsection in proportion to the amount of time spent by the appraiser on each potential developer's proposal. Payments for appraisal costs collected from potential developers may be expended for the costs of appraisal services and to pay member expenses as authorized under Title 5, section 12004-G, subsection 30-D. [2013, c. 360, §3 (AMD).]

G. The following proprietary information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use, is confidential within the meaning of Title 1, section 402, subsection 3, paragraph A and may not be released by the panel or the state agency or authority involved:

(1) Proprietary information in the possession of the state agency or authority; and

(2) Proprietary information in the possession of the panel or a professional appraiser assisting the panel. [2009, c. 655, Pt. A, §2 (NEW).]

H. No later than February 1st of each year, the panel shall provide a written report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters that documents the activities of and actions taken by the panel under this subsection during the previous calendar year. [2009, c. 655, Pt. A, §2 (NEW).]

I. The panel may adopt rules to implement this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 655, Pt. A, §2 (NEW).]

[2013, c. 360, §§1-3 (AMD) .]

1-C. Maine Turnpike Authority; memorandum of agreement; approval of occupancy agreements. The Maine Turnpike Authority shall negotiate the terms of and enter into a memorandum of agreement with the Department of Transportation, consistent with paragraph A, to govern the conditions under which the Maine Turnpike Authority will grant an occupancy agreement for use of Maine Turnpike Authority property as part of the Interstate 95 statutory corridor. The Maine Turnpike Authority shall approve the terms of any occupancy agreement for use of Maine Turnpike Authority property within the Interstate 95 corridor that is consistent with the memorandum of agreement.

A. The terms of the memorandum of agreement must provide for:

(1) Application of reasonable engineering standards of the Maine Turnpike Authority to the location and design of energy infrastructure on Maine Turnpike Authority property within the Interstate 95 statutory corridor;

(2) The right of the Maine Turnpike Authority to review and approve all construction, reconstruction, expansion, improvement, maintenance or operation of energy infrastructure on Maine Turnpike Authority property as part of the Interstate 95 statutory corridor in accordance with reasonable engineering standards of the Maine Turnpike Authority. The Maine Turnpike Authority may not unreasonably withhold approval under this subparagraph;

(3) The right of the Maine Turnpike Authority to require relocation or reconfiguration of any portion of energy infrastructure and all related installations on Maine Turnpike Authority property within the Interstate 95 statutory corridor at the sole cost of the owner of the energy infrastructure so affected when and to the extent that such relocation or reconfiguration is reasonably necessary for the construction, reconstruction, expansion, improvement, maintenance or operation of the Maine Turnpike;

(4) The right of the Maine Turnpike Authority to regulate access to Maine Turnpike Authority property within the Interstate 95 statutory corridor in a reasonable manner that is consistent with the safe and proper administration of the Maine Turnpike as a limited access highway; and

(5) Reimbursement to the Maine Turnpike Authority of any reasonable costs it may incur in relation to use of the Maine Turnpike as part of the Interstate 95 statutory corridor, including, but not limited to, reasonable costs of review and inspection of design, construction, maintenance or repair of energy infrastructure and related operational costs, including, but not limited to, those for traffic control and other measures that are required to accommodate construction, maintenance or repair of energy infrastructure. [2009, c. 655, Pt. A, §2 (NEW).]

B. The Maine Turnpike Authority shall take all reasonable precautions, without forgoing or redesigning projects that it considers necessary or convenient for operation of the Maine Turnpike, to avoid material interference with the development of energy infrastructure on Maine Turnpike Authority property as part of the Interstate 95 statutory corridor. [2009, c. 655, Pt. A, §2 (NEW).]

[2009, c. 655, Pt. A, §2 (NEW) .]

1-D. **Energy infrastructure proposal; decision criteria.** The deciding authority shall evaluate and render a decision on an energy infrastructure proposal in accordance with this subsection. For the purposes of this subsection, "deciding authority" means the Interagency Review Panel acting under subsection 1-B, paragraph D and subject to the approval of the Governor, or the Public Utilities Commission acting under subsection 5-A or section 3132, subsection 6-A.

A. The deciding authority may approve an energy infrastructure proposal only if the deciding authority finds that the proposal:

(1) Materially enhances or does not harm transmission opportunities for energy generation within the State;

(2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the value of those rates, prices or costs but for the proposed energy infrastructure development or, if the deciding authority is unable to determine to its satisfaction the impact of the proposal on rates, prices or costs, the owner or operator of the proposed energy infrastructure agrees to pay annually an amount of money, determined by the deciding authority, to reduce rates, prices or costs over the life of the proposed energy infrastructure; and

(3) Is in the long-term public interest of the State, based on a determination made in accordance with paragraph B. [2009, c. 655, Pt. A, §2 (NEW).]

B. The deciding authority shall determine whether an energy infrastructure proposal is in the long-term public interest of the State. In making that determination, the deciding authority shall, at a minimum, consider the extent to which the proposal:

(1) Materially enhances or does not harm transmission opportunities for energy generation within the State;

(2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the expected value of those electric rates or other energy prices or costs but for the proposed energy infrastructure development;

(3) Increases long-term economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;

(4) Ensures efficient use of the statutory corridor through collocation of energy infrastructure, collaboration between energy infrastructure developers and the preservation of options for future uses;

(5) Minimizes conflict with the public purposes for which the state-owned land or asset is owned and any management plans for the land or asset within the statutory corridor and, when necessary, mitigates unavoidable impacts;

(6) Limits and mitigates the effects of energy infrastructure on the landscape, including but not limited to using underground installation when economically and technically feasible;

(7) Increases the energy reliability, security and independence of the State; and

(8) Reduces the release of greenhouse gases. [2009, c. 655, Pt. A, §2 (NEW).]

[2013, c. 360, §4 (AMD) .]

2. **Designation of petitioned corridors.** The commission may, upon petition, designate petitioned corridors in accordance with this subsection.

A. The commission may designate a petitioned corridor only by rule. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

(1) The rulemaking to designate a petitioned corridor must include a public hearing in which any member of the public may submit oral or written testimony or comments, which must be incorporated into the rule-making record in accordance with Title 5, section 8052, subsection 1. The commission shall provide an opportunity for examination of the petitioner at a rule-making hearing. The commission shall allow for written comments by any member of the public up to 7 days prior to the hearing. The commission shall allow a second round of written comments to be filed within 10 days of the hearing or within such longer time as the commission may direct.

(2) In any rulemaking regarding the designation of a petitioned corridor, the commission shall address all written comments, including those submitted pursuant to subsection 3, and state its rationale for adopting or rejecting any proposals or recommendations contained in those written comments.

(3) A designation of a petitioned corridor must be based on substantial evidence in the record of the rule-making hearing. [2009, c. 655, Pt. A, §2 (AMD).]

B. The commission may commence a proceeding to designate a petitioned corridor only upon the filing of a petition for the designation of a petitioned corridor by the Office of the Public Advocate, the Executive Department, Governor's Energy Office or a potential developer. [2011, c. 655, Pt. MM, §15 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

C. The commission shall dismiss a petition for the designation of a petitioned corridor filed under this subsection if, on the basis of a preliminary review, the commission determines that the petition:

(1) Does not contain sufficient information to support the designation of a petitioned corridor; or

(2) Was filed by a person other than a person listed in paragraph B. [2009, c. 655, Pt. A, §2 (AMD).]

D. The commission may designate a petitioned corridor only if the commission finds, after consultation with state agencies and other entities as required under subsection 3, that a statutory corridor, a previously designated petitioned corridor or an abandoned railroad corridor owned or controlled by the Department of Transportation cannot meet the needs of the proposed energy infrastructure and that the future development of energy infrastructure within the petitioned corridor is reasonably likely to be:

(1) In the public interest, including, but not limited to, consideration of:

(a) Encouraging collocation of energy infrastructure;

(b) Enhancing the efficient utilization of existing energy infrastructure; and

(c) Limiting impacts on the landscape; and

(2) Consistent with environmental and land use laws and rules of the State. A finding that the future development of energy infrastructure within the petitioned corridor is reasonably likely to be consistent with environmental and land use laws and rules of the State under this paragraph has no evidentiary value in a subsequent consolidated environmental permit proceeding undertaken by the department pursuant to subsection 6. [2009, c. 655, Pt. A, §2 (AMD).]

E. In designating a petitioned corridor, the commission shall limit the geographic area of the petitioned corridor to an area no greater in breadth and scope than is necessary to achieve the purposes of this section. [2009, c. 655, Pt. A, §2 (AMD).]

F. The commission may not designate a petitioned corridor in any of the following lands:

(1) Houlton Band Trust Land, as defined in Title 30, section 6203, subsection 2-A;

(2) Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6;

(3) Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9;

(4) Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2;

(5) Lands that constitute a park as defined in Title 12, section 1801, subsection 7 and Baxter State Park;

(6) Federally owned land; and

(7) The Maine Turnpike, as described in Title 23, section 1964, subsection 9. [2009, c. 655, Pt. A, §2 (AMD).]

[2011, c. 655, Pt. MM, §15 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

3. **Petitioned corridors; notification and consultation prior to designation.** Prior to designating a petitioned corridor under subsection 2, the commission shall, at a minimum, notify, consult with and accept comments from:

A. The department; [2007, c. 656, Pt. A, §3 (NEW).]

A-1. A state agency that owns or controls land or assets within the proposed corridor, within a statutory corridor or within a previously designated petitioned corridor; [2009, c. 655, Pt. A, §2 (NEW).]

A-2. The Department of Transportation regarding potential use of abandoned railroad corridors owned or controlled by the department; [2009, c. 655, Pt. A, §2 (NEW).]

B. Appropriate state and federal energy and natural resources protection agencies, as specified by rules adopted pursuant to subsection 9; [2007, c. 656, Pt. A, §3 (NEW).]

C. The municipalities in which the petitioned corridor would be located; [2009, c. 655, Pt. A, §2 (AMD).]

D. The Maine Land Use Planning Commission and the counties in which the petitioned corridor would be located, if the petitioned corridor, or any portion of the petitioned corridor, would be located within unorganized or deorganized territories of the State; and [2009, c. 655, Pt. A, §2 (AMD); 2011, c. 682, §38 (REV).]

E. A tribe, if the petitioned corridor, or any portion of the petitioned corridor, would be located on land of a tribe other than those lands specified in subsection 2, paragraph F. [2009, c. 655, Pt. A, §2 (AMD).]

[2009, c. 655, Pt. A, §2 (AMD); 2011, c. 682, §38 (REV) .]

4. **Use of corridors; certificate and permit required.**

[2009, c. 655, Pt. A, §2 (RP) .]

4-A. **Use of energy infrastructure corridors; requirements.** Development or construction of energy infrastructure within an energy infrastructure corridor is governed by this subsection.

A. A person may not engage in development or construction of energy infrastructure within a statutory corridor, unless:

(1) The person has entered into an occupancy agreement with the Interagency Review Panel in accordance with subsection 1-B and, if applicable, with the Maine Turnpike Authority in accordance with subsection 1-C, and in compliance with applicable state and federal rules, regulations and laws;

(2) The department has issued a consolidated environmental permit for the project in accordance with subsection 6; and

(3) If the project is a transmission line that requires a certificate of public convenience and necessity under section 3132, the commission has issued a certificate of public convenience and necessity for the transmission line. [2009, c. 655, Pt. A, §2 (NEW).]

B. A person may not engage in development or construction of energy infrastructure within a petitioned corridor, unless:

(1) The department has issued a consolidated environmental permit for the project in accordance with subsection 6;

(2) The commission has issued a corridor use certificate for the project in accordance with subsection 5-A; and

(3) If the project is a transmission line that requires a certificate of public convenience and necessity under section 3132, the commission has issued a certificate of public convenience and necessity approving the transmission line. [2009, c. 655, Pt. A, §2 (NEW).]

[2009, c. 655, Pt. A, §2 (NEW) .]

5. **Corridor use certificate.**

[2009, c. 655, Pt. A, §2 (RP) .]

5-A. **Corridor use certificate.** Whenever a person proposes to develop or construct energy infrastructure within a petitioned corridor, that person shall file with the commission a petition for a corridor use certificate. The petition for the corridor use certificate must contain such information as the commission by rule requires. The commission shall process a petition for a corridor use certificate in an adjudicatory proceeding. The commission shall evaluate and render a decision on any petition for a corridor use certificate in accordance with subsection 1-D. A certificate issued under this subsection must specify the terms and conditions of use of the petitioned corridor. The commission shall establish by rule procedures to minimize

duplicative filing and review requirements for the corridor use certificate for any transmission line that requires a certificate of public convenience and necessity under section 3132. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 655, Pt. A, §2 (NEW) .]

6. **Environmental review; consolidated environmental permit.** Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure corridor, that person shall file with the department an application for a consolidated environmental permit. The department may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. A consolidated environmental permit issued by the department takes the place of any other permits or licenses that the department would otherwise require for the proposed project. [2007, c. 656, Pt. A, §3 (NEW).]

B. The application for a consolidated environmental permit must contain such information as the department requires, including, but not limited to, all studies and documentation necessary to determine whether the proposed project is in compliance with the environmental laws of the State administered by the department. [2007, c. 656, Pt. A, §3 (NEW).]

C. The applicant for a consolidated environmental permit shall pay a fee no greater than the total amount of fees that would be required if individual permits were obtained by the applicant rather than the consolidated environmental permit and reimburse the department for any additional costs of regulatory review, including expenses for outside peer review or other consultants or experts assisting the department in its review. Outside review of applications under this subsection is governed by Title 38, section 344-A, except that the Commissioner of Environmental Protection is not required to obtain the consent of the applicant to enter into an agreement with an outside reviewer or require that the costs of the outside review be reimbursed by the applicant. [2009, c. 655, Pt. A, §2 (AMD).]

D. The department shall issue its decision on an application for a consolidated environmental permit within a timeframe specified by department guideline. The decision may specify approval, denial or approval in part and denial in part. A proposed project may not be undertaken if it is denied in whole or in part by the department. [2009, c. 655, Pt. A, §2 (AMD).]

E. Upon issuance of a consolidated environmental permit, the department shall certify to the commission that the permit has been issued and whether the proposed project complies, in part or in whole, with the environmental laws of the State administered by the department and whether other agencies and programs that are required by law to issue separate approvals for some or all aspects of the project have taken final agency action on those matters requiring their separate approval. [2007, c. 656, Pt. A, §3 (NEW).]

F. The department shall enforce the terms of the consolidated environmental permit. [2007, c. 656, Pt. A, §3 (NEW).]

G. The terms of the consolidated environmental permit may require additional submissions by the permit holder, studies and approvals with conditions. [2007, c. 656, Pt. A, §3 (NEW).]

[2009, c. 655, Pt. A, §2 (AMD) .]

6-A. **Revenues.** Except as otherwise provided by subsection 1-C or any other law, including the Constitution of Maine, revenues generated from the use of state-owned land and assets within energy infrastructure corridors must be deposited in the energy infrastructure benefits fund established in Title 5, section 282, subsection 9.

[2009, c. 655, Pt. A, §2 (NEW) .]

6-B. **Revenue from energy infrastructure corridors.** Notwithstanding subsection 6-A, 20% of the revenues generated from the use of statutory corridors designated under subsection 1-A, paragraphs A and B owned by the Department of Transportation within energy infrastructure corridors must be deposited into the Secondary Road Program Fund established in Title 23, section 1803-C and 80% of the revenues must be deposited into the energy infrastructure benefits fund established in Title 5, section 282, subsection 9.

[2013, c. 369, Pt. A, §1 (AMD) .]

7. **Eminent domain.** This subsection grants and limits certain rights of eminent domain with respect to energy infrastructure corridors.

A. The eminent domain authority of a transmission and distribution utility within an energy infrastructure corridor is governed by section 3136. [2007, c. 656, Pt. A, §3 (NEW).]

B. Subject to approval by the commission, a person that is not a transmission and distribution utility that receives a certificate of public convenience and necessity under section 3132 or a corridor use certificate under subsection 5-A to develop energy infrastructure within an energy infrastructure corridor may take and hold by right of eminent domain lands and easements within that corridor necessary for the proper location of the energy infrastructure covered by the certificate of public convenience and necessity or the corridor use certificate in the same manner and under the same conditions as set forth in chapter 65. The right of eminent domain granted in this paragraph does not apply to:

(1) Lands or easements located within 300 feet of an inhabited dwelling;

(2) Lands or easements on or adjacent to any developed or undeveloped water power;

(3) Lands or easements so closely paralleling existing wire lines of other utilities or existing energy transport pipelines that the proposed energy infrastructure would substantially interfere with service rendered over the existing lines or pipelines, except with the consent of the owners;

(4) Lands or easements owned or used by railroad corporations, except as authorized pursuant to section 2311;

(5) Lands or easements owned by the State or an agency or authority of the State; and

(6) Transmission and distribution plant that is owned, controlled, operated or managed by a transmission and distribution utility on the effective date of this section. [2009, c. 655, Pt. A, §2 (AMD).]

C. The commission may take and hold by right of eminent domain lands and easements within an energy infrastructure corridor in accordance with this paragraph, notwithstanding any transmission and distribution utility ownership of the lands or easements.

(1) The commission may exercise the authority under this paragraph only in an adjudicatory proceeding upon a petition by the Office of the Public Advocate or the Executive Department, Governor's Energy Office demonstrating that such action is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor. A determination by the commission that the exercise of eminent domain under this paragraph is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor constitutes reviewable final agency action.

(2) The amount of any lands or easements taken by the commission pursuant to this subsection may be no greater than is required to avoid the harm to electricity consumers identified under subparagraph (1).

(3) The right of eminent domain granted in this paragraph does not apply to personal property, fixtures or improvements that constitute transmission and distribution plant or an energy transport pipeline.

(4) The commission may exercise the right of eminent domain for the purposes of this paragraph in the same manner and under the same conditions as set forth in chapter 65. For the purposes of the exercise of eminent domain authorized by this paragraph, the commission is both a person and the State.

(5) The commission is authorized to assess transmission and distribution utilities to the extent necessary to obtain sufficient funds to pay for lands and easements taken pursuant to this subsection.

(6) The commission, in an adjudicatory proceeding upon petition by the Office of the Public Advocate or the Executive Department, Governor's Energy Office, may transfer or convey to any person or state agency or authority lands and easements once acquired, except that a transmission and distribution utility or the owner of an energy transport pipeline whose lands or easements were taken pursuant to this paragraph must be given the first opportunity to acquire the lands or easements to the extent necessary or useful in the performance of its duties as a transmission and distribution utility or an owner of an energy transport pipeline.

(7) The commission shall report on the circumstances of any taking by eminent domain to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters during the next regular session of the Legislature following the acquisition of lands or easements by eminent domain. [2011, c. 655, Pt. MM, §16 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

[2011, c. 655, Pt. MM, §16 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

8. **Utility service territory.** Nothing in this section modifies existing restrictions on entities providing service within a public utility's service territory provided under chapter 21.

[2007, c. 656, Pt. A, §3 (NEW) .]

9. **Rules.**

[2009, c. 655, Pt. A, §2 (RP) .]

10. **Repeal.** This section is repealed July 30, 2017.

[2013, c. 360, §5 (AMD) .]

SECTION HISTORY
2007, c. 656, Pt. A, §3 (NEW). 2009, c. 655, Pt. A, §2 (AMD). 2011, c. 652, §13 (AMD). 2011, c. 652, §14 (AFF). 2011, c. 655, Pt. MM, §§14-16 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 682, §38 (REV). 2013, c. 360, §§1-5 (AMD). 2013, c. 369, Pt. A, §1 (AMD).

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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 [1987, c. 141, Pt. A, §6 (NEW).]

B. Shall, to a level within the commission's discretion, consider whether the utility is operating as efficiently as possible and is utilizing sound management practices, including the treatment in rates of executive compensation. [1993, c. 506, §1 (AMD).]

[1993, c. 506, §1 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 377, (AMD). 1993, c. 506, §1 (AMD).

§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: [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§302-A. RULES GOVERNING POLITICAL ACTIVITIES, PROMOTIONAL ADVERTISING AND INSTITUTIONAL ADVERTISING

Rules adopted by the commission concerning promotional advertising; promotional allowances, including, but not limited to, the granting of promotional rebates or credits; advertising to promote corporate image or goodwill; or political activities by public utilities are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Rules on these matters in effect on the effective date of this section remain in effect and do not require legislative approval but any changes to such rules are subject to review and approval in accordance with Title 5, chapter 375, subchapter 2-A. [2005, c. 204, §1 (NEW).]

SECTION HISTORY
2005, c. 204, §1 (NEW).

§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 and upon an electric plant to the extent paid for by the utility on the premises of any of its customers, which is 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. [1987, c. 613, §2 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 613, §2 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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 schedules, either in particular instances or by rule applicable to special or peculiar circumstances or conditions. [1995, c. 254, §1 (AMD).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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 4703 or a rate change made for the sole purpose of implementing an energy conservation adjustment rate, pursuant to section 3154. [1999, c. 398, Pt. A, §13 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 254, §1 (AMD). 1999, c. 398, §A13 (AMD). 1999, c. 398, §§A104,105 (AFF).

§307-A. EXEMPTION FOR CERTAIN TELEPHONE UTILITIES

(REPEALED)

SECTION HISTORY
1997, c. 276, §1 (NEW). 1997, c. 276, §4 (AFF). 2001, c. 137, §3 (AMD). 2011, c. 623, Pt. C, §1 (RP).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Exception: Municipal and quasi-municipal water utilities and consumer-owned transmission and distribution utilities.** This section does not apply to:

A. Municipal or quasi-municipal corporations that are water utilities within the definition of section 102, any provisions in any charter notwithstanding, and that elect to proceed pursuant to the terms of section 6104 or 6104-A, unless by the express terms of section 6104 or 6104-A the provisions of this section are made applicable to those corporations; [2009, c. 237, §1 (AMD).]

A-1. Municipal or quasi-municipal corporations that are water utilities within the definition of section 102, any provisions in any charter notwithstanding, and that file a change in a schedule pursuant to section 307 that changes rates, tolls or charges for service other than the provision of water, only if the cumulative revenue impact of all such changes that become effective within any consecutive 12-month period does not exceed 1% of the utility's total annual revenue; or [2007, c. 127, §1 (NEW).]

B. Consumer-owned transmission and distribution 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. [1999, c. 398, Pt. A, §14 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[2009, c. 237, §1 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A14 (AMD). 1999, c. 398, §§A104,105 (AFF). 2007, c. 127, §1 (AMD). 2009, c. 237, §1 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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: [1987, c. 141, Pt. A, §6 (NEW).]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§313. SUBMETERING PERMITTED IN CAMPGROUNDS

A campground owner or operator may submeter electric service to campground sites within the campground in accordance with this section, as long as electric service is not provided to any particular submeter user for a period greater than 6 consecutive months. [1995, c. 129, §1 (NEW).]

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

A. "Campground" means a recreational camping park where fees are charged for the recreational use of the park and that can accommodate 10 or more temporary living quarters, including but not limited to tents, recreational vehicles, trailers, vans, pickup campers and motor homes. [1995, c. 129, §1 (NEW).]

B. "Submeter user" means any person using a campground site on which a campground owner or operator has installed a submeter. [1995, c. 129, §1 (NEW).]

[1995, c. 129, §1 (NEW) .]

2. **Charges.** A campground owner or operator may charge a submeter user only for kilowatt hours used by that submeter user. The charge that a campground owner or operator may charge a submeter user for electric service may not exceed the kilowatt usage of the submeter user multiplied by the combined rate per kilowatt hour that the campground owner or operator is charged by the transmission and distribution utility and competitive electricity provider.

[1999, c. 398, Pt. A, §15 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. **Nontaxable event.** The collection of charges under this section for submetered electric service is not a sale for the purposes of taxation.

[1995, c. 129, §1 (NEW) .]

4. **Interpretation; not resale.** A submeter user is not a customer of the transmission and distribution utility or competitive electricity provider providing service to the master-metered campground owner or operator. For purposes of this Title, a submeter user is not a customer of the campground owner or operator. Nothing in this section permits the resale of electricity by a campground owner or operator.

[1999, c. 398, Pt. A, §15 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1995, c. 129, §1 (NEW). 1999, c. 398, §A15 (AMD). 1999, c. 398, §§A104,105 (AFF).

§314. PRIVATE LINE EXTENSIONS

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

A. "Line" means an electric distribution line, including poles and other related structures. [2001, c. 201, §1 (NEW).]

[2001, c. 201, §1 (NEW) .]

2. **Standards for private lines.** The commission shall by rule establish standards for the construction of a line by a person other than a transmission and distribution utility. The rules:

A. Must establish standards for the construction of lines. The commission may establish different standards in different transmission and distribution utility territories. The standards must be the same as the standards that would apply if the transmission and distribution utility in whose territory the line is constructed built the line unless there are compelling public safety reasons for applying different standards. If these standards and any other reasonable conditions established by the commission are met, a transmission and distribution utility may not refuse to connect the line to the utility's system or to deliver energy over the line; [2001, c. 201, §1 (NEW).]

B. Must establish terms and conditions for transferring the ownership of a line to a transmission and distribution utility. The rules may establish a requirement that certain types of lines, lines under certain conditions, or lines in certain locations, such as lines located in the public way, must be transferred to the transmission and distribution utility; and [2001, c. 201, §1 (NEW).]

C. May require that a person that is not a transmission and distribution utility that constructs a line meet minimum qualifications established or approved by the commission. [2001, c. 201, §1 (NEW).]

[2001, c. 201, §1 (NEW) .]

3. **Apportionment of costs of line extensions.** The commission shall adopt rules establishing requirements for apportioning the costs of a single-phase overhead line extension among persons who take service through the line after the construction of the line. The commission may provide for exemptions from the apportionment methodology established by the commission for any transmission and distribution utility that petitions the commission for an exemption and establishes to the satisfaction of the commission that the transmission and distribution utility's apportionment methodology adequately serves the public interest and balances competing interests of customers.

[2001, c. 201, §1 (NEW) .]

4. **Lines constructed in the public way.** Nothing in this section or rules adopted under this section limits the application of section 2305-B to any line constructed in a public way.

[2001, c. 1, §44 (COR) .]

5. **Submission of rules.** Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be submitted to the Legislature for review no later than February 1, 2002.

[2001, c. 201, §1 (NEW) .]

SECTION HISTORY
RR 2001, c. 1, §44 (COR). 2001, c. 201, §1 (NEW).

§315. TRANSMISSION AND DISTRIBUTION UTILITY LINE EXTENSION CONSTRUCTION

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

A. "Line" has the same meaning as in section 314, subsection 1, paragraph A. [2011, c. 484, §1 (NEW).]

B. "Make-ready work" means work necessary to connect a line extension to existing utility infrastructure. [2011, c. 484, §1 (NEW).]

[2011, c. 484, §1 (NEW) .]

2. **Line extension charge.** Amounts charged by a transmission and distribution utility serving more than 500,000 retail customers for a line extension are governed by this subsection.

A. Through a proceeding or rulemaking and in accordance with this section and section 314, the commission shall establish the method to be used by a transmission and distribution utility serving more than 500,000 retail customers for line extension pricing. The method may include the amount to be charged per foot for the completion of a line extension. [2011, c. 484, §1 (NEW).]

B. Revenue received by a transmission and distribution utility serving more than 500,000 retail customers from a telephone utility may not be used to offset the total cost of or amount charged to a customer for a line extension. [2011, c. 484, §1 (NEW).]

C. A transmission and distribution utility serving more than 500,000 retail customers shall report annually to the commission, on a date determined by the commission, the total amount charged to customers for line extensions and the total actual costs to the transmission and distribution utility serving more than 500,000 retail customers to complete those line extensions for a prior 12-month period determined by the commission. [2011, c. 484, §1 (NEW).]

D. If a report pursuant to paragraph C demonstrates that charges to customers for line extensions are less than 95% of total actual costs or greater than 105% of total actual costs during the reporting period, the commission, within 30 days of the date of the filing of the report, shall open an investigation to determine the appropriate adjustments to be made to the method used by the transmission and distribution utility pursuant to paragraph A to establish the amount charged to a customer for a line extension so that the total amount charged to customers is no less than 95% and no more than 105% of total actual costs for the line extensions. [2011, c. 484, §1 (NEW).]

[2011, c. 484, §1 (NEW) .]

3. **Cost recovery.** Any cost associated with construction of a line extension that is not recovered by a transmission and distribution utility serving more than 500,000 retail customers through the charges established in accordance with subsection 2 must be borne by the utility and may not be recovered in rates.

[2011, c. 484, §1 (NEW) .]

4. **Fees for make-ready work.** A transmission and distribution utility serving more than 500,000 retail customers may charge a customer taking polyphase service the actual costs of make-ready work associated with that customer's service. A transmission and distribution utility serving more than 500,000 retail customers may not charge a customer taking single-phase service for make-ready work associated with that customer's service. A transmission and distribution utility serving more than 500,000 retail customers may recover costs associated with such single-phase service make-ready work in rates.

[2011, c. 484, §1 (NEW) .]

5. **Rules.** The commission shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 484, §1 (NEW) .]

Nothing in this section may be construed to limit the activities of a transmission and distribution utility serving 500,000 or fewer retail customers. [2011, c. 484, §1 (NEW).]

SECTION HISTORY
2011, c. 484, §1 (NEW).

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. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Other systems prohibited.** Nothing in this Title requires 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.

[1987, c. 490, Pt. A, §1 (RPR) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §A1 (AMD).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§504. TIME FOR CLOSING ACCOUNTS; FILING BALANCE SHEETS

The following provisions apply to the accounts of public utilities. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Filing of information.** A balance sheet as of the date the account is closed must be promptly taken from the account. Within 3 months after the account is closed, the balance sheet together with any other information the commission requires must be verified by an officer or owner of the public utility and filed with the commission. Each large, investor-owned transmission and distribution utility, as defined in section 3201, subsection 12, shall provide with the balance sheet and other information a calculation of the utility's return on common equity for the same period in the manner the commission requires, and shall provide a calculation of the utility's return on common equity for each of the previous 3 years. For purposes of this subsection, "return on common equity" means the return on common equity on investments subject to commission jurisdiction.

[2011, c. 71, §1 (AMD) .]

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 $50,000.

[1987, c. 631, §6 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 631, §6 (AMD). 2011, c. 71, §1 (AMD).

§505. AUDIT OF ACCOUNTS

The commission shall provide for the examination and audit of all accounts and all items must be allocated to the accounts in the manner prescribed by the commission. [2011, c. 77, §1 (AMD).]

1. **Consumer-owned water utilities.** Except as provided in this subsection, the commission may not require under this section that a qualified small water utility cause to be conducted an annual audit of its accounts. For purposes of this subsection, "qualified small water utility" means a consumer-owned water utility with gross annual revenues that do not exceed $250,000.

A. A qualified small water utility with gross annual revenues of $50,000 or less shall for any year used as a test year for rate-making purposes cause to be conducted, in accordance with generally accepted auditing standards, an audit of its accounts by an independent certified public accountant licensed to practice in the State. [2011, c. 77, §1 (NEW).]

B. A qualified small water utility with gross annual revenues greater than $50,000:

(1) Shall cause to be conducted, in accordance with generally accepted auditing standards, an annual review of its accounts by an independent certified public accountant licensed to practice in the State; and

(2) Not less than once every 5 years and for any year used as a test year for rate-making purposes, shall cause to be conducted, in accordance with generally accepted auditing standards, an audit of its accounts by an independent certified public accountant licensed to practice in the State. [2011, c. 77, §1 (NEW).]

Nothing in this subsection limits or affects any other reporting, review, auditing or other requirement imposed by a creditor of the qualified small water utility or by any other applicable law or government authority.

[2011, c. 77, §1 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2011, c. 77, §1 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§507. EXEMPTION FOR CERTAIN TELEPHONE UTILITIES

(REPEALED)

SECTION HISTORY
2001, c. 137, §4 (NEW). 2011, c. 623, Pt. C, §2 (RP).

§508. TELEPHONE UTILITIES

The provisions of this chapter do not apply to a telephone utility other than a provider of provider of last resort service with respect to its provider of last resort service accounts. The commission may not require a provider of provider of last resort service to keep its accounts in a manner that is substantially different from federal accounting standards applicable to telecommunications companies under 47 Code of Federal Regulations, Part 32 or any replacement accounting standards adopted by the Federal Communications Commission. [2011, c. 623, Pt. A, §10 (NEW).]

SECTION HISTORY
2011, c. 623, Pt. A, §10 (NEW).

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Renting facilities.** This section does not prohibit a public utility from renting any facilities incident to the production, transmission, delivery or furnishing of transmission and distribution service, gas, heat or water or the conveyance of telephone messages and paying a reasonable rental for the facilities.

[1999, c. 398, Pt. A, §16 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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 a telephone interface upon the subscribers' premises, and unless otherwise ordered by the commission, meters and appliances for the measurement of any product or service.

[1987, c. 490, Pt. C, §3 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C3 (AMD). 1995, c. 225, §5 (AMD). 1999, c. 398, §A16 (AMD). 1999, c. 398, §§A104,105 (AFF).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Service and facilities.** Every public utility providing transmission and distribution 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.

[1999, c. 398, Pt. A, §17 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A17 (AMD). 1999, c. 398, §§A104,105 (AFF).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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 [1987, c. 141, Pt. A, §6 (NEW).]

C. A public utility from making special rates for its employees or in case of emergency service. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1995, c. 254, §2 (AMD) .]

3-A. **Special contracts.** A public utility, subject to the commission's approval, may make a contract for a definite term for its product or service, but the published rates for the product or service may not be changed during the term of the contract without the commission's consent.

[2011, c. 623, Pt. C, §3 (AMD) .]

4. **Forfeiture.**

[2003, c. 505, §14 (RP) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §A2 (AMD). 1995, c. 254, §§2,3 (AMD). 2003, c. 505, §14 (AMD). 2009, c. 66, §1 (AMD). 2011, c. 623, Pt. C, §3 (AMD).

§704. TERMINATION OF UTILITY SERVICES

The following provisions apply to termination of a customer's utility service. [1987, c. 141, Pt. A, §6 (NEW).]

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 a transmission and distribution, gas, water or telephone utility of the State. These rules apply generally to all such utilities within the commission's jurisdiction and must provide for adequate written notice by that utility to the residential customer that the customer's utility bill has not been paid, and a notice of the prospective termination or disconnection and the 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 must 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.

[1999, c. 398, Pt. A, §18 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

1-A. **Agreements with landlords.** A transmission and distribution utility shall, upon request of a landlord, enter into an agreement with that landlord with respect to a residential rental property receiving transmission and distribution service in the name of that landlord's tenant to automatically transfer the service to the name of the landlord if the service would otherwise be disconnected. The transmission and distribution utility must notify the landlord within 72 hours of the transfer of the service to the landlord's name. Except upon the consent of the tenant, the transmission and distribution utility may not disclose to the landlord any personal or confidential information regarding the tenant or the tenant's account, except that a utility may disclose to the landlord that the service has been transferred to the landlord's name and any other information necessary to enable the utility to continue service to the premises.

The transmission and distribution utility may charge a reasonable fee for the costs associated with the transfer of the service to the landlord's name.

[2013, c. 250, §1 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Violation of rules.**

[2003, c. 505, §15 (RP) .]

4. **Property loss suffered by a customer.** Upon a finding by the District Court of a property loss suffered by a customer causally related to a willful or reckless violation by a public utility of any substantive rule adopted by the commission pursuant to the authority granted in this section, the court may order the public utility to compensate the customer for the actual loss, less any setoff 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 that was in willful or reckless violation of the commission's 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 must be provided to the utility in writing within 30 days of the termination.

[2003, c. 505, §16 (AMD) .]

5. **Confidentiality of customer information.** The following provisions apply to the confidentiality of customer information.

A. Records containing the following information shall be confidential and are not public records for the purpose of Title 1, section 402, subsection 3:

(1) Information acquired by the Consumer Assistance Division regarding the payment and credit history and financial condition of a customer who has requested the assistance of the division; and

(2) Information acquired by the Consumer Assistance Division regarding the medical condition of a customer or member of a customer's family. [1987, c. 614, §2 (NEW).]

B. Notwithstanding paragraph A, any person, agency or public utility directly involved in the investigation of an individual customer matter shall be given access to the information which is pertinent to the complaint. [1987, c. 614, §2 (NEW).]

C. Compilations of information in which the customer's identity is not disclosed are not confidential. [1987, c. 614, §2 (NEW).]

D. The Consumer Assistance Division shall prepare its decisions or abstracts of decisions in a manner which protects the confidentiality of customer information as provided by this subsection. Those decisions or abstracts of decisions shall be available for public access. [1987, c. 614, §2 (NEW).]

[1987, c. 614, §2 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 614, §2 (AMD). 1999, c. 398, §A18 (AMD). 1999, c. 398, §§A104,105 (AFF). 1999, c. 547, §§B76,78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 505, §§15,16 (AMD). 2013, c. 250, §1 (AMD).

§705. UTILITY DEPOSITS

The following provisions apply to deposits of utility customers: [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 on any deposit of any customer.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

B. "Rental property" means property used or occupied by any tenant for which rent is paid to a landlord. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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. Any tenant who has assumed responsibility for future service under this section and paid all or any portion of the utility service for the rental property to a utility may deduct the amount paid from any rent due to the landlord.

[1989, c. 87, §2 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. **Subsequent purchaser takes title free of lien.** Any person who is a bona fide purchaser for value of rental property takes 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 is not affected by the lien established unless, before the mortgage is recorded, the utility has filed the certificate set out in subsection 4.

[1993, c. 110, §1 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 87, §2 (AMD). 1993, c. 110, §1 (AMD).

§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) With respect to a public utility other than a provider of provider of last resort service:

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

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

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

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

(e) Any public utility of which any person defined in divisions (a) to (d) is an affiliated interest; or

(2) With respect to a provider of provider of last resort service:

(a) Any person who owns directly, indirectly or through a chain of successive ownership 25% or more of the voting securities of a provider of provider of last resort service;

(b) Any person, 25% or more of whose voting securities are owned, directly or indirectly, by a provider of provider of last resort service;

(c) Any person, or group of persons acting in concert, that the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a provider of provider of last resort service, if the person or group of persons beneficially owns more than 3% of the provider's voting securities; or

(d) Any provider of provider of last resort service of which any person defined in divisions (a) to (c) is an affiliated interest.

[2011, c. 623, Pt. A, §11 (AMD).]

B. "Transaction" means any dealings between a public utility and its affiliated interests that affect, directly or indirectly, any accounting entry of the public utility, as prescribed pursuant to section 501. [2011, c. 623, Pt. A, §11 (AMD).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[2011, c. 623, Pt. A, §11 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Consent by commission.** No public utility may extend or receive credit, including the guarantee of debt, 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 or real or personal property 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. [1987, c. 141, Pt. A, §6 (NEW).]

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 as it applies to utility operations within the State. Unless

otherwise invalid, that contract or arrangement shall remain in effect until declared prospectively void as it applies to utility operations within the State 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. [1989, c. 159, §2 (AMD).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

E. By rule or by order, after notice and hearing, the commission may make this section applicable to contracts or arrangements between affiliated interests of a public utility, even though the public utility is not a party to the contracts or arrangements, in cases where the purpose of the contracts or arrangements is to furnish the services or goods to be used by the public utility in the course of its operations in the State, as described in this subsection. [1989, c. 159, §2 (NEW).]

F. In addition to the exemptions permitted by paragraph C and subsection 4, the commission for good cause may, by rule or by order, exempt classes of contracts or arrangements or a utility or group of utilities from filing or obtaining commission approval of a contract or arrangement with an affiliated interest or between affiliated interests prior to the entry into the contract or arrangement by the utility, provided that no such exemption may exceed 60 days and that the commission shall thereafter approve or disapprove the contract pursuant to this subsection. [1989, c. 159, §2 (NEW).]

G. For any contract or arrangement expected to involve the use by an affiliated interest of utility facilities, services or intangibles, including good will or use of a brand name, the commission shall determine the value of those facilities, services or intangibles. When its facilities, services or intangibles are used by the affiliated interest, the utility's costs must be charged to and received from the affiliated interest based upon this value. The commission shall also determine the proper allocation of costs for shared facilities, services or intangibles. If the commission is unable to make the value determinations required by this paragraph within the time limits imposed by paragraph A, the commission may approve the contract or arrangement without making the determinations, except that the commission shall make the determinations within 60 days of approving the contract or arrangement. [1997, c. 237, §1 (NEW).]

[1997, c. 237, §1 (AMD) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. Contracts or arrangements made in the ordinary course of business for the purchase of services, supplies or other personal property; [1987, c. 141, Pt. A, §6 (NEW).]

C. Contracts or arrangements where the total obligation to be incurred does not exceed $500; [1987, c. 141, Pt. A, §6 (NEW).]

D. The temporary leasing, lending or interchanging of equipment in the ordinary course of business in case of an emergency; and [1987, c. 141, Pt. A, §6 (NEW).]

E. Contracts made by a public utility with any person whose bid is the most favorable to the public utility. [1987, c. 141, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. **Violations.**

[2003, c. 505, §17 (RP) .]

6. **Application.** This section does not apply to any telephone utility other than a provider of provider of last resort service with respect to affiliated interests that are directly related to or that may directly affect provider of last resort service in this State, as determined by the commission by rule or order. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 623, Pt. A, §12 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 159, §2 (AMD). 1997, c. 237, §1 (AMD). 2003, c. 505, §17 (AMD). 2011, c. 623, Pt. A, §§11, 12 (AMD).

§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, device or inheritance. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

C. "Controlling interest" means:

(1) Voting power over voting shares of a corporation or entity that entitle the holders of those shares to cast at least 25% of the votes that all shareholders are entitled to cast in an election of the directors of the corporation or entity; or

(2) Voting power over at least 25% of the shares in any class of shares entitled to elect all the directors or any specified number of the directors.

For the purposes of this section, a person does not have a controlling interest if that person holds voting power, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee or trustee for one or more beneficial owners who do not individually or, if they are a group acting in concert, as a group have the voting power specified under this paragraph or who are not considered to have a controlling interest under this paragraph.

A person has voting power over a voting share if that person has shares, directly or indirectly, through any option, contract, arrangement, understanding, voting trust or conversion right or, by acting jointly or in concert or otherwise, has the power to vote, or to direct the voting of, that voting share. [2011, c. 623, Pt. A, §13 (NEW).]

[2011, c. 623, Pt. A, §13 (AMD) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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 these powers or rights. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

2-A. **Approval does not affect rate-making powers.** Commission approval of a reorganization under this section may not limit or restrict the powers of the commission in determining and fixing any rate, fare, tolls, charge, classification, schedule or joint rate as provided in this Title.

[1989, c. 159, §3 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. **Limitation.** The provisions of this section do not apply to any telephone utility other than a provider of provider of last resort service and apply to a provider of provider of last resort service only if the reorganization results in a merger, sale or transfer of a controlling interest of the provider of provider of last resort service.

[2011, c. 623, Pt. A, §14 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 159, §3 (AMD). 2011, c. 623, Pt. A, §§13, 14 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

C. "Person" means a corporation, partnership, limited partnership, business association, trust, estate or natural person. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. **Civil violation; forfeiture.**

[2003, c. 505, §18 (RP) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 505, §18 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

B. The commission shall seasonably notify the public utility of the time and place of investigations. [1987, c. 141, Pt. A, §6 (NEW).]

C. The public utility shall have an opportunity to be heard during the investigation. [1987, c. 141, Pt. A, §6 (NEW).]

D. The commission may make such order or recommendation based on its investigation as in its judgment seems just and reasonable. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Filing accident reports.** Every public utility shall file reports of accidents described in subsections 1 and 2 with the commission. Accident reports must be filed in compliance with the commission's rules and in the manner and form designated by the commission. Accidents resulting in loss of human life must be reported immediately by telephone, facsimile machine or electronic media in a manner designated by the commission followed by a detailed written report.

[1995, c. 225, §6 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 225, §6 (AMD).

§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, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system affected, it finds the following:

A. That public convenience and necessity require the use by one public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier 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, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system; [2011, c. 623, Pt. B, §4 (AMD).]

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 [1987, c. 141, Pt. A, §6 (NEW).]

C. That the public utilities, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system have failed to agree upon the use or the terms and conditions or compensation for the use. [2011, c. 623, Pt. B, §4 (AMD).]

[2011, c. 623, Pt. B, §4 (AMD) .]

2. **Liability of user.** If joint use is ordered, the public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system to whom the use is permitted is 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.

[2011, c. 623, Pt. B, §4 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Rules.** The commission shall adopt a rule governing the resolution of pole attachment rate disputes. The commission shall consider various formulas, including, but not limited to, the formula adopted by the Federal Communications Commission as codified in 47 Code of Federal Regulations, Part 1, Subpart J, as amended.

[1991, c. 708, §1 (NEW) .]

5. **Dark fiber provider.** This section applies to a dark fiber provider only with respect to the construction and maintenance of federally supported dark fiber.

[2009, c. 612, §4 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 708, §1 (AMD). 2009, c. 612, §4 (AMD). 2011, c. 623, Pt. B, §4 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§713. UNREGULATED BUSINESS VENTURES OF UTILITIES

A utility may not charge its ratepayers for costs attributable to unregulated business ventures undertaken by the utility or an affiliated interest. The commission shall allocate, between a utility's shareholders and ratepayers, costs for facilities, services or intangibles, including good will or use of a brand name, that are shared between regulated and unregulated business activities. The commission shall also attempt to ensure that the utility or the affiliated interest does not have an unfair advantage in any competitive market as a result of its regulated status or its affiliation with a regulated utility. [1999, c. 158, §1 (AMD).]

Complaints by entities competing with a utility or an affiliated interest in an unregulated market, alleging that the utility or affiliated interest has an undue competitive advantage must be adjudicated by the commission. The commission shall render a decision on any complaint filed under this section within 9 months of the date of the filing. The commission may dismiss without hearing any complaint that it concludes is clearly intended to harass or delay, is frivolous or is clearly without merit. [1999, c. 158, §1 (AMD).]

A complaint filed under this section must specify, to the extent possible, the nature and extent of the alleged undue competitive advantage and the basis for the belief that an undue competitive advantage exists. The utility shall respond to the complaint within 10 days of receiving notice from the commission of the complaint. Within 10 days of receiving the utility's response, the commission shall determine whether the complaint is clearly intended to harass or delay, is frivolous or is clearly without merit. [1999, c. 158, §1 (AMD).]

For the purposes of this section, the term "affiliated interest" has the same meaning as in section 707, subsection 1, paragraph A. For the purposes of this section, "undue competitive advantage" means an advantage gained by a violation of the requirements established by the commission by rule pursuant to section 715. [1999, c. 158, §1 (AMD).]

SECTION HISTORY
1997, c. 237, §2 (NEW). 1999, c. 158, §1 (AMD).

§714. NOTICE TO COMMISSION

Within 30 days of the commencement of operations by a utility of any business activity not regulated by the commission, the utility shall notify the commission of the existence of those operations. [1997, c. 237, §2 (NEW).]

SECTION HISTORY
1997, c. 237, §2 (NEW).

§715. RULEMAKING

The commission shall adopt rules that prescribe the allocation of costs for facilities, services or intangibles that are shared between regulated and unregulated activities of a utility or an affiliated interest as defined in section 707, subsection 1, paragraph A. Rules adopted by the commission may not establish a presumption with regard to the value of good will used by an affiliated interest in those cases where the business venture of the affiliated interest is regulated by the commission. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [1999, c. 158, §2 (AMD).]

SECTION HISTORY
1997, c. 237, §2 (NEW). 1999, c. 158, §2 (AMD).

Chapter 7-A: OVERHEAD HIGH-VOLTAGE LINE SAFETY ACT

§751. SHORT TITLE

This Act may be known and cited as the "Overhead High-voltage Line Safety Act." [1995, c. 348, §1 (NEW).]

SECTION HISTORY
1995, c. 348, §1 (NEW).

§752. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 348, §1 (NEW).]

1. **Covered equipment or items.** "Covered equipment or items" means any mechanical equipment, hoisting equipment, antenna or boat mast or rigging, any part of which is capable of vertical, lateral or swinging motion that causes any portion of the equipment or item to come within 10 feet of an overhead high-voltage line during erection, construction, operation or maintenance, including, but not limited to, equipment such as cranes, derricks, power shovels, backhoes, dump trucks, drilling rigs, pile drivers, excavating equipment, hay loaders, hay stackers, combines, portable grain augers or elevators and items such as ladders, scaffolds, boat masts and outriggers, houses or other structures in transport and gutters, siding and other construction materials.

[1995, c. 348, §1 (NEW) .]

2. **Overhead high-voltage line.** "Overhead high-voltage line" means all above-ground bare or insulated electrical conductors of voltage in excess of 600 volts, measured between conductors or measured between a conductor and the ground, that are owned or operated by a transmission and distribution utility, except those conductors that are:

A. Enclosed in a rigid metallic conduit or flexible armored conduit; or [1995, c. 348, §1 (NEW).]

B. On the premises of mines that are subject to the provisions of the Federal Mine Safety and Health Act of 1977, 30 United States Code, Section 801 and regulations adopted pursuant to that Act by the federal Mine Safety and Health Administration. [1995, c. 348, §1 (NEW).]

[1999, c. 398, Pt. A, §19 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. **Person.** "Person" means natural person, firm, business association, company, partnership, corporation or other legal entity.

[1995, c. 348, §1 (NEW) .]

4. **Person responsible.** "Person responsible" means the person performing or controlling the job or activity that necessitates the precautionary safety measures required by this chapter.

[1995, c. 348, §1 (NEW) .]

5. **Warning sign.** "Warning sign" means a weather-resistant sign of not less than 5 inches by 7 inches with at least 2 panels: a signal panel and a message panel. The signal panel must contain the signal word "WARNING" in black lettering and a safety alert symbol consisting of a black triangle with an orange exclamation point, all on an orange background. The message panel must contain the following words, either in black letters on a white background or white letters on a black background: "UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN 10 FEET OF OVERHEAD HIGH-VOLTAGE LINES - Contact with power lines may result in death or serious burns." A symbol or pictorial panel may also be added. The warning sign language, lettering, style, colors, size and format must meet the requirements of the American National Standard Institute, Standard Z535.4-1991, Product Safety Signs and Labels, or its successors.

[1995, c. 348, §1 (NEW) .]

SECTION HISTORY
1995, c. 348, §1 (NEW). 1999, c. 398, §A19 (AMD). 1999, c. 398, §§A104,105 (AFF).

§753. DUTY AND RESPONSIBILITY

It is the duty and responsibility of employers of persons and individuals who use any covered equipment or items, for the benefit of themselves or others, to acquaint themselves and their employees or agents using the equipment or items or engaged in the work operations or other activities with the provisions of this chapter and the rules prescribed and adopted pursuant to it. [1995, c. 348, §1 (NEW).]

SECTION HISTORY
1995, c. 348, §1 (NEW).

§754. PROHIBITED ACTIVITIES

The following activities are prohibited until the requirements of sections 756 and 757 are met. [1995, c. 348, §1 (NEW).]

1. **Perform work.** A person may not individually or through an agent or as an agent or employee perform any work or activity on any land, building, highway or other premises that may cause:

A. A person to be placed within 10 feet of an overhead high-voltage line; or [1995, c. 348, §1 (NEW).]

B. A tool or material used by a person to be brought within 10 feet of an overhead high-voltage line. [1995, c. 348, §1 (NEW).]

[1995, c. 348, §1 (NEW) .]

2. **Erect; construct; operate; maintain; transport; store.** A person may not, individually or through an agent or employee or as an agent or employee, erect, construct, operate, maintain, transport or store any covered equipment or item within 10 feet of an overhead high-voltage line, except as allowed in this subsection. The clearance from an overhead high-voltage line may be less than 10 feet but not less than 4 feet for the following covered equipment or items in the following circumstances:

A. A sail boat on high water; [1995, c. 348, §1 (NEW).]

B. Covered equipment lawfully driven or transported on public streets and highways in compliance with the height restriction applicable to that street or highway; or [1995, c. 348, §1 (NEW).]

C. Refuse collection equipment wherever operated. [1995, c. 348, §1 (NEW).]

[1995, c. 348, §1 (NEW) .]

3. **Operate airplane or helicopter.** A person may not, individually or through an agent or employee or as an agent or employee, operate or cause to be operated an airplane or helicopter within 20 feet of an overhead high-voltage line, except that no clearance is specified for licensed aerial spray applicators that may incidentally pass within the 20-foot limitation during normal operation.

[1995, c. 348, §1 (NEW) .]

4. **Store.** A person may not, individually or through an agent or employee or as an agent or employee, store or cause to be stored, underneath or in proximity to an overhead high-voltage line, any materials that are expected to be moved or handled by covered equipment in a manner that could bring the materials or the covered equipment within 10 feet of an overhead high-voltage line.

[1995, c. 348, §1 (NEW) .]

5. **Provide additional clearance.** A person may not, individually or through an agent or employee or as an agent or employee, provide or cause to be provided additional clearance by:

A. Raising, moving or displacing an overhead utility line of any type or nature, including high-voltage, low-voltage, telephone, cable television, fire alarm or other line; or [1995, c. 348, §1 (NEW).]

B. Pulling or pushing a pole, guy or other structural appurtenance. [1995, c. 348, §1 (NEW).]

[1995, c. 348, §1 (NEW) .]

SECTION HISTORY
1995, c. 348, §1 (NEW).

§755. CLEARANCE REDUCED

If the overhead high-voltage line is covered with a mechanical barrier, in accordance with section 758, the required clearance under section 754, subsections 1 and 2 may be reduced to the designed working dimensions of the mechanical barrier. If the line is de-energized and grounded, in accordance with section 758, subsection 5, the required clearance under section 754, subsections 1 and 2 is reduced from 10 feet to 2 feet. Under no circumstances may the overhead high-voltage line or its covering be contacted. If the

overhead high-voltage lines are temporarily raised or moved to accommodate the expected work or other activity, without also being insulated or de-energized and grounded, the required clearance under section 754, subsections 1 and 2 may not be reduced. [1995, c. 348, §1 (NEW).]

SECTION HISTORY
1995, c. 348, §1 (NEW).

§756. WARNING SIGNS

A person may not, individually or through an agent or employee or as an agent or employee, operate covered equipment in the proximity of an overhead high-voltage line unless there are posted and maintained warning signs as follows: [1995, c. 348, §1 (NEW).]

1. **In covered equipment.** A sign must be located in the covered equipment and readily visible and legible to the operator of the covered equipment when at the controls of the covered equipment; and

[1995, c. 348, §1 (NEW) .]

2. **Outside covered equipment.** Signs must be located on the outside of covered equipment in numbers and locations that are readily visible and legible at a distance of 12 feet by people engaged in the work operations.

[1995, c. 348, §1 (NEW) .]

SECTION HISTORY
1995, c. 348, §1 (NEW).

§757. NOTIFICATION

1. **Notification.** When a person is going to carry on any work or activity in closer proximity to an overhead high-voltage line than permitted by this chapter, the person responsible for the work or activity must notify the owner or operator of the overhead high-voltage line prior to the time the work or activity is to be commenced. Notification must be at least 72 hours in advance of the work or activity, excluding Saturday, Sunday and legal state and federal holidays, except in emergency situations that include police, fire and rescue emergencies, in which case notification must be made as soon as possible. When the person responsible for the work activity is under contract or agreement with a government entity and the government entity and the owner or operator of the overhead high-voltage lines have already made satisfactory mutual arrangements, further arrangements for that particular activity are not required.

[1995, c. 348, §1 (NEW) .]

2. **Information.** A notice served by a person on an owner or operator of an overhead high-voltage line pursuant to this section must contain the following information:

A. The name of the individual serving the notice; [1995, c. 348, §1 (NEW).]

B. The location of the proposed work or activity; [1995, c. 348, §1 (NEW).]

C. The name, address and telephone number of the person responsible for the work or activity; [1995, c. 348, §1 (NEW).]

D. The field telephone number at the site of the work or activity, if one is available; [1995, c. 348, §1 (NEW).]

E. The type and extent of the proposed work or activity; [1995, c. 348, §1 (NEW).]

F. The name of the person for whom the proposed work or activity is being performed; [1995, c. 348, §1 (NEW).]

G. The time and date of the notice; and [1995, c. 348, §1 (NEW).]

H. The date and time when the work or activity is to begin. [1995, c. 348, §1 (NEW).]

[1995, c. 348, §1 (NEW) .]

3. **Telephone notification.** If the notification required by this section is made by telephone, a record of the notification must be maintained by the owner or operator of the overhead high-voltage line and by the person giving the notice to document compliance with the requirements of this section.

[1995, c. 348, §1 (NEW) .]

4. **Address and telephone.** To facilitate the notification required by this section, every owner or operator of overhead high-voltage lines that does not participate in an association for mutual receipt of notification of activities close to overhead high-voltage lines shall file with the commission the addresses and telephone numbers of the contact persons or offices of the owner or operator of overhead high-voltage lines in the State to whom all notifications concerning proposed work in the service territory of the owner or operator is directed. The information must be maintained by the commission in a manner determined by the commission.

[1995, c. 348, §1 (NEW) .]

5. **Form association.** Owners or operators of overhead high-voltage lines may form and operate an association providing for mutual receipt of notification of activities close to overhead high-voltage lines in a specified area. In areas where an association is formed, the following must occur:

A. Notification of work activities to the association must be effected as set forth in this section; [1995, c. 348, §1 (NEW).]

B. Owners or operators of overhead high-voltage lines in the area:

(1) May become members of the association;

(2) May participate in and receive the services furnished by the association; and

(3) Shall pay their proportionate share of the cost for the services furnished; [1995, c. 348, §1 (NEW).]

C. The association whose members or participants have overhead high-voltage lines within the State shall file a list containing the name, address and telephone number of each owner or operator of overhead high-voltage lines within the area of an association with the commission; and [1995, c. 348, §1 (NEW).]

D. If notification is made by telephone, record must be maintained by the association to document compliance with the requirements of this section. [1995, c. 348, §1 (NEW).]

[1995, c. 348, §1 (NEW) .]

SECTION HISTORY
1995, c. 348, §1 (NEW).

§758. PRECAUTIONARY SAFETY ARRANGEMENTS

1. **Precautionary safety arrangements.** Installation or performance of precautionary safety arrangements must be performed by the owner or operator of overhead high-voltage lines only after mutually satisfactory arrangements are negotiated between the owner or the operator of the overhead high-voltage lines

and the person responsible for the work or activity to be done. The negotiations must proceed promptly and in good faith with the goal of accommodating the work or activity consistent with the owner's or operator's service needs and the intent to protect the public from the danger of contact with overhead high-voltage lines.

[1995, c. 348, §1 (NEW) .]

2. **Appropriate for work.** The precautionary safety measures must be appropriate for the work or activity for which the owner or operator of overhead high-voltage lines has received notification. During negotiations, the person responsible for the work or activity may change the notification of intended activities to include different or limited work or activities so as to reduce the precautionary safety measures required to accommodate the work or activities. The precautionary safety measures may not violate the requirements of the National Electrical Safety Code.

[1995, c. 348, §1 (NEW) .]

3. **Agreement for payment.** Agreements for payments of the costs of precautionary safety measures are governed by the following provisions.

A. If the owner or operator of the overhead high-voltage line has standard rates that apply to the provision of precautionary safety arrangements, the owner or operator of the overhead high-voltage line is not required to provide precautionary safety measures until payment has been made by the person requesting the safety measures or an agreement for payment has been reached. [1995, c. 348, §1 (NEW).]

B. If the owner or operator of the overhead high-voltage line does not have standard rates, the owner or operator of the overhead high-voltage lines is not required to provide the precautionary safety arrangements until an agreement for payment has been made, except that, if there is a dispute over the amount to be charged by the owner or operator of the overhead high-voltage lines for providing the arrangements, the owner or operator shall commence providing precautionary safety measures as if an agreement had been reached. If an agreement for payment has not been reached within 14 days from the completion of precautionary safety measures, the owner or operator and the person or business entity responsible for the work activities shall resolve the dispute by arbitration or other legal means. [1995, c. 348, §1 (NEW).]

[1995, c. 348, §1 (NEW) .]

4. **Initiate; timely fashion.** Unless otherwise agreed, the owner or operator of the overhead high-voltage lines shall initiate the agreed upon precautionary safety arrangements within 3 working days after the date of agreement for payment, if required, has been reached or within 5 working days of notice that the work activity is being done without an agreement. Once initiated, the owner or operator of the overhead high-voltage lines shall complete the work promptly and without interruption, consistent with the owner's or operator's service needs. If the owner or operator of the overhead high-voltage lines fails to provide the agreed upon precautionary safety arrangements within the period agreed upon, the owner or operator of the overhead high-voltage lines is liable for costs or loss of production of the person or business entity requesting the precautionary safety arrangements in order to work in proximity to overhead high-voltage lines, except that no liability exists during times of emergency, such as storm repair.

[1995, c. 348, §1 (NEW) .]

5. **Inclusion.** Precautionary safety arrangements may include:

A. Placement of temporary mechanical barriers separating and preventing contact between material, equipment or persons and overhead high-voltage lines; [1995, c. 348, §1 (NEW).]

B. Temporary de-energization and grounding; [1995, c. 348, §1 (NEW).]

C. Temporary relocation or raising of the overhead high-voltage lines; or [1995, c. 348, §1 (NEW).]

D. Any other measures that are appropriate in the judgment of the owner or operator of the overhead high-voltage lines. [1995, c. 348, §1 (NEW).]

[1995, c. 348, §1 (NEW) .]

6. **Expense.** The actual expense incurred by an owner or operator of overhead high-voltage lines in taking precautionary measures, including wages of its workers involved in making safety arrangements, must be paid by the person responsible for the work or activity to be done except when:

A. Prior arrangements for payment are made between a government entity for whom the work is to be done and the owner or operator of the overhead high-voltage line; or [1995, c. 348, §1 (NEW).]

B. The owner or operator of the overhead high-voltage line has not installed the overhead high-voltage line in conformance with the applicable edition of the National Electrical Safety Code. If the overhead high-voltage line is not installed in conformance with the applicable edition of the National Electrical Safety Code, the liability of the person responsible for the work or activity is limited to the amount required to accommodate the work or activity minus the amount required to bring the installation into compliance with the National Electrical Safety Code. [1995, c. 348, §1 (NEW).]

[1995, c. 348, §1 (NEW) .]

SECTION HISTORY
1995, c. 348, §1 (NEW).

§759. ENFORCEMENT

The provisions of this chapter are considered safety and health standards of the State. A person who causes, permits or allows work or other activity in violation of the provisions of this chapter may be assessed a civil penalty not exceeding $1,000 for each day the violation continues. [1995, c. 348, §1 (NEW).]

Civil penalties may be recovered in a civil action in the name of the State brought in the Superior Court for the county where the violation is alleged to have occurred or where the violator resides or has its principal office. Interest accrues on the penalties at a rate of 1 1/2% per month except that the interest is suspended during the pendency of an appeal. [1995, c. 348, §1 (NEW).]

SECTION HISTORY
1995, c. 348, §1 (NEW).

§760. INDEMNIFICATION

A person is liable to the owner or operator of the overhead high-voltage line and 3rd parties, if any, for all damages to facilities, injuries to persons and all costs, expenses and liabilities incurred by the owner or operator of the overhead high-voltage lines and 3rd parties, if any, as a result of any contact with an overhead high-voltage line if the person causes, permits or allows any work or activity in violation of a provision of this chapter and, as a result, a physical or electrical contact with an overhead high-voltage line occurs. [1995, c. 348, §1 (NEW).]

SECTION HISTORY
1995, c. 348, §1 (NEW).

§761. EXEMPTIONS

1. **Overhead electrical; communication circuits; conductors.** This chapter does not apply to any person while engaged in the construction, reconstruction, operation and maintenance of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment, if the person is an employee of the owner or operator of the overhead electrical or communication circuits or conductors or an independent contractor engaged on behalf of the owner or operator of the overhead electrical or communication circuits or conductors, including, but not limited to, employees of and independent contractors working for the following:

A. Any business operating rail transportation systems; [1995, c. 348, §1 (NEW).]

B. Any business operating electrical generating, transmission or distribution systems; [1995, c. 348, §1 (NEW).]

C. Any business operating communication systems; or [1995, c. 348, §1 (NEW).]

D. Any business operating cable television systems. [1995, c. 348, §1 (NEW).]

[1995, c. 348, §1 (NEW) .]

2. **Agricultural activities.** The provisions of sections 756 and 757 do not apply to a person operating agricultural equipment for agricultural purposes. If the equipment is likely to be routinely brought within 10 feet of an overhead high-voltage line, the owner or operator of the equipment must in each calendar year, prior to using the equipment, provide the owner or operator of the high-voltage line with the information required in section 757, subsection 2.

[1995, c. 348, §1 (NEW) .]

3. **Water and sewer system operators.** This chapter does not apply to any employee or independent contractor engaged on behalf of:

A. A water utility; [1995, c. 348, §1 (NEW).]

B. A sewer district or sanitary district; or [1995, c. 348, §1 (NEW).]

C. A municipal sewer department. [1995, c. 348, §1 (NEW).]

[1995, c. 348, §1 (NEW) .]

SECTION HISTORY
1995, c. 348, §1 (NEW).

Chapter 8: COLLECTION FOR AUDIOTEXT SERVICE CHARGES

§801. DEFINITIONS

(REPEALED)

SECTION HISTORY
1991, c. 524, §6 (NEW). 2011, c. 623, Pt. C, §4 (RP).

§802. DISCONNECTION PROHIBITED

(REPEALED)

SECTION HISTORY
1991, c. 524, §6 (NEW). 2011, c. 623, Pt. C, §4 (RP).

§803. BLOCKING SERVICE

(REPEALED)

SECTION HISTORY
1991, c. 524, §6 (NEW). 2009, c. 122, §12 (AMD). 2011, c. 623, Pt. C, §4 (RP).

§804. COLLECTION PROCEDURES

(REPEALED)

SECTION HISTORY
1991, c. 524, §6 (NEW). 2011, c. 623, Pt. C, §4 (RP).

§805. COMPLAINT PROCEDURES

(REPEALED)

SECTION HISTORY
1991, c. 524, §6 (NEW). 2011, c. 623, Pt. C, §4 (RP).

§806. AUDIOTEXT SERVICE STANDARDS

(REPEALED)

SECTION HISTORY
1991, c. 524, §6 (NEW). 2011, c. 623, Pt. C, §4 (RP).

§807. COMMISSION RULES

(REPEALED)

SECTION HISTORY
1991, c. 524, §6 (NEW). 2011, c. 623, Pt. C, §4 (RP).

§808. PENALTIES

(REPEALED)

SECTION HISTORY
1991, c. 524, §6 (NEW). 2011, c. 623, Pt. C, §4 (RP).

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: [1987, c. 141, Pt. A, §6 (NEW).]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

6. **Other purposes.** Any other lawful purpose.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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 are required in good faith for purposes enumerated in section 901.

[2009, c. 2, §99 (COR) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). RR 2009, c. 2, §99 (COR).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§906. COMMISSION AUTHORIZATION NOT REQUIRED

1. **Property and service outside the State.** Except as provided in subsection 2 for transmission and distribution 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.

[1999, c. 398, Pt. A, §20 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

2. **Exception: Transmission and distribution utilities.** Notwithstanding subsection 1, this chapter applies to any domestic transmission and distribution utility acquiring and operating utility facilities outside the State for the purpose of serving customers within the State.

[1999, c. 398, Pt. A, §20 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

3. **Domestic electric utility.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §20 (RP).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1997, c. 710, §4 (AMD). 1999, c. 398, §A20 (AMD). 1999, c. 398, §§A104,105 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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; [1987, c. 141, Pt. A, §6 (NEW).]

B. Declare any stock, bond or scrip dividend; or [1987, c. 141, Pt. A, §6 (NEW).]

C. Divide the proceeds of the sale of its own or any stock, bonds or scrip among stockholders. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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

A. Approved by the commission; and [1987, c. 141, Pt. A, §6 (NEW).]

B. A certificate of approval is filed with the Secretary of State within 20 days of the date it is approved. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§912. EXEMPTION FOR CERTAIN TELEPHONE UTILITIES

The provisions of this chapter do not apply to any telephone utility other than a provider of provider of last resort service. [2011, c. 623, Pt. A, §15 (NEW).]

The commission may adopt by rule standards and procedures for granting exemptions to providers of provider of last resort service from all or specified portions of this chapter. Any exemption granted pursuant to the rule must be accompanied by a finding that the exemption is in the public interest. A utility granted an exemption pursuant to a rule adopted under this section remains subject to other applicable provisions of this Title and commission rules. [2011, c. 623, Pt. A, §15 (AMD).]

For good cause, as defined by the commission by rule, the commission may revoke any exemption granted pursuant to this section. A revocation may be in whole or in part and may be specific to a single provider of provider of last resort service. [2011, c. 623, Pt. A, §15 (AMD).]

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 623, Pt. A, §15 (AMD).]

SECTION HISTORY
1997, c. 276, §2 (NEW). 1997, c. 276, §4 (AFF). 2001, c. 137, §5 (AMD). 2011, c. 623, Pt. A, §15 (AMD).

Chapter 11: AUTHORIZATION 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 any part of its property under construction for the performance of its duties to the public, or its franchises, permits or rights under them; [1987, c. 490, Pt. B, §1 (AMD).]

B. Merge or consolidate its property, franchise or permits, or a part of them, with another public utility by any means, direct or indirect. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 490, Pt. B, §1 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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, unless the property, franchise, permits or rights are owned, operated or under construction with respect to the performance of the utility's duties to the public inside this State.

[1987, c. 490, Pt. B, §2 (AMD) .]

4. **Exempt transactions.** Transactions involving utility property that do not materially affect the ability of a utility to perform its duties to the public do not require commission authorization under this section. The commission may certify transactions as not requiring authorization, either by rule or order.

[1995, c. 357, §1 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §§B1,B2 (AMD). 1995, c. 357, §1 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§1103. TRANSFER OF UTILITY STOCK

The following provisions apply to the acquisition of utility stock by another utility: [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Acquiring additional stock.** Nothing in this section may be construed to prevent the holding of stock lawfully acquired prior to the effective date of Public Law 1913, chapter 129, section 38, as approved March 27, 1913, or to prevent the acquiring of additional stock by a public utility which owned on that date a majority of the stock of such other utility.

[1987, c. 769, Pt. A, §194 (RPR) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §B3 (AMD). 1987, c. 769, §A194 (AMD).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§1105. EXEMPTION FOR CERTAIN TELEPHONE UTILITIES

(REPEALED)

SECTION HISTORY
1997, c. 276, §3 (NEW). 1997, c. 276, §4 (AFF). 2001, c. 137, §6 (AMD). 2011, c. 623, Pt. C, §5 (RP).

Chapter 13: PROCEDURE

§1301. SUBSTANTIAL COMPLIANCE

Substantial compliance by the commission with the requirements of this Title gives effect to all the commission'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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). RR 2009, c. 2, §100 (COR).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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; [1987, c. 141, Pt. A, §6 (NEW).]

B. A service is inadequate or cannot be obtained; or [1987, c. 141, Pt. A, §6 (NEW).]

C. An investigation of any matter relating to a public utility should for any reason be made. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§1304. PUBLIC HEARINGS

Public hearings conducted by the commission under this Title are subject to the following provisions. [1987, c. 141, Pt. A, §6 (NEW).]

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

[1995, c. 226, §1 (AMD) .]

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 by rule or 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. [1995, c. 226, §2 (AMD).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

C. Nothing in this section relieves the utility from the provisions of section 308. [1989, c. 502, Pt. A, §124 (AMD).]

[1995, c. 226, §2 (AMD) .]

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

[1995, c. 226, §3 (AMD) .]

4. **Hearings.** A party to a hearing is entitled to be heard in the manner described in Title 5, section 9056.

[1995, c. 226, §3 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. **Commission authorized to waive public hearing.** Unless one or more parties request a public hearing, the commission may waive the requirement for a public hearing under any provision of this Title.

[1995, c. 357, §2 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 502, §A124 (AMD). 1995, c. 226, §§1-3 (AMD). 1995, c. 357, §2 (AMD).

§1305. HEARINGS; EXAMINERS

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

A. Hold hearings; [1987, c. 141, Pt. A, §6 (NEW).]

B. Conduct investigations; [1987, c. 141, Pt. A, §6 (NEW).]

C. Administer oaths; [1987, c. 141, Pt. A, §6 (NEW).]

D. Certify to official acts; [1987, c. 141, Pt. A, §6 (NEW).]

E. Issue subpoenas; [1987, c. 141, Pt. A, §6 (NEW).]

F. Compel the attendance of witnesses and the production of books, accounts, papers, documents and testimony; [1987, c. 141, Pt. A, §6 (NEW).]

G. Punish by fine and imprisonment for contempt; and [1987, c. 141, Pt. A, §6 (NEW).]

H. Issue all processes necessary to the performance of the commission's duties. [1987, c. 141, Pt. A, §6 (NEW).]

[2011, c. 2, §38 (COR) .]

2. **Examiners.** The commission may appoint examiners who have authority to:

A. Administer oaths; [1987, c. 490, Pt. C, §4 (RPR).]

B. Examine witnesses; [1987, c. 490, Pt. C, §4 (RPR).]

C. Issue subpoenas; [1987, c. 490, Pt. C, §4 (RPR).]

D. Require the production of books, accounts, papers, documents and testimony; and [1987, c. 490, Pt. C, §4 (RPR).]

E. Receive evidence in any matter under the commission's jurisdiction. [1987, c. 490, Pt. C, §4 (RPR).]

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

[1987, c. 490, Pt. C, §4 (RPR) .]

3. **Evidence.** Evidence taken and received by the examiners has the same effect as evidence taken and received by the commission and authorizes commission 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 except as otherwise provided.

[1993, c. 108, §1 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. **Use of advisory staff.** This subsection applies to the participation of advisory staff and consultants in commission proceedings.

A. If an advisory staff member or consultant relies upon facts not otherwise in the record or presents to the commission any independent financial or technical analysis not otherwise in the record, the staff member or consultant:

(1) Shall place any such information into the record;

(2) Is subject to discovery; and

(3) Must be available to answer questions regarding those facts or analysis, in the same manner as witnesses in the proceeding, at a time sufficient to permit parties to respond.

This paragraph does not apply to reviews, evaluations or examinations of information, data, studies, analyses or computer modeling placed into the record by other parties or other aid or advice provided by advisory staff members or consultants. Compliance with this paragraph does not render the advisory staff member or consultant an advocate under the Maine Administrative Procedure Act. [1997, c. 691, §3 (NEW); 1997, c. 691, §10 (AFF).]

B. On request of any party in a proceeding, the commission shall assign one or more staff members who are not advisors in the proceeding to rule on any objection to discovery requests made by or directed to advisors. [1997, c. 691, §3 (NEW); 1997, c. 691, §10 (AFF).]

C. The commission may assign one or more staff members who are not advisors in a proceeding to serve as advocates to facilitate negotiated settlements in the proceeding. If the commission receives a written request from all of the parties in an adjudicatory proceeding that one or more staff advocates be appointed to facilitate a negotiated settlement in the proceeding, the commission shall either grant the request or issue a written order explaining the reasons why the commission denies the request. [1999, c. 602, §1 (AMD).]

[1999, c. 602, §1 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C4 (AMD). 1993, c. 108, §1 (AMD). 1997, c. 691, §3 (AMD). 1997, c. 691, §10 (AFF). 1999, c. 602, §1 (AMD). RR 2011, c. 2, §38 (COR).

§1306. DECISION

The following provisions apply to the commission's findings and decisions. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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

A. Certified by the administrative director; and [1987, c. 141, Pt. A, §6 (NEW).]

B. Delivered to the public utility affected by it. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

5. **Effective date.** The order shall take effect:

A. After a copy is delivered to the public utility affected; and [1987, c. 141, Pt. A, §6 (NEW).]

B. When signed by the administrative director or within such other time as may be prescribed by the commission. [1987, c. 490, Pt. A, §3 (RPR).]

[1987, c. 490, Pt. A, §3 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §A3 (AMD).

§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 public 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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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 the customer or was based upon error. The customer shall attempt to settle any dispute concerning the alleged overcharge 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. [2009, c. 2, §101 (COR).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). RR 2009, c. 2, §101 (COR).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 the person is entitled to reparation from the same utility because the person paid the rates that the utility admits are excessive or unreasonable 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.

[2011, c. 420, Pt. A, §33 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 are 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 schedule rate in force at the time it was rendered.

[1995, c. 254, §4 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 254, §4 (AMD). 2011, c. 420, Pt. A, §33 (AMD).

§1310. FUNDING OF INTERVENORS BY THE COMMISSION

1. **Intervenor funding.** Intervenor funding may be provided as follows.

A. In any commission proceeding in which standards under the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq., are implemented, the commission may order the utility to compensate the intervenor for reasonable attorney's fees, expert witness fees and other reasonable costs incurred in preparation and advocacy of the intervenor's position whenever the commission finds that:

(1) The position of the intervenor is not adequately represented by the Office of the Public Advocate or the Public Utilities Commission staff;

(2) The intervenor substantially contributed to the approval, in whole or in part, of a position advocated by the intervenor in the commission proceeding, except that, if no commission advocacy staff is appointed to a proceeding, the intervenor must be likely to contribute substantially to the conduct of the commission proceeding and to assist in the resolution of the issues raised in the proceeding; and

(3) Participation in the proceeding by the intervenor would impose a significant financial hardship on the intervenor. [1997, c. 691, §4 (AMD); 1997, c. 691, §10 (AFF).]

B. In any proceeding in which the commission does not implement standards under the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq., the commission may compensate the intervenor for reasonable attorney's fees, expert witness fees and other reasonable costs incurred in preparation and advocacy of the intervenor's position whenever the commission finds that requirements of paragraph A, subparagraphs (1) to (3), are satisfied. Compensation may be provided from the commission's regulatory fund and filing fees subject to the commission's determination of the availability of the funds. [1989, c. 281, (NEW).]

[1997, c. 691, §4 (AMD); 1997, c. 691, §10 (AFF) .]

2. **Determination of eligibility.** A determination that an intervenor is eligible for an award of compensation pending the outcome of the proceeding shall be made by the commission at the earliest practicable time in the commission proceeding.

[1989, c. 281, (NEW) .]

3. **Rules.** The commission may, after notice and hearing, adopt rules as are necessary for the implementation of this section.

[1989, c. 281, (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 281, (RPR). 1997, c. 691, §4 (AMD). 1999, c. 127, §D5 (AFF).

§1311. PRACTICE AND RULES OF EVIDENCE; PROCESS SERVICE

1. **Practice and rules of evidence.** In all actions and proceedings arising under this Title, all processes must be served and the practice and rules of evidence are the same as in civil actions in the Superior Court except as otherwise provided.

[1993, c. 108, §2 (NEW) .]

2. **Hearsay.** A statement not specifically covered by the hearsay exceptions in the rules of evidence but having equivalent circumstantial guarantees of trustworthiness may not be excluded by the hearsay rules, if the presiding officer determines that:

A. The statement is offered as evidence of a material fact and does not constitute unduly repetitious evidence; [1993, c. 108, §2 (NEW).]

B. The statement is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs; and [1993, c. 108, §2 (NEW).]

C. The general purposes of the rules of evidence and the interests of justice are best served by admission of the statement into evidence. [1993, c. 108, §2 (NEW).]

[1993, c. 108, §2 (NEW) .]

3. **Process service.** A sheriff or other officer empowered to execute civil process may execute a process issued under this Title and is entitled to receive the compensation prescribed by law for that service.

[1993, c. 108, §2 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1993, c. 108, §2 (RPR).

§1311-A. PROTECTIVE ORDERS; CONFIDENTIAL INFORMATION

Records placed under a protective order by the commission pursuant to the Maine Rules of Civil Procedure, Rule 26 (c) in accordance with this section, are within the scope of a privilege against discovery within the meaning of Title 1, section 402, subsection 3, paragraph B and are not public records while under the protective order. [1997, c. 691, §5 (AMD); 1997, c. 691, §10 (AFF).]

1. **Issuance of protective orders.** The following provisions govern the commission's issuance of protective orders.

A. The commission may issue protective orders to protect the interests of parties in confidential or proprietary information, trade secrets or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26 (c). When issued, a protective order must be served on the party seeking the order. Service must be in accordance with the Maine Rules of Civil Procedure, Rule 5 (b). A requirement to disclose information pursuant to a protective order does not take effect until 24 hours after service of the protective order on the party seeking the protective order. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

B. In granting protective orders, the commission shall balance the need to keep the information confidential with the policies of conducting its proceedings in an open and fair manner where all parties have the right and opportunity to participate effectively as provided under the Maine Administrative Procedure Act, the Maine Rules of Civil Procedure, the Maine Rules of Evidence and the Maine freedom of access laws. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

C. The party requesting a protective order bears the burden of demonstrating the need for protection. The commission may partially and temporarily grant a request for a protective order, consistent with the provisions of paragraph D, to expedite the release of confidential information to certain parties, but the party seeking protection bears the burden of demonstrating that release of the information to other parties should be restricted. The commission may not issue a final order prohibiting or restricting access to a party without notice and an opportunity to be heard. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

D. If the commission issues a protective order that denies a party access to information, the commission shall provide the information to the party's attorney, if any, subject only to the restriction that the attorney use the information solely for the purpose of the proceeding and not disclose the information to others, except that:

(1) The commission may deny an attorney access to information relating to bids if the attorney represents a party that made a competing bid; and

(2) The commission may impose further limitations if the commission finds that an attorney has a direct, personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information.

Unless the commission finds that the conditions of subparagraphs 1 or 2 are met, the obligations of attorneys under the ethical rules, including the obligation to decline representation in certain cases, the authority of the commission to discipline attorneys who appear before the commission, including the authority, under section 1502, to punish for contempt persons who fail to comply with a protective order, and the commission's ability to recommend sanctions by other bodies, including the discipline of attorneys by the courts and the Board of Overseers of the Bar, is sufficient security to permit the attorney to have access to information in order to represent a party before the commission. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

E. The commission may prohibit or restrict the disclosure of information under protective order to a party's independent consultant only for compelling reasons and to the least extent necessary, except that the commission may require that the information be used only for the purposes of the proceeding in which it is disclosed and may prohibit disclosure of the information by the independent consultant to others. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

F. Notwithstanding any other provision of this subsection:

(1) The commission may deny all parties, including the commission and its staff, access to information if the commission finds that the potential for harm from disclosure of the information outweighs its probative value in the proceeding; and

(2) The commission may deny an attorney access to information under protective order if the commission finds that the attorney's request for access to the information is not made in good faith or that the attorney will not respect the terms of the protective order. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

[1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF) .]

2. **Appeal.** A party required to disclose information pursuant to a protective order issued by a hearing examiner in accordance with subsection 1 may appeal to the commissioners sitting as the commission in accordance with this subsection.

A. The basis for an appeal brought pursuant to this subsection is that the potential for damage resulting from the disclosure of the information in accordance with the protective order clearly exceeds the probative value of the information in the proceeding. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

B. A party bringing an appeal pursuant to this subsection must file the appeal within 24 hours of service of the protective order. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

C. If a party appeals in accordance with this subsection, the party is not required to disclose the information during the pendency of the appeal. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

D. The commission shall render a decision on the appeal brought pursuant to this subsection within 7 business days of the filing of the appeal. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

E. Notwithstanding subsection 1, the commission may impose limits on the disclosure of information beyond the limits imposed by the protective order issued in accordance with subsection 1 only if the commission finds that potential for damage resulting from disclosure of the information in accordance with the protective order clearly exceeds the probative value of the information in the proceeding. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

For purposes of this subsection, the term "hearing examiner" means a commission staff person authorized to issue a protective order in a commission proceeding.

[1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF) .]

SECTION HISTORY
1993, c. 535, §1 (NEW). 1997, c. 691, §5 (AMD). 1997, c. 691, §10 (AFF). 1999, c. 127, §D5 (AFF).

§1311-B. SECURITY OF CERTAIN UTILITY INFORMATION

1. **Designation of information as confidential.** If the commission, on its own motion or on petition of any person or entity, determines that public access to specific information about public utility technical operations in the State could compromise the security of public utility systems to the detriment of the public interest, the commission shall issue an order designating that information as confidential. Information designated as confidential pursuant to this section may include, but is not limited to, emergency response plans and network diagrams. Information designated as confidential under this section is not a public record under Title 1, section 402, subsection 3.

[2001, c. 135, §1 (NEW) .]

2. **Treatment of information by commission; generally.** Except as otherwise provided in this section, the commission may not release information designated as confidential under subsection 1 and shall take appropriate steps to protect such information in its possession.

[2001, c. 135, §1 (NEW) .]

3. **Access to information by parties in proceeding.** Designation of information as confidential under subsection 1 does not limit the right of a party in a proceeding before the commission to obtain discovery of that information. Notwithstanding section 1311-A, subsection 1, paragraphs A and C, the commission may issue a protective order limiting discovery of information designated as confidential pursuant to subsection 1 if the commission finds that specific limits are necessary to protect the public interest.

[2001, c. 135, §1 (NEW) .]

4. **Release of information to other state agencies.** The commission may release information designated as confidential pursuant to subsection 1 or require the release of that information by a public utility to another state agency to the extent necessary to support emergency preparedness or response, law enforcement or other public health and safety activities. The commission shall consult with a public utility before releasing or requiring the release of confidential information about that utility to a state agency unless the commission determines that the public health and welfare require immediate release without such consultation. The commission shall notify a public utility within 2 business days of providing information about that utility to a state agency pursuant to this subsection. As soon as practicable after receiving notice from a state agency pursuant to subsection 5, paragraph B of the agency's intent to release the information, the commission shall notify the public utility of the agency's intent.

[2001, c. 135, §1 (NEW) .]

5. **Release by other state agencies.** A state agency that receives information about a public utility pursuant to subsection 4:

A. May not use that information for any purpose other than for the support of emergency preparedness or response, law enforcement or other public health and safety activities; [2001, c. 135, §1 (NEW).]

B. May not release that information to any other person or entity without prior notice to the commission unless the agency determines that immediate release of the information to one or more persons or entities is necessary for the protection of public health and safety; and [2001, c. 135, §1 (NEW).]

C. Shall, when finished with the use of any documents received from the commission or from a public utility pursuant to subsection 4, return the documents to the commission or the public utility, as appropriate. [2001, c. 135, §1 (NEW).]

[2001, c. 135, §1 (NEW) .]

SECTION HISTORY
2001, c. 135, §1 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 490, Pt. C, §5 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C5 (AMD).

§1313. DEPOSITIONS

The following provisions apply to depositions. [1987, c. 141, Pt. A, §6 (NEW).]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§1316. TESTIMONY PRESENTED BY EMPLOYEES OF PUBLIC UTILITIES OR COMPETITIVE SERVICE PROVIDERS 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. [1987, c. 769, Pt. A, §137 (AMD).]

B. "Employer" means a public utility or competitive service provider licensed to do business in this State with one or more employees. [1999, c. 398, Pt. A, §21 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

D. "Own time" means an employee's vacation or personal time, earned as a condition of employment. [1987, c. 141, Pt. A, §6 (NEW).]

[1999, c. 398, Pt. A, §21 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. **Right to provide testimony.** Employees of a public utility or competitive service provider have the right to represent themselves and to testify before a legislative committee or the commission on their own time. An employee of a public utility or competitive service provider who complies with this section may not be denied the right to testify before a legislative committee or the commission.

[1999, c. 398, Pt. A, §21 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. **Discharge of, threats to or discrimination against employees of utility service providers 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 or competitive service provider 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 competitive service provider 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.

[1999, c. 398, Pt. A, §21 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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

[1999, c. 398, Pt. A, §21 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

5. **Civil actions for injunctive relief or other remedies.** An employee of a public utility or competitive service provider who alleges a violation of 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 the employee's 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 the employee's case by a preponderance of the evidence.

[1999, c. 398, Pt. A, §21 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 769, §A137 (AMD). 1999, c. 398, §A21 (AMD). 1999, c. 398, §§A104,105 (AFF).

§1316-A. INFORMATION RELATED TO VIOLATION OF STATE LAW; CONFIDENTIALITY

Subject to the requirements of Title 5, section 9055 regarding ex parte communications but notwithstanding any other provision of law, the commission may declare and treat as confidential communications from any person concerning the affairs of a utility that are reasonably related to a violation of state laws. [1993, c. 165, §2 (NEW).]

SECTION HISTORY
1993, c. 165, §2 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§1318. RECORD OF PROCEEDINGS

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

A. All proceedings before it; [1987, c. 141, Pt. A, §6 (NEW).]

B. Investigations; and [1987, c. 141, Pt. A, §6 (NEW).]

C. Formal public hearings. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§1320. REVIEW OF COMMISSION ACTION

The following procedures apply to an appeal of a decision of the commission. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 appropriate term, respectively.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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 of a public utility or an order relating to matters within the jurisdiction of the commission with respect to a competitive service provider only if it gives the public utility or competitive service provider and all parties to the original proceeding, to the extent practical, written notice and after opportunity for those parties to present evidence or argument, as determined appropriate by the commission. Certified copies of amended orders must be served and take effect as provided for original orders. Nothing in this section is intended to grant to the commission authority to establish or approve the rates charged by competitive service providers. [1999, c. 398, Pt. A, §22 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 226, §4 (AMD). 1999, c. 398, §A22 (AMD). 1999, c. 398, §§A104,105 (AFF).

§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 the public utility. When the commission finds it necessary to prevent injury to a competitive service provider'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 competitive service provider's consent, suspend existing orders affecting the competitive service provider.

[1999, c. 398, Pt. A, §23 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. **Rates.** Rates made under this section:

A. Apply to one or more of the public utilities in the State or to any part of them as the commission directs; and [1999, c. 398, Pt. A, §23 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

B. Take effect and remain in force as the commission prescribes. [1987, c. 141, Pt. A, §6 (NEW).]

[1999, c. 398, Pt. A, §23 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. **Limitation of authority.** Nothing in this section is intended to grant the commission authority to establish or approve the rates charged by competitive service providers.

[1999, c. 398, Pt. A, §23 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A23 (AMD). 1999, c. 398, §§A104,105 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

Chapter 15: SANCTIONS AND ADMINISTRATIVE PENALTIES

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§1503. REFUSAL TO OBEY OR COMPLY

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 505, §20 (RP).

§1504. EACH DAY, DISTINCT OFFENSE

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 505, §20 (RP).

§1505. ILLEGAL ISSUE OF STOCKS, BONDS OR NOTES

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 505, §20 (RP).

§1506. MISAPPROPRIATION OF PROCEEDS

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 505, §20 (RP).

§1507. FALSE STATEMENTS AS TO ISSUE OF STOCKS, BONDS OR NOTES

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 505, §20 (RP).

§1507-A. FALSE STATEMENTS

It is a Class C crime for any person to make or cause to be made, in any document filed with the commission or in any proceeding under this Title, any statement that, at the time and in light of the circumstances under which it is made, is false in any material respect and that the person knows is false in any material respect. [2003, c. 505, §21 (NEW).]

SECTION HISTORY
2003, c. 505, §21 (NEW).

§1508. PUNISHMENT WHERE NO PENALTY

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 505, §22 (RP).

§1508-A. ADMINISTRATIVE PENALTY

1. **Penalty.** Unless otherwise specified in law, the commission may, in an adjudicatory proceeding, impose an administrative penalty as specified in this section.

A. For willful violations of this Title, a commission rule or a commission order by a public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or a competitive electricity provider, the commission may impose an administrative penalty for each violation in an amount that does not exceed $5,000 or .25% of the annual gross revenue that the public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or the competitive electricity provider received from sales in the State, whichever amount is lower. Each day a violation continues constitutes a separate offense. The maximum administrative penalty for any related series of violations may not exceed $500,000 or 5% of the annual gross revenue that the public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or the competitive electricity provider received from sales in the State, whichever amount is lower. [2011, c. 623, Pt. B, §5 (AMD).]

B. For a violation in which a public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or a competitive electricity provider was explicitly notified by the commission that it was not in compliance with the requirements of this Title, a commission rule or a commission order and that failure to comply could result in the imposition of administrative penalties, the commission may impose an administrative penalty that does not exceed $500,000. [2011, c. 623, Pt. B, §5 (AMD).]

C. The commission may impose an administrative penalty in an amount that does not exceed $1,000 on any person that is not a public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or a competitive electricity provider and that violates this Title, a commission rule or a commission order. Each day a violation continues constitutes a separate offense. The administrative penalty may not exceed $25,000 for any related series of violations. [2011, c. 623, Pt. B, §5 (AMD).]

D. In addition to the administrative penalties authorized by this subsection, the commission may require disgorgement of profits or revenues realized as a result of a violation of this Title, a commission rule or a commission order. [2003, c. 505, §23 (NEW).]

[2011, c. 623, Pt. B, §5 (AMD) .]

2. **Considerations.** In determining the amount of an administrative penalty under this section, the commission shall take into account:

A. The severity of the violation, including the intent of the violator and the nature, circumstances, extent and gravity of the prohibited act; [2003, c. 505, §23 (NEW).]

B. The reasonableness of the violator's belief that the violator's action or lack of action was in conformance with this Title, a commission rule or a commission order; [2003, c. 505, §23 (NEW).]

C. The violator's history of previous violations; [2003, c. 505, §23 (NEW).]

D. The amount necessary to deter future violations; [2003, c. 505, §23 (NEW).]

E. The violator's good faith attempts to comply after notification of a violation; and [2003, c. 505, §23 (NEW).]

F. Such other matters as justice requires. [2003, c. 505, §23 (NEW).]

[2003, c. 505, §23 (NEW) .]

SECTION HISTORY
2003, c. 505, §23 (NEW). 2011, c. 623, Pt. B, §5 (AMD).

§1509. LIMITATION ON IMPOSING PENALTY

An action that may result in the imposition of an administrative penalty under this chapter must be commenced within 5 years after the cause of action accrues. [2003, c. 505, §24 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 505, §24 (AMD).

§1510. PENALTY FOR FAILURE TO FILE

(REPEALED)

SECTION HISTORY
1989, c. 86, (NEW). 2003, c. 505, §25 (RP).

§1510-A. DISPOSITION OF ADMINISTRATIVE PENALTY

The disposition of administrative penalties collected by the commission is governed by section 117, subsection 3. [2005, c. 432, §2 (RPR).]

SECTION HISTORY
2003, c. 505, §26 (NEW). 2005, c. 432, §2 (RPR).

§1511. REVOCATION; SUSPENSION

The commission may, in an adjudicatory proceeding, suspend or revoke the authority of a public utility to provide service upon a finding that the public utility is unfit to provide safe, adequate and reliable service at rates that are just and reasonable. The commission shall provide notice and a reasonable opportunity for the public utility to comply with its obligations under this Title prior to suspending or revoking the authority of a public utility to provide service pursuant to this section. The authority granted in this section is in addition to the commission's authority under section 1321. [2003, c. 505, §27 (NEW).]

SECTION HISTORY
2003, c. 505, §27 (NEW).

§1512. UNAUTHORIZED SERVICE

The commission may order any person to cease and desist from providing service if it finds that the person has not obtained commission authorization to provide the service as required by this Title. The commission may impose the sanctions and penalties of this chapter upon any person that provides service without first obtaining commission authorization as required by this Title. [2003, c. 505, §27 (NEW).]

SECTION HISTORY
2003, c. 505, §27 (NEW).

Chapter 17: PUBLIC ADVOCATE

§1701. APPOINTMENT AND STAFF

1. Appointment of the Public Advocate.

[2009, c. 399, §1 (RP) .]

1-A. **Appointment of the Public Advocate; term; removal.** This subsection governs the appointment, term of service and removal of the Public Advocate.

A. The Governor shall appoint the Public Advocate, subject to review by the joint standing committee of the Legislature having jurisdiction over public utilities matters and to confirmation by the Legislature. [2009, c. 399, §2 (NEW).]

B. The Public Advocate shall serve for a 4-year term of office, beginning on February 1, 2013 and every 4 years thereafter. [2009, c. 399, §2 (NEW).]

C. The Public Advocate may continue to serve beyond the end of the 4-year term until a successor is appointed and qualified. [2009, c. 399, §2 (NEW).]

D. Any vacancy occurring must be filled by appointment for the unexpired portion of the term. [2009, c. 399, §2 (NEW).]

E. Any willful violation of this chapter by the Public Advocate constitutes sufficient cause for removal of the Public Advocate 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. [2009, c. 399, §2 (NEW).]

[2009, c. 399, §2 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Salaries of certain employees.** The salaries of the following employees of the Public Advocate are within the following salary ranges:

A. Deputy Public Advocate, salary range 53; [1999, c. 259, §4 (NEW).]

B. Senior Counsel, salary range 36; [1999, c. 259, §4 (NEW).]

C. [2011, c. 655, Pt. P, §1 (RP).]

D. Research Assistant, salary range 30; [1999, c. 259, §4 (NEW).]

E. Business Services Manager, salary range 26; and [1999, c. 259, §4 (NEW).]

F. Special Assistant to the Public Advocate, salary range 20. [1999, c. 259, §4 (NEW).]

The employees listed in this subsection serve at the pleasure of the Public Advocate and are confidential employees. All other employees of the Public Advocate are subject to the Civil Service Law.

The Public Advocate may compensate one or more Senior Counsels at salary range 37 if, in the judgment of the Public Advocate, an increase is necessary to provide competitive salary levels.

[2011, c. 655, Pt. P, §1 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 259, §4 (AMD). 2001, c. 476, §1 (AMD). 2009, c. 399, §§1, 2 (AMD). 2011, c. 655, Pt. P, §1 (AMD).

§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: [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. The reasonableness and adequacy of the service furnished or proposed to be furnished by any public utility or competitive service provider; [1999, c. 398, Pt. A, §24 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

C. Any proposal by a public utility to reduce or abandon service to the public; [1987, c. 141, Pt. A, §6 (NEW).]

D. The issuance of certificates of public convenience and necessity. Recommendations may include alternative analyses and plans as necessary; [1987, c. 141, Pt. A, §6 (NEW).]

E. Terms and conditions of public utilities; [1987, c. 141, Pt. A, §6 (NEW).]

F. Mergers and consolidations of public utilities; [1987, c. 141, Pt. A, §6 (NEW).]

G. Contracts of public utilities with affiliates or subsidiaries; and [1987, c. 141, Pt. A, §6 (NEW).]

H. Securities, regulations and transactions of public utilities. [1987, c. 141, Pt. A, §6 (NEW).]

[1999, c. 398, Pt. A, §24 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 or competitive service provider when determined necessary by the Public Advocate.

[1999, c. 398, Pt. A, §25 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. **Intervention on behalf of public.** The Public Advocate may, on behalf of the using and consuming public, or any particular group of consumers, petition to initiate, or intervene and appear 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 or

competitive service provider doing business in this State, except that the Public Advocate may 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.

[1999, c. 398, Pt. A, §26 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

7. **Assist customers of consumer-owned transmission and distribution utilities.** The Public Advocate shall assist customers of consumer-owned transmission and distribution 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.

[1999, c. 398, Pt. A, §27 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

8. **Represent interests of retail customers on regional bodies.** The Public Advocate, when the Public Advocate determines it necessary, may serve as a voting member of any regional body whose decisions directly affect the prices or quality of utility services in the State, as long as that service is limited to a seat that is designated for the representation of consumer interests. Service as a voting member of a regional body in accordance with this subsection does not create or constitute a conflict of interest pursuant to section 1709.

[2001, c. 27, §1 (NEW) .]

9. **Other advocacy forums.** The Public Advocate, consistent with the priorities established in section 1702-A and the requirements of this chapter, may represent and promote the interests of the using and consuming public:

A. In appropriate proceedings of the Legislature; and [2011, c. 79, §2 (NEW).]

B. In regional or national forums, including but not limited to any proceeding of an independent system operator or the Federal Energy Regulatory Commission. [2011, c. 79, §2 (NEW).]

[2011, c. 79, §2 (NEW) .]

10. **Independent representation of the interests of the using and consuming public.** The Public Advocate, when taking a position on any matter in any proceeding or forum pursuant to the Public Advocate's authority under this chapter, shall exercise independent judgment to ensure the position:

A. Is consistent with the priorities established in section 1702-A and the requirements of this chapter; and [2011, c. 79, §2 (NEW).]

B. Promotes stabilization and lowering of prices paid by those members of the using and consuming public whose interests the Public Advocate is representing. [2011, c. 79, §2 (NEW).]

[2011, c. 79, §2 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 660, (AMD). 1999, c. 398, §§A24-27 (AMD). 1999, c. 398, §§A104,105 (AFF). 2001, c. 27, §1 (AMD). 2011, c. 79, §§1, 2 (AMD).

§1702-A. EVALUATION OF NEEDS AND RESOURCES

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

A. "Low-income consumers" means residential consumers for whom paying public utility bills is difficult or impossible without some form of assistance or government aid; [1997, c. 166, §1 (NEW).]

B. "Residential consumers" means consumers who take public utility service for domestic purposes; and [1997, c. 166, §1 (NEW).]

C. "Small business consumers" means commercial consumers that employ fewer than 100 employees. [1997, c. 166, §1 (NEW).]

[1997, c. 166, §1 (NEW) .]

2. **Intent.** It is the intent of the Legislature that the resources of the Public Advocate be devoted to the maximum extent possible to ensuring adequate representation of the interests of those consumers whose interests would otherwise be inadequately represented in matters within the jurisdiction of the commission.

[1997, c. 166, §1 (NEW) .]

3. **Priority.** When the interests of consumers differ, the Public Advocate shall give priority to representing the interests of consumers in the following order:

A. Low-income consumers; [1997, c. 166, §1 (NEW).]

B. Residential consumers; [1997, c. 166, §1 (NEW).]

C. Small business consumers; and [1997, c. 166, §1 (NEW).]

D. Other consumers whose interests the Public Advocate finds to be inadequately represented. [1997, c. 166, §1 (NEW).]

This subsection does not require the Public Advocate to represent the interests of a consumer or group of consumers if the Public Advocate determines that such representation is adverse to the overall interests of the using and consuming public.

[1997, c. 166, §1 (NEW) .]

SECTION HISTORY
1997, c. 166, §1 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§1706. EXPERT WITNESSES

The Public Advocate may employ expert witnesses and pay appropriate compensation and expenses to employ the witnesses. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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 or competitive service provider operating within this State; render any professional

service against any such public utility or competitive service provider; or be a member of a firm that renders any such service. [1999, c. 398, Pt. A, §28 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A28 (AMD). 1999, c. 398, §§A104,105 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW); 1987, c. 490, Pt. C, §6 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C6 (AMD).

§1711. RAILROAD SERVICE QUALITY

(REPEALED)

In addition to the authority and duties otherwise specified in this chapter, the Public Advocate shall seek to promote and enhance railroad freight service quality in accordance with this section. The Public Advocate shall undertake activities under this section only to the extent funding for those activities is available in the fund established under subsection 5. [2005, c. 248, §2 (NEW).]

SECTION HISTORY
2005, c. 248, §2 (NEW). MRSA T. 35-A, §1711, sub-§7 (RP).

§1712. RAILROAD CROSSING INFORMATION COUNCIL

(REPEALED)

SECTION HISTORY
2007, c. 657, §2 (NEW). 2011, c. 79, §3 (RP).

§1713. INFORMATION FOR CONSUMERS

In addition to the duties and responsibilities in section 1702, the Public Advocate may publish in printed copy or electronic format, or both, information for consumers in the State relating to regulated services provided by public utilities, unregulated services provided by public utilities and unregulated services provided by any entity relating to telecommunications, electricity delivery or supply and gas delivery or supply. Telecommunications services include, but are not limited to, telephone service, Internet service, video service, wireless phone service, satellite service and voice over Internet protocol service. [2013, c. 79, §1 (NEW).]

SECTION HISTORY
2013, c. 79, §1 (NEW).

Chapter 19: THE MAINE ENERGY COST REDUCTION ACT

§1901. SHORT TITLE

This chapter may be known and cited as "the Maine Energy Cost Reduction Act." [2013, c. 369, Pt. B, §1 (NEW).]

SECTION HISTORY
2013, c. 369, Pt. B, §1 (NEW).

§1902. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2013, c. 369, Pt. B, §1 (NEW).]

1. **Basis differential.** "Basis differential" means the difference between the so-called Henry Hub spot price for natural gas and the corresponding cash spot price for natural gas in New England.

[2013, c. 369, Pt. B, §1 (NEW) .]

2. **Energy cost reduction contract.** "Energy cost reduction contract" or "contract" means a contract executed in accordance with this chapter to procure capacity on a natural gas transmission pipeline, including, when applicable, compression capacity.

[2013, c. 369, Pt. B, §1 (NEW) .]

3. **ISO-NE region.** "ISO-NE region" means the region in which the New England bulk power system operated by the independent system operator of the New England bulk power system or a successor organization is located.

[2013, c. 369, Pt. B, §1 (NEW) .]

4. **Pipeline capacity holder.** "Pipeline capacity holder" means any person owning rights to natural gas pipeline capacity.

[2013, c. 369, Pt. B, §1 (NEW) .]

5. **Trust fund.** "Trust fund" means the Energy Cost Reduction Trust Fund established under section 1907, subsection 1.

[2013, c. 369, Pt. B, §1 (NEW) .]

SECTION HISTORY
2013, c. 369, Pt. B, §1 (NEW).

§1903. LEGISLATIVE FINDINGS

The Legislature finds that: [2013, c. 369, Pt. B, §1 (NEW).]

1. **Electricity prices.** It is in the public interest to decrease prices of electricity and natural gas for consumers in this State; and

[2013, c. 369, Pt. B, §1 (NEW) .]

2. **Natural gas expansion.** The expansion of natural gas transmission capacity into this State and other states in the ISO-NE region could result in lower natural gas prices and, by extension, lower electricity prices for consumers in this State.

[2013, c. 369, Pt. B, §1 (NEW) .]

SECTION HISTORY
2013, c. 369, Pt. B, §1 (NEW).

§1904. ENERGY COST REDUCTION CONTRACTS

The commission in consultation with the Public Advocate and Governor's Energy Office may execute an energy cost reduction contract in accordance with this section. In no event may the commission execute energy cost reduction contracts for the transmission of greater than a cumulative total of 200,000,000 cubic feet of natural gas per day or for a total amount that exceeds $75,000,000 annually. [2013, c. 369, Pt. B, §1 (NEW).]

1. **Prior to executing an energy cost reduction contract.** Before executing an energy cost reduction contract, the commission shall:

A. Pursue, in appropriate regional and federal forums, market and rule changes that will reduce the basis differential for gas coming into New England and increase the efficiency with which gas brought into New England and Maine is transmitted, distributed and used. If the commission concludes that those market or rule changes will, within the same time frame, achieve substantially the same cost reduction effects for Maine electricity and gas customers as the execution of an energy cost reduction contact, the commission may not execute an energy cost reduction contract; [2013, c. 369, Pt. B, §1 (NEW).]

B. Explore all reasonable opportunities for private participation in securing additional gas pipeline capacity that would achieve the objectives in subsection 2. If the commission concludes that private transactions, within the same time frame, achieve substantially the same cost reduction effects for Maine electricity and gas customers as the execution of an energy cost reduction contact, the commission may not execute an energy cost reduction contract; and [2013, c. 369, Pt. B, §1 (NEW).]

C. In consultation with the Public Advocate and the Governor's Energy Office, hire a consultant with expertise in natural gas markets to make recommendations regarding the execution of an energy cost reduction contract. The commission shall consider those recommendations as part of an adjudicatory proceeding under subsection 2. [2013, c. 369, Pt. B, §1 (NEW).]

[2013, c. 369, Pt. B, §1 (NEW) .]

2. **Commission determination of benefits.** After satisfying the requirements of subsection 1, the commission may execute or direct one or more transmission and distribution utilities, gas utilities or natural gas pipeline utilities to execute an energy cost reduction contract if the commission has determined, in an adjudicatory proceeding, that the agreement is commercially reasonable and in the public interest and that the contract is reasonably likely to:

A. Materially enhance natural gas transmission capacity into the State or into the ISO-NE region and that additional capacity will be economically beneficial to electric consumers, natural gas consumers or both in the State and that the overall costs of the contract are outweighed by its benefits to electric consumers, natural gas consumers or both in the State; and [2013, c. 369, Pt. B, §1 (NEW).]

B. Enhance electrical and natural gas reliability in the State. [2013, c. 369, Pt. B, §1 (NEW).]

[2013, c. 369, Pt. B, §1 (NEW) .]

3. **Parties to an energy cost reduction contract.** The commission may execute, or direct to be executed, an energy cost reduction contract that contains the following provisions.

A. The commission may direct one or more transmission and distribution utilities, gas utilities or natural gas pipeline utilities to be a counterparty to an energy cost reduction contract. In determining whether and to what extent to direct a utility to be a counterparty to a contract under this subsection, the commission shall consider the anticipated reduction in the price of gas or electricity, as applicable, accruing to the customers of the utility as a result of the contract as determined by the commission in an adjudicatory proceeding.

Any economic loss, including but not limited to any effects on the cost of capital resulting from an energy cost reduction contract for a transmission and distribution utility, a gas utility or a natural gas pipeline utility, is deemed to be prudent and the commission shall allow full recovery through the utility's rates. [2013, c. 369, Pt. B, §1 (NEW).]

B. If the commission concludes that an energy cost reduction contract can be achieved with the participation of other entities, the commission may contract jointly with other entities, including other state agencies and instrumentalities, governments in other states and nations, utilities and generators. [2013, c. 369, Pt. B, §1 (NEW).]

C. The commission may execute an energy cost reduction contract as a principal and counterparty. [2013, c. 369, Pt. B, §1 (NEW).]

[2013, c. 369, Pt. B, §1 (NEW) .]

4. **Approval by the Governor.** The commission may not execute or direct the execution of an energy cost reduction contract unless the Governor has in writing approved the execution of the energy cost reduction contract.

[2013, c. 369, Pt. B, §1 (NEW) .]

SECTION HISTORY
2013, c. 369, Pt. B, §1 (NEW).

§1905. FUNDING OF AN ENERGY COST REDUCTION CONTRACT

An energy cost reduction contract may be funded in accordance with this section. [2013, c. 369, Pt. B, §1 (NEW).]

1. **Assessments on ratepayers.** The commission may direct one or more transmission and distribution utilities, gas utilities or natural gas pipeline utilities to collect an assessment from ratepayers for the following purposes:

A. To finance the participation of a transmission and distribution utility, a gas utility or a natural gas pipeline utility in an energy cost reduction contract; and [2013, c. 369, Pt. B, §1 (NEW).]

B. To pay the costs of energy cost reduction contract evaluation and administration under section 1906, subsection 2. [2013, c. 369, Pt. B, §1 (NEW).]

All assessments must be just and reasonable as determined by the commission and must be identified as an energy cost reduction contract charge on a ratepayer's utility bill. When determining just and reasonable assessments, the commission shall consider the anticipated reduction in the price of gas or electricity, as applicable, accruing to different categories of ratepayers as a result of the contract.

[2013, c. 369, Pt. B, §1 (NEW) .]

2. **Assessments on utilities.** If the commission is the principal and counterparty on the contract, the commission may:

A. Assess one or more transmission and distribution utilities, gas utilities and natural gas pipeline utilities in proportion to the anticipated reduction in the price of gas or electricity, as applicable, accruing as a result of the contract to the customers of the utility for any and all net costs to the commission of the commission's performance of the contract as determined by the commission in an adjudicatory proceeding. The cost to the utility of the assessment may be recovered by the utility in rates in the same manner as any other prudently incurred cost. [2013, c. 369, Pt. B, §1 (NEW).]

[2013, c. 369, Pt. B, §1 (NEW) .]

3. **Volumetric fee.** The commission may establish and direct the payment to the trust fund of a volumetric fee on the use of gas by a consumer of natural gas obtained from a source other than a gas utility or a natural gas pipeline utility of this State in proportion to the anticipated reduction in the price of gas accruing to that consumer as a result of the contract as determined by the commission in an adjudicatory proceeding.

[2013, c. 369, Pt. B, §1 (NEW) .]

SECTION HISTORY
2013, c. 369, Pt. B, §1 (NEW).

§1906. CONTRACT RESALE AND ADMINISTRATION

The following provisions govern the resale and evaluation and administration of an energy cost reduction contract. [2013, c. 369, Pt. B, §1 (NEW).]

1. **Resale of natural gas pipeline capacity.** The commission may negotiate and enter into contracts for the resale of all or a portion of the reserved natural gas transmission pipeline capacity acquired through an energy cost reduction contract. All of the revenue received as a result of the resale must be deposited into the trust fund.

[2013, c. 369, Pt. B, §1 (NEW) .]

2. **Contract evaluation and administration.** The commission is responsible for assessing, analyzing, negotiating, implementing and monitoring compliance with energy cost reduction contracts. The commission may use funds for this purpose from the trust fund or may collect funds for this purpose through just and reasonable assessments placed on a transmission and distribution utility, a gas utility or a natural gas pipeline utility pursuant to section 1905, subsection 1, paragraph B.

[2013, c. 369, Pt. B, §1 (NEW) .]

SECTION HISTORY
2013, c. 369, Pt. B, §1 (NEW).

§1907. REVENUES FROM ENERGY COST REDUCTION CONTRACTS

Revenues received from the resale of natural gas pipeline capacity acquired through an energy cost reduction contract must be used in accordance with this section. [2013, c. 369, Pt. B, §1 (NEW).]

1. **Establishment of Energy Cost Reduction Trust Fund.** The Energy Cost Reduction Trust Fund is established as a nonlapsing fund administered by the commission for the purposes of this chapter. The commission is authorized to receive and shall deposit in the trust fund and expend in accordance with this section revenues received from an energy cost reduction contract and revenues received from the resale of natural gas pipeline capacity acquired through an energy cost reduction contract.

The funds in the trust fund are held in trust for the purpose of reducing the energy costs of consumers in the State and may not be used for any other purpose, except as described in subsection 2.

[2013, c. 369, Pt. B, §1 (NEW) .]

2. **Distribution of funds.** The commission shall distribute funds in the trust fund in the following order of priority:

A. As a first priority, to the costs of monitoring and administering a contract pursuant to section 1906, subsection 2; and [2013, c. 369, Pt. B, §1 (NEW).]

B. As a 2nd priority, to utilities and other entities to reduce energy costs for electricity and natural gas ratepayers and consumers subject to a volumetric fee under section 1905, subsection 3. The commission may distribute funds to benefit ratepayers of one or more transmission and distribution utilities, gas utilities or natural gas pipeline utilities or consumers subject to a volumetric fee under section 1905, subsection 3 in a manner that the commission finds is equitable, just and reasonable. [2013, c. 369, Pt. B, §1 (NEW).]

[2013, c. 369, Pt. B, §1 (NEW) .]

SECTION HISTORY
2013, c. 369, Pt. B, §1 (NEW).

§1908. EXEMPTION FROM STATE PURCHASING AGENT RULES

Notwithstanding any other provision of law, agreements and contracts entered into pursuant to this chapter are not subject to the competitive bid requirements of the State Purchasing Agent. [2013, c. 369, Pt. B, §1 (NEW).]

SECTION HISTORY
2013, c. 369, Pt. B, §1 (NEW).

§1909. MARKET POWER INVESTIGATION

The commission may on its own motion, with or without notice, summarily investigate the exercise of market power by a gas utility, natural gas pipeline utility or pipeline capacity holder. If, after the summary investigation, the commission determines it to be necessary, it may hold a public hearing in accordance with section 1304. Notwithstanding section 1304 and Title 5, section 9052, the commission shall notify the utility under investigation in writing of the matter under investigation and 7 days after the commission has given notice the commission may set the time and place for the public hearing. [2013, c. 369, Pt. B, §1 (NEW).]

SECTION HISTORY
2013, c. 369, Pt. B, §1 (NEW).

§1910. RULEMAKING

The commission may adopt rules to implement this chapter. When adopting rules, the commission shall consider the financial implications of this chapter for transmission and distribution utilities, gas utilities and natural gas pipeline utilities. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2013, c. 369, Pt. B, §1 (NEW).]

SECTION HISTORY
2013, c. 369, Pt. B, §1 (NEW).

§1911. REPORTS

The commission shall include in its annual report under section 120, subsection 3 a description of its efforts to pursue, in appropriate regional and federal forums, market and rule changes that will reduce the basis differential for natural gas coming into New England. [2013, c. 369, Pt. B, §1 (NEW).]

SECTION HISTORY
2013, c. 369, Pt. B, §1 (NEW).

§1912. LIMITATION

The commission may not execute an energy cost reduction contract under this chapter after December 31, 2018. The commission may continue to administer existing contracts and enter into agreements regarding the resale of natural gas pipeline capacity purchased through an energy cost reduction contract after December 31, 2018. [2013, c. 369, Pt. B, §1 (NEW).]

SECTION HISTORY
2013, c. 369, Pt. B, §1 (NEW).

Part 2: PUBLIC UTILITIES HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

Chapter 21: ORGANIZATION, POWERS, SERVICE TERRITORY

§2101. ORGANIZATION OF CERTAIN PUBLIC UTILITIES

A provider of provider of last resort service, a local exchange carrier and a public utility for the purpose of making, selling, distributing and supplying gas or electric transmission and distribution service or for the operation of water utilities, ferries or public heating utilities in any municipality, or 2 or more adjoining municipalities, within the State, may be organized as a legal entity authorized under the laws of the State, including Title 13-C. [2011, c. 623, Pt. A, §16 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C7 (AMD). 1995, c. 225, §7 (AMD). 1997, c. 707, §2 (AMD). 1999, c. 398, §A29 (AMD). 1999, c. 398, §§A104,105 (AFF). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B54 (COR). 2011, c. 623, Pt. A, §16 (AMD).

§2102. APPROVAL TO FURNISH SERVICE

The following provisions apply to furnishing service. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Approval required.** Except as provided in subsection 2 and in section 4507, a public utility may not 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. The commission may condition approval upon the submission of a bond or other financial security if the commission determines that such a requirement is necessary to ensure that a public utility has the financial ability to meet its obligations under this Title.

A. [2011, c. 623, Pt. A, §17 (RP).]

[2011, c. 623, Pt. A, §17 (AMD) .]

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 a transmission and distribution utility to distribute electricity to any other transmission and distribution utility.

[2011, c. 623, Pt. A, §17 (AMD) .]

2-A. **Northern Maine Transmission Corporation.**

[2003, c. 506, §11 (RP) .]

3. **Exemption for certain telephone utilities.** The provisions of this section do not apply to any telephone utility except a provider of provider of last resort service with respect to the provision of provider of last resort service and a local exchange carrier.

A. [2011, c. 623, Pt. A, §17 (RP).]

B. [2011, c. 623, Pt. A, §17 (RP).]

C. [2011, c. 623, Pt. A, §17 (RP).]

[2011, c. 623, Pt. A, §17 (AMD) .]

4. **Dark fiber provider.**

[2011, c. 623, Pt. A, §17 (RP) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 342, §4 (AMD). 1997, c. 118, §1 (AMD). 1997, c. 569, §1 (AMD). 1997, c. 569, §2 (AFF). 1999, c. 398, §A30 (AMD). 1999, c. 398, §§A104,105 (AFF). 1999, c. 513, §7 (AMD). 2003, c. 505, §28 (AMD). 2003, c. 506, §11 (AMD). 2007, c. 638, §1 (AMD). 2009, c. 612, §§5, 6 (AMD). 2011, c. 623, Pt. A, §17 (AMD).

§2103. TRANSMISSION AND DISTRIBUTION UTILITY AND COOPERATIVE AUTHORIZED TO SERVE SAME AREA

After September 1, 1967, where a cooperative organized under chapter 37 and any other transmission and distribution 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. [1999, c. 398, Pt. A, §31 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 [1987, c. 141, Pt. A, §6 (NEW).]

B. Send a copy of its objections to the utility or cooperative and to the party requesting electrical service. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A31 (AMD). 1999, c. 398, §§A104,105 (AFF).

§2104. COMMISSION APPROVAL FOR GAS COMPANIES TO FURNISH SERVICE

1. **Approval of commission required; generally.** Except as provided in subsection 2, a gas utility may not furnish its service in or to any municipality within the State without the approval of the commission.

[2001, c. 124, §1 (NEW) .]

2. **Approval not required; no other utility serving.** Notwithstanding section 2102 or 2105, a gas utility authorized to furnish service and serving customers within the State is not required to obtain the approval of the commission to serve in any municipality in which no other gas utility is furnishing similar service unless the commission, in an order issued pursuant to subsection 3, specifically provides otherwise.

[2001, c. 124, §1 (NEW) .]

3. **Limited grant of authority.** The commission, in an order granting authorization to a person to operate, manage or control a gas utility in any municipality in this State, may expressly limit the area in which the gas utility may provide service without further approval of the commission only if:

A. The commission finds that the financial and technical capacity of the gas utility is limited in a manner that public convenience and necessity require such limited authorization; or [2001, c. 124, §1 (NEW).]

B. The person seeking authorization requests that the authorization be limited to a particular area. [2001, c. 124, §1 (NEW).]

[2001, c. 124, §1 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1997, c. 707, §3 (AMD). 2001, c. 124, §1 (RPR).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[2009, c. 2, §102 (COR) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). RR 2009, c. 2, §102 (COR).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§2108. CORPORATIONS MAY HOLD REAL ESTATE

Corporations organized under section 2101 and former section 2109 may purchase, hold and convey real estate and personal property that are necessary for the purposes for which they are created. [1999, c. 398, Pt. A, §32 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A32 (AMD). 1999, c. 398, §§A104,105 (AFF).

§2109. ORGANIZATION OF ELECTRIC CORPORATIONS IN AREAS NOT ADEQUATELY SERVED

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §§A104,105 (AFF). 1999, c. 398, §A33 (RP).

§2110. EXTENSION OF SERVICE

A public utility organized by Private and Special Act of the Legislature may extend its service as follows. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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-C or any prior general corporation law.

[2003, c. 344, Pt. D, §23 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 344, §D23 (AMD).

Chapter 23: UTILITY FACILITIES IN THE PUBLIC WAY

§2301. TELEPHONE PROVIDERS AND TELEVISION CORPORATIONS MAY CONSTRUCT LINES

Except as limited, every voice service provider, wholesale competitive local exchange carrier and dark fiber provider for the purposes of constructing and maintaining its federally supported dark fiber 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. [2011, c. 623, Pt. B, §6 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 225, §8 (AMD). 2009, c. 612, §7 (AMD). 2011, c. 623, Pt. B, §6 (AMD).

§2301-A. UNIVERSITY OF MAINE SYSTEM MAY INSTALL LINES ON EXISTING FACILITIES

The University of Maine System may install wires or lines on existing utility facilities located within or along a public right-of-way for the purpose of transmitting data and communications between and among University of Maine System facilities and partnering entities, wherever located, subject to the conditions and restrictions provided in this chapter and chapter 25. For purposes of this section, "lines" does not include utility poles and "partnering entities" means organizations, wherever located, authorized to use the university's regional optical network for education and research institutions or other university data and communications systems. [2007, c. 268, §1 (NEW).]

SECTION HISTORY
2007, c. 268, §1 (NEW).

§2302. PIPELINES FOR COMMON CARRIER TRANSPORTATION

Every corporation organized under the general laws of the State and any public utility 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. [1997, c. 707, §4 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1997, c. 707, §4 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

A water utility shall comply with sections 2503, 2505, 2506 and 2512. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

This section does not apply to state and state-aid highways maintained by the State. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§2305. TRANSMISSION AND DISTRIBUTION UTILITIES MAY CONSTRUCT LINES

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 834, §§1,2 (AMD). 1993, c. 18, §§1,2 (AMD). 1993, c. 91, §1 (AMD). 1995, c. 349, §§1,2 (AMD). 1999, c. 398, §A34 (AMD). 1999, c. 398, §§A104,105 (AFF). 2001, c. 110, §1 (RP).

§2305-A. TRANSMISSION AND DISTRIBUTION UTILITIES AND TELEPHONE PROVIDERS TO CONFORM TO STANDARDS

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

A. "Cable television company" has the same meaning as in Title 30-A, section 2001. [1995, c. 349, §3 (NEW).]

B. "Most recent edition of the Standard" means the 1993 edition or any subsequent edition of the Standard adopted by the commission pursuant to this section. [1995, c. 349, §3 (NEW).]

C. "Standard" means the National Electrical Safety Code (NESC)-ANSI-C2. [1995, c. 349, §3 (NEW).]

[1995, c. 349, §3 (NEW) .]

2. **Applicable national standard.** Except as otherwise provided in this section or by rule of the commission adopted pursuant to this section, every transmission and distribution utility, entity authorized under section 2301 to construct lines and cable television company shall design, construct, operate and maintain its lines and equipment in conformance with the applicable provisions of the most recent edition of the Standard.

[2011, c. 623, Pt. B, §7 (AMD) .]

3. **Review of standards by commission.** Whenever a new or revised edition of the Standard is published, a transmission and distribution utility, entity authorized under section 2301 to construct lines or cable television company may request the commission to hold a hearing on whether the new or revised Standard should be adopted.

A. If a hearing is requested within 120 days of the publication of the new or revised Standard, the commission shall hold a hearing and shall either adopt the new or revised Standard or, pursuant to subsection 4, amend or reject the new or revised Standard. If a hearing is requested and held under this paragraph, the new or revised Standard does not go into effect in any form except as expressly provided by the commission in its order. [1995, c. 349, §3 (NEW).]

B. If a hearing is not requested within 120 days of the publication of the new or revised Standard, the commission is deemed to have adopted the new or revised Standard effective on the 180th day after publication. Existing facilities that meet the requirements of the previously applicable Standard but which do not meet the requirements of the new or revised Standard may remain in noncompliance only if grandfathered under the new edition. [1995, c. 349, §3 (NEW).]

[2011, c. 623, Pt. B, §7 (AMD) .]

4. **Modifications, deletions and waivers to Standard.** The commission may, at its discretion and after appropriate hearing, modify, delete or waive individual requirements of the Standard. The commission may make a modification or deletion or grant a waiver of a national standard of practice contained in the Standard only if it finds one of the following:

A. Other measures achieving equivalent levels of safety will be substituted for the modified, deleted or waived national standard; or [1995, c. 349, §3 (NEW).]

B. The national standard is not applicable or is unduly burdensome for the level of safety achieved under local conditions. [1995, c. 349, §3 (NEW).]

Modifications, deletions or waivers of individual requirements of the Standard remain in force until the next edition of the Standard is adopted by the commission pursuant to subsection 3 or the modification, deletion or waiver is repealed by the commission, whichever occurs first.

Pursuant to subsection 3, paragraph A, a transmission and distribution utility, entity authorized under section 2301 to construct lines or cable television company may petition the commission to continue approved modifications, deletions or waivers under a new or revised Standard. Unless the commission reaffirms a modification, deletion or waiver in its order adopting a new or revised Standard, a modification, deletion or waiver is deemed repealed on adoption of the new or revised Standard.

[2011, c. 623, Pt. B, §7 (AMD) .]

5. **Additional safety measures.** The commission may, at its discretion and after appropriate hearing, require safety measures in addition to those required by the Standard. An additional requirement remains in force for 10 years from its effective date unless the commission:

A. Repeals the requirement; or [1995, c. 349, §3 (NEW).]

B. Reaffirms the requirement by order. Each reaffirmation must occur within 10 years of the original effective date of the requirement or within 10 years of the last affirmation. [1995, c. 349, §3 (NEW).]

[1995, c. 349, §3 (NEW) .]

SECTION HISTORY
1995, c. 349, §3 (NEW). 1999, c. 398, §A35 (AMD). 1999, c. 398, §§A104,105 (AFF). 2011, c. 623, Pt. B, §7 (AMD).

§2305-B. CONSTRUCTION OF TRANSMISSION AND DISTRIBUTION LINES

1. **Transmission and distribution utilities.** A transmission and distribution utility may construct and maintain its lines in, upon, along, over, across or under the roads and streets in any municipality in which it is authorized to supply electricity, subject to the conditions and restrictions provided in this chapter and chapter 25.

[2001, c. 110, §2 (NEW) .]

2. **Persons other than transmission and distribution utilities.** A person other than a transmission and distribution utility may not construct or maintain electric lines, including poles or other related structures, in, upon, along, over, across or under a road, street or other public way unless:

A. The person satisfies the requirements of section 2503; [2001, c. 110, §2 (NEW).]

B. The person or the person's contractor hired to construct the line provides to the applicable licensing authority a performance bond:

(1) In the amount of the value of the line, including poles or other related structures, to be located in the public way; and

(2) That is enforceable for one year from the date the line is energized; [2001, c. 110, §2 (NEW).]

C. Prior to constructing the line, the person notifies the transmission and distribution utility in whose service territory the line is proposed to be built of the proposed location of the line; and [2001, c. 110, §2 (NEW).]

D. If a public utility objects to the line on the basis that it may constitute a duplication of existing transmission or distribution facilities or may interfere with the adequate and safe delivery of electricity to others, the commission issues a finding that the line is not a duplication of existing transmission or distribution facilities and does not interfere with the adequate and safe delivery of electricity to others. A finding is not required under this paragraph unless a public utility has objected in writing to the applicable licensing authority. [2001, c. 110, §2 (NEW).]

[2001, c. 110, §2 (NEW) .]

3. **Recording.** A public utility that enters into any written agreement with the owner of a facility with regard to that facility shall record that agreement in the registry of deeds in the county in which the facility is placed.

[2001, c. 110, §2 (NEW) .]

4. **Maintenance.** The owner of a line located in, upon, along, over, across or under a road, street or other public way is responsible for properly maintaining the line and complying with lawful directives of the applicable licensing authority. If the owner of a line fails to maintain a line properly or to comply with directives of the applicable licensing authority and the applicable licensing authority incurs any expense in maintaining the line or pays any damages as a result of the owner's failure to maintain the line properly or

to comply with the directives of the licensing authority, the licensing authority may assess the owner of the line the amount of those actual costs. The assessment must be in writing and must specify the amount of the assessment, the basis for the assessment and that a lien will be created on the real estate of the owner of the line if the assessment is not paid within 90 days. If the owner of the line does not pay the assessment within 90 days, a lien is created on the real estate of the owner of the line situated in the municipality to secure the payment of actual costs incurred by the applicable licensing authority. This lien may be treated and enforced in the same manner as a tax lien under Title 36, chapter 105, subchapter IX, article 2. In addition to any other available remedies, a person aggrieved by a lien imposed or enforced by a licensing authority under this subsection may bring an action in Superior Court for a determination of the validity of the lien.

[2001, c. 110, §2 (NEW) .]

5. **Energizing lines.** A transmission and distribution utility may not deliver electricity over any line in, upon, along or under a road, street or other public way if the lines or related structures were constructed by a person other than a transmission and distribution utility unless the transmission and distribution utility is provided with certified copies of applicable permits required under section 2503. A transmission and distribution utility may not refuse to deliver electricity over a line if:

A. The owner of the line reimburses the transmission and distribution utility for the cost of connecting the line to the utility's system; and [2001, c. 110, §2 (NEW).]

B. The line meets the transmission and distribution utility's standards, provided those standards are no different from the standards the utility applies to its own lines. [2001, c. 110, §2 (NEW).]

[2001, c. 110, §2 (NEW) .]

SECTION HISTORY
2001, c. 110, §2 (NEW).

§2306. NO TAKING PROPERTY WITHOUT CONSENT

A public utility organized under section 2101 and former section 2109 may not 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. [1999, c. 398, Pt. A, §36 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1997, c. 707, §4 (AMD). 1999, c. 398, §A36 (AMD). 1999, c. 398, §§A104,105 (AFF).

§2306-A. PERMIT REQUIRED FOR PERSON LAYING PIPES AND WIRES *(REPEALED)*

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 502, §A125 (RP).

§2307. PUBLIC UTILITIES AND TELEPHONE PROVIDERS MAY LAY WIRES, PIPES AND CABLES UNDER STREETS SUBJECT TO MUNICIPAL PERMIT

Public utilities and entities authorized under section 2301 to construct lines 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 or entities 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. [2011, c. 623, Pt. B, §8 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2011, c. 623, Pt. B, §8 (AMD).

§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 must 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 and for the permitted facilities of entities authorized under section 2301 to construct lines. A utility or entity 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 or telecommunications service, upon compliance with the provisions of sections 2503, 2505, 2506, 2507 and 2508. [2011, c. 623, Pt. B, §9 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2011, c. 623, Pt. B, §9 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§2310. TRESPASS ON A UTILITY POLE

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

[2011, c. 623, Pt. B, §10 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2011, c. 623, Pt. B, §10 (AMD).

§2311. LINES ALONG RAILROADS; APPLICATION TO PUBLIC UTILITIES COMMISSION WHEN DISAGREEMENT

A person maintaining or operating a telephone or electric line may construct a line across, upon or along any railroad with the written permit of the person owning or operating the railroad. If the person maintaining or operating a telephone or electric line and the person owning or operating the railroad can not agree as to the construction or manner of construction of lines upon, along or across the railroad or as to the continued operation of lines 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. The commission's decision is binding upon the parties. The commission may grant the person seeking to construct or operate a line a permit with appropriate terms and conditions to construct or operate the line along, upon or across the railroad or, in the case of a line across the railroad, authorize, subject to appropriate terms and conditions, the person to take by eminent domain an easement across the railroad. The taking of an easement authorized by the commission pursuant to this section must be in accordance with the procedures established in chapter 65. This section does not permit the commission to authorize the taking of an easement over lands owned by the State. The person seeking to construct lines on the railroad shall pay the expenses of the hearing, except that if the commission finds that parties owning or operating the railroad have unreasonably refused their consent, those parties shall pay the expenses. Without limiting the commission's jurisdiction under this section, if a railroad company and a telephone or transmission and distribution utility enter into an agreement involving a utility crossing of railroad property and that agreement or some other agreement provides that the commission shall resolve disputes arising under the original agreement, the commission may resolve those disputes. As used in this section, the term "railroad" includes, but is not limited to, a railroad whose abandonment has been approved pursuant to 49 United States Code, Chapter 109. [2001, c. 608, §1 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 743, §1 (AMD). 2001, c. 608, §1 (AMD).

§2312. FACILITIES IN MUNICIPALLY DESIGNATED HISTORIC DISTRICTS

1. **Location of facilities in municipally designated historic district.** A public utility or other facility owner that owns facilities, as defined in section 2502, subsection 3, along a state highway or state aid highway located in a district designated a historic district by a municipality by ordinance shall provide, upon written demand by the governing body of that municipality, services to buildings or structures located along the state highway or state aid highway either by connecting its facilities to the rear of those buildings or structures, if rear access is reasonably available from other poles, however owned and controlled, legally located in public streets or ways, or by placing those facilities under the surface of the state highway or state aid highway. Any relocation or placement cost is the responsibility of the municipality whose governing body issued the written demand, unless the public utility or other facility owner has specifically agreed in writing to bear a portion of the cost.

[1999, c. 596, §1 (NEW) .]

2. **Cost estimate.** A public utility or other facility owner that owns facilities, as defined in section 2502, subsection 3, shall inform, within 60 days of receiving a written demand from a municipality pursuant to subsection 1, the municipality's governing body of its preliminary estimate of costs of relocating facilities. The written demand must include the exact location within the public way of the proposed new placement or relocation, taking into consideration existing underground utilities. The municipality may rescind its demand for a relocation after reviewing the cost estimate.

[1999, c. 596, §1 (NEW) .]

SECTION HISTORY
1999, c. 596, §1 (NEW).

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Applicability of section 2503.** Except as otherwise provided, a person may not 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 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; the University of Maine System, for purposes described in section 2301-A; every dark fiber provider for the purposes of constructing and maintaining its federally supported dark fiber; and any other person engaged in telecommunications or the transmission of heat or electricity.

[2009, c. 612, §8 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 225, §9 (AMD). 2007, c. 268, §2 (AMD). 2009, c. 612, §8 (AMD).

§2502. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

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 or state-aid highway, except for state or state-aid highways in the compact areas of urban compact municipalities as defined in Title 23, section 754; [1999, c. 753, §9 (AMD).]

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 urban compact municipalities and as defined in Title 23, section 754; and [1999, c. 473, Pt. D, §8 (AMD).]

C. The county commissioners, for all other public ways. [1987, c. 141, Pt. A, §6 (NEW).]

[1999, c. 753, §9 (AMD) .]

2. **Compact area.**

[1999, c. 473, Pt. D, §9 (RP) .]

3. **Facilities.** "Facilities" means:

A. If under the surface of the public way, pipes, cables and conduits; and [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Federal-aid highway system.**

[1999, c. 753, §10 (RP) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1993, c. 163, §§1,2 (AMD). 1999, c. 473, §§D8,9 (AMD). 1999, c. 753, §§9,10 (AMD).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

13. **Appeals.** Appeals from decisions shall be conducted 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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

The department may adopt rules authorizing public utilities to install facilities on or over the surface of public ways for which the department is the licensing authority. The rules must set forth the following:

A. General terms and conditions regarding the location of the facilities; and [1993, c. 540, §1 (NEW).]

B. Reasonable requirements determined necessary to protect public safety and to permit unobstructed public travel along the affected public way. [1993, c. 540, §1 (NEW).]

Utilities installing facilities in accordance with these rules are not required to receive a separate written location permit as required by section 2501, subsection 2. Facilities installed in accordance with the rules are legal structures and are deemed installed pursuant to a written location permit.

[1993, c. 540, §1 (AMD) .]

17. **Relocation in certain municipalities.** The Department of Transportation has the exclusive rights, powers and duties of municipal officers under section 2517 when state or state-aid highways are affected, except for state and state-aid highways in the compact areas of urban compact municipalities as defined in Title 23, section 754.

[1999, c. 753, §11 (AMD) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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-A, chapter 165.

[1995, c. 254, §5 (AMD) .]

21. **Default standards.** When a local licensing authority has not adopted standards governing the location, depth and height of utilities along state or state-aid highways within compact areas of urban compact municipalities as defined in Title 23, section 754, standards adopted by the Department of Transportation govern.

[1999, c. 753, §12 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1993, c. 163, §3 (AMD). 1993, c. 540, §1 (AMD). 1995, c. 254, §5 (AMD). 1999, c. 753, §§11,12 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 appraisement 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. [1987, c. 141, Pt. A, §6 (NEW).]

B. They shall sign duplicates of the written appraisement. [1987, c. 141, Pt. A, §6 (NEW).]

C. They shall on demand deliver one copy to the applicant and the other to the person constructing the line or his agent. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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 [1987, c. 141, Pt. A, §6 (NEW).]

B. Give written notice of the appeal with a copy of the complaint to the opposite party. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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: [1987, c. 141, Pt. A, §6 (NEW).]

1. **Time.** The time during which the streets, roads or highways may remain open;

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Place.** The place where the opening may be made; and

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Surface.** The number of square yards of surface which may be disturbed.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§2510. FEES FOR EXCAVATION PERMITS

The following provisions apply to fees for excavation permits. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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 unless the municipality or village corporation has entered into an agreement pursuant to Title 23, section 3357 requiring the permittee to relay the pavement. If the municipality or village corporation relays the pavement, the cost of relaying the pavement, including materials, labor and inspection, must be paid out of any funds in the special fund for this purpose. [1999, c. 337, §12 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 337, §12 (AMD).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1991, c. 2, §129 (COR) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). RR 1991, c. 2, §129 (COR).

§2515. LIABILITY; DAMAGES

Every corporation organized under section 2101 and former section 2109 and every entity authorized under section 2301 to construct lines 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 or entity, together with attorney's fees and expenses necessarily incurred in defending the municipality in the actions. The corporation or entity must: [2011, c. 623, Pt. B, §11 (AMD).]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A37 (AMD). 1999, c. 398, §§A104,105 (AFF). 2011, c. 623, Pt. B, §11 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Permit required to cut wires and remove poles.** A person may not cut, disconnect or remove the wires or poles of a telephone or transmission and distribution 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 [1987, c. 141, Pt. A, §6 (NEW).]

B. Receives a written permit from the officers. [1987, c. 141, Pt. A, §6 (NEW).]

[1999, c. 398, Pt. A, §38 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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

A. Fix a time and place for a hearing; and [1987, c. 141, Pt. A, §6 (NEW).]

B. Give reasonable notice of the hearing, including actual notice to any utility whose service may be interrupted or property interfered with. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 225, §10 (AMD). 1999, c. 398, §A38 (AMD). 1999, c. 398, §§A104,105 (AFF).

§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 messages already erected in a public street or way other than a state or a state-aid highway outside the compact area of an urban compact municipality as defined in Title 23, section 754, 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 must be granted by the municipal officers to the person.

[1999, c. 753, §13 (AMD) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

B. Personal notice shall be given to the owners of the poles and wires at least 14 days before the hearing. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 225, §11 (AMD). 1999, c. 753, §13 (AMD).

§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 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, only if 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.

[1995, c. 225, §12 (AMD) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

B. The municipal officers shall give personal notice to each party 14 days before the hearing. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 225, §12 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§2521. FEES OF MUNICIPAL OFFICERS

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C8 (RP).

§2522. MAINTENANCE OF UTILITY FACILITIES

Notwithstanding any other provision of law, a transmission and distribution utility or entity authorized under section 2301 to construct lines may trim, cut or remove by cutting trees located within the public right-of-way of a public way and may trim or cut portions of trees encroaching upon the public right-of-way when necessary to ensure safe and reliable service if: [2011, c. 623, Pt. B, §12 (AMD).]

1. **Notice to applicable licensing authority.** Notice is provided by the utility or entity to the applicable licensing authority, as defined in section 2502, at least 30 days before the trimming, cutting or removal of trees;

[2011, c. 623, Pt. B, §12 (AMD) .]

2. **Consultation with applicable licensing authority.** Upon request of the applicable licensing authority, the utility or entity consults with the applicable licensing authority before the trimming, cutting or removal of trees. Notice must be sent to each municipality in which trimming, cutting or removal of trees is to be conducted and the utility or entity shall consult with the applicable municipal licensing authority or, if none, the municipal officers before commencing operations. The municipal licensing authority or, if none, the municipal officers may elect to hold a public hearing on the utility's or entity's proposal and, if so, the utility or entity may not commence operations until after the public hearing has been held;

[2011, c. 623, Pt. B, §12 (AMD) .]

3. **Public notice.** Public notice is placed in at least 2 newspapers with circulation in the area where trimming, cutting or removal of trees is scheduled to occur at least 30 days before the trimming, cutting or removal of those trees. The notice must state that customers may request to be placed on the list, required under subsection 4, of persons who have requested to be personally consulted before the trimming, cutting or removal of trees;

[1993, c. 399, §1 (NEW) .]

4. **Customer notice list.** Before the trimming, cutting or removal of trees, the utility or entity confers with any person who requests personal consultation concerning the trimming, cutting or removal of trees on property in which the person has a legal interest. The utility or entity shall keep a list of persons who have

requested personal consultation under this subsection. The utility or entity shall notify annually, in the form of a bill insert, all of the utility's or entity's customers of the opportunity to be on the list required under this subsection; and

[2011, c. 623, Pt. B, §12 (AMD) .]

5. **Shade and ornamental trees.** Before removing a shade or ornamental tree, the utility or entity consults with the owner of the land upon which the tree is located. For purposes of this subsection, "owner" includes a person who owns the underlying fee interest in land encumbered with a public easement.

[2011, c. 623, Pt. B, §12 (AMD) .]

This section does not apply to trimming, cutting or removal of trees undertaken in emergency situations. [1993, c. 1, §103 (NEW).]

SECTION HISTORY
RR 1993, c. 1, §103 (COR). 1993, c. 399, §1 (NEW). 1999, c. 398, §A39 (AMD). 1999, c. 398, §§A104,105 (AFF). 2011, c. 623, Pt. B, §12 (AMD).

§2523. STREET LIGHTS; USE OF POLES

This section governs street lights that are attached to utility poles in the public way. [2013, c. 369, Pt. E, §1 (NEW).]

1. **Ownership and maintenance options.** On or after October 1, 2014, a transmission and distribution utility shall provide the following options to municipalities for street and area lighting provided by light fixtures attached to poles owned by the transmission and distribution utility or on shared-use poles in the electrical space under the contractual management of the transmission and distribution utility located in the public way:

A. The transmission and distribution utility provides all of the components of the street lighting system, including installation on the utility poles and maintenance, and provides electricity delivery to the street lighting system from a power vendor selected by the municipality. The transmission and distribution utility shall apply a monthly charge for these services as approved by the commission that reflects the total cost to provide street lighting equipment for each light and a separate charge for power delivery consistent with subsection 3; [2013, c. 369, Pt. E, §1 (NEW).]

B. The transmission and distribution utility installs all of the components of the street lighting hardware as selected, purchased and owned by the municipality on utility poles owned by the transmission and distribution utility or in the electrical space under contractual management of the transmission and distribution utility on shared-use poles and connects the light to the power source on the pole. The transmission and distribution utility may apply a one-time charge per light fixture for installation as established by the commission.

Any repairs made by the transmission and distribution utility to the mounting hardware or the power supply wire connection following installation must be billed at a rate established by the commission. Maintenance of all components of the light fixture is the responsibility of the municipality or its contractor. Any person performing maintenance work on behalf of the municipality pursuant to this provision must be qualified pursuant to applicable federal or state standards or any standards established by the commission for such work and must have liability insurance in an amount and with terms determined by the commission. Light locations, the street lighting hardware installed and delivery charges are governed by subsections 2 and 3; and [2013, c. 369, Pt. E, §1 (NEW).]

C. The transmission and distribution utility connects to the power lines a light fixture either owned by or owned and installed by the municipality or its contractor on a pole owned by the transmission and distribution utility or on a shared-use pole in the electrical space under the contractual management of the transmission and distribution utility. Light locations, the street lighting hardware installed and

delivery charges are governed by subsections 2 and 3. Maintenance of the light fixture and mounting hardware is the responsibility of the municipality or its contractor. Any person installing or working on municipally owned street lighting equipment pursuant to this paragraph on behalf of the municipality must be qualified pursuant to applicable federal and state standards or any standards established by the commission for such work and must have liability insurance in an amount and with terms determined by the commission. The transmission and distribution utility may apply a one-time power connection charge per light fixture as established by the commission. [2013, c. 369, Pt. E, §1 (NEW).]

[2013, c. 369, Pt. E, §1 (NEW) .]

2. **Lighting location and installation.** For municipally owned street lighting hardware located on poles owned by the transmission and distribution utility or in the electrical space under the contractual management of the transmission and distribution utility on shared-use poles in the public way, the location on the pole and the street lighting hardware installed, as well as any associated charges, are governed by the following provisions.

A. The commission shall establish criteria, based on standard utility industry practice, for determining possible locations on the utility pole for the street lighting hardware, determining any changes that may be needed, including, but not limited to, relocating equipment already on the pole, installing a taller pole or bracing an existing pole, as well as determining any one-time fees the transmission and distribution utility may charge the municipality for making the determinations and undertaking the work necessitated by the determinations. The criteria must also specify the conditions under which a request from a municipality to locate a light fixture on a pole may reasonably be denied by the transmission and distribution utility. [2013, c. 369, Pt. E, §1 (NEW).]

B. The commission shall establish basic criteria, consistent with standard utility industry practice, for municipally owned street lighting hardware installed on utility poles that address any reasonable safety and compatibility issues with other equipment on or uses of the pole. The criteria must provide a basis for determining when no additional assessment work, and related fees pursuant to paragraph A, would be warranted for a replacement light fixture because the new light fixture places comparable or lower demands on the utility pole and related utility equipment than the light fixture being replaced. [2013, c. 369, Pt. E, §1 (NEW).]

[2013, c. 369, Pt. E, §1 (NEW) .]

3. **Delivery rates and associated charges.** The commission shall establish through appropriate proceedings the charges for the transmission and distribution utility to deliver electricity to the municipal street lighting systems as provided in subsection 1. For municipal street lighting system options described in subsection 1, paragraphs B and C, the commission shall determine what, if any, ongoing fees beyond the power-only delivery charge may be assessed, including a pole attachment fee. In making this determination, the commission shall weigh, among other factors, the municipal interest to serve the general public and the location of the poles in municipal rights-of-way.

[2013, c. 369, Pt. E, §1 (NEW) .]

4. **Transfer of ownership.** A transmission and distribution utility shall allow a municipality to transfer utility-owned street and area lighting for which the municipality is billed to either form of municipal ownership in subsection 1, paragraphs B and C in a time frame and under terms established by the commission. The commission shall also determine a fair and equitable cost for all aspects of the transfer and establish guidelines to best enable the contiguous ownership of lighting fixtures.

[2013, c. 369, Pt. E, §1 (NEW) .]

SECTION HISTORY
2013, c. 369, Pt. E, §1 (NEW).

Chapter 27: INSPECTION OF METERS AND CIVIL LIABILITY

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§2702. APPOINTMENT OF INSPECTORS

The officers of any municipality may annually appoint an inspector of meters, who shall: [1987, c. 141, Pt. A, §6 (NEW).]

1. **Term.** Serve for one year or until another is qualified in his stead, at a salary determined by the municipal officers; and

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Duties.** Have charge of the inspection of all gas, water and electric meters furnished for use in the municipality.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§2705. CIVIL LIABILITY FOR DAMAGES TO METERS

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1993, c. 106, §3 (AMD). 2007, c. 553, §1 (RP).

§2706. CIVIL LIABILITY FOR UTILITY SERVICES WRONGFULLY OBTAINED

A person may not obtain utility services by deception, threat or force or any other means designed to avoid due payment for the services that the person knows are available only for compensation and a person may not, having control over the disposition of utility services of another to which the person knows the person is not entitled, divert such utility services to the person's own benefit or to the benefit of some other person who the person knows is not entitled to the utility services. A person who violates this section is liable in a civil action to the utility providing the service for: [2007, c. 553, §2 (NEW).]

1. **Cost of service.** The cost of the utility services wrongfully obtained or diverted plus interest on the value of those services based on an annual interest rate of 5%;

[2007, c. 553, §2 (NEW) .]

2. **Other costs.** All other reasonable costs to the utility, including attorney's fees and costs of undertaking and completing the investigation resulting in a determination of liability under this section; and

[2007, c. 553, §2 (NEW) .]

3. **Civil penalty.** A civil penalty not to exceed $2,500 due and payable to the utility for each violation of this section.

[2007, c. 553, §2 (NEW) .]

A person who is liable under this section may not pass on the cost of that liability, including any civil penalty assessed, to any tenants of that person who received diverted or wrongfully obtained utility services due to the actions of the liable person. [2007, c. 553, §2 (NEW).]

SECTION HISTORY
2007, c. 553, §2 (NEW).

§2707. CIVIL LIABILITY FOR DAMAGES TO UTILITY PROPERTY

A person may not intentionally, knowingly or recklessly damage, destroy or tamper with property of a utility having no reasonable grounds to believe that the person has a right to do so if such conduct creates a risk of interruption or impairment of services rendered to the public or causes a substantial interruption or impairment of services rendered to the public. A person who violates this section is liable in a civil action to the utility owning the property affected for: [2007, c. 553, §3 (NEW).]

1. **Cost of repair or replacement.** The cost of repair or replacement of the utility property, as necessary;

[2007, c. 553, §3 (NEW) .]

2. **Other costs.** All other reasonable costs to the utility, including attorney's fees and costs of undertaking and completing the investigation resulting in a determination of liability under this section; and

[2007, c. 553, §3 (NEW) .]

3. **Civil penalty.** A civil penalty not to exceed $2,500 due and payable to the utility for each violation of this section.

[2007, c. 553, §3 (NEW) .]

SECTION HISTORY
2007, c. 553, §3 (NEW).

§2708. CIVIL LIABILITY FOR UTILITY PROPERTY WRONGFULLY OBTAINED

A person may not obtain or exercise unauthorized control over the property of a utility with intent to deprive the utility of the property. A person who violates this section is liable in a civil action to the utility owning the property affected for: [2007, c. 553, §4 (NEW).]

1. **Cost of replacement.** The cost of replacement of the utility property, as necessary;

[2007, c. 553, §4 (NEW) .]

2. **Other costs.** All other reasonable costs to the utility, including attorney's fees and costs of undertaking and completing the investigation resulting in a determination of liability; and

[2007, c. 553, §4 (NEW) .]

3. **Civil penalty.** A civil penalty not to exceed $2,500 due and payable to the utility for each violation of this section.

[2007, c. 553, §4 (NEW) .]

SECTION HISTORY
2007, c. 553, §4 (NEW).

Chapter 29: MAINE PUBLIC UTILITY FINANCING BANK ACT

§2901. TITLE

This chapter shall be known and may be cited as the "Maine Public Utility Financing Bank Act." [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§2902. FINDINGS AND DECLARATION OF PURPOSE

It is declared to be in the public interest and to be the policy of the State: [1987, c. 141, Pt. A, §6 (NEW).]

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, 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;

[1999, c. 398, Pt. A, §40 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A40 (AMD). 1999, c. 398, §§A104,105 (AFF).

§2903. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Bank.** "Bank" means the Maine Public Utility Financing Bank created by this chapter.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Bonds.** "Bonds" means bonds of the bank issued pursuant to this chapter.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Chapter.** "Chapter" means the Maine Public Utility Financing Bank Act.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. **Notes.** "Notes" means any notes of the bank issued pursuant to this chapter.

[1987, c. 141, Pt. A, §6 (NEW) .]

7. **Public utility.** "Public utility" means any transmission and distribution utility, water utility or gas utility that is subject to the jurisdiction of the commission.

[1999, c. 398, Pt. A, §41 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

9. **Revenues.** "Revenues" means all fees, charges, money, profits, payments of principal of or 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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A41 (AMD). 1999, c. 398, §§A104,105 (AFF).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 [1987, c. 141, Pt. A, §6 (NEW).]

B. Appoint an executive director who shall also serve as both secretary and treasurer. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 [1987, c. 141, Pt. A, §6 (NEW).]

B. Determine their qualifications, terms of office, duties and compensation. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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; [1987, c. 141, Pt. A, §6 (NEW).]

B. To adopt and have an official seal and alter that seal at pleasure; [1987, c. 141, Pt. A, §6 (NEW).]

C. To make and enforce bylaws and rules for the conduct of its affairs and business and for use of its services and facilities; [1987, c. 141, Pt. A, §6 (NEW).]

D. To maintain an office at such place or places inside the State as it may determine; [1987, c. 141, Pt. A, §6 (NEW).]

E. To acquire, hold, use and dispose of its income, revenue, funds and money; [1987, c. 141, Pt. A, §6 (NEW).]

F. To acquire, rent, lease, hold, use and dispose of other personal and real property for its purposes; [1989, c. 374, §2 (AMD).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

H. To fix and revise from time to time and charge and collect fees and charges for the use of its services or facilities; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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 [1987, c. 141, Pt. A, §6 (NEW).]

P. To do all acts necessary, convenient or desirable to carry out the powers expressly granted or necessarily implied in this chapter. [1987, c. 141, Pt. A, §6 (NEW).]

[1989, c. 374, §2 (AMD) .]

2. **Allocation of state ceiling.** The bank may establish a process for allocation and carry-forward of that portion of the state ceiling on issuance of tax-exempt bonds allocated to the bank under Title 10, chapter 9. The executive director is designated as the state official authorized to issue the certification under the United States Code, Title 26, Section 149(e)(2)(F), as amended, for allocations of the state ceiling allocated to the bank pursuant to Title 10, chapter 9.

[1989, c. 224, §4 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 224, §4 (AMD). 1989, c. 374, §2 (AMD).

§2907. PROHIBITED ACTS AND LIMITATION OF POWERS

Nothing in this chapter permits or authorizes the bank to: [1987, c. 141, Pt. A, §6 (NEW).]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Bank and trust company.** Be or constitute a bank or trust company within the jurisdiction or under the control of the Bureau of Financial Institutions, the Superintendent of Financial Institutions, the Comptroller of the Currency of the United States or the United States Department of the Treasury;

[1987, c. 141, Pt. A, §6 (NEW); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF).

§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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

C. The establishment or increase of the reserves to secure or to pay the bonds or interest on them; and [1987, c. 141, Pt. A, §6 (NEW).]

D. All other costs or expenses of the bank incident to and necessary or convenient to carry out its corporate purposes and powers. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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 addition 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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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: [1987, c. 141, Pt. A, §6 (NEW).]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

C. Pay fees and charges required to be paid to the bank for its services; and [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Cost and expense of state services.** At the request 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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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; [1987, c. 141, Pt. A, §6 (NEW).]

B. The payment or collection of amounts due and payable as to principal or interest; and [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

It is not intended that the general laws relating to public utilities shall be in any way affected by this chapter. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§2930. LIBERAL CONSTRUCTION OF CHAPTER

This chapter shall be construed liberally to effectuate the legislative intent and the purposes of this chapter. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

Part 3: ELECTRIC POWER HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

Chapter 31: GENERAL PROVISIONS

Subchapter 1: ELECTRIC RATES HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§3101. FUEL ADJUSTMENT CLAUSE

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 253, §1 (AMD). 1987, c. 671, §1 (AMD). 1999, c. 398, §§A104,105 (AFF). 1999, c. 398, §A42 (RP).

§3102. RECOVERY OF COST OF CANCELED OR ABANDONED ELECTRIC GENERATING FACILITY OR TRANSMISSION OR DISTRIBUTION PLANT

1. **Determining rate-making treatment.** In determining the rate-making treatment for a utility's investment in a canceled or abandoned electric generating facility or transmission or distribution plant, 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 or transmission or distribution plant.

[1999, c. 398, Pt. A, §43 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. **Canceled or abandoned generating facility or transmission or distribution plant.** As used in this section, the term "canceled or abandoned generating facility or transmission or distribution plant" means any electric generating facility or transmission or distribution plant canceled or abandoned by the owner or by the joint participants in the facility in accordance with the terms of applicable agreements or otherwise.

[1999, c. 398, Pt. A, §43 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. **Exception.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §43 (RP) .]

4. **This section not intended to indicate preference.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §43 (RP) .]

5. **Canceled plant recovery filing fee.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §43 (RP) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 490, §A4 (AMD). 1999, c. 398, §A43 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3103. MINIMUM CHARGE

1. **Utilities required to provide minimum charge.** Any transmission and distribution utility serving more than 5,000 customers that has a residential rate combining energy and demand costs in a single rate that 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 transmission and distribution utility shall provide for a minimum charge to include such an amount of kilowatt hours as the commission determines.

[1999, c. 398, Pt. A, §44 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. **Billing of minimum charge.** The minimum charge must be billed to the customer in such a manner that all transmission and distribution charges to the customer for residential service appear on the bill as a single item.

[1999, c. 398, Pt. A, §44 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A44 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3104. SCHEDULE OF REGULAR METER READINGS REQUIRED

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

A. "Investor-owned transmission and distribution utility" means a transmission and distribution utility other than a consumer-owned transmission and distribution utility as defined in section 3201. [2003, c. 412, §1 (NEW).]

[2003, c. 412, §1 (NEW) .]

2. **Requirement.** An investor-owned transmission and distribution utility shall adopt and ordinarily follow as a general operating policy a schedule of reading customer meters on a monthly basis. Any investor-owned transmission and distribution utility that plans to adopt a different policy, such as bimonthly meter readings, must receive prior approval of the commission.

[2003, c. 412, §1 (NEW) .]

SECTION HISTORY
2003, c. 412, §1 (NEW).

Subchapter 2: ENERGY PLANNING; CONSTRUCTION; PURCHASES HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§3131. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Domestic transmission and distribution utility.** "Domestic transmission and distribution utility" means any entity organized under the laws of this State to transmit or distribute electricity.

[1999, c. 398, Pt. A, §45 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

1-A. **Electric utility.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §45 (RP) .]

2. **Energy.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §45 (RP) .]

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, that 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.

[1999, c. 398, Pt. A, §45 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3-A. **Fuel conversion.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §45 (RP) .]

4. **Generating capacity.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §45 (RP) .]

4-A. **High-impact electric transmission line.** "High-impact electric transmission line" means a transmission line greater than 50 miles in length that is not located in a statutory corridor, as defined in section 122, subsection 1, paragraph F-4, or a petitioned corridor, as defined in section 122, subsection 1, paragraph D-1, and that is:

A. Constructed to transmit direct current electricity; or [2009, c. 655, Pt. A, §3 (NEW).]

B. Capable of operating at 345 kilovolts or more and:

(1) Is not a generator interconnection transmission facility as defined in section 3132, subsection 1-B; and

(2) Is not constructed primarily to provide electric reliability, as determined by the commission. [2009, c. 655, Pt. A, §3 (NEW).]

[2009, c. 655, Pt. A, §3 (NEW) .]

4-B. **Nontransmission alternative.** "Nontransmission alternative" means any of the following methods used either individually or combined to reduce the need for the construction of a transmission line under section 3132 or transmission project under section 3132-A: energy efficiency and conservation, load management, demand response or distributed generation.

[2013, c. 369, Pt. C, §1 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. **Utility facility.** "Utility facility" means an item of plant used or useful in the transmission and distribution utility business, and includes, but is not limited to, such items of plant as transmission lines, office buildings and equipment and transportation equipment.

[1999, c. 398, Pt. A, §45 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

7. **Corridor.** "Corridor" means an area no greater than 1/2 mile in width in which a proposed transmission line is to be located.

[1991, c. 640, §1 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). RR 1991, c. 2, §130 (COR). 1991, c. 640, §1 (AMD). 1997, c. 710, §5 (AMD). 1999, c. 398, §A45 (AMD). 1999, c. 398, §§A104,105 (AFF). 2009, c. 655, Pt. A, §3 (AMD). 2013, c. 369, Pt. C, §1 (AMD).

§3132. CONSTRUCTION OF TRANSMISSION LINES PROHIBITED WITHOUT PRIOR ORDER OF THE COMMISSION

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

Except as provided in subsection 1-B, a person may not construct any transmission line covered by subsection 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. [2007, c. 148, §1 (AMD).]

1. **Construction of generating facility and resulting line.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §46 (RP) .]

1-A. **Purchase of capacity or energy and resulting line.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §46 (RP) .]

1-B. **Exception; generator interconnection transmission facility.** The construction of a generator interconnection transmission facility is not subject to the requirements of this section. For the purposes of this subsection, "generator interconnection transmission facility" means a transmission line, together with all associated equipment and facilities, that is constructed, owned and operated by a generator of electricity solely for the purpose of electrically and physically interconnecting such generator to the transmission system of a transmission and distribution utility.

[2007, c. 148, §2 (NEW) .]

2. **Construction of transmission line.** Except as otherwise provided in subsection 3-A, whenever any person proposes to erect within this State a transmission line capable of operating at 69 kilovolts or more, that person shall file a petition for the approval of the proposed line in accordance with subsection 2-C. 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, as long as 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 person filing the petition 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.

[2009, c. 309, §1 (AMD) .]

2-A. **Other projects requiring approval.**

[2009, c. 123, §1 (RP) .]

2-B. **Standards for certain projects.**

[2009, c. 123, §2 (RP) .]

2-C. **Petition for approval of proposed transmission line.** The petition for approval of the proposed transmission line must contain such information as the commission by rule prescribes, including, but not limited to:

A. A description of the effect of the proposed transmission line on public health and safety and scenic, historic, recreational and environmental values and of the proximity of the proposed transmission line to inhabited dwellings; [2009, c. 309, §2 (NEW).]

B. Justification for adoption of the route selected, including comparison with alternative routes that are environmentally, technically and economically practical; [2013, c. 369, Pt. C, §2 (AMD).]

C. Results of an investigation by an independent 3rd party, which may be the commission or a contractor selected by the commission, of nontransmission alternatives to construction of the proposed transmission line. The investigation must set forth the total projected costs of the transmission line as well as the total projected costs of the alternatives over the effective life of the proposed transmission line; and [2013, c. 369, Pt. C, §2 (AMD).]

D. A description of the need for the proposed transmission line. [2013, c. 369, Pt. C, §3 (NEW).]

[2013, c. 369, Pt. C, §§2, 3 (AMD) .]

3. **Transmission line rebuilding or relocation projects.** Each transmission and distribution utility shall file annually with the commission a schedule of transmission line rebuilding or relocation projects that it intends to carry out during the next 5 years concerning transmission lines that will become, or will remain at, voltages of 69 kilovolts or more. The schedule must 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 transmission and distribution utility within 60 days of the annual filing and the transmission and distribution utility is then 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.

[2009, c. 123, §3 (AMD) .]

3-A. **Minor transmission line construction projects.** Each domestic transmission and distribution utility shall file annually with the commission a schedule of minor transmission line construction projects that it intends to carry out during the next 5 years concerning transmission lines that will be capable of operating at 69 kilovolts or more. A minor transmission line construction project is a transmission line construction project the cost of which does not exceed 25% of the utility's current annual transmission property depreciation charge. The schedule must describe each project, showing the length, location and estimated cost.

If the commission determines that an investigation of any minor transmission line construction project is warranted, it shall notify the transmission and distribution utility within 60 days of the annual filing and the utility must then 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.

[2009, c. 123, §4 (AMD) .]

4. **Corridor of proposed transmission line.** The person filing a petition under this section for approval of a proposed transmission line shall submit a map to the commission with its application. The map must:

A. Be available to the public at the offices of the commission and at the local town office where any portion of the proposed transmission line is to be located; [1991, c. 640, §3 (AMD).]

B. Indicate the proposed corridor or corridors of the transmission line and a description of any planned equipment and facilities to be placed there; and [1991, c. 640, §3 (AMD).]

C. Be prepared in cooperation with the appropriate natural resource protection agencies and the affected municipalities. [1991, c. 640, §3 (NEW).]

[2007, c. 148, §4 (AMD) .]

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. The commission shall give preference to the nontransmission alternatives that have been identified as able to address the identified need for the proposed transmission line at lower total cost to ratepayers in this State. When the costs to ratepayers in this State of the identified nontransmission alternatives are reasonably equal, the commission shall give preference to the alternatives that produce the lowest amount of local air emissions, including greenhouse gas emissions.

[2013, c. 369, Pt. C, §4 (AMD) .]

6. **Commission order; certificate of public convenience and necessity.** In its order, the commission shall make specific findings with regard to the public need for the proposed transmission line. The commission shall make specific findings with regard to the likelihood that nontransmission alternatives can sufficiently address the identified public need over the effective life of the transmission line at lower total cost. Except as provided in subsection 6-A for a high-impact electric transmission line and in accordance with subsection 6-B regarding nontransmission alternatives, if the commission finds that a public need exists, after considering whether the need can be economically and reliably met using nontransmission alternatives, it shall issue a certificate of public convenience and necessity for the transmission line. In determining public need, the commission shall, at a minimum, take into account economics, reliability, public health and safety, scenic, historic and recreational values, state renewable energy generation goals, the proximity of the proposed transmission line to inhabited dwellings and alternatives to construction of the transmission line, including energy conservation, distributed generation or load management. If the commission orders or allows the erection of the transmission line, the order is subject to all other provisions of law and the right of any other agency to approve the transmission line. The commission shall, as necessary and in accordance with subsections 7 and 8, consider the findings of the Department of Environmental Protection under Title 38, chapter 3, subchapter 1, article 6, with respect to the proposed transmission line and any modifications

ordered by the Department of Environmental Protection to lessen the impact of the proposed transmission line on the environment. A person may submit a petition for and obtain approval of a proposed transmission line under this section before applying for approval under municipal ordinances adopted pursuant to Title 30-A, Part 2, Subpart 6-A; and Title 38, section 438-A and, except as provided in subsection 4, before identifying a specific route or route options for the proposed transmission line. Except as provided in subsection 4, the commission may not consider the petition insufficient for failure to provide identification of a route or route options for the proposed transmission line. 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 person to erect or construct was prudent. At the time of its issuance of a certificate of public convenience and necessity, the commission shall send to each municipality through which a proposed corridor or corridors for a transmission line extends a separate notice that the issuance of the certificate does not override, supersede or otherwise affect municipal authority to regulate the siting of the proposed transmission line. The commission may deny a certificate of public convenience and necessity for a transmission line upon a finding that the transmission line is reasonably likely to adversely affect any transmission and distribution utility or its customers.

[2013, c. 369, Pt. C, §5 (AMD) .]

6-A. **High-impact electric transmission line; certificate of public convenience and necessity.** The commission shall evaluate and render a decision on any petition for a certificate of public convenience and necessity for a high-impact transmission line in accordance with section 122, subsection 1-D.

[2009, c. 655, Pt. A, §5 (NEW) .]

6-B. (TEXT EFFECTIVE UNTIL 12/31/15) (TEXT REPEALED 12/31/15) **Reasonable consideration of nontransmission alternatives.** If the commission determines that nontransmission alternatives can sufficiently address the transmission need under subsection 6 at lower total cost, but at a higher cost to ratepayers in this State than the proposed transmission line, the commission shall make reasonable efforts to achieve within 180 days an agreement among the states within the ISO-NE region to allocate the cost of the nontransmission alternatives among the ratepayers of the region using the allocation method used for transmission lines or a different allocation method that results in lower costs than the proposed transmission line to the ratepayers of this State.

For the purposes of this section, "ISO-NE region" has the same meaning as in section 1902, subsection 3.

The subsection is repealed December 31, 2015.

[2013, c. 369, Pt. C, §6 (NEW) .]

6-B. (TEXT EFFECTIVE UNTIL 12/31/15) (TEXT REPEALED 12/31/15) **Reasonable consideration of nontransmission alternatives.** If the commission determines that nontransmission alternatives can sufficiently address the transmission need under subsection 6 at lower total cost, but at a higher cost to ratepayers in this State than the proposed transmission line, the commission shall make reasonable efforts to achieve within 180 days an agreement among the states within the ISO-NE region to allocate the cost of the nontransmission alternatives among the ratepayers of the region using the allocation method used for transmission lines or a different allocation method that results in lower costs than the proposed transmission line to the ratepayers of this State.

For the purposes of this section, "ISO-NE region" has the same meaning as in section 1902, subsection 3.

The subsection is repealed December 31, 2015.

[2013, c. 369, Pt. C, §6 (NEW) .]

7. **Environmental protection agency modification.** If the commission has issued a certificate of public convenience and necessity for a proposed transmission line and the Department of Environmental Protection in an order issued under Title 38, chapter 3, subchapter 1, article 6 makes a modification in the location, size, character or design of the transmission line, the person proposing the transmission line shall:

A. Deliver a copy of the order to the commission; and [1987, c. 141, Pt. A, §6 (NEW).]

B. State the nature of the modifications and all cost adjustments occasioned by the modifications to the cost of the proposed transmission line relied upon by the commission in issuing its certificate of public convenience and necessity under this section. [1999, c. 398, Pt. A, §46 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[2009, c. 309, §4 (AMD) .]

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 person may not proceed with any construction of the proposed transmission line, 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 transmission line; [1999, c. 398, Pt. A, §46 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

B. Make specific findings with regard to the need for the transmission line to the same extent and with the same authority as if the person's petition for approval were before it; and [2007, c. 148, §7 (AMD).]

C. Except as modified in this section, retain all authority granted to it under section 1321. [1987, c. 141, Pt. A, §6 (NEW).]

[2007, c. 148, §7 (AMD) .]

9. **Filing fee; waiver of fee.** When a petition is filed under this section, the person or persons involved shall pay to the commission an amount equal to 2/100 of 1% of the estimated cost to erect, rebuild or relocate the transmission line provided that in the case of a petition filed under subsection 2, the fee is 4/100 of 1%. The person may, at the time of the filing of notice of its intent to file the petition, or, in the case of lines subject to subsection 2, at the time of the filing of 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 30 days.

Filing fees paid as required under this subsection must 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 person and is not expended by the commission to process the petition for a certificate of public convenience and necessity must be returned to the person.

[2007, c. 148, §8 (AMD) .]

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 the review of which does not place an unusual burden on the commission's budget.

[1999, c. 398, Pt. A, §46 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

10-A. **Filing fee to Office of the Public Advocate.** When a person pays a filing fee to the commission pursuant to subsection 9, the person shall, at the same time, pay to the Office of the Public Advocate an amount equal to 1/100 of 1% of the estimated cost to erect, rebuild or relocate the transmission line. The person may, at the time of the filing of the petition under this section, request the Office of the Public Advocate to waive all or a portion of the filing fee. The Office of the Public Advocate shall decide on the waiver request within 30 days.

Filing fees paid as required under this subsection must be segregated, apportioned and expended by the Office of the Public Advocate for the purposes of representing the interests of consumers in the proceeding before the commission or conducting public outreach to inform consumers about the proceeding. The Office of the Public Advocate shall return any portion of the filing fee that is not expended for these purposes to the person who paid the fee.

[2009, c. 26, §1 (NEW) .]

10-B. **Office of the Public Advocate reporting requirement; repeal.**

[2009, c. 26, §2 (NEW); T. 35-A, §3132, sub-§10-B (RP) .]

11. **Amendments, extensions and renewals.**

[1993, c. 91, §2 (RP) .]

11-A. **Amendments, extensions and renewals of contracts originally subject to commission approval.** This section applies to any amendment, extension or renewal of any contract between a person and other parties with an ownership interest governing the terms of their participation in the construction of a transmission line subject to this section, if the original contract was subject to approval by the commission. The commission may waive the approval requirements of this section with respect to a particular amendment, extension or renewal or a group of amendments, extensions or renewals upon request. If the commission does not respond to a request for waiver within 30 days, the request is deemed to have been granted. The commission shall prescribe by rule the content of a request for waiver and procedures for the expeditious processing of requests in certain circumstances.

[2007, c. 148, §9 (AMD) .]

11-B. **Amendments, extensions and renewals of contracts not originally subject to commission approval.** For any amendment, extension or renewal of any contract otherwise subject to this section, but when the original contract was not subject to approval by the commission, the person shall file a copy of the proposed amendment, extension or renewal with the commission within 7 days of the day when the utility receives notice of the proposal, but approval under this section is not required.

[2007, c. 148, §10 (AMD) .]

12. **Waiver of notice.** The commission may waive any of the notice requirements in this section in advance of filing.

[1989, c. 60, §6 (NEW) .]

13. **Public lands.** The State, any agency or authority of the State or any political subdivision of the State may not sell, lease or otherwise convey any interest in public land, other than a future interest or option to purchase an interest in land that is conditioned on satisfaction of the terms of this subsection, to any person for the purpose of constructing a transmission line subject to this section, unless the person has received a certificate of public convenience and necessity from the commission pursuant to this section.

A. [2009, c. 123, §6 (RP).]

B. [2009, c. 123, §6 (RP).]

A person who has bought, leased or otherwise been conveyed any interest in public land for the purpose of constructing a transmission line may not undertake construction of that line except under the terms of the certificate of public convenience and necessity as originally issued for that transmission line by the

commission or as modified by order of the Department of Environmental Protection under subsection 7 or under the terms of an amended certificate of public convenience and necessity issued by the commission or deemed to have been issued by the commission under subsection 11-A.

As used in this subsection, "public land" means land that is owned or controlled by the State, by an instrumentality of the State or by a political subdivision of the State.

As used in this subsection, "future interest or option to purchase an interest in land" includes an option, purchase and sale agreement or other equivalent legal instrument that conveys the intent to pursue a future sale, lease or other conveyance of land.

[2009, c. 655, Pt. C, §3 (AMD) .]

14. **Customer cost impact.** Notwithstanding any other provision of this section, the commission may not issue a certificate of public convenience and necessity that has the effect of eliminating the independent system administrator for northern Maine or eliminating or materially modifying the scope of responsibilities of the independent system administrator for northern Maine unless the certificate is subject to a requirement for the full compensation for the net adverse effects on ratepayers as determined by the commission. The determination of the net adverse effects must include, but is not limited to, known and measurable transmission cost effects. Compensation required by this section must be provided to affected ratepayers through a rebate, reduction in rates or other appropriate compensation mechanism benefiting affected ratepayers in the area of the State in which the retail electricity market is administered by the independent system administrator for northern Maine. Compensation required by this section must be calculated for and provided to affected ratepayers over a period of not more than 10 years.

[2009, c. 285, §1 (NEW) .]

15. **Advancement of nontransmission alternatives policies.** The commission shall advocate in all relevant venues for the pursuit of least-cost solutions to bulk power system needs on a total cost basis and for all available resources, including nontransmission alternatives, to be treated comparably in transmission analysis, planning and access to funding.

[2013, c. 369, Pt. C, §7 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 387, §§1,2 (AMD). 1987, c. 490, §A5 (AMD). 1989, c. 60, §§1-6 (AMD). 1989, c. 796, §§1,2 (AMD). 1991, c. 640, §§2-4 (AMD). 1993, c. 91, §§2,3 (AMD). 1995, c. 254, §6 (AMD). 1997, c. 710, §6 (AMD). 1999, c. 398, §A46 (AMD). 1999, c. 398, §§A104,105 (AFF). 2003, c. 506, §§12,13 (AMD). 2007, c. 148, §§1-11 (AMD). 2007, c. 575, §1 (AMD). 2009, c. 26, §§1, 2 (AMD). 2009, c. 123, §§1-6 (AMD). 2009, c. 285, §1 (AMD). 2009, c. 309, §§1-4 (AMD). 2009, c. 615, Pt. A, §1 (AMD). 2009, c. 655, Pt. A, §§4, 5 (AMD). 2009, c. 655, Pt. C, §3 (AMD). 2011, c. 281, §1 (AMD). 2013, c. 369, Pt. C, §§2-7 (AMD).

§3132-A. CONSTRUCTION OF TRANSMISSION PROJECTS PROHIBITED WITHOUT APPROVAL OF THE COMMISSION

A person may not construct any transmission project without approval from the commission. For the purposes of this section, "transmission project" means any proposed transmission line and its associated infrastructure capable of operating at less than 69 kilovolts and projected to cost in excess of $20,000,000. [2013, c. 369, Pt. C, §8 (NEW).]

1. **Submission requirement.** A person that proposes to undertake in the State a transmission project must provide the commission with the following information:

A. Results of an investigation by an independent 3rd party, which may be the commission or a contractor selected by the commission, of nontransmission alternatives to construction of the proposed transmission project. The investigation must set forth the total projected costs of the transmission project as well as the total projected costs of the nontransmission alternatives over the effective life of the proposed transmission project; and [2013, c. 369, Pt. C, §8 (NEW).]

B. A description of the need for the proposed transmission project. [2013, c. 369, Pt. C, §8 (NEW).]

[2013, c. 369, Pt. C, §8 (NEW) .]

2. **Approval; consideration of nontransmission alternatives.** In order for a transmission project to be approved, the commission must consider whether the identified need over the effective life of the proposed transmission project can be economically and reliably met using nontransmission alternatives at a lower total cost. During its review the commission shall give preference to nontransmission alternatives that are identified as able to address the identified need for the proposed transmission project at lower total cost to ratepayers. Of the identified nontransmission alternatives, the commission shall give preference to the lowest-cost nontransmission alternatives. When the costs to ratepayers of the identified nontransmission alternatives are reasonably equal, the commission shall give preference to the alternatives that produce the lowest amount of local air emissions, including greenhouse gas emissions.

[2013, c. 369, Pt. C, §8 (NEW) .]

3. **Exception.** A transmission project that is constructed, owned and operated by a generator of electricity solely for the purpose of electrically and physically interconnecting the generator to the transmission system of a transmission and distribution utility is not subject to this section.

[2013, c. 369, Pt. C, §8 (NEW) .]

SECTION HISTORY
2013, c. 369, Pt. C, §8 (NEW).

§3133. PURCHASE OF TRANSMISSION CAPACITY PROHIBITED WITHOUT PRIOR ORDER OF THE COMMISSION

1. **Commission approval required for purchases.** A transmission and distribution utility may not purchase any transmission capacity unless the commission has issued a certificate of public convenience and necessity approving the purchase or has waived the approval requirements pursuant to subsection 11.

[1999, c. 398, Pt. A, §47 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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, a notice of its intent to file the petition. The notice must inform the commission of the terms of the proposed purchase 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.

[1999, c. 398, Pt. A, §47 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. **Petition for certificate of public convenience and necessity.** The petition for a certificate of public convenience and necessity must contain such information as the commission may by rule prescribe.

[1999, c. 398, Pt. A, §47 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

4. **Hearing.** The petition must be set down for public hearing.

[1999, c. 398, Pt. A, §47 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 and, if the commission finds that a need exists, it shall issue a certificate of public convenience and necessity for the purchase. [1999, c. 398, Pt. A, §47 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

B. [1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §47 (RP).]

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 was prudent. [1999, c. 398, Pt. A, §47 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[1999, c. 398, Pt. A, §47 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

7. **Exclusions.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §47 (RP) .]

7-A. **Consumer-owned electric utilities.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §47 (RP) .]

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. 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 a request for waiver within 30 days.

Filing fees paid as required by this subsection must 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 certificate of public convenience and necessity must be returned to the utility or utilities.

[1999, c. 398, Pt. A, §47 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

9. **Imported power.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §47 (RP) .]

10. **Renewal of contracts for purchase or conversion.**

[1993, c. 91, §4 (RP) .]

10-A. **Renewal of contracts for purchase originally subject to commission approval.** The requirements of this section apply to any amendment, extension or renewal of any contract between the utility and other parties governing the terms of their participation in a purchase subject to this section, if the original contract was subject to approval by the commission.

[1999, c. 398, Pt. A, §47 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

10-B. **Renewal of contracts not originally subject to commission approval.** For any amendment, extension or renewal of any contract otherwise subject to this section for which the original contract was not subject to approval by the commission, the utility shall file a copy of the proposed amendment, extension or renewal with the commission within 7 days of the day when the utility receives notice of the proposal, but approval under this section is not required.

[1993, c. 91, §5 (NEW) .]

11. **Waiver of approval requirements.** The commission may waive the notice and approval requirements of this section on its own motion or upon request of any party. The commission shall rule on a request for a waiver within 60 days. Prior to considering a waiver, the commission shall ensure that notice by mail has been sent, and an opportunity to be heard permitted, to persons who commonly participate in commission proceedings and persons whose contracts the commission determines may be affected by the agreement. The commission may prescribe by rule the content of a request for waiver and procedures for the expeditious processing of the request in certain circumstances.

[1999, c. 398, Pt. A, §47 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 378, §1 (AMD). 1987, c. 387, §3 (AMD). 1987, c. 490, §§A6,B4 (AMD). 1987, c. 769, §§A138,A139 (AMD). 1993, c. 91, §§4,5 (AMD). 1995, c. 357, §§3-5 (AMD). 1999, c. 398, §A47 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3133-A. SIGNIFICANT AGREEMENTS AND CONTRACTS RELATING TO TRANSMISSION CAPACITY PROHIBITED WITHOUT PRIOR ORDER OF THE COMMISSION

1. **Certificate of public convenience and necessity.** Except as provided in subsection 3, a transmission and distribution utility may not enter into any significant agreement or contract, as defined in subsection 2, unless the commission has issued a certificate of public convenience and necessity approving the proposed agreement or contract or has waived the approval requirements pursuant to subsection 6. The utility must file a notice 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 agreement or contract. The commission may require the petitioner to make available such additional information as it determines necessary. The petition must contain such information as the commission may by rule prescribe. The petition must be set down for public hearing. The commission shall issue its order within 12 months after the complete petition is filed. If there is then outstanding a long-range plan for the utility pursuant to section 3134 that includes the agreement or contract, the utility need not provide advance notice of its intent to file the petition and the commission shall issue its order within 9 months after the complete petition is filed.

In its order, the commission shall make specific findings with regard to the agreement or contract. If the commission finds that a need for it exists and it is reasonable and consistent with the public interest, the commission shall issue the certificate of public convenience and necessity.

The issuance of a certificate of public convenience and necessity establishes that, as of the date of issuance, the decision by the utility to enter into the agreement or contract was prudent.

[1999, c. 398, Pt. A, §48 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

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

A. "Significant agreement or contract" means a contract or other agreement enforceable as a contract that binds the utility to a future course of action with respect to supplying, purchasing or exchanging transmission capacity or any renewal, amendment or extension of any contract or agreement that is for a period of longer than 3 years and involves one of the following, whichever is less:

(1) More than 5,000 kilowatts of electrical transmission capacity, or 50,000,000 kilowatt hours or more of energy per year, flowing over a transmission line with a capacity greater than 100 kilovolts;

(2) More than 10% of the transmission capacity of the utility; or

(3) The transmission of an amount equal to more than 1.0% of the total annual kilowatt hour sales in the utility's service territory. [1999, c. 398, Pt. A, §48 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[1999, c. 398, Pt. A, §48 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

3. **Exclusions.** This section does not apply to any contract or agreement for which commission approval is required under section 3132 or 3133. This section applies to contracts or agreements that take effect on or after the effective date of this section.

[1999, c. 398, Pt. A, §48 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

4. **Filing fee.** A utility or utilities filing a petition under this section shall pay to the Public Utilities Commission at the time of filing an amount equal to 2/100 of 1% of the estimated cost of the contract or agreement. The utility or utilities, at or before the time of filing of notice of its intent to file the petition, may request the commission to waive all or a portion of the filing fee as unnecessary to help defray the cost of review. The commission shall rule on the request for waiver within 60 days.

Notwithstanding this Title, filing fees paid as required in this subsection must be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from a utility or utilities and is not expended by the commission to process the petition for a certificate of public convenience and necessity must be returned to the utility or utilities.

[1999, c. 398, Pt. A, §48 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

5. **Amendments, extensions and renewals.**

[1993, c. 91, §6 (RP) .]

5-A. **Amendments, extensions and renewals.** The requirements of this section apply to any amendment, extension or renewal of any significant agreement or contract subject to this section, if the original contract was subject to approval by the commission.

[1995, c. 357, §8 (AMD) .]

5-B. **Amendments, extensions and renewals of contracts not originally subject to commission approval.** For any amendment, extension or renewal of any contract otherwise subject to this section when the original contract was not subject to approval by the commission, the utility shall file a copy of the proposed amendment, extension or renewal with the commission within 7 days of the day when the utility receives notice of the proposal, but approval is not required under this section.

[1993, c. 91, §7 (NEW) .]

6. **Waiver of approval requirements.** The commission may waive the notice and approval requirements of this section upon its own motion or upon the request of any party. The commission shall rule on a request for a waiver within 60 days. Prior to considering a waiver, the commission shall ensure that notice by mail has been sent, and an opportunity to be heard permitted, to persons who commonly participate in commission proceedings and persons whose contracts the commission determines may be affected by the agreement. The commission may prescribe by rule the content of a request for waiver and procedures for expeditious processing of the request in certain circumstances.

[1999, c. 398, Pt. A, §48 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 387, §4 (NEW). 1993, c. 91, §§6,7 (AMD). 1993, c. 119, §1 (AMD). 1995, c. 357, §§6-9 (AMD). 1999, c. 398, §A48 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3134. LONG-RANGE PLAN

1. **Filing by transmission and distribution utilities.** Every transmission and distribution utility in whose service territory 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 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, 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 [1999, c. 398, Pt. A, §49 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

B. List and describe all the assumptions used by the utility in formulating the plan required by this section. [1987, c. 141, Pt. A, §6 (NEW).]

[1999, c. 398, Pt. A, §49 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. **Hearing and decision.** The commission shall set down for public hearing each long-range plan filed in accordance with subsection 1. Notice of the hearing and opportunity to intervene must 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 plan in accordance with this subsection. Each long-range plan as approved or modified by the commission constitutes the plan of the filing utility and, unless altered as the result of judicial review or subsequently modified by commission order, represents the final finding of fact of the matters contained in the plan for the purposes of subsection 3.

[1999, c. 398, Pt. A, §49 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. **Purchase of transmission capacity.** 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 plan for the utility approved or modified by the commission 2 years or less before the date of the order, the certificate may not be granted unless the purchase conforms to that plan. The findings by the commission, as embodied in its order under subsection 2, 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.

[1999, c. 398, Pt. A, §49 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

4. **Plans of consumer-owned transmission and distribution utilities.** The commission may order the filing of a long-range plan, comparable to the plan authorized in this section, by a consumer-owned transmission and distribution utility, as defined in section 3501. The order must allow sufficient time for its preparation. A consumer-owned utility may file a comparable plan on its own initiative. Any plan submitted under this subsection may be filed in concert with other consumer-owned transmission and distribution utilities. A plan is comparable to a plan otherwise authorized in this section if it provides the same or similar data to the fullest extent possible, taking into account the size and resources of the consumer-owned utility.

The plan must be reviewed by the commission in accordance with subsection 2.

[1999, c. 398, Pt. A, §49 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 378, §2 (AMD). 1999, c. 398, §A49 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3134-A. NEW ENGLAND ELECTRIC POWER POOL AGREEMENT

(REPEALED)

SECTION HISTORY

1987, c. 490, §B5 (NEW). 1995, c. 357, §10 (RP).

§3135. PHYSICAL CONNECTION BETWEEN LINES OF UTILITIES AUTHORIZED

1. **Connection with feed lines.** A transmission and distribution utility may extend its lines to connect with the feed lines of any other transmission and distribution utility. The commission may fix such terms and conditions as will safeguard the rights and interests of both utilities.

[1999, c. 398, Pt. A, §50 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. **Emergency connection and transport of energy.** The commission, in the interest of public convenience and necessity, may order any utility that is principally engaged in the transmission and distribution 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 that exists by reason of an emergency.

Whenever the commission, upon its own motion or upon application of any transmission and distribution 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 transmit or distribute electricity for any other utility for a temporary period.

The commission may not compel a company to transmit or distribute electricity under this subsection when to do so would impair its ability to render adequate service to its customers.

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 that will inure to its sole benefit assumes the entire cost of the connection.

[1999, c. 398, Pt. A, §50 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A50 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3136. TRANSMISSION AND DISTRIBUTION UTILITIES HAVE EMINENT DOMAIN; APPROVAL

1. **Land necessary for location of transmission lines carrying 5,000 volts.** Subject to approval by the commission under subsection 4, a transmission and distribution utility may take and hold by right of eminent domain lands and easements necessary for the proper location of its transmission lines that 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.

[2007, c. 148, §12 (AMD) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. Lands or easements on or adjacent to any developed or undeveloped water power; [1987, c. 141, Pt. A, §6 (NEW).]

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; [2001, c. 608, §2 (AMD).]

D. Lands or easements owned or used by railroad corporations, except as authorized pursuant to section 2311; and [2001, c. 608, §2 (AMD).]

E. Lands or easements owned by the State. [2001, c. 608, §2 (NEW).]

[2001, c. 608, §2 (AMD) .]

3. **Prior right to locate distribution lines and appurtenances in right-of-way limits of public way.** Subject to approval by the commission under subsection 4, transmission and distribution 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 transmission and distribution 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 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, D and E.

[2007, c. 148, §13 (AMD) .]

4. **Commission approval required; certificate of public convenience and necessity; environmental factors.** A location to be taken by eminent domain for such transmission or distribution lines must be approved by the commission before a transmission and distribution utility can exercise the right of eminent domain granted in subsection 1 or subsection 3. The commission may not approve a location to be taken by eminent domain for the construction, rebuilding or relocation of a transmission line that requires a certificate of public convenience and necessity under section 3132, unless the commission has issued a certificate of public convenience and necessity for that transmission line. Environmental factors to be considered for proper location of a transmission line are not subject to review by the commission under this section when the location of the transmission line has received site location of development approval under Title 38, section 484.

[2007, c. 148, §14 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A51 (AMD). 1999, c. 398, §§A104,105 (AFF). 2001, c. 608, §§2,3 (AMD). 2007, c. 148, §§12-14 (AMD).

§3137. AREA WITHIN WHICH DOMESTIC TRANSMISSION AND DISTRIBUTION UTILITY MAY TRANSMIT ELECTRICITY; TAXATION BY OTHER STATES

1. **Domestic transmission and distribution utility may transmit electricity inside or outside this State.** Notwithstanding any limitation imposed by its charter, each domestic transmission and distribution utility may 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 distribute 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.

[1999, c. 398, Pt. A, §52 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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 transmission and distribution utility that is acting outside this State under this section.

[1999, c. 398, Pt. A, §52 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A52 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3138. JOINT OWNERSHIP OF FACILITY; WAIVER OF RIGHT TO PARTITION

Notwithstanding Title 14, chapter 719, any domestic transmission and distribution utility or foreign electric utility that acquires or owns a joint or common interest with one or more other utilities or other persons in any property that 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 that does not exceed the period for which the property is used or useful for transmission and distribution utility purposes. [1999, c. 398, Pt. A, §53 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A53 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3139. POWERS OF FOREIGN ELECTRIC UTILITY

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1997, c. 316, §1 (RP).

§3140. REGULATION OF FOREIGN ELECTRIC UTILITY

1. **Foreign electric utility to notify commission before acting within this State.** A foreign electric utility 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 [1987, c. 141, Pt. A, §6 (NEW).]

B. Provide any information reasonably required by the commission under section 3132. [1987, c. 141, Pt. A, §6 (NEW).]

[1997, c. 316, §2 (AMD) .]

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 [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Registered office and agent; service of process.** A foreign electric utility:

A. Shall designate and continuously maintain in this State a registered office and a registered agent in accordance with Title 5, section 105; and [2007, c. 323, Pt. G, §3 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

B. Is subject to service of process, notice or demand as provided in Title 5, section 113. [2007, c. 323, Pt. G, §3 (AMD).]

[2007, c. 323, Pt. G, §3 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

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 may not be deemed a "transmission and distribution utility" as defined in section 102, subsection 20-B, merely by reason of the exercise by it of the authority granted in former section 3139.

[1999, c. 398, Pt. A, §54 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

5. **Exemption.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §55 (RP) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1997, c. 316, §2 (AMD). 1997, c. 710, §7 (AMD). 1999, c. 398, §§A54,55 (AMD). 1999, c. 398, §§A104,105 (AFF). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B55 (COR). 2007, c. 323, Pt. G, §3 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§3141. TAXATION

1. **Utility facilities owned by domestic transmission and distribution utility.** All utility facilities, real and personal, situated within this State and owned by a domestic transmission and distribution utility are subject to assessment and taxation to the same extent and in the same manner as provided in Title 36.

[1999, c. 398, Pt. A, §56 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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 transmission and distribution utility.

[1999, c. 398, Pt. A, §56 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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 or other political subdivision of a state or province.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A56 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3142. REGISTRATION REQUIRED TO MARKET RETAIL ELECTRIC SERVICE *(REPEALED)*

SECTION HISTORY
1997, c. 447, §A1 (NEW). 1997, c. 710, §8 (AMD). MRSA T.35A, §3142/4 (AMD).

§3143. DECLARATION OF POLICY ON SMART GRID INFRASTRUCTURE

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

A. "Smart grid" means the integration of information and communications innovations and infrastructure with the electric system to enhance the efficiency, reliability and functioning of the system through smart grid functions. [2009, c. 539, §2 (NEW).]

B. "Smart grid coordinator" means an entity, authorized by the commission in accordance with subsection 5, that manages access to smart grid functions and associated infrastructure, technology and applications within the service territory of a transmission and distribution utility. [2009, c. 539, §2 (NEW).]

C. "Smart grid functions" means those functions that advance the policy of the United States as specified in the federal Energy Independence and Security Act of 2007, Public Law 110-140, Section 1301, including functions that enable consumers to access information about and to manage and adjust their electricity consumption or to generate and store electricity and functions specified in Section 1306(d) of that Act. [2009, c. 539, §2 (NEW).]

[2009, c. 539, §2 (NEW) .]

2. **Legislative findings.** The Legislature finds that:

A. The cost of electricity to consumers in this State is high in comparison to costs in similar markets and impedes economic development; [2009, c. 539, §2 (NEW).]

B. The State has recognized the consequences of climate change and has committed to policies to reduce emissions of greenhouse gases; [2009, c. 539, §2 (NEW).]

C. The State's electric grid and long-term infrastructure investment are vital to continued security and economic development, and smart grid functions will deliver electricity from suppliers to consumers using modern technology to increase reliability and reduce costs in a way that saves energy and to enable greater consumer choice; [2009, c. 539, §2 (NEW).]

D. The State currently lacks a comprehensive smart grid policy but faces critical decisions regarding the implementation of smart grid functions and associated infrastructure, technology and applications, and the commission and the Legislature will play central roles in making those decisions; and [2009, c. 539, §2 (NEW).]

E. It is vital that a smart grid policy be developed in order to ensure that all ratepayers and the State as a whole are afforded the benefits of smart grid functions and associated infrastructure, technology and applications. [2009, c. 539, §2 (NEW).]

[2009, c. 539, §2 (NEW) .]

3. **Smart grid policy; goals.** In order to improve the overall reliability and efficiency of the electric system, reduce ratepayers' costs in a way that improves the overall efficiency of electric energy resources, reduce and better manage energy consumption and reduce greenhouse gas emissions, it is the policy of the State to promote in a timely and responsible manner, with consideration of all relevant factors, the development, implementation, availability and use of smart grid functions and associated infrastructure, technology and applications in the State through:

A. Increased use of digital information and control technology to improve the reliability, security and efficiency of the electric system; [2009, c. 539, §2 (NEW).]

B. Deployment and integration into the electric system of renewable capacity resources, as defined in section 3210-C, subsection 1, paragraph E, that are interconnected to the electric grid at a voltage level less than 69 kilovolts; [2009, c. 539, §2 (NEW).]

C. Deployment and integration into the electric system of demand response technologies, demand-side resources and energy-efficiency resources; [2009, c. 539, §2 (NEW).]

D. Deployment of smart grid technologies, including real-time, automated, interactive technologies that optimize the physical operation of energy-consuming appliances and devices, for purposes of metering, communications concerning grid operation and status and distribution system operations; [2009, c. 539, §2 (NEW).]

E. Deployment and integration into the electric system of advanced electric storage and peak-reduction technologies, including plug-in electric and hybrid electric vehicles; [2009, c. 539, §2 (NEW).]

F. Provision to consumers of timely energy consumption information and control options; and [2009, c. 539, §2 (NEW).]

G. Identification and elimination of barriers to adoption of smart grid functions and associated infrastructure, technology and applications. [2009, c. 539, §2 (NEW).]

It is the policy of the State to promote the development, implementation, availability and use of smart grid functions in accordance with this subsection in a manner that is consistent with applicable standards for reliability, safety, security and privacy and that takes into account the implementation of smart grid functions in other jurisdictions.

The commission may adopt rules regarding the implementation of smart grid functions in the State in accordance with this subsection, including, but not limited to, rules regarding cybersecurity and protection of consumer privacy, and access to smart grid infrastructure and information, including, but not limited to, open access issues, coordination between smart grid users and methods to address financial disincentives for transmission and distribution utilities to promote smart grid functions. Rules adopted pursuant to this subsection are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.

[2009, c. 539, §2 (NEW) .]

4. **Resource assessment policy.** In order to meet the goals of the smart grid policy as specified in subsection 3, it is the policy of the State that all available energy resources be assessed, including but not limited to the following types of resources:

A. Energy efficiency; [2009, c. 539, §2 (NEW).]

B. Demand management, including but not limited to establishment of time-of-use tariffs and performance-based rates; [2009, c. 539, §2 (NEW).]

C. Renewable resources, as defined in section 3210, subsection 2, paragraph C; [2009, c. 539, §2 (NEW).]

D. Energy resources, other than those listed in paragraph C, that are located in the State and are interconnected to the electric grid at a voltage level of less than 69 kilovolts; and [2009, c. 539, §2 (NEW).]

E. Transmission lines for which a certificate of public convenience and necessity is required under section 3132, subsection 2. [2009, c. 539, §2 (NEW).]

[2009, c. 539, §2 (NEW) .]

5. **Smart grid coordinator; authorization by the Public Utilities Commission; rules.** Upon petition, the commission shall open an adjudicatory proceeding to determine whether it is in the public interest of the State to have one or more smart grid coordinators in order to achieve the purposes of and implement the policies specified in this section. If, in an adjudicatory proceeding conducted pursuant to this subsection, the commission finds that it is in the public interest, the commission may adopt, by rule or as part of the adjudicatory proceeding, standards regarding smart grid coordinators, including but not limited to:

A. Eligibility, qualification and selection criteria; [2009, c. 539, §2 (NEW).]

B. Duties and functions; [2009, c. 539, §2 (NEW).]

C. The application or exemption from any provisions of this Title otherwise applicable to public utilities; [2009, c. 539, §2 (NEW).]

D. The relationship between a smart grid coordinator and a transmission and distribution utility; [2009, c. 539, §2 (NEW).]

E. Access to information held by the smart grid coordinator by 2nd and 3rd parties; and [2009, c. 539, §2 (NEW).]

F. Data collection and reporting. [2009, c. 539, §2 (NEW).]

Pursuant to standards adopted by rule or in an adjudicatory proceeding pursuant to this subsection, the commission may authorize no more than one smart grid coordinator within each transmission and distribution utility service territory. A smart grid coordinator authorized under this subsection may operate as a transmission and distribution utility, under a commission-approved contract with a transmission and distribution utility or in some other manner approved by the commission. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 539, §2 (NEW) .]

6. **Transition plan; displaced employees.** If an investment in smart grid infrastructure by a transmission and distribution utility will lead to the displacement of 20 or more employees within a 3-year period, the transmission and distribution utility must file a transition plan for the displaced employees with the commission for approval and may not displace those employees unless the commission has approved a transition plan in accordance with this subsection.

A. If a transition plan filed with the commission has been agreed to by a collective bargaining agent representing the employees to be displaced, the commission must approve the plan. If a transition plan filed with the commission has not been agreed to by a collective bargaining agent representing the employees to be displaced, the commission may approve that plan only if the plan:

(1) Prioritizes the transition of the employees to employment within the transmission and distribution utility, to the extent feasible;

(2) Provides funds for worker education, training and support, including but not limited to tuition, fees, books, supplies, tools, equipment, child care, transportation and other assistance needed to obtain relevant remedial or prerequisite education or training, and maximizes the extent to which such education and training can be pursued while employed rather than after termination of employment;

(3) Demonstrates appropriate coordination with the Department of Labor; and

(4) Prevents unnecessary retraining and public assistance costs to the State, to the extent feasible. [2009, c. 539, §2 (NEW).]

B. In applying for federal or other grants for workforce training to support smart grid implementation, the commission, the Department of Labor, the Efficiency Maine Trust and any other agency or instrumentality of the State shall, to the extent permissible and feasible under the terms of the grant, give priority to assisting employees that are displaced as a result of the investment in smart grid infrastructure. [2009, c. 539, §2 (NEW).]

C. The commission shall permit a transmission and distribution utility to adjust its rates to recover costs incurred pursuant to this subsection. [2009, c. 539, §2 (NEW).]

For purposes of this subsection, "displaced employee" means an employee who is terminated from employment with a transmission and distribution utility; reduced to less than 75% of the hours traditionally required for the employee's position; involuntarily transferred to another position within the utility for less pay; or transferred to another position within the utility at a site more than 50 miles away from the employee's current site of employment.

[2009, c. 539, §2 (NEW) .]

7. **Compliance with safety, security and reliability standards.** In implementing the policies specified in this section, the commission and other agencies and instrumentalities of the State shall ensure that applicable regional, national and international grid safety, security and reliability standards are met. The commission and other agencies and instrumentalities of the State shall seek to cause standards that promote cost-effective technologies and practices supporting smart grid functions to be integrated into national and international grid safety, security and reliability standards.

[2009, c. 539, §2 (NEW) .]

8. **Cost recovery.** The commission shall, upon petition, permit a transmission and distribution utility to adjust its rates to recover the utility's prudently incurred incremental costs associated with implementing smart grid functions and associated infrastructure, technology and applications or otherwise taking reasonable actions consistent with the policies of this section, to the extent that the costs are not already reflected in the utility's rates and the adjustment does not result in rates that are unjust or unreasonable. A grant by a utility in an amount approved by the commission to the University of Maine System for smart grid research and development is deemed to be a prudently incurred incremental cost associated with implementing smart grid functions.

[2009, c. 539, §2 (NEW) .]

9. **Report.** The commission, as part of its annual report pursuant to section 120, shall include a report on the progress of the State in achieving the purposes of this section. The commission may include in its report any recommendations for changes to law to promote the purposes of this section.

[2009, c. 539, §2 (NEW) .]

10. **Consumer education.** A transmission and distribution utility that implements smart grid functions shall, to the extent the commission determines appropriate, provide information to customers about the purpose and goals of smart grid functions, the ways in which smart grid functions, including but not limited to time-of-use pricing, may involve customer interaction and how the implementation of smart grid functions can benefit customers.

[2009, c. 539, §2 (NEW) .]

11. **Savings clause.** Nothing in this section limits any other authority of the commission with respect to smart grid implementation.

[2009, c. 539, §2 (NEW) .]

SECTION HISTORY
2009, c. 539, §2 (NEW).

Subchapter 3: ELECTRIC RATE REFORM ACT HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§3151. TITLE

This subchapter shall be known and may be cited as the "Electric Rate Reform Act." [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§3152. POLICY AND FINDINGS

1. **Increased efficiency.** The Legislature declares and finds that improvements in transmission and distribution 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 transmission capacity. It is the purpose of this chapter to:

A. Require the commission to relate transmission and distribution rates more closely to the costs of providing transmission and distribution service; [2013, c. 369, Pt. F, §2 (AMD).]

B. [1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §57 (RP).]

C. Require the commission to consider the ability of low-income residential customers to pay in full for electric services as transmission and distribution rates are redesigned consistent with these policies; and [2013, c. 369, Pt. F, §3 (AMD).]

D. Require the commission to set rates to the extent practicable to achieve economic efficiency. [2013, c. 369, Pt. F, §4 (NEW).]

[2013, c. 369, Pt. F, §§2-4 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 769, §A140 (AMD). 1991, c. 253, §§1-3 (AMD). 1993, c. 402, §1 (AMD). 1999, c. 398, §A57 (AMD). 1999, c. 398, §§A104,105 (AFF). 2013, c. 369, Pt. F, §§2-4 (AMD).

§3153. THE PUBLIC UTILITIES COMMISSION TO DEVELOP PROPOSALS TO IMPROVE ELECTRIC UTILITY RATE DESIGN

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 451, §1 (RP). 1987, c. 490, §B6 (AMD). 1987, c. 769, §A141 (AMD).

§3153-A. PUBLIC UTILITIES COMMISSION TO DEVELOP PROPOSALS TO IMPROVE TRANSMISSION AND DISTRIBUTION UTILITY RATE DESIGN

1. **Proposals and programs developed.** The commission, as it determines appropriate, shall order transmission and distribution utilities to develop and submit specific rate design proposals and related programs for implementing energy conservation and energy efficiency techniques and innovations, either in conjunction with or independent of any rate-making proceeding pending before the commission. The proposals, as the commission determines, must be designed to encourage energy conservation, minimize the need for new transmission and distribution capacity, minimize costs of transmission and distribution service to consumers, minimize transmission and distribution rates over the long term or short term and take into account the needs of low-income customers. In approving a proposal under this section, the commission shall give equivalent consideration to the goals of minimizing costs and minimizing transmission and distribution rates to consumers. Proposals must include, but are not limited to, proposals that provide for the development and implementation of:

A. Load management techniques; [1991, c. 253, §4 (AMD).]

B. Rates that reflect marginal costs of services at different voltages, times of day or seasons of the year, including long-run marginal costs associated with the construction of new transmission and distribution facilities; [1999, c. 398, Pt. A, §58 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

C. [1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §58 (RP).]

D. Rates or other regulatory policies that encourage transmission and distribution utility system reliability; [1999, c. 398, Pt. A, §58 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

E. Transmission and distribution utility financing or subsidization of capital improvements undertaken by ratepayers to conserve electricity used by the ratepayers in the future. This paragraph applies to future programs for utility financing of energy conservation or load management as long as the goal of such

programs is to economically defer or eliminate the need for transmission and distribution plant upgrades. In addition to programs undertaken pursuant to this paragraph, programs may be undertaken pursuant to section 10110 to achieve goals other than that identified in this paragraph; [2009, c. 2, §103 (COR).]

F. As defined by the commission by rule, cost-effective conversions of electric space heat systems to systems relying on other fuels and other techniques for enabling homeowners and tenants to replace on-peak, winter period electric usage with less expensive sources of heat; [1993, c. 402, §2 (AMD).]

G. Rates or bill payment assistance programs for residential customers who have been certified eligible for state or federal fuel assistance that take into account the difficulty these customers have paying in full for electric service or that target assistance to these customers in the most efficient manner, taking into account the necessity of maintaining electric service; and [1993, c. 402, §2 (AMD).]

H. Rates that allow incremental use or maintenance of existing use when those rates serve to minimize rate levels for all transmission and distribution customers. In approving any proposal for rates that allow incremental use or maintenance of existing use, the commission shall seek to ensure that rates for all customer classes will be lower than they would have been had the commission not approved the proposal. [1999, c. 398, Pt. A, §58 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[2009, c. 2, §103 (COR) .]

2. **Hook-up fee prohibited.**

[1993, c. 177, §1 (RP) .]

3. **Implementation of rebate structures.** The Public Utilities Commission may require a transmission and distribution utility to implement rebate structures for installation or upgrade of an electric service entrance to encourage energy efficient buildings and discourage energy inefficient buildings. In designing these programs, the commission shall give due consideration to safety.

[1999, c. 398, Pt. A, §58 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

4. **Economic efficiency.** In designing rates for transmission and distribution utilities, the commission shall set rates to the extent practicable to achieve economic efficiency.

[2013, c. 369, Pt. F, §5 (NEW) .]

SECTION HISTORY
1987, c. 451, §2 (NEW). 1987, c. 769, §A142 (AMD). 1989, c. 246, (AMD). 1991, c. 253, §4 (AMD). 1993, c. 177, §1 (AMD). 1993, c. 402, §2 (AMD). 1999, c. 398, §A58 (AMD). 1999, c. 398, §§A104,105 (AFF). 2001, c. 624, §2 (AMD). RR 2009, c. 2, §103 (COR). 2013, c. 369, Pt. F, §5 (AMD).

§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 transmission and distribution utility rate design and related regulatory programs submitted and approved under section 3153-A and is authorized to order utilities to implement transmission and distribution 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 transmission and distribution 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-A, the commission shall consider rate design stability and shall ensure the revenue requirements of the utility.

[1999, c. 398, Pt. A, §59 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. Procedures which provide incentives and disincentives for the effective implementation of this subchapter; and [1987, c. 141, Pt. A, §6 (NEW).]

C. Procedures to provide for the financial cost or benefit of under-collection or over-collection. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Federal standards.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §60 (RP) .]

5. **Load management devices.** The commission shall mandate, in any transmission and distribution 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, that reflects the savings to the utility resulting from the use of the device.

[1999, c. 398, Pt. A, §61 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

6. **Conservation investments in rate base.** Upon petition by the public utility in any general rate change request pursuant to section 307, filed on or after January 1, 1988, the commission may in its discretion include in the utility's rate base and permit a fair return on the utility's rate base, any electric plant to the extent financed by the utility which constitutes a cost effective investment in conservation or load management and which was installed on the premises of a customer.

[1987, c. 613, §3 (NEW) .]

7. **Interruptible rates.** In any general rate design case pending on or initiated after April 1, 1992, the commission, upon request, shall determine interruptible rates consistent with and by reference to its determination of utility transmission and distribution capacity costs. Interruptible rates must be designed so as to encourage the long-term availability of interruptible resources, including interruptible options for all customer classes.

[1999, c. 398, Pt. A, §62 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

8. **Incentive rates.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §63 (RP) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 613, §3 (AMD). 1991, c. 769, §1 (AMD). 1991, c. 769, §3 (AFF). 1993, c. 91, §8 (AMD). 1993, c. 262, §1 (AMD). 1999, c. 398, §§A59-63 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3155. THE ATTORNEY GENERAL AUTHORIZED TO INTERVENE BEFORE THE COMMISSION TO PROTECT CONSUMER INTEREST

The Department of Attorney General may: [1987, c. 141, Pt. A, §6 (NEW).]

1. **Make assessments.** Make general factual assessments of the impact of proposed rate changes and other proposed regulatory actions upon all affected consumers;

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Assist consumers.** Assist consumers in the presentation of their positions before utility regulatory commissions;

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§3156. CERTIFICATES OF APPROVAL

The commission may issue a certificate of approval for an electric rate stabilization agreement, following submission to it of an application for approval, in the form and with any supporting data as the commission may require. The commission shall issue or deny the certification within 120 days of receipt of an application. [1997, c. 593, §1 (AMD).]

The commission may not, in any rate proceeding or other context, disallow or otherwise prevent the recovery of costs incurred by the electric utility, including costs projected to be paid by an electric utility to a qualifying facility as defined in section 3303, under the terms of an agreement certified under this section based solely on the execution of the certified agreement. The commission shall take all reasonable action to ensure that amounts required to be paid pursuant to an agreement certified under this section are available. [1997, c. 492, §2 (AMD); 1997, c. 492, §7 (AFF).]

The commission shall issue a certificate upon application by a utility pursuant to this section only if it finds that: [1993, c. 712, §6 (NEW).]

1. **Benefits.** The agreement, and any assistance in financing the agreement to be provided by the Finance Authority of Maine, will provide substantial net benefits to ratepayers of the utility that will be reflected in rates paid by the electric utility's customers. The commission may consider whether alternative arrangements providing greater net benefits to ratepayers are reasonably likely to be available to the utility and may not issue a certificate if the commission concludes that such an alternative arrangement is reasonably likely to be available;

[1997, c. 593, §2 (AMD) .]

2. **Rate impacts.** Near-term benefits to ratepayers will substantially exceed future adverse impacts estimated by the commission;

[1997, c. 593, §3 (RPR) .]

3. **Protection of certain facilities.** The agreement does not have as a necessary or probable consequence the permanent cessation of operations of a qualifying facility with a capacity of more than 50 megawatts;

[1993, c. 712, §6 (NEW) .]

4. **Consistent with energy policy.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §64 (RP) .]

5. **Protection of energy resources.** The agreement will not adversely impact the availability of a diverse and reliable mix of electric energy resources and will not significantly reduce the long-term electric energy or capacity resources available to the electric utility and needed to meet future electric demand. To the extent consistent with the long-term interests of ratepayers, an agreement resulting in a modification of an existing contract and that preserves electric energy or capacity resources is preferred over an agreement that results in the permanent cessation of operations of a qualifying facility.

[1993, c. 712, §6 (NEW) .]

For purposes of this section, the term "qualifying facility" has the same meaning as in section 3303. For purposes of this section, the term "electric rate stabilization agreement" means any agreement by an electric utility with a qualifying facility that will result in the reduction of costs to the electric utility and includes, but is not limited to, agreements proposed to be supported with financing made available under Title 10, chapter 110, subchapter III. [1993, c. 712, §6 (NEW).]

A certificate may not be issued under this section after July 31, 1998. [1997, c. 781, §2 (AMD).]

SECTION HISTORY

1993, c. 712, §6 (NEW). 1995, c. 120, §2 (AMD). 1995, c. 120, §5 (AFF). 1995, c. 698, §1 (AMD). 1995, c. 698, §4 (AFF). 1997, c. 492, §§2,3 (AMD). 1997, c. 492, §7 (AFF). 1997, c. 593, §§1-3 (AMD). 1997, c. 781, §2 (AMD). 1999, c. 398, §A64 (AMD). 1999, c. 398, §§A104,105 (AFF).

Subchapter 4: OLDER CITIZENS TRANSMISSION AND DISTRIBUTION SERVICE POLICY HEADING: PL 1987, C. 141, PT. A, §6 (NEW); 1999, C.398, PT, A, §65 (RPR)

§3171. TITLE

This subchapter may be known and cited as the "Older Citizens Transmission and Distribution Service Policy." [1999, c. 398, Pt. A, §66 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). RR 1993, c. 1, §104 (COR). 1999, c. 398, §A66 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3172. POLICY

It is declared that it is a policy of the State to insure an adequate transmission and distribution 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 transmission and distribution service to alleviate the upward spiral in the cost of transmission and distribution 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 transmission and distribution 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. [1999, c. 398, Pt. A, §67 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A67 (AMD). 1999, c. 398, §§A104,105 (AFF).

Subchapter 5: BULK POWER TRANSACTIONS AND WHEELING HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§3180. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 490, Pt. B, §7 (NEW).]

1. Affiliate. "Affiliate" means any person who, as determined by the commission:

A. Directly controls, is controlled by or is under common control with an electric generation enterprise; or [1987, c. 490, Pt. B, §7 (NEW).]

B. Substantially owns, is substantially owned by or is substantially under common ownership with, an electric generation enterprise. [1987, c. 490, Pt. B, §7 (NEW).]

[1987, c. 490, Pt. B, §7 (NEW) .]

SECTION HISTORY
1987, c. 490, §B7 (NEW).

§3181. PURCHASE AND RESALE OF ELECTRICITY BY PUBLIC UTILITIES COMMISSION

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §§A104,105 (AFF). 1999, c. 398, §A68 (RP).

§3182. TRANSMISSION OR WHEELING OF ELECTRICITY

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §§B8,B9 (AMD). 1999, c. 398, §§A104,105 (AFF). 1999, c. 398, §A69 (RP).

Subchapter 6: THE MAINE ENERGY POLICY ACT OF 1988 HEADING: PL 1987, C. 671, §2 (NEW)

§3191. ENERGY POLICY

(REPEALED)

SECTION HISTORY
1987, c. 671, §2 (NEW). 1991, c. 769, §2 (AMD). 1999, c. 398, §§A104,105 (AFF). 1999, c. 398, §A70 (RP).

Subchapter 7: INCENTIVE RATEMAKING HEADING: PL 1991, C. 413, §1 (NEW)

§3195. COMMISSION AUTHORITY TO PROMOTE TRANSMISSION AND DISTRIBUTION UTILITY EFFICIENCY

1. **Rate-adjustment mechanisms.** This Title may not be construed to prohibit the commission from or to restrict the commission in establishing or authorizing any reasonable rate-adjustment mechanisms to promote efficiency in transmission and distribution utility operations and least-cost planning. Rate-adjustment mechanisms may include, but are not limited to:

A. Decoupling of utility profits from utility sales through revenue reconciliation; [1991, c. 413, §1 (NEW); 1991, c. 413, §2 (AFF).]

B. Reconciliation of actual revenues or costs with projected revenues or costs, either on a total or per customer basis; [1991, c. 413, §1 (NEW); 1991, c. 413, §2 (AFF).]

C. Adjustment of revenues based on reconciled, indexed or forecasted costs; and [1991, c. 413, §1 (NEW); 1991, c. 413, §2 (AFF).]

D. Positive or negative financial incentives for efficient operations. [1991, c. 413, §1 (NEW); 1991, c. 413, §2 (AFF).]

[1999, c. 398, Pt. A, §71 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. **Just and reasonable rates.** In determining the reasonableness of any rate-adjustment mechanism established under this subchapter, the commission shall apply the standards of section 301 to ensure that the rates resulting from the implementation of the mechanism are just and reasonable. Prior to the adoption of a new or replacement alternative rate plan or renewal of any existing alternative rate plan, the commission shall, in order to ensure that rates at the starting point of the plan are just and reasonable, conduct a revenue requirement and earnings review pursuant to the standards of section 301. In conducting such a review under this subsection, the commission, at its discretion, may conduct the review in a manner designed to minimize the cost of the review to ratepayers.

[2003, c. 45, §1 (AMD) .]

3. **Value of utility property.** Notwithstanding section 303, rate-adjustment mechanisms established under this section may be used to establish the value of the transmission and distribution utility's property.

[1999, c. 398, Pt. A, §71 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

4. **Ratepayer protection.** In determining the reasonableness of any rate-adjustment mechanisms, the commission shall consider the transfer of risks associated with the effect of the economy and the weather on the utility's sales. To the extent these risks are transferred from the utility to its customers, the commission shall consider in a rate proceeding the effect of the transfer of risk in determining a utility's allowed rate of return.

[1991, c. 413, §1 (NEW); 1991, c. 413, §2 (AFF) .]

5. **Report.** The commission shall include in its annual report pursuant to section 120, subsection 6 any significant developments with respect to any actions taken or proposed to be taken by the commission under this section.

[2009, c. 122, §13 (AMD) .]

6. **Rate flexibility.** Notwithstanding sections 307 and 703, the commission, in an adjudicatory proceeding, may authorize a transmission and distribution utility to implement a program under which:

A. The utility may change its schedule of rates with limited notice to the commission; and [1993, c. 614, §1 (NEW).]

B. The utility may enter into contracts for the sale of transmission and distribution services and related management services with limited or no prior express approval by the commission. [1999, c. 398, Pt. A, §71 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

The commission shall render its decision in any adjudicatory proceeding held for the purposes of authorizing a utility to implement a program consistent with this subsection within 9 months of the initiation of the proceeding. In the adjudicatory proceeding, the commission shall establish the terms and conditions under which a program is authorized under this subsection. The authority granted to the commission under this

subsection is in addition to the authority of the commission granted under other provisions of this Title and nothing in this subsection may be construed to limit the authority of the commission under any other provision of this Title.

[1999, c. 398, Pt. A, §71 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1991, c. 413, §1 (NEW). 1991, c. 413, §2 (AFF). 1993, c. 614, §1 (AMD). 1999, c. 398, §A71 (AMD). 1999, c. 398, §§A104,105 (AFF). 2003, c. 45, §1 (AMD). 2009, c. 122, §13 (AMD).

Chapter 32: ELECTRIC INDUSTRY RESTRUCTURING

§3201. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 316, §3 (NEW).]

1. **Affiliated interest.** "Affiliated interest" has the same meaning as provided in section 707, subsection 1, paragraph A.

[1997, c. 316, §3 (NEW) .]

2. **Aggregate.** "Aggregate" means to organize individual electricity consumers into a group or entity for the purpose of purchasing electricity on a group basis.

[1997, c. 316, §3 (NEW) .]

3. **Aggregator.** "Aggregator" means an entity that gathers individual consumers together for the purpose of purchasing electricity.

[1999, c. 398, Pt. A, §72 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

4. **Broker.** "Broker" means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity.

[1997, c. 316, §3 (NEW) .]

5. **Competitive electricity provider.** "Competitive electricity provider" means a marketer, broker, aggregator or any other entity selling electricity to the public at retail.

[1997, c. 316, §3 (NEW) .]

6. **Consumer-owned transmission and distribution utility.** "Consumer-owned transmission and distribution utility" means any transmission and distribution utility wholly owned by its consumers, including, but not limited to:

A. The transmission and distribution portion of a rural electrification cooperative organized under chapter 37; [1997, c. 316, §3 (NEW).]

B. The transmission and distribution portion of an electrification cooperative organized on a cooperative plan under the laws of the State; [1997, c. 316, §3 (NEW).]

C. A municipal or quasi-municipal transmission and distribution utility; [1997, c. 316, §3 (NEW).]

D. The transmission and distribution portion of a municipal or quasi-municipal entity providing generation and other services; and [1997, c. 316, §3 (NEW).]

E. A transmission and distribution utility wholly owned by a municipality. [1997, c. 316, §3 (NEW).]

[1997, c. 316, §3 (NEW) .]

7. **Divest.** "Divest" means to legally transfer ownership and control to an entity that is not an affiliated interest.

[1997, c. 316, §3 (NEW) .]

7-A. **Efficient combined heat and power system.** "Efficient combined heat and power system" means a system that:

A. Produces heat and electricity from one fuel input, without restriction to specific fuel or generating technology; [2009, c. 197, §1 (NEW).]

B. Has an electric generating capacity rating of at least one kilowatt and not more than 30 kilowatts and a fuel system efficiency of not less than 80% in the production of heat and electricity, or has an electric generating capacity of at least 31 kilowatts and a fuel system efficiency of not less than 65% in the production of heat and electricity; [2009, c. 197, §1 (NEW).]

C. May work in combination with supplemental or parallel conventional heating systems; [2009, c. 197, §1 (NEW).]

D. Is manufactured, installed and operated in accordance with applicable government and industry standards; and [2009, c. 197, §1 (NEW).]

E. Is connected to the electric grid and operated in conjunction with the facilities of a transmission and distribution utility. [2009, c. 197, §1 (NEW).]

[2009, c. 197, §1 (NEW) .]

8. **Electric billing and metering services.** "Electric billing and metering services" means the following services:

A. Billing and collection; [1997, c. 316, §3 (NEW).]

B. Provision of a meter; [1997, c. 316, §3 (NEW).]

C. Meter maintenance and testing; and [1997, c. 316, §3 (NEW).]

D. Meter reading. [1997, c. 316, §3 (NEW).]

[1997, c. 316, §3 (NEW) .]

8-A. **Eligible small generator.** "Eligible small generator" means a generator that has a generating capacity of 5 megawatts or less and generates electricity using:

A. A renewable resource, as defined in section 3210, subsection 2, paragraph C; or [2009, c. 197, §2 (NEW).]

B. An efficient combined heat and power system. [2009, c. 197, §2 (NEW).]

[2009, c. 197, §2 (NEW) .]

9. **Entity.** "Entity" means a person or organization, including but not limited to any political, governmental, quasi-governmental, corporate, business, professional, trade, agricultural, cooperative, for-profit or nonprofit organization.

[1997, c. 316, §3 (NEW) .]

10. **Generation assets.** "Generation assets" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the generation of electric power.

[1997, c. 316, §3 (NEW) .]

11. **Generation service.** "Generation service" means the provision of electric power to a consumer through a transmission and distribution utility but does not encompass any activity related to the transmission or distribution of that power.

[1997, c. 316, §3 (NEW) .]

12. **Large, investor-owned transmission and distribution utility.** "Large, investor-owned transmission and distribution utility" means an investor-owned transmission and distribution utility serving more than 50,000 retail customers.

[1997, c. 316, §3 (NEW) .]

13. **Marketer.** "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail consumers.

[1999, c. 398, Pt. A, §72 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

14. **Public entity.** "Public entity" includes the State, any political subdivision of the State, a municipality and any quasi-municipal entity.

[1997, c. 316, §3 (NEW) .]

15. **Qualifying facility.** "Qualifying facility" has the same meaning as provided in section 3303.

[1997, c. 316, §3 (NEW) .]

16. **Small, investor-owned transmission and distribution utility.** "Small, investor-owned transmission and distribution utility" means an investor-owned transmission and distribution utility serving 50,000 or fewer retail customers.

[1997, c. 316, §3 (NEW) .]

17. **Retail access.** "Retail access" means the right of a retail consumer of electricity to purchase generation service from a competitive electricity provider.

[1997, c. 316, §3 (NEW) .]

18. **Transmission and distribution plant.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §73 (RP) .]

19. **Transmission and distribution utility.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §73 (RP) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 1999, c. 398, §§A72,73 (AMD). 1999, c. 398, §§A104,105 (AFF). 2009, c. 197, §§1, 2 (AMD).

§3202. RETAIL ACCESS; DEREGULATION

1. **Right to purchase generation.** Beginning on March 1, 2000, all consumers of electricity have the right to purchase generation services directly from competitive electricity providers, except as provided in subsection 7.

[2007, c. 481, §1 (AMD) .]

2. **Deregulation of generation services.** Except as otherwise provided in this chapter, competitive electricity providers are not subject to regulation under this Title on or after March 1, 2000.

[1997, c. 316, §3 (NEW) .]

3. **Aggregation permitted; limitation.** When retail access begins, consumers of electricity may aggregate their purchases of generation service in any manner they choose. If a public entity serves as an aggregator, it may not require consumers of electricity within its jurisdiction to purchase generation service from that entity.

[1997, c. 316, §3 (NEW) .]

4. **Electric billing and metering services.** The commission by rule may provide for competition in the provision of electric billing and metering services. The commission in its rules shall establish terms and conditions for such competition including which services are subject to competition and which customers will receive competitive services.

If the commission provides for competition for any billing or metering services, the commission shall:

A. Establish in its rules minimum standards necessary to protect consumers of such services and codes of conduct governing the relationship among transmission and distribution utilities providing such services, any affiliates of transmission and distribution utilities providing such services and providers of such services that are not affiliated with a transmission and distribution utility; and [1999, c. 601, §1 (NEW).]

B. Determine each transmission and distribution utility's costs of providing such services as reflected in consumer rates, including capital costs, depreciation, operating expenses and taxes, and shall separate this portion of the consumer rate into a separate charge. [1999, c. 601, §1 (NEW).]

Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

[1999, c. 601, §1 (RPR) .]

5. **International transmission contracts.** Notwithstanding section 3204, transmission and distribution utilities, including consumer-owned utilities, that operate or manage a portion of the grid connected to the New England grid by transmission lines that pass through Canada may enter into commercially reasonable contracts with Canadian electric utilities for the purchase of back-up services, tie-line interruption services, ancillary services, transmission services or any other service that promotes effective retail electric competition in northern Maine. The transmission and distribution utilities shall make all such contract services available

to competitive electricity providers at cost, on an equitable basis. Commission approval of such contracts is not required. Nothing in this subsection exempts from commission jurisdiction utility operations or activities undertaken pursuant to such contracts.

[1999, c. 398, Pt. B, §1 (NEW) .]

6. **Exception.** Notwithstanding any other provision of this chapter, an electric utility whose system is not physically connected to any transmission and distribution utility is exempt from this chapter. The commission shall ensure that such an electric utility's rates, including consideration of generation-related costs, are just and reasonable.

[1999, c. 398, Pt. E, §1 (NEW) .]

7. **Exception; load aggregation by consumer-owned utilities.** The commission may authorize a consumer-owned transmission and distribution utility to aggregate its load for the purpose of purchasing generation services on behalf of its customers. The commission shall adopt rules to implement the provisions of this subsection. The rules must specify the process and requirements for a consumer-owned transmission and distribution utility to obtain approval under this subsection and allowable exceptions under which customers of consumer-owned transmission and distribution utilities that have received such approval may continue to purchase generation services directly from competitive electricity providers. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 481, §2 (NEW) .]

8. **Separate charges.** A person who provides electric billing and metering services shall issue bills that clearly separate the charges for generation services and the charges for transmission and distribution services if charges for both types of services appear on the same bill.

[2013, c. 116, §1 (NEW) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 1999, c. 398, §§B1,D1,E1 (AMD). 1999, c. 601, §1 (AMD). 2007, c. 481, §§1, 2 (AMD). 2013, c. 116, §1 (AMD).

§3203. LICENSING OF COMPETITIVE ELECTRICITY PROVIDERS; CONSUMER PROTECTIONS; ENFORCEMENT

1. **Authority.** In order to provide effective competition in the market for the generation and sale of electricity in the State and to provide an orderly transition from the current form of regulation to retail access, the commission shall license competitive electricity providers in accordance with this section.

[1997, c. 316, §3 (NEW) .]

2. **Requirements.** A competitive electricity provider may not undertake the sale of electricity at retail in this State without first receiving a license from the commission. Before approving a license application, the commission must receive from the applicant:

A. Evidence of financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason; [1997, c. 316, §3 (NEW).]

B. Evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities; [1997, c. 316, §3 (NEW).]

C. Disclosure of all pending legal actions and customer complaints filed against the competitive electricity provider at a regulatory body other than the commission in the 12 months prior to the date of license application; [1997, c. 316, §3 (NEW).]

D. Evidence of the ability to satisfy the renewable resource portfolio requirement established under section 3210; [1999, c. 398, Pt. J, §1 (AMD).]

E. Disclosure of the names and corporate addresses of all affiliates of the applicant; and [1999, c. 398, Pt. J, §1 (AMD).]

F. Evidence that the applicant is registered with the State Tax Assessor as a seller of tangible personal property pursuant to Title 36, section 1754-B, together with a statement that the applicant agrees to be responsible for the collection and remission of taxes in accordance with Title 36, Part 3 on all taxable sales of electricity made by the applicant to consumers located in this State. [1999, c. 398, Pt. J, §2 (NEW).]

The commission shall consider the need for requiring and, if it determines there is a need, may require a competitive electricity provider to file a bond with the commission as evidence of financial ability to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to its customers if a competitive electricity provider stops service.

[1999, c. 398, Pt. J, §§1, 2 (AMD) .]

3. **Informational filings; public information.** The commission shall establish by rule information disclosure and filing requirements for competitive electricity providers. The rules must require generation providers to file their generally available rates, terms and conditions with the commission. The commission, subject to appropriate protective orders, may require the submission of individual service contracts or any other confidential information from a competitive electricity provider.

The commission by rule shall establish standards for making available, through any means considered appropriate, information that enhances consumers' ability to effectively make choices in a competitive electricity market.

Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 284, §1 (AMD) .]

4. **Consumer protection provisions.** As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a residential consumer or to a small commercial consumer:

A. May not terminate generation service without at least 30-day prior notice to the consumer; [1999, c. 657, §18 (AMD).]

B. Must offer service to the consumer for a minimum period of 30 days; [1999, c. 657, §18 (AMD).]

C. Must allow the consumer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection; [1999, c. 657, §18 (AMD).]

D. Must comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing; [2003, c. 558, §1 (AMD).]

E. Must provide to the consumer within 30 days of contracting for retail service a disclosure of information provided to the commission pursuant to rules adopted under subsection 3 in a standard written format established by the commission; and [2011, c. 284, §2 (AMD).]

F. Must comply with any other applicable standards or requirements adopted by the commission by rule or order. [2011, c. 284, §3 (AMD).]

G. [2011, c. 284, §4 (RP).]

For purposes of this subsection, "residential consumer" means a consumer defined as residential under the terms and conditions of the consumer's transmission and distribution utility. For purposes of this subsection, "small commercial consumer" means, in the case of a consumer served by an investor-owned transmission

and distribution utility, a nonresidential consumer that meets the availability criteria to take service under a core customer class of the transmission and distribution utility that does not pay a demand charge to the transmission and distribution utility or, in the case of a consumer served by a consumer-owned transmission and distribution utility, a nonresidential consumer with a demand of 20 kilowatts or less.

[2011, c. 284, §§2-4 (AMD) .]

4-A. **General consumer protections.** As a condition of licensing, a competitive electricity provider:

A. Shall obtain a consumer's authorization before serving the consumer; [1999, c. 657, §19 (NEW).]

B. May not release to any other entity, other than for purposes of debt collection or credit reporting pursuant to state and federal law or to law enforcement agencies pursuant to lawful process, any personal information regarding a customer, including name, address, telephone number, usage and historical payment information, without the consent of the customer; [1999, c. 657, §19 (NEW).]

C. Must comply with the provisions of the Maine Unfair Trade Practices Act, Title 5, chapter 10; [1999, c. 657, §19 (NEW).]

D. May not collect or seek to collect unreasonable costs from a customer who is in default; [1999, c. 657, §19 (NEW).]

E. Must comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f; [1999, c. 657, §19 (NEW).]

F. Must comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing; and [2003, c. 558, §4 (AMD).]

G. [2003, c. 558, §5 (RP).]

H. Must comply with any other applicable standards or requirements established by the commission by rule. [1999, c. 657, §19 (NEW).]

[2003, c. 558, §§4, 5 (AMD) .]

5. **Licensing renewals and revocations.** Consistent with all applicable requirements of Title 5, chapter 375, the commission may limit the duration and effectiveness of a license to a specified term, may conduct proceedings for the renewal of licenses and may conduct proceedings for the revocation of a license when a requirement of this section has not been complied with by a competitive electricity provider. The commission shall adopt rules governing the procedures for issuing or revoking a license under this section and related matters.

[1997, c. 316, §3 (NEW) .]

6. **Consumer protection standards; rules.** The commission shall establish by rule consumer protection standards and standards to protect and promote market competition in order to protect retail consumers of electricity from fraud and other unfair and deceptive business practices. Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, the commission may provide by rule that a competitive electricity provider may satisfy the requirements of subsection 4-A, paragraph A by obtaining from the customer oral authorization obtained by an independent 3rd party.

[2003, c. 2, §112 (COR) .]

7. **Penalties.** The commission may impose administrative penalties upon a competitive electricity provider in accordance with chapter 15.

[2003, c. 505, §29 (RPR) .]

8. **Dispute resolution.** The commission shall resolve disputes between competitive electricity providers and retail consumers of electricity concerning standards or requirements established by or pursuant to subsection 4, 4-A or 6.

[1999, c. 657, §20 (AMD) .]

9. **Additional actions.** The commission may impose by rule any additional requirements necessary to carry out the purposes of this chapter, except that this section may not be construed to permit the commission to regulate the rates of any competitive electricity provider.

[1997, c. 316, §3 (NEW) .]

10. **Cease and desist orders.** The commission may issue a cease and desist order:

A. Following an adjudicatory hearing held in conformance with Title 5, chapter 375, subchapter IV, if the commission finds that any competitive electricity provider or transmission and distribution utility has engaged or is engaging in any act or practice in violation of any law or rule administered or enforced by the commission or any lawful order issued by the commission. A cease and desist order is effective when issued unless the order specifies a later effective date or is stayed pursuant to Title 5, section 11004; or [1997, c. 316, §3 (NEW).]

B. In an emergency, without hearing or notice, if the commission receives a written, verified complaint or affidavit showing that a competitive electricity provider or a transmission and distribution utility is selling electricity to retail consumers without being duly licensed or is engaging in conduct that creates an immediate danger to the public safety or is reasonably expected to cause significant, imminent and irreparable public injury. An emergency cease and desist order is effective immediately and continues in force and effect until further order of the commission or until stayed by a court of competent jurisdiction. In a subsequent hearing the commission shall in a final order affirm, modify or set aside the emergency cease and desist order and may employ simultaneously or separately any other enforcement or penalty provisions available to the commission. [1997, c. 316, §3 (NEW).]

[1997, c. 316, §3 (NEW) .]

11. **Restitution.** The commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this section.

[1997, c. 316, §3 (NEW) .]

12. **Enforcement.** The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before it.

[1997, c. 316, §3 (NEW) .]

13. **Notice to Attorney General.** If the commission has reason to believe that any competitive electricity provider or transmission and distribution utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this State or the United States, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

[1997, c. 316, §3 (NEW) .]

13-A. **Investigation.** The commission may investigate any matter relating to the provision of service by a competitive electricity provider pursuant to this chapter. In conducting an investigation under this subsection, the commission shall use the procedures established under section 1303, subsection 2.

[1999, c. 398, Pt. A, §74 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

14. **Disconnection restricted.** A transmission and distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under section 3212.

[1997, c. 316, §3 (NEW) .]

15. **Standard billing.** The commission shall consider requiring standard billing information on bills for electric power service. If standard billing information is required, the commission shall investigate the possibility of adopting standards consistent with other New England states. The commission may not prohibit transmission and distribution utilities from contracting with generation service providers to include both entities' charges on a single bill. The commission may not preclude the inclusion of other information on bills for electric power service.

[1997, c. 316, §3 (NEW) .]

16. **Access to load data.** Upon request from a competitive electricity provider, the commission shall provide load data on a class basis that is in the possession of a transmission and distribution utility, subject to reasonable protective orders to protect confidentiality, if considered necessary by the commission.

[1997, c. 316, §3 (NEW) .]

16-A. **Customer information.** A transmission and distribution utility may not release any customer-specific information to a licensed competitive electricity provider unless the provider produces sufficient evidence, as defined by the commission by rule, that the provider has obtained the customer's authorization.

[1999, c. 237, §1 (NEW) .]

17. **Rules.** Except as otherwise provided in this section, rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

[1997, c. 316, §3 (NEW) .]

18. **Confidentiality of consumer information.** Information concerning customers of a competitive electricity provider is subject to the same confidentiality protections afforded utility customer information under section 704, subsection 5.

[1999, c. 398, Pt. A, §75 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 1999, c. 237, §1 (AMD). 1999, c. 398, §§A74,75,J1, 2 (AMD). 1999, c. 398, §§A104,105 (AFF). 1999, c. 657, §§18-20 (AMD). 2001, c. 71, §1 (AMD). RR 2003, c. 2, §112 (COR). 2003, c. 505, §29 (AMD). 2003, c. 558, §§1-5 (AMD). 2011, c. 284, §§1-4 (AMD).

§3204. DIVESTITURE OF GENERATION

1. **Divestiture required; exceptions.** Except as provided in subsection 3, on or before March 1, 2000, each investor-owned electric utility shall divest all generation assets and generation-related business activities other than any:

A. Contract with a qualifying facility, contract with a party other than a qualifying facility or affiliated interest entered into solely for the purpose of restructuring a contract with a qualifying facility or contract with a demand-side management or conservation provider, broker or host; [1997, c. 558, §1 (AMD).]

B. Ownership interest in a nuclear power plant; [1997, c. 316, §3 (NEW).]

C. Ownership interest in a facility located outside the United States; or [1997, c. 316, §3 (NEW).]

D. Ownership interest in a generation asset that the commission determines is necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner. [1997, c. 316, §3 (NEW).]

No later than January 1, 1999, each investor-owned electric utility shall submit to the commission a plan to accomplish the divestiture required under this subsection. In an adjudicatory proceeding, the commission shall review the plans for consistency with this chapter. By July 1, 1999, the commission shall issue an order approving the plan or modifying the plan to make it consistent with the requirements of this chapter. An investor-owned electric utility shall divest its generation assets in accordance with the commission's order.

[1997, c. 558, §1 (AMD) .]

2. **Commission may require divestiture of Maine Yankee interests.** Notwithstanding any other provision of this chapter, the commission, if necessary to achieve the purposes of this chapter, may, in an adjudicatory proceeding, require any investor-owned transmission and distribution utility to divest its ownership interests in the Maine Yankee Atomic Power Company on or after January 1, 2009. The commission may order divestiture under this subsection only after notice to all interested parties and an opportunity for those parties to be heard.

[1997, c. 316, §3 (NEW) .]

3. **Extension; separation required.** An investor-owned electric utility may apply to the commission for an extension to permit the utility to divest one or more generation assets or generation-related business activities after March 1, 2000. The commission shall grant an extension if the commission finds that an extension would be likely to improve the sale value of those assets on the market or would be likely to reduce the level of the utility's stranded costs.

The commission by rule shall establish the procedure for granting extensions. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 577, §1 (AMD) .]

4. **Sale of capacity and energy required.** The commission by rule shall require each investor-owned electric utility after February 28, 2000 to sell rights to capacity and energy from all generation assets and generation-related business, including purchased power contracts that are not divested pursuant to subsection 1, except those rights to capacity and energy that the commission determines are necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

In the rules adopted under this subsection, the commission shall establish procedures to promote the maximum market value for these rights. Nothing in this subsection prohibits a utility from re-negotiating, buying out or buying down a contract with a qualifying facility in accordance with applicable laws. The commission shall adopt all rules required under this subsection. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 577, §2 (AMD) .]

5. **Ownership of generation prohibited.** Except as otherwise permitted under this chapter, on or after March 1, 2000, an investor-owned transmission and distribution utility may not own, have a financial interest in or otherwise control generation or generation-related assets.

[1997, c. 316, §3 (NEW) .]

6. **Generation assets permitted.** On or after March 1, 2000, notwithstanding any other provision in this chapter, the commission may allow an investor-owned transmission and distribution utility to own, have a financial interest in or otherwise control generation and generation-related assets to the extent that the commission finds that ownership, interest or control is necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

[1997, c. 316, §3 (NEW) .]

7. **Corporate law; exemptions.** An order of the commission directing or approving divestiture renders an electric utility and its directors, officers and shareholders exempt from Title 13-C, section 651 and from the Uniform Fraudulent Transfer Act, Title 14, chapter 504 for the matters addressed by the order. A divestiture pursuant to a commission order directing or approving the divestiture is not subject to limitations contained in the corporation's articles of incorporation and, notwithstanding Title 13-C, chapter 12, does not require shareholder approval.

[2003, c. 344, Pt. D, §24 (AMD) .]

8. **Authority to transfer title.** Except as otherwise expressly provided by law, a law of this State enacted prior to September 1, 1997, including any private and special law, that grants generation-asset-related rights, privileges or immunities to an investor-owned electric utility is deemed to grant authorization to the investor-owned electric utility to convey or otherwise transfer those rights, privileges or immunities in accordance with this section only if:

A. The investor-owned utility provides to the commission a copy of the law granting the rights, privileges or immunities and a description of the proposed transfer; and [1997, c. 710, §9 (NEW).]

B. The commission makes a written finding that the law grants rights, privileges or immunities that are generation assets required to be divested under this section or that are necessary to the ownership or operation of generation assets required to be divested under this section. [1997, c. 710, §9 (NEW).]

Upon the issuance of a written finding by the commission under paragraph B, an electric utility is authorized to transfer those generation-asset-related rights, privileges and immunities identified in the written finding of the commission, provided that the electric utility complies with all other applicable requirements of law, including section 1101. The commission may issue a written finding under paragraph B in an order approving a divestiture of generation assets, pursuant to section 1101.

For purposes of this subsection, "generation-asset-related rights, privileges or immunities" means rights, privileges or immunities that constitute generation assets or that are necessary to the ownership or operation of generation assets, including water rights associated with hydro-electric facilities. For purposes of this

subsection, the term "investor-owned electric utility" includes an affiliate of an investor-owned electric utility to the extent that the affiliate is transferring an asset that the affiliate is required to divest pursuant to this section.

Nothing in this subsection may be interpreted to permit the transfer of any rights, privileges or immunities that by law are expressly nontransferable or that are transferable only on condition, unless the condition is met. Nothing in this subsection may be interpreted as extinguishing or affecting any lawful rights, privileges or immunities that any person or entity or the public may have in any property held or transferred by an electric utility. Nothing in this section authorizes the sale or transfer of any right of eminent domain. Any right of eminent domain held by an investor-owned electric utility in relation to generation-asset-related rights, privileges or immunities terminates upon the divestiture of the generation-asset-related rights, privileges or immunities.

[1997, c. 710, §9 (NEW) .]

9. **Other regulatory approvals; limitation.** A transfer of interests or rights in real property necessary to consummate a divestiture pursuant to this section that results in a division of ownership of any lot or parcel of real property:

A. Is exempt from municipal and state agency approval required pursuant to laws, ordinances or rules related to land use, zoning, shoreland zoning or subdivision of property; and [1999, c. 43, §1 (NEW).]

B. Does not constitute a violation of laws, ordinances or rules relating to land use, zoning, shoreland zoning or subdivision of property. [1999, c. 43, §1 (NEW).]

Any subsequent regulated activity relating to any resulting parcel is subject to all applicable regulatory reviews and approvals by a municipality or state agency. A municipality or state agency, in its review of any subsequent regulated activity relating to any resulting parcel, may consider the division of ownership accomplished pursuant to the exemption granted under this subsection and may, in accordance with applicable standards established by law, rule or ordinance, deny or condition its approval based on the cumulative effect of that division of ownership and the subsequent regulated activity, as though both were occurring at the same time.

For purposes of this subsection, "subsequent regulated activity" means any activity occurring after a division of ownership accomplished pursuant to the exemption granted under this subsection that is subject to regulatory review by a municipality or state agency, including any change of use, division of ownership or development. For purposes of this subsection, "resulting parcel" means a lot or parcel of real property resulting from a division of ownership accomplished pursuant to an exemption granted under this subsection.

[1999, c. 43, §1 (NEW) .]

10. **Retail contracts for bundled electricity service extending beyond March 1, 2000.** If a transmission and distribution utility has entered into a contract to provide bundled electricity service to a retail customer at a price other than the applicable tarriffed rate for a term extending beyond March 1, 2000, the utility shall attempt to renegotiate and reform the contract to preserve as nearly as possible the parties' benefits and burdens under the terms of the contract, except that an investor-owned transmission and distribution utility may not agree to provide directly or indirectly generation service to the customer on or after March 1, 2000.

The utility shall reform the contract so that the customer pays a total price for delivered electricity on an annual basis during the remaining term of the contract equal to the price contained in the contract. If the customer has exercised due diligence to obtain the lowest price from a competitive electricity provider for generation service for the remaining term of the contract, the utility shall reform the contract to provide a price for transmission and distribution services, stranded costs and all other applicable utility charges that is equal to the difference between the original contract price and the price for generation service obtained by the customer. If the customer has failed to exercise due diligence, the price must be equal to the difference between the original contract price and a reasonable market price for generation service for that customer.

If after good faith negotiations the contracting parties are unable to agree to a reformed contract, either party may petition the commission to resolve the dispute. The commission shall determine any unresolved issues and impose a reformed contract to preserve as nearly as possible the parties' benefits and burdens under the terms of the original contract. Prior to its final determination, the commission shall review updated information provided by the retail customer concerning the price of its generation service. The commission may not approve a retail contract with a price term longer than the expected duration of the retail customer's generation service contract. Changes to a contract reformed under this subsection take effect on March 1, 2000. A transmission and distribution utility shall ensure that any contract subject to this subsection has been reformed before that date.

[1999, c. 398, Pt. K, §1 (NEW) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 1997, c. 558, §1 (AMD). 1997, c. 710, §9 (AMD). 1999, c. 43, §1 (AMD). 1999, c. 398, §§K1,N1 (AMD). 1999, c. 577, §§1,2 (AMD). 2003, c. 344, §D24 (AMD).

§3205. MARKETING; LARGE UTILITIES

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

A. "Affiliated competitive provider" means a competitive electricity provider whose relationship with a large investor-owned transmission and distribution utility qualifies it as an affiliated interest. [1997, c. 316, §3 (NEW).]

B. "Distribution utility" means a large investor-owned transmission and distribution utility that has an affiliated competitive provider. [1997, c. 316, §3 (NEW).]

C. "Purchasing entity" means a person that purchases 10% or more of the stock of a distribution utility on or after the effective date of this section. [1997, c. 316, §3 (NEW).]

D. "Related entity" means:

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

(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 purchasing entity;

(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 purchasing entity, provided that the person or group of persons beneficially owns more than 3% of the purchasing entity's voting securities; or

(5) Any purchasing entity of which any person defined in subparagraphs (1) to (4) is an affiliated interest. [1997, c. 316, §3 (NEW).]

E. "Voting securities" 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. [1997, c. 316, §3 (NEW).]

[1997, c. 316, §3 (NEW) .]

2. **Marketing permitted.** On and after the beginning of retail access, a large investor-owned transmission and distribution utility may not sell electric energy or capacity to any retail consumer of electricity. Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated competitive provider may sell electric energy or capacity to retail consumers of electricity:

A. Outside the service territory of the distribution utility with which it is affiliated; and [1997, c. 316, §3 (NEW).]

B. Within the service territory of the distribution utility with which it is affiliated, except that:

(1) The affiliated competitive provider may not sell or contract to sell more than 33% of the total kilowatt hours sold within the service territory of the distribution utility, as determined by the commission by rule; and

(2) In accordance with section 3212, the affiliated competitive provider may not at any one time provide or bid to provide standard-offer service for more than 20% of electric load within the territory of the transmission and distribution utility with which it is affiliated.

The marketing limitations in this paragraph do not apply to competitive electricity service or standard-offer service in the service territory or any portion of the service territory of a distribution utility that is located in an area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine unless the commission finds that the level of competitive electricity service and standard-offer service competition in the area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine is substantially similar to the level of competitive electricity service and standard-offer service competition in the area of the State that is within the New England independent system operator control area. All kilowatt hours sales and electric load in any portion of a distribution utility's service territory that is located in an area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine must be excluded from the calculation under this paragraph for those portions of the distribution utility's service territory that is not located in an area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine. [2013, c. 346, §1 (AMD).]

No later than January 1, 2005, based on its evaluation of the development of the competitive retail electric sales market, the commission shall complete an evaluation of the need for the market share limitation imposed under paragraph B, subparagraph (1) and shall report its findings together with any recommendations to the joint standing committee of the legislature having jurisdiction over utility matters.

[2013, c. 346, §1 (AMD) .]

3. **Standards of conduct.** The following provisions govern the conduct of a distribution utility and an affiliated competitive provider.

A. A distribution utility may not, through a tariff provision or otherwise, give its affiliated competitive provider or customers of its affiliated competitive provider preference over nonaffiliated competitive electricity providers or customers of nonaffiliated competitive electricity providers in matters relating to any regulated product or service. [1997, c. 316, §3 (NEW).]

B. All regulated products and services offered by a distribution utility, including any discount, rebate or fee waiver, must be available to all customers and competitive electricity providers simultaneously to the extent technically possible and without undue or unreasonable discrimination. [1997, c. 316, §3 (NEW).]

C. A distribution utility may not sell or otherwise provide regulated products or services to its affiliated competitive provider without either posting the offering electronically on a well-known source or otherwise making a sufficient offering to the market for that product or service. [1997, c. 316, §3 (NEW).]

D. A distribution utility shall process all similar requests for a regulated product or service in the same manner and within the same period of time. [1997, c. 316, §3 (NEW).]

E. A distribution utility may not condition or tie the provision of any regulated product, service or rate agreement by the distribution utility to the provision of any product or service in which an affiliated competitive provider is involved. [1997, c. 316, §3 (NEW).]

F. A distribution utility shall process all similar requests for information in the same manner and within the same period of time. A distribution utility may not provide information to an affiliated competitive provider without a request when information is made available to nonaffiliated competitive electricity providers only upon request. A distribution utility may not allow an affiliated competitive provider preferential access to any nonpublic information regarding the distribution system or customers taking service from the distribution utility that is not made available to nonaffiliated competitive electricity providers upon request, and a distribution utility shall instruct all of its employees not to provide affiliated competitive providers or nonaffiliated competitive electricity providers any preferential access to nonpublic information. [1997, c. 316, §3 (NEW).]

G. Employees of a distribution utility may not share with any affiliated competitive provider or any nonaffiliated competitive electricity provider:

(1) Any market information acquired from the affiliated competitive provider or from any nonaffiliated competitive electricity provider; or

(2) Any market information developed by the distribution utility in the course of responding to requests for distribution service. [1997, c. 316, §3 (NEW).]

H. A distribution utility shall keep a log of all requests for information made by the affiliated competitive provider and nonaffiliated competitive electricity providers and the date of the response to such requests and shall keep a log of any other transactions between the distribution utility and the affiliated provider that the commission may by rule require. The log is subject to periodic review by the commission. The commission shall establish categories of requests for information and shall specify which categories, if any, are sufficiently trivial to be exempt from the log requirements imposed under this paragraph. [1999, c. 398, Pt. G, §1 (AMD).]

I. [1999, c. 237, §2 (RP).]

J. A distribution utility shall refrain from giving any appearance of speaking on behalf of its affiliated competitive provider. Neither a distribution utility nor an affiliated competitive provider may in any way represent that any advantage accrues to customers or others in the use of the distribution utility's services as a result of that customer or others dealing with the affiliated competitive provider. A distribution utility may not engage in joint advertising or marketing programs of any sort with its affiliated competitive provider, nor may the distribution utility promote or market any product or service offered by its affiliated competitive provider. The commission shall maintain a current list of all competitive providers. If a customer requests information about competitive electricity providers, the distribution utility shall provide a copy of a list on which competitive electricity providers appear in random sequence and not in alphabetical order. The distribution utility may not in any manner promote its affiliated competitive provider. [1997, c. 316, §3 (NEW).]

K. Employees of a distribution utility may not state or provide to any customer or potential customer any opinion regarding the reliability, experience, qualifications, financial capability, managerial capability, operations capability, customer service record, consumer practices or market share of any affiliated competitive provider or nonaffiliated competitive electricity provider. [1997, c. 316, §3 (NEW).]

L. Employees of a distribution utility may not be shared with, and must be physically separated from those of, an affiliated competitive provider. The commission may approve an exemption from these separation requirements upon a finding by the commission that:

(1) Sharing employees or facilities would be in the best interest of the public;

(2) Sharing employees or facilities would have no anticompetitive effect; and

(3) The costs of any shared employees or facilities can be fully and accurately allocated between the distribution utility and the affiliated competitive provider.

Any request for an exemption must be accompanied by a full and transparent allocation of costs for any shared facilities or general and administrative support services. The commission shall allow a reasonable opportunity for parties to submit comments regarding any request for an exemption. An exemption is valid until the commission determines that modification or removal of the exemption is necessary. [1997, c. 316, §3 (NEW).]

M. A distribution utility and its affiliated competitive provider shall keep separate books of accounts and records, which are subject to review by the commission. [1997, c. 316, §3 (NEW).]

N. A distribution utility shall establish and file with the commission a dispute resolution procedure to address complaints alleging violations of this section or any rules adopted pursuant to this section. A dispute resolution procedure must, at a minimum, designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the claimant in writing within 30 days after the complaint was received, including a description of any action taken and the complainant's right to file a complaint with the commission if not satisfied with the results of the investigation. The distribution utility shall maintain a log of all new, resolved and pending complaints. The log is subject to annual review by the commission and must include, at a minimum, the written statement of the complaint and the resolution of the complaint or the reason why the complaint is still pending. [1997, c. 316, §3 (NEW).]

O. A distribution utility shall maintain its books of account and records of its transmission and distribution operations separately from those of its affiliated competitive provider, and the transmission and distribution books of account and records must be available for commission inspection. [1997, c. 316, §3 (NEW).]

P. A distribution utility shall maintain in a public place and file with the commission current written procedures implementing the standards of conduct established by this section and rules adopted by the commission pursuant to this section. Such written procedure must be in detail sufficient to enable customers and the commission to determine that the company is in compliance with the requirements of this section. [1997, c. 316, §3 (NEW).]

Q. A distribution utility may not subsidize the business of its affiliated competitive provider at ratepayer expense in any manner not specifically authorized under this section. [1999, c. 398, Pt. G, §2 (NEW).]

[1999, c. 237, §2 (AMD); 1999, c. 398, Pt. G, §§1,2 (AMD) .]

4. **Rules.** The commission shall adopt rules implementing the provisions of this section, including:

A. Rules governing the tracking of the amount of kilowatt-hour sales by any affiliated competitive provider compared to the total kilowatt-hour sales within the service territory of the affiliated distribution utility; [1997, c. 316, §3 (NEW).]

B. Rules governing the procedure for divestiture; and [1997, c. 316, §3 (NEW).]

C. Rules establishing standards of conduct for distribution utilities and affiliated competitive providers consistent with the requirements of this section. [1997, c. 316, §3 (NEW).]

Beginning on the effective date of competition and annually thereafter, copies of the rules adopted under this section must be provided by distribution utilities to every employee of the distribution utility and posted prominently in every employee location.

Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A and must be provisionally adopted by March 1, 1999.

[1997, c. 316, §3 (NEW) .]

5. **Penalties.**

[1999, c. 398, Pt. G, §3 (RP) .]

6. **Prohibition; divestiture.**

[1999, c. 398, Pt. G, §3 (RP) .]

7. **Effect of divestiture.**

[1999, c. 398, Pt. G, §3 (RP) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 1999, c. 237, §2 (AMD). 1999, c. 398, §§G1-3 (AMD). 2013, c. 346, §1 (AMD).

§3206. MARKETING; SMALL UTILITIES

1. **Small utilities; limitations.** Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated interest of a small investor-owned transmission and distribution utility may sell retail generation service to retail consumers of electricity located within or outside the service territory of the small investor-owned transmission and distribution utility with which it is affiliated.

[1997, c. 316, §3 (NEW) .]

2. **Rules of conduct.** By July 1, 1998, the commission shall open a rule-making proceeding to determine the extent of separation between a small investor-owned transmission and distribution utility and an affiliated competitive electricity provider necessary to avoid cross-subsidization and market power abuses. By March 1, 1999, the commission shall provisionally adopt all rules required under this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. In adopting rules under this subsection, the commission shall consider all relevant issues, including, but not limited to:

A. Codes of conduct that may be required to ensure the effectiveness of the separation requirement; [1997, c. 316, §3 (NEW).]

B. Restrictions on employee activities; [1997, c. 316, §3 (NEW).]

C. Accounting standards; and [1997, c. 316, §3 (NEW).]

D. Information and service comparability requirements. [1997, c. 316, §3 (NEW).]

[1997, c. 316, §3 (NEW) .]

3. **Commission study.** The commission shall conduct a study to determine the most effective and efficient means of ensuring that the portions of this State that are currently connected to the New England electric grid through transmission lines that pass through Canada are connected to the grid in a manner that ensures that customers in those portions of the State are able to take full advantage of retail access. By January 1, 1999, the commission shall complete its study and report its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over utility matters.

[1997, c. 316, §3 (NEW) .]

SECTION HISTORY
1997, c. 316, §3 (NEW).

§3206-A. MARKETING; INVESTOR-OWNED UTILITIES; PENALTIES

1. **Penalties.** The commission shall require an investor-owned transmission and distribution utility to divest an affiliated competitive provider if the commission determines in an adjudicatory proceeding that:

A. The distribution utility or an affiliated competitive provider has knowingly violated section 3205 or section 3206 or any rule adopted by the commission pursuant to those sections; and [1999, c. 398, Pt. G, §4 (NEW).]

B. The violation resulted or had the potential to result in substantial injury to retail consumers of electric energy or to the competitive retail market for electric energy. [1999, c. 398, Pt. G, §4 (NEW).]

The commission may impose administrative penalties of up to $100,000 for a violation of section 3205 or section 3206 or any rule adopted by the commission pursuant to those sections. Each day of a violation constitutes a separate offense. In addition, the commission may require disgorgement of profits or revenues realized as a result of a violation of section 3205 or section 3206 or any rule adopted by the commission pursuant to those sections.

[2003, c. 505, §30 (AMD) .]

2. **Prohibition; divestiture.** If, after the effective date of this section, 10% or more of the stock of an investor-owned transmission and distribution utility is purchased by an entity:

A. The purchasing entity and any related entity may not sell or offer for sale generation service to any retail consumer of electric energy in this State; and [1999, c. 398, Pt. G, §4 (NEW).]

B. If, in an adjudicatory proceeding, the commission determines that an affiliated competitive provider obtains an unfair market advantage as a result of the purchase, the commission shall order the investor-owned transmission and distribution utility to divest the affiliated competitive provider. [1999, c. 398, Pt. G, §4 (NEW).]

If the commission orders a divestiture pursuant to this subsection, the distribution utility must complete the divestiture within 12 months of the order to divest, unless the commission grants an extension. Upon application by the distribution utility, the commission may grant an extension for the purpose of permitting the utility to complete a divestiture that has been initiated in good faith but not finalized within the 12-month period. The commission shall oversee and approve a divestiture in accordance with rules adopted pursuant to subsection 4.

[1999, c. 398, Pt. G, §4 (NEW) .]

3. **Effect of divestiture.** If the commission orders an investor-owned transmission and distribution utility to divest an affiliated competitive provider pursuant to this section, the investor-owned transmission and distribution utility may not have an affiliated interest in a competitive electricity provider after the divestiture.

[1999, c. 398, Pt. G, §4 (NEW) .]

As used in this section, the term "affiliated competitive provider" means a competitive electricity provider whose relationship with an investor-owned transmission and distribution utility qualifies it as an affiliated interest. [1999, c. 398, Pt. G, §4 (NEW).]

SECTION HISTORY
1999, c. 398, §G4 (NEW). 2003, c. 505, §30 (AMD).

§3207. MARKETING; CONSUMER-OWNED UTILITIES

1. **Consumer-owned utilities; limitations.** Consumer-owned transmission and distribution utilities:

A. May sell retail generation service only within their respective service territories, and are authorized to purchase electric power and energy at wholesale, provided that the consumer-owned transmission and distribution utility complies with the requirements of section 3203, subsection 3 and section 3210, subsection 3, and to purchase such transmission and related services as may be required to effect the delivery of such power and energy to their respective service territories; and [2003, c. 141, §1 (AMD).]

B. May not sell wholesale generation service except incidental sales necessary to reduce the cost of providing retail service. [1997, c. 316, §3 (NEW).]

[2003, c. 141, §1 (AMD) .]

1-A. **Consumer-owned utilities in the northern Maine independent system administrator's area.** Notwithstanding subsection 1, a consumer-owned transmission and distribution utility with service territory within an area administered as of January 1, 2009 by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine:

A. May sell retail generation service only within its service territory and is authorized to purchase electric power and energy at wholesale, as long as the consumer-owned transmission and distribution utility complies with the requirements of section 3203, subsection 3 and section 3210, subsection 3, and to purchase such transmission and related services as may be required to effect the delivery of such power and energy to its service territory; and [2009, c. 108, §1 (NEW).]

B. May sell wholesale generation service in excess of its retail generation service as part of providing retail service in accordance with paragraph A. [2009, c. 108, §1 (NEW).]

[2009, c. 108, §1 (NEW) .]

2. **Commission review of marketing within territory.** Notwithstanding any other provision of this chapter, the commission by rule shall limit or prohibit sale of generation services by competitive providers within the service territory of a consumer-owned transmission and distribution utility if the commission determines that allowing such sales would cause the consumer-owned transmission and distribution utility to lose its tax-exempt status under federal or state law. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1997, c. 316, §3 (NEW) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 2003, c. 141, §1 (AMD). 2009, c. 108, §1 (AMD).

§3208. STRANDED COST RECOVERY

1. **Stranded costs defined.** For the purposes of this section, the term "stranded costs" means a utility's legitimate, verifiable and unmitigable costs made unrecoverable as a result of the restructuring of the electric industry required by this chapter and determined by the commission as provided in this subsection.

[1997, c. 316, §3 (NEW) .]

2. **Calculation.** For each electric utility, the commission shall determine the sum of the following to the extent they qualify as stranded costs pursuant to subsection 1:

A. The costs of a utility's regulatory assets related to generation; [1997, c. 316, §3 (NEW).]

B. The difference between net plant investment associated with a utility's generation assets and the market value of the generation assets; and [1997, c. 316, §3 (NEW).]

C. The difference between future contract payments and the market value of a utility's purchased power contracts. [1997, c. 316, §3 (NEW).]

When determining the market value of generation assets and purchased power contracts, the commission shall rely to the greatest extent possible on market information, including, but not limited to, market valuations that become known as generation assets and the rights to power under contracts with qualifying facilities are sold.

[1997, c. 316, §3 (NEW) .]

3. **Exclusions.** Notwithstanding any other provision of this chapter, the commission may not include any costs for obligations incurred on or after April 1, 1995 in a utility's stranded costs, except that the commission may include:

A. Regulatory assets created after April 1, 1995 and prior to March 1, 2000 for:

(1) The amortization of costs associated with the restructuring of a qualifying facility contract;

(2) Costs deferred pursuant to rate plans; or

(3) Energy conservation costs; [1997, c. 316, §3 (NEW).]

B. Obligations incurred by a utility after April 1, 1995 and prior to March 1, 2000 that are beyond the control of the electric utility; and [1997, c. 316, §3 (NEW).]

C. Obligations incurred by an electric utility after April 1, 1995 to reduce potential stranded costs. [1997, c. 316, §3 (NEW).]

[1997, c. 316, §3 (NEW) .]

4. **Mitigation.** An electric utility shall pursue all reasonable means to reduce its potential stranded costs and to receive the highest possible value for generation assets and contracts, including the exploration of all reasonable and lawful opportunities to reduce the cost to ratepayers of contracts with qualifying facilities. The commission shall consider a utility's efforts to satisfy this requirement when determining the amount of a utility's stranded costs.

[1997, c. 316, §3 (NEW) .]

5. **Stranded costs recoverable.** When retail access begins, the commission shall provide a transmission and distribution utility a reasonable opportunity to recover stranded costs through the rates of the transmission and distribution utility, as provided in this section. The opportunity must be comparable to the utility's opportunity to recover stranded costs before the implementation of retail access under this chapter. Nothing in this chapter may be construed to give a transmission and distribution utility a greater or lesser opportunity to recover stranded costs than existed prior to the implementation of retail access. The commission may reduce or increase the amount of stranded costs that the commission allows a utility to recover based on the efforts of the utility to mitigate its stranded costs.

[1997, c. 316, §3 (NEW) .]

6. **Determination of stranded costs charges.** Before retail access begins, the commission shall estimate the stranded costs for each electric utility in the State. The commission shall use these estimates as the basis for a stranded costs charge to be charged by each transmission and distribution utility when retail access begins. In 2003 and every 3 years thereafter until the utility is no longer recovering adjustable stranded costs, the commission shall correct any substantial inaccuracies in the stranded costs estimates associated with adjustable stranded costs and adjust the stranded costs charges to reflect any such correction. The commission may correct adjustable stranded costs estimates and adjust the stranded costs charges at any other time. When correcting stranded costs estimates and adjusting stranded costs charges, the commission shall make any change effective only prospectively and may not reconcile past estimates to reflect actual values.

For purposes of this subsection, "adjustable stranded costs" means stranded costs other than stranded costs associated with divested generation assets.

[1997, c. 316, §3 (NEW) .]

7. **Recovery of stranded costs.** The commission shall set an amount of recoverable stranded costs after calculating the net aggregate value of all divested assets that had proceeds exceeding book costs against the aggregate value of all other stranded electricity generation assets. The commission may not shift cost recovery among customer classes in a manner inconsistent with existing law, as applicable.

[1997, c. 316, §3 (NEW) .]

8. **Proceedings.** The commission shall conduct separate adjudicatory proceedings to determine the stranded costs for each investor-owned utility and each consumer-owned utility. In the same proceedings, the commission shall establish the revenue requirements for each transmission and distribution utility and stranded costs charges to be charged by each transmission and distribution utility when retail access begins. The proceedings must be completed by December 1, 1999.

[1999, c. 398, Pt. L, §1 (AMD) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 1999, c. 398, §L1 (AMD).

§3209. RATE DESIGN

The commission shall set charges and rates collected by transmission and distribution utilities in accordance with this section. [1997, c. 316, §3 (NEW).]

1. **Applicable law.** The design of rate recovery for the collection of transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter must be consistent with existing law, as applicable. The commission may continue to permit recovery, in transmission and distribution utility rates, of costs previously incurred by the utility when it was an integrated electric utility that are not included in the recovery of stranded costs pursuant to section 3208.

[1997, c. 316, §3 (NEW) .]

2. **Proceeding.** Following notice and hearing, the commission shall complete an adjudicatory proceeding on or before December 1, 1999 for the design of cost recovery for transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter and for the design of rates for backup or standby service.

[1999, c. 398, Pt. L, §2 (AMD) .]

3. **Exit fees.** A customer who significantly reduces or eliminates consumption of electricity due to self-generation, conversion to an alternative fuel or demand-side management may not be assessed an exit or reentry fee in any form for the reduction or elimination of consumption or reestablishment of service with a transmission and distribution utility.

[1997, c. 316, §3 (NEW) .]

4. **Decommissioning costs.** As required by federal law, rule or order, the commission shall include in the rates of a transmission and distribution utility decommissioning expenses associated with a nuclear unit.

[1997, c. 316, §3 (NEW) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 1999, c. 398, §L2 (AMD).

§3209-A. NET ENERGY BILLING

The commission may adopt or amend rules governing net energy billing. Rules adopted or amended under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. "Net energy billing" means a billing and metering practice under which a customer is billed on the basis of net energy over the billing period taking into account accumulated unused kilowatt-hour credits from the previous billing period. [2011, c. 262, §1 (NEW).]

SECTION HISTORY
2011, c. 262, §1 (NEW).

§3210. RENEWABLE RESOURCES

1. **Policy.** In order to ensure an adequate and reliable supply of electricity for Maine residents and to encourage the use of renewable, efficient and indigenous resources, it is the policy of this State to encourage the generation of electricity from renewable and efficient sources and to diversify electricity production on which residents of this State rely in a manner consistent with this section.

[1999, c. 398, Pt. I, §1 (AMD) .]

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

A. "Efficient resource" means a source of electrical generation that:

(1) Qualifies as a qualifying cogeneration facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997, was constructed prior to January 1, 1997 and meets the following efficiency standard:

(a) During any calendar year, the sum of the useful power output and the useful thermal energy output of the facility is no less than 60% of the total energy input to the facility.

For purposes of this paragraph, the term "useful power output" means the electrical or mechanical energy made available for use, exclusive of any energy used in the power production process. For purposes of this paragraph, the term "useful thermal energy" means thermal energy made available to an industrial or commercial process, net of any heat contained in condensate return and makeup water, used in a heating application or used in a space cooling application. [1999, c. 398, Pt. I, §2 (RPR).]

A-1. "Alternative compliance payment rate" means a certain dollar amount per kilowatt-hour set by the commission that a competitive electricity provider may pay to the commission to satisfy the portfolio requirements of subsection 3-A. [2007, c. 403, §1 (NEW).]

B. "Eligible resource" means a source of electrical generation that:

(1) Generates power that can physically be delivered to the control region in which the New England Power Pool, or its successor as approved by the Federal Energy Regulatory Commission, has authority over transmission, or to the Maritimes Control Area; and

(2) Is either a renewable resource or an efficient resource. [1999, c. 398, Pt. I, §2 (RPR).]

B-1. [2009, c. 542, §1 (RP).]

B-2. "Renewable energy credit" means a tradable instrument that represents an amount of electricity generated from eligible resources or renewable capacity resources. [2009, c. 542, §2 (AMD).]

B-3. "Renewable capacity resource" means a source of electrical generation:

(1) Whose total power production capacity does not exceed 100 megawatts and relies on one or more of the following:

(a) Fuel cells;

(b) Tidal power;

(c) Solar arrays and installations;

(d) Geothermal installations;

(e) Hydroelectric generators that meet all state and federal fish passage requirements applicable to the generator; or

(f) Biomass generators that are fueled by wood or wood waste, landfill gas or anaerobic digestion of agricultural products, by-products or wastes; or

(2) That relies on wind power installations. [2009, c. 542, §3 (NEW).]

B-4. "New" as applied to any renewable capacity resource means a renewable capacity resource that:

(1) Has an in-service date after September 1, 2005;

(2) Was added to an existing facility after September 1, 2005;

(3) For at least 2 years was not operated or was not recognized by the New England independent system operator as a capacity resource and, after September 1, 2005, resumed operation or was recognized by the New England independent system operator as a capacity resource; or

(4) Was refurbished after September 1, 2005 and is operating beyond its previous useful life or is employing an alternate technology that significantly increases the efficiency of the generation process.

For the purposes of this paragraph, "capacity resource" has the same meaning as in section 3210-C, subsection 1, paragraph A. For the purposes of this paragraph, "to refurbish" means to make an investment in equipment or facilities, other than for routine maintenance and repair, to renovate, reequip or restore the renewable capacity resource. [2011, c. 413, §1 (AMD).]

C. "Renewable resource" means a source of electrical generation:

(1) That qualifies as a small power production facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997; or

(2) Whose total power production capacity does not exceed 100 megawatts and that relies on one or more of the following:

(a) Fuel cells;

(b) Tidal power;

(c) Solar arrays and installations;

(d) Wind power installations;

(e) Geothermal installations;

(f) Hydroelectric generators;

(g) Biomass generators that are fueled by wood or wood waste, landfill gas or anaerobic digestion of agricultural products, by-products or wastes; or

(h) Generators fueled by municipal solid waste in conjunction with recycling. [2009, c. 542, §5 (AMD).]

[2011, c. 413, §1 (AMD) .]

3. **Portfolio requirements.** As a condition of licensing pursuant to section 3203, each competitive electricity provider in this State must demonstrate in a manner satisfactory to the commission that no less than 30% of its portfolio of supply sources for retail electricity sales in this State is accounted for by

eligible resources. If a competitive electricity provider represents to a customer that the provider is selling to the customer a portfolio of supply sources that includes more than 30% eligible resources, the resources necessary to supply more than 30% of that customer's load may not be applied to meet the aggregate 30% portfolio requirement. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 398, Pt. I, §3 (AMD) .]

3-A. **Portfolio requirements; new renewable capacity resources.** Portfolio requirements for new renewable capacity resources are governed by this subsection.

A. Except as provided in paragraph B, beginning January 1, 2008, as a condition of licensing pursuant to section 3203, each competitive electricity provider in this State must demonstrate in a manner satisfactory to the commission that the percentage of its portfolio of supply sources for retail electricity sales in this State accounted for by new renewable capacity resources is as follows:

(1) One percent for the period from January 1, 2008 to December 31, 2008;

(2) Two percent for the period from January 1, 2009 to December 31, 2009;

(3) Three percent for the period from January 1, 2010 to December 31, 2010;

(4) Four percent for the period from January 1, 2011 to December 31, 2011;

(5) Five percent for the period from January 1, 2012 to December 31, 2012;

(6) Six percent for the period from January 1, 2013 to December 31, 2013;

(7) Seven percent for the period from January 1, 2014 to December 31, 2014;

(8) Eight percent for the period from January 1, 2015 to December 31, 2015;

(9) Nine percent for the period from January 1, 2016 to December 31, 2016; and

(10) Ten percent for the period from January 1, 2017 to December 31, 2017.

New renewable capacity resources used to satisfy the requirements of this paragraph may not be used to satisfy the requirements of subsection 3. [2007, c. 2, §20 (COR).]

B. Suspensions of scheduled increases in the portfolio requirements as provided in paragraph A are governed by this paragraph.

(1) If by March 31st of the years 2010, 2012, 2014 and 2016 the commission determines that investment in new renewable capacity resources in the preceding 2 calendar years has not been sufficient for competitive electricity providers to meet the portfolio requirements under paragraph A and that the resulting use of renewable energy credits pursuant to subsection 8 or the alternative compliance payment mechanism pursuant to subsection 9, or both of these methods, has burdened electricity customers in the State without providing the benefits of new renewable capacity resources, the commission may suspend all or some of the future scheduled increases in the portfolio requirements under paragraph A.

(2) If the commission finds that alternative compliance payments are made pursuant to subsection 9 in 3 consecutive calendar years, the commission shall temporarily suspend all or some of the future scheduled increases in the portfolio requirements under paragraph A.

(3) If the commission suspends any scheduled increases in the portfolio requirements under paragraph A pursuant to subparagraph (1) or (2), the commission may resume increases, limited to no more than one percentage point per year over the previous year, in the portfolio requirements after a minimum of one year. [2007, c. 403, §4 (NEW).]

C. No later than March 31, 2008 and annually thereafter, the commission shall submit a report regarding the status of new renewable capacity resources in the State and compliance with the portfolio requirements under paragraph A to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. The report must include, but is not limited to, a description of

new renewable capacity resources available to meet the portfolio requirements under paragraph A, documentation of the loss of any existing renewable generation capacity in the State, the status of implementation of the new renewable capacity resources portfolio requirements, including any suspensions pursuant to paragraph B, and recommendations to stimulate investment in new renewable capacity resources. [2007, c. 403, §4 (NEW).]

D. Retail electricity sales pursuant to a supply contract or standard-offer service arrangement executed by a competitive electricity provider that is in effect on the effective date of this subsection is exempt from the requirements of this subsection until the end date of the current term of the supply contract or standard-offer service arrangement. [2007, c. 403, §4 (NEW).]

The commission shall adopt rules to implement this subsection. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2007, c. 2, §20 (COR) .]

4. **Report.** In view of property tax benefits, developments in other states and the development of a market for tradable credits for satisfying eligible resource requirements, the commission shall review the 30% portfolio requirement and make a recommendation for any change to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters no later than 5 years after the beginning of retail competition.

[1999, c. 398, Pt. I, §3 (AMD) .]

5. **Funding for research and development; community demonstration projects.**

[2009, c. 565, §1 (RPR); T. 35-A, §3210, sub-§5 (RP) .]

6. **Fund.**

[2009, c. 565, §9 (AFF); 2009, c. 565, §2 (RP) .]

6-A. **Renewable Resource Fund report.**

[2009, c. 565, §9 (AFF); 2009, c. 565, §3 (RP) .]

7. **Information.** To the extent that funding is available, the commission shall inform electricity consumers in this State of the benefits of electricity generated in this State using renewable resources and of the opportunities available in this State to purchase electricity that is generated using those resources, including, but not limited to, the green power offer and other green power supply products and renewable energy credit products certified under section 3212-A. The commission may not promote any renewable resources over others. The commission may apply for, receive and expend grant money from the United States Department of Energy and other government agencies for this purpose. The commission may create or cause to be created a brand or logo to identify Maine renewable resources, including the green power offer and other green power supply products and renewable energy credit products certified under section 3212-A, to consumers. The commission shall register any mark or logo created pursuant to this subsection with the United States Patent and Trademark Office or in accordance with Title 10, chapter 301-A, or both. Any brand or logo created pursuant to this subsection may only be used in accordance with the purposes of this subsection as approved by the commission.

[2011, c. 283, §1 (AMD) .]

8. **Credit trading.** The commission shall allow competitive electricity providers to satisfy the portfolio requirements of subsections 3 and 3-A through the use of renewable energy credits if the commission determines that a reliable system of electrical attribute trading exists. When renewable energy credits are

used to satisfy the portfolio requirements of subsections 3 and 3-A, the value of a renewable energy credit for electricity generated by a community-based renewable energy project, as defined in section 3602, that is participating in the community-based renewable energy pilot program established in section 3603 and elects the renewable energy credit multiplier under section 3605 is 150% of the amount of the electricity.

[2009, c. 329, Pt. A, §2 (AMD) .]

9. **Alternative compliance payment; portfolio requirements for new renewable capacity resources.** The commission shall allow competitive electricity providers to satisfy the portfolio requirements for new renewable capacity resources under subsection 3-A through an alternative compliance payment mechanism in accordance with this subsection.

A. The commission shall set the alternative compliance payment rate by rule and shall publish the alternative compliance payment rate by January 31st of each year. In setting the rate, the commission shall take into account prevailing market prices, standard-offer service prices for electricity, reliance on alternative compliance payments to meet the requirements of subsection 3-A and investment in new renewable capacity resources in the State during the previous calendar year. [2007, c. 403, §7 (NEW).]

B. The commission shall collect alternative compliance payments made by competitive electricity providers and shall deposit all funds collected under this paragraph in the Energy Efficiency and Renewable Resource Fund established under section 10121, subsection 2 to be used to fund research, development and demonstration projects relating to renewable energy technologies and to fund rebates for cost-effective renewable energy technologies. [2011, c. 637, §1 (AMD).]

The commission shall adopt rules to implement this subsection. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 637, §1 (AMD) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 1999, c. 372, §§1,2 (AMD). 1999, c. 398, §§I1-3 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 665, §1 (AMD). 2005, c. 646, §2 (AMD). RR 2007, c. 2, §20 (COR). 2007, c. 18, §§1-3 (AMD). 2007, c. 403, §§1-7 (AMD). 2007, c. 644, §§1-3 (AMD). 2009, c. 329, Pt. A, §2 (AMD). 2009, c. 329, Pt. B, §1 (AMD). 2009, c. 372, Pt. K, §§1-3 (AMD). 2009, c. 372, Pt. K, §5 (AFF). 2009, c. 415, Pt. E, §2 (AFF). 2009, c. 542, §§1-5 (AMD). 2009, c. 565, §§1-4 (AMD). 2009, c. 565, §9 (AFF). 2011, c. 283, §1 (AMD). 2011, c. 314, §1 (AMD). 2011, c. 413, §1 (AMD). 2011, c. 637, §1 (AMD). MRSA T. 35-A, §3210, sub-§5 (RP).

§3210-A. SMALL GENERATOR AGGREGATION

1. **Standard-offer service provider purchase requirement.** In accordance with rules adopted pursuant to this section, the commission, at the request of the owner or operator of a generator with a capacity of 5 megawatts or less, shall:

A. If the generator is located in an area of this State within the New England independent system operator control area, require a standard-offer service provider that serves an area of this State within the New England independent system operator control area to purchase the output of that generator at applicable market clearing prices or at such other prices determined by the commission to be financially neutral to the standard-offer service provider; and [2003, c. 555, §1 (NEW).]

B. If the generator is located in an area of this State in which the retail market is administered by the independent system administrator for northern Maine and the commission finds that the market design will accommodate purchases in a manner that is financially neutral to the standard-offer service provider,

require a standard-offer service provider that serves that area of the State, or a portion of that area, to purchase the output of that generator at prices determined by the commission to be financially neutral to the standard-offer service provider. [2003, c. 555, §1 (NEW).]

The requirements of this subsection apply only if they can be accomplished in a manner that is financially neutral to standard-offer service providers.

[2003, c. 555, §1 (NEW) .]

2. **Transmission and distribution utility administration.** Transmission and distribution utilities shall administer the purchase and sale of electricity to a standard-offer service provider required under subsection 1. Administrative costs incurred by a transmission and distribution utility under this subsection must be paid, in a manner established by the commission, by the generators of the electricity the purchase and sale of which the utility administers.

[2009, c. 197, §3 (AMD) .]

2-A. **Purchase by competitive electricity providers.** In addition to its obligations under subsection 2, a transmission and distribution utility may administer on behalf of any eligible small generator the purchase and sale of electricity to a competitive electricity provider. In carrying out this function, a transmission and distribution utility may in its discretion aggregate the output of multiple eligible small generators for the purpose of obtaining the most favorable purchase price on behalf of the generators. The parties to any resulting sale must be the eligible small generators and the competitive electricity provider.

If a transmission and distribution utility aggregates the output of eligible small generators under this subsection and is unable to sell the aggregated output to a competitive electricity provider, the transmission and distribution utility shall administer the purchase and sale of the aggregated output to a standard-offer service provider in accordance with the provisions of subsections 1 and 2.

[2009, c. 197, §4 (NEW) .]

3. **Rules.** The commission shall adopt rules to implement the provisions of subsections 1 and 2, including, but not limited to, rules identifying how the commission assigns purchasing obligations to particular standard-offer service providers and the timing and manner of such obligations. The commission may adopt rules and may amend any rules necessary to implement the requirements of subsection 2-A, including rules to allow a transmission and distribution utility to collect an administrative fee from participating eligible small generators to cover reasonable costs incurred by the transmission and distribution utility under subsection 2-A. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 197, §5 (AMD) .]

SECTION HISTORY
2003, c. 555, §1 (NEW). 2009, c. 197, §§3-5 (AMD).

§3210-B. ELECTRIC UTILITY AND CONSERVATION BENEFITS

(REPEALED)

SECTION HISTORY
2003, c. 610, §2 (NEW). MRSA T. 35-A, §3210-B, sub-§5 (RP).

§3210-C. CAPACITY RESOURCE ADEQUACY

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

A. "Capacity resource" means any renewable capacity resource, nonrenewable capacity resource or interruptible, demand response or energy efficiency capacity resource. [2007, c. 293, §1 (AMD).]

A-1. "Contract for differences" means a contractual arrangement between a buyer and a seller in which cash payments are made based on the actual or relative difference between a target price for energy or a capacity resource and the market value of the energy or capacity resource. Under a contract for differences, the seller pays to the buyer the positive difference between the market value and the target price and the buyer pays to the seller the negative difference between the market value and the target price. "Contract for differences" does not include a contract for the physical delivery of energy or capacity resources. [2007, c. 656, Pt. B, §1 (NEW).]

B. "Interruptible, demand response or energy efficiency capacity resource" means a resource that has demand response, interruptible or energy efficiency capacity recognized by the commission. [2005, c. 677, Pt. C, §1 (NEW).]

C. "New" as applied to any capacity resource means a capacity resource that:

(1) Has an in-service date after September 1, 2005;

(2) Was added to an existing facility after September 1, 2005;

(3) For at least 2 years was not operated or was not recognized by the New England independent system operator as a capacity resource and, after September 1, 2005, resumed operation or was recognized by the New England independent system operator as a capacity resource; or

(4) Was refurbished after September 1, 2005 and is operating beyond its previous useful life or is employing an alternate technology that significantly increases the efficiency of the generation process. [2005, c. 677, Pt. C, §1 (NEW).]

D. "Nonrenewable capacity resource" means an electric generation resource other than a renewable capacity resource. [2005, c. 677, Pt. C, §1 (NEW).]

E. "Renewable capacity resource" has the same meaning as in section 3210, subsection 2, paragraph B-3. [2009, c. 542, §6 (AMD).]

F. "Renewable energy credit" means a tradable instrument that represents an amount of electricity generated from eligible resources as defined in section 3210, subsection 2, paragraph B or renewable capacity resources. [2009, c. 518, §1 (NEW).]

G. "Triennial plan" has the same meaning as in section 10102, subsection 9. [2009, c. 518, §2 (NEW).]

[2009, c. 518, §§1, 2 (AMD); 2009, c. 542, §6 (AMD) .]

2. **Policy.** It is the policy of this State:

A. That the share of new renewable capacity resources as a percentage of the total capacity resources in this State on December 31, 2007 increase by 10% by 2017 and that, to the extent possible, the increase occur in uniform annual increments; [2005, c. 677, Pt. C, §1 (NEW).]

B. To reduce electric prices and price volatility for the State's electricity consumers and to reduce greenhouse gas emissions from the electricity generation sector; and [2005, c. 677, Pt. C, §1 (NEW).]

C. To develop new capacity resources to reduce demand or increase capacity so as to mitigate the effects of any regional or federal capacity resource mandates. [2005, c. 677, Pt. C, §1 (NEW).]

[2005, c. 677, Pt. C, §1 (NEW) .]

3. **Commission authority.** The commission may direct investor-owned transmission and distribution utilities to enter into long-term contracts for:

A. Capacity resources; [2009, c. 518, §3 (AMD).]

B. Any available energy associated with capacity resources contracted under paragraph A:

(1) To the extent necessary to fulfill the policy of subsection 2, paragraph A; or

(2) If the commission determines appropriate for purposes of supplying or lowering the cost of standard-offer service or otherwise lowering the cost of electricity for the ratepayers in the State. Available energy contracted pursuant to this subparagraph may be sold into the wholesale electricity market in conjunction with solicitations for standard-offer supply bids; and [2009, c. 518, §3 (AMD).]

C. Any available renewable energy credits associated with capacity resources contracted under paragraph A. The price paid by the investor-owned transmission and distribution utility for the renewable energy credits must be lower than the price received for those renewable energy credits at the time they are sold by the investor-owned transmission and distribution utility. [2013, c. 424, Pt. A, §20 (RPR).]

The commission may permit, but may not require, investor-owned transmission and distribution utilities to enter into contracts for differences that are designed and intended to buffer ratepayers in the State from potential negative impacts from transmission development. To the greatest extent possible, the commission shall develop procedures for long-term contracts for investor-owned transmission and distribution utilities under this subsection having the same legal and financial effect as the procedures used for standard-offer service pursuant to section 3212 for investor-owned transmission and distribution utilities.

The commission may enter into contracts for interruptible, demand response or energy efficiency capacity resources. These contracts are not subject to the rules of the State Purchasing Agent. In a competitive solicitation conducted pursuant to subsection 6, the commission shall allow transmission and distribution utilities to submit bids for interruptible or demand response capacity resources.

Capacity resources contracted under this subsection may not exceed the amount necessary to ensure the reliability of the electric grid of this State, to meet the energy efficiency program budget allocations articulated in the triennial plan as approved by the commission pursuant to section 10104, subsection 4 or any annual update plan approved by the commission pursuant to section 10104, subsection 6 or to lower customer costs as determined by the commission pursuant to rules adopted under subsection 10.

Unless the commission determines the public interest requires otherwise, a capacity resource may not be contracted under this subsection unless the commission determines that the capacity resource is recognized as a capacity resource for purposes of any regional or federal capacity requirements.

The commission shall ensure that any long-term contract authorized under this subsection is consistent with the State's goals for greenhouse gas reduction under Title 38, section 576 and the regional greenhouse gas initiative as described in the state climate action plan required in Title 38, section 577.

[2013, c. 424, Pt. A, §20 (AMD) .]

4. **Priority of capacity resources.** In selecting capacity resources for contracting pursuant to subsection 3, the commission shall apply the following standards.

A. The commission shall select capacity resources that are competitive and the lowest price when compared to other available offers for capacity resources of the same or similar contract duration or terms. [2007, c. 293, §3 (AMD).]

B. Among capacity resources meeting the standard in paragraph A, the commission shall choose among capacity resources in the following order of priority:

(1) New interruptible, demand response or energy efficiency capacity resources located in this State;

(2) New renewable capacity resources located in this State;

(3) New capacity resources with no net emission of greenhouse gases;

(4) New nonrenewable capacity resources located in this State. The commission shall give preference to new nonrenewable capacity resources with no net emission of greenhouse gases;

(5) Capacity resources that enhance the reliability of the electric grid of this State. The commission shall give preference to capacity resources with no net emission of greenhouse gases; and

(6) Other capacity resources. [2005, c. 677, Pt. C, §1 (NEW).]

[2007, c. 293, §3 (AMD) .]

5. **Contract term.** A contract entered into pursuant to subsection 3 may not be for more than 10 years, unless the commission finds a contract for a longer term to be prudent.

[2005, c. 677, Pt. C, §1 (NEW) .]

6. **Competitive solicitation process and contract negotiation.** Except as provided in paragraph A, for purposes of selecting potential capacity resources for contracting pursuant to subsection 3, the commission shall conduct a competitive solicitation no less often than every 3 years if the commission determines that the likely benefits to ratepayers resulting from any contracts entered into as a result of the solicitation process will exceed the likely costs. Following review of bids, the commission may negotiate with one or more potential suppliers. When only one bid has been offered, the commission shall ensure that negotiations are based on full project cost disclosure by the potential supplier. The commission shall negotiate contracts that are commercially reasonable and that commit all parties to commercially reasonable behavior.

A. The commission shall, for purposes of selecting energy efficiency capacity resources and available energy associated with such resources for contracting pursuant to subsection 3, conduct a competitive solicitation in accordance with this subsection or contract with the Efficiency Maine Trust established in section 10103 to deliver those resources through a competitive solicitation process administered by the trust. [2009, c. 518, §4 (NEW).]

[2009, c. 518, §4 (AMD) .]

7. **Disposition of resources.** An investor-owned transmission and distribution utility shall sell capacity resources, energy or renewable energy credits purchased pursuant to subsection 3 or take other action relative to such capacity resources, energy or renewable energy credits as directed by the commission.

[2009, c. 518, §5 (AMD) .]

8. **Cost recovery.** The commission shall ensure that all costs and direct financial benefits associated with contracts entered into under this section are allocated to ratepayers in accordance with section 3210-F. A price differential existing at any time during the term of the contract between the contract price and the prevailing market price at which the capacity resource is sold or any gains or losses derived from contracts for differences must be reflected in the amounts charged to ratepayers and may not be considered imprudent.

[2013, c. 454, §1 (AMD) .]

9. **Contract payments.** Except as provided in paragraphs A and B, contracts for capacity resources, related energy or renewable energy credits entered into pursuant to this section must provide that payments will be made only after contracted amounts of capacity resources, related energy or renewable energy credits have been provided.

A. Contracts with the Efficiency Maine Trust established in section 10103 for energy efficiency capacity resources and related energy entered into pursuant to this section may provide that up to 20% of the total payment be made at the start of the contract. Such contracts must provide that the remaining payments will be made only after the supplier has demonstrated, according to measurement and verification

protocols specified in rules adopted by the Efficiency Maine Trust Board pursuant to section 10105, subsection 5, that physical installations have been completed and contracted amounts of capacity resources and related energy have been substantiated. [2009, c. 518, §6 (NEW).]

B. Contracts with any entity other than the Efficiency Maine Trust established in section 10103 for energy efficiency capacity resources and related energy must provide that payments will be made only after the supplier has demonstrated, according to measurement and verification protocols specified in rules adopted by the Efficiency Maine Trust Board pursuant to section 10105, subsection 5, that physical installations have been completed and contracted amounts of capacity resources and related energy have been substantiated. [2009, c. 518, §6 (NEW).]

[2009, c. 518, §6 (AMD) .]

10. **Rules.** The commission shall adopt rules to implement this section. In adopting rules, the commission shall consider the financial implications of this section for investor-owned transmission and distribution utilities. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 273, §2 (AMD); 2011, c. 273, §3 (AFF) .]

11. **Customer benefits.** The commission may direct investor-owned transmission and distribution utilities to enter into contracts under this section only as agents for their customers and only when such contracts are in the best interest of customers and in accordance with this subsection. The commission shall adopt rules to ensure that:

A. To the extent the benefits to ratepayers of a long-term contract are projected to occur in the later years of the contract term, the commission shall ensure that adequate financial security is in place so that it is reasonably likely ratepayers will obtain the projected benefits of the long-term contract; and [2011, c. 413, §3 (NEW).]

B. To the extent practicable, ratepayers obtain the benefit of lower cost capacity resources of energy associated with those resources or of any renewable energy credits that may exist after the term of primary financing or subsequent replacement financing necessary for the development and construction of a generation project is completed. [2011, c. 413, §3 (NEW).]

[2011, c. 413, §3 (NEW) .]

12. **Triennial plan energy efficiency contracts.**

[2013, c. 369, Pt. A, §2 (RP) .]

SECTION HISTORY
2005, c. 677, §C1 (NEW). 2007, c. 293, §§1-4 (AMD). 2007, c. 575, §§2-5 (AMD). 2007, c. 656, Pt. B, §§1-5 (AMD). 2009, c. 415, Pt. A, §§21-23 (AMD). 2009, c. 518, §§1-6 (AMD). 2009, c. 542, §6 (AMD). 2011, c. 273, §§1, 2 (AMD). 2011, c. 273, §3 (AFF). 2011, c. 413, §§2, 3 (AMD). 2013, c. 369, Pt. A, §2 (AMD). 2013, c. 424, Pt. A, §20 (AMD). 2013, c. 454, §1 (AMD).

§3210-D. RESOURCE PLAN

The commission shall adopt by rule a long-term plan for electric resource adequacy for this State to ensure grid reliability and the provision or availability of electricity to consumers at the lowest cost. [2005, c. 677, Pt. C, §1 (NEW).]

After final adoption of rules under this section, the commission shall take any necessary action within its authority under this Title to support achievement of the objectives of the plan. [2005, c. 677, Pt. C, §1 (NEW).]

Rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 677, Pt. C, §1 (NEW).]

SECTION HISTORY
2005, c. 677, §C1 (NEW).

§3210-E. ELECTRIC UTILITY AND CONSERVATION BENEFITS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/28)
(WHOLE SECTION TEXT REPEALED 12/31/28)

1. **Discount rates.** Transmission and distribution utilities may offer discounted rates to qualified Pine Tree Development Zone businesses established under Title 30-A. If a transmission and distribution utility requires approval prior to offering any such rate, the transmission and distribution utility shall apply to the commission in accordance with applicable provisions of this Title, and the commission may approve the rate if it finds it to be in accord with applicable requirements of this Title, except that the commission may take into account the overall benefits to ratepayers resulting from state efforts to promote economic development within Pine Tree Development Zones.

[2009, c. 627, §5 (NEW); 2009, c. 627, §12 (AFF) .]

2. **Line extensions.** When approving or authorizing line extension terms and conditions for qualified Pine Tree Development Zone businesses established under Title 30-A, the commission may take into account the overall benefits to ratepayers resulting from state efforts to promote economic development within Pine Tree Development Zones established pursuant to Title 30-A.

[2009, c. 627, §5 (NEW); 2009, c. 627, §12 (AFF) .]

3. **Conservation programs.**

[2009, c. 627, §5 (NEW); 2009, c. 627, §12 (AFF); T. 35-A, §3210-E, sub-§3 (RP) .]

4. **Conservation programs.** Beginning July 1, 2010, in designing and implementing conservation programs pursuant to section 10110, the Efficiency Maine Trust may make available to qualified Pine Tree Development Zone businesses established under Title 30-A special programs of enhanced value to aid state efforts to promote economic development within Pine Tree Development Zones. A program made available pursuant to this subsection must be cost-effective as defined by the Efficiency Maine Trust by rule or order pursuant to section 10110.

[2009, c. 627, §5 (NEW); 2009, c. 627, §12 (AFF) .]

5. **Electricity sales.** Notwithstanding section 3210, the sale of electricity by a competitive electricity provider to a qualified Pine Tree Development Zone business established under Title 30-A is exempt from the requirements of that section unless the qualified Pine Tree Development Zone business requests the commission to waive the exemption for the sale of electricity to that Pine Tree Development Zone business.

The commission may adopt routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A, to implement this subsection.

[2011, c. 413, §4 (AMD) .]

6. **Repeal.** This section is repealed December 31, 2028.

[2009, c. 627, §5 (NEW); 2009, c. 627, §12 (AFF) .]

SECTION HISTORY
2009, c. 627, §5 (NEW). 2009, c. 627, §12 (AFF). 2011, c. 413, §4 (AMD). MRSA T. 35-A, §3210-E, sub-§3 (AMD).

§3210-F. ALLOCATION OF COSTS AND BENEFITS OF LONG-TERM ENERGY CONTRACTS

The commission shall ensure that all eligible costs and benefits associated with a long-term energy contract are allocated to ratepayers in accordance with this section. [2013, c. 454, §2 (NEW).]

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

A. "Eligible costs and benefits" means the net amount of all costs and direct financial benefits associated with long-term energy contracts entered into by investor-owned transmission and distribution utilities, including but not limited to any effects on a utility's cost of capital as a result of these contracts. [2013, c. 454, §2 (NEW).]

B. "Long-term energy contract" means a contract with an investor-owned transmission and distribution utility entered into under section 3210-C or section 3604. [2013, c. 454, §2 (NEW).]

[2013, c. 454, §2 (NEW) .]

2. **Eligible costs and benefits.** The commission shall determine the eligible costs and benefits of a long-term energy contract annually.

[2013, c. 454, §2 (NEW) .]

3. **Allocation of eligible costs and benefits.** The commission shall annually allocate to each investor-owned transmission and distribution utility its pro rata share of eligible costs and benefits as determined under subsection 2. The allocation must be based on each utility's total retail kilowatt-hour energy sales to ratepayers that receive the benefits and pay the costs of long-term energy contracts. The commission may determine the means to be used for the allocation required under this section, which may include the direct transfer of funds between investor-owned transmission and distribution utilities.

[2013, c. 454, §2 (NEW) .]

4. **Rules.** The commission may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[2013, c. 454, §2 (NEW) .]

SECTION HISTORY
2013, c. 454, §2 (NEW).

§3211. CONSERVATION PROGRAMS

(REPEALED)

SECTION HISTORY
1997, c. 316, §3 (NEW). 1999, c. 336, §3 (RPR). 2001, c. 624, §3 (RP).

§3211-A. CONSERVATION PROGRAMS

(REPEALED)

SECTION HISTORY
2001, c. 624, §4 (NEW). 2003, c. 217, §1 (AMD). 2003, c. 219, §1 (AMD). 2003, c. 275, §§1,2 (AMD). 2003, c. 487, §§2,3 (AMD). 2005, c. 459, §1 (AMD). 2005, c. 569, §§1-6 (AMD). 2007, c. 317, §§3-13 (AMD). 2009, c. 372, Pt. A, §10 (AFF). 2009, c. 372, Pt. A, §6 (RP).

§3211-B. ADDITIONAL ENERGY CONSERVATION PROGRAMS

(REPEALED)

§3211-B. Solar energy rebate program; fund

(As enacted by PL 2005, c. 459, §2 is REALLOCATED TO TITLE 35-A, SECTION 3211-C)

SECTION HISTORY
2003, c. 20, §RR10 (NEW). 2003, c. 20, §RR18 (AFF). 2003, c. 644, §8 (RP). 2003, c. 688, §G1 (AFF). RR 2005, c. 1, §17 (RAL). 2005, c. 459, §2 (NEW).

§3211-C. SOLAR AND WIND ENERGY REBATE PROGRAM; FUND

(REALLOCATED FROM TITLE 35-A, SECTION 3211-B)
(REPEALED)

SECTION HISTORY
RR 2005, c. 1, §17 (RAL). 2007, c. 29, §1 (AMD). 2007, c. 158, §§1-4 (AMD). 2007, c. 493, §§1-3 (AMD). 2007, c. 661, Pt. D, §1 (AMD). 2009, c. 88, §1 (AMD). 2009, c. 372, Pt. A, §10 (AFF). 2009, c. 372, Pt. A, §7 (RP).

§3212. STANDARD OFFER

Except as provided in subsection 6, when retail access begins, the commission shall ensure that standard-offer service is available to all consumers of electricity. [1997, c. 638, §1 (AMD).]

1. **Establishment of terms and conditions.** The commission shall open a rule-making proceeding no later than October 1, 1997 to establish terms and conditions for standard-offer service that include, but are not limited to:

A. Entry and exit restrictions; [1997, c. 316, §3 (NEW).]

B. Protection against a standard-offer service provider's failure to provide service as contracted for; [1997, c. 316, §3 (NEW).]

C. Appropriate rate design issues; [1997, c. 316, §3 (NEW).]

D. Retaining averaged prices for all customers in the same class; and [1997, c. 316, §3 (NEW).]

E. Credit, collection and disconnection practices. [1997, c. 316, §3 (NEW).]

The commission shall adopt rules establishing terms and conditions for standard-offer service. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 577, §3 (AMD) .]

2. **Selection of standard-offer service providers.** After terms and conditions for standard-offer service have been established under subsection 1, the commission shall administer a bid process to select a standard-offer service provider for that transmission and distribution utility's service territory. By December 1, 1999, the commission shall review the bid submissions for each transmission and distribution utility and select the standard-offer service provider or providers for that utility's service territory.

A. The commission shall determine the general credit data and specific information from general load and usage data that transmission and distribution utilities must provide to potential standard-offer service bidders, including, but not limited to, monthly demand and energy consumption and the number of customers in each customer class. The commission shall ensure that individual customer confidentiality is preserved in this process and that a transmission and distribution utility releases customer-specific data only with the customer's permission. If the transmission and distribution utility incurs additional costs to develop and produce the required data, the commission shall permit that utility to recover those costs through transmission and distribution rates. [1997, c. 316, §3 (NEW).]

B. The commission shall establish the maximum duration of a standard-offer service contract after considering all relevant factors, including, but not limited to, market risks and the need for price stability and contract flexibility. [1997, c. 316, §3 (NEW).]

C. A competitive electricity provider that is an affiliate of a large investor-owned transmission and distribution utility may submit bids to provide standard-offer service for up to 20% of the electric load within the service territory of the large investor-owned transmission and distribution utility with which it is affiliated. To prevent the unfair use of information possessed by a large investor-owned transmission and distribution utility, the commission shall ensure that a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders. [1997, c. 316, §3 (NEW).]

D. A consumer-owned transmission and distribution utility and a small investor-owned transmission and distribution utility may submit bids to provide standard-offer service for that utility's service territory. To prevent the unfair use of information possessed by a consumer-owned transmission and distribution utility or a small investor-owned transmission and distribution utility, the commission shall ensure that a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders. [1997, c. 316, §3 (NEW).]

The commission shall adopt rules establishing a methodology for structuring the bidding process for standard-offer service in order to implement the provisions of this subsection. In adopting rules, the commission shall consider methods to ensure, to the extent possible, at least 3 providers of standard-offer service in each transmission and distribution utility service territory, as long as the method does not result in any significant adverse impacts on rates paid by consumers. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

Notwithstanding any other provision of this Title, the commission may, in the event of a default by a standard-offer service provider, require the transmission and distribution utility in whose service territory the provider was providing standard-offer service to arrange and to provide for default service. Notwithstanding any other provision of this Title, the commission may, in the event that the commission receives no bids to provide standard-offer service in a transmission and distribution utility's territory or the commission determines that the bids it receives are inadequate or unacceptable, require the transmission and distribution utility to arrange and to provide for default service. Notwithstanding any other provision of this Title, the commission may require a transmission and distribution utility to provide default service to its customers that are not located within either the New England independent system operator control area or the Maritimes control area; and default service pursuant to this sentence must be provided to customers at the same price and on the same terms and conditions as standard-offer service is provided to the customers of the transmission and distribution utility in the standard-offer class in which the customer is eligible to receive service. The arrangement and provision of such default service by a transmission and distribution utility does not constitute selling electric energy or capacity at retail for purposes of section 3205, subsection 2.

Notwithstanding Title 5, section 1831, the commission is not subject to rules adopted by the State Purchasing Agent in conducting the competitive bidding process required under this section.

[1999, c. 577, §4 (AMD); 1999, c. 578, §1 (AMD) .]

3. **Price cap; investigation.** If the qualifying bids under subsection 2 for standard-offer service in any service territory, when combined with the regulated rates of transmission and distribution service and any stranded costs charge, exceed, on average, the total rate for electricity immediately before the implementation of retail access, the commission shall investigate whether the implementation of retail access remains in the public interest or whether other mechanisms to achieve the public interest and to adequately protect consumer interests need to be put in place. Pursuant to section 3217, the commission shall notify the Legislature of the results of its investigation and its determination.

[1997, c. 316, §3 (NEW) .]

4. **Implementation period and investigation.** Standard-offer service must be available until March 1, 2005. By August 1, 2002, the commission shall begin an investigation to determine whether the continued availability of standard-offer service is necessary and in the public interest and, if so, how best to make such service available after March 1, 2005. The commission shall conclude the investigation by December 1, 2002 and report its results and recommendations to the Legislature pursuant to section 3217. In its investigation, the commission shall solicit the input of all interested parties and consider the questions in paragraphs A to D in addition to other issues the commission determines appropriate.

A. Are the goals of this chapter best fulfilled if standard-offer service ceases altogether on March 1, 2005 or at a date certain after March 1, 2005? [2001, c. 528, §1 (NEW).]

B. Should opportunities for retail aggregators be changed to ensure greater participation in competitive markets by residential and small commercial customers, beginning March 1, 2005? [2001, c. 528, §1 (NEW).]

C. Beginning March 1, 2005, should any standard-offer provider selected by the commission pursuant to subsection 2 be required to offer at least one standard-offer service that is composed entirely of renewable resources as defined in section 3210? [2001, c. 528, §1 (NEW).]

D. Should this chapter be amended to enable aggregators, beginning March 1, 2005, automatically to receive by contract, for a term designated in that contract, the designation as competitive electricity provider for all the electric accounts in a given municipality if:

(1) That municipality adopts a "negative-option" form of municipal aggregation, following notice and opportunity for hearing, by means of a recorded vote of the municipal officers or the appropriate governing body; and

(2) All customers in that municipality reserve the right to leave the municipal aggregation and designate a different provider, in writing, within a time period established by legislative enactment? [2001, c. 528, §1 (NEW).]

[2001, c. 528, §1 (AMD) .]

4-A. **Renewables; hedging.**

[2005, c. 677, Pt. B, §1 (RP) .]

4-B. **Demand response and energy efficiency.** The commission may incorporate cost-effective demand response and energy efficiency into the supply of standard-offer service. The commission shall encourage entities based in this State that are not otherwise either a standard-offer service provider or its affiliate to participate in supplying cost-effective demand response or energy efficiency pursuant to this subsection.

[2005, c. 677, Pt. B, §2 (NEW) .]

4-C. **Authority to establish various contract lengths and terms.** For the purpose of providing over a reasonable time period the lowest price for standard-offer service to residential and small commercial customers, the commission, with respect to residential and small commercial standard-offer service, may, in addition to incorporating cost-effective demand response and energy efficiency pursuant to subsection 4-B and to the extent authorized in section 3210-C, incorporating the energy portion of any contracts entered into pursuant to section 3210-C, establish various standard-offer service contract lengths and terms.

[2005, c. 677, Pt. B, §2 (NEW) .]

4-D. **Community-based renewable energy.** The commission may incorporate energy generated by community-based renewable energy projects as defined in section 3602, subsection 1 into the supply of standard-offer service. The commission shall encourage entities based in this State that are not otherwise either a standard-offer service provider or its affiliate to participate in supplying energy from community-based renewable energy projects pursuant to this subsection.

[2009, c. 329, Pt. A, §3 (NEW) .]

5. **Territorial and rate class application.** Nothing in this section precludes the commission from permitting or requiring different terms and conditions for standard-offer service in different utility service territories or for different customer classes.

[1997, c. 316, §3 (NEW) .]

6. **Consumer-owned utilities.** Notwithstanding any other provision of this section, the commission is not required to conduct a competitive bidding process or select a standard-offer service provider or providers for the territory of a consumer-owned transmission and distribution utility if the consumer-owned transmission and distribution utility chooses one or more standard-offer service providers for its territory through a competitive bidding process conducted in accordance with the commission's rules governing the selection and criteria for approval of a standard-offer service provider, or if the consumer-owned transmission and distribution utility enters into one or more contracts to purchase power at wholesale for the purpose of providing retail generation service within its service territory. Selection of a standard-offer service provider or providers and agreements with or purchases from a standard-offer service provider or providers or other wholesale power supply providers are not subject to the approval requirements of section 3133 or 3133-A. A consumer-owned transmission and distribution utility may choose a single standard-offer service provider. A consumer-owned transmission and distribution utility that intends to choose a standard-offer service provider or providers, or to enter into a wholesale power purchase contract for the purpose of providing retail generation service within its service territory, in accordance with this subsection shall notify the commission.

[2003, c. 141, §2 (AMD) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 1997, c. 638, §§1,2 (AMD). 1997, c. 691, §§6,7 (AMD). 1999, c. 398, §F1 (AMD). 1999, c. 577, §§3,4 (AMD). 1999, c. 578, §1 (AMD). 2001, c. 528, §1 (AMD). 2003, c. 141, §2 (AMD). 2003, c. 665, §2 (AMD). 2005, c. 677, §§B1,2 (AMD). 2009, c. 329, Pt. A, §3 (AMD).

§3212-A. GREEN POWER OPTIONS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNITL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15)

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

A. "Green power supply" means electricity or renewable energy credits for electricity generated from renewable capacity resources as defined in section 3210, subsection 2, paragraph B-3, including electricity generated by community-based renewable energy projects as defined in section 3602, subsection 1. [2009, c. 542, §7 (AMD).]

B. "Renewable energy credit" has the same meaning as in section 3210, subsection 2, paragraph B-2. [2009, c. 542, §7 (AMD).]

[2009, c. 542, §7 (AMD) .]

1-A. **Green power offer.** The commission shall arrange for a green power offer that is composed of green power supply in accordance with this subsection. Except as provided in this subsection, the commission shall ensure that the green power offer is available to all residential and small commercial electricity customers, as defined by the commission by rule, and shall administer a competitive bid process to select a green power offer provider or providers for the service territory of a transmission and distribution utility.

A. The green power offer must be in addition to existing standard-offer service under section 3212. [2009, c. 329, Pt. B, §3 (NEW).]

B. The commission shall, to the maximum extent possible:

(1) Incorporate green power supply from community-based renewable energy projects, as defined in section 3602, subsection 1, into the green power offer; and

(2) Encourage entities based in this State to provide green power supply from community-based renewable energy projects, as defined in section 3602, subsection 1 for the green power offer pursuant to this subsection. [2009, c. 329, Pt. B, §3 (NEW).]

C. The green power offer may include incidental amounts of electricity supply that do not meet the definition of green power supply, if the commission determines that including such electricity supply is necessary to ensure that a green power offer provider can meet its retail load obligation. [2009, c. 329, Pt. B, §3 (NEW).]

D. The commission shall, in accordance with section 3210, subsection 7, inform residential and small commercial consumers of electricity in this State of the opportunity to purchase the green power offer. [2009, c. 329, Pt. B, §3 (NEW).]

E. The commission is not required to arrange for a green power offer in the event that the commission receives no bids to provide the green power offer in a transmission and distribution utility's territory, determines that the bids it receives are inadequate or unacceptable or determines, based on prior experience arranging for a green power offer in a utility’s territory, that it is reasonably likely that it will not receive any adequate or acceptable bids. [2009, c. 329, Pt. B, §3 (NEW).]

F. The commission is not required to arrange for a green power offer for the territory of a consumer-owned transmission and distribution utility. If the commission arranges standard-offer service for a consumer-owned transmission and distribution utility, the consumer-owned transmission and distribution utility may elect to have the commission arrange a green power offer in accordance with this subsection. A consumer-owned transmission and distribution utility may establish a green power offer through a competitive bidding process conducted in accordance with the commission’s rules governing the selection of a green power offer provider under this subsection. [2009, c. 329, Pt. B, §3 (NEW).]

The commission shall adopt rules to implement this subsection. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 329, Pt. B, §3 (NEW) .]

2. **Certification; information in bill inserts.** Beginning July 1, 2008, information regarding the availability of the green power offer and of green power supply products and renewable energy credit products that are certified by the commission may, at the option of the provider of the offer or the product and with the cooperation of the transmission and distribution utility, be presented through inserts in customer bills issued by transmission and distribution utilities. The costs of the inserts, including but not limited to printing and postage costs, are the responsibility of the provider of the offer or product. The commission may define the criteria for certification of green power supply products and renewable energy credit products by order or by rule, and the commission may limit the criteria for certification for consumer protection and eligibility verification purposes. Rules adopted to implement this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 329, Pt. B, §4 (AMD) .]

3. **Repeal.** This section is repealed December 31, 2015.

[2009, c. 329, Pt. B, §5 (AMD) .]

SECTION HISTORY
2007, c. 403, §8 (NEW). 2009, c. 329, Pt. B, §§2-5 (AMD). 2009, c. 542, §7 (AMD).

§3213. BILL UNBUNDLING; CONSUMER EDUCATION

(REPEALED)

SECTION HISTORY
1997, c. 316, §3 (NEW). 1997, c. 691, §8 (AMD). 2013, c. 116, §2 (RP).

§3214. NEEDS-BASED LOW-INCOME ASSISTANCE

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. **Policy.** In order to meet legitimate needs of electricity consumers who are unable to pay their electricity bills in full and who satisfy eligibility criteria for assistance, and recognizing that electricity is a basic necessity to which all residents of the State should have access, it is the policy of the State to ensure adequate provision of financial assistance.

[1997, c. 316, §3 (NEW) .]

2. **Low-income assistance.** In order to continue existing levels of financial assistance for low-income households and to meet future increases in need caused by economic exigencies, the commission shall:

A. Receive funds collected by all transmission and distribution utilities in the State at a rate set by the commission in periodic rate cases; and [1997, c. 316, §3 (NEW).]

B. Set initial funding for programs based on an assessment of aggregate customer need in periodic rate cases. The funding formula may not result in assistance being counted as income or as a resource in other means-tested assistance programs for low-income households. To the extent possible, assistance must be provided in a manner most likely to prevent the loss of other federal assistance. [1997, c. 316, §3 (NEW).]

[1997, c. 316, §3 (NEW) .]

2-A. (TEXT EFFECTIVE UNTIL 9/30/18) (TEXT REPEALED 9/30/18) **Arrearage management program.** Each transmission and distribution utility shall implement pursuant to this subsection an arrearage management program to assist eligible low-income residential customers who are in arrears on their

electricity bills. An arrearage management program implemented pursuant to this subsection is a plan under which a transmission and distribution utility works with an eligible low-income residential customer to establish an affordable payment plan and provide credit to that customer toward the customer's accumulated arrears as long as that customer remains in compliance with the terms of the program. The commission shall establish requirements relating to the arrearage management programs by rule. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

In adopting rules regarding arrearage management programs, the commission shall:

A. Consider best practices as developed and implemented in other states or regions; [2013, c. 556, §1 (NEW).]

B. Require that an arrearage management program include an electricity usage assessment at no cost to the participant; [2013, c. 556, §1 (NEW).]

C. Permit each transmission and distribution utility to propose a start date for its program that is no later than October 1, 2015; [2013, c. 556, §1 (NEW).]

D. Ensure that each transmission and distribution utility develops terms and conditions for its arrearage management program in a manner that is consistent with the program's objectives and is in the best interests of all ratepayers; and [2013, c. 556, §1 (NEW).]

E. Ensure that a transmission and distribution utility recovers in rates all costs of arrearage management programs, including incremental costs, reconnection fees and administrative and marketing costs but not including the amount of any arrearage forgiven that is treated as bad debt for purposes of cost recovery by the transmission and distribution utility. [2013, c. 556, §1 (NEW).]

The Efficiency Maine Trust shall work with transmission and distribution utilities and other stakeholders to provide access to a complementary low-income energy efficiency program for participants in arrearage management programs in order to help reduce participants' energy consumption.

No later than January 28, 2018, the commission shall prepare a report assessing the effectiveness of arrearage management programs, including the number of participants enrolled in the programs, the number of participants completing the programs, the number of participants who have failed to complete the programs, the payment patterns of participating customers after completing the programs, the dollar amount of arrears forgiven, a comparison of outcomes for those participating in the programs and those not participating, the impact on a transmission and distribution utility's bad debt as a result of the programs, the costs and benefits to all ratepayers associated with the programs and recommendations for ways in which the programs might be improved or continued for the benefit of all ratepayers. In preparing its report, the commission shall hold at least one formal stakeholder meeting involving affected parties, including the Office of the Public Advocate and the participating transmission and distribution utilities. Parties must also be provided an opportunity to submit written comments to the commission regarding the performance of the programs.

The joint standing committee of the Legislature having jurisdiction over utilities matters may report out a bill relating to the commission report to the Second Regular Session of the 128th Legislature.

This subsection is repealed September 30, 2018.

[2013, c. 556, §1 (NEW) .]

3. **Special rate.** Nothing in this section may be construed to prohibit a transmission and distribution utility from offering any special rate or program for low-income customers that is not in effect as of the effective date of this chapter, subject to the approval of the commission.

[1997, c. 316, §3 (NEW) .]

4. **Financial support.** If the Legislature appropriates from the General Fund financial support for households and individuals receiving assistance under this section, the commission may not terminate the assistance provided by transmission and distribution utilities unless the General Fund source has completely replaced such assistance. The commission may adjust the assistance provided pursuant to this section based

on the amount of any financial support from the General Fund and may reinstitute assistance subsequent to any termination of assistance if the commission finds that the General Fund source no longer completely replaces such assistance.

[1997, c. 316, §3 (NEW) .]

5. **Ensuring equitable treatment for persons with certain disabilities.** If the commission establishes or approves one or more low-income assistance programs under subsection 2 or 3 that result in similarly situated persons receiving different levels of assistance depending solely upon which transmission and distribution utility service territory they reside in, the commission shall by rule establish an equitable-treatment program consistent with this subsection.

A. The equitable-treatment program must be available to any person who:

(1) Is eligible for benefits under the transmission and distribution utility's low-income assistance program established in accordance with subsection 2; and

(2) Provides documentation from a doctor that the person for health reasons needs an oxygen pump or ventilator at least 8 hours each day. [2007, c. 97, §1 (AMD).]

B. The equitable-treatment program must be designed to ensure that the low-income assistance benefits provided under this section to persons who qualify under paragraph A mitigate, to an extent that is reasonably equivalent in each transmission and distribution utility territory, electric charges associated with the operation of an oxygen pump or ventilator. The commission may not reduce any assistance provided under any low-income assistance program established under subsection 2 in order to satisfy the requirements of this paragraph. [2007, c. 97, §2 (AMD).]

C. The commission shall establish an administratively simple and inexpensive method of administering the equitable-treatment program. [2005, c. 132, §1 (NEW).]

D. Reasonable costs incurred by a transmission and distribution utility in implementing any program established by the commission under this subsection are just and reasonable expenses for rate-making purposes. [2005, c. 132, §1 (NEW).]

E. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 132, §1 (NEW).]

[2007, c. 97, §§1, 2 (AMD) .]

6. **Annual report.** The commission shall include in its annual report pursuant to section 120, subsection 7 a report on low-income assistance programs established or approved under subsection 2 or 3 and any equitable-treatment program established pursuant to subsection 5. The report must, at a minimum, include:

A. For each month of the program year, the number of participants enrolled in low-income assistance programs, the number receiving oxygen pump benefits and the number receiving ventilator benefits; [2007, c. 97, §3 (NEW).]

B. For each month of the program year, the dollar amount of low-income assistance program benefits, the dollar amount of oxygen pump benefits and the dollar amount of ventilator benefits; and [2007, c. 97, §3 (NEW).]

C. An assessment of the effectiveness of the oxygen pump benefit and the ventilator benefit with regard to covering only those electric charges directly related to use of an oxygen pump or ventilator by the program participant. [2007, c. 97, §3 (NEW).]

[2009, c. 122, §14 (AMD) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 2005, c. 132, §1 (AMD). 2007, c. 97, §§1-3 (AMD). 2009, c. 122, §14 (AMD). 2013, c. 556, §1 (AMD).

§3215. COMMISSION AUTHORITY AND RESPONSIBILITY

1. **Authority.** Without limiting the commission's authority under any other provision of law, the commission may:

A. Intervene and participate in proceedings at the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the United States Department of Energy and other federal agencies and in proceedings conducted by Canadian or other authorities or agencies whenever the interests of competition, consumers of electricity or economic development in this State are affected. When intervening or participating in proceedings under this paragraph, the commission shall promote system reliability, the reduction of the cost of electricity to ratepayers in the State and long-term sustainable resource planning; and [2011, c. 109, §1 (AMD).]

B. Monitor trends and make recommendations, as appropriate, to the Legislature, to the Governor, to Congress or to any federal agency regarding:

(1) The safety and economic effects or potential effects of market competition on nuclear units; and

(2) The effects or potential effects of market competition on Maine's air quality. [1997, c. 316, §3 (NEW).]

[2011, c. 109, §1 (AMD) .]

2. **Findings; responsibility.** The Legislature finds that, in order for retail competition in this State to function effectively, the governance of any independent system operator with responsibility for operations of the regional transmission system must be fully independent of influence by market participants. The commission shall use all means within its authority and resources to advocate for and promote the interests of Maine ratepayers in any proceeding at the Federal Energy Regulatory Commission involving the development, governance, operations or conduct of an independent system operator.

[1997, c. 316, §3 (NEW) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 2011, c. 109, §1 (AMD).

§3216. TRANSITION; UTILITY EMPLOYEES

(REPEALED)

SECTION HISTORY
1997, c. 316, §3 (NEW). 1999, c. 398, §§M1,2 (AMD). 1999, c. 398, §M3 (AFF). 2013, c. 116, §3 (RP).

§3217. REPORTS

1. **Annual restructuring report.** The commission shall include in its annual report pursuant to section 120, subsection 7 a report describing the commission's activities in carrying out the requirements of this chapter and the activities relating to changes in the regulation of electric utilities in other states.

[2009, c. 122, §15 (AMD) .]

2. **Proposed changes.** If the commission determines, after providing interested parties an opportunity to be heard, that any provision in this chapter is not in the public interest, the commission shall present a report to the joint standing committee of the Legislature having jurisdiction over utility matters stating the basis for the commission's conclusion and including draft legislation designed to modify this chapter consistent with the public interest.

[1997, c. 316, §3 (NEW) .]

3. **Independent system operator.** The commission shall monitor events in the region pertaining to:

A. The development of an independent system operator with responsibility for transmission reliability; [1997, c. 316, §3 (NEW).]

B. The management of competitive access to the regional transmission system; and [1997, c. 316, §3 (NEW).]

C. Rights to negotiate potential contracts between sellers and buyers of electricity. [1997, c. 316, §3 (NEW).]

If the commission determines that there exists insufficient independence on the part of the independent system operator from any provider of wholesale transmission, competitive electricity provider or electric utility, or if it determines any other problem threatens regional transmission reliability, the commission shall provide a report to the joint standing committee of the Legislature having jurisdiction over utility matters with a recommendation as to what actions within the authority of the State are available to remedy this problem.

[1997, c. 316, §3 (NEW) .]

SECTION HISTORY
1997, c. 316, §3 (NEW). 2001, c. 528, §2 (AMD). 2009, c. 122, §15 (AMD).

Chapter 33: SMALL POWER PRODUCTION AND COGENERATION

§3301. TITLE

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §§A104,105 (AFF). 1999, c. 398, §A76 (RP).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

The Legislature intends through this legislation to: [1987, c. 141, Pt. A, §6 (NEW).]

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;

[2001, c. 76, §1 (AMD) .]

2. **Promote existing use.** Promote the more efficient use of existing energy systems particularly, through the cogeneration of power; and

[2001, c. 76, §1 (AMD) .]

3. **Meet goals.** Require, whenever the interests of competition, consumers of electricity and economic development in this State are not adversely affected, that the commission ensure that the goals of this section will be met following the restructuring of the electric utility industry by:

A. Proposing market rules and transmission pricing policies and practices at the regional and federal levels that encourage the generation and sale of electricity from the State's renewable power producers and cogenerators; [2001, c. 76, §2 (NEW).]

B. Opposing market rules and proposed transmission pricing policies and practices that place the State's renewable power producers and cogenerators at a competitive disadvantage compared with nonrenewable power generators; and [2001, c. 76, §2 (NEW).]

C. Implementing the State's electric industry restructuring laws and other provisions of this Title in a manner that promotes generation of electricity from the State's indigenous renewable resources and cogeneration. [2001, c. 76, §2 (NEW).]

[2001, c. 76, §2 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2001, c. 76, §§1,2 (AMD).

§3303. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Associate.** "Associate" means any person other than a transmission and distribution 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.

[1999, c. 398, Pt. A, §77 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

1-A. **Affiliate.** "Affiliate" means any person who, as determined by the commission:

A. Directly controls, is controlled by or is under common control with an electric generation enterprise; or [1987, c. 769, Pt. A, §143 (NEW).]

B. Substantially owns, is substantially owned by or is substantially under common ownership with, an electric generation enterprise. [1987, c. 769, Pt. A, §143 (NEW).]

[1987, c. 769, Pt. A, §143 (NEW) .]

2. **Cogenerator.** "Cogenerator" means a municipality or person:

A. Owning or operating a facility that generates electricity and steam or other useful forms of energy that are used for commercial, industrial, heating or cooling purposes; and [1999, c. 398, Pt. A, §77 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

B. Not primarily engaged in the generation or sale of electricity, other than the electricity generated at the cogeneration facility. [1987, c. 141, Pt. A, §6 (NEW).]

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 a transmission and distribution utility, a subsidiary of a transmission and distribution utility or an affiliate of a transmission and distribution utility.

[1999, c. 398, Pt. A, §77 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. **Existing transmission and distribution line improvement costs.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §77 (RP) .]

4. **Interconnection costs.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §77 (RP) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. **Municipal solid waste energy recovery facility.** "Municipal solid waste energy recovery facility" means a small power producer that depends upon municipal solid waste for at least 50% of its energy.

[1999, c. 398, Pt. A, §77 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

7. **Qualifying facility.** "Qualifying facility" means any small power producer or cogenerator as defined in this chapter.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 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.

[1999, c. 398, Pt. A, §77 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

9. **Small power producer.** "Small power producer" means a municipality or person owning or operating a power production facility with a power production capacity that, together with any other facilities located at the same site, does not exceed 80 megawatts of electricity and that 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 transmission and distribution utility, a subsidiary of a transmission and distribution utility or an affiliate of a transmission and distribution utility.

[1999, c. 398, Pt. A, §77 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 769, §A143 (AMD). 1999, c. 398, §A77 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3304. CONTROL AND REGULATION OF GENERATING FACILITIES

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 613, §4 (AMD). 1999, c. 398, §§A104,105 (AFF). 1999, c. 398, §A78 (RP).

§3305. SALE OF ELECTRICITY

1. **Authorized markets for electricity.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §79 (RP) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Interconnections and existing transmission line improvements.**

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §79 (RP) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A79 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3306. TRANSACTIONS

1. **Rate.** The small power producer or cogenerator and the transmission and distribution utility shall determine the rate paid by the transmission and distribution utility for the purchase of electricity as described in this section.

[1999, c. 398, Pt. A, §80 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. **Small power producer or cogenerator and public utility unable to agree.** In the event that the small power producer or cogenerator and the transmission and distribution 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.

[1999, c. 398, Pt. A, §80 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

3. **Competing petitions filed by small power producers.** In the event competing petitions are filed by small power producers or cogenerators that are otherwise equivalent with respect to the standards set forth in former section 3307, and implementing rules adopted by the commission, the commission may give preference to any facility that is fueled primarily by municipal solid waste.

[1999, c. 398, Pt. A, §80 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

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 transmission and distribution utility.

[1999, c. 398, Pt. A, §80 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

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 transmission and distribution utility for commission intercession.

[1999, c. 398, Pt. A, §80 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

6. **Filing fee.** The petitioner or petitioners requesting 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. The commission shall rule on the request for waiver within 30 days. Filing fees paid as required in this subsection must 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 must be returned to the petitioner or petitioners.

[1999, c. 398, Pt. A, §80 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §A7 (AMD). 1999, c. 398, §A80 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3307. REVIEW OF RATES

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §§A104,105 (AFF). 1999, c. 398, §A81 (RP).

§3308. ENERGY AND CAPACITY PURCHASES FROM SMALL POWER PRODUCERS AND COGENERATORS BY TRANSMISSION AND DISTRIBUTION UTILITIES 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 a transmission and distribution utility that 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 former 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 transmission and distribution 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 transmission and distribution utility is obligated to continue to purchase without interruption from the small power producer or cogenerator whose contract was rejected any energy or energy and capacity that 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 must be the avoided cost determined for the period as if the determination were being made on the date on which the transmission and distribution utility and small power producer or cogenerator entered into the rejected contract.

[1999, c. 398, Pt. A, §82 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

2. **Nature of capacity contract.** If a small power producer or cogenerator contracts to provide a transmission and distribution utility with electric generating capacity, that portion of the power purchase contract that requires the delivery of the capacity may not be executory in nature under the laws of the State once the small power producer or cogenerator has first made available to the transmission and distribution utility the electric generating capacity. This section may not be interpreted to mean that any other sections of such a contract are executory in nature.

[1999, c. 398, Pt. A, §82 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

3. **Commission approval of rates of reorganized utility.** At any time that the commission is requested or required to approve rates for a transmission and distribution utility that 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 a transmission and distribution utility that was a party to such a rejected contract, it may not grant any rate approval unless the transmission and distribution 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.

[1999, c. 398, Pt. A, §82 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

Any person who is obligated to comply with this section may not be permitted to operate as a transmission and distribution utility in the State, unless it is in full compliance with this section. [1999, c. 398, Pt. A, §82 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A82 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3309. PERFORMANCE OF CONTRACTS; COMMERCIALLY REASONABLE BUSINESS PRACTICES

In the performance or enforcement of any contract for the purchase of energy resources by a transmission and distribution utility, all parties shall act in good faith and observe reasonable commercial standards of fair dealing. Conformance to this standard does not constitute imprudent utility behavior. [1999, c. 398, Pt. A, §83 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1993, c. 712, §7 (NEW). 1999, c. 398, §A83 (AMD). 1999, c. 398, §§A104,105 (AFF).

Chapter 34: THE MAINE WIND ENERGY ACT

§3401. SHORT TITLE

This chapter may be known and cited as "the Maine Wind Energy Act." [2003, c. 665, §3 (NEW).]

SECTION HISTORY
2003, c. 665, §3 (NEW).

§3402. LEGISLATIVE FINDINGS

The Legislature finds that it is in the public interest to explore opportunities for and encourage the development, where appropriate, of wind energy production in the State in a manner that is consistent with all state and federal environmental standards and that achieves reliable, cost-effective, sustainable energy production on those sites in the State that will attract investment and permit the development of viable wind energy projects. The Legislature finds that the development of the wind energy potential in the State needs to be integrated into the existing energy supply and transmission systems in a way that achieves system reliability, total capital cost-effectiveness and optimum short-term and long-term benefits to Maine people. The Legislature finds it is in the public interest to encourage the construction and operation of community wind power generation facilities in the State. For the purposes of this chapter, "community wind power generation facility" means an electricity-generating facility at any one site with instantaneous generating nameplate capacity of not more than 10 megawatts that is powered entirely by wind energy. The Legislature also finds it is in the public interest to encourage wind energy research and the development of wind generation equipment manufacturing facilities in the State. [2007, c. 693, §4 (AMD); 2007, c. 693, §37 (AFF).]

1. **Contribution of wind energy development.** The Legislature finds and declares that the wind energy resources of the State constitute a valuable indigenous and renewable energy resource and that wind energy development, which is unique in its benefits to and impacts on the natural environment, makes a significant contribution to the general welfare of the citizens of the State for the following reasons:

A. Wind energy is an economically feasible, large-scale energy resource that does not rely on fossil fuel combustion or nuclear fission, thereby displacing electrical energy provided by these other sources and avoiding air pollution, waste disposal problems and hazards to human health from emissions, waste and by-products; consequently, wind energy development may address energy needs while making a significant contribution to achievement of the State's renewable energy and greenhouse gas reduction objectives, including those in Title 38, section 576; [2009, c. 615, Pt. A, §2 (AMD).]

B. At present and increasingly in the future with anticipated technological advances that promise to increase the number of places in the State where grid-scale wind energy development is economically viable, and changes in the electrical power market that favor clean power sources, wind energy may

be used to displace electrical power that is generated from fossil fuel combustion and thus reduce our citizens' dependence on imported oil and natural gas and improve environmental quality and state and regional energy security; and [2009, c. 615, Pt. A, §2 (AMD).]

C. Renewable energy resources within the State and in the Gulf of Maine have the potential, over time, to provide enough energy for the State's homeowners and businesses to reduce their use of oil and liquid petroleum-fueled heating systems by transition to alternative, renewable energy-based heating systems and to reduce their use of petroleum-fueled motor vehicles by transition to electric-powered motor vehicles. Electrification of heating and transportation has potential to increase the State's energy independence, to help stabilize total residential and commercial energy bills and to reduce greenhouse gas emissions. [2009, c. 615, Pt. A, §2 (NEW).]

[2009, c. 615, Pt. A, §2 (AMD) .]

2. **Need for modification of regulatory process for siting wind energy developments.** The Legislature finds that it is in the public interest to reduce the potential for controversy regarding siting of grid-scale wind energy development by expediting development in places where it is most compatible with existing patterns of development and resource values when considered broadly at the landscape level. Accordingly, the Legislature finds that certain aspects of the State's regulatory process for determining the environmental acceptability of wind energy developments should be modified to encourage the siting of wind energy developments in these areas. Such changes include, but are not limited to:

A. Making wind energy development a permitted use within certain parts of the State's unorganized and deorganized areas; [2007, c. 661, Pt. A, §5 (NEW).]

B. Refining certain procedures of the Department of Environmental Protection and the Maine Land Use Planning Commission; and [2007, c. 661, Pt. A, §5 (NEW); 2011, c. 682, §38 (REV).]

C. Because the Legislature recognizes that wind turbines are potentially a highly visible feature of the landscape that will have an impact on views, judging the effects of wind energy development on scenic character and existing uses related to scenic character based on whether the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to the scenic character of that resource. [2007, c. 661, Pt. A, §5 (NEW).]

The Legislature further finds that, while wind energy may be developed at many sites with minimal site-specific environmental impacts, wind energy developments may have, in addition to their beneficial environmental effects and potential scenic impacts, specific adverse environmental effects that must be addressed in state permitting decisions pursuant to approval criteria tailored to address issues presented by wind energy development. Nothing in this section is meant to diminish the importance of addressing as appropriate site-specific impacts on natural values, including, but not limited to, wildlife, wildlife habitats and other ecological values.

The Legislature further finds that development of the State's wind energy resources should be undertaken in a manner that ensures significant tangible benefits to the people of the State, including, but not limited to, residents of communities that host wind energy facilities; and that the State should seek to host a substantial amount of wind energy as part of a strategy to reduce greenhouse gas emissions and meet the goals established in the state climate action plan developed pursuant to Title 38, section 577.

[2007, c. 661, Pt. A, §5 (NEW); 2011, c. 682, §38 (REV) .]

SECTION HISTORY
2003, c. 665, §3 (NEW). 2005, c. 646, §3 (AMD). 2007, c. 661, Pt. A, §§4, 5 (AMD). 2007, c. 693, §4 (AMD). 2007, c. 693, §37 (AFF). 2009, c. 615, Pt. A, §2 (AMD). 2011, c. 682, §38 (REV).

§3403. SPECIFIC MEASURES TO SUPPORT WIND ENERGY

1. **Monitoring.** The commission shall monitor electricity markets and sale opportunities physically accessible to wind power installations in this State to determine whether such markets and opportunities are available for the sale of wind energy in accordance with federal and state law.

[2003, c. 665, §3 (NEW) .]

2. **Legal action.** After consultation with the Attorney General, the commission may initiate regulatory and other legal action to protect access to markets by wind power facilities located in the State.

[2003, c. 665, §3 (NEW) .]

3. **Certification.** The commission may certify a person as a community wind power generator if the commission determines that such a certification would support construction of a community wind power generation facility in this State and that the person will be the owner of that facility. The person must demonstrate to the commission that the construction of the community wind power generation facility would not be likely to occur absent the availability of the benefits under Title 36, section 1760, subsection 89 and Title 36, sections 2017 and 5219-CC. The commission may not certify a person as a community wind power generator with respect to a community wind power generation facility for which the person commenced the site permit application process prior to August 23, 2006.

[2007, c. 693, §5 (NEW); 2007, c. 693, §37 (AFF) .]

SECTION HISTORY
2003, c. 665, §3 (NEW). 2007, c. 693, §5 (AMD). 2007, c. 693, §37 (AFF).

§3404. DETERMINATION OF PUBLIC POLICY; STATE WIND ENERGY GENERATION GOALS

1. **Encouragement of wind energy-related development.** It is the policy of the State in furtherance of the goals established in subsection 2, to encourage the attraction of appropriately sited development related to wind energy, including any additional transmission and other energy infrastructure needed to transport additional offshore wind energy to market, consistent with all state environmental standards; the permitting and financing of wind energy projects; and the siting, permitting, financing and construction of wind energy research and manufacturing facilities.

[2009, c. 615, Pt. A, §3 (AMD) .]

2. **State wind energy generation goals.** The goals for wind energy development in the State are that there be:

A. At least 2,000 megawatts of installed capacity by 2015; [2009, c. 615, Pt. A, §4 (AMD).]

B. At least 3,000 megawatts of installed capacity by 2020, including 300 megawatts or more from generation facilities located in coastal waters, as defined by Title 12, section 6001, subsection 6, or in proximate federal waters; and [2009, c. 615, Pt. A, §4 (AMD).]

C. At least 8,000 megawatts of installed capacity by 2030, including 5,000 megawatts from generation facilities located in coastal waters, as defined by Title 12, section 6001, subsection 6, or in proximate federal waters. [2009, c. 615, Pt. A, §4 (NEW).]

[2009, c. 615, Pt. A, §4 (AMD) .]

SECTION HISTORY
2005, c. 646, §4 (NEW). 2007, c. 661, Pt. A, §6 (RPR). 2009, c. 615, Pt. A, §§3, 4 (AMD).

Chapter 34-A: EXPEDITED PERMITTING OF GRID-SCALE WIND ENERGY DEVELOPMENT

§3451. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 661, Pt. A, §7 (NEW).]

1. **Associated facilities.** "Associated facilities" means elements of a wind energy development other than its generating facilities that are necessary to the proper operation and maintenance of the wind energy development, including but not limited to buildings, access roads, generator lead lines and substations.

[2007, c. 661, Pt. A, §7 (NEW) .]

1-A. **Best practical mitigation.** "Best practical mitigation" means methods or technologies used during construction or operation of a wind energy development that control or reduce to the lowest feasible level impacts to scenic or wildlife resources in accordance with rules adopted by the department. "Best practical mitigation" may include, but is not limited to, turbine and blade coloration to reduce visual impacts, aircraft detection technologies to reduce the need for aircraft hazard warning lighting, technologies to detect at-risk animal populations and modification or curtailment of operations during specified times or conditions to reduce bird and bat mortality.

[2013, c. 325, §1 (NEW) .]

1-B. **Community benefit agreement.** "Community benefit agreement" means an agreement between the developer of an expedited wind energy development and a host community that involves payments by the developer to the host community to be utilized for public purposes, including, but not limited to, for property tax reductions, economic development projects, land and natural resource conservation, tourism promotion or reduction of energy costs, and that specifies in writing:

A. The value of any lump sum payments made by the developer to the host community; and [2009, c. 642, Pt. A, §2 (NEW).]

B. Any payment schedule and associated terms and conditions for payments to be made over time by the developer to the host community. [2009, c. 642, Pt. A, §2 (NEW).]

[2009, c. 642, Pt. A, §2 (NEW) .]

1-C. **Community benefits package.** "Community benefits package" means the aggregate collection of tangible benefits resulting from any of the following:

A. Payments, not including property tax payments, to the host community or communities, including, but not limited to, payments under community benefit agreements; [2009, c. 642, Pt. A, §3 (NEW).]

B. Payments that reduce energy costs in the host community or communities; and [2009, c. 642, Pt. A, §3 (NEW).]

C. Any donations for land or natural resource conservation. [2009, c. 642, Pt. A, §3 (NEW).]

[2009, c. 642, Pt. A, §3 (NEW) .]

2. **Department.** "Department" means the Department of Environmental Protection.

[2007, c. 661, Pt. A, §7 (NEW) .]

3. **Expedited permitting area.** "Expedited permitting area" means:

A. The organized areas of the State in their entirety, but not including waters subject to tidal influence, so that the edge of the area that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service defines the boundary of the expedited permitting area on lands abutting waters subject to tidal influence; and [2007, c. 661, Pt. A, §7 (NEW).]

B. Specific places within the State's unorganized and deorganized areas, as defined by Title 12, section 682, subsection 1, that are identified by rule by the Maine Land Use Planning Commission in accordance with this chapter. [2007, c. 661, Pt. A, §7 (NEW); 2011, c. 682, §38 (REV).]

[2007, c. 661, Pt. A, §7 (NEW); 2011, c. 682, §38 (REV) .]

4. **Expedited wind energy development.** "Expedited wind energy development" means a grid-scale wind energy development that is proposed for location within an expedited permitting area.

[2007, c. 661, Pt. A, §7 (NEW) .]

5. **Generating facilities.** "Generating facilities" means wind turbines and towers and transmission lines, not including generator lead lines, that are immediately associated with the wind turbines.

[2007, c. 661, Pt. A, §7 (NEW) .]

6. **Grid-scale wind energy development.** "Grid-scale wind energy development" means a wind energy development that is of a size that would qualify as a development of state or regional significance that may substantially affect the environment as defined under Title 38, section 482, subsection 2, paragraph A or paragraph C.

[2007, c. 661, Pt. A, §7 (NEW) .]

7. **Host community.** "Host community" means:

A. The following entities:

(1) A municipality or plantation in which the generating facilities of an expedited wind energy development are located;

(2) If the generating facilities of an expedited wind energy development are located in a township, the county in which those facilities are located;

(3) If the generating facilities of an expedited wind energy development are located on Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6, the Passamaquoddy Tribe, if the Passamaquoddy Tribe notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development;

(4) If the generating facilities of an expedited wind energy development are located on Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9, the Penobscot Nation if the Penobscot Nation notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development; or

(5) If the generating facilities of an expedited wind energy development are located on Qualifying Band Trust Land, the Aroostook Band of Micmacs, if the Aroostook Band of Micmacs notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development; and [2009, c. 642, Pt. A, §4 (NEW).]

B. When the generating facilities of an expedited wind energy development are located within the State's unorganized or deorganized areas and the developer selects a municipality; plantation; township; Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6; Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9; or Qualifying Band Trust Land proximate to the location of the generating facilities for the purpose of providing specific tangible benefits:

(1) In the case of a municipality or plantation that is selected, the municipality or plantation;

(2) In the case of a township that is selected, the county in which that township is located;

(3) In the case of Passamaquoddy Indian territory that is selected, the Passamaquoddy Tribe if the Passamaquoddy Tribe notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development;

(4) In the case of Penobscot Indian territory that is selected, the Penobscot Nation if the Penobscot Nation notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development; and

(5) In the case of Qualifying Band Trust Land that is selected, the Aroostook Band of Micmacs, if the Aroostook Band of Micmacs notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development. [2009, c. 642, Pt. A, §4 (NEW).]

An expedited wind energy development may have multiple host communities.

[2009, c. 642, Pt. A, §4 (AMD) .]

8. **Primary siting authority.** "Primary siting authority" means:

A. The department, in the case of an expedited wind energy development subject to the department's jurisdiction pursuant to Title 38, chapter 3, subchapter 1, article 6, including, but not limited to, a development subject to the department's jurisdiction pursuant to Title 38, section 488, subsection 9-A; or [2011, c. 682, §26 (AMD).]

B. The Maine Land Use Planning Commission, in the case of a community-based offshore wind energy project as defined in Title 12, section 682, subsection 19 and a wind energy development in the unorganized and deorganized areas as defined in Title 12, section 682, subsection 1 that is not grid-scale wind energy development. [2011, c. 682, §26 (AMD).]

[2011, c. 682, §26 (AMD) .]

8-A. **Qualifying Band Trust Land.** "Qualifying Band Trust Land" means Band Trust Land, as defined in the federal Aroostook Band of Micmacs Settlement Act, Public Law 102-171, 105 Stat. 1143 (1991), over which the Aroostook Band of Micmacs possesses municipal authority with respect to expedited wind energy development. For purposes of this subsection, "municipal authority" means the rights, privileges, powers and immunities of a municipality that are specified in legislation specifically authorizing the exercise of those government powers and that are equivalent to the rights, privileges, powers and immunities possessed by the Penobscot Nation and the Passamaquoddy Tribe with respect to expedited wind energy development within their respective Indian territories pursuant to Title 30, section 6206.

[2009, c. 642, Pt. A, §5 (NEW) .]

9. **Scenic resource of state or national significance.** "Scenic resource of state or national significance" means an area or place owned by the public or to which the public has a legal right of access that is:

A. A national natural landmark, federally designated wilderness area or other comparable outstanding natural and cultural feature, such as the Orono Bog or Meddybemps Heath; [2007, c. 661, Pt. A, §7 (NEW).]

B. A property listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, including, but not limited to, the Rockland Breakwater Light and Fort Knox; [2007, c. 661, Pt. A, §7 (NEW).]

C. A national or state park; [2007, c. 661, Pt. A, §7 (NEW).]

D. A great pond that is:

(1) One of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the "Maine's Finest Lakes" study published by the Executive Department, State Planning Office in October 1989; or

(2) One of the 280 great ponds in the State's unorganized or deorganized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987; [2007, c. 661, Pt. A, §7 (NEW).]

E. A segment of a scenic river or stream identified as having unique or outstanding scenic attributes listed in Appendix G of the "Maine Rivers Study" published by the former Department of Conservation in 1982; [2013, c. 405, Pt. D, §13 (AMD).]

F. A scenic viewpoint located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that the Department of Agriculture, Conservation and Forestry designates by rule adopted in accordance with section 3457; [2007, c. 661, Pt. A, §7 (NEW); 2011, c. 657, Pt. W, §5 (REV).]

G. A scenic turnout constructed by the Department of Transportation pursuant to Title 23, section 954 on a public road that has been designated by the Commissioner of Transportation pursuant to Title 23, section 4206, subsection 1, paragraph G as a scenic highway; or [2007, c. 661, Pt. A, §7 (NEW).]

H. Scenic viewpoints located in the coastal area, as defined by Title 38, section 1802, subsection 1, that are ranked as having state or national significance in terms of scenic quality in:

(1) One of the scenic inventories prepared for and published by the Executive Department, State Planning Office: "Method for Coastal Scenic Landscape Assessment with Field Results for Kittery to Scarborough and Cape Elizabeth to South Thomaston," Dominie, et al., October 1987; "Scenic Inventory Mainland Sites of Penobscot Bay," Dewan and Associates, et al., August 1990; or "Scenic Inventory: Islesboro, Vinalhaven, North Haven and Associated Offshore Islands," Dewan and Associates, June 1992; or

(2) A scenic inventory developed by or prepared for the Executive Department, former State Planning Office or the Department of Agriculture, Conservation and Forestry in accordance with section 3457. [2011, c. 655, Pt. KK, §22 (AMD); 2011, c. 655, Pt. KK, §34 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

[2013, c. 405, Pt. D, §13 (AMD) .]

10. **Tangible benefits.** "Tangible benefits" means environmental or economic improvements or benefits to residents of this State attributable to the construction, operation and maintenance of an expedited wind energy development, including but not limited to: property tax payments resulting from the development; other payments to a host community, including, but not limited to, payments under a community benefit agreement; construction-related employment; local purchase of materials; employment in operations and maintenance; reduced property taxes; reduced electrical rates; land or natural resource conservation; performance of construction, operations and maintenance activities by trained, qualified and licensed workers in accordance with Title 32, chapter 17 and other applicable laws; or other comparable benefits, with particular attention to assurance of such benefits to the host community or communities to the extent practicable and affected neighboring communities.

[2009, c. 642, Pt. A, §6 (AMD) .]

11. **Wind energy development.** "Wind energy development" means a development that uses a windmill or wind turbine to convert wind energy to electrical energy for sale or use by a person other than the generator. A wind energy development includes generating facilities and associated facilities.

[2007, c. 661, Pt. A, §7 (NEW) .]

SECTION HISTORY
2007, c. 661, Pt. A, §7 (NEW). 2009, c. 642, Pt. A, §§2-6 (AMD). 2011, c. 655, Pt. KK, §22 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2011, c. 682, §26 (AMD). 2011, c. 682, §38 (REV). 2013, c. 325, §1 (AMD). 2013, c. 405, Pt. D, §13 (AMD).

§3452. DETERMINATION OF EFFECT ON SCENIC CHARACTER AND RELATED EXISTING USES

1. **Application of standard.** In making findings regarding the effect of an expedited wind energy development on scenic character and existing uses related to scenic character pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484, subsection 3 or section 480-D, the primary siting authority shall determine, in the manner provided in subsection 3, whether the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the scenic resource of state or national significance. Except as otherwise provided in subsection 2, determination that a wind energy development fits harmoniously into the existing natural environment in terms of potential effects on scenic character and existing uses related to scenic character is not required for approval under either Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484, subsection 3.

[2007, c. 661, Pt. A, §7 (NEW) .]

2. **Exception; certain associated facilities.** The primary siting authority shall evaluate the effect of associated facilities of a wind energy development in terms of potential effects on scenic character and existing uses related to scenic character in accordance with Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484, subsection 3, in the manner provided for development other than wind energy development, if the primary siting authority determines that application of the standard in subsection 1 to the development may result in unreasonable adverse effects due to the scope, scale, location or other

characteristics of the associated facilities. An interested party may submit information regarding this determination to the primary siting authority for its consideration. The primary siting authority shall make a determination pursuant to this subsection within 30 days of its acceptance of the application as complete for processing.

[2007, c. 661, Pt. A, §7 (NEW) .]

3. **Evaluation criteria.** In making its determination pursuant to subsection 1, and in determining whether an applicant for an expedited wind energy development must provide a visual impact assessment in accordance with subsection 4, the primary siting authority shall consider:

A. The significance of the potentially affected scenic resource of state or national significance; [2007, c. 661, Pt. A, §7 (NEW).]

B. The existing character of the surrounding area; [2007, c. 661, Pt. A, §7 (NEW).]

C. The expectations of the typical viewer; [2007, c. 661, Pt. A, §7 (NEW).]

D. The expedited wind energy development's purpose and the context of the proposed activity; [2007, c. 661, Pt. A, §7 (NEW).]

E. The extent, nature and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities' presence on the public's continued use and enjoyment of the scenic resource of state or national significance; and [2007, c. 661, Pt. A, §7 (NEW).]

F. The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape. [2007, c. 661, Pt. A, §7 (NEW).]

A finding by the primary siting authority that the development's generating facilities are a highly visible feature in the landscape is not a solely sufficient basis for determination that an expedited wind energy project has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a scenic resource of state or national significance. In making its determination under subsection 1, the primary siting authority shall consider insignificant the effects of portions of the development's generating facilities located more than 8 miles, measured horizontally, from a scenic resource of state or national significance.

[2007, c. 661, Pt. A, §7 (NEW) .]

4. **Visual impact assessment; rebuttable presumption.** An applicant for an expedited wind energy development shall provide the primary siting authority with a visual impact assessment of the development that addresses the evaluation criteria in subsection 3 if the primary siting authority determines such an assessment is necessary in accordance with subsection 3. There is a rebuttable presumption that a visual impact assessment is not required for those portions of the development's generating facilities that are located more than 3 miles, measured horizontally, from a scenic resource of state or national significance. The primary siting authority may require a visual impact assessment for portions of the development's generating facilities located more than 3 miles and up to 8 miles from a scenic resource of state or national significance if it finds there is substantial evidence that a visual impact assessment is needed to determine if there is the potential for significant adverse effects on the scenic resource of state or national significance. Information intended to rebut the presumption must be submitted to the primary siting authority by any interested person within 30 days of acceptance of the application as complete for processing. The primary siting authority shall determine if the presumption is rebutted based on a preponderance of evidence in the record.

[2007, c. 661, Pt. A, §7 (NEW) .]

SECTION HISTORY

2007, c. 661, Pt. A, §7 (NEW).

§3452-A. IMPACT ON BICKNELL'S THRUSH HABITAT; ADVERSE EFFECT

If any portion of the generating facilities or associated facilities of a wind energy development is proposed to be located within a conterminous area of coniferous forest that lies above 2,700 feet in elevation, is at least 25 acres in size and provides suitable habitat for Bicknell's Thrush, Catharsus bicknelli, and in which sightings of Bicknell's Thrush have been documented to occur during the bird's breeding season within the previous 15 years, there is a rebuttable presumption that the development would constitute a significant adverse effect on natural resources for the purposes of Title 38, section 484, subsection 3. The presumption extends to the entire conterminous area of suitable habitat and is not limited to the parts of the area immediately proximate to where Bicknell's Thrush sightings have been documented. [2013, c. 1, §50 (COR).]

SECTION HISTORY
RR 2013, c. 1, §50 (COR). 2013, c. 325, §2 (NEW).

§3453. ADDITIONS TO THE EXPEDITED PERMITTING AREA

The Maine Land Use Planning Commission may, by rule adopted in accordance with Title 5, chapter 375, add a specified place in the State's unorganized or deorganized areas to the expedited permitting area. In order to add a specified place to the expedited permitting area, the Maine Land Use Planning Commission must determine that the proposed addition to the expedited permitting area: [2007, c. 661, Pt. A, §7 (NEW); 2011, c. 682, §38 (REV).]

1. **Geographic extension.** Involves a logical geographic extension of the currently designated expedited permitting area;

[2007, c. 661, Pt. A, §7 (NEW) .]

2. **Meets state goals.** Is important to meeting the state goals for wind energy development established in section 3404; and

[2007, c. 661, Pt. A, §7 (NEW) .]

3. **Principal values and goals.** Would not compromise the principal values and the goals identified in the comprehensive land use plan adopted by the Maine Land Use Planning Commission pursuant to Title 12, section 685-C.

[2007, c. 661, Pt. A, §7 (NEW); 2011, c. 682, §38 (REV) .]

Rules adopted by the Maine Land Use Planning Commission pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 661, Pt. A, §7 (NEW); 2011, c. 682, §38 (REV).]

SECTION HISTORY
2007, c. 661, Pt. A, §7 (NEW). 2011, c. 682, §38 (REV).

§3454. DETERMINATION OF TANGIBLE BENEFITS; REQUIREMENTS

In making findings pursuant to Title 38, section 484, subsection 3, the primary siting authority shall presume that an expedited wind energy development provides energy and emissions-related benefits described in section 3402 and shall make additional findings regarding other tangible benefits provided by

the development. The Department of Labor, the Governor's Office of Policy and Management, the Governor's Energy Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority. [2013, c. 424, Pt. A, §21 (RPR).]

1. **Documentation.** As part of any permit application for an expedited wind energy development, the applicant shall include the following information regarding tangible benefits, except that the applicant may submit the information required under paragraph D as an addendum to the permit application during the period in which the application is pending:

A. Estimated jobs to be created statewide and in the host community or communities, as a result of construction, maintenance and operations of the project; [2009, c. 642, Pt. A, §7 (NEW).]

B. Estimated annual generation of wind energy; [2009, c. 642, Pt. A, §7 (NEW).]

C. Projected property tax payments; [2009, c. 642, Pt. A, §7 (NEW).]

D. A description of the community benefits package, including but not limited to community benefit agreement payments, to be provided in accordance with the requirements of subsection 2; and [2009, c. 642, Pt. A, §7 (NEW).]

E. Any other tangible benefits to be provided by the project. [2009, c. 642, Pt. A, §7 (NEW).]

[2009, c. 642, Pt. A, §7 (NEW) .]

2. **Community benefits package requirement.** Except as provided in subsection 3, to demonstrate that an expedited wind energy development provides significant tangible benefits as required in Title 38, section 484, subsection 10, the applicant for an expedited wind energy development is required to establish a community benefits package valued at no less than $4,000 per year per wind turbine included in the expedited wind energy development, averaged over a 20-year period. This subsection does not affect the property tax obligations of an expedited wind energy development.

[2011, c. 682, §28 (AMD) .]

3. **Community benefits package requirement; exceptions.** The community benefits package requirement under subsection 2:

A. Is waived for any expedited wind energy development that:

(1) Has an installed capacity of less than 20 megawatts; or

(2) Is owned by a nonprofit entity, a public entity or a quasi-public entity; and [2009, c. 642, Pt. A, §7 (NEW).]

B. Does not apply to those turbines included in the development that are located:

(1) In a host community in which the legislative body has voted to waive or reduce the community benefits package requirement;

(2) On Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6, unless the Passamaquoddy Tribe notifies the primary siting authority that it chooses to be considered a host community for the purposes of this chapter with respect to the expedited wind energy development;

(3) On Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9, unless the Penobscot Nation notifies the primary siting authority that it chooses to be considered a host community for the purposes of this chapter with respect to the expedited wind energy development; or

(4) On Qualifying Band Trust Land unless the Aroostook Band of Micmacs notifies the primary siting authority that it chooses to be considered a host community for the purposes of this chapter with respect to the expedited wind energy development.

The community benefits package requirement applies to any turbines of the development that are not exempted under subparagraph (1), (2), (3) or (4). [2009, c. 642, Pt. A, §7 (NEW).]

Nothing in this subsection limits a host community's authority to require an expedited wind energy development to enter into a community benefit agreement and to fulfill its property tax obligations.

[2009, c. 642, Pt. A, §7 (NEW) .]

4. **Community benefit agreement payments to counties.** When generating facilities of an expedited wind energy development are located within an unorganized or deorganized area other than within a plantation, community benefit agreement payments provided to the county as the host community in accordance with this section may be used for projects and programs of public benefit located anywhere within that county.

[2009, c. 642, Pt. A, §7 (NEW) .]

5. **Promoting economic development and resource conservation; assistance to host communities.** To the extent practicable within existing resources, the Department of Economic and Community Development, the Governor's Energy Office and the Governor's Office of Policy and Management shall provide, upon the request of a host community, assistance for the purpose of helping the host community maximize the economic development and resource conservation benefits from tax payments and payments made pursuant to a community benefit agreement or a community benefits package in connection with expedited wind energy developments. As part of this assistance, the department and the Department of Economic and Community Development shall support host communities in identifying additional funding and developing regional economic and natural resource conservation strategies.

[2011, c. 655, Pt. DD, §15 (AMD); 2011, c. 655, Pt. DD, §24 (AFF) .]

SECTION HISTORY
2007, c. 661, Pt. A, §7 (NEW). 2009, c. 642, Pt. A, §7 (AMD). 2011, c. 655, Pt. DD, §§14, 15 (AMD). 2011, c. 655, Pt. DD, §24 (AFF). 2011, c. 682, §§27, 28 (AMD). 2013, c. 424, Pt. A, §21 (AMD).

§3455. DETERMINATION OF PUBLIC SAFETY-RELATED SETBACKS

In making findings pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484, subsection 3 on whether a wind energy development must be constructed with setbacks adequate to protect public safety, the primary siting authority must consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities. The primary siting authority may require submission of this information as part of the application. [2007, c. 661, Pt. A, §7 (NEW).]

SECTION HISTORY
2007, c. 661, Pt. A, §7 (NEW).

§3456. SITING CONSIDERATIONS FOR SMALLER-SCALE WIND ENERGY DEVELOPMENT IN ORGANIZED AREAS

1. **Construction and operation requirements.** A person may not construct or operate a wind energy development, other than a grid-scale wind energy development, without first obtaining a certification from the department that the generating facilities:

A. Will meet the requirements of the noise control rules adopted by the Board of Environmental Protection pursuant to Title 38, chapter 3, subchapter 1, article 6; [2007, c. 661, Pt. A, §7 (NEW).]

B. Will be designed and sited to avoid unreasonable adverse shadow flicker effects; and [2007, c. 661, Pt. A, §7 (NEW).]

C. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities. [2007, c. 661, Pt. A, §7 (NEW).]

A person proposing a wind energy development subject to certification under this section shall apply to the department for certification using an application provided by the department and may not begin construction until the certification is received.

[2011, c. 682, §29 (AMD) .]

2. **Fees; outside review; approval process.** The department may charge a developer an appropriate fee for its review and certification pursuant to this section. Certification may be conditioned on specific requirements, including but not limited to setbacks from residential structures to address noise or safety concerns. The department may use an outside reviewer as provided in Title 38, section 344-A. If no other approval by the department is required for the development, the department shall issue its certification within 185 days of its acceptance of a request for certification as complete pursuant to Title 38, section 344. At the request of an applicant, the department may put the certification review period on hold. If another approval by the department is required for the development, the department shall consolidate its process for certification under this section with that regarding other approvals by the department as provided in the department's rules and may extend the review period as provided in those rules. Notwithstanding any other provision of law, the department's certification pursuant to this section regarding a development that does not otherwise require the department's approval pursuant to this Title is not itself subject to judicial review as final agency action or otherwise, except as an aspect of an appeal of a pertinent municipal land use decision.

[2007, c. 661, Pt. A, §7 (NEW) .]

3. **Enforcement of standards.** Following certification under this section and during construction and operation, the standards in subsection 1 for a wind energy development subject to certification under this section may be enforced by the municipality in which the generating facilities are located at the municipality's discretion pursuant to Title 30-A, section 4452. The department is not responsible for enforcement of this section.

[2007, c. 661, Pt. A, §7 (NEW) .]

4. **Exemption.** Certification under this section is not required for a wind energy development with a generating capacity of less than 100 kilowatts.

[2007, c. 661, Pt. A, §7 (NEW) .]

SECTION HISTORY
2007, c. 661, Pt. A, §7 (NEW). 2011, c. 682, §29 (AMD).

§3457. RULEMAKING; SCENIC VIEWPOINT; SCENIC INVENTORY

1. **Scenic viewpoint.** The Department of Agriculture, Conservation and Forestry shall adopt rules to designate scenic viewpoints located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that have state or national significance from a scenic perspective based on criteria modeled after those used in the "Maine Rivers Study" published by the former

Department of Conservation in 1982 and "Maine Wildlands Lakes Assessment" published by the former Maine Land Use Regulation Commission in June 1987 and consideration of the criteria in section 3452, subsection 3.

[2013, c. 405, Pt. C, §18 (AMD) .]

2. **Scenic inventory.** The Department of Agriculture, Conservation and Forestry, Division of Geology, Natural Areas and Coastal Resources shall adopt rules regarding the methodology for conducting a scenic inventory of scenic resources of state or national significance that are located in the coastal area, as defined by Title 38, section 1802, subsection 1, in a manner comparable to that used for an inventory listed in section 3451, subsection 9, paragraph H, subparagraph (1). The Department of Agriculture, Conservation and Forestry, Division of Geology, Natural Areas and Coastal Resources may contract with an outside entity for the preparation of a scenic inventory conducted pursuant to the methodology developed pursuant to this subsection.

[2013, c. 405, Pt. C, §18 (AMD) .]

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 661, Pt. A, §7 (NEW).]

SECTION HISTORY
2007, c. 661, Pt. A, §7 (NEW). 2011, c. 655, Pt. KK, §23 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2013, c. 405, Pt. C, §18 (AMD).

§3458. JUDICIAL APPEAL; MUNICIPAL PERMITTING DECISION

Any judicial appeal of a municipal decision regarding permitting of an expedited wind energy development that is taken in the manner provided in the Maine Rules of Civil Procedure, Rule 80B must be heard and determined by the Superior Court as expeditiously as possible. [2009, c. 642, Pt. B, §2 (NEW).]

SECTION HISTORY
2009, c. 642, Pt. B, §2 (NEW).

§3459. BEST PRACTICAL MITIGATION

1. **Process.** An application for a grid-scale wind energy development must contain, and the primary siting authority shall require, best practical mitigation for all aspects of construction and operation of generating facilities. In determining best practical mitigation options, the primary siting authority shall consider:

A. The existing state of technology; [2013, c. 325, §3 (NEW).]

B. The effectiveness of available technologies or methods for reducing impacts; and [2013, c. 325, §3 (NEW).]

C. The economic feasibility of the type of mitigation under consideration. [2013, c. 325, §3 (NEW).]

[2013, c. 325, §3 (NEW) .]

2. **Rules.** The department shall adopt rules governing best practical mitigation under this section. Rules adopted under this subsection are major substantive rules as described in Title 5, chapter 375, subchapter 2-A. Any amendments to the rules after final adoption of the major substantive rules are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2013, c. 325, §3 (NEW) .]

SECTION HISTORY
2013, c. 325, §3 (NEW).

Chapter 34-B: THE MAINE SOLAR ENERGY ACT

§3471. SHORT TITLE

This chapter may be known and cited as "the Maine Solar Energy Act." [2013, c. 562, §1 (NEW).]

SECTION HISTORY
2013, c. 562, §1 (NEW).

§3472. LEGISLATIVE FINDINGS

1. **Public interest.** The Legislature finds that it is in the public interest to develop renewable energy resources, including solar energy, in a manner that protects and improves the health and well-being of the citizens and natural environment of the State while also providing economic benefits to communities, ratepayers and the overall economy of the State.

[2013, c. 562, §1 (NEW) .]

2. **Contribution of solar energy development.** The Legislature finds that the solar energy resources of the State constitute a valuable indigenous and renewable energy resource and that solar energy development, which is unique in its benefits to and impacts on the climate and the natural environment, can make a contribution to the general welfare of the citizens of the State for the following reasons:

A. Solar energy is an energy resource that does not rely on fossil fuel combustion and therefore it can displace energy provided by that source and reduce air pollution and greenhouse gas emissions; and [2013, c. 562, §1 (NEW).]

B. There is an inexhaustible supply of solar energy throughout the State that should be used cost-effectively for heat and electricity using current technology. [2013, c. 562, §1 (NEW).]

[2013, c. 562, §1 (NEW) .]

SECTION HISTORY
2013, c. 562, §1 (NEW).

§3473. SPECIFIC MEASURES TO SUPPORT SOLAR ENERGY

1. **Monitoring.** The commission shall monitor, to the extent possible through readily available information, the level of solar energy development in the State in relation to the goals in section 3474, basic trends in solar energy markets and the likely relative costs and benefits for ratepayers from solar energy development, including but not limited to minimizing peak load on transmission and distribution systems and the energy market price of electricity and natural gas during the peak hours.

[2013, c. 562, §1 (NEW) .]

2. **Economic development.** Within existing programs and resources, the State, including the Small Enterprise Growth Program, as established in Title 10, chapter 13; the Maine Technology Institute, as established in Title 5, section 12004-G, subsection 33-D; the Maine Rural Development Authority, as established in Title 5, section 12004-F, subsection 18; the Finance Authority of Maine, as established in Title 10, chapter 110; and the Department of Economic and Community Development, shall seek opportunities to promote investment in solar energy development, generation and manufacturing.

[2013, c. 562, §1 (NEW) .]

SECTION HISTORY
2013, c. 562, §1 (NEW).

§3474. DETERMINATION OF PUBLIC POLICY; STATE SOLAR ENERGY GENERATION GOALS

1. **Encouragement of solar energy-related development.** It is the policy of the State in furtherance of the goals established in subsection 2 to encourage the attraction of appropriately sited development related to solar energy generation, including any additional transmission, distribution and other energy infrastructure needed to transport additional solar energy to market, consistent with all state environmental standards; the permitting and financing of solar energy projects; appropriate utility rate structures; and the siting, permitting, financing and construction of solar energy research and manufacturing facilities for the benefit of all ratepayers.

[2013, c. 562, §1 (NEW) .]

2. **State solar energy generation goals.** When encouraging the development of solar energy generation, the State shall pursue cost-effective developments, policies and programs that advance the following goals:

A. Ensuring that solar electricity generation, along with electricity generation from other renewable energy technologies, meaningfully contributes to the generation capacity of the State through increasing private investment in solar capacity in the State; [2013, c. 562, §1 (NEW).]

B. Ensuring that the production of thermal energy from solar technologies meaningfully contributes to reducing the State's dependence on imported energy sources; [2013, c. 562, §1 (NEW).]

C. Ensuring that the production of electricity from solar energy meaningfully contributes to mitigating more costly transmission and distribution investments otherwise needed for system reliability; [2013, c. 562, §1 (NEW).]

D. Ensuring that solar energy provides energy that benefits all ratepayers regardless of income level; [2013, c. 562, §1 (NEW).]

E. Increasing the number of businesses and residences using solar technology as an energy resource; and [2013, c. 562, §1 (NEW).]

F. Increasing the State's workforce engaged in the manufacturing and installation of solar technology. [2013, c. 562, §1 (NEW).]

[2013, c. 562, §1 (NEW) .]

SECTION HISTORY
2013, c. 562, §1 (NEW).

Chapter 35: CONSUMER-OWNED TRANSMISSION AND DISTRIBUTION UTILITIES

§3501. DEFINITIONS

1. **Consumer-owned transmission and distribution utility.** For the purposes of this chapter, "consumer-owned transmission and distribution utility" means any transmission and distribution utility that is wholly owned by its consumers, including, but not limited to:

A. Any rural electrification cooperative organized under chapter 37; [1987, c. 141, Pt. A, §6 (NEW).]

B. Any electrification cooperative organized on a cooperative plan under the laws of the State; [1987, c. 141, Pt. A, §6 (NEW).]

C. Any municipal or quasi-municipal transmission and distribution utility; [1999, c. 398, Pt. A, §85 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

D. The portion of any municipal or quasi-municipal entity providing transmission and distribution services; and [1999, c. 398, Pt. A, §85 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

E. Any transmission and distribution utility wholly owned by a municipality. [1999, c. 398, Pt. A, §85 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[1999, c. 398, Pt. A, §85 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C9 (AMD). 1999, c. 398, §A85 (AMD). 1999, c. 398, §§A104,105 (AFF). MRSA T.35A ., §3505 (RP).

§3502. PROCEDURES FOR CHANGES IN RATES

Notwithstanding section 310, any consumer-owned transmission and distribution utility 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. [1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

1. **Public hearing.** A consumer-owned transmission and distribution utility that elects to set rates under this section may not increase or decrease any rate, toll or charge without first holding a public hearing at which the Public Advocate and any customer of the consumer-owned transmission and distribution utility may present testimony and may question the officials present regarding the proposed rate change.

[1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. **Notification.** The consumer-owned transmission and distribution utility shall, at least 30 days prior to the hearing, publish a notice of the amount of the proposed rate change, the percent of change for each customer class 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 consumer-owned transmission and distribution utility. In addition, 60 days prior to the hearing, the consumer-owned transmission and distribution utility shall notify the commission and the Public Advocate of its intent to change rates, tolls or charges.

[1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. **Ratepayer notification.** Each consumer-owned transmission and distribution 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 change; [1995, c. 255, §3 (AMD).]

B. The percent of change for each customer class; [1995, c. 255, §3 (AMD).]

C. The customer's right to request information relating to the present and proposed rates; [1987, c. 141, Pt. A, §6 (NEW).]

D. The customer's right to an open and fair hearing and to further hearings before the commission; [1995, c. 255, §3 (AMD).]

E. The availability of assistance from the Public Advocate; [1993, c. 589, §3 (AMD).]

F. The date, time, place and purpose of the hearing; and [1993, c. 589, §4 (AMD).]

G. The customer's right to petition the commission to investigate the proposed rate change, the requirement that signatures on petitions filed pursuant to subsection 8 are invalid unless accompanied by the printed names and addresses of the signers and the fact that the utility will, upon request, provide customers with petition forms that include space for signatures and the printed names and addresses of the signers. [1995, c. 255, §3 (AMD).]

[1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

4. **Customer rights.** At the commencement of each hearing held pursuant to this section, the consumer-owned transmission and distribution utility shall inform those present of customer rights as specified in subsection 3, that the rate change may be investigated by the commission in accordance with subsection 8 and that petitions filed pursuant to subsection 8 must bear the signature, printed name and address of the signer. Upon request, the utility shall provide customers with petition forms that include a place for signatures and the printed names and addresses of the signers.

[1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

5. **Supporting materials.** The consumer-owned transmission and distribution utility shall file a copy of all materials supporting the proposed rate change with the commission and the Public Advocate, at least 30 days prior to the hearing. A copy of all material supporting the proposed rate change must be made available to customers for examination at the offices of the consumer-owned transmission and distribution utility for at least 30 days prior to the hearing. The consumer-owned transmission and distribution utility shall promptly provide any relevant additional material or information requested by a customer or by the commission or by the Public Advocate.

[1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

6. **Filing changed rates.** The consumer-owned transmission and distribution 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 transmission and distribution utility to correct any mathematical or clerical errors.

[1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

7. **Effective date of rate change.** Subject to the notice and waiver requirements of section 307, consumer-owned transmission and distribution 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.

[1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

8. **Authority to investigate rate changes.** If, within 30 days of the public hearing, 10% of the customers of the consumer-owned transmission and distribution 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.

[1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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 exceeds 10% of the customers indicated on the consumer-owned transmission and distribution 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 utility of the suspension.

[1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

10. **Transmission and distribution utility may challenge petitions.** A consumer-owned transmission and distribution utility has 10 days from the receipt of notice to notify the commission and the lead petitioner whether it intends to contest any aspect of the validity of the petitions, after which it loses that right. If the utility intends to challenge the validity of individual signatures on the petitions, it shall identify, in its notice to the commission and lead petitioner, the specific signatures it is challenging and state the grounds for challenging each signature it believes is invalid. When the utility files its notice of intent to challenge the validity of the petitions, the utility shall provide the commission and the lead petitioner with a list of its customers. If the utility notifies the commission in a timely fashion that it wishes to contest the validity of the petitions, the commission shall set the matter for hearing. It shall hold the hearing and issue its decision on the validity of the petitions within 30 days of notification by the 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 one adult residing in a household where the utility's transmission and distribution service is provided and, in the case of all other accounts where the utility's transmission and distribution service is provided, a corporate officer, a partner or a proprietor. No more than one person may sign on behalf of an account. A person may not sign on behalf of more than one account unless the person is a customer at each account.

A signature on a petition filed pursuant to subsection 8 is valid only if accompanied by the printed name and address of the signer. If a petition filed pursuant to subsection 8 bears a sufficient total number of signatures but an insufficient number of printed names and addresses of the signers, the lead petitioner has 7 days from

receipt of notice of the utility's challenge to cure the invalidity. If the utility's only challenge to a petition relates to the absence of printed names or addresses of the signers of the petition and the lead petitioner cures the invalidity as provided in this subsection, the commission is not required to hold a hearing under this subsection.

[1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

11. **Review of rates under section 310.** Nothing in this section prohibits a consumer-owned transmission and distribution utility from petitioning the commission for review pursuant to section 310 in the first instance.

[1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

12. **Frequency of rate increases.** A consumer-owned transmission and distribution utility may not institute a general increase in its rates under this section within one year of its most recent general increase in rates pursuant to this section. For the purposes of this section, a "general increase in rates" means any change in the rates, tolls and charges of a consumer-owned transmission and distribution utility, the effect of which is to increase the annual operating revenues of a consumer-owned transmission and distribution utility by more than 1%.

[1999, c. 398, Pt. A, §86 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

13. **Penalty.** If, upon the filing of a rate change 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.

[1995, c. 255, §6 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 159, §§4-6 (AMD). 1993, c. 512, §§1,2 (AMD). 1993, c. 589, §§3-7 (AMD). 1995, c. 255, §§1-6 (AMD). 1999, c. 398, §A86 (AMD). 1999, c. 398, §§A104,105 (AFF). MRSA T.35A ., §3505 (RP).

§3503. RATES FOR CONSUMER-OWNED TRANSMISSION AND DISTRIBUTION 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 transmission and distribution utility, the rate, toll or charge made, exacted, demanded or collected by the consumer-owned transmission and distribution utility is governed by this section.

[1999, c. 398, Pt. A, §87 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. **Definition.** As used in this section, the term "governing body" means the governing body of a consumer-owned transmission and distribution utility.

[1999, c. 398, Pt. A, §87 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. **Just and reasonable rates.** The governing body shall establish and file rates, tolls and charges that are just and reasonable and that provide revenue as may be required for the consumer-owned transmission and distribution utility to perform its public utility service and to attract necessary capital on just and reasonable terms.

[1999, c. 398, Pt. A, §87 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

4. **Nondiscriminatory rates.** The governing body shall establish and file rates that are nondiscriminatory and that are applied on a nondiscriminatory basis.

[1999, c. 398, Pt. A, §87 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

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 transmission and distribution system and to provide for normal renewals and replacements; [1999, c. 398, Pt. A, §87 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

B. To provide for the payment of the interest on the indebtedness created or assumed by the utility; [1987, c. 141, Pt. A, §6 (NEW).]

C. For consumer-owned transmission and distribution 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 must be turned into a sinking fund and kept to provide for the extinguishment of term indebtedness. The money set aside in this sinking fund and all interest accrued to this fund must 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, 1/2 of which may be used for capital purposes, to reflect up to a 25% addition to yearly revenues over the amount required to operate the utility, not including purchased power supply costs, if any. Any surplus in excess of this 25% must be used to offset future revenue requirements in the setting of rates. Any interest generated on these funds must be deposited into the contingency reserve fund. The balance in the contingency reserve fund at the close of the utility's fiscal year may not exceed 25% of the yearly revenues over the amount required to operate the utility, not including purchased power supply costs, if any; and [1999, c. 398, Pt. A, §87 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

D. For rural electrification cooperatives supplying or authorized to supply energy, to provide for debt service coverage by providing rates to reflect an additional amount no more than the amount of yearly long-term interest payments. The total amount of equity may not exceed the level of equity required by the lender and in no case may exceed 40% of the rural electrification cooperative's total assets minus total reserves as shown on the cooperative's annual report to the commission submitted pursuant to section 504, subsection 2. Any surplus in excess must be used to offset future revenue requirements in the setting of rates. [1993, c. 512, §3 (AMD).]

The limitations set out in this subsection apply only in the case of rates established pursuant to this section and do not limit the discretion of the commission in setting rates under any other section.

[1999, c. 398, Pt. A, §87 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

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 that 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.

[1999, c. 398, Pt. A, §87 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1993, c. 512, §3 (AMD). 1999, c. 102, §1 (AMD). 1999, c. 398, §A87 (AMD). 1999, c. 398, §§A104,105 (AFF). MRSA T.35A ., §3505 (RP).

§3504. TREATMENT OF CERTAIN SMALL CONSUMER-OWNED TRANSMISSION AND DISTRIBUTION UTILITIES

1. **Exemption.** Upon request of a consumer-owned transmission and distribution utility of not more than 150 customers, the commission may exempt the utility from any of the requirements of any commission rules and this Title, with the exception of sections 3502 and 3503.

[1999, c. 398, Pt. A, §88 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. **Rule-making considerations.** The commission shall take into account the form of governance of consumer-owned transmission and distribution utilities when promulgating rules and shall state in any notice of proposed rulemaking relating to those utilities what consideration has been given to the ability of those utilities to regulate matters covered under their own authority and, in promulgating those rules, may not impose unreasonable requirements on consumer-owned transmission and distribution utilities.

[1999, c. 398, Pt. A, §88 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 101, (RPR). 1999, c. 398, §A88 (AMD). 1999, c. 398, §§A104,105 (AFF). MRSA T.35A ., §3505 (RP).

§3505. SUNSET PROVISION

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 571, (AMD). 1991, c. 651, (RP). MRSA T.35A ., §3505 (RP).

Chapter 36: COMMUNITY-BASED RENEWABLE ENERGY

§3601. SHORT TITLE

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15 by T. 35-A, §3609; PL 2009, c. 329, Pt. A, §4 (new))

This chapter may be known and cited as "the Community-based Renewable Energy Act." [2009, c. 329, Pt. A, §4 (NEW).]

SECTION HISTORY
2009, c. 329, Pt. A, §4 (NEW).

§3602. DEFINITIONS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15 by T. 35-A, §3609; PL 2009, c. 329, Pt. A, §4 (new))

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 329, Pt. A, §4 (NEW).]

1. **Community-based renewable energy project.** "Community-based renewable energy project" means a locally owned electricity generating facility that generates electricity from an eligible renewable resource.

[2009, c. 329, Pt. A, §4 (NEW) .]

2. **Eligible renewable resource.** "Eligible renewable resource" means a renewable capacity resource as defined in section 3210, subsection 2, paragraph B-3.

[2009, c. 542, §8 (AMD) .]

3. **Locally owned electricity generating facility.** "Locally owned electricity generating facility" means an electricity generating facility at least 51% of which is owned by one or more qualifying local owners.

[2009, c. 329, Pt. A, §4 (NEW) .]

4. **Program participant.** "Program participant" means a community-based renewable energy project that is participating in the community-based renewable energy pilot program established in section 3603.

[2009, c. 329, Pt. A, §4 (NEW) .]

5. **Qualifying local owner.** "Qualifying local owner" means a person or entity that is:

A. An individual who is a resident of the State; [2009, c. 329, Pt. A, §4 (NEW).]

B. A political subdivision of the State, including, but not limited to, a county, municipality, quasi-municipal corporation or district as defined in Title 30-A, section 2351, school administrative unit as defined in Title 20-A, section 1, public or private institution of higher education, regional council of governments or any other local or regional governmental organization, including, but not limited to, a board, commission or association; [2009, c. 329, Pt. A, §4 (NEW).]

C. A department, agency or instrumentality of the State; [2009, c. 329, Pt. A, §4 (NEW).]

D. A federally recognized Indian tribe located in the State; [2009, c. 329, Pt. A, §4 (NEW).]

E. A nonprofit corporation, organized under the laws of the State, including a unit owners association organized under Title 33, section 1603-101; or [2009, c. 329, Pt. A, §4 (NEW).]

F. A business corporation, organized under the laws of the State, at least 51% of which is owned by one or more residents of the State. [2009, c. 329, Pt. A, §4 (NEW).]

[2009, c. 329, Pt. A, §4 (NEW) .]

SECTION HISTORY
2009, c. 329, Pt. A, §4 (NEW). 2009, c. 542, §8 (AMD).

§3603. COMMUNITY-BASED RENEWABLE ENERGY PILOT PROGRAM

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15 by T. 35-A, §3609; PL 2009, c. 329, Pt. A, §4 (new))

1. **Program established.** The community-based renewable energy pilot program, referred to in this section as "the program," is established to encourage the sustainable development of community-based renewable energy in the State. The program is administered by the commission.

[2009, c. 329, Pt. A, §4 (NEW) .]

2. **Program scope; limits on generating capacity.** The commission shall limit participation in the program in accordance with this subsection.

A. The installed generating capacity of a program participant may not exceed 10 megawatts. [2009, c. 329, Pt. A, §4 (NEW).]

B. The total installed generating capacity of all program participants combined may not exceed 50 megawatts. [2009, c. 329, Pt. A, §4 (NEW).]

C. [2013, c. 454, §3 (RP).]

D. Of the 50-megawatt limit on total generating capacity under paragraph B, 10 megawatts must be reserved at the outset of the program for program participants that:

(1) Have an installed generating capacity of less than 100 kilowatts; or

(2) Are located in the service territory of a consumer-owned transmission and distribution utility.

The commission may modify the amount of generating capacity reserved under this paragraph based on program experience. [2009, c. 329, Pt. A, §4 (NEW).]

E. The total installed generating capacity of program participants that receive the renewable energy credit multiplier incentive under section 3605 may not exceed 10 megawatts. [2009, c. 329, Pt. A, §4 (NEW).]

[2013, c. 454, §3 (AMD) .]

3. **Program eligibility criteria.** To be eligible to participate in the program, a community-based renewable energy project must:

A. Provide documentation of a resolution of support passed by the municipal legislative body or by the municipal officers, if the municipal legislative body has delegated this authority to the municipal officers, of the municipality in which the community-based renewable energy project is proposed to be located, except that any project that is proposed to be located wholly in an unorganized or deorganized area of the State or that has a generating capacity of less than 100 kilowatts is exempt from the requirement set forth in this paragraph; [2009, c. 565, §5 (AMD).]

B. In the case of a community-based renewable energy project proposed to be located on the tribal land or territory of a federally recognized Indian tribe in this State, including any land owned by the tribe or held in trust by the United States for the tribe, provide documentation that the tribe supports the community-based renewable energy project; [2009, c. 329, Pt. A, §4 (NEW).]

C. Be connected to the electric grid of this State; [2009, c. 329, Pt. A, §4 (NEW).]

D. Have an in-service date after September 1, 2009; and [2009, c. 329, Pt. A, §4 (NEW).]

E. Satisfy the limits on generating capacity established in subsection 2. [2009, c. 329, Pt. A, §4 (NEW).]

The commission shall prescribe an application form or procedure that must be used to apply to the program under this chapter. The application form or procedure must include any information that the commission determines necessary for the purpose of administering the program. The commission shall, within 30 days of receipt of a completed application, determine whether a community-based renewable energy project qualifies to participate in the program and respond in writing.

[2009, c. 565, §5 (AMD) .]

4. **Program incentives.** Subject to the requirements of subsection 2, a program participant may elect one of the following program incentives:

A. A long-term contract for community-based renewable energy pursuant to section 3604; or [2009, c. 329, Pt. A, §4 (NEW).]

B. The renewable energy credit multiplier pursuant to section 3605. [2009, c. 329, Pt. A, §4 (NEW).]

[2009, c. 329, Pt. A, §4 (NEW) .]

SECTION HISTORY
2009, c. 329, Pt. A, §4 (NEW). 2009, c. 565, §5 (AMD). 2013, c. 454, §3 (AMD).

§3604. LONG-TERM CONTRACTS FOR COMMUNITY-BASED RENEWABLE ENERGY

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15 by T. 35-A, §3609; PL 2009, c. 329, Pt. A, §4 (new))

Long-term contracts with program participants who elect the long-term contract for community-based renewable energy pursuant to section 3603, subsection 4, paragraph A are governed by this section. [2009, c. 329, Pt. A, §4 (NEW).]

1. **Investor-owned transmission and distribution utilities; required participation.** Notwithstanding section 3204, the commission may direct investor-owned transmission and distribution utilities to enter into long-term contracts with program participants located within the service territory of the utility for energy, capacity resources or renewable energy credits. The commission may direct investor-owned transmission and distribution utilities to enter into contracts under this subsection only as agents for their customers and only in accordance with this section. An investor-owned transmission and distribution utility shall sell energy, capacity resources or renewable energy credits purchased pursuant to this subsection into the wholesale electricity market or take other action relative to such energy, capacity resources or renewable energy credits as directed by the commission.

[2009, c. 329, Pt. A, §4 (NEW) .]

2. **Consumer-owned transmission and distribution utilities; voluntary participation.** A consumer-owned transmission and distribution utility may, at the option of the utility, enter into long-term contracts with program participants located within the service territory of the utility for energy, capacity resources or renewable energy credits. Consumer-owned transmission and distribution utilities may enter into contracts under this subsection only as agents for their customers and only in accordance with this section.

[2009, c. 329, Pt. A, §4 (NEW) .]

3. **Sale of energy; contract procedures.** Energy, capacity resources or renewable energy credits contracted in long-term contracts pursuant to this section may be sold into the wholesale electricity market in conjunction with solicitations for standard-offer supply bids under section 3212 or solicitations for green power offer bids under section 3212-A. To the greatest extent possible, the commission shall develop procedures for long-term contracts for transmission and distribution utilities under this section having the same legal and financial effect as the procedures used for standard-offer service pursuant to section 3212 for transmission and distribution utilities.

[2009, c. 329, Pt. A, §4 (NEW) .]

4. **Contract term.** A contract entered into pursuant to this section may not be for more than 20 years.

[2009, c. 329, Pt. A, §4 (NEW) .]

5. **Contract pricing; cost containment.** The commission shall ensure that in any contract entered into pursuant to this section:

A. The average price per kilowatt-hour within each contract year does not exceed 10¢; and [2009, c. 329, Pt. A, §4 (NEW).]

B. The cost of the contract does not exceed the cost of the project plus a reasonable rate of return on investment as determined by the commission. [2009, c. 329, Pt. A, §4 (NEW).]

[2009, c. 329, Pt. A, §4 (NEW) .]

6. **Competitive solicitation process and contract negotiation; large generators.** For program participants with a generating capacity of one megawatt or more, the commission shall, in accordance with this subsection, conduct competitive solicitations for long-term contracts. The commission shall require that bids include full project cost disclosure. Following a review of bids received, the commission may negotiate with one or more potential suppliers. The commission shall negotiate contracts that are commercially reasonable and that commit all parties to commercially reasonable behavior. In selecting program participants for contracting pursuant to this subsection, the commission shall select program participants that are competitive and the lowest priced when compared to other available bids of the same or similar contract duration or terms.

[2009, c. 329, Pt. A, §4 (NEW) .]

7. **Contract administration; small generators.** For program participants with a generating capacity of less than one megawatt, the commission shall administer long-term contracts at prices established by the commission by rule. The commission shall, at a minimum, establish prices for energy generated by the following renewable resources:

A. Wind power installations; [2009, c. 329, Pt. A, §4 (NEW).]

B. Solar arrays and installations; and [2009, c. 329, Pt. A, §4 (NEW).]

C. Any other renewable resource upon request of one or more community-based renewable energy generators that use that resource. [2009, c. 329, Pt. A, §4 (NEW).]

The commission shall establish prices under this subsection based on an analysis of reasonable costs and may establish different prices for different resources or technologies and different prices by time of generation in accordance with that analysis.

[2009, c. 329, Pt. A, §4 (NEW) .]

8. **Cost and benefit allocation.** The commission shall ensure that all costs and benefits associated with contracts involving investor-owned transmission and distribution utilities entered into under this section are allocated to electricity consumers in accordance with section 3210-F.

[2013, c. 454, §4 (RPR) .]

9. **Contract payments.** Contracts for capacity and related energy entered into pursuant to this section must provide that payments will be made only after contracted amounts of energy have been provided.

[2009, c. 329, Pt. A, §4 (NEW) .]

10. **Ratepayer protection.** The commission shall ensure that mechanisms are established to provide protections for ratepayers over the term of contracts entered into pursuant to this section.

[2009, c. 329, Pt. A, §4 (NEW) .]

SECTION HISTORY
2009, c. 329, Pt. A, §4 (NEW). 2013, c. 454, §4 (AMD).

§3605. RENEWABLE ENERGY CREDIT MULTIPLIER

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15 by T. 35-A, §3609; PL 2009, c. 329, Pt. A, §4 (new))

The renewable energy credit multiplier is governed by this section. The value of a renewable energy credit for electricity generated by a program participant that elects the renewable energy credit multiplier under section 3603, subsection 4, paragraph B is 150% of the amount of the electricity. When a program participant elects the renewable energy credit multiplier, the multiplier must be accounted for when renewable energy credits are used to satisfy the portfolio requirements of section 3210, subsections 3 and 3-A. [2009, c. 329, Pt. A, §4 (NEW).]

SECTION HISTORY
2009, c. 329, Pt. A, §4 (NEW).

§3606. RULES

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15 by T. 35-A, §3609; PL 2009, c. 329, Pt. A, §4 (new))

The commission shall adopt rules to implement this chapter. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 329, Pt. A, §4 (NEW).]

SECTION HISTORY
2009, c. 329, Pt. A, §4 (NEW).

§3607. TRACKING; BIENNIAL REPORT

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15 by T. 35-A, §3609; PL 2009, c. 329, Pt. A, §4 (new))

The commission shall develop and administer a system to register and track the development of community-based renewable energy projects and by January 15, 2011 and biennially by January 15th thereafter shall report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters on the program and the development of community-based renewable energy projects. The report must include, but is not limited to: [2009, c. 329, Pt. A, §4 (NEW).]

1. **Community-based renewable energy development.** Documentation of the progress of community-based renewable energy development, including the number of community-based renewable energy projects in the State, the generating capacity of those projects and the kilowatt-hours of electricity purchased from community-based renewable energy projects; and

[2009, c. 329, Pt. A, §4 (NEW) .]

2. **Program implementation; assessment; recommendations.** Actions taken by the commission to implement the program, an assessment of the effectiveness of the program with respect to encouraging the sustainable development of community-based renewable energy in the State and recommendations, including any necessary implementing legislation, to improve the program.

[2009, c. 329, Pt. A, §4 (NEW) .]

SECTION HISTORY
2009, c. 329, Pt. A, §4 (NEW).

§3608. REGULATORY APPROVALS; USE OF PUBLIC RESOURCES

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15 by T. 35-A, §3609; PL 2009, c. 329, Pt. A, §4 (new))

1. **Regulatory approval.** The development, siting and operation of a community-based renewable energy project is subject to all applicable regulatory reviews and approvals required by governmental entities, including, but not limited to, municipalities and state agencies, pursuant to law, ordinance or rule.

[2009, c. 329, Pt. A, §4 (NEW) .]

2. **Use of publicly owned land, water or facilities.** Nothing in this chapter limits the authority of the State or a political subdivision of the State to use publicly owned land, water or facilities in the development and operation of a community-based renewable energy project or to lease publicly owned land, water or facilities to other qualifying owners for the development and operation of a community-based renewable energy project.

[2009, c. 329, Pt. A, §4 (NEW) .]

SECTION HISTORY
2009, c. 329, Pt. A, §4 (NEW).

§3609. REPEAL; AUTHORITY FOR LEGISLATION

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)
(WHOLE SECTION TEXT REPEALED 12/31/15 by T. 35-A, §3609)

This chapter is repealed December 31, 2015. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may report out legislation regarding this program to the First Regular Session of the 126th Legislature. [2009, c. 329, Pt. A, §4 (NEW).]

SECTION HISTORY
2009, c. 329, Pt. A, §4 (NEW).

Chapter 37: RURAL ELECTRIFICATION COOPERATIVES

Subchapter 1: GENERAL PROVISIONS
HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§3701. SHORT TITLE

This chapter shall be known and may be cited as the "Rural Electrification Cooperative Enabling Act." [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§3703. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following words have the following meanings: [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[2009, c. 1, §24 (COR) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). RR 2009, c. 1, §24 (COR).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§3705. REFUNDS

Revenues of a cooperative for any fiscal year shall be applied as follows: [1987, c. 141, Pt. A, §6 (NEW).]

1. **Expenses.** To defray the expenses of the operation and maintenance of the facilities of the cooperative during the fiscal year;

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Interest and obligations.** To pay interest and principal obligations of the cooperative coming due in the fiscal year;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Reserve for working capital.** To provide a reasonable reserve for working capital; and

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

Subchapter 2: ORGANIZATION HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§3731. INCORPORATORS

Five or more natural persons or 2 or more cooperatives may organize a cooperative in the manner provided in this subchapter. [1987, c. 141, Pt. A, §6 (NEW).]

This section does not apply to a generation and transmission cooperative organized in accordance with subchapter IV. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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; [1987, c. 141, Pt. A, §6 (NEW).]

B. The address of its principal office; [1987, c. 141, Pt. A, §6 (NEW).]

C. The names and addresses of the incorporators; and [1987, c. 141, Pt. A, §6 (NEW).]

D. The names and addresses of its trustees. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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 transmission and distribution service or other services furnished by the cooperative when they are made available through its facilities.

[1999, c. 398, Pt. A, §89 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. **Requirements of membership.** Any member of a cooperative who agrees to use transmission and distribution service ceases to be a member if that member does not use transmission and distribution service supplied by the cooperative within 6 months after it is made available or if transmission and distribution service is not made available by the cooperative within 2 years after the member becomes a member or such lesser period as the bylaws of the cooperative may provide.

[1999, c. 398, Pt. A, §89 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. **Joint membership.** A husband and wife may hold a joint membership in a cooperative.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Membership not transferable.** Membership in a cooperative is not transferable, except as provided in the bylaws.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. **Additional qualifications.** The bylaws may prescribe additional qualifications and limitations in respect to membership.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A89 (AMD). 1999, c. 398, §§A104,105 (AFF).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Quorum.** Unless the bylaws prescribe the presence 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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. **Quorum.** A majority of the board of trustees shall constitute a quorum.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. **Joint membership.** If 2 or more individuals hold a joint membership in a cooperative, only one of them, may be elected a trustee.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

Subchapter 3: POWERS HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§3751. POWERS GENERALLY

A cooperative may: [1987, c. 141, Pt. A, §6 (NEW).]

1. **Sue.** Sue in its corporate name;

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Be sued.** Be sued in its corporate name;

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Seal.** Adopt and alter a corporate seal;

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Use of electricity.** Generate, manufacture, purchase, acquire, accumulate and transmit electricity, and distribute, sell, supply and dispose of electricity to its members;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

11. **Member of other cooperatives.** Become a member of other cooperatives or corporations or to own stock in them;

[1987, c. 141, Pt. A, §6 (NEW) .]

12. **Bylaws.** Adopt, amend and repeal bylaws;

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§3752. AMENDMENT OF ARTICLES

A cooperative may amend its articles of incorporation as follows. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. The address of its principal office; and [1987, c. 141, Pt. A, §6 (NEW).]

C. The amendment to its articles of incorporation. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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, executed and acknowledged by its president or vice-president under its seal, attested by its secretary, in the office of the Secretary of State. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. The law or laws under which it was organized; [1987, c. 141, Pt. A, §6 (NEW).]

C. A statement that the corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter; [1987, c. 141, Pt. A, §6 (NEW).]

D. Its name as a cooperative; [1987, c. 141, Pt. A, §6 (NEW).]

E. The address of the principal office of the cooperative; [1987, c. 141, Pt. A, §6 (NEW).]

F. The names and addresses of the trustees of the cooperative; and [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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; [1987, c. 141, Pt. A, §6 (NEW).]

B. The address of its principal office; [1987, c. 141, Pt. A, §6 (NEW).]

C. That the cooperative has not commenced business; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

E. That no debt of the cooperative is unpaid; and [1987, c. 141, Pt. A, §6 (NEW).]

F. That a majority of the incorporators elect that the cooperative is dissolved. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. The address of its principal office; [1987, c. 141, Pt. A, §6 (NEW).]

C. The date on which the certificate of election to dissolve was filed by the Secretary of State; [1987, c. 141, Pt. A, §6 (NEW).]

D. That there are no actions or suits pending against the cooperative; [1987, c. 141, Pt. A, §6 (NEW).]

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 [1987, c. 141, Pt. A, §6 (NEW).]

F. That this section has been complied with. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

Subchapter 4: GENERATION AND TRANSMISSION COOPERATIVES HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

Chapter 39: MUNICIPAL ELECTRIC DISTRICTS

§3901. SHORT TITLE

This chapter shall be known and may be cited as the "Municipal Electric District Enabling Act." [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§3903. FORMATION OF SINGLE-MEMBER DISTRICT

A municipal power district may be formed under the following provisions. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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-A, section 2528:

"Shall the (name of municipality) Power District be created and incorporated under the Maine Revised Statutes, Title 35-A, chapter 39?" [1995, c. 254, §7 (AMD).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 254, §7 (AMD).

§3904. FORMATION OF MULTIMEMBER DISTRICT

Two or more municipalities may form a multimember municipal power district under the following provisions. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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-A, section 2528:

"Shall the (name of municipalities) Power District be created and incorporated under the Maine Revised Statutes, Title 35-A, chapter 39?" [1995, c. 254, §8 (AMD).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 254, §8 (AMD).

§3905. EXISTING DISTRICTS

Any quasi-municipal district organized under the private and special laws that is a transmission and distribution 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. [1999, c. 398, Pt. A, §90 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A90 (AMD). 1999, c. 398, §§A104,105 (AFF).

§3906. ORGANIZATION OF SINGLE-MEMBER DISTRICT

A municipal power district shall be organized under the following provisions. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Trustee.** Upon formation of a district under section 3903, all the affairs of the district must be managed by a board of 3 trustees who must be residents of the district. They 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, that trustee's position becomes vacant. Trustees are subject to Title 30-A, section 2605, concerning conflict of interest.

[1995, c. 254, §9 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 254, §9 (AMD).

§3907. ORGANIZATION OF MULTIMEMBER DISTRICT

A municipal power district formed under section 3904 shall be organized under the following provisions. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Trustees.** Upon formation of a district under section 3904, all the affairs of the district must be managed by a board of trustees comprised of 2 trustees from each municipality. Trustees must be residents of their respective municipalities. They 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 trustee's municipality, that trustee's position becomes vacant. Trustees are subject to Title 30-A, section 2605, concerning conflict of interest.

[1995, c. 254, §10 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 254, §10 (AMD).

§3908. POWERS OF DISTRICT

A district may: [1987, c. 141, Pt. A, §6 (NEW).]

1. **Sue.** Sue or be sued in its capacity as a district;

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Electricity.** Generate, manufacture, purchase, acquire, accumulate, transmit, distribute, sell, supply and dispose of electricity to individuals and corporations within the district;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Acquire plants and equipment.** Construct, purchase, 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;

[1987, c. 141, Pt. A, §6 (NEW) .]

5. **Contract.** Contract and be contracted with;

[1987, c. 141, Pt. A, §6 (NEW) .]

5-A. **Mutual funds.** In addition to and not in limitation of any power of the district, invest its funds, including reserve funds, sinking funds and trust funds, to the extent that any terms of the instrument creating the funds do not prohibit the investment, in shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States;

[1993, c. 651, §5 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

9. **Other consistent acts.** Perform any other acts which may be necessary, convenient or appropriate to accomplish the purposes of this chapter.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1993, c. 651, §5 (AMD).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§3911. EMINENT DOMAIN

A district may exercise the right of eminent domain under the same conditions and for the same purposes as other transmission and distribution utilities under section 3136. Title to property acquired must be taken in the name of the district. [1999, c. 398, Pt. A, §91 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A91 (AMD). 1999, c. 398, §§A104,105 (AFF).

§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: [1987, c. 141, Pt. A, §6 (NEW).]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Payment of interest indebtedness.** To provide for the payment of the interest on the indebtedness created or assumed by the utility;

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Principal payments on serial indebtedness.** To provide for annual principal payments on serial indebtedness created or assumed by the utility.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§3913. RATE SETTING

Municipal power districts are public utilities and subject to this Title. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§3915. EXISTING SERVICE AREAS

A municipal power district may not serve as a public utility, as defined in section 102, without consent from the commission in accordance with section 2102. [1995, c. 254, §11 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 254, §11 (AMD).

§3916. TRIBAL POWER DISTRICTS

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

A. "Passamaquoddy Indian territory" has the same meaning as in Title 30, section 6203, subsection 6. [2007, c. 189, §1 (NEW).]

B. "Passamaquoddy Tribe" has the same meaning as in Title 30, section 6203, subsection 7. [2007, c. 189, §1 (NEW).]

C. "Penobscot Indian territory" has the same meaning as in Title 30, section 6203, subsection 9. [2007, c. 189, §1 (NEW).]

D. "Penobscot Nation" has the same meaning as in Title 30, section 6203, subsection 10. [2007, c. 189, §1 (NEW).]

[2007, c. 189, §1 (NEW) .]

2. **Construction and application.** This section must be construed to provide the Penobscot Nation and the Passamaquoddy Tribe the opportunity to acquire, develop, finance and provide electric power within their respective Indian territories to allow them to develop a sustainable local economy. The rights applicable to municipal power districts as provided in this chapter apply to any tribal power district of the Penobscot Nation or the Passamaquoddy Tribe.

[2007, c. 189, §1 (NEW) .]

3. **Tribal power districts.** Under the authority specified in Title 30, section 6206, subsection 1, the Penobscot Nation and the Passamaquoddy Tribe may form power districts pursuant to this chapter, referred to in this section as "tribal power districts." A tribal power district formed by the Penobscot Nation or the Passamaquoddy Tribe may consist of all or part of the Penobscot Indian territory or the Passamaquoddy Indian territory, respectively. For the purpose of forming a tribal power district, the Penobscot Nation or Passamaquoddy Tribe shall designate appropriate tribal officers and proceedings in place of municipal officers and proceedings to implement the provisions of this chapter and any other laws referenced in this chapter.

Subject to the approval of the commission under sections 2102 and 2105, a tribal power district may furnish electric power transmission, distribution and supply services within the district. An application by a tribal power district to furnish electric power transmission, distribution or supply services must identify the boundaries of the Indian territory to be served. Approval of the commission under sections 2102 and 2105 is not required for a tribal power district to generate or manufacture electricity within the district or to purchase, acquire, accumulate or sell electricity at wholesale or by private contract for use within the tribal power district.

A tribal power district has the same rights, powers, privileges, obligations and limitations of a municipal power district formed under this chapter, including, but not limited to, the issuance of revenue obligation securities; the exemption of district property from taxation under Title 36, section 651; and, in the case of a tribal power district that has received approval from the commission under sections 2102 and 2105, the right of eminent domain as provided under section 3911.

[2007, c. 189, §1 (NEW) .]

SECTION HISTORY
2007, c. 189, §1 (NEW).

Chapter 41: MAINE MUNICIPAL AND RURAL ELECTRIFICATION COOPERATIVE AGENCY ACT

Subchapter 1: GENERAL PROVISIONS
HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§4101. SHORT TITLE

This chapter shall be known and may be cited as the "Maine Municipal and Rural Electrification Cooperative Agency Act." [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4102. FINDINGS AND DECLARATION OF NECESSITY

It is found and declared that: [1987, c. 141, Pt. A, §6 (NEW).]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

5. **Public interest.** The necessity of the public interest for the provisions enacted is declared as a matter of legislative determination.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4103. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Agency.** "Agency" means the Maine Municipal and Rural Electrification Cooperative Agency.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **New England power pool.** "New England power pool" means the relationship or organization created by the New England power pool agreement.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

C. Administrative, legal, engineering and inspection expenses; [1987, c. 141, Pt. A, §6 (NEW).]

D. Financing fees, expenses and costs; [1987, c. 141, Pt. A, §6 (NEW).]

E. Working capital; [1987, c. 141, Pt. A, §6 (NEW).]

F. Initial fuel costs; [1987, c. 141, Pt. A, §6 (NEW).]

G. Interest on the bonds during the period of construction and for a reasonable period afterwards as may be determined by the agency; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

I. Prepayments under contracts for the purchase of capacity and output; and [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

Subchapter 2: ESTABLISHMENT AND ORGANIZATION HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Powers.** The powers of the agency shall be exercised by a board of directors.

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

C. The Director of the Governor's Energy Office, or another employee of that office, 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. [2011, c. 655, Pt. MM, §17 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

[2011, c. 655, Pt. MM, §17 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF). 1995, c. 254, §12 (AMD). 2011, c. 655, Pt. MM, §17 (AMD). 2011, c. 655, Pt. MM, §26 (AFF).

§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-C, and including, without limiting the generality of this paragraph, the power: [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §56 (COR).]

1. **Acceptance, grants or gifts.** To accept gifts or grants of property, funds, money, materials, labor, supplies 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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

6. **Borrow funds.** To borrow money and issue its notes and bonds as provided in this chapter;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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 utility purposes may not be invalid and unenforceable by reason of length of the period, or as unduly restricting the alienation of the property;

[1999, c. 398, Pt. A, §92 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

14. **Contract; administrative services.** To contract for administrative services with any person;

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF). 1999, c. 398, §A92 (AMD). 1999, c. 398, §§A104,105 (AFF). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B56 (COR).

§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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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 [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Restrictions.** The agency shall exercise the power of eminent domain in the manner provided in Title 30-A, section 5108. References in Title 30-A, section 5108, to an urban renewal project and a renewal project area and the like are inapplicable. Notwithstanding Title 30-A, section 5108:

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. [1987, c. 141, Pt. A, §6 (NEW).]

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 [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1995, c. 254, §13 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF). 1995, c. 254, §13 (AMD).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 transmission and distribution utilities.

[1999, c. 398, Pt. A, §93 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF). 1999, c. 398, §A93 (AMD). 1999, c. 398, §§A104,105 (AFF).

§4136. RULES AND RATES

1. **Rules.** The agency may make and enforce rules consistent with the purpose of this chapter.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 [1987, c. 141, Pt. A, §6 (NEW).]

B. For the sale of electricity or of generation or transmission capacity or service as it determines necessary, proper, desirable and reasonable. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4137. POWERS OF MUNICIPALITIES AND COOPERATIVES

By resolution of its governing body, a municipality or cooperative may: [1987, c. 141, Pt. A, §6 (NEW).]

1. **Director.** Appoint a director to the board in accordance with section 4131;

[1987, c. 141, Pt. A, §6 (NEW) .]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

Subchapter 3: FORM AND NATURE OF BONDS AND NOTES HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

D. Bonds, notes or other evidences of indebtedness may be issued in accordance with this chapter. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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 noteholders, 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 noteholders or bondholders that may then exist; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

D. The setting aside of reserves or sinking funds and their regulation and disposition; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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 [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 reason of the issuance of the bonds, notes or other evidences of indebtedness.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 convenants 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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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-A, but no provision of Title 11, Article 9-A, respecting the filing of a financing statement to perfect a security interest is applicable to any pledge made or security interest created in connection with the issuance of the bonds, notes or coupons.

[1999, c. 699, Pt. D, §25 (AMD); 1999, c. 699, Pt. D, §30 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF). 1999, c. 699, §D25 (AMD). 1999, c. 699, §D30 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. Enforce all rights of the bondholders or noteholders, 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; [1987, c. 141, Pt. A, §6 (NEW).]

C. Bring suit upon all or any part of the bonds, notes or other evidences of indebtedness; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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 [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

Subchapter 4: MISCELLANEOUS PROVISIONS
HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4174. ENVIRONMENTAL REGULATION

The agency is subject to the jurisdiction of the Department of Environmental Protection and the Maine Land Use Planning Commission in the same manner as any other public utility. [1987, c. 141, Pt. A, §6 (NEW); 2011, c. 682, §38 (REV).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF). 2011, c. 682, §38 (REV).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 622, §S36 (RP). 1991, c. 855, §§1,2 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 622, §S36 (RP). 1991, c. 855, §§1,2 (AFF).

Chapter 43: NUCLEAR POWER GENERATING FACILITIES

Subchapter 1: CONSTRUCTION HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§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 consumers for years to come. In the recent past, investments in nuclear power plants have caused severe financial strain on consumers.

[1999, c. 398, Pt. A, §94 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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 and reductions in these costs will serve to benefit consumers.

[2001, c. 629, §1 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A94 (AMD). 1999, c. 398, §§A104,105 (AFF). 2001, c. 629, §1 (AMD).

§4302. REFERENDUM

1. **Question submitted to voters.** Prior to the construction of any nuclear power plant within the State, the question of approving that construction must be submitted to the voters of the State in the manner prescribed by law for holding a statewide election. This question must be submitted to the legal voters of the State at the next following statewide election. The municipal officers 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)?"

[1999, c. 398, Pt. A, §95 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A95 (AMD). 1999, c. 398, §§A104,105 (AFF).

§4303. NOTICE; EFFECTIVE DATE OF CERTIFICATE; PROHIBITION

Construction may not commence on a nuclear power plant without approval by the voters, as prescribed in section 4302. [1999, c. 398, Pt. A, §96 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A96 (AMD). 1999, c. 398, §§A104,105 (AFF).

Subchapter 2: EMISSIONS AND SAFETY REPORTING HEADING: PL 1987, C. 141, PT. A, §6 (NEW); 2005, C. 254, PT. A, §1 (RP)

§4331. PURPOSE

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C10 (AMD). 2005, c. 254, §A1 (RP).

§4332. NOTICE OF EMISSIONS TO THE COMMISSIONER OF HEALTH AND HUMAN SERVICES

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 689, §§1,2 (AMD). 2001, c. 614, §1 (AMD). 2003, c. 689, §B7 (REV). 2005, c. 254, §A1 (RP).

§4333. REPORTS BY THE COMMISSIONER OF HEALTH AND HUMAN SERVICES

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 689, §B7 (REV). 2005, c. 254, §A1 (RP).

§4334. SAFETY REPORTING; PENALTY

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 370, §8 (AMD). 2005, c. 254, §A1 (RP).

Subchapter 3: DECOMMISSIONING
HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§4351. SHORT TITLE; FINDINGS

This subchapter shall be known and may be cited as the "Nuclear Decommissioning Financing Act." [1987, c. 141, Pt. A, §6 (NEW).]

The Legislature has made the following findings. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§4352. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Closing.** "Closing" means the time at which a nuclear power plant ceases to generate electricity and is retired from active service.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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 [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Decommissioning financing plan.** "Decommissioning financing plan" means the plan approved by the commission under section 4353.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

8. **Licensee.** "Licensee" means the holder of the operating permit from the United States Nuclear Regulatory Commission for a nuclear power plant.

[1987, c. 141, Pt. A, §6 (NEW) .]

9. **Nuclear power plant or plant.** "Nuclear power plant" or "plant" means a nuclear fission thermal power plant situated in this State.

[1987, c. 141, Pt. A, §6 (NEW) .]

10. **Owner.** "Owner" means any transmission and distribution utility that owns any portion of a nuclear power plant, whether directly or through ownership of stock in a company that owns any portion of a nuclear power plant or through membership in a holding company that owns any portion of a nuclear power plant or through other means.

[1999, c. 398, Pt. A, §97 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

13. **Trustee.** "Trustee" means a bank or trust company qualified to act as a fiduciary in this State.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A97 (AMD). 1999, c. 398, §§A104,105 (AFF).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

C. The share of the estimated decommissioning expenses attributed to each utility to which the plant supplies power; [1999, c. 398, Pt. A, §98 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

D. Plans for periodic review and updating of the plan, including the cost of decommissioning estimated under paragraph B, consistent with subsection 6; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

G. Reasonable assurance of responsibility in the event of insufficient assets in accordance with section 4356; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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; [1987, c. 141, Pt. A, §6 (NEW).]

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 [1987, c. 141, Pt. A, §6 (NEW).]

K. Any other information related to the financing of decommissioning which the commission requests. [1987, c. 141, Pt. A, §6 (NEW).]

[1999, c. 398, Pt. A, §98 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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 utility to which the plant supplies power is reasonable;

(3) The principal and income that 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 can not 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 must occur at least every 5 years. [1999, c. 398, Pt. A, §99 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1999, c. 398, Pt. A, §99 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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 decommissioning 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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §§A98,99 (AMD). 1999, c. 398, §§A104,105 (AFF).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. A member nominated by the municipal officials of any municipality containing a nuclear power plant; [1987, c. 141, Pt. A, §6 (NEW).]

C. Four members nominated by the Governor, including 2 from the financial community and 2 from the general public; and [1987, c. 141, Pt. A, §6 (NEW).]

D. One member designated by the licensee. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 expenses incurred. Members of a licensee-established committee are not entitled to any compensation under this subsection.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. Approve selection of other financial managers, if any, by the trustee; [1987, c. 141, Pt. A, §6 (NEW).]

C. Establish investment policy; [1987, c. 141, Pt. A, §6 (NEW).]

D. Evaluate investment policy and trustee performance; [1987, c. 141, Pt. A, §6 (NEW).]

E. Establish procedures for expenditures from the fund for decommissioning and administrative expenses; and [1987, c. 141, Pt. A, §6 (NEW).]

F. Perform other duties it finds necessary to carry out its responsibilities. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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 Financial Institutions;

(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 Financial Institutions; 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. [1987, c. 141, Pt. A, §6 (NEW); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

E. All income of a fund shall be accumulated and added to the principal of the fund, except as otherwise provided in subsection 5. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 must 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.

A transmission and distribution utility in the State that receives remaining decommissioning funds under this subchapter shall distribute the funds equitably, under the guidance of the commission, to its customers.

[1999, c. 398, Pt. A, §100 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A100 (AMD). 1999, c. 398, §§A104,105 (AFF). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

Subchapter 4: SPENT FUEL AND HIGH-LEVEL WASTE REQUIREMENTS HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§4372. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Construction.** "Construction" means the installation of permanent equipment or structures.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Nuclear power plant.** "Nuclear power plant" means a nuclear fission thermal power plant.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§4374. CONDITIONS FOR CERTIFICATION OF NUCLEAR POWER PLANTS

The commission may certify a nuclear power plant if it finds that: [1987, c. 141, Pt. A, §6 (NEW).]

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;

[1987, c. 141, Pt. A, §6 (NEW) .]

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

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

Subchapter 5: SPENT FUEL DISPOSAL TRUST FUND HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

§4391. DEFINITIONS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL CONTINGENCY: See T. 35-A, §4392, sub-§6)
(WHOLE SECTION TEXT REPEALED ON CONTINGENCY: See T. 35-A, §4392, sub-§6)

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Licensee.** "Licensee" means the holder of the operating permit from the United States Nuclear Regulatory Commission for a nuclear power plant.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Nuclear power plant or plant.** "Nuclear power plant" or "plant" means a nuclear fission thermal power plant.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Owner.** "Owner" means any utility that owns any portion of a nuclear power plant, whether directly or indirectly, through ownership of stock in a company that owns any portion of a nuclear power plant, through membership in a holding company that owns any portion of a nuclear power plant or through other means.

[1999, c. 398, Pt. A, §101 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 398, §A101 (AMD). 1999, c. 398, §§A104,105 (AFF).

§4392. SPENT NUCLEAR FUEL DISPOSAL TRUST FUND

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL CONTINGENCY: See T. 35-A, §4392, sub-§6)
(WHOLE SECTION TEXT REPEALED ON CONTINGENCY: See T. 35-A, §4392, sub-§6)

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 inconsistent with this subchapter. The trustee may appoint subsidiary financial managers, subject to the approval of the licensee.

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

B. [1999, c. 173, §1 (RP).]

C. The funds shall not be invested in the securities of the owner of any nuclear power plant. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

E. The fund may be invested only in a manner consistent with the criteria for decommissioning trust funds as described in 18 Code of Federal Regulations, Sections 35.32(a)(3) and 35.33(c)(1998). [1999, c. 173, §2 (NEW).]

[1999, c. 173, §§1, 2 (AMD) .]

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. Notwithstanding any other provision of this subsection, the trustee shall make payments from the fund to the licensee to meet expenditures for interim spent fuel storage costs and to offset those interim spent fuel storage costs already incurred by the licensee.

[1999, c. 173, §3 (AMD) .]

6. **Contingent repeal.** 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.

[2009, c. 2, §104 (COR) .]

7. **Assets remaining in the fund.** Any assets remaining in the fund at the time of dissolution must 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 transmission and distribution 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.

[1999, c. 398, Pt. A, §102 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 173, §§1-3 (AMD). 1999, c. 398, §A102 (AMD). 1999, c. 398, §§A104,105 (AFF). RR 2009, c. 2, §104 (COR).

§4393. REPORT; AUDIT

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL CONTINGENCY: See T. 35-A, §4392, sub-§6)
(WHOLE SECTION TEXT REPEALED ON CONTINGENCY: See T. 35-A, §4392, sub-§6)

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Audit.** The licensee shall cause an annual audit to be made of the fund.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

Subchapter 6: POST-DECOMMISSIONING OVERSIGHT FEES (HEADING: PL 2005, C. 254, PT. A, §2 (NEW); PL 2007, C. 539, PT. KK, §14 (RP))

§4395. STATE ASSESSMENT

(REPEALED)

SECTION HISTORY
2005, c. 254, §A2 (NEW). 2007, c. 539, Pt. KK, §14 (RP).

§4396. INTERIM SPENT FUEL STORAGE FACILITY OVERSIGHT FUND

(REPEALED)

SECTION HISTORY
2005, c. 254, §A2 (NEW). 2007, c. 539, Pt. KK, §14 (RP).

Chapter 44: MAINE SURPLUS ENERGY AUCTION PROGRAM

§4401. DEFINITIONS

(REPEALED)

SECTION HISTORY
1993, c. 662, §1 (NEW). 1997, c. 56, §1 (RP).

§4402. PROGRAM ESTABLISHED

(REPEALED)

SECTION HISTORY
1993, c. 662, §1 (NEW). 1997, c. 56, §1 (RP).

§4403. SURPLUS ENERGY POOL ESTABLISHED

(REPEALED)

SECTION HISTORY
1993, c. 662, §1 (NEW). 1995, c. 462, §A65 (AMD). 1997, c. 56, §1 (RP).

§4404. REPORT TO LEGISLATURE

(REPEALED)

SECTION HISTORY
1993, c. 662, §1 (NEW). 1997, c. 56, §1 (RP).

Part 4: GAS HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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-C. Following organization under former Title 13-A or Title 13-C, the corporation has all the other rights, privileges and immunities of a legal corporation organized under Title 13-C, except as they are inconsistent with this chapter.

[2003, c. 344, Pt. D, §25 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 344, §D25 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§4504. EMINENT DOMAIN

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 605, §3 (AFF). 1999, c. 605, §1 (RP).

§4505. EXEMPTION FROM EMINENT DOMAIN

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 605, §3 (AFF). 1999, c. 605, §1 (RP).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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 and the commission approves or the commission permits the sale, after notice and hearing. [1987, c. 490, Pt. C, §11 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C11 (AMD).

§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 that 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 that has obtained authorization from the commission, is subject to the authority of the commission. The commission shall adopt policies that reduce the probability of methane leakage from facilities as part of its regulation under this chapter.

[2013, c. 369, Pt. B, §2 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. Avail itself of records and facilities of the authority and make records and facilities available to the agency; [1987, c. 141, Pt. A, §6 (NEW).]

C. Conduct joint investigations and hold joint hearings; [1987, c. 141, Pt. A, §6 (NEW).]

D. Issue orders and rules jointly or concurrently with, or complementary to those issued by, the agency; and [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2013, c. 369, Pt. B, §2 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§4512. COMPLIANCE WITH ORDERS

A natural gas pipeline utility subject to this chapter shall comply immediately with any proper order of the commission. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Failure to comply.**

[2003, c. 505, §31 (RP) .]

2. **Damages.** In addition to the administrative penalty imposed pursuant to this Title, 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.

[2003, c. 505, §32 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 505, §§31,32 (AMD).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 [1987, c. 141, Pt. A, §6 (NEW).]

B. File, with the town clerk of each municipality through which the pipeline is proposed to be located, a map demonstrating the intended approximate location 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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§4515. CEASE AND DESIST ORDERS

The commission may order a natural gas pipeline utility to cease and desist from operating or acting in violation of a statute or rule or order. Whenever practicable, the commission shall notify a natural gas pipeline utility against whom a cease and desist order is contemplated and afford it an opportunity to present its views and shall afford it reasonable opportunity to comply. Failure to notify and afford such an opportunity does not preclude the granting of appropriate relief. [2003, c. 505, §33 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 505, §33 (AMD).

§4516. CIVIL VIOLATION

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1993, c. 113, §1 (AMD). 2003, c. 505, §34 (RP).

§4516-A. ADMINISTRATIVE PENALTY

1. **Violation of this Title.** The commission may impose an administrative penalty on 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 in an amount not to exceed $200,000 for each violation. Each day of violation constitutes a separate offense.

[2013, c. 495, §1 (AMD) .]

2. **Maximum administrative penalty.** The maximum administrative penalty may not exceed $2,000,000 for any related series of violations.

[2013, c. 495, §1 (AMD) .]

3. **Determining amount of penalty.** In determining the amount of the penalty, the commission shall consider the following:

A. The nature, circumstances and gravity of the violation; [2003, c. 505, §35 (NEW).]

B. The degree of the natural gas pipeline utility's culpability; [2003, c. 505, §35 (NEW).]

C. The natural gas pipeline utility's history of prior offenses; [2003, c. 505, §35 (NEW).]

D. The natural gas pipeline utility's ability to pay; [2003, c. 505, §35 (NEW).]

E. Any good faith by the natural gas pipeline utility in attempting to achieve compliance; [2003, c. 505, §35 (NEW).]

F. The effect on the natural gas pipeline utility's ability to continue in business; and [2003, c. 505, §35 (NEW).]

G. Such other matters as justice may require. [2003, c. 505, §35 (NEW).]

[2003, c. 505, §35 (NEW) .]

4. **Payment of penalty.** The amount of the administrative penalty may be:

A. Deducted from any sums owing by the State to the natural gas pipeline utility; or [2003, c. 505, §35 (NEW).]

B. Recovered in a civil action in the state courts. [2003, c. 505, §35 (NEW).]

[2003, c. 505, §35 (NEW) .]

5. **Limitation on imposing penalty.** Any action that may result in the imposition of an administrative penalty pursuant to this section must be commenced within 5 years after the cause of action accrues.

[2003, c. 505, §35 (NEW) .]

SECTION HISTORY
2003, c. 505, §35 (NEW). 2013, c. 495, §1 (AMD).

§4517. PRIVATE NATURAL GAS PIPELINES

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

A. "Affiliated compression or liquefaction facility" means a facility that is used to liquefy or compress natural gas for sale or distribution to others by means other than a pipeline and that is owned or operated by an affiliate of the owner of a private natural gas pipeline. [2011, c. 592, §1 (NEW).]

B. "Private natural gas pipeline" means a pipeline that is used solely for the transport of natural gas to a single customer and is owned by the customer and whose owner or operator is not otherwise regulated by the commission as a natural gas pipeline utility or gas utility. For purposes of this paragraph, "customer" includes an affiliate of a customer. [2011, c. 592, §1 (NEW).]

[2011, c. 592, §1 (RPR) .]

2. **Safety regulation.** The commission may exercise safety regulation over an entity that owns or operates a private natural gas pipeline on public land or land owned by a 3rd party, notwithstanding that the entity is not a public utility. The commission may exercise safety regulation over the owner or operator of an affiliated compression or liquefaction facility, notwithstanding that the owner or operator is not a public utility. Safety regulation under this subsection may be enforced as provided in sections 4515 and 4516-A.

[2011, c. 592, §2 (AMD) .]

3. **Approval of construction.** A private natural gas pipeline or affiliated compression or liquefaction facility may not be constructed without approval of the commission. When requesting approval, the entity that owns or operates a private natural gas pipeline or affiliated compression or liquefaction facility shall submit to the commission information concerning the engineering design of the pipeline or affiliated compression or liquefaction facility and the standards of construction the entity proposes to follow and any other information the commission determines necessary to make a determination of whether to approve construction. The commission shall approve the construction if the commission determines that the standards of construction of the pipeline or affiliated compression or liquefaction facility adequately protect the safety of the public.

[2011, c. 592, §2 (AMD) .]

4. **Waiver.** The commission may waive for good cause any requirements under this section.

[2011, c. 110, §1 (NEW) .]

5. **Sale by affiliate of liquefied natural gas or compressed natural gas.** The owner or operator of a private natural gas pipeline that delivers natural gas to its affiliate that then liquefies or compresses the natural gas for sale or distribution to others by means other than by a pipeline is not, as a result of the delivery,

considered a public utility. The owner or operator of an affiliated compression or liquefaction facility is not considered a public utility if the owner or operator is not otherwise regulated by the commission as a public utility.

[2011, c. 592, §3 (NEW) .]

SECTION HISTORY
2011, c. 110, §1 (NEW). 2011, c. 592, §§1-3 (AMD).

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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§4702. SAFETY JURISDICTION ONLY OVER CERTAIN GAS UTILITIES *(REPEALED)*

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1999, c. 718, §15 (RPR). 2011, c. 197, §1 (RP).

§4702-A. SAFETY JURISDICTION ONLY OVER CERTAIN GAS UTILITIES

The commission may regulate certain gas utilities in accordance with this section as an agent of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration pursuant to 49 United States Code, Section 60105. [2011, c. 197, §2 (NEW).]

1. **Jurisdiction.** A gas utility owning, controlling, operating or managing a central tank system or a liquefied petroleum gas system is subject to the jurisdiction of the commission solely with respect to safety if that system serves:

A. Ten or more customers; [2011, c. 197, §2 (NEW).]

B. More than one customer and any portion of the central tank system or liquefied petroleum gas system is located in a public place; or [2011, c. 197, §2 (NEW).]

C. One customer and a portion of the central tank system or liquefied petroleum gas system is located off the customer's premises in a public place. [2011, c. 197, §2 (NEW).]

In regulating gas utilities under this section, the commission may not interpret "public place" to include a motel room, hotel room, rented cottage or other rented or leased living space unless the commission receives written notice from the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration that this exclusion is incompatible with the administration's interpretation of 49 Code of

Federal Regulations, Section 192.1 and the commission by rule establishes a definition of "public place" consistent with that written notice. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 197, §2 (NEW) .]

2. Limitations; liquefied petroleum gas systems. Regulation of liquefied petroleum gas systems under this section is governed by this subsection. As used in this subsection, unless the context otherwise indicates, "jurisdictional system" means a liquefied petroleum gas system subject to the jurisdiction of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration under 49 Code of Federal Regulations, Section 192.1, and "operator" means the operator of a jurisdictional system.

A. The commission may regulate liquefied petroleum gas systems only to the extent the system is subject to the jurisdiction of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration under 49 Code of Federal Regulations, Section 192.1. [2011, c. 197, §2 (NEW).]

B. The commission shall regulate jurisdictional systems and operators under this section in accordance with the minimum standards established by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration as adopted by reference by the commission by rule. Rules adopting by reference the minimum standards established by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 197, §2 (NEW).]

C. The commission may not adopt or enforce any rule governing jurisdictional systems or operators, including but not limited to rules establishing definitions or standards, except as specifically authorized in this paragraph, paragraph B or subsection 1. The commission may by rule:

(1) Identify and certify operators;

(2) Require jurisdictional systems to be registered with the commission. The commission may not impose an administrative penalty under section 1508-A that exceeds $5,000 for failure to register a jurisdictional system;

(3) Prohibit delivery of liquefied petroleum gas to a customer if an operator has determined that piping or other equipment owned by the customer makes continued delivery unsafe. Nothing in this subparagraph permits the commission to require an operator to inspect, maintain or otherwise oversee customer-owned piping or other equipment;

(4) Require operators to participate in the underground facility damage prevention system established under Title 23, section 3360-A;

(5) Define "combustible material";

(6) Establish reasonable requirements for operators to keep on file maps or drawings of jurisdictional systems;

(7) Establish reasonable standards for the protection of jurisdictional systems from reasonably foreseeable damages that may be caused by motorized vehicles or snow, ice or other weather-related conditions;

(8) Establish reasonable requirements for the installation of warning tape and tracer wires on plastic pipes installed by operators;

(9) Establish reasonable requirements for operators to mark containers owned by the operators and located on customer property;

(10) Establish reasonable requirements for the use of directional boring by operators for the installation of piping for jurisdictional systems;

(11) Establish reasonable odor verification requirements for liquefied petroleum gas delivered to customers by operators; and

(12) Establish enforcement procedures. The enforcement procedures must provide for informal disposition of possible violations, including procedures that allow a person to correct a violation without penalty, informal conferences to resolve disputes about violations, consent agreements to resolve enforcement actions and other means of avoiding adjudicatory proceedings and the imposition of administrative penalties when informal means of enforcement are adequate to ensure public safety.

Rules adopted under this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 197, §2 (NEW).]

D. In applying the atmospheric corrosion control standards established by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration to liquefied petroleum gas systems, the commission shall consider atmospheric corrosion to be a condition exhibiting signs of deterioration, including pitting or loss of metal. The commission may not consider surface rust or loss of paint coating to constitute atmospheric corrosion. [2011, c. 197, §2 (NEW).]

[2011, c. 197, §2 (NEW) .]

SECTION HISTORY
2011, c. 197, §2 (NEW).

§4703. COST OF GAS ADJUSTMENT

1. **Cost of gas; related costs.** Subject to the approval of the commission, each gas utility shall charge its customers a cost-of-gas adjustment rate that includes reasonable costs for the gas that it supplies to its firm sales customers who receive uninterrupted service on a year-round basis. The cost of gas includes the cost of the gas purchased by the company for use in the State and may include costs directly related to the gas purchased and may include all or a portion of the cost of facilities used to produce and store gas, pursuant to rules adopted by the commission under this section.

[1997, c. 707, §5 (AMD) .]

2. **Cost of gas adjustment for firm and nonfirm customers.**

[1997, c. 707, §6 (RP) .]

2-A. **Cost-of-gas adjustment for firm sales customers.** Subject to the conditions of this section, a gas utility shall periodically adjust its cost-of-gas adjustment clause charges to its firm sales customers to reflect increases and decreases in the cost of gas. For purposes of this section, a "firm sales customer" means a customer that receives uninterrupted gas supply and transportation service from the gas utility on a year-round basis. Subject to the approval of the commission, the cost-of-gas adjustment charge must be billed at a uniform rate per 100 therms or 100 cubic feet of gas for customers of the gas utility receiving service pursuant to the same rate schedule.

[1997, c. 707, §7 (NEW) .]

2-B. **Cost-of-gas adjustment for nonfirm customers.** The rates charged to nonfirm customers include a cost of gas determined by the commission. The total rate charged to nonfirm customers is subject to the approval of the commission.

[1997, c. 707, §7 (NEW) .]

3. **Scope of adjustment.** The costs described in subsection 1 constitute the only items subject to adjustment, pursuant to rules adopted by the commission under this section, except 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.

[1997, c. 707, §8 (AMD) .]

4. **Cost of gas adjustment rate applied uniformly to firm customers.**

[1997, c. 707, §9 (RP) .]

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; [1987, c. 141, Pt. A, §6 (NEW).]

B. The computation period and method of computation of the cost of gas adjustment rate; [1987, c. 141, Pt. A, §6 (NEW).]

C. Definitions and components of gas costs to be included in the cost of gas adjustment; [1987, c. 141, Pt. A, §6 (NEW).]

D. An appropriate method to amortize a utility's unrecovered reasonable gas costs; [1987, c. 141, Pt. A, §6 (NEW).]

E. An appropriate method to credit customers for gas cost overcharges; and [1987, c. 141, Pt. A, §6 (NEW).]

F. Reporting requirements to administer this section. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

7. **Reports.** The commission may require gas utilities to provide such reports and information as it determines necessary to administer this section.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1997, c. 707, §§5-9 (AMD).

§4703-A. NATURAL GAS FOR USE IN VEHICLES

The following provisions govern the creation of subsidiaries or affiliates of gas utilities for the purpose of selling gas for use in vehicles fueled by natural gas. [1993, c. 178, §2 (NEW).]

1. **Policy and findings.** The Legislature finds that it is in the best interests of this State that the sale of natural gas for use as fuel in vehicles take place in an unregulated environment. The Legislature finds that entities that assume the risk of investment in the business of selling natural gas for use as a fuel in vehicles are entitled to the rewards and should be responsible for the costs of engaging in that business. It is the policy of the Legislature, in authorizing the creation of certain unregulated entities under this section, that ratepayers of gas utilities should not, as ratepayers, contribute to or benefit from the unregulated activity of those entities.

[1993, c. 178, §2 (NEW) .]

2. **Creation of subsidiary or affiliate.** Notwithstanding section 708, a gas utility may create without commission approval a wholly owned subsidiary or affiliate corporation whose sole purpose is to sell gas for use in vehicles fueled by natural gas, provided that:

A. The creation of the wholly owned subsidiary or affiliate does not result in ratepayers of the gas utility directly or indirectly contributing to or benefiting from the activities of the wholly owned subsidiary or affiliate and does not otherwise adversely affect ratepayers of the gas utility; and [1993, c. 178, §2 (NEW).]

B. The creation of a subsidiary or affiliate does not impair the ability of the gas utility to provide safe, reasonable and adequate service. [1993, c. 178, §2 (NEW).]

[1993, c. 178, §2 (NEW) .]

3. **Rates for sales by gas utility.** The rate for any sale of gas by a gas utility to a subsidiary or affiliate corporation created pursuant to this section or to any other entity that provides natural gas for use in vehicles must exceed the actual cost of the gas sold and include a contribution to the fixed costs of the utility. The commission may not find that the cost of gas sold to other customers of the utility has been increased as a result of any sale of gas by the utility at a rate that meets the requirements of this section.

[1993, c. 178, §2 (NEW) .]

4. **Allocation of earnings.** The commission may not allocate earnings of a wholly owned subsidiary or affiliate created pursuant to this section in a manner that benefits the customers of a gas utility.

[1993, c. 178, §2 (NEW) .]

5. **Separate books and records.** A subsidiary or affiliate created pursuant to this section shall maintain separate and independent books, accounts and records.

[1993, c. 178, §2 (NEW) .]

6. **Access to books and records.** A gas utility shall provide the commission with reasonable access to books, records, documents and other information of the gas utility related to a subsidiary or affiliate corporation created pursuant to this section.

[1993, c. 178, §2 (NEW) .]

7. **Reasonableness of transaction.** In a commission proceeding pursuant to section 307, 1303 or 4703, a gas utility shall demonstrate that all transactions with a subsidiary or affiliate corporation created by the utility pursuant to this section were reasonable.

[1993, c. 178, §2 (NEW) .]

8. **Commission oversight.** Notwithstanding the provisions of section 707, transactions between a gas utility and a subsidiary or affiliated interest created pursuant to this section do not require preapproval by the commission.

[1993, c. 178, §2 (NEW) .]

9. **Investment by utility.** Except as otherwise provided in this subsection, a gas utility that creates a subsidiary or affiliate corporation pursuant to this section may not invest in that subsidiary or affiliate corporation an amount greater than 1% of the gas utility's total retail revenues. Upon request of a gas utility, the commission, after notice and hearing, may permit an investment greater than 1% of the utility's total retail revenues.

[1993, c. 178, §2 (NEW) .]

10. **Regulation of gas utility.** Except as expressly provided in this section, nothing in this section exempts a gas utility from any laws, principles and rules governing the regulation of public utilities.

[1993, c. 178, §2 (NEW) .]

11. **Subsidiary or affiliate created by the parent corporation of a gas utility.** If a subsidiary or affiliated interest is created by the parent corporation of a gas utility for the purpose of supplying natural gas for use in vehicles, only the following provisions apply.

A. If the subsidiary or affiliate does any business in this State, the parent corporation shall provide the commission with reasonable access to books, records, documents or other information of the parent corporation related to that subsidiary or affiliate. [1993, c. 178, §2 (NEW).]

B. In a commission proceeding pursuant to section 307, 1303 or 4703, a gas utility shall demonstrate that all transactions with a subsidiary or affiliate of a parent corporation were reasonable. [1993, c. 178, §2 (NEW).]

For purposes of this subsection, the term "parent corporation" means an affiliated interest, as defined in section 707, subsection 1, paragraph A, subparagraphs (1), (2) and (4), of a gas utility that is not itself a gas utility in this State.

[1993, c. 178, §2 (NEW) .]

12. **Limitations.** Except as provided in this section, the sale by a person, not otherwise a gas utility, of natural gas directly to customers for use in vehicles fueled by natural gas is not subject to regulation by the commission.

[1993, c. 178, §2 (NEW) .]

SECTION HISTORY
1993, c. 178, §2 (NEW).

§4704. CEASE AND DESIST ORDERS

The commission may order a gas utility to cease and desist from operating or acting in violation of a statute or rule or order of the commission. Whenever practicable, the commission shall notify a gas utility against whom a cease and desist order is contemplated and afford it an opportunity to present its views and shall afford it reasonable opportunity to comply. Failure to notify and afford such an opportunity does not preclude the granting of appropriate relief. [2003, c. 505, §36 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 505, §36 (AMD).

§4705. CIVIL FORFEITURE

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1993, c. 113, §2 (AMD). 2003, c. 505, §37 (RP).

§4705-A. ADMINISTRATIVE PENALTY

1. **Violation of this Title.** The commission may impose an administrative penalty on a gas utility that violates any provision of this Title relating to safety of gas facilities or any rule issued under this Title in an amount not to exceed $200,000 for each violation. Each day of violation constitutes a separate offense.

[2013, c. 495, §2 (AMD) .]

2. **Maximum administrative penalty.** The maximum administrative penalty may not exceed $2,000,000 for any related series of violations.

[2013, c. 495, §2 (AMD) .]

3. **Determining amount of penalty.** In determining the amount of the penalty, the commission shall consider the following:

A. The nature, circumstances and gravity of the violation; [2003, c. 505, §38 (NEW).]

B. The degree of the gas utility's culpability; [2003, c. 505, §38 (NEW).]

C. The gas utility's history of prior offenses; [2003, c. 505, §38 (NEW).]

D. The gas utility's ability to pay; [2003, c. 505, §38 (NEW).]

E. Any good faith by the gas utility in attempting to achieve compliance; [2003, c. 505, §38 (NEW).]

F. The effect on the gas utility's ability to continue in business; and [2003, c. 505, §38 (NEW).]

G. Such other matters as justice may require. [2003, c. 505, §38 (NEW).]

[2003, c. 505, §38 (NEW) .]

4. **Payment of penalty.** The amount of the penalty may be:

A. Deducted from any sums owing by the State to the gas utility; or [2003, c. 505, §38 (NEW).]

B. Recovered in a civil action in the state courts. [2003, c. 505, §38 (NEW).]

[2003, c. 505, §38 (NEW) .]

5. **Limitation on imposing penalty.** Any action that may result in the imposition of an administrative penalty pursuant to this section must be commenced within 5 years after the cause of action accrues.

[2003, c. 505, §38 (NEW) .]

SECTION HISTORY
2003, c. 505, §38 (NEW). 2013, c. 495, §2 (AMD).

§4706. COMMISSION AUTHORITY TO ADOPT ALTERNATIVE RATE-MAKING MECHANISMS

1. **Alternative rate-making mechanisms.** This Title may not be construed to prohibit the commission from or to restrict the commission in establishing or authorizing any reasonable alternative rate-making mechanisms for gas utilities to promote efficiency in operations, create appropriate financial incentives, promote rate stability and promote equitable cost recovery. Alternative rate-making mechanisms may include, but are not limited to:

A. Multiyear rate-making plans that cap or otherwise establish mechanisms for future rate or revenue changes; [1997, c. 707, §10 (NEW).]

B. Reconciliation of actual revenues or costs with projected revenues or costs; [1997, c. 707, §10 (NEW).]

C. Adjustment of rates or revenues based on the use of any index, formula, forecast or projection; [1997, c. 707, §10 (NEW).]

D. Adjustment of rates or revenues based on an earnings-sharing, range-of-freedom or rate-stability plan; [1997, c. 707, §10 (NEW).]

E. Positive or negative financial incentives; and [1997, c. 707, §10 (NEW).]

F. Streamlined regulation or deregulation of services or entities when regulation is not required to protect the public interest. [1997, c. 707, §10 (NEW).]

In adopting an alternative rate-making mechanism, the commission may consider the costs of regulation, the benefits of the rate plan to the utility and to ratepayers, the impact on economic development, the reallocation of risk between investors and ratepayers, the development of a competitive market for gas services that are not natural monopolies and any other factor relevant to the establishment or authorization of an alternative rate-making mechanism. Prior to adopting an alternative rate-making mechanism, the commission shall consider the need for a rate case in order to establish a base line for the alternative rate-making mechanism.

[1997, c. 707, §10 (NEW) .]

2. **Adoption of rate-making mechanisms.** Upon the filing of an application for a rate plan by a gas utility, or upon the commission's own motion, the commission, in an adjudicatory proceeding, may adopt alternative rate-making mechanisms for any gas utility in the State. The alternative rate-making mechanisms need not conform with chapter 3 to the extent that the provisions of chapter 3 require the use of rate-base, rate-of-return or any other specific form of regulation of the rates of a gas utility or to the extent that the provisions of chapter 3 give any party, including the gas utility, the right to petition to change rates for gas services. This section may not be construed to limit the authority of the commission under section 1322.

[1997, c. 707, §10 (NEW) .]

3. **Just and reasonable rates.** In determining the reasonableness of any rate-adjustment mechanism established under this subchapter, the commission shall apply the standards of section 301 to ensure that the rates resulting from the implementation of a rate-adjustment mechanism are just and reasonable. Prior to the adoption of a new or replacement alternative rate plan or renewal of any existing alternative rate plan, the commission shall, in order to ensure that rates at the starting point of the plan are just and reasonable, conduct a revenue requirement and earnings review pursuant to the standards of section 301. In conducting such a review under this subsection, the commission, at its discretion, may conduct the review in a manner designed to minimize the cost of the review to ratepayers.

[2003, c. 45, §2 (AMD) .]

4. **General safeguards.** In adopting alternative rate-making mechanisms, the commission shall consider appropriate consumer and competitive safeguards.

[1997, c. 707, §10 (NEW) .]

5. **Rate flexibility.** Notwithstanding sections 307 and 703, the commission, in an adjudicatory proceeding, may authorize a gas utility to implement a program under which:

A. The utility may change its schedule of rates with limited notice to the commission; and [1997, c. 707, §10 (NEW).]

B. The utility may enter into contracts for the sale of gas, transmission and distribution services and related management services with limited or no prior approval by the commission. [1997, c. 707, §10 (NEW).]

The commission shall establish the terms and conditions under which a program is authorized under this subsection.

[1997, c. 707, §10 (NEW) .]

6. **Amendment to multiyear rate plans.** The commission may not amend or prematurely terminate the terms of a multiyear rate plan in a manner that prevents or threatens the utility's opportunity to recover a reasonable rate of return over the entire term of the plan. The commission shall ensure compliance with the requirements of this subsection in the revenue requirement proceeding and earnings review required by subsection 3.

[2003, c. 45, §2 (AMD) .]

7. **Authority.** The authority granted to the commission under this section is in addition to the authority of the commission granted under other provisions of this Title and this section may not be construed to limit the authority of the commission under any other provision of this Title.

[1997, c. 707, §10 (NEW) .]

8. **Cost-of-gas adjustment.** As part of the implementation of alternative rate-making mechanisms pursuant to this section, the commission may waive or modify the requirements of section 4703 to the extent necessary to promote efficiency in operation, appropriate financial incentives, rate stability or equitable cost recovery.

[1997, c. 707, §10 (NEW) .]

9. **Report.** The commission shall include in its annual report pursuant to section 120, subsection 6 any significant developments with respect to any actions taken or proposed to be taken by the commission under this section.

[2009, c. 122, §16 (AMD) .]

SECTION HISTORY
1997, c. 707, §10 (NEW). 2003, c. 45, §2 (AMD). 2009, c. 122, §16 (AMD).

§4706-A. SPECIAL RATE ARRANGEMENTS FOR ELIGIBLE LOW-INCOME CUSTOMERS

(REPEALED)

SECTION HISTORY
1999, c. 664, §1 (NEW). 2009, c. 35, §1 (RP).

§4706-B. ASSISTANCE PROGRAMS FOR LOW-INCOME CUSTOMERS

1. **Programs.** Each gas utility in the State that serves 5,000 or more residential customers shall offer low-income assistance programs for residential customers who satisfy criteria for low-income assistance as established by the commission in rule. To the maximum extent possible, a gas utility, in adopting and implementing a low-income assistance program under this section, shall seek to encourage conservation in the use of gas by program participants.

[2009, c. 35, §2 (NEW) .]

2. **Cost recovery.** The commission shall include in rates for a gas utility all costs incurred in compliance with this section and commission rules adopted under this section, as long as such costs have been prudently incurred.

[2009, c. 35, §2 (NEW) .]

3. **Rules.** The commission may adopt rules necessary to implement this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 35, §2 (NEW) .]

4. **Report.** The commission shall report on low-income assistance programs offered by gas utilities pursuant to this section within the annual report required under section 120.

[2009, c. 35, §2 (NEW) .]

SECTION HISTORY
2009, c. 35, §2 (NEW).

§4707. STRANDED COSTS; NOTICE OF RISK

Notwithstanding any other provision of this Title, costs arising from obligations incurred by a gas utility after March 1, 1998, other than costs or obligations that are beyond the control of the gas utility, determined by the commission in an adjudicatory proceeding to be unrecoverable as a result of competition or

deregulation are incurred at the risk of the shareholders of the gas utility and may not be borne by ratepayers of the gas utility. This section may not be interpreted as requiring that costs incurred prior to March 1, 1998 be recovered from ratepayers. [1997, c. 707, §10 (NEW).]

SECTION HISTORY
1997, c. 707, §10 (NEW).

§4708. GAS MARKETER REGISTRATION

1. **Registration required.** Unless registered with the commission under this section, a gas marketer may not contract or attempt to contract with any retail natural gas consumer in this State to provide natural gas supply service.

[1999, c. 143, §3 (NEW) .]

2. **Required information.** A gas marketer registering under this section shall provide:

A. The name, mailing address and phone number of the gas marketer; and [1999, c. 143, §3 (NEW).]

B. The name, mailing address and phone number of a contact person who is knowledgeable regarding the gas marketer's activities in the State. [1999, c. 143, §3 (NEW).]

A gas marketer registered under this section shall promptly provide the commission with any additional relevant information requested by the commission, including, but not limited to, copies of any residential contracts for retail natural gas supply service. The commission shall provide through the issuance of protective orders pursuant to section 1311 for appropriate confidentiality protection as necessary for any information provided under this section.

[1999, c. 143, §3 (NEW) .]

3. **Contracts void.** Any contract for retail natural gas supply service entered into after the effective date of this section by a gas marketer that is not registered with the commission under this section is deemed void.

[1999, c. 143, §3 (NEW) .]

SECTION HISTORY
1999, c. 143, §3 (NEW).

§4709. NATURAL GAS UNBUNDLING

1. **Commission rulemaking.** In order to foster the unbundling of natural gas services and the development of a competitive natural gas supply market in the State, the commission shall consider the need for and may adopt rules in the following areas:

A. The need to license gas marketers; [1999, c. 143, §3 (NEW).]

B. The need for a code of conduct governing the relationship between a gas utility and an affiliated gas marketer to prevent the affiliated gas marketer's exercise of market power and to ensure fair competition among all gas marketers; [1999, c. 143, §3 (NEW).]

C. The need for regulations to protect consumers from abusive practices by gas marketers; and [1999, c. 143, §3 (NEW).]

D. Any other subject of natural gas unbundling that requires additional regulation. [1999, c. 143, §3 (NEW).]

[1999, c. 143, §3 (NEW) .]

2. **Major substantive rules.** Rules adopted under this section are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 143, §3 (NEW) .]

SECTION HISTORY
1999, c. 143, §3 (NEW).

§4710. EMINENT DOMAIN

Subject to the provisions of this section, a natural gas utility may take and hold by right of eminent domain lands or rights in lands necessary to the safe, economical and efficient operation of a pipeline and to the provision of adequate service to the public. For purposes of this section, the term "natural gas utility" means an intrastate natural gas pipeline utility or a gas utility other than a gas utility over which the commission's jurisdiction is limited pursuant to section 4702-A. [2011, c. 197, §3 (AMD).]

1. **Conditions and standards.** A natural gas utility may take and hold by right of eminent domain lands or rights in lands necessary to the safe, economical and efficient operation of the pipeline and to the provision of adequate service to the public if:

A. The natural gas utility has obtained from the commission:

(1) In the case of a gas utility, authority to provide gas utility service to the area to be served by the proposed pipeline; or

(2) In the case of an intrastate natural gas pipeline utility, authority pursuant to chapter 45 to construct and operate the proposed pipeline; [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

B. The natural gas utility has complied with the provisions of this chapter and in the case of a foreign natural gas utility with Title 13-C, chapter 15; [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §57 (COR).]

C. The natural gas utility has obtained from the commission approval of the location to be taken in a proceeding conducted in accordance with the following.

(1) The commission shall fix a time for a hearing and give written notice of the hearing to the property owner and to the utility seeking to acquire the property. The hearing must be held in the county where the property is situated, unless all parties agree to a different location. At the hearing, all parties in interest may 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) The burden of proof to show the necessity of the particular taking rests on the utility seeking to acquire the property.

(3) The decision of a majority of the commissioners is final as to questions of fact.

(4) The commission must issue a written approval if it finds that the taking is necessary and in the public interest, except that the commission's examination of environmental issues affecting the public interest may consist only of whether the natural gas utility has obtained required environmental permits for the proposed pipeline, excluding permits that the utility can not obtain without possessing rights in the property proposed to be taken.

(5) The commission shall issue a written decision within 30 days of a filing of a request for approval, except that the commission may extend its review of the request for an additional 30 days if it determines additional time is necessary to adequately complete its review. The commission may extend its review for more than an additional 30 days if a party requests an extension of more than 30 days and the commission finds that the additional time is required to avoid unfairness to a party; and [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

D. The right of eminent domain is exercised in the manner and under the conditions set forth in chapter 65. [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

[2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §57 (COR) .]

2. **Public utility facilities.** Nothing in this section authorizes a natural gas utility 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.

[1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF) .]

3. **Owner's consent required.** A natural gas utility may not take, without the owner's consent:

A. Meetinghouses; [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

B. Dwelling houses; or [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

C. Public or private burying grounds. [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

[1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF) .]

4. **Public lands.** A natural gas utility may not take by eminent domain lands or rights in:

A. A public street or highway; [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

B. A public park or reservation; [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

C. Other public property; or [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

D. The location of a railroad or public utility. [1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF).]

[1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF) .]

5. **Pipeline constructed under or through public property.** A natural gas 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 utility in accordance with section 2302. The natural gas utility has all the rights, privileges and duties arising out of section 2302 to the extent they apply to a natural gas utility.

[1999, c. 605, §2 (NEW); 1999, c. 605, §3 (AFF) .]

6. **Pipelines constructed over or across railroad or public utility.** A natural gas 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. Notwithstanding subsection 4, paragraph D, the commission's approval of a natural gas utility's crossing of a railroad may include authorization pursuant to this section for the natural gas utility to take by eminent domain an easement across the railroad. For purposes of this section "railroad" includes, but is not limited to, a railroad whose abandonment has been approved pursuant to 49 United States Code, Chapter 109. This subsection does not permit the commission to authorize

the taking of an easement over lands owned by the State. All work on the property of 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 utility's expense.

[2001, c. 608, §4 (AMD) .]

SECTION HISTORY
1999, c. 605, §2 (NEW). 1999, c. 605, §3 (AFF). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B57 (COR). 2001, c. 608, §4 (AMD). 2011, c. 197, §3 (AMD).

§4711. CONSERVATION PROGRAMS

(REPEALED)

SECTION HISTORY
2005, c. 110, §1 (NEW). 2009, c. 122, §17 (AMD). 2009, c. 372, Pt. A, §10 (AFF). 2009, c. 372, Pt. A, §8 (RP).

§4712. GAS EMERGENCY RESPONSE

1. **Definitions.** As used in this section, unless the context otherwise indicates, "gas explosion event" means an explosion or fire that causes property damage or personal injury and that involves natural gas or liquefied petroleum gas controlled, transported or delivered by a gas utility or a natural gas pipeline utility subject to the jurisdiction of the commission.

[2011, c. 27, §3 (NEW) .]

2. **Response.** Following a gas explosion event, the commission shall immediately contact the State Fire Marshal:

A. To confirm that the State Fire Marshal is investigating the event and securing evidence in accordance with Title 25, section 2394, subsection 1 and to coordinate the commission's activities with the State Fire Marshal's investigation; or [2011, c. 27, §3 (NEW).]

B. To confirm that the event does not warrant investigation by the State Fire Marshal pursuant to the protocol established in accordance with Title 25, section 2394, subsection 1. [2011, c. 27, §3 (NEW).]

[2011, c. 27, §3 (NEW) .]

3. **Proceedings.** In any commission proceeding concerning a gas explosion event, the commission shall afford a person injured by the event or who suffered property damage in the event an opportunity to address the commission regarding the event.

[2011, c. 27, §3 (NEW) .]

4. **Compensation.** In determining pursuant to section 117 whether to apply any administrative penalties relating to the gas explosion event to benefit customers affected or potentially affected by the violation, and in determining the amount to apply, the commission shall consider documented property damages suffered by a person as a result of the event and may apply an amount to equitably compensate that person for losses not otherwise fully compensated.

[2011, c. 27, §3 (NEW) .]

SECTION HISTORY

2011, c. 27, §3 (NEW).

Part 5: WATERBORNE TRANSPORTATION HEADING: PL 1987, C. 475, §2 (AMD)

Chapter 51: REGULATION OF FERRIES IN CASCO BAY

§5101. FRANCHISE OF CASCO BAY ISLAND TRANSIT DISTRICT AND OTHERS

No person, except for the Casco Bay Island Transit District, created by Private and Special Law 1981, chapter 22, may, directly, by lease or other arrangement transport passengers or property by vessel, for compensation, between the mainland of Cumberland County and Peaks Island, Great Diamond Island, Little Diamond Island, Long Island, Chebeague Island or Cliff Island, or between the islands mentioned in this section, without obtaining a certificate of public convenience and necessity from the commission authorizing the transportation. The district and any person who must obtain a certificate are ferries subject to the jurisdiction of the commission with respect to the service that 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. The Casco Bay Island Transit District may assign or subcontract to another person any service for which it has a franchise. Regularly scheduled freight and passenger services are subject to the requirements of sections 5101-A to 5101-C. Unscheduled freight, tour, charter and taxi services are subject to the requirements of sections 5101-D and 5101-E. [1991, c. 774, §1 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 475, §2 (AMD). 1991, c. 774, §1 (AMD).

§5101-A. ALLOWANCE OF CROSS-SUBSIDIZATION; LEGISLATIVE INTENT

1. **Legislative intent.** The Legislature finds that the provision of affordable year-round passenger, freight and vehicle transportation to the islands served by the Casco Bay Island Transit District is critical to the continued existence of these island communities. It is the intent of the Legislature that the regulation of rates for the district allow for reasonable cross-subsidization of rates in order to preserve the affordability of passenger, freight and vehicle transportation for the year-round residents of the affected islands, the financial viability of the district and the viability of the island communities served by the district.

[1991, c. 774, §2 (NEW) .]

2. **Cross-subsidization.** In making decisions that require an evaluation of the rates charged by the Casco Bay Island Transit District, the commission shall allow reasonable cross-subsidization of rates in order to preserve the affordability of passenger and freight services for the year-round residents of the affected islands, the financial viability of the district and the viability of the island communities served by the district. In allowing such cross-subsidization, the commission shall attempt to minimize the potential need for governmental operating subsidies for the operations maintained by the district.

[1991, c. 774, §2 (NEW) .]

3. **Competing scheduled service.** The commission may not grant an application for a certificate of public convenience and necessity in which the applicant seeks to offer a scheduled passenger, freight or vehicle transportation service currently offered by the Casco Bay Island Transit District if the principal

difference in service proposed by the applicant is a proposed or potential reduced rate for that service, unless the applicant proves that the granting of that certificate will not have a significant adverse affect on the revenues of the district. This subsection does not apply to tour or charter service applications.

[1991, c. 774, §2 (NEW) .]

SECTION HISTORY
1991, c. 774, §2 (NEW).

§5101-B. INADEQUACIES OR DEFICIENCIES IN SERVICE OF CASCO BAY ISLAND TRANSIT DISTRICT

1. **Seasonal scheduled service.** A certificate granted by the commission for seasonal scheduled passenger, freight or vehicle transportation services must be limited to the provision of scheduled services found by the commission to cure any inadequacies or deficiencies in existing scheduled services of the Casco Bay Island Transit District.

[1991, c. 774, §2 (NEW) .]

2. **Permanent certificates.** An applicant for a permanent certificate of public convenience and necessity for the provision of scheduled passenger, freight or vehicle transportation service who seeks such a certificate on the grounds that the service provided by the Casco Bay Island Transit District is inadequate or deficient has the burden of establishing the following.

A. The service of the district is inadequate or deficient in the areas in which the applicant proposes to provide service. [1991, c. 774, §2 (NEW).]

B. By written application to the board of directors of the district, the applicant has identified the inadequacies and deficiencies in the service of the district that the applicant wishes to provide. [1991, c. 774, §2 (NEW).]

C. The district has failed substantially to cure these inadequacies or deficiencies in its service within 60 days after receipt of the written application of the applicant that identifies the inadequacies or deficiencies. [1991, c. 774, §2 (NEW).]

[1991, c. 774, §2 (NEW) .]

3. **Insufficiency of lower rates to establish deficiency.** A scheduled service provided by the Casco Bay Island Transit District may not be found to be inadequate or deficient solely on the basis that a seasonal service is proposed by an applicant to be provided at a lower rate than the scheduled service offered by the district. This subsection does not apply to any application proposing to provide all scheduled passenger, freight and vehicle transportation services currently offered by the district.

[1991, c. 774, §2 (NEW) .]

SECTION HISTORY
1991, c. 774, §2 (NEW).

§5101-C. PRESERVATION OF FINANCIAL VIABILITY OF CASCO BAY ISLAND TRANSIT DISTRICT

In reviewing an application for a certificate of public convenience and necessity for the provision of scheduled passenger, freight or vehicle transportation service under section 5101, the commission shall consider the cumulative impact of each application in conjunction with any other certificates previously granted for ferry services in Casco Bay. The commission may not grant a certificate for scheduled passenger, freight or vehicle transportation service that is likely to have a significant adverse impact on the rates that

must be charged by the Casco Bay Island Transit District, the capability of the district to sell or repay bonds, the short-term or long-term financial viability of the district, or the ability of the district to retain a reasonable level of cross-subsidization, taking into consideration the full range of services provided by the district and the requirement that the district provide and maintain reasonable and adequate service, rates and schedules to the islands of Casco Bay as required by section 5103. [1991, c. 774, §2 (NEW).]

SECTION HISTORY
1991, c. 774, §2 (NEW).

§5101-D. UNSCHEDULED FREIGHT SERVICES

(REPEALED)

SECTION HISTORY
1991, c. 774, §2 (NEW).

§5101-E. UNSCHEDULED TOURS, CHARTERS AND WATER TAXI SERVICES

The commission shall adopt rules governing unscheduled tours, charters and water taxi services. [1991, c. 774, §2 (NEW).]

SECTION HISTORY
1991, c. 774, §2 (NEW).

§5101-F. EXEMPTIONS

Sections 5101-A to 5101-D do not apply to the operations of any ferry service to the extent that those operations involve service to Chebeague Island and to none of the other islands served by the Casco Bay Island Transit District. [1991, c. 774, §2 (NEW).]

The Chebeague Transportation Company is not required to seek or hold a certificate of public convenience and necessity under section 5101 for ferry service between Chebeague Island and the mainland of Cumberland County north of Tukeys Bridge. [1991, c. 774, §2 (NEW).]

SECTION HISTORY
1991, c. 774, §2 (NEW).

§5102. APPLICATION OF THIS TITLE

1. **Authority over ferries.** 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.

[1987, c. 475, §2 (NEW) .]

2. **Emergency.** Persons providing emergency transportation, including transportation relating to emergency planning activities, under this Title are not public utilities subject to the jurisdiction of the commission.

[1991, c. 774, §3 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 475, §2 (AMD). 1991, c. 774, §3 (AMD).

§5103. SERVICE, RATES AND SCHEDULES

All ferries shall maintain reasonable and adequate service, rates and schedules to the islands of Casco Bay as set out in section 5101 under rules promulgated by the commission. [1987, c. 475, §2 (AMD).]

1. **Rates.**

[1987, c. 475, §2 (RP) .]

2. **Schedules.** The commission, when promulgating rules as to schedules, shall take into consideration the daily year-round service needs of the inhabitants of the islands of Casco Bay as set out in section 5101.

[1987, c. 475, §2 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 475, §2 (AMD).

§5104. EXCEPTIONS FOR FERRIES CARRYING COMMODITIES IN BULK

Nothing in this Part 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 transportation of a commodity in motor vehicles, whether commercial or privately owned, upon a vessel may not be construed as a bulk movement of those commodities. [1987, c. 475, §2 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 475, §2 (AMD).

§5105. MEDICAL EMERGENCY

In the case of a medical emergency, transportation may be obtained from any person. [1987, c. 475, §2 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 475, §2 (AMD).

§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 authorize other persons to provide services to the islands of Casco Bay as set out in section 5101, when persons authorized under section 5101 are unable to provide a needed service. The commission may attach reasonable terms, conditions and limitations to the temporary certificates. [1987, c. 475, §2 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 475, §2 (AMD).

§5107. VIOLATION OF THIS CHAPTER; PENALTY

1. **Offense.** Whoever violates this chapter is guilty of unlawfully operating a ferry in Casco Bay.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Penalty.** Unlawful operation of a ferry in Casco Bay is a Class E crime.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Civil remedy.** 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 operation of a ferry covered by this chapter, the Superior Court has jurisdiction upon complaint filed by the commission or the Casco Bay Island Transit District 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 or the Casco Bay Island Transit District may seek an injunction under this section without first resorting to another form of administrative proceedings or court procedures as a condition precedent to the granting of the injunction.

[1987, c. 475, §2 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 475, §2 (AMD).

§5108. RADAR REQUIREMENTS ON VESSELS OPERATING IN CASCO BAY

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 475, §2 (RP).

§5109. STANDARDS; PROMULGATION; ENFORCEMENT

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 475, §2 (RP).

§5110. LAPSE OF UNUSED CERTIFICATES

Any certificate issued pursuant to this chapter that has not been used by the holder during the 2-year period prior to the effective date of this section lapses on the effective date of this section. Any other certificate issued under this chapter, other than a certificate for the transportation of mail, that is not used within 2 years after the date of its issuance lapses 2 years after the date of its issuance. Any certificate issued prior to the effective date of this section for the transportation of mail that is not used within 5 years of the date of issuance lapses 5 years after the date of its issuance. [1991, c. 774, §4 (NEW).]

SECTION HISTORY
1991, c. 774, §4 (NEW).

§5111. REPEAL; REPORT

(REPEALED)

SECTION HISTORY
1991, c. 774, §4 (NEW). 1993, c. 589, §8 (AMD). 1995, c. 559, §1 (RP).

Part 6: WATER HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

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. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Governing body.** 1987, c. 490, Pt. B, § 10 (rp).

1-A. **Consumer-owned water utility.** "Consumer-owned water utility" means any water utility which is wholly owned by its consumers, including, but not limited to, any municipal or quasi-municipal water district or corporation, municipal water department or the water portion of any utility wholly owned by a municipality or district.

[1987, c. 490, Pt. B, §11 (NEW) .]

1-B. **Governing body.** "Governing body" means the governing body of a consumer-owned water utility.

[1987, c. 490, Pt. B, §11 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §§B10,B11 (AMD).

§6102. FILING WITH THE COMMISSION PLANS FOR CONSTRUCTION OR IMPROVEMENTS OF WATER SYSTEMS

1. **General requirements.** 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, addition or alteration in order to obtain the advice of the commission as to cost, method of financing and adherence to proper engineering standards. If the water utility, in whole or in part in consequence of the requirements of the federal Safe Drinking Water Act, 42 United States Code, Sections 300f to 300j-11, will incur expenses in the construction, addition or alteration that are likely to result in increases in rates, tolls or charges totaling more than 50% of the utility's annual operating revenues, the utility shall publish in a newspaper of general circulation in the service territory of the water utility a notice to customers that information regarding the construction, addition

or alteration is available for public review at a location and in a manner that is convenient to the water utility's ratepayers and provide to each of the water utility's customers a direct written notice of the availability of that information.

[2001, c. 488, §1 (AMD) .]

2. **Certain construction or improvements; additional requirements.**

[2001, c. 488, §2 (RP) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1991, c. 52, §1 (RPR). 1993, c. 91, §9 (AMD). 2001, c. 488, §§1,2 (AMD).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§6104. MUNICIPAL AND QUASI-MUNICIPAL WATER UTILITIES SUBJECT TO SUSPENSION, INVESTIGATION, HEARING AND RATE SUBSTITUTION

1. **Application of this section.** Notwithstanding section 310, any consumer-owned water utility that proposes to increase or decrease rates, tolls or charges may elect to set rates pursuant to this section.

[1995, c. 255, §7 (AMD) .]

2. **Utilities that elect to set rates under this section.** Consumer-owned water utilities that elect to set rates under this section may not increase or decrease any rate, toll or charge without first holding a public hearing at which the Public Advocate and any customer may testify and may question the officials present regarding the proposed rate change.

[1995, c. 255, §8 (AMD) .]

3. **Notice of proposed rate change and hearing.** The consumer-owned water utility shall, at least 14 days prior to the hearing, publish a notice of the proposed rate change 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 consumer-owned water utility and give one notice of the proposed rate change and the date, time, place and purpose of the hearing to each of its customers. The published and individual notices must include a statement describing the amount of the rate change and the percentage change for each customer class, the customer's right to request information relating to the present and proposed rates, the right to an open and fair hearing and the right to further hearings before the commission, and the availability of assistance from the Public Advocate. The published and individual notices must inform customers that they can petition the commission to investigate the proposed rate change and must include a statement that signatures on petitions filed pursuant to subsection 7 are invalid unless accompanied by the printed names and addresses of the signers. The published and individual notices must also inform customers that the utility will, upon request, provide customers with petition forms that include space for signatures and the printed names and addresses of the signers. Copies of the notice must be sent to the commission and the Public Advocate at least 14 days prior to the hearings.

[1995, c. 255, §9 (AMD) .]

4. **Notice that rate change may be investigated by commission.** At the commencement of each hearing held pursuant to this section, the consumer-owned water utility shall inform those present that the rate change may be investigated by the commission in accordance with this section and that petitions filed pursuant to subsection 7 must bear the signatures and the printed names and addresses of the signers. Upon request, the utility shall provide customers with petition forms that include space for signatures and the printed names and addresses of the signers.

[1995, c. 255, §10 (AMD) .]

4-A. **Supporting materials.** The water utility shall file a copy of all materials supporting the proposed rate change with the commission and the Public Advocate, at least 30 days prior to the hearing. A copy of all material supporting the proposed rate change shall be made available to customers for examination at the offices of the utility for at least 30 days prior to the hearing. The utility shall promptly provide any readily available relevant additional material or information requested by a customer, the commission or the Public Advocate.

[1995, c. 255, §11 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

7. **Authority to investigate rate changes.** If, within 30 days of the public hearing, 15% of the customers of the consumer-owned 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 if a rate increase is more than 50% of the utility's annual operating revenues, the required number of petitions is 15% of the customers of the consumer-owned water utility or 500 customers, whichever is less. No suspension order issued by the commission pursuant to section 310 is effective for a period greater than 9 months from the date the rate changes were filed.

[1991, c. 52, §2 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

9. **Water utility may challenge petitions.** A consumer-owned water utility has 10 days from receipt of notice to notify the commission and the lead petitioner whether it intends to contest any aspect of the validity of the petitions, after which it loses that right. If the utility intends to challenge the validity of individual signatures on the petitions, it must identify, in its notice to the commission and lead petitioner, the specific signatures it is challenging and state the grounds for challenging each signature it believes is invalid. When the utility files its notice of intent to challenge the validity of the petitions, the utility shall provide the commission and the lead petitioner with a list of its customers. 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. For the purposes of this section, "customer" means, in the case of residential accounts, any one adult residing in a household where the utility's service is provided and, in the case of all other accounts where the utility's service is provided, a corporate officer, a partner or a proprietor. No more than one person may sign on behalf of an account. No person may sign on behalf of more than one account unless the person is a customer at each account.

Signatures on petitions filed pursuant to subsection 7 are valid only if accompanied by the printed names and addresses of the signers. If a petition filed pursuant to subsection 7 bears a sufficient total number of signatures but an insufficient number of printed names and addresses of the signers, the lead petitioner has 7 days from receipt of notice of the utility's challenge to cure the invalidity. If the utility's only challenge to a petition relates to the absence of printed names or addresses of the signers of the petition and the lead petitioner cures the invalidity as provided in this subsection, the commission is not required to hold a hearing under this subsection.

[1993, c. 589, §11 (AMD) .]

10. **Review of rates under section 310.** Nothing in this section prohibits a consumer-owned water utility from petitioning the commission for review pursuant to section 310 in the first instance.

[1987, c. 490, Pt. B, §12 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §B12 (AMD). 1987, c. 628, §§2-4 (AMD). 1989, c. 159, §§7,8 (AMD). 1991, c. 52, §2 (AMD). 1993, c. 589, §§9-11 (AMD). 1995, c. 255, §§7-11 (AMD).

§6104-A. CONSUMER-OWNED WATER UTILITIES; STREAMLINED RATEMAKING

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

A. "Large consumer-owned water utility" means a consumer-owned water utility with total annual revenues of at least $750,000 during the most recent fiscal year. [2009, c. 237, §2 (NEW).]

B. "Medium consumer-owned water utility" means a consumer-owned water utility with total annual revenues of less than $750,000 and at least $250,000 during the most recent fiscal year. [2009, c. 237, §2 (NEW).]

C. "Small consumer-owned water utility" means a consumer-owned water utility with total annual revenues of less than $250,000 during the most recent fiscal year. [2009, c. 237, §2 (NEW).]

[2009, c. 237, §2 (NEW) .]

2. **Application of this section; qualification; supporting materials.** Notwithstanding section 310 or section 6104, any consumer-owned water utility may elect to increase rates pursuant to this section.

A. [2011, c. 106, §1 (RP).]

B. [2011, c. 106, §1 (RP).]

The consumer-owned water utility shall file its proposed rate increase, in accordance with the limits established in subsection 3, along with a copy of all materials required to be submitted under section 6104, subsection 4-A supporting the proposed rate increase with the commission and the Public Advocate at least 30 days prior to the public meeting required under subsection 4. A copy of the required materials supporting

the proposed rate increase must be made available to customers for examination at the offices of the utility for at least 30 days prior to the public meeting. The utility shall promptly provide any readily available relevant additional material or information requested by a customer, the commission or the Public Advocate.

[2011, c. 106, §1 (AMD) .]

3. **Maximum rate increase.** The maximum rate increase that a consumer-owned water utility may propose under this section:

A. Is 3% of current rates if the utility is a large consumer-owned water utility. The cumulative total of rate increases under this paragraph may not exceed 10% over 5 years; [2011, c. 106, §1 (AMD).]

B. Is 5% of current rates if the utility is a medium consumer-owned water utility. The cumulative total of rate increases under this paragraph may not exceed 15% over 5 years; and [2011, c. 106, §1 (AMD).]

C. Is 7.5% of current rates if the utility is a small consumer-owned water utility. The cumulative total of rate increases under this paragraph may not exceed 20% over 5 years. [2011, c. 106, §1 (AMD).]

[2011, c. 106, §1 (AMD) .]

4. **Utilities that set rates under this section; public meeting required.** Consumer-owned water utilities that qualify to increase rates under this section may not increase any rate, toll or charge without first holding a public meeting at which the Public Advocate and any customer may provide comment and may question the officials present regarding the proposed rate increase.

[2009, c. 237, §2 (NEW) .]

5. **Notice of proposed rate increase and public meeting.** The consumer-owned water utility shall, at least 14 days prior to the public meeting required under subsection 4, publish a notice of the proposed rate increase and the meeting, including the date, time, place and purpose of the meeting, in a newspaper of general circulation in the area encompassed by the consumer-owned water utility and give one notice of the proposed rate change and the date, time, place and purpose of the meeting to each of its customers. The published and individual notices must include a statement describing the amount of the rate increase and the percentage change for each customer class, the customer's right to request information relating to the present and proposed rates and the availability of assistance from the Public Advocate. Copies of the notice must be sent to the commission and the Public Advocate at least 14 days prior to the meeting.

[2011, c. 106, §1 (AMD) .]

6. **Public meeting; vote of governing body; minutes.** At the commencement of each public meeting held pursuant to this section, the consumer-owned water utility shall inform those present of the reason for the rate change. Each public meeting held pursuant to this section must include a public comment period. After the public meeting, the governing body of the consumer-owned water utility shall hold a meeting to deliberate and vote on the proposed rate increase, which may be modified on the basis of the public comment received during the public meeting. The consumer-owned water utility shall take minutes of the public meeting and the subsequent meeting of the governing body.

Within 30 days of the public meeting, the consumer-owned water utility shall file with the commission and the Public Advocate a copy of the minutes of that meeting, which must include a record of the public comment received. Within 30 days of the meeting of the governing body of the consumer-owned water utility held under this subsection, the consumer-owned water utility shall file with the commission and the Public

Advocate a copy of the minutes of that meeting, which must include the vote of the governing body, along with responses of the governing body to the public comment received. A copy of the minutes of each meeting must be made available to customers for examination at the offices of the utility.

[2009, c. 237, §2 (NEW) .]

7. **Filing changed rates.** The consumer-owned water utility shall file its changed rates with the commission within 30 days of the vote of the governing body of the consumer-owned water utility under subsection 6, but not sooner than 10 days following the vote.

[2009, c. 237, §2 (NEW) .]

8. **Effective date established for rate change.** Subject to the notice and waiver requirements of section 307, consumer-owned 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 under subsection 7.

[2009, c. 237, §2 (NEW) .]

9. **Review of rates under section 310.** Nothing in this section prohibits a consumer-owned water utility from petitioning the commission for review pursuant to section 310 or filing a rate change pursuant to section 6104 in the first instance.

[2009, c. 237, §2 (NEW) .]

10. **Correction of errors.** Upon review of a rate filing made pursuant to this section, the commission may order the consumer-owned water utility to correct mathematical or clerical errors.

[2009, c. 237, §2 (NEW) .]

SECTION HISTORY
2009, c. 237, §2 (NEW). 2011, c. 106, §1 (AMD).

§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 consumer-owned water utility, the rate, toll or charge made, exacted, demanded or collected by a consumer-owned water utility is governed by this section.

[1987, c. 490, Pt. B, §13 (AMD) .]

2. **Just and reasonable rates.** The governing body shall establish rates, tolls or charges that are just and reasonable and that provide revenue as may be required to perform its public utility service and to attract necessary capital on just and reasonable terms. The governing body shall provide the rate schedule and any changes to the rate schedule to the commission.

[2013, c. 573, §1 (AMD) .]

3. **Uniform rates.** The governing body shall establish rates that 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 higher rates for that section, but these higher rates must be uniform throughout that section. The governing body shall provide the rate schedule and any changes to the rate schedule to the commission.

[2013, c. 573, §1 (AMD) .]

3-A. **Impact fees and connection fees; affordable housing.** Notwithstanding subsection 3 and section 703, the governing body may reduce the impact fee or connection fee, as those terms are defined in Title 30-A, section 5061, for water service to newly constructed affordable housing in accordance with Title 30-A, chapter 202-A.

[2007, c. 174, §3 (NEW) .]

4. **Purposes.** The governing body may establish 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; [1987, c. 141, Pt. A, §6 (NEW).]

B. To provide for the payment of the interest on the indebtedness created or assumed by the utility; [1987, c. 141, Pt. A, §6 (NEW).]

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; the sum must 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 must 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; [2013, c. 573, §2 (AMD).]

D. To provide for annual principal payments on serial indebtedness created or assumed by the utility; [1989, c. 59, §1 (AMD).]

E. To provide for a contingency allowance as provided in section 6112; [2011, c. 602, §1 (AMD).]

F. To provide for rate adjustments to reflect the cost of anticipated construction of plants or facilities required by the 1986 amendments to the United States Safe Drinking Water Act, Public Law 93-523, or related projects, except that rates established under this paragraph are not subject to section 6104; and [2011, c. 2, §39 (COR).]

G. To provide for recovery of the amounts necessary to fund the replacement of water system infrastructure. Those funds must be deposited in a capital reserve account and used in accordance with section 6107-A. [2011, c. 602, §3 (NEW).]

[2013, c. 573, §2 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §§B13,B14 (AMD). 1989, c. 59, §§1-3 (AMD). RR 1991, c. 2, §131 (COR). 1991, c. 221, §1 (AMD). 2003, c. 529, §1 (AMD). 2007, c. 174, §3 (AMD). RR 2011, c. 2, §39 (COR). 2011, c. 602, §§1-3 (AMD). 2013, c. 573, §§1, 2 (AMD).

§6106. APPORTIONMENT OF COSTS FOR WATER MAIN EXTENSIONS OR SERVICE LINES

1. **Investment.** The governing body of a consumer-owned 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.

[1987, c. 490, Pt. B, §15 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. **Notice to commission.** A consumer-owned water utility that chooses to make no investment in water main extensions or service lines under subsection 1 shall notify the commission in writing of the effective date of the decision and shall include the minutes or other record of the decision, including any endorsement required by subsection 3.

[1989, c. 159, §9 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §B15 (AMD). 1989, c. 159, §9 (AMD).

§6107. SYSTEM DEVELOPMENT CHARGE

1. **System development charge authorized.** In addition to section 6105, the governing body of a consumer-owned 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.

[1987, c. 490, Pt. B, §16 (AMD) .]

2. **Commission review.** If a consumer-owned 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.

[1987, c. 490, Pt. B, §16 (AMD) .]

3. **Use of funds.** The funds generated by the system development charge must be deposited into a special account of the consumer-owned 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 may be used only for the purpose of financing the expansion of the system and may 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 may not be treated as income of the consumer-owned water utility nor may it be considered part of the rates established and provided to the commission pursuant to section 6105.

[2013, c. 573, §3 (AMD) .]

4. **Assessment of charge.** The system development charge may be assessed upon all customers of the consumer-owned 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.

[1987, c. 490, Pt. B, §16 (AMD) .]

5. **Water conservation programs.** Before a system development charge may be instituted, the consumer-owned 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.

[1987, c. 490, Pt. B, §16 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §B16 (AMD). 2013, c. 573, §3 (AMD).

§6107-A. FUNDING FOR INFRASTRUCTURE IMPROVEMENTS FOR WATER UTILITIES

Notwithstanding chapter 3, a water utility may fund future infrastructure improvements through recovery in rates and fund completed infrastructure replacement or repairs through the establishment of a surcharge in accordance with this section and rules adopted by the commission. Nothing in this section may be construed to exempt any expenditure by a water utility from review by the commission in accordance with this Title. [2011, c. 602, §4 (NEW).]

1. **Recovery in rates.** A water utility may recover in rates the amounts necessary to fund the future replacement of water system infrastructure. Those funds must be deposited in a capital reserve account.

[2011, c. 602, §4 (NEW) .]

2. **Commission review of capital reserve account.** A water utility shall provide to the commission an annual accounting of all revenues deposited into and expenditures made from the water utility's capital reserve account. Money in the capital reserve account is not considered unappropriated retained earnings for the purpose of section 6112, subsection 5.

[2011, c. 602, §4 (NEW) .]

3. **Infrastructure replacement surcharge.** A water utility may establish and file, pursuant to section 307, a temporary surcharge to allow recovery of the costs of completed replacement or repairs of water system infrastructure. The temporary surcharge may continue until the water utility's next rate case under chapter 3 or rate filing pursuant to sections 6104 and 6104-A and in accordance with section 6105.

If a water utility elects to institute an infrastructure replacement surcharge pursuant to this subsection, the water utility shall file the proposed surcharge with a justification for the implementation of the surcharge with the commission no less than 30 days before the effective date of the surcharge. The commission may investigate the surcharge in accordance with section 1303 to determine if the surcharge is just and reasonable. If the commission investigates the surcharge, the commission shall make its determination within 75 days of the filing and shall approve the surcharge if it is determined to be just and reasonable and deny the surcharge if it is determined not to be just and reasonable.

[2011, c. 602, §4 (NEW) .]

4. **Limitations.** A water utility may not expend amounts collected pursuant to subsection 1 for any purpose other than infrastructure improvements in accordance with this section and rules adopted by the commission.

[2011, c. 602, §4 (NEW) .]

5. **Rules.** The commission shall adopt rules to implement this section, including but not limited to rules governing the maximum amount of funds that may be recovered through rates or surcharges under this section, the authorized uses of those funds and reporting requirements and procedures to ensure that this section is being implemented in a manner that is consistent with just and reasonable rate-making principles, including a requirement that utilities submit an infrastructure needs assessment plan when establishing and using a capital reserve account. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2011, c. 602, §4 (NEW) .]

SECTION HISTORY
2011, c. 602, §4 (NEW).

§6108. STATE CONTRIBUTIONS

The management and allocation by a consumer-owned water utility of a state contribution of funds made prior to January 1, 1989, under Title 38, section 568, and its income, shall not be subject to investigation or review by the commissioner included under section 310, 1302 or 1303 except upon request by the Department of Environmental Protection. [1987, c. 889, (NEW).]

SECTION HISTORY
1987, c. 889, (NEW).

§6109. SALE OF LAND BY CONSUMER-OWNED WATER UTILITY

The following provisions govern the sale or transfer by a consumer-owned water utility of land or property owned by that water utility for the purposes of providing a source of supply, storing water or protecting sources of supply or water storage, including reservoirs, lakes, ponds, rivers and streams, land surrounding or adjoining reservoirs, lakes, ponds, rivers or streams, wetlands and watershed areas. [1989, c. 685, (NEW); 1989, c. 733, §1 (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

1. **Notice of proposed sale.** A consumer-owned water utility shall, at least 8 months prior to the sale of land under this section, give notice of that proposed sale to the commission. The utility shall provide additional notice as prescribed by rule by the commission as follows.

A. Notice must be given to the municipality or municipalities where the land is located. [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

B. One notice must be given to each of the customers of the consumer-owned water utility in a manner prescribed by the commission. [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

C. Notice must be published in a newspaper of general circulation in the area encompassed by the consumer-owned water utility. [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

[1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR) .]

2. **Time of sale.** Land subject to the provisions of this section may not be sold within the first 8 months after notice of the proposed sale has been given to the commission unless all or part of that time period is waived by the commission for good cause shown.

[1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR) .]

3. **Sale at a price below market value.** The trustees of a consumer-owned water utility may sell land to the State, an agency of the State, a municipality or other governmental body, or a private nonprofit organization at a price below market value. Land purchased under this subsection must be used for:

A. The purposes of retaining or protecting the natural scenic or open-space values of the property; [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

B. Assuring the availability of the property for recreational or open-space use; [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

C. Protecting natural resources; or [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

D. Maintaining or enhancing air or water quality. [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

The sale of consumer-owned water utility land pursuant to this subsection may not be considered unreasonable or imprudent solely by reason of its sale at a price below market value.

[1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR) .]

4. **Rules.** The commission may promulgate rules to implement this section, including, but not limited to, rules governing the authority of the ratepayers of the consumer-owned water utility to endorse or prohibit the sale of land by a consumer-owned water utility under this section and to prohibit or endorse any condition of that sale.

[1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR) .]

5. **Right of first refusal.** The municipality in which the land is located shall have the right of first refusal to purchase any land that lies within that municipality's boundaries and is offered for sale under this section. That right is assignable by the municipality.

[1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR) .]

SECTION HISTORY
1989, c. 685, (NEW). 1989, c. 733, §1 (NEW). 1989, c. 878, §F4 (RPR).

§6109-A. LEASE OF PROPERTY BY CONSUMER-OWNED WATER UTILITY

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

A. "Charter" has the same meaning as set forth in section 6402, subsection 1. [2003, c. 267, §1 (NEW).]

B. "Consumer-owned water utility" has the same meaning as set forth in section 6101, subsection 1-A. [2003, c. 267, §1 (NEW).]

[2003, c. 267, §1 (NEW) .]

2. **Agreements authorized.** Notwithstanding any provision to the contrary in its charter, a consumer-owned water utility may enter into a lease and leaseback transaction with respect to some or all of its real or personal property, other than land, and may take all other action necessary or desirable, including, but not limited to, the granting of mortgages and liens, to effectuate the transaction. For purposes of this subsection, "lease" includes a lease of any length, including leases that may be defined as sales for income tax purposes.

[2003, c. 267, §1 (NEW) .]

SECTION HISTORY
2003, c. 267, §1 (NEW).

§6109-B. CONTRACTS FOR LARGE-SCALE EXTRACTION AND TRANSPORTATION OF WATER

Except as provided in subsection 5, this section governs any contract or agreement between a consumer-owned water utility and another entity that involves the large-scale extraction of water and the large-scale transportation of water. [2009, c. 37, §1 (NEW).]

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

A. "Large-scale extraction of water" means the extraction of water that is required to be permitted, certified, reported or approved pursuant to:

(1) The in-stream flow provisions of Title 38, section 470-H;

(2) The requirements for significant groundwater wells under Title 38, section 480-B;

(3) The site location of development law requirements for a development of state or regional significance that may substantially affect the environment as provided in Title 38, section 482, subsection 2; or

(4) The water withdrawal reporting program under Title 38, chapter 3, subchapter 1, article 4-B. [2009, c. 37, §1 (NEW).]

B. "Large-scale transportation of water" means the transportation of water for commercial purposes by pipeline or other conduit or by tank vehicle or in a container, greater in size than 10 gallons, beyond the boundaries of the municipality or township in which the water is naturally located or of any bordering municipality or township. [2013, c. 381, Pt. B, §31 (AMD).]

[2013, c. 381, Pt. B, §31 (AMD) .]

2. **Public meeting required.** A consumer-owned water utility may not enter into a contract or agreement subject to this section until at least 30 days after holding a public meeting on the proposed contract or agreement in accordance with this subsection. The public meeting must include:

A. A presentation by the consumer-owned water utility of the terms and conditions of the proposed contract or agreement and the criteria to be used by the utility to decide whether to enter into the contract or agreement; and [2009, c. 37, §1 (NEW).]

B. An opportunity for public comment on the proposed contract or agreement. [2009, c. 37, §1 (NEW).]

[2009, c. 37, §1 (NEW) .]

3. **Public notice required.** The consumer-owned water utility shall, at least 30 days prior to the public meeting required under subsection 2, give written notice of the public meeting and the proposed contract or agreement in accordance with this subsection. The notice must include the date, time, place and purpose of the meeting.

A. The consumer-owned water utility shall give one written notice to each of its customers. [2009, c. 37, §1 (NEW).]

B. The consumer-owned water utility shall give written notice to the commission, the Office of the Public Advocate and the municipality or municipalities where the source of water is located. [2009, c. 37, §1 (NEW).]

C. The consumer-owned water utility shall publish one notice in a newspaper of general circulation in the area served by the consumer-owned water utility. [2009, c. 37, §1 (NEW).]

[2009, c. 37, §1 (NEW) .]

4. **Copy available for inspection.** Prior to the public meeting required under subsection 2, the consumer-owned water utility shall make available for public inspection a copy of the proposed contract or agreement.

[2009, c. 37, §1 (NEW) .]

5. **Exceptions.** This section does not apply to a contract or agreement between a consumer-owned water utility and another entity that involves the large-scale extraction of water and the large-scale transportation of water when:

A. The entity entering into a contract or agreement with the consumer-owned water utility is:

(1) An existing customer of the consumer-owned water utility; or

(2) A water utility; or [2009, c. 37, §1 (NEW).]

B. The large-scale transportation of water meets the exceptions provided in Title 22, section 2660-A, subsection 2, paragraph B, C or D. [2009, c. 37, §1 (NEW).]

[2009, c. 37, §1 (NEW) .]

6. **Rulemaking.** The commission may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 37, §1 (NEW) .]

SECTION HISTORY
2009, c. 37, §1 (NEW). 2013, c. 381, Pt. B, §31 (AMD).

§6110. INJUNCTIVE RELIEF FOR VIOLATIONS OF MUNICIPAL SHORELAND ZONING ORDINANCES

Pursuant to Title 38, section 444-A, any water utility may commence a civil action for a violation of municipal shoreland zoning ordinances. [1989, c. 878, Pt. F, §5 (NEW).]

SECTION HISTORY
1989, c. 878, §F5 (NEW).

§6111. LIENS ON MULTI-UNIT RESIDENTIAL RENTAL PROPERTY

(REPEALED)

SECTION HISTORY
RR 1991, c. 1, §49 (COR). 1991, c. 136, (NEW). 1991, c. 221, §2 (NEW). 2005, c. 7, §1 (RP).

§6111-A. LIENS FOR UNPAID RATES; MULTIUNIT RESIDENTIAL RENTAL PROPERTY

1. **Liens for unpaid rates; water utilities.** A water utility has a lien on real estate served by that water utility to secure the payment of unpaid rates.

[2011, c. 97, §1 (AMD) .]

2. **Rental property; water utilities.** Notwithstanding section 706, when a landlord has applied for and is granted water utility service to a multiunit residential rental property, the water utility has a lien on the property and on any interest the landlord has in the multiunit residential rental property to secure payment for the water utility's service to that property with costs and with interest at a rate not to exceed the highest lawful rate set by the Treasurer of State for municipal taxes.

[2005, c. 7, §2 (NEW) .]

3. **Method and procedure.** The method for obtaining, enforcing and receiving payment on a lien created under this section must be performed in the same manner and has the same effect and creates the same rights as provided in Title 38, section 1208 pertaining to the collection of unpaid rates by a sanitary district, except that a sanitary district lien created under Title 38, section 1208 continues with priority over a lien created under this section. The notice of impending automatic foreclosure must be substantially in the following form:

STATE OF MAINE
(insert name of water utility)
NOTICE OF IMPENDING AUTOMATIC FORECLOSURE
WATER LIEN
Title 35-A M.R.S.A., section 6111-A
IMPORTANT: DO NOT DISREGARD THIS NOTICE
YOU WILL LOSE YOUR PROPERTY UNLESS
YOU PAY THE CHARGES, COSTS AND INTEREST FOR WHICH
A LIEN ON YOUR PROPERTY HAS BEEN CREATED BY THE
(insert name of water utility)

TO: .....

You are the party named on the Water Lien Certificate filed on ....., 20.. and recorded in Book ....., Page ..... in the ..... County Registry of Deeds. This (insert name of water utility) filing created a lien mortgage on the real estate described in the Water Lien Certificate.

On ....., 20..., the water lien mortgage will be foreclosed and your right to redeem the mortgage and recover your property by paying the charges and interest of the (insert name of water utility) that are owed will expire.

IF THE LIEN FORECLOSES,
THE (insert name of water utility) WILL OWN
YOUR PROPERTY, SUBJECT ONLY TO
SANITARY DISTRICT AND MUNICIPAL TAX LIENS.

If you cannot pay the outstanding charges, costs and interest that are the subject of this notice or the subject of installment payment arrangements that you have made with the (insert name of water utility), please contact me immediately to discuss this notice.

.....
(insert name of water utility) Treasurer

[2005, c. 7, §2 (NEW) .]

4. **Waiver of water lien foreclosure.** The treasurer of a water utility, when authorized by the trustees or directors of the utility, may waive the foreclosure of a lien mortgage created pursuant to this section by recording in the registry of deeds a waiver of foreclosure before the period for the right of redemption from the lien mortgage has expired. The lien mortgage remains in full effect after the recording of a waiver. Other methods established by law for the collection of any unpaid rate, toll, rent or other charges are not affected by the filing of a waiver under this section. The waiver of foreclosure must be substantially in the following form:

The foreclosure of the water lien mortgage on real estate for charges against ..... (NAME) to ..... (NAME OF WATER UTILITY) dated ..... and recorded in the ..... County Registry of Deeds in Book ....., Page ..... is hereby waived.

The form must be dated, signed by the treasurer of the water utility and notarized. A copy of the form must be provided to the party named on the lien mortgage and each record holder of a mortgage on the real estate.

[2011, c. 97, §2 (AMD) .]

SECTION HISTORY
2005, c. 7, §2 (NEW). 2009, c. 490, §1 (AMD). 2011, c. 97, §§1, 2 (AMD).

§6111-B. LANDLORD ACCESS TO TENANT BILL PAYMENT INFORMATION

If a tenant is billed for water utility service provided to property rented by the tenant and nonpayment for the service may result in a lien against the property, the utility shall provide to the landlord or the landlord's agent, on request of the landlord or the landlord's agent, the current status of the tenant's account, including any amounts due or overdue. [2005, c. 306, §2 (NEW).]

SECTION HISTORY
2005, c. 306, §2 (NEW).

§6111-C. DISCONNECTION OF WATER SERVICE FOR NONPAYMENT OF SEWER SERVICES

Except as provided in subsection 4, this section applies to any consumer-owned water utility that is authorized to provide sewer services, notwithstanding any provision in its charter. Notwithstanding any other provision of law, in the event a user of the consumer-owned water utility's sewer system fails within a reasonable time to pay the utility's rates, fees or charges for sewer service, the utility may disconnect water service to the user, as long as the disconnection is accomplished in accordance with procedures established in applicable law or rules governing disconnection of utility services and terms and conditions approved by the commission. In order to exercise this authority, the utility must apply to the commission and the commission must approve terms and conditions consistent with the requirements of this section. [2009, c. 541, §1 (NEW).]

1. **Annual filings.** The terms and conditions under this section must include a requirement that the consumer-owned water utility annually file with the commission a report that includes:

A. The total number of each of the following over the preceding 12 months:

(1) Disconnection notices issued;

(2) Disconnections completed; and

(3) Reconnections of disconnections; and [2009, c. 541, §1 (NEW).]

B. The reason for each disconnection. [2009, c. 541, §1 (NEW).]

[2009, c. 541, §1 (NEW) .]

2. **Assistance program information.** The terms and conditions under this section must include a requirement that the consumer-owned water utility provide to customers to whom the utility sends disconnection notices information about available assistance programs, including programs that offer assistance in paying for sewer or water service, programs that offer assistance in paying for other utility services or in paying for heating fuel or similar assistance programs that could provide sufficient support to the customer to allow the customer to pay the utility's rates, fees or charges for sewer service.

[2009, c. 541, §1 (NEW) .]

3. **Limitations.** The terms and conditions under this section must prohibit:

A. A disconnection based solely on a customer’s nonpayment of a fee or charge for estimated sewer service usage; and [2009, c. 541, §1 (NEW).]

B. A disconnection of a multiunit rental facility greater than 2 units unless the owner of the facility occupies a unit that would be subject to the disconnection. [2009, c. 541, §1 (NEW).]

[2009, c. 541, §1 (NEW) .]

4. **Exception.** Subsection 3, paragraph B does not apply to a consumer-owned water utility that has authority pursuant to its charter to disconnect water service in the event a user of the consumer-owned water utility's sewer system fails to pay the utility's rates, fees or charges for sewer service, provided the charter provision establishing that authority was enacted prior to August 1, 2010.

[2009, c. 541, §1 (NEW) .]

SECTION HISTORY
2009, c. 541, §1 (NEW).

§6112. CONTINGENCY ALLOWANCE

1. **Annual contingency allowance.** A consumer-owned water utility may provide for an annual contingency allowance by including in rates the amounts as follows:

A. For a utility with total annual revenues up to $85,000, an amount up to 10% of the revenues required to operate the utility; and [2003, c. 529, §2 (NEW).]

B. For a utility with total annual revenues in excess of $85,000, an amount up to 5% of the revenues required to operate the utility. [2003, c. 529, §2 (NEW).]

[2003, c. 529, §2 (AMD) .]

2. **Contingency reserve fund maximum.**

[2003, c. 529, §2 (RP) .]

3. **Use of contingency reserve fund.**

[2003, c. 529, §2 (RP) .]

3-A. **Authorized uses; commission review.** This section does not:

A. Authorize a consumer-owned water utility to expend amounts collected pursuant to this section for any purposes other than those allowed under this Title; or [2003, c. 529, §2 (NEW).]

B. Exempt any expenditures from review by the commission in accordance with this Title. [2003, c. 529, §2 (NEW).]

[2003, c. 529, §2 (NEW) .]

4. **Transition.**

[2003, c. 529, §2 (RP) .]

5. **Commission review.** If the commission determines that the consumer-owned water utility has accumulated in its unappropriated retained earnings account an amount that is inconsistent with just and reasonable rates, the commission may, pursuant to chapter 13, order the utility to reduce its rates to the appropriate level either in the form of temporary rate adjustments, credits or reduction in rates.

[2003, c. 529, §2 (AMD) .]

6. **Public hearing on excesses.** If a consumer-owned water utility in each of 3 consecutive years collects through rates under subsection 1 an amount, in the case of a utility with up to $85,000 total annual revenues, greater than 10% of the utility's annual operating expenses or, in the case of a utility with greater than $85,000 total annual revenues, an amount equal to or greater than 7% of the utility's total annual operating expenses, the water utility shall:

A. No later than July 1st of the calendar year following the end of the 3rd consecutive year of over-collection, notify all of its customers in writing of the over-collection and of the time and place where the utility will hold a public hearing on the matter; and [2003, c. 529, §2 (AMD).]

B. Hold a public hearing no less than 10 days and no more than 30 days after sending the notice required under paragraph A. During the hearing the water utility shall:

(1) Detail the extent of the over-collection;

(2) Provide opportunity for any customer to testify or question the officials on any matter relating to the utility's financial situation; and

(3) Explain and provide copies of the provisions of section 1302 and section 6104, subsection 7. [1991, c. 221, §2 (NEW).]

[2003, c. 529, §2 (AMD) .]

SECTION HISTORY
RR 1991, c. 1, §49 (RNU). 1991, c. 221, §2 (NEW). 2003, c. 529, §2 (AMD).

§6113. WATER SUPPLY PROTECTION FUND

1. **Water supply protection fund.** A consumer-owned water utility may establish a water supply protection fund to which a sum may be credited annually from surplus funds. The annual credit may not exceed 5% of the prior year's total revenue.

[2003, c. 529, §3 (AMD) .]

2. **Water supply protection fund maximum.** Except as provided in subsections 5 and 7, the maximum amount that may be accumulated in a water supply protection fund is 15% of the most recent year's annual revenue of the utility or $100,000, whichever is greater. When the water supply protection fund is at the maximum amount permitted, credit may not be made to the fund from surplus funds.

[1993, c. 30, §1 (NEW) .]

3. **Use of water supply protection fund.** Except as provided in subsection 4, a water supply protection fund may be used by a consumer-owned water utility only for the acquisition of interests in real property reasonably necessary for the protection of a public water supply, including, but not limited to, the acquisition of conservation easements, access easements, other permanent interests in land or long-term leases of at least 99 years. For purposes of this subsection "protection of public water supply" includes watershed protection, groundwater protection or wellhead protection reasonably necessary to minimize the potential for contamination of the consumer-owned water utility's water supply. If the consumer-owned water utility has adopted a watershed control program pursuant to 40 Code of Federal Regulations, Section 141.71 and that program has been approved by the Department of Health and Human Services, any expenditures from the water supply protection fund pursuant to this section for the purposes of watershed protection must be in conformity with that watershed control program.

[1993, c. 30, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

4. **Withdrawal of money from the fund.** A consumer-owned water utility that has accumulated money in its water supply protection fund may remove money from the fund and return that money to the unappropriated retained earnings account if the utility determines that the removal would be in the best interest of the utility's customers.

[1993, c. 30, §1 (NEW) .]

5. **Commission review.** If a consumer-owned water utility needs to accumulate more than the maximum amount allowed in the water supply protection fund to acquire interests as provided in subsection 3, the utility shall obtain the approval of the commission before any sum may be allotted to the fund that would cause the fund to exceed the maximum.

[1993, c. 30, §1 (NEW) .]

6. **Accounting treatment of fund.** Money in a water supply protection fund is not considered unappropriated retained earnings for the purpose of section 6112, subsection 5, nor is such money considered in determining reasonable revenue requirements under section 310 or 6104.

[1993, c. 30, §1 (NEW) .]

7. **Interest.** Except as provided in subsection 4, interest earned on money in a water supply protection fund must remain in the fund and be used solely for the purposes of the fund, notwithstanding the maximum amount permitted in the fund.

[1993, c. 30, §1 (NEW) .]

SECTION HISTORY
1993, c. 30, §1 (NEW). 2003, c. 529, §3 (AMD). 2003, c. 689, §B6 (REV).

§6114. EXEMPTION FROM REQUIREMENTS

The commission may grant exemptions from portions of this Title to individual consumer-owned water utilities or a class of consumer-owned water utilities in accordance with this section. An exemption granted under this section must be granted pursuant to standards and procedures adopted by the commission by rule. [2013, c. 573, §4 (NEW).]

1. **General standards.** In order to grant an exemption, the commission must make specific findings that the exemption is in the public interest, will not result in unjust or unreasonable rates and will not have a negative impact on the provision of safe, adequate and reliable service and that the affected consumer-owned water utility or class of consumer-owned water utilities has the adequate technical, financial and administrative capacity to perform the waived function or requirement.

[2013, c. 573, §4 (NEW) .]

2. **Initiation of exemption.** The commission shall consider an exemption to an individual consumer-owned water utility at the request of a consumer-owned water utility. The commission shall require the consumer-owned water utility to notify its customers and hold a public hearing before approving the request for exemption. The commission may, on its own motion, grant an exemption to a class of consumer-owned water utilities. The commission shall adopt by rule standards and procedures for granting an exemption to a class of consumer-owned water utilities.

[2013, c. 573, §4 (NEW) .]

3. **Exceptions.** The commission may not a grant an exemption under this section from any of the following sections of this Title:

A. Section 116; [2013, c. 573, §4 (NEW).]

B. Section 301, subsections 1 to 3; [2013, c. 573, §4 (NEW).]

C. Section 309, subsection 1; [2013, c. 573, §4 (NEW).]

D. Section 501; [2013, c. 573, §4 (NEW).]

E. Section 502; [2013, c. 573, §4 (NEW).]

F. Section 702; [2013, c. 573, §4 (NEW).]

G. Section 709; [2013, c. 573, §4 (NEW).]

H. Section 712; [2013, c. 573, §4 (NEW).]

I. Section 1101; [2013, c. 573, §4 (NEW).]

J. Section 1302; [2013, c. 573, §4 (NEW).]

K. Section 6105; [2013, c. 573, §4 (NEW).]

L. Section 6109; [2013, c. 573, §4 (NEW).]

M. Section 6109-B; [2013, c. 573, §4 (NEW).]

N. Section 6111-C; and [2013, c. 573, §4 (NEW).]

O. Section 6112. [2013, c. 573, §4 (NEW).]

[2013, c. 573, §4 (NEW) .]

4. **Consumer assistance division.** The commission shall ensure that customers of consumer-owned water utilities retain access to the services provided by the consumer assistance division within the commission.

[2013, c. 573, §4 (NEW) .]

5. **Rescission.** The commission shall establish by rule a process by which:

A. Customers of a consumer-owned water utility may petition the commission to rescind an exemption granted under this section to an individual consumer-owned water utility or to a class of consumer-owned water utilities; and [2013, c. 573, §4 (NEW).]

B. The commission may on its own motion rescind an exemption granted under this section to an individual consumer-owned water utility or to a class of consumer-owned water utilities. [2013, c. 573, §4 (NEW).]

A rescission may be in whole or in part and may be specific to an individual consumer-owned water utility.

[2013, c. 573, §4 (NEW) .]

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2013, c. 573, §4 (NEW).]

SECTION HISTORY
2013, c. 573, §4 (NEW).

Chapter 63: WATER DISTRICTS

§6301. SHORT TITLE; PURPOSE

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 616, §2 (RP).

§6302. FORMATION OF DISTRICTS

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 616, §2 (RP).

§6303. TRUSTEES

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 769, §A144 (AMD). 1995, c. 616, §3 (RP).

§6304. ISSUANCE OF BONDS AND NOTES

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C12 (AMD). 1995, c. 616, §4 (RP).

§6305. LIENS

(REPEALED)

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1995, c. 616, §5 (RP).

§6306. CONFORMITY WITH PRIVATE AND SPECIAL LAWS

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 616, §5 (RP).

§6307. LEGISLATIVE AMENDMENT OF CHARTER

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C13 (AMD). 1995, c. 616, §6 (RP).

§6308. LONG-TERM INDEBTEDNESS OF WATER DISTRICTS

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 616, §7 (RP).

§6309. MUTUAL FUNDS

(REPEALED)

SECTION HISTORY
1993, c. 651, §6 (NEW). 1995, c. 616, §8 (RP).

§6310. WATER DISTRICTS; INDIVIDUAL FINANCING

When the trustees of a water district 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 must be published at least once in a newspaper having general circulation in the water district. The trustees shall give notice to each ratepayer by mail. Notice of a rate change under section 6104 that contains the notice required by this section satisfies the notice requirements. The debt may not be incurred by the vote of the trustees until the expiration of 7 days following the date on which the notice was first published and mailed. Prior to the expiration of the 7-day period, the trustees shall call a special district meeting in order to collect testimony from the public concerning the amount of debt authorized. Except for indebtedness to fund projects specifically mandated by 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 water district on or before the date of the meeting, a vote of those attending the meeting must be called to approve or disapprove the amount of debt authorized. If a majority of voters present and voting disapprove of the amount of debt authorized by the trustees, the debt may not be incurred and the vote of the trustees authorizing the debt is void. [1995, c. 616, §9 (NEW).]

This section applies to water districts formed on or after January 1, 1982, except that this section does not apply to any standard district created pursuant to chapter 64 whose debt limit is subject to voter approval as provided in section 6413. [1995, c. 616, §9 (NEW).]

SECTION HISTORY
1995, c. 616, §9 (NEW).

Chapter 64: WATER DISTRICTS AND STANDARD DISTRICTS

§6401. PURPOSE; SCOPE AND APPLICATION; COMMISSION AUTHORITY

1. **Purpose.** The purpose of this chapter, which may be known and cited as the "Standard Water District Enabling Act," is to promote consistency among the powers and authorities of water districts in this State. The intent of this chapter is to suggest standard provisions that a district formed after January 1, 1997 may consider including in its charter. Except as specifically provided in subsection 2, in recognition of the unique nature of each water district, its customers and its priorities, the suggested provisions are specifically not intended to be mandatory in nature and are not intended to apply to districts formed prior to January 1, 1997.

[1995, c. 616, §10 (NEW) .]

2. **Scope and application.** The provisions of this chapter apply as follows.

A. The following provisions apply to all water districts, regardless of when chartered, and any portion of a water district charter that is contrary to the provisions is void and of no effect:

(1) Section 6410, subsection 7;

(2) Section 6410, subsection 8;

(3) Section 6413-A; and

(4) Section 6414-A. [2003, c. 147, §1 (AMD).]

B. The following provisions apply to all water districts formed on or after January 1, 1982:

(1) Subsection 3;

(2) Section 6410, subsection 5; and

(3) Section 6416. [1995, c. 616, §10 (NEW).]

C. Except as provided in paragraphs A and B or in subsection 3 or by charter or other provision of law, the provisions of this chapter do not apply to districts formed prior to January 1, 1997. [1995, c. 616, §10 (NEW).]

[2003, c. 147, §1 (AMD) .]

3. **Water districts; commission authority.** Notwithstanding any terms, conditions or limitations, either expressed or implied, in a special Act of the Legislature under which a district is organized or in any special Act of the Legislature under which a district is franchised, the commission may establish reasonable terms upon which water districts shall extinguish their long-term indebtedness. This subsection does not authorize the commission to alter the terms of any existing obligations of a water district.

[1995, c. 616, §10 (NEW) .]

SECTION HISTORY
1995, c. 616, §10 (NEW). 2003, c. 147, §1 (AMD).

§6402. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 616, §10 (NEW).]

1. **Charter.** "Charter" means a private and special law or a series of private and special laws that establishes a water district and defines its responsibilities and authority.

[1995, c. 616, §10 (NEW) .]

2. **Standard district.** "Standard district" means a water district that is a quasi-municipal corporation constituted for the purpose of supplying persons of the standard district with potable water for domestic, sanitary, commercial, industrial, agricultural and municipal purposes, and that is formed and chartered pursuant to this chapter.

[1995, c. 616, §10 (NEW) .]

3. **Water district.** "Water district" has the same meaning as defined in section 6101, subsection 3 and includes, but is not limited to, standard districts.

[1995, c. 616, §10 (NEW) .]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6403. PROCEDURES; LEGAL EFFECT

1. **Mandatory provisions.** A standard district charter must include the following, which are not specified in this chapter:

A. The corporate name of the standard district; [1995, c. 616, §10 (NEW).]

B. The territorial limits of the standard district; [1995, c. 616, §10 (NEW).]

C. The number of trustees of the standard district, which may not be less than 3; [1995, c. 616, §10 (NEW).]

D. The appointing authority responsible for appointing or the method of electing the first board of trustees; [1995, c. 616, §10 (NEW).]

E. The terms of the trustees who are elected or appointed subsequent to the first board. Terms may not be longer than 3 years. Terms of the first board are determined pursuant to section 6410, subsection 4; [1995, c. 616, §10 (NEW).]

F. Whether the trustees, subsequent to the first board, are appointed or elected. Reference must be made to the appropriate subsections of section 6410; and [1995, c. 616, §10 (NEW).]

G. The procedures for a local referendum on the creation of a standard district. [1995, c. 616, §10 (NEW).]

[1995, c. 616, §10 (NEW) .]

2. **Optional provisions.** A standard district charter may include provisions relating to the following:

A. Special qualifications of trustees; [1995, c. 616, §10 (NEW).]

B. Election of trustees by other than at large elections as provided in section 6410, subsection 1. Any provision for election of trustees by other than at large elections must establish voting districts in conformance with the judicial principle of one person, one vote; [1995, c. 616, §10 (NEW).]

C. Additional purposes and powers of the standard district, such as authority to buy out an existing water company or to provide sewerage or other utility services; [1995, c. 616, §10 (NEW).]

D. Areas outside the standard district's territory in which the standard district is authorized to take water; [1995, c. 616, §10 (NEW).]

E. Notwithstanding section 6413, a specific debt limit; [1995, c. 616, §10 (NEW).]

F. Areas outside the standard district's territory in which the district is authorized to locate facilities; [1995, c. 616, §10 (NEW).]

G. Towns with which the standard district is authorized to contract to supply water; and [1995, c. 616, §10 (NEW).]

H. Any other powers or duties necessary to the accomplishment of legislative purposes for creating the standard district. [1995, c. 616, §10 (NEW).]

[1995, c. 616, §10 (NEW) .]

3. **Guidelines for modified standard charters.** As determined appropriate by the Legislature, a standard district charter may include provisions that differ from those set forth in this chapter.

[1995, c. 616, §10 (NEW) .]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6404. STANDARD DISTRICTS; POWERS

Except as otherwise provided by law, for the purposes of its incorporation, a standard district may take water from any source within the territory of the district. A standard district may also, for the purposes of its incorporation, locate, construct and maintain pipes, dams, wells, reservoirs, pumping stations, treatment plants and other necessary structures and equipment and take any action necessary to furnish water for those purposes and for the public health, safety, comfort and convenience of the inhabitants and others of the district. A standard district may contract to accomplish any and all of the foregoing things. [1995, c. 616, §10 (NEW).]

All incidental powers, rights and privileges necessary to the accomplishment of the objectives set forth in this chapter are granted to a standard district. [1995, c. 616, §10 (NEW).]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6405. STANDARD DISTRICTS; AUTHORIZED TO LAY MAINS, PIPES, CONDUITS AND OTHER WATER CONVEYANCES THROUGH PUBLIC WAYS AND ACROSS PRIVATE LANDS

Except as otherwise provided by law and to the extent necessary for the purposes of its incorporation, a standard district may lay, maintain, repair and replace pipes, mains and other fixtures and appurtenances in, along and through the streets, roads, ways, highways, bridges, tidal waters, lakes, ponds, rivers and water courses in the district and across private lands in the district. When a standard district lays, maintains, repairs or replaces any fixtures or appurtenances in any street, road, way or highway, it shall do so with as little obstruction as practicable to public travel. At its own expense and without unnecessary delay, a standard district shall replace in proper condition the earth and pavement removed by it. [1995, c. 616, §10 (NEW).]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6406. STANDARD DISTRICTS; AUTHORIZED TO ERECT DAMS AND RESERVOIRS, CROSS NAVIGABLE WATERS, SUPPLY WATER TO UTILITIES

A standard district, for the purposes of its incorporation, may erect and maintain dams, reservoirs and structures. In accordance with applicable state and federal law, a standard district may lay, construct and maintain its pipes and fixtures in, over and under navigable waters and build and maintain structures for the pipes and fixtures. Subject to the consent of the commission, a standard district may supply water to any other water utility for purposes of resale. [1995, c. 616, §10 (NEW).]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6407. STANDARD DISTRICTS; PROCEDURE IF PUBLIC UTILITY MUST BE CROSSED

If a standard district, in constructing, maintaining or replacing any of its facilities, must cross any property of another public utility, the standard district must obtain the consent of the other public utility and undertake the work in accordance with conditions established by agreement. If, within 30 days after requesting consent, the standard district fails to reach an agreement with the public utility, the district may petition the commission to determine the time, place and manner of the crossing. All work done on the property of the public utility must be done under the supervision and to the satisfaction of the public utility or as prescribed by the commission. All work must be done at the expense of the standard district. [1995, c. 616, §10 (NEW).]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6408. STANDARD DISTRICTS; AUTHORITY TO ACQUIRE PROPERTY; RIGHTS OF EMINENT DOMAIN

To the extent necessary for purposes of incorporation, a standard district may take and hold any interest in real estate and personal estate. [1995, c. 616, §10 (NEW).]

1. **Purchase or lease.** A standard district may take and hold an interest in real estate or personal estate by purchase, lease or other lawful means.

[1995, c. 616, §10 (NEW) .]

2. **Eminent domain.** For purposes of its incorporation, a standard district may exercise the right of eminent domain as provided in chapters 65 and 67 to acquire any interest in land or water rights:

A. For erecting and maintaining dams, plants and works, for flowage, power, pumping and supplying water through its mains; [1995, c. 616, §10 (NEW).]

B. For reservoirs and for preserving and protecting the purity of the water and related watershed; [1995, c. 616, §10 (NEW).]

C. For laying and maintaining aqueducts and other structures; [1995, c. 616, §10 (NEW).]

D. For taking, distributing, discharging and disposing of water; and [1995, c. 616, §10 (NEW).]

E. For rights-of-way or roadways to its sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures and lands. [1995, c. 616, §10 (NEW).]

Except as otherwise provided by law, a standard district may not take by right of eminent domain any property or facilities of any other public utility used or acquired for future use in the performance of a public duty.

[1995, c. 616, §10 (NEW) .]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6409. STANDARD DISTRICTS; PROCEDURES IN EXERCISING EMINENT DOMAIN

Except as otherwise provided by law, a standard district must exercise the right of eminent domain granted under section 6408 in accordance with this chapter and chapters 65 and 67. [1995, c. 616, §10 (NEW).]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6410. STANDARD DISTRICTS AND WATER DISTRICTS; TRUSTEES

All of the affairs of a standard district must be managed by a board of trustees whose members must be residents of the district. The number of trustees must be specified in the standard district's charter. After selection of the first board, each trustee is nominated and elected or appointed as provided in the charter creating the standard district and in accordance with subsection 1 or 2, as applicable. If the charter does not indicate whether trustees are appointed or elected, the trustees, after the selection of the first board, must be elected in accordance with subsection 1. [1995, c. 616, §10 (NEW).]

1. **Standard districts; nominations and elections; vacancies.** Nominations and elections of trustees are conducted in accordance with the laws relating to municipal elections.

When the term of office of a trustee expires, the trustee's successor is elected at large by a plurality vote of the voters of the standard district. For the purpose of election, a special election must be called and held on the date established by the trustees. The election must be called by the trustees of the standard district in the same manner as town meetings are called and, for this purpose, the trustees are vested with the powers of municipal officers of towns. A vacancy is filled in the same manner for the unexpired term by a special election called by the trustees of the standard district.

The trustees shall appoint a registrar of voters for the standard district, who may also be the registrar of voters for any town within the standard district, and fix the registrar's salary. It is the registrar's duty to make and keep a complete list of all the registered voters resident in the standard district. The list prepared by the registrar governs the eligibility of any voter. Voters who are resident outside the territorial limits of the standard district, as defined in its charter, are not eligible voters and the registrar of voters shall exclude those voters from the registrar's lists. All warrants issued for elections by the trustees must show that only the voters resident within the territorial limits of the standard district are entitled to vote.

[2003, c. 147, §2 (AMD) .]

2. **Standard districts; appointments.** If the charter creating a standard district specifies that the trustees are appointed, the appointments must be made as provided in the charter.

[1995, c. 616, §10 (NEW) .]

3. **Standard districts; eligibility requirements.** When a trustee ceases to be a resident of a standard district, the trustee shall vacate the office of trustee and the vacancy is filled as provided in subsection 1 or 2, as applicable. All trustees are eligible for reelection or reappointment, but a person who is a municipal officer, as defined in Title 30-A, section 2001, subsection 10, of any town located, in whole or in part, within the standard district is not eligible for appointment, nomination or election as a trustee of that district.

[1995, c. 616, §10 (NEW) .]

4. **Standard districts; first board.** The first board is appointed or elected as provided in the charter creating the standard district. At the first meeting, the initial trustees shall determine by agreement or, failing to agree, they shall determine by lot the term of office of each trustee. The terms of the trustees must be determined in accordance with the following table.

TERM			
Total number of trustees	1 year	2 years	3 years
3	1	1	1
4	1	1	2
5	1	2	2
6	2	2	2
7	2	2	3
8	2	3	3
9	3	3	3
10	3	3	4
11	3	4	4
12	4	4	4
13	4	4	5
14	4	5	5
15	5	5	5

The trustees shall enter on their records the determination made. Vacancies are filled pursuant to subsection 1 or 2, as applicable.

At this original meeting, the trustees shall organize by electing from among their members a chair and a clerk, by adopting a corporate seal and by electing a treasurer who may or may not be a trustee.

[1995, c. 616, §10 (NEW) .]

5. **Water districts; organization; conduct of business.** Within one week after each annual appointment or election, the trustees of a water district shall meet for the purpose of electing a chair, treasurer and clerk from among them to serve for the ensuing year and until their successors are elected or appointed and qualified. The trustees, from time to time, may choose and employ and fix the compensation of any other necessary officers and agents who serve at the pleasure of the trustees. The treasurer shall furnish bond in the sum and with sureties approved by the trustees. The water district shall pay the cost of the bond.

The trustees may adopt and establish bylaws consistent with the laws of this State and necessary for the convenience and the proper management of the affairs of the water district, and perform other acts within the powers delegated by law to the trustees.

The trustees must be sworn to the faithful performances of their duties including the duties of a member who serves as clerk or clerk pro tem. The trustees shall publish an annual report that includes a report of the treasurer.

Business of the district must be conducted in accordance with the applicable provisions of the Freedom of Access Act.

[2011, c. 662, §23 (AMD) .]

6. **Standard districts; decisions of the board.** All decisions of the board of trustees must be made by a majority of those present and voting, except that a vote to approve the issuing of any bond, note or other evidence of indebtedness payable within a period of more than 12 months after the date of issuance must be approved by a majority of the entire elected board. A quorum of the board of trustees consists of the total number of authorized trustees divided by 2 and, if necessary to obtain a whole number, the resulting number rounded up to the next whole number.

Trustees are subject to the conflict of interest provisions of Title 30-A, section 2605.

[1995, c. 616, §10 (NEW) .]

7. **Water districts; trustees' compensation.** The trustees of a water district receive compensation as recommended by the trustees 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 must be recommended by the trustees 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 must be recorded with the Secretary of State and recorded in the bylaws. Compensation schedules in effect on January 1, 1982 continue in effect until changed.

Notwithstanding section 6401, subsection 2, this subsection does not apply to any water district for which the charter provides for trustee compensation in a manner inconsistent with this subsection and specifically indicates by its own terms that this subsection or former section 6303, subsection 4 does not apply.

[2003, c. 147, §2 (AMD) .]

8. **Water districts; trustees' retirement.** Persons who have not been water district trustees prior to January 1, 1987, and who are not full-time employees, are not eligible to become members of the Maine Public Employees 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 Public Employees Retirement System prior to January 1, 1987, the provisions of the appropriate governing charter in effect at the time of the trustee's application for membership controls.

[1995, c. 616, §10 (NEW); 2007, c. 58, §3 (REV) .]

9. **Standard districts; expenses.** The trustees may obtain an office and incur necessary expenses.

[1995, c. 616, §10 (NEW) .]

SECTION HISTORY
1995, c. 616, §10 (NEW). 2003, c. 147, §2 (AMD). 2007, c. 58, §3 (REV).
2011, c. 662, §23 (AMD).

§6411. STANDARD DISTRICTS; AUTHORIZED TO MAKE AND ASSUME CONTRACTS

A standard district, through its trustees, in order to carry out the purposes of its incorporation, may contract with persons, districts, municipalities, utilities or corporations. [1995, c. 616, §10 (NEW).]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6412. STANDARD DISTRICTS; AUTHORIZED TO RECEIVE GOVERNMENT AID, BORROW MONEY, ISSUE BONDS AND NOTES

1. **Definition.** For the purposes of this section, the term "necessary expenses and liabilities" means expenses and liabilities necessary to the operation of a standard district, including, but not limited to:

A. Reimbursement to a town for any organizational or other expenses and liabilities incurred by the town on behalf of the district; [1995, c. 616, §10 (NEW).]

B. Organizational expenses and liabilities incurred by the district; [1995, c. 616, §10 (NEW).]

C. Expenses and liabilities incurred in acquiring properties, paying damages and in laying pipes, mains, aqueducts and conduits; [1995, c. 616, §10 (NEW).]

D. Expenses and liabilities incurred in constructing, maintaining and operating a water plant or system; [1995, c. 616, §10 (NEW).]

E. Expenses and liabilities incurred in making renewals, additions, extensions and improvements to a water plant or system; and [1995, c. 616, §10 (NEW).]

F. Principal and interest payments associated with any of the expenses and liabilities in paragraphs A to E. [1995, c. 616, §10 (NEW).]

[1995, c. 616, §10 (NEW) .]

2. **Authorization.** A standard district, through its trustees, in order to pay necessary expenses and liabilities incurred in accordance with the purposes of its incorporation, may receive state and federal aid or grants and may borrow money temporarily and issue for the money its negotiable notes in order to renew and refund the debt created.

A standard district, through its trustees, may also issue, in accordance with section 6413 and chapter 9, bonds, notes or other evidences of indebtedness of the standard district. The trustees shall determine the amount or amounts of the indebtedness, the rate or rates of interest, whether the instrument will be sold at par or at a discount or a premium, the manner of the sale, including whether the sale will be public or private and any other terms and provisions of the offering. The trustees shall determine whether the debt will be issued to mature serially or made to run for a term of years. The standard district's debt instruments may be issued with or without provisions for calling the debt prior to maturity. If the debt is callable, the trustees shall determine whether it will be callable at par or at a premium.

[1995, c. 616, §10 (NEW) .]

3. **Certain requirements concerning indebtedness.** All bonds, notes or other evidences of indebtedness must have inscribed upon their face the corporate name of the standard district, as specified in the charter creating the district, and be signed by the treasurer and countersigned by the chair of the board of trustees of the standard district. If coupon bonds are issued, the interest coupon attached to the coupon bonds must bear the facsimile signature of the treasurer.

[1995, c. 616, §10 (NEW) .]

4. **Legal effect; tax exemption; reissue and refund authorization.** All bonds, notes and other evidences of indebtedness issued by a standard district in accordance with this section are legal obligations of the standard district within the meaning of Title 30-A, section 5701. All bonds, notes and other evidences of indebtedness issued by the standard district are legal investments for savings banks in this State and are exempt from state income tax.

A standard district, through its trustees, may refund and reissue, from time to time, in one or in separate series, its bonds, notes and other evidences of indebtedness, and each authorized issue constitutes a separate loan.

[1995, c. 616, §10 (NEW) .]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6413. STANDARD DISTRICTS; DEBT LIMIT AND APPROVAL OF VOTERS OF THE DISTRICT

Prior to issuing on behalf of a standard district any bond, note or other evidence of indebtedness payable within a period of more than 12 months after the date of issuance, the trustees shall propose a debt limit for the standard district that the trustees must submit for approval in a districtwide referendum. The referendum must be called, advertised and conducted according to the law relating to municipal elections, except the standard district's registrar of voters is not required to prepare or the clerk to post a new list of voters. The referendum may be held outside the territory of the district if the usual voting place for persons located within the district is located outside the territory of the district. For the purpose of registering voters, the registrar of voters must be in session on the regular workday preceding the election. The question presented must conform to one of the following forms: [2005, c. 192, §1 (AMD).]

For establishment of an initial debt limit: "Do you favor establishing the debt limit of the (insert name of standard district) at (insert amount)?"; or [1995, c. 616, §10 (NEW).]

For amendment of an existing debt limit: "Do you favor changing the debt limit of the (insert name of standard district) from (insert current debt limit) to (insert proposed debt limit)?". [1995, c. 616, §10 (NEW).]

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their opinion on the question. [1995, c. 616, §10 (NEW).]

The results must be declared by the trustees and entered upon the standard district's records. Due certificate of the results must be filed by the clerk with the Secretary of State. [1995, c. 616, §10 (NEW).]

A debt limit proposal becomes effective upon its acceptance by a majority of the legal voters within the standard district voting at the referendum. Failure of approval by the majority of voters voting at the referendum does not prevent subsequent referenda from being held for the same purpose. The costs of referenda are borne by the standard district. [1995, c. 616, §10 (NEW).]

Trustees may not issue any bond, note or other evidence of indebtedness payable within a period of more than 12 months after the date of issuance unless the total amount of such debt issued by the trustees is no more than an amount approved by referendum under this section. [1995, c. 616, §10 (NEW).]

SECTION HISTORY
1995, c. 616, §10 (NEW). 2005, c. 192, §1 (AMD).

§6413-A. WATER DISTRICTS; AUTHORITY TO INCREASE DEBT LIMITS

Notwithstanding any provision of its charter to the contrary, a water district may increase its debt limit by referendum in accordance with this section. A water district is not required to use this section and may seek to increase its debt limit by any other lawful means, including pursuant to any other means described in its charter or by seeking legislative amendment to its charter. [2003, c. 147, §3 (NEW).]

If a water district chooses to increase its debt limit pursuant to this section, the governing body of the water district shall propose a new debt limit and submit the proposal for approval at a districtwide referendum. The referendum must be called, advertised and conducted according to the law relating to

municipal elections, except the registrar of voters is not required to prepare or the clerk to post a new list of voters. The referendum may be held outside the territory of the district if the usual voting place for persons located within the district is located outside the territory of the district. For the purpose of registering voters, the registrar of voters must be in session on the regular work day preceding the election. The question presented must conform to the following form:

> "Do you favor changing the debt limit of the (insert name of district) from (insert current debt limit) to (insert proposed debt limit)?"

[2005, c. 192, §2 (AMD).]

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their opinion on the question. [2003, c. 147, §3 (NEW).]

The results must be declared by the governing body of the district and entered upon the district's records. Due certificate of the results must be filed by the clerk with the Secretary of State. [2003, c. 147, §3 (NEW).]

A debt limit proposal becomes effective upon its acceptance by a majority of the legal voters within the district voting at the referendum. Failure of approval by the majority of voters voting at the referendum does not prevent subsequent referenda from being held for the same purpose. The costs of referenda are borne by the district. [2003, c. 147, §3 (NEW).]

SECTION HISTORY
2003, c. 147, §3 (NEW). 2005, c. 192, §2 (AMD).

§6414. STANDARD DISTRICTS; RATES

The rates of a standard district must be established in accordance with chapter 61. The rates must be sufficient to provide revenue to the standard district to carry out the purposes of its incorporation, without the need for any financial assistance from any municipality, other than the normal payment of water charges for services rendered and any loan or loans provided to the district for initial funds as set forth in section 6412. All customers of a standard district shall pay to the treasurer or other designated officer of the district the rates established by the district. [1995, c. 161, §10 (NEW).]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6414-A. WATER UTILITIES; RATE COLLECTION AND LIENS

All persons, firms and corporations, whether public, private or municipal, shall pay to the treasurer of any water district the rates established pursuant to chapter 61 for the water service used with respect to their real estate. [2003, c. 147, §4 (NEW).]

SECTION HISTORY
2003, c. 147, §4 (NEW). 2005, c. 7, §3 (AMD).

§6415. STANDARD DISTRICTS; TAX EXEMPT

A standard district is a public municipal corporation within the meaning of Title 36, section 651 and the property of the district is exempt from taxation to the extent provided in that section. [1995, c. 616, §10 (NEW).]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6416. WATER DISTRICTS; MUTUAL FUNDS

A water district may invest its funds, including sinking funds, reserve funds and trust funds, to the extent that the terms of any instrument creating the funds do not prohibit the investment, in shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States, or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States. This section is in addition to and does not limit the power of a water district to invest its funds. [1995, c. 616, §10 (NEW).]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6417. WATER DISTRICTS; RIGHTS CONFERRED SUBJECT TO PROVISIONS OF LAW

Except as otherwise specifically provided by law, all the rights and duties mentioned in this chapter must be exercised and performed in accordance with all the applicable provisions of this Title to the extent this Title affects the operations of a water district. [1995, c. 616, §10 (NEW).]

SECTION HISTORY
1995, c. 616, §10 (NEW).

§6418. WATER DISTRICTS; LEGISLATIVE ACTS

Prior to acting upon any proposal to create or to amend a water district charter, the joint standing committee of the Legislature having jurisdiction over public utilities shall solicit written comments from the municipalities that lie in whole or in part within the district or proposed district. [1995, c. 616, §10 (NEW).]

SECTION HISTORY
1995, c. 616, §10 (NEW).

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Exceptions.** Except as otherwise provided by law, 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 [1987, c. 141, Pt. A, §6 (NEW).]

B. Property which, when taken, is being or is necessary to be used by the owner in the performance of a public duty. [1987, c. 141, Pt. A, §6 (NEW).]

[2001, c. 608, §5 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2001, c. 608, §5 (AMD).

§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; [1987, c. 141, Pt. A, §6 (NEW).]

B. Give the names of the owners; and [1987, c. 141, Pt. A, §6 (NEW).]

C. Be accompanied by a map showing the property as described. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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 [1987, c. 141, Pt. A, §6 (NEW).]

B. Order the location recorded. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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 eminent 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 [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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 owner or the taker, may prescribe terms and conditions, for the use of the property taken, that will best accommodate the owner and the taker.

[1989, c. 159, §10 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 159, §10 (AMD).

§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 [1987, c. 141, Pt. A, §6 (NEW).]

B. The rights and obligations of each party. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Expense of notice.** The expense of the notice shall be added to the costs of the proceedings which the taker shall pay.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 [1987, c. 141, Pt. A, §6 (NEW).]

B. Give written notice of the appeal with a copy of the complaint to the opposite party. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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. [1987, c. 141, Pt. A, §6 (NEW).]

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. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

5. **Additional review.** An appeal may be taken to the Law Court as in other actions.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§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. [1987, c. 141, Pt. A, §6 (NEW).]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

Chapter 67: CONDEMNATION BY WATER UTILITIES

§6701. NECESSITY OF TAKING DETERMINED

The owner of property which is subject to appropriation for public purposes by a water utility, upon hearing, may have the commission determine the necessity of the appropriation. [1987, c. 490, Pt. B, §17 (RPR).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §B17 (RPR).

§6702. PETITION BY OWNER

The owner of the property, within 30 days after the beginning of condemnation proceedings, may 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. [1987, c. 490, Pt. B, §17 (RPR).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §B17 (RPR).

§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.

[1987, c. 490, Pt. B, §17 (RPR) .]

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.

[1987, c. 490, Pt. B, §17 (RPR) .]

3. **Commission's decision.** The decision of a majority of the commissioners is final as to questions of fact.

[1987, c. 490, Pt. B, §17 (RPR) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §B17 (RPR).

§6704. CONDEMNATION PROCEEDINGS BY 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. [1987, c. 490, Pt. B, §17 (RPR).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §B17 (RPR).

§6704-A. NOTICE REQUIREMENTS FOR TAKING OF LAND FOR WATER TREATMENT FACILITIES

A water utility that proposes to initiate condemnation proceedings for the purpose of acquiring land for the construction of a water treatment facility shall: [1989, c. 789, (NEW).]

1. **Notice to public.** No less than 90 days prior to the initiation of condemnation proceedings, provide notice to the public stating that the construction of a water treatment facility is being considered and identifying the area or areas that are being considered for that construction by publication in a newspaper of general circulation in the county and affected area in which the property is located;

[1989, c. 789, (NEW) .]

2. **Notice to municipal officers.** No less than 60 days prior to the initiation of condemnation proceedings, provide written notice to the municipal officers of each municipality in which the land proposed to be taken by eminent domain is located. This notice must state clearly that the construction of a water treatment facility is being considered and identify the area or areas that are being considered for that construction; and

[1989, c. 789, (NEW) .]

3. **Notice to landowners.** No less than 60 days prior to the initiation of condemnation proceedings, provide written notice to each owner and all abutters of land proposed to be taken by eminent domain. This notice must state that the construction of a water treatment facility is being considered and identify the area or areas that are being considered for that construction. This notice must also state clearly in nontechnical language the rights of each landowner in the proposed condemnation proceedings, including any rights of appeal, and provide the name, address and telephone number of the appropriate state agency to assist the landowner in the proceedings.

[1989, c. 789, (NEW) .]

SECTION HISTORY
1989, c. 789, (NEW).

§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. [1987, c. 490, Pt. B, §17 (RPR).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §B17 (RPR).

§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 time, place, manner and conditions of the crossing, the commission upon petition of either party, after notice and hearing, shall determine the time, 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. [1987, c. 490, Pt. B, §17 (RPR).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §B17 (RPR).

Chapter 68: REGIONAL WATER COUNCILS

§6801. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 209, §1 (NEW).]

1. **Regional water council.** "Regional water council" means a nonprofit corporation established for the benefit of 2 or more water utilities pursuant to this chapter.

[2005, c. 209, §1 (NEW) .]

SECTION HISTORY
2005, c. 209, §1 (NEW).

§6802. REGIONAL WATER COUNCILS AUTHORIZED

Two or more water utilities may organize a regional water council by forming a nonprofit corporation under Title 13-B, the membership of which is restricted to water utilities. A water utility is not required to become a member of a regional water council. [2005, c. 209, §1 (NEW).]

SECTION HISTORY
2005, c. 209, §1 (NEW).

§6803. COUNCIL ORGANIZATION

The organizational documents of a regional water council must provide for representation of each member. The documents must specify the organizational structure, the method of withdrawal, the method of terminating the council and the grounds for suspension of member water utilities. [2005, c. 209, §1 (NEW).]

SECTION HISTORY
2005, c. 209, §1 (NEW).

§6804. POWERS

1. **Powers.** A regional water council may:

A. Study an issue common to 2 or more of the members of the regional water council that it considers appropriate, including, but not limited to, matters affecting water supply, watershed protection, water use policies, regional economic conditions and future development; [2005, c. 209, §1 (NEW).]

B. Promote cooperative arrangements and coordinate action among members of the regional water council, including, but not limited to, providing purchasing, billing, accounting and customer services; [2005, c. 209, §1 (NEW).]

C. Make recommendations for review and action to the members of the regional water council and other public agencies that perform functions within the region; and [2005, c. 209, §1 (NEW).]

D. Exercise its powers and authority as a nonprofit corporation under Title 13-B as necessary or desirable for dealing with issues of local or regional significance to its members, except that it may not exercise any power or authority that would cause the regional water council to become a water utility within this State. [2005, c. 209, §1 (NEW).]

[2005, c. 209, §1 (NEW) .]

2. **Status.** A regional water council is a nonprofit corporation and is not a governmental entity and is subject to all laws governing nonprofit corporations.

[2005, c. 209, §1 (NEW) .]

3. **Standing committee.** A regional water council, by appropriate action of the governing bodies of its members, may establish a standing committee to prepare and maintain a comprehensive regional water plan.

[2005, c. 209, §1 (NEW) .]

SECTION HISTORY
2005, c. 209, §1 (NEW).

§6805. BYLAWS

A regional water council shall adopt bylaws designating the officers of the council and providing for the conduct of its business. [2005, c. 209, §1 (NEW).]

SECTION HISTORY
2005, c. 209, §1 (NEW).

§6806. STAFF

A regional water council may employ staff and consult and retain experts that it considers necessary. [2005, c. 209, §1 (NEW).]

SECTION HISTORY
2005, c. 209, §1 (NEW).

§6807. FINANCES; ANNUAL REPORT

1. **Expenses.** The member water utilities of a regional water council may contribute funds to meet the expenses of the council. Services of personnel, use of equipment and office space and other necessary services may be accepted from members as part of their financial support.

[2005, c. 209, §1 (NEW) .]

2. **Funds; limitation.** A regional water council may accept funds, grants, gifts and services from:

A. The Federal Government; [2005, c. 209, §1 (NEW).]

B. The State or its departments, agencies or instrumentalities; [2005, c. 209, §1 (NEW).]

C. Any governmental unit not specified in paragraph A or B, whether participating in the regional water council or not; and [2005, c. 209, §1 (NEW).]

D. Private and public sources. [2005, c. 209, §1 (NEW).]

A fund, grant, gift or service of the State or its departments, agencies or instrumentalities otherwise available to water utilities may not be made conditional on a water utility's membership in a regional water council.

[2005, c. 209, §1 (NEW) .]

3. **Report.** A regional water council shall make an annual report of its activities to the member utilities. The report must be filed with the Public Utilities Commission and the drinking water program of the Department of Health and Human Services.

[2005, c. 209, §1 (NEW) .]

SECTION HISTORY
2005, c. 209, §1 (NEW).

§6808. COORDINATOR

1. **Public Utilities Commission.** The commission may receive, obtain and distribute state, federal or other funds supporting regional water council tasks and may provide assistance to regional water councils as appropriate. This subsection does not require the commission to determine the appropriate disbursement of state, federal or other funds among members of a regional water council and does not prohibit a regional water council from obtaining, receiving or disbursing funds without commission involvement.

Nothing in this chapter limits the commission's jurisdiction or authority over water utilities that are members of regional water councils.

[2005, c. 209, §1 (NEW) .]

2. **Rulemaking.** The commission may adopt rules to establish procedures and audit requirements related to the requirements of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 209, §1 (NEW) .]

SECTION HISTORY
2005, c. 209, §1 (NEW).

Chapter 69: AQUEDUCTS

§6901. MEETINGS OF PROPRIETORS FOR INCORPORATION

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C14 (RP).

§6902. PROPRIETORS TO BE A CORPORATION

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C14 (RP).

§6903. AUTHORITY OF DIRECTORS; ENFORCEMENT OF ASSESSMENTS

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C14 (RP).

§6904. REGISTRY OF SHARES AND TRANSFERS

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C14 (RP).

§6905. POWERS OF PROPRIETORS; MANNER OF VOTING

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C14 (RP).

§6906. ATTACHMENT AND EXECUTION; POSSESSIONS; REDEMPTION; REVIVAL OF JUDGMENT

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C14 (RP).

§6907. MUNICIPALITY MAY USE PIPES IN CASE OF FIRE

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C14 (RP).

§6908. CONSTRUCTION OF POWERS AFTER DISSOLUTION; ENFORCEMENT OF JUDGMENT

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C14 (RP).

§6909. PROPRIETORS ARE TENANTS IN COMMON OF REMAINDER

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C14 (RP).

§6910. INJURY TO AQUEDUCT PENALIZED

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C14 (RP).

Part 7: TELECOMMUNICATIONS HEADING: PL 1987, C. 141, PT. A, §6 (NEW)

Chapter 71: GENERAL PROVISIONS

§7101. TELECOMMUNICATIONS POLICY

1. **Universal 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 must continue to be universally available, especially to the poor, at affordable rates.

[1993, c. 410, Pt. OOO, §1 (NEW) .]

2. **Economic development.** The Legislature further declares and finds that a modern state-of-the-art telecommunications network is essential for the economic health and vitality of the State and for improvement in the quality of life for all Maine citizens. Therefore, it is the goal of the State that all Maine's businesses and citizens should have affordable access to an integrated telecommunication infrastructure capable of providing voice, data and image-based services. The State shall consider policies that:

A. Encourage economic development; [1993, c. 410, Pt. OOO, §1 (NEW).]

B. Employ methods of regulation that encourage the development and deployment of new technologies; and [1993, c. 410, Pt. OOO, §1 (NEW).]

C. Encourage acceptable service applications that support economic development initiatives or otherwise improve the well-being of Maine citizens. [1993, c. 410, Pt. OOO, §1 (NEW).]

[1993, c. 410, Pt. OOO, §1 (NEW) .]

3. **Report.**

[1995, c. 631, §5 (AFF); 1995, c. 631, §1 (RP) .]

4. **Information access.** The Legislature further declares and finds that computer-based information services and information networks are important economic and educational resources that should be available to all Maine citizens at affordable rates. It is the policy of the State that affordable access to those information services that require a computer and rely on the use of the telecommunications network should be made available in all communities of the State without regard to geographic location.

[1995, c. 631, §2 (NEW); 1995, c. 631, §5 (AFF) .]

5. **Homeland security and emergency alerts.** The Legislature further finds that seamless, integrated, robust and redundant means of communication, including, but not limited to, voice and alphanumeric pagers, landline telephones, wireless telephones, text radio and wireless e-mail, create a robust communication system that enables rapid contact with first responders, ensures emergency alert notification to all affected persons in the State, including at-risk populations such as the hearing or visually impaired, and enhances homeland security. It is the policy of the State to encourage the deployment of the infrastructure necessary to support such a communications system.

[2003, c. 553, Pt. B, §1 (NEW) .]

6. **Prepaid wireless telecommunications services.** The Legislature further finds that, because prepaid wireless telecommunications services are provided to consumers without a periodic bill, the collection of fees and surcharges regarding prepaid wireless telecommunications services must be accomplished according to a methodology that differs from the collection of fees and surcharges on other wireless telecommunications services to ensure fairness and competitive neutrality with respect to other telecommunications services provided to consumers of wireless telecommunications services who do receive a periodic bill.

[2011, c. 600, §3 (NEW); 2011, c. 600, §10 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1993, c. 410, §OOO1 (RPR). 1993, c. 638, §1 (AMD). 1995, c. 631, §§1,2 (AMD). 1995, c. 631, §5 (AFF). 2003, c. 553, §B1 (AMD). 2011, c. 600, §3 (AMD). 2011, c. 600, §10 (AFF).

§7101-A. TELECOMMUNICATIONS PRIVACY; POLICY

The Legislature declares and finds the following. [1991, c. 654, §1 (NEW); 1991, c. 654, §5 (AFF).]

1. **Privacy right.** Telephone subscribers have a right to privacy and the protection of this right to privacy is of paramount concern to the State.

[1991, c. 654, §1 (NEW); 1991, c. 654, §5 (AFF) .]

2. **Exercise of right.** To exercise their right to privacy, telephone subscribers must be able to limit the dissemination of their telephone numbers to persons of their choosing.

[1991, c. 654, §1 (NEW); 1991, c. 654, §5 (AFF) .]

SECTION HISTORY
1991, c. 654, §1 (NEW). 1991, c. 654, §5 (AFF).

§7101-B. ACCESS RATES

1. **Definitions.** As used in this section, the term "intrastate access rates" means rates that a telecommunications service provider pays for access to a local exchange carrier's facilities and services in order to provide intrastate interexchange service.

[1997, c. 259, §1 (NEW) .]

2. **Access rates.** After any decrease of interstate access rates by the Federal Government, the commission shall consider corresponding reductions in intrastate access rates, taking into account both the disadvantages to customers of intrastate access rates that exceed interstate access rates and the disadvantages to customers of increases in rates for local telephone service that may result from reductions in intrastate access rates.

A. By May 31, 2005, the commission shall ensure that intrastate access rates are equal to interstate access rates established by the Federal Communications Commission as of January 1, 2003. [2003, c. 101, §1 (NEW).]

B. If achieving the result required under paragraph A would result in an increase of more than 50% in the price of local telephone service, whether as a result of an increase in local service rates or an increase in universal service fund collections, the commission shall:

(1) Phase in intrastate access rate reductions through stepped reductions so as to produce as smooth a transition as possible; and

(2) To the maximum extent possible, keep increases in the price of local telephone service to no more than 50% for each stepped reduction in the intrastate access rate. [2003, c. 101, §1 (NEW).]

C. If interstate access rates are reduced by the Federal Communications Commission below the rates as of January 1, 2003, the commission may further require reductions in intrastate access rates beyond what is required under paragraph A, except that, within any 2-year period, the commission may not require such further access rate reduction if the result will be an increase of more than 50% in local service rates or an increase of more than 50% in the collection rate for the state universal service fund. [2003, c. 101, §1 (NEW).]

The commission may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 101, §1 (RPR) .]

3. **Consumer rates.** If the commission finds that effective competition in the intrastate interexchange market does not exist, the commission shall require all persons providing intrastate interexchange service to reduce their intrastate long-distance rates to reflect net reductions in intrastate access rates ordered by the commission pursuant to subsection 2.

[1997, c. 259, §1 (NEW) .]

SECTION HISTORY
1997, c. 259, §1 (NEW). 2003, c. 101, §1 (AMD).

§7102. DEFINITIONS

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

1. **Emergency.** "Emergency" means a situation in which property or human or animal life is in jeopardy and the prompt summoning of aid is essential.

[1987, c. 490, Pt. C, §15 (AMD) .]

1-A. **Caller-ID.** "Caller-ID" means a service that allows a person who receives a telephone call to know, by means of an appropriate device, the telephone access line identification number or other telephone access line identification information. "Caller-ID" does not include the following:

A. An identification service that is used within the same limited system, including but not limited to a private branch exchange, or PBX, system or a Centrex system; [1991, c. 654, §2 (NEW); 1991, c. 654, §5 (AFF).]

B. An identification service provided in connection with toll-free, or "800" access code, telephone service or a similar telephone service; [2011, c. 623, Pt. C, §6 (AMD).]

C. An identification service that provides billing information to another telephone utility or to others providing service to a customer; [1991, c. 654, §2 (NEW); 1991, c. 654, §5 (AFF).]

D. An identification service that is used on a public agency's emergency telephone line or on the line that receives the 9-1-1 or primary emergency telephone number; and [1991, c. 654, §2 (NEW); 1991, c. 654, §5 (AFF).]

E. An identification service provided in connection with legally sanctioned call tracing or tapping procedures. [1991, c. 654, §2 (NEW); 1991, c. 654, §5 (AFF).]

[2011, c. 623, Pt. C, §6 (AMD) .]

1-B. **Line-item charge.** "Line-item charge" means a discrete charge identified separately on a customer's telephone bill.

[2009, c. 36, §1 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Public telephone.** "Public telephone" means a telephone made available for voice message use by members of the transient or general public for compensation, including pay telephones and any telephones provided for the use of lodgers in or patrons of hotels, motels, hospitals, medical and convalescent care facilities, academic institutions, transportation terminals, government offices, public buildings, restaurants or other places of public accommodation or prisons and other confinement facilities.

[1989, c. 651, §1 (NEW) .]

4. **Prepaid wireless telecommunications service.** "Prepaid wireless telecommunications service" has the same meaning as in Title 25, section 2921, subsection 13.

[2011, c. 600, §4 (NEW); 2011, c. 600, §10 (AFF) .]

5. **Prepaid wireless telecommunications service consumer or prepaid wireless consumer.** "Prepaid wireless telecommunications service consumer" or "prepaid wireless consumer" has the same meaning as in Title 25, section 2921, subsection 13-A.

[2011, c. 600, §4 (NEW); 2011, c. 600, §10 (AFF) .]

6. **Prepaid wireless telecommunications service provider.** "Prepaid wireless telecommunications service provider" has the same meaning as in Title 25, section 2921, subsection 14.

[2011, c. 600, §4 (NEW); 2011, c. 600, §10 (AFF) .]

7. **Retail transaction.** "Retail transaction" has the same meaning as in Title 25, section 2921, subsection 15.

[2011, c. 600, §4 (NEW); 2011, c. 600, §10 (AFF) .]

8. **Seller.** "Seller" has the same meaning as in Title 25, section 2921, subsection 16.

[2011, c. 600, §4 (NEW); 2011, c. 600, §10 (AFF) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C15 (AMD). 1989, c. 651, §1 (AMD). 1991, c. 654, §2 (AMD). 1991, c. 654, §5 (AFF). 2009, c. 36, §1 (AMD). 2011, c. 600, §4 (AMD). 2011, c. 600, §10 (AFF). 2011, c. 623, Pt. C, §6 (AMD).

§7103. AUTOMATED CALLING PROCEDURES

(REPEALED)

SECTION HISTORY
1991, c. 252, §2 (NEW). 1991, c. 352, §1 (NEW). 1991, c. 654, §5 (AFF). 1991, c. 654, §3 (RPR). 1993, c. 589, §12 (AMD). 1995, c. 334, §3 (RP).

§7104. AFFORDABLE TELEPHONE SERVICE

1. **Low-income support.** The commission shall require telephone utilities to participate in statewide outreach programs designed to increase the number of low-income telephone customers on the network through increased participation in any universal service program approved by the commission.

[1997, c. 692, §1 (NEW) .]

2. **General availability.** The commission shall seek to ensure that provider of last resort service is available to consumers throughout all areas of the State at reasonably comparable rates.

[2011, c. 623, Pt. B, §13 (AMD) .]

3. **Authority.** The commission shall adopt rules to implement this section and may require voice network service providers to contribute to a state universal service fund to support programs consistent with the goals of applicable provisions of this Title and the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56. Prior to requiring that voice network service providers contribute to a state universal service fund, the commission shall assess the telecommunications needs of the State's consumers and establish the level of support required to meet those needs. If the commission establishes a state universal service fund pursuant to this section, the commission shall contract with an appropriate independent fiscal agent that is not a state entity to serve as administrator of the state universal service fund. Funds contributed to a state universal service fund are not state funds. Rules and any state universal service fund requirements established by the commission pursuant to this section must:

A. Be reasonably designed to maximize federal assistance available to the State for universal service purposes; [1997, c. 692, §1 (NEW).]

B. Meet the State's obligations under the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56; [2011, c. 623, Pt. B, §14 (AMD).]

C. Be consistent with the goals of the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56; [2011, c. 623, Pt. B, §14 (AMD).]

D. Ensure that any requirements regarding contributions to a state universal service fund be nondiscriminatory and competitively neutral; and [2011, c. 623, Pt. B, §14 (AMD).]

E. [2011, c. 623, Pt. B, §14 (RP).]

F. [2011, c. 623, Pt. B, §14 (RP).]

G. Require, if a voice network service provider recovers its contributions under this section by means of a charge placed on a bill issued to a customer, explicit identification on that bill of any charge imposed under this section. [2011, c. 623, Pt. B, §14 (NEW).]

For purposes of this section, "voice network service provider" means a voice service provider that offers its subscribers the means to initiate or receive voice communications using the public switched telephone network. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 600, §2 (AMD) .]

3-A. **Determination of amount of prepaid wireless telecommunications service fee.** The commission shall determine by rule the amount of the fee on prepaid wireless telecommunications service that is required to be contributed to a state universal service fund established under subsection 3. The fee is a fixed amount per retail transaction established by multiplying $25 by a percentage that is determined by the commission for purposes of calculating contributions to the state universal service fund by providers of intrastate telecommunications services. The fee must be rounded to the nearest penny. The fee may not be adjusted by

the commission more frequently than once every 24 months. The collection of the fee is governed by section 7104-C. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 600, §5 (NEW); 2011, c. 600, §10 (AFF) .]

4. **Standards and reporting.**

[2011, c. 623, Pt. B, §15 (RP) .]

5. **Funds for Communications Equipment Fund.** The commission shall annually transfer $85,000 from a state universal service fund established pursuant to this section to the Communications Equipment Fund established under Title 26, section 1419-A.

If the Department of Labor, Bureau of Rehabilitation Services does not receive from federal or other sources funds in addition to the $85,000 sufficient to carry out the purposes of Title 26, section 1419-A, the commission, at the request of the Department of Labor, Bureau of Rehabilitation Services, may transfer from the state universal service fund to the Communications Equipment Fund an additional $100,000.

The commission may, upon the request of the Department of Labor, Bureau of Rehabilitation Services and after a finding that the funds are necessary and that sufficient attempts have been made by the Bureau of Rehabilitation Services to maximize federal support to support emergency alert telecommunications service, annually transfer up to $57,500 from the state universal service fund established by this section to the Communications Equipment Fund established under Title 26, section 1419-A for the exclusive purpose of supporting the discount program established under Title 26, section 1419-A, subsection 6.

The commission may require contributions to the state universal service fund in an amount necessary to collect amounts transferred pursuant to this subsection.

[2007, c. 224, §3 (AMD) .]

6. **Public-interest pay phone support.** The commission may require contributions to a state universal service fund established pursuant to this section in an amount sufficient to collect up to $50,000 each year to fund public-interest pay phones pursuant to section 7508. The commission shall maintain an accounting of all funds contributed to the state universal service fund pursuant to this subsection and all funds expended pursuant to section 7508. Funds contributed to the state universal service fund pursuant to this subsection may be expended only for the purposes of section 7508.

[2005, c. 131, §1 (NEW) .]

7. **Telecommunications relay services support.** In order to ensure the affordability of telecommunications relay services throughout the State, the commission shall establish funding support for telecommunications relay services, including related outreach programs, within the state universal service fund established pursuant to subsection 3.

A. In establishing the total level of support for the state universal service fund, the commission shall include funding levels for telecommunications relay services as recommended by the Telecommunications Relay Services Advisory Council, as established in section 8704, unless the commission determines, upon its own motion or upon the request of a voice network service provider, that the recommended funding levels may be unreasonable. If the commission determines that the funding levels may be unreasonable, the commission shall open a proceeding to determine a reasonable funding level for telecommunications relay services, including related outreach programs. Upon the conclusion of the proceeding, the commission shall establish funding support for telecommunications relay services, including related outreach programs, that it has found to be reasonable within the state universal service fund. The commission shall require contributions to the state universal service fund on a quarterly basis to meet the established funding support levels. [2011, c. 623, Pt. B, §16 (AMD).]

B. In determining reasonable funding levels for telecommunications relay services, including related outreach programs, the commission may consider whether the recommended funding is for telecommunications relay services, including related outreach programs, that are:

(1) Federally required services;

(2) Services provided in other states with a similar deaf, hard-of-hearing and speech impaired population as this State; or

(3) Services that are designed to maximize the effectiveness of telecommunications relay services through the application of new technologies. [2005, c. 305, §2 (NEW).]

[2011, c. 623, Pt. B, §16 (AMD) .]

8. **Maximization of support.** The commission shall pursue all activities necessary to maximize the amount of federal support received by voice service providers offering voice and broadband service in the State.

[2011, c. 623, Pt. B, §17 (NEW) .]

SECTION HISTORY
1991, c. 654, §4 (NEW). 1991, c. 654, §5 (AFF). 1997, c. 692, §1 (RPR). 1999, c. 60, §1 (AMD). 2003, c. 553, §A4 (AMD). 2005, c. 131, §1 (AMD). 2005, c. 305, §§1,2 (AMD). 2005, c. 336, §3 (AMD). 2005, c. 683, §A59 (AMD). 2007, c. 224, §3 (AMD). 2011, c. 600, §5 (AMD). 2011, c. 600, §10 (AFF). 2011, c. 623, Pt. B, §§13-17 (AMD). 2013, c. 600, §2 (AMD).

§7104-A. ACCESS TO INFORMATION SERVICES

(REPEALED)

SECTION HISTORY
1995, c. 631, §3 (NEW). 1995, c. 631, §5 (AFF). 1997, c. 169, §1 (AMD). 1999, c. 409, §1 (RP).

§7104-B. ACCESS TO INFORMATION SERVICES

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

A. "Qualified library" means a public library as defined in Title 27, section 110, subsection 10; a research center as defined in Title 27, section 110, subsection 12; or a library that provides free public access to all advanced telecommunications services available at that library and whose collection serves as a statewide resource, if the commission determines, in consultation with the Maine Library Commission, that including that library as a qualified library is in the public interest. [1999, c. 409, §2 (NEW).]

B. "Qualified school" means a public school as defined in Title 20-A, section 1, subsection 24; a private school approved under Title 20-A, section 2901 or 2951; or a school that provides free public access to all advanced telecommunications services available at that school, if the commission determines, in consultation with the Department of Education, that including that school as a qualified school is in the public interest. [1999, c. 409, §2 (NEW).]

C. [2011, c. 623, Pt. B, §18 (RP).]

D. "Voice network service provider" means a voice service provider that offers its subscribers the means to initiate or receive voice communications using the public switched telephone network. [2011, c. 623, Pt. B, §19 (NEW).]

[2011, c. 623, Pt. B, §§18, 19 (AMD) .]

2. **Authority.** Pursuant to the authority granted in section 7104 and in order to carry out the policy goals established by section 7101, subsections 1, 2 and 4, the commission shall establish a telecommunications education access fund, referred to in this section as the "fund," and require all voice network service providers providing service in the State and any other entities identified by the commission to contribute to the fund. The fund must be available, with any accumulated interest, to qualified libraries, qualified schools and the Raymond H. Fogler Library at the University of Maine to assist in paying the costs of acquiring and using advanced telecommunications technologies.

[2011, c. 623, Pt. B, §20 (AMD) .]

2-A. **Determination of amount of prepaid wireless telecommunications service fee.** The commission shall determine by rule the amount of the fee on prepaid wireless telecommunications service that is required to be contributed to the fund. The fee is a fixed amount per retail transaction established by multiplying $25 by a percentage that is determined by the commission for purposes of calculating contributions to the fund by providers of intrastate telecommunications services. The fee must be rounded to the nearest penny. The fee may not be adjusted by the commission more frequently than once every 24 months. The collection of the fee is governed by section 7104-C. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 600, §6 (NEW); 2011, c. 600, §10 (AFF) .]

3. **Limitations.** In carrying out the authority granted by subsection 2, the commission shall:

A. Limit the amount collected to no more than 0.7% of retail charges for 2-way voice communications services as determined by the commission, excluding interstate tolls or interstate private line services; [2011, c. 623, Pt. B, §21 (AMD).]

B. Ensure that the funds are collected in a competitively neutral manner; [1999, c. 409, §2 (NEW).]

C. Integrate the collection of the charge with any state universal service fund developed by the commission; and [2011, c. 623, Pt. B, §22 (AMD).]

D. Require, if a voice network service provider recovers its contributions under this section by means of a charge placed on a bill issued to a customer, explicit identification on customer bills of any charge imposed under this section. [2011, c. 623, Pt. B, §22 (AMD).]

E. [2011, c. 623, Pt. B, §23 (RP).]

[2011, c. 623, Pt. B, §§21-23 (AMD) .]

4. **Use of fund.** The fund must be used to provide discounts to qualified libraries, qualified schools and the Raymond H. Fogler Library at the University of Maine for the following:

A. Telecommunications services; [1999, c. 409, §2 (NEW).]

B. Internet access; [1999, c. 409, §2 (NEW).]

C. Internal connections; [1999, c. 409, §2 (NEW).]

D. Computers; [2001, c. 522, §2 (AMD).]

E. Training; and [2001, c. 522, §2 (AMD).]

F. Content. [2001, c. 522, §2 (NEW).]

[2001, c. 522, §2 (AMD) .]

4-A. **State Librarian; Commissioner of Education.** The State Librarian or the Commissioner of Education may enter into contracts or order services on behalf of qualified schools and qualified libraries in connection with the fund and may take advantage of any discounts available pursuant to the federal Telecommunications Act of 1996.

[2009, c. 274, §18 (NEW) .]

5. **Guidelines for funding.** The commission shall allocate money from the fund using the following guidelines:

A. To ensure a basic level of connectivity for all of the qualified schools and qualified libraries in the State; [1999, c. 409, §2 (NEW).]

B. To ensure that all qualified schools, qualified libraries and the Raymond H. Fogler Library at the University of Maine are capable of using the advanced technology equipment obtained through the fund; [2001, c. 522, §2 (AMD).]

C. To ensure that more technologically sophisticated equipment is available to students in grades 9 to 12 and in larger qualified libraries in the State; [1999, c. 409, §2 (NEW).]

D. To provide for necessary equipment to use the services obtained through the fund; [1999, c. 409, §2 (NEW).]

E. To provide for internal connections necessary to use the services obtained through the fund; [1999, c. 409, §2 (NEW).]

F. To provide training to teachers so that they may assist and educate their students in the use of the advanced technology equipment; [2001, c. 522, §2 (AMD).]

G. To provide for the establishment of computer technology training programs in schools to provide training to students in areas such as, but not limited to, electronic commerce, Internet proficiency and World Wide Web-enabled systems; and [2001, c. 522, §2 (AMD).]

H. To provide for electronic database content to be used for the purposes of accessing information by schools and libraries. [2001, c. 522, §2 (NEW).]

[2011, c. 54, §1 (AMD) .]

6. **Coordination with federal funds.** Except as provided in paragraph A, qualified schools and qualified libraries shall apply for any federal discounts available pursuant to the federal Telecommunications Act of 1996. The level of discount, pursuant to subsection 4, is determined by the commission.

A. A qualified library is not required to apply for a federal discount pursuant to the federal Telecommunications Act of 1996 if the library determines that satisfying conditions for receiving that discount would substantially compromise the library's standards or mission. If the qualified library does not receive a federal discount as a result of a determination made in accordance with this paragraph, the commission shall establish an enhanced level of discount pursuant to subsection 4 to ensure the library is not substantially disadvantaged by that determination. The commission shall establish a level of discount that mitigates, to the maximum extent the commission determines appropriate, the financial impact on the library resulting from its not receiving the federal discount. [2003, c. 673, Pt. IIII, §1 (NEW).]

[2003, c. 673, Pt. IIII, §1 (AMD) .]

7. **Coordination with existing facilities.** Any existing facilities developed to provide services to qualified schools, qualified libraries and the Raymond H. Fogler Library at the University of Maine, as directed by the commission under this section, must continue to provide services to qualified schools, qualified libraries and the Raymond H. Fogler Library at the University of Maine at rates that reflect the incremental costs to use those facilities.

[2001, c. 522, §2 (AMD) .]

8. **Review by commission.**

[2011, c. 623, Pt. B, §24 (RP) .]

SECTION HISTORY
1999, c. 409, §2 (NEW). 2001, c. 522, §§1,2 (AMD). 2003, c. 673, §IIII1 (AMD). 2005, c. 251, §1 (AMD). 2009, c. 274, §18 (AMD). 2011, c. 54, §1 (AMD). 2011, c. 600, §6 (AMD). 2011, c. 600, §10 (AFF). 2011, c. 623, Pt. B, §§18-24 (AMD).

§7104-C. COLLECTION OF FEES RELATED TO PREPAID WIRELESS TELECOMMUNICATIONS SERVICES

1. **Prepaid wireless fee.** This section governs the fees and surcharges related to prepaid wireless telecommunications services, referred to in this section as "the prepaid wireless fee." The amount of the prepaid wireless fee is the sum of the following fees:

A. The amount of the fee that is required to be contributed to the state universal service fund as determined pursuant to section 7104, subsection 3-A; [2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF).]

B. The amount of the fee that is required to be contributed to the telecommunications education access fund as determined pursuant to section 7104-B, subsection 2-A; and [2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF).]

C. The statewide prepaid wireless telecommunications service E-9-1-1 surcharge levied on prepaid wireless telecommunications service consumers pursuant to Title 25, section 2927, subsection 1-F. [2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF).]

[2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF) .]

2. **Collection of fees and surcharges related to prepaid wireless telecommunications services.** The collection of the prepaid wireless fee is governed by this subsection.

A. A seller of prepaid wireless telecommunications services shall collect the prepaid wireless fee from the prepaid wireless consumer for each retail transaction occurring in this State. The amount of the prepaid wireless fee must be separately stated on an invoice, receipt or similar document that is provided to the prepaid wireless consumer by the seller, when practicable. In circumstances in which disclosure of the prepaid wireless fee on an invoice, receipt or similar document is not practicable, the seller must make the information regarding the amount of the prepaid wireless fee available to the prepaid wireless consumer in another manner. [2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF).]

B. For purposes of paragraph A, a retail transaction that is effected in person by a prepaid wireless consumer at the business location of the seller is treated as occurring in this State if that business location is in this State. Any other retail transaction must be treated as occurring in this State if the retail transaction is treated as occurring in this State for the purposes of Title 36, section 1752, subsection 8-B. [2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF).]

C. The prepaid wireless fee is the liability of the prepaid wireless consumer and not of the seller or of any prepaid wireless telecommunications service provider, except that the seller is liable to remit all prepaid wireless fees that the seller collects from prepaid wireless consumers as provided in this subsection, including all such charges that the seller is deemed to collect when the amount of the prepaid wireless fee has not been separately stated on an invoice, receipt or similar document provided to the prepaid wireless consumer by the seller. [2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF).]

D. The amount of the prepaid wireless fee that is collected by a seller from a prepaid wireless consumer, whether or not such amount is separately stated on an invoice, receipt or similar document provided to the prepaid wireless consumer by the seller, may not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this State, any political subdivision of this State or any intergovernmental agency. [2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF).]

E. If the prepaid wireless fee is amended by rule or law, the new amount of the prepaid wireless fee must take effect at the beginning of the next calendar quarter that is at least 60 days after adoption or enactment of the change. The commission and the State Tax Assessor shall provide not less than 30 days' advance notice of the adoption or enactment of any change to the prepaid wireless fee amount on both the commission's publicly accessible website and the State Tax Assessor's publicly accessible website. [2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF).]

F. Prepaid wireless fees collected by sellers must be remitted to the State Tax Assessor. Prepaid wireless fees must be remitted at the times and in the manner provided for the remittance of sales tax under Title 36, section 1951-A and rules adopted pursuant to that section for the remittance of sales tax on an other than monthly basis. The State Tax Assessor shall establish registration and payment procedures that substantially coincide with registration and payment procedures as provided in Title 36, section 1754-B and related provisions. [2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF).]

G. A seller who is not a prepaid wireless telecommunications service provider may deduct and retain 3% of the prepaid wireless fee that is collected by the seller from a prepaid wireless consumer. [2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF).]

H. The State Tax Assessor shall establish procedures by which a seller may document that a sale is not a retail transaction. Procedures established under this paragraph must substantially coincide with the procedures for documenting a sale as a retail transaction as provided in Title 36, section 1754-B. [2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF).]

I. The State Tax Assessor shall remit the total prepaid wireless fees collected pursuant to this subsection to the commission. The commission shall deposit the total fees into the prepaid wireless fee fund established in subsection 3 and shall ensure that, within 30 days of receipt:

(1) The portion of the remitted prepaid wireless fees attributable to the E-9-1-1 surcharge imposed by Title 25, section 2927, subsection 1-H is deposited in a separate account;

(2) The portion of the remitted prepaid wireless fees attributable to the fee imposed under section 7104, subsection 3-A is deposited in the state universal service fund established pursuant to section 7104, subsection 3; and

(3) The portion of the remitted prepaid wireless fees attributable to the fee imposed under section 7104-B, subsection 2-A is deposited in the telecommunications education access fund established under section 7104-B, subsection 2. [2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF).]

[2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF) .]

3. **Fund established.** The prepaid wireless fee fund is established within the commission for the purposes of collecting and distributing funds pursuant to subsection 2, paragraph I.

[2011, c. 600, §7 (NEW); 2011, c. 600, §10 (AFF) .]

SECTION HISTORY
2011, c. 600, §7 (NEW). 2011, c. 600, §10 (AFF).

§7105. CALLER-ID

Caller-ID services provided in this State are subject to the following. [1991, c. 654, §4 (NEW); 1991, c. 654, §5 (AFF).]

1. **Per-call blocking.** At least 2 months prior to initiating any caller-ID service, and throughout the period that caller-ID service is offered to subscribers in this State, telephone utilities must advertise and immediately upon initiating such service must offer to all subscribers free per-call blocking.

[2011, c. 623, Pt. B, §25 (AMD) .]

2. **Per-line blocking.** A telephone utility must provide per-line blocking to individuals, agencies and groups that submit a written request to the telephone utility asserting a specific need for per-line blocking for reasons of health and safety. Telephone utilities may not charge a subscriber a fee for the first per-line blocking or unblocking of the subscriber's line. Except as otherwise authorized by law or to confirm that a subscriber has made a valid request, telephone utilities may not disclose information concerning the request for per-line blocking submitted by an individual, agency or group.

[2011, c. 623, Pt. B, §25 (AMD) .]

3. **Penalty.**

[2003, c. 505, §39 (RP) .]

SECTION HISTORY
1991, c. 654, §4 (NEW). 1991, c. 654, §5 (AFF). 2003, c. 505, §39 (AMD). 2011, c. 623, Pt. B, §25 (AMD).

§7106. UNAUTHORIZED CHANGE OF CARRIER

1. **Unauthorized change of carrier.** This subsection governs the initiation of a change in a customer's local or intrastate interexchange carrier that is not authorized by that consumer.

A. Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, and except as otherwise provided by the commission by rule adopted pursuant to subsection 3, a local or intrastate interexchange carrier may not initiate the change of a customer's local or intrastate carrier unless the change is expressly authorized by the customer as verified by one of the following methods:

(1) Written or electronically signed authorization from the customer;

(2) Toll-free electronic authorization placed from the telephone number that is the subject of the change order; or

(3) Oral authorization of the customer obtained by an independent 3rd party. [2007, c. 638, §2 (AMD).]

B. When a customer's service is changed to a new local or intrastate interexchange carrier, the new local or intrastate interexchange carrier shall maintain for 24 months a record of nonpublic customer-specific information that establishes that the customer authorized the change. [2003, c. 530, §2 (AMD).]

C. [2003, c. 530, §3 (RP).]

D. A local or intrastate interexchange carrier that has initiated an unauthorized customer change shall:

(1) Pay all usual and customary charges associated with returning the customer to the customer's original local or intrastate interexchange carrier;

(2) Return to the customer any amount paid to that carrier by the customer or on the customer's behalf; and

(3) Pay any access charges and related charges to access providers or to an underlying carrier when applicable.

[2011, c. 623, Pt. B, §26 (AMD).]

E. [2011, c. 623, Pt. B, §26 (RP).]

[2011, c. 623, Pt. B, §26 (AMD) .]

2. **Penalty.** A local or intrastate interexchange carrier that violates this section is subject to penalty in accordance with this subsection.

A. The commission may impose an administrative penalty against any person who violates this section or any rule or order adopted pursuant to this section. In determining whether to impose a penalty, the commission may consider whether the violation was intentional. The penalty for a violation may be in an amount not to exceed $5,000 for each day the violation continues, up to a maximum of $40,000 for a first offense and a maximum of $110,000 for subsequent offenses. The amount of the penalty 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;

(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. [2003, c. 505, §40 (AMD).]

B. [2011, c. 623, Pt. B, §26 (RP).]

C. [2003, c. 505, §41 (RP).]

D. The commission may order a telephone utility to withhold funds collected on behalf of a carrier that is subject to an administrative penalty proceeding conducted pursuant to this section if it finds that it is more likely than not that penalties will be imposed or customer refunds will be ordered that are equal to or greater than the amount ordered withheld. The commission shall provide the carrier notice and an opportunity to be heard prior to ordering funds to be withheld. If the commission finds that there is a clear danger that, if notified in advance, the carrier will conceal or otherwise make funds unavailable to satisfy penalties or customer refunds prior to providing notice and an opportunity to be heard, it may issue an order to the public utility to withhold the funds without providing notice or an opportunity to be heard. To issue such an order, the commission must also make the first finding required by this paragraph. The commission shall, without delay, provide a copy of the order to the carrier along with

written notice that the carrier, on request, will be provided with an opportunity to contest the finding that it is more likely than not that penalties will be imposed or customer refunds will be ordered that are equal to or greater than the amount ordered withheld. [2003, c. 505, §42 (NEW).]

[2011, c. 623, Pt. B, §26 (AMD) .]

3. **Rules.** The commission shall adopt nondiscriminatory and competitively neutral rules to further implement this section.

A. [2011, c. 623, Pt. B, §26 (RP).]

B. [2011, c. 623, Pt. B, §26 (RP).]

C. [2011, c. 623, Pt. B, §26 (RP).]

D. [2011, c. 623, Pt. B, §26 (RP).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 623, Pt. B, §26 (AMD) .]

4. **Enforcement.** The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before the court.

[1997, c. 702, §1 (NEW) .]

5. **Notice to the Attorney General.** If the commission has reason to believe that any carrier has violated any provision of the law for which criminal prosecution is provided and would be in order or any law regarding fraud or consumer protection, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

[2011, c. 623, Pt. B, §26 (AMD) .]

6. **Customer education.** The Public Advocate shall periodically inform telephone customers in the State of the protections and rights provided by this section.

[2007, c. 638, §3 (NEW) .]

SECTION HISTORY
1997, c. 702, §1 (NEW). 2001, c. 71, §2 (AMD). 2003, c. 505, §§40-42 (AMD). 2003, c. 530, §§1-4 (AMD). 2007, c. 638, §§2, 3 (AMD). 2011, c. 623, Pt. B, §26 (AMD).

§7107. UNAUTHORIZED SERVICES

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

A. "Billing agent" means a telephone utility that includes in a bill it sends to a customer a charge for a product or service offered by a service provider. [1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF).]

B. "Billing aggregator" means any person, other than a service provider, who forwards the charge for a product or service offered by a service provider to a billing agent. [1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF).]

C. "Service provider" means any person, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent. [1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF).]

D. "Unauthorized service" means the provision of any service or product by a service provider from whom a billing agent has not obtained sufficient evidence of customer authorization and for which a charge appears on the customer's telephone bill. For the purposes of this section, a charge for a collect call is deemed to be authorized by the customer receiving the call. [1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF).]

[1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF) .]

2. **Registration requirements.** The following acts are prohibited.

A. A service provider may not offer a product or service to a customer, the charge for which appears on the bill of a billing agent, unless the service provider is properly registered with the commission. [1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF).]

B. A billing aggregator may not forward to a billing agent charges for a service or product offered by a service provider unless the billing aggregator is properly registered with the commission. [1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF).]

C. A billing aggregator may not forward charges to a billing agent from a service provider who is required to be registered under this subsection and who is not properly registered under this subsection. [1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF).]

D. A billing agent may not knowingly bill on behalf of a service provider who is required to be registered under this subsection and who is not properly registered under this subsection. [1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF).]

A telephone utility that is authorized by the commission or by law to provide telephone services in this State is not required to be registered under this subsection.

The commission by rule may establish the manner and form of the registration. A registration properly filed with the commission takes effect 14 days after the filing date unless the commission objects to the registration and provides notice of its objection to the registrant within the 14 days. If the commission objects to the registration, the registration does not become effective unless expressly approved by the commission. The commission shall offer a person whose registration has been rejected an opportunity for a hearing. A registration, once effective, remains effective until revoked by the commission or surrendered by the service provider or billing aggregator.

[1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF) .]

3. **Revocation of registration; notice.**

[2003, c. 505, §43 (RP) .]

3-A. **Denial or revocation of registration; notice.** The commission may by order, after notice and opportunity for hearing, deny, suspend or revoke an application for registration as, or the registration of, a service provider or billing aggregator if the commission finds that the order is in the public interest and that the applicant or registrant, or a principal of the applicant or registrant:

A. Has knowingly misrepresented or omitted a material fact on the application for registration as a service provider or billing aggregator or has filed an incomplete application and does not take reasonable steps to provide the missing information; [2003, c. 505, §44 (NEW).]

B. Has, in the case of a service provider, knowingly or repeatedly billed one or more customers for unauthorized service or, in the case of a billing aggregator, knowingly or repeatedly forwarded the charge for a service or product to a billing agent on behalf of a service provider who was required to be registered with the commission under subsection 2 and was not properly registered; [2003, c. 505, §44 (NEW).]

C. Has engaged in any other false or deceptive billing practices prohibited by commission rule; [2003, c. 505, §44 (NEW).]

D. Has acted as a service provider or billing aggregator in the State without being licensed to do so; [2003, c. 505, §44 (NEW).]

E. Is then permanently or temporarily enjoined by any court of competent jurisdiction from violating 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; [2003, c. 505, §44 (NEW).]

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; [2003, c. 505, §44 (NEW).]

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 [2003, c. 505, §44 (NEW).]

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. [2003, c. 505, §44 (NEW).]

[2003, c. 505, §44 (NEW) .]

4. **Procedure upon complaint.** If a customer of a billing agent notifies the billing agent that a charge for an unauthorized service has been included in the customer's telephone bill, the billing agent shall:

A. Immediately suspend collection efforts on that portion of the customer's bill; and [1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF).]

B. Either cease collection efforts entirely with regard to the disputed charge or request evidence from the service provider that the customer authorized the service for which payment is sought. If the billing agent ceases collection efforts or sufficient evidence of customer authorization is not presented to the billing agent within a reasonable time, as defined by the commission by rule, the billing agent shall:

(1) Immediately remove any charges associated with the unauthorized service from the customer's bill; and

(2) Refund to the customer any amounts paid for the unauthorized service that were billed by the billing agent during the 6 months prior to the customer's complaint or during any longer period in which the customer can prove the customer was billed by the billing agent for unauthorized services.

If sufficient evidence of customer authorization is provided to the billing agent, the billing agent may restore the charges on the customer's bill and reinstitute collection efforts. The customer or the service provider may appeal the billing agent's determination to the commission. [1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF).]

[1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF) .]

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. [1999, c. 59, §1 (NEW); 1999, c. 59, §3 (AFF).]

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;

(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. [2003, c. 505, §45 (AMD).]

[2003, c. 505, §45 (AMD) .]

6. **Rulemaking.** The commission shall adopt rules to implement this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

A. [2011, c. 623, Pt. B, §27 (RP).]

B. [2011, c. 623, Pt. B, §27 (RP).]

C. [2011, c. 623, Pt. B, §27 (RP).]

The commission may not adopt any rule that requires any 3rd-party verification of customer authorization of the provision of any service or product by a service provider that is an affiliate of the billing agent, as defined by the commission by rule.

[2011, c. 623, Pt. B, §27 (AMD) .]

SECTION HISTORY

1999, c. 59, §1 (NEW). 1999, c. 59, §3 (AFF). 2001, c. 71, §3 (AMD). RR 2003, c. 2, §113 (COR). 2003, c. 505, §§43-45 (AMD). 2011, c. 623, Pt. B, §27 (AMD).

§7108. USE OF 2-1-1 NUMBER; DESIGNATION OF SOLE ENTITY ENTITLED TO USE

The commission may designate an appropriate entity to be the sole entity entitled to use the 2-1-1 telephone number assigned by the Federal Communications Commission to be used for access to information and referral services. A designation may not extend for more than 3 years but may be renewed by the commission, after review, for successive periods of up to 3 years each. There is no limit on the number of times the commission may renew a designation of the same entity pursuant to this section. Before making a designation or renewing a designation, the commission shall determine that the designation or renewal is in the public interest. The commission may consult with appropriate state and local agencies and other public or private entities before granting a designation or renewing a designation. The commission may suspend, revoke, terminate or modify a designation if the commission determines the public interest is no longer served by the designation or in response to actions by the Federal Communications Commission that affect the availability or assigned use of the 2-1-1 number. [2005, c. 51, §1 (NEW).]

SECTION HISTORY
2005, c. 51, §1 (NEW).

§7109. UNLAWFUL TELEPHONE CHARGES

1. **Unauthorized and duplicative line-item charges prohibited.** A telephone utility may not charge a customer for, or include as a separate line-item charge on the customer's bill, any charge unless that charge represents:

A. An actual service or fee authorized by the customer; or [2009, c. 36, §2 (NEW).]

B. An actual tax, fee or charge authorized or required by federal or state law or by a federal or state agency rule or order. [2009, c. 36, §2 (NEW).]

A telephone utility may not include in a line-item charge on a customer's bill any element of the telephone utility's costs that is charged for elsewhere on the customer's bill.

[2009, c. 36, §2 (NEW) .]

2. **Description of line-item charges required.** A telephone utility shall provide on the customer's bill a brief, clear, nonmisleading, plain language description of each line-item charge included on the bill and the authorized service, tax or fee represented by that line-item charge.

[2009, c. 36, §2 (NEW) .]

3. **Enforcement.** In addition to any authority the commission may have pursuant to other law, the commission may impose an administrative penalty upon a telephone utility for violation of this section. The amount of any administrative penalty imposed under this subsection may not exceed $1,000 per violator for violations arising out of the same incident or complaint and must be based on:

A. The severity of the violation, including the intent of the violator and the nature, circumstances, extent and gravity of any prohibited acts; [2009, c. 36, §2 (NEW).]

B. The history of previous violations by the violator; [2009, c. 36, §2 (NEW).]

C. The amount necessary to deter future violations; [2009, c. 36, §2 (NEW).]

D. Good faith attempts to comply after notification of a violation; and [2009, c. 36, §2 (NEW).]

E. Such other matters as justice requires. [2009, c. 36, §2 (NEW).]

The commission shall provide a simple process for a customer of a telephone utility to report to the commission a line-item charge that the customer believes may violate this section.

This subsection is not intended to limit any enforcement action or penalty pursued by the Attorney General for violations of Title 5, chapter 10 where applicable.

[2009, c. 36, §2 (NEW) .]

SECTION HISTORY
2009, c. 36, §2 (NEW).

Chapter 72: TELECOMMUNICATIONS REGULATORY REFORM

Subchapter 1: GENERAL PROVISIONS

§7201. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2011, c. 623, Pt. A, §18 (NEW).]

1. **Access to directory assistance.** "Access to directory assistance" means access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings.

[2011, c. 623, Pt. A, §18 (NEW) .]

2. **Access to emergency services.** "Access to emergency services" means access to emergency services, as defined in Title 25, section 2921, subsection 5, through 9-1-1 or enhanced 9-1-1 service, as defined in Title 25, section 2921, subsection 6, to the extent a local government in the service area of a provider of last resort service provides 9-1-1 or enhanced 9-1-1 services.

[2011, c. 623, Pt. A, §18 (NEW) .]

3. **Access to interexchange service.** "Access to interexchange service" means the use of the wireline loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network.

[2011, c. 623, Pt. A, §18 (NEW) .]

4. **Access to operator services.** "Access to operator services" means access to any automatic or live assistance by a consumer to arrange for billing for or completion of a telephone call or both.

[2011, c. 623, Pt. A, §18 (NEW) .]

5. **Dual-tone multifrequency signaling.** "Dual-tone multifrequency signaling" means a method of signaling that facilitates the transportation of signaling through a network, shortening call set-up time.

[2011, c. 623, Pt. A, §18 (NEW) .]

6. **Local usage.** "Local usage" means an amount of minutes of use of exchange service within a certain area, prescribed by the commission, provided for a flat rate to end users.

[2011, c. 623, Pt. A, §18 (NEW) .]

7. **Provider of last resort service.** "Provider of last resort service" means a flat-rate service with voice grade access to the public switched telephone network; local usage within the basic service calling areas of incumbent local exchange carriers as of January 1, 2012; dual-tone multifrequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; toll limitation for qualifying low-income customers; and the capacity to maintain uninterrupted voice service during a power failure, either through the incorporation into the network or network interface devices of suitable battery backup or through electric current.

[2011, c. 623, Pt. A, §18 (NEW) .]

8. **Service provider.** "Service provider" means an entity designated as a provider of provider of last resort service under this chapter.

[2011, c. 623, Pt. A, §18 (NEW) .]

9. **Single-party service.** "Single-party service" means telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed or, in the case of wireless telecommunications carriers that use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission.

[2011, c. 623, Pt. A, §18 (NEW) .]

10. **Toll limitation for qualifying low-income customers.** "Toll limitation for qualifying low-income customers" means a service provided to customers of provider of last resort service that meet income qualifications established by the commission by rule that allows those customers:

A. To elect not to allow the completion of outgoing toll calls; or [2011, c. 623, Pt. A, §18 (NEW).]

B. To limit the amount of toll usage that the customer may incur. [2011, c. 623, Pt. A, §18 (NEW).]

With respect to a service provider that has the capacity to allow customers both options described in paragraphs A and B, "toll limitation for qualifying low-income customers" means a service that offers both options to those customers. With respect to a service provider that does not have the capacity to allow customers both options, "toll limitation for qualifying low-income customers" means a service that offers one of the options to those customers.

[2011, c. 623, Pt. A, §18 (NEW) .]

11. **Voice grade access.** "Voice grade access" means a functionality that offers a minimum bandwidth range of 300 to 3,000 hertz that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.

[2011, c. 623, Pt. A, §18 (NEW) .]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

Subchapter 2: PROVIDER OF LAST RESORT SERVICE

§7221. DESIGNATION OF SERVICE PROVIDERS

1. **Initial designation of service providers.** An entity that was an incumbent local exchange carrier as of January 1, 2012 shall provide provider of last resort service within its service area.

[2011, c. 623, Pt. A, §18 (NEW) .]

2. **Reassignment of service provider obligation.** A service provider may petition the commission for authorization to assign its provider of last resort service obligation for a given geographic area to another voice service provider. The commission shall by rule develop a process for identifying and approving replacement service providers, but in no event may a voice service provider be designated as a replacement service provider without the express consent of the voice service provider. Before authorizing the reassignment of the provider of last resort service obligation to another voice service provider, the commission shall ensure that the voice service provider possesses the financial and technical capability to meet all provider of last resort service standards set by the commission by rule. The commission may not reassign the provider of last resort service obligation to any entity that would provide the service only as a reseller, as determined by the commission by rule.

[2011, c. 623, Pt. A, §18 (NEW) .]

3. **Modification of service obligations.** Notwithstanding section 7201, subsection 7, the commission, in an adjudicatory proceeding, may relieve a service provider of the requirement that it have the capacity to maintain uninterrupted voice service during a power failure, either through the incorporation into the network or network interface devices of suitable battery backup or through electric current. The commission may grant the relief only if it finds that doing so is in the public interest. In determining that granting relief under this section is in the public interest, the commission must find that the benefits that would accrue to customers of the provider of last resort service from providing the relief would exceed the benefits to those customers of preserving the requirement.

[2011, c. 623, Pt. A, §18 (NEW) .]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

§7222. REVENUE REQUIREMENTS OF SERVICE PROVIDERS

The initial rates for provider of last resort service are those rates in effect for basic local exchange service for each incumbent local exchange carrier in the service area of that carrier as of January 1, 2012. [2011, c. 623, Pt. A, §18 (NEW).]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

§7223. PROVIDER OF LAST RESORT SERVICE CONSUMER PROTECTION

A service provider in accordance with rules adopted by the commission: [2011, c. 623, Pt. A, §18 (NEW).]

1. **Information.** Shall provide customers adequate and timely information about provider of last resort service including posting in an easily discoverable location on its publicly accessible website its rate for provider of last resort service;

[2011, c. 623, Pt. A, §18 (NEW) .]

2. **Fairness.** Shall treat its customers in a nondiscriminatory manner and may not unreasonably deny or disconnect provider of last resort service; and

[2011, c. 623, Pt. A, §18 (NEW) .]

3. **Consumer protection.** Shall comply with minimum consumer protection standards for provider of last resort service essential to the preservation of good quality, affordable provider of last resort service throughout the State.

[2011, c. 623, Pt. A, §18 (NEW) .]

A customer of a service provider may seek redress from the commission in accordance with any applicable provisions of this Title with respect to provider of last resort service, regardless of any other services the customer may take from the service provider. A service provider may not disconnect a provider of last resort service customer from provider of last resort service except in accordance with rules adopted by the commission. This section does not authorize the commission to regulate services other than provider of last resort service, including but not limited to discontinuance by the service provider of any other services to the customer. [2011, c. 623, Pt. A, §18 (NEW).]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

§7224. ANCILLARY SERVICES

If a service provider offers an ancillary service to any customer, it shall offer that service to its provider of last resort service customers individually in conjunction with provider of last resort service and may not require that the ancillary service be bundled with any other ancillary services. For purposes of this section, "ancillary service" means a service that allows a customer to manage the display of information identifying the originator of a voice call or to manage the delivery of a voice call, including but not limited to call waiting and call forwarding, and is related to the provisioning of voice grade access to the public switched telephone network so that the customer is unable to obtain a functionally equivalent service from any device or service offered by an entity other than the service provider. [2011, c. 623, Pt. A, §18 (NEW).]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

§7225. SERVICE QUALITY

1. **Service quality reporting.** The commission by rule shall establish service quality indicators with respect to which service providers shall regularly report. The service quality indicators may relate only to:

A. Network trouble rates; [2011, c. 623, Pt. A, §18 (NEW).]

B. The percentage of network troubles not resolved within 24 hours; [2011, c. 623, Pt. A, §18 (NEW).]

C. The percentage of installation appointments not met; [2011, c. 623, Pt. A, §18 (NEW).]

D. The average delay, in days, for missed installation appointments; and [2011, c. 623, Pt. A, §18 (NEW).]

E. Service outages. [2011, c. 623, Pt. A, §18 (NEW).]

[2011, c. 623, Pt. A, §18 (NEW) .]

2. **Commission review of service quality.** The commission by rule shall establish provider of last resort service quality standards. The commission may impose penalties or require a service provider to provide rebates or rate reductions if the commission finds, after investigation, that a service provider has failed to meet service quality standards.

[2011, c. 623, Pt. A, §18 (NEW) .]

3. **Rules.** Rules adopted under this section may establish appropriate penalties, rebates or rate reductions that may be applied if the commission finds, after investigation, that a service provider has failed to meet service quality standards. Rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 623, Pt. A, §18 (NEW) .]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

§7226. CERTAIN INFORMATION REQUIREMENTS AND LIMITATIONS

Notwithstanding section 112, the commission may not require a service provider: [2011, c. 623, Pt. A, §18 (NEW).]

1. **Infrastructure maps.** To provide to the commission infrastructure maps that contain a level of detail that is greater than the infrastructure maps filed for that service provider's service territory prior to March 1, 2012 or that depict the infrastructure connecting interoffice facilities to remote terminals and digital loops; or

[2011, c. 623, Pt. A, §18 (NEW) .]

2. **Outage reporting.** To submit notices to the commission of unscheduled service outages or notices of restorations of service earlier than 7 calendar days following the restoration of service.

[2011, c. 623, Pt. A, §18 (NEW) .]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

§7227. RULES

The commission shall adopt rules to implement this subchapter. Except as otherwise provided in this subchapter, rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 623, Pt. A, §18 (NEW).]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

Subchapter 3: REGULATORY REFORM

§7231. LAWS THAT APPLY ONLY TO SERVICE PROVIDERS

Notwithstanding any other provision of law, the provisions listed in subsections 1 to 4 do not apply to a telephone utility except service providers with respect to the provision of provider of last resort service: [2011, c. 623, Pt. A, §18 (NEW).]

1. **Regulation and control of public utilities.** The following sections of chapter 7:

A. Section 703 relating to discounts and discrimination; [2011, c. 623, Pt. A, §18 (NEW).]

B. Section 704 relating to termination of utility services; [2011, c. 623, Pt. A, §18 (NEW).]

C. Section 705 relating to utility deposits; [2011, c. 623, Pt. A, §18 (NEW).]

D. Section 706 relating to tenant liability for landlord utility bills; [2011, c. 623, Pt. A, §18 (NEW).]

E. Section 713 relating to unregulated business ventures; and [2011, c. 623, Pt. A, §18 (NEW).]

F. Section 715 relating to rules of the commission; [2011, c. 623, Pt. A, §18 (NEW).]

[2011, c. 623, Pt. A, §18 (NEW) .]

2. **Sales, leases and mortgages of property.** The following sections of chapter 11:

A. Section 1101 relating to authorization; and [2011, c. 623, Pt. A, §18 (NEW).]

B. Section 1103 relating to transfer of utility stock; [2011, c. 623, Pt. A, §18 (NEW).]

[2011, c. 623, Pt. A, §18 (NEW) .]

3. **Procedure.** The following sections of chapter 13:

A. Section 1302 relating to complaints; and [2011, c. 623, Pt. A, §18 (NEW).]

B. Section 1303 relating to investigations; and [2011, c. 623, Pt. A, §18 (NEW).]

[2011, c. 623, Pt. A, §18 (NEW) .]

4. **Telephone lines.** The following sections of chapter 79:

A. Section 7904 relating to purchasing and taking land for public use. [2011, c. 623, Pt. A, §18 (NEW).]

[2011, c. 623, Pt. A, §18 (NEW) .]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

§7232. LAWS THAT APPLY ONLY TO SERVICE PROVIDERS AND LOCAL EXCHANGE CARRIERS FOR LIMITED PURPOSES

Notwithstanding any other provision of law, the provisions listed in subsections 1 to 5 do not apply to a telephone utility except service providers with respect to the provision of provider of last resort service and local exchange carriers with respect to federal interconnection rights and obligations: [2011, c. 623, Pt. A, §18 (NEW).]

1. **Rates of public utilities.** The provisions of chapter 3 relating to the rates of public utilities.

The commission may adopt by rule standards and procedures for granting exemptions from all or specified portions of chapter 3 to service providers with respect to the provision of provider of last resort service or to local exchange carriers with respect to federal interconnection rights and obligations. Any exemption granted pursuant to rule must be accompanied by a finding that the exemption is in the public interest and will not result in unjust or unreasonable rates or have a negative impact on competitive markets for telephone services. The commission may limit an exemption to specific geographic areas. An entity granted an exemption pursuant to a rule adopted under this section remains subject to otherwise applicable provisions of chapter 3.

For good cause, as defined by the commission by rule, the commission may revoke any exemption granted pursuant to this subsection. A revocation may be in whole or in part and may be specific to individual entities or services.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A;

[2011, c. 623, Pt. A, §18 (NEW) .]

2. **Regulation and control of public utilities.** The following sections of chapter 7:

A. Section 701 relating to special privileges; [2011, c. 623, Pt. A, §18 (NEW).]

B. Section 702 relating to unjust discrimination; [2011, c. 623, Pt. A, §18 (NEW).]

C. Section 709 relating to insider transactions; [2011, c. 623, Pt. A, §18 (NEW).]

D. Section 710 relating to accident investigations; [2011, c. 623, Pt. A, §18 (NEW).]

E. Section 712 relating to competitive bidding; and [2011, c. 623, Pt. A, §18 (NEW).]

F. Section 714 relating to notice of certain business activities; [2011, c. 623, Pt. A, §18 (NEW).]

[2011, c. 623, Pt. A, §18 (NEW) .]

3. **Authorization of sales, leases and mortgages of property.** The following sections of chapter 11:

A. Section 1102 relating to unnecessary property; and [2011, c. 623, Pt. A, §18 (NEW).]

B. Section 1104 relating to abandonment of property or service; [2011, c. 623, Pt. A, §18 (NEW).]

[2011, c. 623, Pt. A, §18 (NEW) .]

4. **Procedure.** The following sections of chapter 13:

A. Section 1306 relating to commission decisions; [2011, c. 623, Pt. A, §18 (NEW).]

B. Section 1307 relating to enforcement of decisions; [2011, c. 623, Pt. A, §18 (NEW).]

C. Section 1308 relating to reparation or adjustments; [2011, c. 623, Pt. A, §18 (NEW).]

D. Section 1309 relating to adjustment of excessive rates; and [2011, c. 623, Pt. A, §18 (NEW).]

E. Section 1323 relating to exhausting of rights before the commission; and [2011, c. 623, Pt. A, §18 (NEW).]

[2011, c. 623, Pt. A, §18 (NEW) .]

5. **Sanctions and administrative penalties.** The following sections of chapter 15:

A. Section 1511 relating to revocation and suspension of authority to provide service. [2011, c. 623, Pt. A, §18 (NEW).]

[2011, c. 623, Pt. A, §18 (NEW) .]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

§7233. LAWS THAT APPLY ONLY TO SERVICE PROVIDERS AND LOCAL EXCHANGE CARRIERS

Notwithstanding any other provision of law, the provisions listed in subsection 1 do not apply to a telephone utility except service providers with respect to the provision of provider of last resort service and local exchange carriers: [2011, c. 623, Pt. A, §18 (NEW).]

1. **Organization, powers and service territory.** The following sections of chapter 21:

A. Section 2105 relating to approval after hearing; [2011, c. 623, Pt. A, §18 (NEW).]

B. Section 2107 relating to approval only to Maine corporations; [2011, c. 623, Pt. A, §18 (NEW).]

C. Section 2108 relating to holding real estate; and [2011, c. 623, Pt. A, §18 (NEW).]

D. Section 2110 relating to extension of service. [2011, c. 623, Pt. A, §18 (NEW).]

[2011, c. 623, Pt. A, §18 (NEW) .]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

§7234. INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICE

Notwithstanding any other provision of law, a person, insofar as that person is providing interconnected voice over Internet protocol service, is not subject to any regulation under this Title as a telephone utility or as a public utility unless the person is providing provider of last resort service. Nothing in this section affects the application of any provision of this Title that otherwise expressly applies to a person providing interconnected voice over Internet protocol service or to voice service providers. [2011, c. 623, Pt. A, §18 (NEW).]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

§7235. DARK FIBER PROVIDERS

Notwithstanding any other provision of law, a person, insofar as that person is a dark fiber provider, is not subject to any regulation under this Title as a telephone utility or as a public utility. Nothing in this section affects the application of any provision of this Title that otherwise expressly applies to a dark fiber provider. [2011, c. 623, Pt. A, §18 (NEW).]

SECTION HISTORY
2011, c. 623, Pt. A, §18 (NEW).

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. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§7302. TOLL-CALL RATES FOR DEAF, HARD-OF-HEARING, LATE-DEAFENED OR SPEECH-IMPAIRED PERSONS

1. **Rate reduction.** The commission shall establish a 70% rate reduction for usage-sensitive intrastate toll calls made on lines, or via credit cards assigned to lines, used for making calls from certified deaf, hard-of-hearing, late-deafened or speech-impaired persons who must rely on telecommunications devices for the deaf for residential telephone communications. In addition, the 70% rate reduction must apply to all usage-sensitive intrastate toll calls using the state telecommunications relay service. Upon request, this discount must be provided to any noncertified user making calls to a certified user, provided the noncertified user informs the intrastate toll provider of the relevant billed calls made during each billing period. This reduction must also apply to intrastate toll calls made by agencies certified by the Division for the Deaf, Hard of Hearing and Late Deafened in the Department of Labor as eligible to receive a discount, while providing vocal relay services to deaf, hard-of-hearing, late-deafened or speech-impaired persons, as well as to community service centers serving deaf, hard-of-hearing, late-deafened or speech-impaired persons certified by the Division for the Deaf, Hard of Hearing and Late Deafened of the Department of Labor as eligible to receive a discount. The costs incurred by an intrastate toll provider under this subsection are just and reasonable expenses for rate-making purposes.

[2009, c. 174, §23 (AMD) .]

2. **Customers qualifying for the reduction.** To qualify for the reduction, a customer must file an affidavit, on a form approved by the commission, with the customer's intrastate toll provider, stating that, due to deafness, hearing impairment or speech impairment, the customer or a member of the household must rely on a telecommunications device for the deaf for telecommunications.

[2009, c. 68, §2 (AMD) .]

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

A. "Deaf person" has the same meaning as in section 8702, subsection 3. [2009, c. 68, §3 (NEW).]

B. "Hard-of-hearing person" has the same meaning as in section 8702, subsection 3-A. [2009, c. 68, §3 (NEW).]

C. "Speech-impaired person" has the same meaning as in section 8702, subsection 5. [2009, c. 68, §3 (NEW).]

D. "Telecommunications device for the deaf" has the same meaning as in section 8702, subsection 6. [2009, c. 68, §3 (NEW).]

[2009, c. 68, §3 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1989, c. 66, (AMD). 1993, c. 275, §1 (AMD). 1993, c. 589, §13 (AMD). 1993, c. 708, §J10 (AMD). 1995, c. 462, §A66 (AMD). 1995, c. 560, §F15 (AMD). 2009, c. 68, §§1-3 (AMD). 2009, c. 174, §23 (AMD).

§7303. MANDATORY LOCAL MEASURED TELEPHONE SERVICE PROHIBITED

1. **Mandatory measured service.** Mandatory local measured telephone service is prohibited in the State.

[1987, c. 141, Pt. A, §6 (NEW) .]

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 company 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.

[1987, c. 141, Pt. A, §6 (NEW) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§7303-A. BASIC SERVICE CALLING AREAS

1. **Petition.** Upon written petition of 50 or more customers of a local exchange carrier who receive local, flat-rate, basic service within no more than a single exchange area, the commission shall open a proceeding to investigate expanding that basic service calling area. The commission shall hold at least one public hearing. The commission, within 6 months of the filing of the written petition, shall issue an order that must either expand the basic service calling area or state the commission's reasons for refusing to expand the basic service calling area. If the commission expands the basic service calling area pursuant to this subsection, the commission may allow a carrier affected by the expansion to recover, to the extent reasonable, its costs, including lost revenues, attributable to the expansion.

[2001, c. 106, §1 (NEW) .]

2. **Rules; limitation on petitions.** No later than 30 days after the effective date of this subsection, the commission shall by rule establish standards for expanding single-exchange basic service calling areas pursuant to this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. A petition may not be filed with or accepted by the commission pursuant to subsection 1 prior to 30 days after the effective date of this subsection.

[2001, c. 106, §1 (NEW) .]

SECTION HISTORY
2001, c. 106, §1 (NEW).

§7304. PROHIBITION AGAINST ORDERING COMPETITIVE BIDDING

The commission may not issue any order or adopt any rule that requires a local exchange carrier to consider competitive bids on, or requires notice to potential bidders of, the construction of any interexchange facility. Nothing in this section limits the ability of the commission to establish reasonable rates for customers. [1991, c. 54, §2 (AFF); 1991, c. 54, §1 (RPR).]

SECTION HISTORY
1989, c. 444, (NEW). 1991, c. 54, §2 (AFF). 1991, c. 54, §1 (RPR).

§7305. NOTICE OF CHARGES FOR USE OF PUBLIC TELEPHONES

1. **Notice of charges.** Any person who owns, controls, operates or manages a public telephone shall provide a written notice within the immediate vicinity of the telephone and plainly visible to any person using the telephone. The notice must:

A. Identify the name, address and telephone number of the person who owns, controls, operates or manages the public telephone to whom complaints regarding that telephone may be directed; [1989, c. 651, §2 (NEW).]

B. Inform the person using the public telephone how to contact a local telephone company operator or "911" service operator in case of emergency; [1989, c. 651, §2 (NEW).]

C. Specify the rates or charges for use of the public telephone, including charges for local calls, intrastate calls, "800" or other toll-free calls, uncompleted calls, incoming calls, collect calls, 3rd-party calls and credit card calls; and [1989, c. 651, §2 (NEW).]

D. Contain the identity of the long-distance company that serves the public telephone, explain how the user of the public telephone may, at no charge, obtain information on the rates or charges imposed by the long-distance company, and any additional charges imposed on the user for long distance services. [1989, c. 651, §2 (NEW).]

[1989, c. 651, §2 (NEW) .]

2. **Charges limited when no notice.** Any person who owns, controls, operates or manages a public telephone and fails to provide the notice required by subsection 1 may not demand or receive compensation for use of the telephone in excess of charges imposed by the local exchange telephone utility serving that area with respect to that use.

[1989, c. 651, §2 (NEW) .]

SECTION HISTORY
1989, c. 651, §2 (NEW).

§7306. CUSTOMER PREMISE WIRE

1. **Definitions.** For purposes of this section, unless the context otherwise indicates, the following term has the following meaning.

A. "Customer premise wire" means the segment of telephone wiring from the customer's side of the protector, or such other point that may be determined by the commission, to the customer's telephone equipment. [1991, c. 318, §1 (NEW).]

[1991, c. 318, §1 (NEW) .]

2. **Deregulation of customer premise wire.** The commission may by rule deregulate all or a portion of a telephone utility's service providing installation, maintenance and repair of customer premise wire. Prior to deregulation, the commission must find that a reasonable degree of competition exists between providers of installation, maintenance or repair services on customer premise wire. The commission must include the results of any action taken pursuant to this subsection in the annual report filed with the Legislature pursuant to section 120.

[1991, c. 318, §1 (NEW) .]

3. **Ratemaking treatment of customer premise wire services.** Nothing in subsection 2 restricts the commission's authority over the ratemaking treatment of expenses and revenues associated with customer premise wire services offered by a telephone utility.

[1991, c. 318, §1 (NEW) .]

SECTION HISTORY
1991, c. 318, §1 (NEW).

§7307. NOTICE OF INTRASTATE TOLL RATE CHANGES

1. **Notice required.** A telephone utility offering intrastate toll service may not increase the price for such service or change its terms or conditions for such service in a manner that results in an increase in costs for any customer without first:

A. Filing a tariff revision with the commission identifying the new price or the change in the terms or conditions of service unless the utility is exempt from filing tariffs pursuant to rules adopted by the commission under section 307-A; and [2007, c. 478, §2 (AMD).]

B. Providing prior adequate written notice to each retail subscriber receiving intrastate toll service from the utility identifying the change in terms or conditions or price increase and the effective date of the change or increase. The notice, which may take the form of a bill insert, must be provided no less than 25 days prior to the effective date of the increase in price or change in terms or conditions. The commission by rule shall define what constitutes adequate written notice and shall specify whether notice by electronic means is adequate written notice. [2001, c. 29, §1 (NEW).]

[2007, c. 478, §2 (AMD) .]

2. **Failure to notify.** An increase in price or a change in the terms or conditions of service that results in an increase in costs for a customer receiving intrastate toll service from a telephone utility may not take effect until the customer has been supplied with adequate written notice in conformity with subsection 1. A customer that has not been supplied with adequate written notice under subsection 1 is not obligated to make payment for any increase in the customer's bill attributable to an increase in price or change in the terms or conditions. A telephone utility shall refund to a customer any increase in the customer's payments attributable to an increase in price or change in terms or conditions if the telephone utility fails to provide adequate written notice in accordance with subsection 1.

[2001, c. 29, §1 (NEW) .]

3. **Notice of rights.** A telephone utility offering intrastate toll service shall provide notice to customers of the requirements of subsection 1, paragraph B and of customer rights pursuant to subsection 2. The commission by rule shall specify the form and frequency of the notice.

[2001, c. 29, §1 (NEW) .]

4. **Rules.** The commission shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[2001, c. 29, §1 (NEW) .]

SECTION HISTORY
2001, c. 29, §1 (NEW). 2007, c. 478, §2 (AMD).

§7308. PREPAID CALLING SERVICE

1. **Definition.** For purposes of this section, "prepaid calling service" has the same meaning as in Title 36, section 2551, subsection 9.

[2007, c. 511, §1 (NEW) .]

2. **Prohibition on retroactive rate increase for prepaid calling services.** A provider of prepaid calling services may not increase the rate charged for the quantity of service that the consumer purchased until the balance of the purchased service is consumed or expires in accordance with an expiration date of which the consumer had notice at the time of purchase. The quantity of service must be determined by the rates, terms and conditions in effect at the time of the purchase.

[2007, c. 511, §1 (NEW) .]

3. **Notice of rate increase for prepaid calling service purchased by telephone or on the Internet.** A provider of a prepaid calling service shall notify a consumer of the prepaid calling service of an increase in the rate charged for that service before that consumer purchases additional service from that provider by telephone or on the Internet. This notice may be in the form of a telephone recording.

[2007, c. 511, §1 (NEW) .]

4. **Notice of variance between in-state and interstate rates.** A provider of a prepaid calling service shall notify a consumer of the prepaid calling service if that provider charges different rates for in-state and interstate service. If that service is purchased in a store, this notice must be on the packaging of the prepaid calling service product. If that service is purchased by telephone, this notice must be in the form of a telephone recording. If that service is purchased on the Internet, this notice must be on the website on which that service is purchased.

[2007, c. 511, §1 (NEW) .]

SECTION HISTORY
2007, c. 511, §1 (NEW).

Chapter 75: SERVICE

§7501. DIRECTORIES

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2011, c. 623, Pt. A, §19 (RP).

§7501-A. EMERGENCY NUMBERS IN DIRECTORIES

(REPEALED)

SECTION HISTORY
1991, c. 45, (NEW). 2011, c. 623, Pt. A, §20 (RP).

§7501-B. DIRECTORIES

A telephone utility is not required to publish a hard-copy telephone directory. A provider of provider of last resort service shall annually offer its provider of last resort service customers the option to receive a telephone directory in an electronic format or in the form of a printout of the electronic database showing the names, addresses and telephone numbers of persons and businesses, other than of those who have requested unlisted numbers. The service provider shall annually provide notice to each of its provider of last resort service customers of this option. [2011, c. 623, Pt. A, §21 (NEW).]

SECTION HISTORY
2011, c. 623, Pt. A, §21 (NEW).

§7502. TELEPHONE DIRECTORY ERRATA LISTS

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2011, c. 623, Pt. A, §22 (RP).

§7503. PUBLIC TELEPHONE SERVICE FOR DISABLED PERSONS

1. **Placement of public telephones.** Any person placing public telephones in any public place after December 31, 1983, shall provide that at least one public telephone is wheelchair accessible if the public place is otherwise wheelchair accessible.

If a public place in which one or more public telephones are located becomes wheelchair accessible after December 31, 1983, the subscriber shall notify the person placing the public telephones and that person shall replace at least one public telephone with a telephone which is wheelchair accessible.

Any public telephone placed before January 1, 1984, shall be deemed to be in compliance with this section. This section shall not apply to public telephones for the use of persons while in motor vehicles.

[1989, c. 159, §11 (AMD) .]

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.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Definitions.** For purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Public telephone" means a telephone located in a public place and which is intended for use by the public. [1989, c. 159, §12 (AMD).]

B. "Wheelchair accessible" means meeting the most recent applicable standards of the American National Standards Institute for accessibility by the physically handicapped at the time of placement. [1987, c. 628, §6 (NEW).]

C. "Public place" means any location to which members of the public are invited or have general access, including, but not limited to, sidewalks, plazas, lobbies, stores, schools, governmental buildings, transportation terminals and shopping centers. [1989, c. 159, §13 (NEW).]

[1989, c. 159, §§12, 13 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 628, §§5,6 (AMD). 1989, c. 159, §§11-13 (AMD).

§7504. SPECIAL TELEPHONE EQUIPMENT

The commission shall retain jurisdiction over the sale or lease of volume control and low-speech 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-speech power telephone equipment or of bone conductor receivers is considered not to be substantial. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY
1987, c. 141, §A6 (NEW).

§7505. TELECOMMUNICATION DEVICES FOR THE HEARING AND SPEECH IMPAIRED REQUIRED IN PUBLIC FACILITIES

1. **State buildings.** The Department of Administrative and Financial Services shall require the installation and maintenance of telecommunication devices for communication for the deaf, hard of hearing, late deafened and speech-impaired who rely on those devices for telephone communications in locations accessible to the public in state buildings where a primary function is the delivery of service to the general public in accordance with a plan developed by the Department of Administrative and Financial Services, Bureau of Information Services and the Department of Labor, Bureau of Rehabilitation Services.

[2009, c. 174, §24 (AMD) .]

2. **Other facilities serving the public.** If public telephones are provided in a public facility, it shall be the responsibility of the owner or manager of the public facility to provide equal access by providing at least one telecommunication device for the hearing and speech impaired in the public facility.

[1987, c. 503, §1 (NEW) .]

3. **Public facilities.** For the purposes of this section, the following kinds of facilities shall be considered public facilities:

A. Airport terminals serving scheduled flights; [1987, c. 503, §1 (NEW).]

B. Bus and train depots; and [1987, c. 503, §1 (NEW).]

C. Hospitals. [1987, c. 503, §1 (NEW).]

[1987, c. 503, §1 (NEW) .]

4. **Notice.** A sign noting the availability and location of the telecommunication device for hearing and speech impaired persons shall be posted by the owner of the facility in a conspicuous location within each public facility covered by this section.

[1987, c. 503, §1 (NEW) .]

5. **Devices.** The requirements of this section may be satisfied by installation of telecommunications devices for the deaf as defined in section 8702, subsection 6, or other devices approved by the Department of Labor, Bureau of Rehabilitation Services, Division for the Deaf, Hard of Hearing and Late Deafened.

[2009, c. 174, §25 (AMD) .]

6. **Relief.** A violation of this section is unlawful public accommodations discrimination under Title 5, section 4592, and any person aggrieved may assert that person's rights pursuant to Title 5, chapter 337.

[1989, c. 671, (NEW) .]

SECTION HISTORY
1987, c. 503, §1 (NEW). 1989, c. 671, (AMD). 1993, c. 708, §J11 (AMD). RR 1995, c. 1, §30 (COR). 2009, c. 68, §4 (AMD). 2009, c. 174, §§24, 25 (AMD).

§7506. INTEREXCHANGE CARRIER SELECTION

(REPEALED)

SECTION HISTORY
1991, c. 318, §2 (NEW). 1991, c. 660, §1 (RP).

§7507. EMERGENCY INTERRUPTION OF SERVICE FOR LAW ENFORCEMENT PURPOSES

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

A. "Critical incident" means a situation in which there is probable cause to believe that a person is holding a hostage while committing a crime or who is barricaded and resisting apprehension through the use or threatened use of force. [1993, c. 1, §105 (COR).]

B. "Commanding law enforcement officer" means a law enforcement officer who has jurisdiction and is in charge at a critical incident. [1993, c. 1, §105 (COR).]

C. "Law enforcement officer" means a person who by virtue of public employment is vested by law with a duty to maintain public order, to prosecute offenders and to make arrests for crimes. [1993, c. 1, §105 (COR).]

[1993, c. 1, §105 (COR) .]

2. **Order.** The commanding law enforcement officer at a critical incident may order a previously designated telephone utility security employee to arrange to cut, reroute or divert telephone lines for the purpose of preventing telephone communication by a suspected person with a person other than a law enforcement officer or a person authorized by a law enforcement officer.

[1993, c. 31, §1 (NEW) .]

3. **Security employee designation.** A telephone utility shall designate a security employee and an alternate security employee to provide required assistance to law enforcement officers involved in a critical incident.

[1993, c. 31, §1 (NEW) .]

SECTION HISTORY
RR 1993, c. 1, §105 (COR). 1993, c. 31, §1 (NEW).

§7508. PUBLIC-INTEREST PAY PHONES

1. **Public-interest pay phone locations.** In order to ensure access to pay phones in a manner that fulfills the requirements of the public health, safety and welfare, the commission shall establish by rule a process for reviewing and approving requests for public-interest pay phones in accordance with this section.

A. The commission shall establish procedures by which citizens may petition to have a public-interest pay phone at a particular location. [2005, c. 131, §2 (NEW).]

B. Consistent with the following general criteria, the commission shall establish procedures and standards for responding to a petition for a public-interest pay phone.

(1) A proposed public-interest pay phone must fulfill a public welfare, health or safety policy objective.

(2) A pay phone would not otherwise remain or be placed at a proposed public-interest pay phone location by the operation of the competitive marketplace. [2005, c. 131, §2 (NEW).]

C. A public-interest pay phone may not be removed from service unless its owner provides written notice to the commission 30 days prior to removal, except that the commission, pursuant to rules adopted under this section, may grant a waiver of this requirement. [2005, c. 131, §2 (NEW).]

[2005, c. 131, §2 (NEW) .]

2. **Recovery of costs.** The costs associated with installing and maintaining public-interest pay phones pursuant to this section must be paid from funds available pursuant to section 7104, subsection 6.

[2005, c. 131, §2 (NEW) .]

3. **Rules.** The commission shall adopt rules that are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A to implement this section.

[2005, c. 131, §2 (NEW) .]

4. **Annual report.** The commission shall include in its annual report pursuant to section 120, subsection 7 a report detailing activities undertaken pursuant to this section. The report must include information on the number of petitions for public-interest pay phones the commission has received, the number of such pay phones the commission has approved and the amount of available funds expended.

[2009, c. 122, §18 (AMD) .]

SECTION HISTORY
2005, c. 131, §2 (NEW). 2009, c. 122, §18 (AMD).

Chapter 77: EMERGENCY USE OF TELEPHONE PARTY LINES

§7701. EMERGENCY USE OF PARTY LINES; REFUSAL TO SURRENDER; PENALTY

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2003, c. 452, §T1 (AMD). 2003, c. 452, §X2 (AFF). 2011, c. 623, Pt. C, §7 (RP).

Chapter 79: TELEPHONE LINES

§7901. TELEPHONE LINES

1. **Connection between the lines of 2 or more utilities.** When the commission, after a hearing, finds that a physical connection can reasonably be made between the lines of 2 or more telephone 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 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; [1987, c. 141, Pt. A, §6 (NEW).]

B. Require that conversations be transmitted and messages transferred over the connection under such rules as the commission may establish; and [1987, c. 141, Pt. A, §6 (NEW).]

C. Prescribe through lines and joint rates, tolls and charges to be made and to be used, observed and enforced in the future. [1987, c. 141, Pt. A, §6 (NEW).]

[1995, c. 225, §14 (AMD) .]

2. **Division of costs between utilities.** If the telephone 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.

[1995, c. 225, §14 (AMD) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 225, §14 (AMD).

§7902. LINES ALONG HIGHWAYS AND ACROSS WATERS

Every entity authorized under section 2301 to construct lines 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. The authority provided under this section applies to a dark fiber provider for the purposes of constructing and maintaining its federally supported dark fiber. [2011, c. 623, Pt. B, §28 (AMD).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1995, c. 225, §14 (AMD). 2009, c. 612, §9 (AMD). 2011, c. 623, Pt. B, §28 (AMD).

§7903. CONNECTION WITH OTHER TELEPHONE LINES

Every telephone utility in the State may, upon such terms as may be agreed upon by the contracting parties: [2011, c. 623, Pt. B, §29 (AMD).]

1. **Connect lines.** Connect its lines with those of any other like utility;

[1987, c. 141, Pt. A, §6 (NEW) .]

2. **Sell or lease lines.** Sell or lease its lines and property, in whole or in part, to any other like utility; and

[1987, c. 141, Pt. A, §6 (NEW) .]

3. **Purchase or lease lines.** Purchase or lease the lines and property, in whole or in part, of any like utility.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 225, §14 (AMD). 2011, c. 623, Pt. B, §29 (AMD).

§7904. LAND FOR PUBLIC USE

Every 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. [1995, c. 225, §14 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 225, §14 (AMD).

Chapter 81: DUTIES OF TELEGRAPH UTILITIES

§8101. LIABILITY FOR DELAYS AND ERRORS; FALSIFYING OR DIVULGING CONTENTS OF DISPATCH

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1987, c. 490, §C16 (AMD). 1995, c. 225, §15 (RP).

§8102. LIABILITY FOR FRAUD; COMMON LAW LIABILITIES

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 1995, c. 225, §15 (RP).

Chapter 83: CABLE TELEVISION COMPANIES

§8301. PUBLIC UTILITIES COMMISSION REGULATION

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2011, c. 623, Pt. C, §8 (RP).

§8302. POLE ATTACHMENTS

If a cable television system and a voice service provider, dark fiber provider, wholesale competitive local exchange carrier or public utility fail to agree on the joint use of poles or other equipment or on the terms and conditions or compensation for the use, the matter is subject to section 711. [2011, c. 623, Pt. B, §30 (AMD).]

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2011, c. 623, Pt. B, §30 (AMD).

Chapter 85: RADIO PAGING SERVICE

§8501. SEPARATE ACCOUNTING REQUIRED

(REPEALED)

SECTION HISTORY
1987, c. 141, §A6 (NEW). 2011, c. 623, Pt. C, §9 (RP).

§8502. CENTRAL OFFICE CODE CONSERVATION

To the extent permitted under federal law, the commission may exercise jurisdiction, control and regulation over radio paging service for the purpose of implementing central office code conservation measures. [1999, c. 60, §2 (NEW).]

SECTION HISTORY
1999, c. 60, §2 (NEW).

Chapter 87: TELECOMMUNICATIONS RELAY SERVICES

§8701. FINDINGS

The Legislature finds and declares that it is in the public interest to establish an effective statewide system to provide continuous telecommunications relay services to facilitate communication between deaf, hard-of-hearing or speech impaired persons who use telecommunications devices for the deaf and persons using standard telephone equipment. [2009, c. 68, §5 (AMD).]

SECTION HISTORY
1989, c. 851, §7 (NEW). 2009, c. 68, §5 (AMD).

§8702. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 851, §7 (NEW).]

1. **Advisory council.** "Advisory council" means the Telecommunications Relay Services Advisory Council.

[1989, c. 851, §7 (NEW) .]

2. **Blockage level.** "Blockage level" means the proportion of placed calls that fail to reach a relay operator.

[1989, c. 851, §7 (NEW) .]

3. **Deaf person.** "Deaf person" means a person whose sense of hearing is nonfunctional for the purpose of ordinary communication.

[1989, c. 851, §7 (NEW) .]

3-A. **Hard-of-hearing person.** "Hard-of-hearing person" means a person who has a hearing loss in the range of mild to profound, who uses residual hearing and who prefers to speak and listen with the help of amplification, implantable devices, assistive technology and speechreading.

[2009, c. 68, §6 (NEW) .]

4. **Hearing impaired person.**

[2009, c. 68, §7 (RP) .]

5. **Speech impaired person.** "Speech impaired person" means a person whose speech is nonfunctional or diminished for the purpose of ordinary communication.

[2009, c. 68, §8 (AMD) .]

5-A. **Speechreading.** "Speechreading" means a technique of understanding speech by visually interpreting the movements of the lips, face and tongue with information provided by the context, language and any residual hearing.

[2009, c. 68, §9 (NEW) .]

6. **Telecommunications device for the deaf or TDD.** "Telecommunications device for the deaf" or "TDD" means a teletypewriter, or TTY, or other telecommunication equipment used by deaf, hard-of-hearing or speech impaired persons to conduct telephone communications, including but not limited to devices required for captioned telephone service, equipment necessary to perform video relay service and 2-way paging devices.

[2009, c. 68, §10 (AMD) .]

7. **Telecommunications relay service.** "Telecommunications relay service" means a service transmitting messages and information between a person using a telecommunications device for the deaf and another person.

[2009, c. 68, §11 (AMD) .]

SECTION HISTORY
1989, c. 851, §7 (NEW). 2009, c. 68, §§6-11 (AMD).

§8703. REQUIREMENTS

Telecommunications relay services must conform to the following requirements. [1989, c. 851, §7 (NEW).]

1. **Geographic availability.** Services must be available on a statewide basis to the extent that they are technologically feasible.

[2009, c. 68, §12 (AMD) .]

2. **Temporal availability.** Services must be available 24 hours a day for every calendar day of the year.

[1989, c. 851, §7 (NEW) .]

3. **Accessibility.** Relay service operators may not refuse calls or limit the length of calls.

[1989, c. 851, §7 (NEW) .]

4. **Blockage level.** The allowable blockage level for the telecommunications relay services must be reasonable. Complaints relating to the reasonableness of the blockage level may be brought to the commission by the advisory council or by 10 or more aggrieved persons pursuant to section 1302, subsection 1.

[1989, c. 851, §7 (NEW) .]

5. **Confidentiality.** Relay service communications must be confidential.

[1989, c. 851, §7 (NEW) .]

6. **User fee prohibited.** A separate fee for telecommunications relay services may not be assessed to users of the services.

[1989, c. 851, §7 (NEW) .]

7. **Recovery of expenses and costs.** The costs for telecommunications relay services must be recovered through the state universal service fund pursuant to section 7104, subsection 7.

[2005, c. 305, §3 (AMD) .]

8. **Advisory council.** The providers of telecommunications relay services must take into consideration any comments from the advisory council.

[1989, c. 851, §7 (NEW) .]

9. **Restrictions.** Upon request, the providers of telecommunications relay services shall make known to users of the services any restrictions on the types of calls handled such as collect calls and automated information services.

[1989, c. 851, §7 (NEW) .]

10. **Notification of rates or charges.** Upon request, the providers of telecommunications relay services shall make known to users any rates or charges for the services.

[1989, c. 851, §7 (NEW) .]

SECTION HISTORY
1989, c. 851, §7 (NEW). 2005, c. 305, §3 (AMD). 2009, c. 68, §12 (AMD).

§8704. ADVISORY COUNCIL

The Telecommunications Relay Services Advisory Council, as established by Title 5, section 12004-G, subsection 30-C, shall evaluate telecommunications relay services in this State and provide advice to providers of telecommunications relay services. [2005, c. 605, §5 (AMD).]

1. **Membership.** The advisory council consists of 12 members as follows:

A. The Director of the Division for the Deaf, Hard of Hearing and Late Deafened, Bureau of Rehabilitation Services, Department of Labor, or a designee; [2009, c. 174, §26 (AMD).]

B. The chair of the Commission for the Deaf, Hard of Hearing and Late Deafened established by Title 5, section 12004-J, subsection 17, or a designee; [2009, c. 652, Pt. A, §48 (AMD).]

C. One member from the Public Utilities Commission, appointed by the commissioners; [1989, c. 851, §7 (NEW).]

D. One member from the office of the Public Advocate, appointed by the Public Advocate; and [1989, c. 851, §7 (NEW).]

E. Eight members appointed by the Governor as follows:

(1) One member from the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf;

(2) One member from a statewide association for the deaf;

(3) One member from a center on deafness;

(4) One member from the largest incumbent local exchange carrier providing telecommunications relay service in this State;

(5) One member of a telephone association in this State, except that the representative under this subparagraph may not be a representative of the carrier under subparagraph (4);

(6) Two members from the general public who use telecommunications devices for the deaf as a primary means of telecommunications; and

(7) One member representing an Internet telecommunications relay service provider that provides service to customers in this State. [2013, c. 40, §1 (AMD).]

[2013, c. 40, §1 (AMD) .]

2. **Compensation.** Compensation is not authorized.

[1989, c. 851, §7 (NEW) .]

3. **Technical assistance.** The commission shall provide technical assistance to the advisory council.

[1989, c. 851, §7 (NEW) .]

4. **Appointment of chair and vice-chair.** The members shall annually elect a chair and a vice-chair from among the membership. The vice-chair shall serve as acting chair in the absence of the chair. The council shall meet at the call of the chair but no fewer than 4 times during the calendar year. The chair may delegate, as necessary, duties to members to carry out the functions of the council.

[1989, c. 851, §7 (NEW) .]

5. **Powers and duties.** The advisory council shall evaluate telecommunications relay services in this State and shall advise providers of telecommunications relay services regarding telecommunications relay service matters, including, but not limited to, the development of training standards and an evaluation

of the service being provided, including the quality and availability of that service. The advisory council may enter into contracts with telecommunications relay service providers for the purpose of providing telecommunications relay services.

[2005, c. 605, §6 (AMD) .]

SECTION HISTORY
1989, c. 851, §7 (NEW). 1993, c. 708, §J12 (AMD). 2001, c. 377, §3 (AMD). 2005, c. 279, §17 (AMD). 2005, c. 605, §§5,6 (AMD). 2009, c. 68, §13 (AMD). 2009, c. 174, §§26, 27 (AMD). 2009, c. 652, Pt. A, §48 (AMD). 2013, c. 40, §1 (AMD).

Chapter 89: MOBILE TELECOMMUNICATIONS SERVICES

§8901. SEPARATE ACCOUNTING REQUIRED

(REPEALED)

SECTION HISTORY
1991, c. 342, §5 (NEW). 2011, c. 623, Pt. C, §10 (RP).

§8902. CENTRAL OFFICE CODE CONSERVATION

To the extent permitted under federal law, the commission may exercise jurisdiction, control and regulation over mobile telecommunications services for the purpose of implementing central office code conservation measures. [1999, c. 60, §3 (NEW).]

SECTION HISTORY
1999, c. 60, §3 (NEW).

Chapter 91: ALTERNATIVE FORM OF REGULATION OF TELECOMMUNICATIONS SERVICES

§9101. DEFINITIONS

(REPEALED)

SECTION HISTORY
1993, c. 638, §2 (NEW). MRSA T. 35-A, §9106 (RP).

§9102. ADOPTION OF ALTERNATIVE FORM OF REGULATION

(REPEALED)

SECTION HISTORY
1993, c. 638, §2 (NEW). 1997, c. 275, §1 (AMD). MRSA T. 35-A, §9106 (RP).

§9103. CONDITIONS OF ALTERNATIVE FORM OF REGULATION

(REPEALED)

SECTION HISTORY

1993, c. 638, §2 (NEW). 2007, c. 550, §1 (AMD). MRSA T. 35-A, §9106 (RP).

§9104. IMPLEMENTATION

(REPEALED)

SECTION HISTORY
1993, c. 638, §2 (NEW). 2003, c. 48, §1 (RP).

§9105. REPORT TO LEGISLATURE

(REPEALED)

SECTION HISTORY
1993, c. 638, §2 (NEW). MRSA T. 35-A, §9106 (RP).

§9106. APPLICATION OF CHAPTER; REPEAL

(REPEALED)

SECTION HISTORY
2011, c. 623, Pt. C, §11 (NEW). MRSA T. 35-A, §9106 (RP).

Chapter 93: ADVANCED TECHNOLOGY INFRASTRUCTURE

§9201. SHORT TITLE

This chapter may be known and cited as "the Advanced Technology Infrastructure Act." [2005, c. 665, §3 (NEW).]

SECTION HISTORY
2005, c. 665, §3 (NEW).

§9202. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 665, §3 (NEW).]

1. **Advanced communications technology infrastructure.** "Advanced communications technology infrastructure" means any communications technology infrastructure or infrastructure improvement that expands the deployment of, or improves the quality of, broadband availability and wireless service coverage.

[2005, c. 665, §3 (NEW) .]

2. **Authority.** "Authority" means the ConnectME Authority established in section 9203.

[2005, c. 665, §3 (NEW) .]

3. **Communications service.** "Communications service" means any wireline voice, satellite, data, fixed wireless data or video retail service.

[2005, c. 665, §3 (NEW) .]

4. **Communications service provider.** "Communications service provider" means:

A. Any entity offering communications service to customers in the State; or [2005, c. 665, §3 (NEW).]

B. Any facilities-based provider of wireless voice or data retail service that voluntarily chooses to be assessed by the authority pursuant to section 9211. [2005, c. 665, §3 (NEW).]

[2005, c. 665, §3 (NEW) .]

5. **Unserved or underserved area.** "Unserved or underserved area" means an area that the authority pursuant to section 9204, subsection 2, paragraph B determines to meet criteria established by the authority by rule adopted pursuant to section 9205, subsection 3 in accordance with section 9204, subsection 1.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY
2005, c. 665, §3 (NEW).

§9202-A. STATE BROADBAND POLICY

1. **Goal.** It is the goal of the State that:

A. Broadband service become and remain, as nearly as possible, universally available in this State, including to all residential and business locations and community anchor institutions in the State; and [2009, c. 586, §1 (NEW).]

B. A secure, reliable and sustainable forward-looking infrastructure that can meet future broadband needs is developed. [2009, c. 586, §1 (NEW).]

[2009, c. 586, §1 (NEW) .]

2. **Policy.** It is the policy of the State to:

A. Maximize sustainable private investment in broadband infrastructure in the State and to promote broadband infrastructure deployment and availability to all individuals, businesses and institutions in this State, including those that require ultra high-speed Internet access; [2009, c. 586, §1 (NEW).]

B. Maximize federal grant resources and private investment opportunities to support the deployment of broadband infrastructure in unserved and underserved areas of the State in a manner consistent with paragraph A; [2009, c. 586, §1 (NEW).]

C. Prioritize the use of state broadband resources to assist private infrastructure deployment in unserved and underserved areas of the State; [2009, c. 586, §1 (NEW).]

D. Maximize the number of state permits and licenses that may be obtained or renewed online at rates equal to or less than the rates set for obtaining or renewing the permits or licenses in person; [2009, c. 586, §1 (NEW).]

E. Increase the number of subscribers to broadband services in the State so as to ensure that all residents of the State are able to fully take advantage of the economic opportunities available through broadband Internet connectivity, including by:

(1) Educating residents of the State about the benefits and opportunities associated with broadband services, such as distance learning opportunities, opportunities in telemedicine, as defined in Title 24-A, section 4316, and state programs available online; and

(2) Educating small businesses regarding the advantages of broadband access, such as online business reporting and tax filings and national and global sales opportunities; and [2009, c. 586, §1 (NEW).]

F. Seek to expand computer ownership and training in this State and ensure appropriate computer equipment is available for use by public school students. [2009, c. 586, §1 (NEW).]

[2009, c. 586, §1 (NEW) .]

In order to facilitate the achievement of the goals and policies of this section, the authority shall establish and regularly update, after opportunity for public comment and taking into consideration relevant federal policies, a definition of "broadband." [2009, c. 586, §1 (NEW).]

SECTION HISTORY
2009, c. 586, §1 (NEW).

§9203. CONNECTME AUTHORITY

1. **Establishment; membership.** The ConnectME Authority is established to stimulate investment in advanced communications technology infrastructure in unserved or underserved areas. The authority is created as a body corporate and politic and a public instrumentality of the State. The exercise by the authority of powers conferred by this chapter is considered to be the performance of essential governmental functions. The authority consists of the following 5 voting members:

A. The chair of the Public Utilities Commission or the chair's designee; [2005, c. 665, §3 (NEW).]

B. The Chief Information Officer of the State, or the officer's designee; [2005, c. 665, §3 (NEW).]

C. One representative of consumers, appointed by the Governor; and [2005, c. 665, §3 (NEW).]

D. Two members with significant knowledge of communications technology, appointed by the Governor. [2005, c. 665, §3 (NEW).]

Compensation of members is as provided in Title 5, section 12004-G, subsection 33-F.

[2005, c. 665, §3 (NEW) .]

2. **Terms; chair; vacancies.** All members are appointed for 3-year terms. The Governor shall appoint a chair from among the 3 members appointed by the Governor. In the event of a vacancy in the membership, the Governor shall appoint a replacement member for the remainder of that vacated term. Each member of the authority serves until that member's successor is appointed and qualified. Any member of the authority is eligible for reappointment.

[2005, c. 665, §3 (NEW) .]

3. **Officers; quorum.** The authority may elect a secretary and a treasurer, who may, but need not, be members of the authority. Three members of the authority constitute a quorum, and the affirmative vote of 3 members is necessary for any action taken by the authority.

[2005, c. 665, §3 (NEW) .]

4. **Participation by members.** A member may participate in a meeting of the authority and place a vote electronically or telephonically as long as members of the public have an opportunity to listen to the deliberations of the authority and otherwise participate in or observe the proceedings of the authority consistent with Title 1, section 405.

[2005, c. 665, §3 (NEW) .]

5. **Indemnification.** Each member of the authority must be indemnified by the authority against expenses actually and necessarily incurred by the member in connection with the defense of any action or proceeding in which the member is made a party by reason of being or having been a member of the authority and against any final judgment rendered against the member in that action or proceeding.

[2005, c. 665, §3 (NEW) .]

6. **Staff.** At the request of the authority, the commission or any other state agency with expertise in communications services or advanced communications technology infrastructure shall provide to the authority staff designated by the commission or agency. Staff resources provided by the commission and other agencies may not exceed in total the equivalent of 3 full-time employees. The salaries and costs of such staff must be allocated proportionately to the authority. The authority may retain staff in addition to the staff designated and provided by the commission or other state agencies.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY
2005, c. 665, §3 (NEW).

§9204. DUTIES OF AUTHORITY

1. **Establish criteria defining unserved and underserved areas.** The authority, by rule adopted pursuant to section 9205, subsection 3, shall establish criteria to define unserved and underserved areas. The authority shall establish criteria that ensure that an area is not determined to be an unserved or underserved area if the effect of that determination would inhibit or impede private investment in any area or diminish the value of prior investment in advanced communications technology infrastructure within any area. Criteria established by the authority must include but are not limited to whether investment is planned in an area within a reasonable time. Criteria established by the authority to define unserved and underserved areas with respect to broadband service must include the percentage of households with access to broadband service within a municipality or other appropriate geographic area.

[2009, c. 63, §1 (AMD) .]

2. **Enhance communications technology infrastructure.** The authority, through partnerships, grants, direct investment, loans, demonstration projects and other appropriate means, shall, in a competitively neutral fashion and without giving preference to any one form of technology over another:

A. Monitor wireless coverage in areas where the authority determines the quality of the coverage is inadequate; [2005, c. 665, §3 (NEW).]

B. Determine whether an area is an unserved or underserved area; [2005, c. 665, §3 (NEW).]

C. Expand the availability of broadband service to residential and small business customers in unserved or underserved areas. In awarding grants, the authority shall give priority to those proposals that, relative to other proposals, extend access to broadband service to a higher percentage of an unserved area within a municipality or other appropriate geographic area; [2009, c. 63, §2 (AMD).]

D. Expand the availability of broadband with bandwidth, synchronicity, reliability and security adequate to serve business, education and enterprise consumers in unserved or underserved areas; [2005, c. 665, §3 (NEW).]

E. Otherwise enhance the State's communications technology infrastructure in unserved and underserved areas; and [2005, c. 665, §3 (NEW).]

F. Cover reasonable administrative costs of the authority. [2005, c. 665, §3 (NEW).]

[2009, c. 63, §2 (AMD) .]

3. **Additional duties.** In addition to its duties established under this chapter, the authority shall:

A. Collect, aggregate, coordinate and disseminate information and data concerning communications services and advanced communications technology infrastructure in the State; [2005, c. 665, §3 (NEW).]

B. Track investment in advanced communications technology infrastructure; [2005, c. 665, §3 (NEW).]

C. Continually assess the availability of and need for advanced communications technology infrastructure in unserved or underserved areas within the State; [2005, c. 665, §3 (NEW).]

D. Identify and secure federal and other funding sources for broadband or wireless deployment or education; [2005, c. 665, §3 (NEW).]

E. Identify opportunities for coordination among providers, consumers and state and local governmental entities, including coordination with the statewide emergency radio network; and [2005, c. 665, §3 (NEW).]

F. Create and facilitate public awareness and educational programs to encourage the use of broadband services. [2005, c. 665, §3 (NEW).]

[2005, c. 665, §3 (NEW) .]

4. **Limitations on activities of the authority.** The authority may not develop, acquire, fund, coordinate or otherwise undertake any project or make any grant, direct investment or loan under this chapter unless:

A. The action is taken on behalf of, in partnership with or in support of one or more communications service providers that are remitting assessments to the authority under section 9211; and [2005, c. 665, §3 (NEW).]

B. The authority determines that, without the authority's action, the installation of adequate advanced communications technology infrastructure in an unserved or underserved area would not otherwise occur. [2005, c. 665, §3 (NEW).]

Notwithstanding any other provision of this chapter, the authority may not provide any wireline, wireless, satellite, voice, data or video service at retail or wholesale.

[2005, c. 665, §3 (NEW) .]

5. **Public notice and opportunity for private investment.** Prior to taking any action described in subsection 4, the authority shall provide public notice of its intention to take the action. The authority may not take the action if a service provider franchised or certificated to provide a communications service to the area submits a timely certification to the authority that the service provider will commence within 45 days and will complete within one year the installation of sufficient advanced communications technology infrastructure to provide broadband or wireless service in a manner that would render the authority's action unnecessary or redundant.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY
2005, c. 665, §3 (NEW). 2009, c. 63, §§1, 2 (AMD).

§9205. GENERAL POWERS

In order to carry out the purposes of this chapter, the authority has the following powers with respect to a project together with all powers incidental to or necessary for the performance of these powers: [2005, c. 665, §3 (NEW).]

1. **Power to sue and be sued.** To sue or initiate or appear in any proceeding. The authority may be sued on its written contracts or in accordance with Title 1, section 409; Title 5, chapter 375; or Title 14, chapter 741;

[2005, c. 665, §3 (NEW) .]

2. **Official seal.** To adopt and have an official seal and alter the seal at pleasure;

[2005, c. 665, §3 (NEW) .]

3. **Bylaws; rules.** To adopt bylaws and any rule necessary or useful for carrying out any of the authority's powers or duties pursuant to this chapter. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A;

[2005, c. 665, §3 (NEW) .]

4. **Acquire real or personal property.** To acquire real or personal property or any interest in real or personal property, including rights or easements, on either a temporary or long-term basis by gift, purchase, transfer, foreclosure, lease or otherwise; to improve, hold, sell with or without public bidding, assign, lease, rent, encumber, mortgage or otherwise dispose of any real or personal property, any interest in real or personal property or mortgage interests owned or in its control, custody or possession; and to release or relinquish any right, title claim, lien, interest, easement or demand, however acquired, including threat of foreclosure;

[2005, c. 665, §3 (NEW) .]

5. **Prepare and plan projects and facilities.** To prepare or cause to be prepared plans, specifications, designs and estimates of costs for the construction and equipment for a project and attendant facilities and from time to time to modify or cause to be modified those plans, specifications, designs or estimates;

[2005, c. 665, §3 (NEW) .]

6. **Improve and equip project and attendant facilities.** By contract or contracts to construct, acquire, alter, repair, reconstruct, rehabilitate, improve and equip a project and necessary and usual attendant facilities;

[2005, c. 665, §3 (NEW) .]

7. **Maintain, reconstruct and operate.** To maintain, reconstruct and operate, or cause to be maintained, reconstructed and operated, a project;

[2005, c. 665, §3 (NEW) .]

8. **Fix and collect fees.** To fix and collect fees, lease-rentals and other charges for the use of a project to transmit voice, data or video signals and to provide for the adoption of such reasonable and proper rules as may be necessary to ensure the maximum use at all times of the facilities of any project;

[2005, c. 665, §3 (NEW) .]

9. **Provide for financing or refinancing.** To provide financing for a project or to provide for refinancing of existing indebtedness and for the financing of the project and of other necessary and usual attendant facilities;

[2005, c. 665, §3 (NEW) .]

10. **Make and execute contracts.** To make and execute contracts and other instruments and enter into such transactions as necessary or convenient for the exercise of the authority's powers and functions under this chapter;

[2005, c. 665, §3 (NEW) .]

11. **Agreements; acceptions; contributions; aid; grants.** To enter into agreements with and accept loans, aid, contributions, grants and the cooperation or assistance of the United States, or any agency of the United States, or of the State or any agency or governmental subdivision in furtherance of the purposes of this chapter, including, but not limited to, the development and financing of a project, and to do all things necessary in order to avail the authority of those loans, aid, contributions, grants and cooperation;

[2005, c. 665, §3 (NEW) .]

12. **Accept aid or contributions.** To receive and accept from any source aid or contributions of money, property, labor or other things of value, to be held, used and applied to carry out the purposes of this chapter, subject to the conditions upon which those grants and contributions are made, including, but not limited to, gifts or grants from any department or agency of the United States or the State for any purpose consistent with this chapter;

[2005, c. 665, §3 (NEW) .]

13. **Insurance.** To procure insurance against any loss in connection with the authority's securities and its property and other assets in such amounts and from such insurers as it considers desirable;

[2005, c. 665, §3 (NEW) .]

14. **Modification of contract, lease, indenture or agreement.** To consent to any modification of any contract, lease, indenture or agreement of any kind to which the authority is a party;

[2005, c. 665, §3 (NEW) .]

15. **Manage or operate real and personal property.** To manage or operate, or cause to be managed or operated, real and personal property, to take assignments of leases and rentals or to take any other action necessary or incidental to the performance of the authority's duties under this chapter;

[2005, c. 665, §3 (NEW) .]

16. **Lease or rent facilities or equipment used to transmit voice, data or video signals.** To lease or rent any facilities or equipment for a project for such amounts as the authority determines to a communications service provider to further the purposes of this chapter, as long as the obligation of the service provider is considered a binding contract with the authority and as long as no liability on account of the authority may be incurred beyond the money available for that purpose and may be considered a liability of the State;

[2005, c. 665, §3 (NEW) .]

17. **Investments.** Except as otherwise provided in this chapter, to invest any funds not needed for immediate use, including any funds held in reserve, in property or in securities in which fiduciaries in the State may legally invest funds;

[2005, c. 665, §3 (NEW) .]

18. **Appearances.** To appear on the authority's own behalf before boards, commissions, departments or agencies of a municipality or the State Government or the Federal Government;

[2005, c. 665, §3 (NEW) .]

19. **Executive director; other employees.** To employ an executive director, consulting engineers, architects, attorneys, accountants, construction and financial experts and such other employees and agents as may be necessary in the authority's judgment; and

[2005, c. 665, §3 (NEW) .]

20. **All acts granted or implied.** To do any act necessary or convenient to exercise the powers granted in this chapter or reasonably implied by this chapter.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY
2005, c. 665, §3 (NEW).

§9206. CONNECTME ADVISORY COUNCIL

The ConnectME Advisory Council, referred to in this section as "the advisory council," is established to advise the authority in accordance with this section. [2005, c. 665, §3 (NEW).]

1. **Membership.** The advisory council is composed of the following members:

A. Four members who have experience with issues concerning advanced communications technology infrastructure, appointed by the Governor; [2005, c. 665, §3 (NEW).]

B. Two members who have experience with issues concerning the telecommunications and technology infrastructure implemented by the State's education community, appointed by the Governor; [2005, c. 665, §3 (NEW).]

C. One member who serves on the Maine Telecommunications Education Access Fund Advisory Board established by rules adopted by the commission, or a successor board, appointed by the Governor; [2005, c. 665, §3 (NEW).]

D. One member from the Maine Technology Institute appointed by the Director of the Office of Innovation within the Department of Economic and Community Development; [2005, c. 665, §3 (NEW).]

E. One member representing the Small Enterprise Growth Fund, established in Title 10, section 383, appointed by the Director of the Office of Innovation within the Department of Economic and Community Development; and [2005, c. 665, §3 (NEW).]

F. Up to 2 additional members, appointed by the authority, as needed to ensure adequate representation and expertise. [2005, c. 665, §3 (NEW).]

Compensation of members is as provided in Title 5, section 12004-I, subsection 85-A.

[2005, c. 665, §3 (NEW) .]

2. **Duties; rules.** The advisory council shall provide advice and counsel to the authority on technical, policy, financial and economic issues. The advisory council shall also perform limited functions assigned to it by the authority or as provided for by rule adopted by the authority pursuant to section 9205, subsection 3.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY

2005, c. 665, §3 (NEW).

§9207. COLLECTION OF DATA

Subject to the provisions in this section, the authority may collect data from communications service providers and any wireless provider that own or operate advanced communications technology infrastructure in the State concerning infrastructure deployment and costs, revenues and subscribership. [2005, c. 665, §3 (NEW).]

1. **Confidential information.** If the authority, on its own or upon request of any person or entity, determines that public access to specific information about communications service providers in the State could compromise the security of public utility systems to the detriment of the public interest or that specific information is of a competitive or proprietary nature, the authority shall issue an order designating that information as confidential. Information that may be designated as confidential pursuant to this subsection includes, but is not limited to, network diagrams. The authority may designate information as confidential under this subsection only to the minimum extent necessary to protect the public interest or the legitimate competitive or proprietary interests of a communications service provider. The authority shall adopt rules pursuant to section 9205, subsection 3 defining the criteria it will use to satisfy the requirements of this paragraph and the types of information that would satisfy the criteria. The authority may not designate any information as confidential under this subsection until those rules are finally adopted.

Information designated as confidential under this subsection is not a public record under Title 1, section 402, subsection 3.

[2005, c. 665, §3 (NEW) .]

2. **Protection of information.** A communications service provider may request that confidential or proprietary information provided to the authority under subsection 1 not be viewed by those members of the authority who could gain a competitive advantage from viewing the information. Upon such a request, the authority shall ensure that the information provided is viewed only by those members of the authority and staff who do not stand to gain a competitive advantage and that there are adequate safeguards to protect that information from members of the authority who could gain a competitive advantage from viewing the information.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY
2005, c. 665, §3 (NEW).

§9208. LEGISLATIVE OVERSIGHT; REPORT TO COMMITTEE

No later than January 15th of each year, the authority shall provide a report to the joint standing committee of the Legislature having jurisdiction over utilities matters that: [2005, c. 665, §3 (NEW).]

1. **Budget.** Includes a report on the budget of the authority;

[2005, c. 665, §3 (NEW) .]

2. **Activities.** Documents the activities of the authority, including review of applications for funding received by the authority;

[2005, c. 665, §3 (NEW) .]

3. **Investments.** Contains a listing of any investments of money in the ConnectME Fund, as established pursuant to section 9211, and a tracking of the infrastructure improvements resulting from the investments; and

[2005, c. 665, §3 (NEW) .]

4. **Market conditions.** Contains an analysis of the availability of communications services and advanced communications technology infrastructure, including an analysis of the competitive market in the State for communications services and advanced communications technology infrastructure and whether the communications services provided in the State are reasonably comparable to services provided regionally and nationwide.

[2005, c. 665, §3 (NEW) .]

After receiving a report under this section, the joint standing committee of the Legislature having jurisdiction over utilities matters may report out legislation relating to the authority. [2005, c. 665, §3 (NEW).]

SECTION HISTORY
2005, c. 665, §3 (NEW).

§9209. CONFLICTS

A member of the authority may not participate in any decision on any contract entered into by the authority under this chapter if that member has any interest, direct or indirect, in any firm, partnership, corporation or association that is party to the contract. The interest must be disclosed to the authority in writing and must be set forth in the minutes of the authority. [2005, c. 665, §3 (NEW).]

SECTION HISTORY
2005, c. 665, §3 (NEW).

§9210. ACTIONS AGAINST AUTHORITY

A member of the authority, while acting within the scope of this chapter, is not subject to any personal liability resulting from the exercise or carrying out of any of the authority's purposes or powers. [2005, c. 665, §3 (NEW).]

SECTION HISTORY
2005, c. 665, §3 (NEW).

§9211. CONNECTME FUND

1. **ConnectME Fund established.** The ConnectME Fund, referred to in this section as "the fund," is established as a nonlapsing fund administered by the authority for the purposes of supporting the activities and projects of the authority under this chapter.

[2005, c. 665, §3 (NEW) .]

2. **Assessment.** After receiving authorization pursuant to Title 5, section 8072 to finally adopt major substantive rules under section 9205, subsection 3 or after January 15, 2007, whichever is later, the authority may require every communications service provider to contribute on a competitively neutral basis to the fund. The assessment may not exceed 0.25% of the revenue received or collected for all communications services

provided in this State by the communications service provider. A facilities-based provider of wireless voice or data retail service may voluntarily agree to be assessed by the authority as a communications service provider under this subsection.

[2005, c. 665, §3 (NEW) .]

3. **Explicit identification on customer bills.** A communications service provider assessed pursuant to subsection 2 may recover the amount of the assessment from the provider's customers. If a provider recovers the amount from its customers, it must explicitly identify the amount owed by a customer on the customer's bill and indicate that the funds are collected for use in the ConnectME Fund.

[2005, c. 665, §3 (NEW) .]

SECTION HISTORY
2005, c. 665, §3 (NEW).

§9212. GIFTS AND CONTRIBUTIONS

The authority may accept gifts and contributions on behalf of the authority for the purpose of designing, constructing, reconstructing, renovating or acquiring a project. [2005, c. 665, §3 (NEW).]

The authority, in accepting gifts of money, federal funds or other types of income, shall place this money in a special account for the purpose for which it is provided. The authority may invest the money in accordance with the purposes of this chapter, subject to any limitations imposed by the donor. [2005, c. 665, §3 (NEW).]

SECTION HISTORY
2005, c. 665, §3 (NEW).

§9213. USE OF REVENUES

The revenues derived by the authority from any assessment, transfer of funds, lease, assignment, rental agreement or other disposition or any other revenue must be used for the purposes of this chapter and applied in a competitively neutral fashion and without giving preference to any one form of technology over another. [2005, c. 665, §3 (NEW).]

SECTION HISTORY
2005, c. 665, §3 (NEW).

§9214. NO FRANCHISE FEES

The authority may not establish or collect a franchise fee pursuant to 47 United States Code, Section 542 or Title 30-A, section 3008. If any tax, fee, charge or assessment or portion thereof established by the authority is held by a court of competent jurisdiction to be a franchise fee, the imposition of that tax, fee, charge or assessment or portion thereof is unenforceable. [2005, c. 665, §3 (NEW).]

SECTION HISTORY
2005, c. 665, §3 (NEW).

§9215. REPEAL

(REPEALED)

SECTION HISTORY
2005, c. 665, §3 (NEW). 2007, c. 698, §1 (RP).

§9216. BROADBAND SUSTAINABILITY FEE

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

A. "First assessment period" means the period:

(1) Commencing on the first day of the month following the date on which a dark fiber provider first sells, leases or otherwise provides one or more strands of federally supported dark fiber to an entity in this State; and

(2) Ending on the last day of the 60th month following the commencement under subparagraph (1). [2009, c. 612, §10 (NEW).]

B. "Incumbent local exchange carrier" means a telephone utility that provided single-party service, voice grade access to the public switched telephone network in a defined service territory in the State on February 8, 1996, or its successor, or that is designated as an incumbent local exchange carrier pursuant to 47 United States Code, Section 251(h)(2). [2009, c. 612, §10 (NEW).]

C. "Second assessment period" means the period:

(1) Commencing on the first day of the month following the end of the first assessment period; and

(2) Ending on December 31, 2017. [2009, c. 612, §10 (NEW).]

[2009, c. 612, §10 (NEW) .]

2. **Broadband sustainability fee.** An entity that purchases, leases or otherwise obtains federally supported dark fiber from a dark fiber provider is subject to the following broadband sustainability fees:

A. During the first assessment period, a monthly fee equal to $3 multiplied by the number of miles of federally supported dark fiber strand purchased, leased or used by the entity during the month; and [2009, c. 612, §10 (NEW).]

B. During the 2nd assessment period, a monthly fee equal to $2 multiplied by the number of miles of federally supported dark fiber strand purchased, leased or used by the entity during the month. [2009, c. 612, §10 (NEW).]

[2009, c. 612, §10 (NEW) .]

3. **Collection.** A dark fiber provider shall collect the broadband sustainability fees under subsection 2 and within 15 days after the end of each month remit the amounts collected to the authority. When remitting funds to the authority, the dark fiber provider shall include sufficient information to allow the authority to determine the number of miles of federally supported dark fiber strands sold, leased or used in the service territory of each incumbent local exchange carrier.

[2009, c. 612, §10 (NEW) .]

4. **Deposit.** The authority shall:

A. Deposit 5% of the funds received under subsection 3 into the ConnectME Fund established under section 9211 and may use these funds to support the activities of the authority under this section and for the purposes of section 9204; and [2009, c. 612, §10 (NEW).]

B. Deposit 95% of the funds received under subsection 3 into the broadband sustainability fund established pursuant to subsection 5. [2009, c. 612, §10 (NEW).]

[2009, c. 612, §10 (NEW) .]

5. **Broadband sustainability fund.** The authority shall establish a broadband sustainability fund, separate and distinct from any other funds held or maintained by the authority, for use in accordance with subsection 6. The fund is nonlapsing and all interest on funds in the fund remains in the fund for use in accordance with subsection 6. The authority may contract with an appropriate independent fiscal agent that is not a state entity to serve as the administrator of the fund. All funds deposited in the broadband sustainability fund are deemed to be encumbered for purposes of subsection 6 at the time the funds are deposited in the fund.

[2009, c. 612, §10 (NEW) .]

6. **Use of the broadband sustainability fund.** The authority shall provide incumbent local exchange carriers a right of first refusal to access the broadband sustainability fund established pursuant to subsection 5 in accordance with this subsection.

A. The authority shall allocate funds in the broadband sustainability fund established pursuant to subsection 5 to each incumbent local exchange carrier in accordance with this paragraph. Each month, the authority shall allocate to each incumbent local exchange carrier an amount equal to the total amount deposited that month into the broadband sustainability fund multiplied by a fraction, the denominator of which is the total number of miles of federally supported dark fiber leased, sold or used in this State during the previous month and the numerator of which is the total number of miles of federally supported dark fiber leased, sold or used in that incumbent local exchange carrier's service territory during the previous month. Any accumulated interest in the fund must be allocated proportionally. Only those amounts allocated to an incumbent local exchange carrier under this paragraph are available for disbursement to that carrier pursuant to paragraph B. By December 31st of each calendar year, the authority shall make an accounting of the total funds allocated during that calendar year to each incumbent local exchange carrier under this paragraph, and if by December 31st of the following calendar year some or all of those funds allocated to a carrier are not disbursed to that carrier in accordance with paragraph B, the authority shall transfer those unspent funds to the ConnectME Fund established under section 9211 for use in accordance with that section. Funds transferred to the ConnectME Fund under this paragraph cease to be available to any incumbent local exchange carrier pursuant to the provisions of this section. [2009, c. 612, §10 (NEW).]

B. To receive a disbursement from the broadband sustainability fund established pursuant to subsection 5, an incumbent local exchange carrier must file with the authority a request for funds together with a certification indicating that the funds requested will be used to deploy broadband infrastructure in unserved areas within the carrier's service territory. The certification must include the projected cost for the project and the scope of work, which must indicate how the funds will be spent. Upon receipt of a request for funds accompanied by the required certification, the authority shall disburse the requested amount to the incumbent local exchange carrier up to an amount not to exceed the total amount allocated under paragraph A to the requesting carrier. [2009, c. 612, §10 (NEW).]

C. An incumbent local exchange carrier may not expend funds received under paragraph B in a manner inconsistent with the certification provided by the carrier under paragraph B. The authority may audit the use by an incumbent local exchange carrier of funds disbursed in accordance with paragraph B. [2009, c. 612, §10 (NEW).]

D. On the last day of the 12th month following the end of the 2nd assessment period, the authority shall transfer all funds remaining in the broadband sustainability fund established pursuant to subsection 5 to the ConnectME Fund established under section 9211 for use in accordance with that section. Funds transferred to the ConnectME Fund pursuant to this paragraph cease to be available to any incumbent local exchange carrier pursuant to the provisions of this section. [2009, c. 612, §10 (NEW).]

[2009, c. 612, §10 (NEW) .]

SECTION HISTORY
2009, c. 612, §10 (NEW).

Part 8: ENERGY EFFICIENCY HEADING: PL 2003, C. 644, §9 (NEW)

Chapter 95: ENERGY EFFICIENCY

§10001. PROVISION OF PUBLIC INFORMATION

(REPEALED)

SECTION HISTORY
2003, c. 644, §9 (NEW). 2009, c. 372, Pt. A, §10 (AFF). 2009, c. 372, Pt. A, §9 (RP).

§10002. TRAINING FOR INSTALLERS OF SOLAR EQUIPMENT

(REPEALED)

SECTION HISTORY
2003, c. 644, §9 (NEW). 2009, c. 372, Pt. A, §10 (AFF). 2009, c. 372, Pt. A, §9 (RP).

§10003. TRAINING FOR ENERGY AUDITORS

(REPEALED)

SECTION HISTORY
2003, c. 644, §9 (NEW). 2009, c. 372, Pt. A, §10 (AFF). 2009, c. 372, Pt. A, §9 (RP).

§10004. FEDERAL ENERGY PROGRAMS

(REPEALED)

SECTION HISTORY
2003, c. 644, §9 (NEW). 2009, c. 372, Pt. A, §10 (AFF). 2009, c. 372, Pt. A, §9 (RP).

§10005. ENERGY CONSERVATION SMALL BUSINESS REVOLVING LOAN PROGRAM; ENERGY CONSERVATION SMALL BUSINESS REVOLVING LOAN FUND

(REPEALED)

SECTION HISTORY
2003, c. 644, §9 (NEW). 2009, c. 372, Pt. A, §10 (AFF). 2009, c. 372, Pt. A, §9 (RP).

§10006. ENERGY EFFICIENCY OF RENTAL PROPERTIES

(REPEALED)

SECTION HISTORY
2005, c. 534, §2 (NEW). 2009, c. 372, Pt. A, §10 (AFF). 2009, c. 372, Pt. A, §9 (RP).

§10007. MAINE ENERGY CONSERVATION BOARD

(REPEALED)

SECTION HISTORY
2007, c. 317, §14 (NEW). 2009, c. 372, Pt. A, §10 (AFF). 2009, c. 372, Pt. A, §9 (RP).

§10008. ENERGY AND CARBON SAVINGS TRUST

(REPEALED)

SECTION HISTORY
2007, c. 317, §15 (NEW). 2007, c. 608, §§1, 2 (AMD). 2007, c. 695, Pt. A, §42 (AMD). 2009, c. 200, §§1, 2 (AMD). 2009, c. 329, Pt. A, §5 (AMD). 2009, c. 372, Pt. A, §10 (AFF). 2009, c. 372, Pt. A, §9 (RP).

Chapter 97: EFFICIENCY MAINE TRUST ACT

§10101. SHORT TITLE

This chapter may be known and cited as "the Efficiency Maine Trust Act." [2009, c. 372, Pt. B, §3 (NEW).]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW).

§10102. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 372, Pt. B, §3 (NEW).]

1. **Administrative costs.** "Administrative costs" means costs of the trust in carrying out its responsibilities under this chapter, including, but not limited to, costs of:

A. Securing necessary expertise; [2009, c. 372, Pt. B, §3 (NEW).]

B. Contracting for program delivery; and [2009, c. 372, Pt. B, §3 (NEW).]

C. Monitoring and enforcing contractual obligations. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

2. **Administration fund.** "Administration fund" means the administration fund established pursuant to section 10103, subsection 5.

[2009, c. 372, Pt. B, §3 (NEW) .]

3. **Alternative energy resources.** "Alternative energy resources" means nonfossil fuel energy resources, including, but not limited to, biomass, wood, wood pellets and solar, wind or geothermal resources.

[2009, c. 372, Pt. B, §3 (NEW) .]

4. **Board.** "Board" means the Efficiency Maine Trust Board.

[2009, c. 372, Pt. B, §3 (NEW) .]

5. **Director.** "Director" means the Director of the Efficiency Maine Trust.

[2009, c. 372, Pt. B, §3 (NEW) .]

6. **Forward capacity market.** "Forward capacity market" means the program established by the regional transmission organization that is in effect on the effective date of this subsection and compensates providers of electrical capacity with payments for the availability or reduction of capacity as determined by the regional transmission organization.

[2009, c. 372, Pt. B, §3 (NEW) .]

7. **Program funds.** "Program funds" means any of the funds established pursuant to this chapter, other than the administration fund, to fund Efficiency Maine Trust programs.

[2009, c. 372, Pt. B, §3 (NEW) .]

8. **Regional transmission organization.** "Regional transmission organization" means the independent systems operator that administers and oversees the wholesale electricity markets in which the State participates.

[2009, c. 372, Pt. B, §3 (NEW) .]

9. **Triennial plan.** "Triennial plan" means the plan required under section 10104, subsection 4.

[2009, c. 372, Pt. B, §3 (NEW) .]

10. **Trust.** "Trust" means the Efficiency Maine Trust established in section 10103.

[2009, c. 372, Pt. B, §3 (NEW) .]

11. **Trustee.** "Trustee" means a member of the board.

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW).

§10103. EFFICIENCY MAINE TRUST

1. **Establishment; purpose.** The Efficiency Maine Trust is established for the purposes of developing, planning, coordinating and implementing energy efficiency and alternative energy resources programs in the State to:

A. Provide uniform, integrated planning, program design and administration of programs pursuant to this chapter and any other provisions of law administered by the trust; [2009, c. 372, Pt. B, §3 (NEW).]

B. Reduce energy costs and improve security of the state and local economies. The trust shall administer cost-effective energy and energy efficiency programs consistent with applicable requirements of this chapter and other law to help individuals and businesses meet their energy needs at the lowest cost and generally to improve the economic security of the State by:

(1) Reducing the cost of energy to residents of the State;

(2) Maximizing the use of cost-effective weatherization and energy efficiency measures, including measures that improve the energy efficiency of energy-using systems, such as heating and cooling systems and system upgrades to energy efficient systems that rely on affordable energy resources;

(3) Reducing economic insecurity from the inefficient use of fossil fuels;

(4) Increasing new jobs and business development to deliver affordable energy and energy efficiency products and services;

(5) Enhancing heating improvements for households of all income levels through implementation of cost-effective efficiency programs, including weatherization programs and affordable heating systems, that will produce comfort, improve indoor air quality, reduce energy costs for those households and reduce the need for future fuel assistance;

(6) Simplifying and enhancing consumer access to technical assistance and financial incentives relating to energy efficiency and the use of alternative energy resources by merging or coordinating dispersed programs under a single administrative unit possessing independent management and expertise; and

(7) Using cost-effective energy and energy efficiency investments to reduce greenhouse gas emissions; [2013, c. 369, Pt. A, §3 (RPR).]

C. Ensure that all expenditures of the trust are cost-effective in terms of avoided energy costs as provided by rules adopted pursuant to section 10105, subsection 5, paragraph A; and [2009, c. 518, §7 (AMD).]

D. Actively promote investment in cost-effective energy and energy efficiency measures and systems that use energy resources that reduce overall energy costs for consumers in the State. [2013, c. 369, Pt. A, §4 (AMD).]

Nothing in this chapter is intended or may be construed to constitute a mandate that would prevent the sale of carbon emission reductions into a voluntary carbon market.

[2013, c. 369, Pt. A, §§3, 4 (AMD) .]

2. **Governance; board.** The trust is created as a body corporate and politic and a public instrumentality of the State and is governed by the independent Efficiency Maine Trust Board, established in Title 5, section 12004-G, subsection 10-C, in accordance with this section.

A. The board consists of the following 9 voting members:

(1) The Director of the Governor's Energy Office;

(2) The director of the Maine State Housing Authority; and

(3) Seven members appointed by the Governor, reviewed by the joint standing committee of the Legislature having jurisdiction over energy matters and approved by the Senate. Among these 7 members must be persons who adequately represent the interests of commercial energy consumers, industrial energy consumers, small business energy consumers, residential energy consumers and low-income energy consumers; among these members must be persons with knowledge of and experience in financial matters and consumer advocacy and who possess substantial management expertise or knowledge of or experience with conservation fund programs, carbon reduction programs or energy efficiency or climate change policy. The requirements of this subparagraph may be met through the appointment of one or more persons who satisfy more than one of the requirements, as long as at any one time the 7 members include among them members who adequately represent the identified interests and who possess the required knowledge, expertise and experience.

Appointed trustees serve 3-year terms. If an appointed trustee is unable to complete the term, the Governor shall appoint a replacement for the remainder of the unexpired term. [2013, c. 424, Pt. B, §14 (RPR).]

B. The board shall elect a chair, a vice-chair, a secretary and a treasurer from among the members. Each officer serves for a one-year term and is eligible for reelection. [2009, c. 372, Pt. B, §3 (NEW).]

C. A majority of the trustees constitutes a quorum. [2009, c. 372, Pt. B, §3 (NEW).]

D. The board may elect an executive committee of not fewer than 5 trustees who, in intervals between meetings of the board, may transact such business of the trust as the board may authorize from time to time. [2009, c. 372, Pt. B, §3 (NEW).]

[2013, c. 424, Pt. B, §14 (AMD) .]

3. **Administration of trust; director.** The board shall appoint, using a full and competitive search process, a qualified full-time director of the trust. The Director of the Efficiency Maine Trust serves at the pleasure of the board. The director must have demonstrated experience in the planning, design or delivery of energy efficiency programs or the management of organizations that plan, design or deliver those programs. The board shall establish the rate and amount of compensation of the director and all other employees of the trust. The director:

A. Serves as the president of the trust and as the liaison between the board and any committee of the Legislature having jurisdiction over energy matters; [2009, c. 372, Pt. B, §3 (NEW).]

B. Is responsible for:

(1) Establishing an office for the trust;

(2) Hiring and organizing staff for the trust and determining their qualifications and duties; and

(3) Managing the trust's programs, services and staff and performing other duties as the board considers appropriate; and [2009, c. 372, Pt. B, §3 (NEW).]

C. May delegate to employees of the trust any powers and duties that the director considers proper. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

4. **Program funding.** The board may apply for and receive grants from state, federal and private sources for deposit into appropriate program funds, including funds for both residential and business programs. The board may deposit in appropriate program funds the proceeds of any bonds issued for the purposes of programs administered by the trust. The board may receive and shall deposit in appropriate program funds revenue resulting from any forward capacity market or other capacity payments from the regional transmission organization that may be attributable to those projects funded by those funds. The board shall deposit into appropriate program funds revenue transferred to the trust from the energy infrastructure benefits fund pursuant to Title 5, section 282, subsection 9 for use in accordance with subsection 4-A. The board may also deposit any grants or other funds received by or from any entity with which the trust has an agreement or contract pursuant to this chapter if the board determines that receipt of those funds is consistent with the purposes of this chapter.

[2013, c. 369, Pt. A, §5 (AMD) .]

4-A. **Use of revenues from the energy infrastructure benefits fund.** The trust shall use revenues transferred to the trust from the energy infrastructure benefits fund pursuant to Title 5, section 282, subsection 9:

A. To improve the State's economy by pursuing lower energy costs for people, communities and businesses in a manner that will enhance the environment of the State in accordance with the triennial plan. In the expenditure of funds pursuant to this paragraph, the trust may provide grants, loans, programs and incentives; and [2013, c. 369, Pt. A, §6 (RPR).]

B. To compensate public members of the Interagency Review Panel pursuant to Title 5, section 12004-G, subsection 30-D. [2009, c. 655, Pt. B, §4 (NEW).]

As part of the annual report required under section 10104, subsection 5, the director shall report on the use of revenues from the energy infrastructure benefits fund. The report must document the revenues transferred from the energy infrastructure benefits fund to the trust during the most recently completed fiscal year and the current fiscal year and amounts and uses of money expended by the trust in accordance with this subsection during the most recently completed and the current fiscal year.

[2013, c. 369, Pt. A, §6 (AMD) .]

5. **Administration fund.** The board shall establish an administration fund to be used solely to defray administrative costs. The trust may annually deposit funds authorized to be used for administrative costs under this chapter into the administration fund. Any interest on funds in the administration fund must be credited to the administration fund and any funds unspent in any fiscal year must either remain in the administration fund to be used to defray administrative costs or be transferred to program funds.

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW). 2009, c. 518, §7 (AMD). 2009, c. 655, Pt. B, §§3, 4 (AMD). 2011, c. 637, §2 (AMD). 2011, c. 655, Pt. MM, §18 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2013, c. 369, Pt. A, §§3-6 (AMD). 2013, c. 424, Pt. B, §14 (AMD).

§10104. DUTIES

1. **Generally.** In accordance with this section and other applicable law, the trust administers and disburses funds and coordinates programs to promote reduced energy costs, energy efficiency and increased use of alternative energy resources in the State. The trust is responsible for accounting for, evaluating and monitoring all activities of the trust and all programs funded in whole or in part by the trust.

[2013, c. 369, Pt. A, §7 (AMD) .]

2. **Programs.** The trust shall plan, design and administer programs to ensure that funds are expended for uses consistent with applicable state and federal law and so that the following principles of administration are met:

A. Programs are consumer-oriented such that the processes for participation and program design are targeted to serve the multiple needs of energy consumers in this State; [2009, c. 372, Pt. B, §3 (NEW).]

B. The effectiveness of programs is maximized by building up and centralizing expertise, addressing conflicts of interest, mitigating the influence of politics, promoting flexible, timely program management and providing a champion for funding cost-effective energy and energy efficiency programs; [2013, c. 369, Pt. A, §8 (AMD).]

C. The efficiency with which programs are planned, designed, overseen and delivered is maximized; and [2009, c. 372, Pt. B, §3 (NEW).]

D. Sufficient checks and balances are provided to ensure consistency with public policy and accountability for meeting the principles set out in paragraphs A to C so that energy efficiency programs in the State are sustainable for the long term. [2009, c. 372, Pt. B, §3 (NEW).]

[2013, c. 369, Pt. A, §8 (AMD) .]

3. **Measures of performance.** The trust shall develop quantifiable measures of performance for all programs it administers and to which it will hold accountable all recipients of funding from the trust and recipients of funds used to deliver energy and energy efficiency and weatherization programs administered

or funded by the trust. Such measures may include, but are not limited to, reduced energy consumption, increased use of alternative energy resources, reduced heating costs, reduced capacity demand for natural gas, electricity and fossil fuels, reduced carbon dioxide emissions, program and overhead costs and cost-effectiveness, the number of new jobs created by the award of trust funds, the number of energy efficiency trainings or certification courses completed and the amount of sales generated.

[2013, c. 369, Pt. A, §9 (AMD) .]

4. **Triennial plan.** The board shall vote on a detailed, triennial, energy efficiency, alternative energy resources and conservation plan that includes the quantifiable measures of performance developed under subsection 3 and make a full report of the vote to the commission in accordance with this subsection. The triennial plan must provide integrated planning, program design and implementation strategies for all energy efficiency, alternative energy resources and conservation programs administered by the trust, including but not limited to the electric efficiency and conservation programs under section 10110, the natural gas efficiency and conservation programs under section 10111, the Regional Greenhouse Gas Initiative Trust Fund under section 10109, the Heating Fuels Efficiency and Weatherization Fund under section 10119 and any state or federal funds or publicly directed funds accepted by or allocated to the trust for the purposes of this chapter. The triennial plan must include provisions for the application of appropriate program funds to support workforce development efforts that are consistent with and promote the purposes of the trust. Beginning January 1, 2011, the triennial plan must specify the appropriate participation of the State in national and regional carbon markets. The plan must be consistent with the comprehensive state energy plan pursuant to Title 2, section 9, subsection 3, paragraph C.

A. The triennial plan must be developed by the trust, in consultation with entities and agencies engaged in delivering efficiency programs in the State, to authorize and govern or coordinate implementation of energy efficiency and weatherization programs in the State. The triennial plan must identify all achievable cost-effective energy efficiency savings and related programs that could be implemented pursuant to sections 10110 and 10111, the costs and benefits of such programs and the basis and support for such identified costs and benefits. The trust shall conduct an evaluation of all cost-effective potential for electrical and natural gas energy efficiency savings in the State at least once every 5 years.

(1) Transmission and distribution utilities and natural gas utilities shall furnish data to the trust that the trust requests under this subsection to develop and implement the triennial plan or conduct the evaluation of all cost-effective potential for electrical and natural gas energy efficiency savings subject to such confidential treatment as a utility may request and the board determines appropriate pursuant to section 10106. The costs of providing the data are deemed reasonable and prudent expenses of the utilities and are recoverable in rates. [2013, c. 369, Pt. A, §10 (AMD).]

B. In developing the triennial plan, the staff of the trust shall consult the board and provide the opportunity for the board to provide input on drafts of the plan. [2009, c. 372, Pt. B, §3 (NEW).]

B-1. In developing the triennial plan, the trust shall provide the joint standing committee of the Legislature having jurisdiction over energy matters an opportunity to provide input on the plan, which may occur at the same time the trust consults with other entities in the development of the plan. [2011, c. 637, §3 (NEW).]

C. The board shall review and approve the triennial plan by affirmative vote of 2/3 of the trustees upon a finding that the plan is consistent with the statutory authority for each source of funds that will be used to implement the plan, advances the state energy efficiency targets in paragraph F and reflects the best practices of program administration under subsection 2. The plan must include, but is not limited to, efficiency and conservation program budget allocations, objectives, targets, measures of performance, program designs, program implementation strategies, timelines and other relevant information. [2013, c. 369, Pt. A, §11 (AMD).]

D. Prior to submission of the triennial plan to the commission, the trust shall offer to provide a detailed briefing on the draft plan to the joint standing committee of the Legislature having jurisdiction over energy matters and, at the request of the committee, shall provide such a briefing and opportunity for input from the committee. After providing such opportunity for input and making any changes as a result of any input received, the board shall deliver the plan to the commission for its review and approval. The commission shall open an adjudicatory proceeding and issue an order either approving the plan and issuing the appropriate orders to transmission and distribution utilities and gas utilities or rejecting the plan and stating the reasons for the rejection. The commission shall reject elements of the plan that propose to use funds generated pursuant to sections 3210-C, 10110, 10111 or 10119 if the plan fails to reasonably explain how these elements of the program would achieve the objectives and implementation requirements of the programs established under those sections or the measures of performance under subsection 3. Funds generated under these statutory authorities may not be used pursuant to the triennial plan unless those elements of the plan proposing to use the funds have been approved by the commission. The commission shall approve all elements of the triennial plan it determines to be cost-effective, reliable and achievable and shall incorporate into gas utility and transmission and distribution rates sufficient revenue to provide for the procurement of energy efficiency resources identified within the plan pursuant to section 10110, subsection 4-A and section 10111, subsection 2. The commission shall approve or reject the entire plan or elements of the plan within 120 days of its delivery to the commission. The board, within 30 days of final commission approval of its plan, shall submit the plan to the joint standing committee of the Legislature having jurisdiction over energy matters together with any explanatory or other supporting material as the committee may request and, at the request of the committee, shall provide a detailed briefing on the final plan. After receipt of the plan, the joint standing committee of the Legislature having jurisdiction over energy matters may submit legislation relating to the plan. [2013, c. 369, Pt. A, §12 (AMD).]

E. The trust shall determine the period to be covered by the triennial plan except that the period of the plan may not interfere with the delivery of any existing contracts to provide energy efficiency services that were previously procured pursuant to efficiency and conservation programs administered by the commission. [2009, c. 372, Pt. B, §3 (NEW).]

F. It is an objective of the triennial plan to design, coordinate and integrate sustained energy efficiency and weatherization programs that are available to all energy consumers in the State and to users of all fuel types. The plan must set forth the costs and benefits of energy efficiency programs that advance the following goals, and funding necessary to meet those goals:

(1) Reducing energy costs, including residential heating costs;

(2) Weatherizing substantially all homes whose owners or occupants are willing to participate in and share the costs of cost-effective home weatherization to a minimum standard of weatherization, as defined by the trust, by 2030;

(3) Reducing peak-load demand for electricity through trust programs by 300 megawatts by 2020;

(4) By 2020, achieving electricity and natural gas program savings of at least 20% and heating fuel savings of at least 20%, as defined in and determined pursuant to the measures of performance approved by the commission under section 10120;

(5) Creating stable private sector jobs providing alternative energy and energy efficiency products and services in the State by 2020; and

(6) Reducing greenhouse gas emissions from the heating and cooling of buildings in the State by amounts consistent with the State's goals established in Title 38, section 576.

The trust shall preserve when possible and appropriate the opportunity for carbon emission reductions to be monetized and sold into a voluntary carbon market. Any program of the trust that supports weatherization of buildings must be voluntary and may not constitute a mandate that would prevent the sale of emission reductions generated through weatherization measures into a voluntary carbon market.

Except when specifically provided in the individual goals under this paragraph, the trust may consider expected savings from market effects not attributable to the trust as well as efforts by other organizations, including but not limited to federally funded low-income weatherization programs.

As used in this paragraph, "heating fuel" means liquefied petroleum gas, kerosene or #2 heating oil, but does not include fuels when used for industrial or manufacturing processes. [2013, c. 369, Pt. A, §13 (RPR).]

[2013, c. 369, Pt. A, §§10-13 (AMD) .]

5. **Report.** The trust shall report by December 1st of each year to the commission and the joint standing committee of the Legislature having jurisdiction over energy matters. The report must include:

A. A description of actions taken by the trust pursuant to this section, including descriptions of all energy efficiency, weatherization and conservation programs implemented during the prior 12 months and all programs that the trust plans to implement during the next 12 months, a description of how the trust determines the cost-effectiveness of each program and its assessment of the cost-effectiveness of programs implemented during the prior 12 months; [2009, c. 372, Pt. B, §3 (NEW).]

B. An accounting of:

(1) Assessments made on each transmission and distribution utility pursuant to section 10110 during the prior 12 months and projected assessments during the next 12 months and total deposits into and expenditures from the program fund during the prior 12 months and projected deposits into and expenditures from the program funds during the next 12 months;

(2) Assessments made pursuant to section 10111 during the prior 12 months and projected assessments during the next 12 months and total deposits into and expenditures from the natural gas conservation fund during the prior 12 months and projected deposits into and expenditures from the natural gas conservation fund during the next 12 months;

(3) Any heating fuel assessments made for the purposes of section 10119 during the prior 12 months and projected assessments during the next 12 months and total deposits into and expenditures from the Heating Fuels Efficiency and Weatherization Fund during the prior 12 months and projected deposits into and expenditures from the Heating Fuels Efficiency and Weatherization Fund during the next 12 months;

(4) Total funds received and expended by the State on energy efficiency and weatherization pursuant to the Weatherization Assistance for Low-income Persons Program of the United States Department of Energy and the Low-income Home Energy Assistance Program of the United States Department of Health and Human Services;

(5) The amount and source of any grants or funds deposited in the program fund pursuant to section 10110 during the previous 12 months and the projected amount and source of any such funds during the next 12 months; and

(6) Total deposits into and expenditures from the conservation administration fund under section 10110 during the prior 12 months and projected deposits into and expenditures from the conservation administration fund during the next 12 months; [2009, c. 372, Pt. B, §3 (NEW).]

C. Any recommendations for changes to the laws relating to energy conservation; and [2009, c. 372, Pt. B, §3 (NEW).]

D. The performance of the trust and individual programs and program delivery agents or service providers in meeting the objectives, targets and measures of performance approved by the commission and contained in the triennial plan. [2009, c. 372, Pt. B, §3 (NEW).]

The report must be approved by the board before the report is presented to the commission and the joint standing committee of the Legislature having jurisdiction over energy matters.

[2009, c. 372, Pt. B, §3 (NEW) .]

6. **Updated plans.** Within 30 days of completion of the annual report under subsection 5, the director shall submit to the board an annual update plan describing any significant changes to the triennial plan under subsection 4 related to program budget allocations, goals, targets, measures of performance, program designs, implementation strategies, timelines and other relevant information for the year ahead for all funds administered and managed by the trust. The director or any contractor, grantee or agency delivering programs may not execute any significant changes until the changes are approved by the board and, in the case of significant changes to programs using funds generated by assessments under this chapter, until the changes are also approved by the commission using the same standard as for the triennial plan.

All annual update plans must be presented to the commission and the joint standing committee of the Legislature having jurisdiction over energy matters.

[2009, c. 372, Pt. B, §3 (NEW) .]

7. **Certification.** The board shall by rule establish certification standards for energy auditors, installers of energy efficiency measures or other service providers that provide services under programs administered by the trust. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 372, Pt. B, §3 (NEW) .]

8. **Approval of Maine State Housing Authority plans.** After July 1, 2010, the Maine State Housing Authority, prior to applying for federal funds on behalf of the State pursuant to Title 30-A, section 4741, subsection 15 for weatherization, energy conservation and fuel assistance pursuant to the Weatherization Assistance for Low-income Persons Program administered through the United States Department of Energy and the Low-income Home Energy Assistance Program administered through the United States Department of Health and Human Services, shall submit to the board for its review and input the authority's implementation plans for the use of such funds. The plans must provide for coordination by the Maine State Housing Authority in its use of such funds with the programs administered by the trust under this chapter. The Maine State Housing Authority shall include in its plans any recommendations of the board to the extent the recommendations are consistent with the applicable federal guidelines governing the use of the funds.

[2009, c. 372, Pt. B, §3 (NEW) .]

9. **Coordination with other entities.** Consistent with the requirements of this chapter and other applicable laws, the board shall coordinate with the activities and programs of state agencies and authorities that relate to the purposes of this chapter in order to align such activities and programs with the plans and programs of the trust. For purposes of this subsection, activities and programs of state agencies and authorities that relate to the purposes of this chapter include but are not limited to energy efficiency programs relating to state facilities administered by the Department of Administrative and Financial Services, Bureau of General Services, the adoption, amendment and maintenance of the Maine Uniform Building and Energy Code by the Technical Building Codes and Standards Board, established in Title 5, section 12004-G, subsection 5-A within the Department of Public Safety, energy efficiency or green energy workforce development activities of the Department of Labor or the State Workforce Investment Board and energy efficiency and weatherization programs administrated by the Maine State Housing Authority.

[2011, c. 627, §5 (AMD) .]

10. **Independent analysis of programs.** The trust shall arrange for an independent evaluation of each major program implemented under this section. Each major program must be evaluated at least once every 5 years. The evaluation must include an accounting audit of the program and an evaluation of the program's effectiveness in meeting the goals of this section. The evaluations must be conducted by a competent professional with expertise in energy efficiency matters, including the management of cost-effective energy efficiency programs. The trust shall include the results of all evaluations conducted under this subsection in the annual report submitted pursuant to subsection 5. For purposes of this subsection, "major program" means a program with an annual budget of more than $500,000.

[2009, c. 372, Pt. B, §3 (NEW) .]

11. **Other duties.** The trust shall do all things necessary or convenient to carry out the lawful purposes of the trust.

[2009, c. 372, Pt. B, §3 (NEW) .]

12. **Budget transparency.** The trust shall provide on January 30th and July 30th of each year to the joint standing committee of the Legislature having jurisdiction over energy matters a report that includes the trust's revenues and program expenses for the current fiscal year and program budgets for the next fiscal year for all the trust's funds and programs, whether or not subject to legislative allocation. The report must indicate any significant departures from the triennial plan approved pursuant to subsection 4 or an updated plan approved pursuant to subsection 6. After receiving a report, the joint standing committee of the Legislature having jurisdiction over energy matters may report out legislation relating to the trust. In accordance with applicable provisions of Title 5, chapter 149, the trust shall also prepare and submit to the State Budget Officer for inclusion in the budget of the State Government the amount of any funds administered by the trust that require legislative allocation in the budget. The joint standing committee of the Legislature having jurisdiction over energy matters shall make recommendations to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs with regard to any proposed allocation of the trust's funds in any budget legislation. Within 30 days after enactment of legislation that includes an allocation of funds that affects the trust's triennial plan, the trust shall make any necessary adjustments to the triennial plan.

[2011, c. 637, §4 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW). 2009, c. 518, §8 (AMD). 2011, c. 627, §5 (AMD). 2011, c. 637, §§3, 4 (AMD). 2013, c. 369, Pt. A, §§7-13 (AMD).

§10105. POWERS, DUTIES AND LIMITATIONS

1. **Funds.** The trust shall administer programs and funds in accordance with this chapter and other applicable laws.

[2009, c. 372, Pt. B, §3 (NEW) .]

2. **Efficiency Maine projects; bonds.** The board shall propose, develop and approve revenue bond projects as Efficiency Maine projects under Title 10, section 963-A, subsection 10-A.

[2009, c. 372, Pt. B, §3 (NEW) .]

3. **Bylaws.** The trust shall adopt bylaws, through the board, consistent with this section for the governance of its affairs.

[2009, c. 372, Pt. B, §3 (NEW) .]

4. **Purchasing agent rules.** Notwithstanding Title 5, section 1831, the trust is not subject to rules adopted by the State Purchasing Agent in selecting service providers pursuant to this chapter. The trust shall consider delivery of programs by means of contracts with service providers that participate in competitive bid processes for providing services within individual market segments or for particular end uses.

[2009, c. 372, Pt. B, §3 (NEW) .]

5. **Rules.** The board shall adopt rules for establishing and administering the trust and its programs. These rules must include:

A. Provisions for the expenditure of trust funds, including, but not limited to, the development of program budgets, criteria for energy efficiency and conservation programs and other consumer benefit programs, the process for project selection and approval, minimum requirements for project monitoring and verification and the cost-effectiveness tests to be used for measuring and comparing program benefits and costs; and [2009, c. 372, Pt. B, §3 (NEW).]

B. Provisions for the independent evaluation of program expenditures to ensure cost-effectiveness of projects to improve energy efficiency or to reduce greenhouse gases. [2009, c. 372, Pt. B, §3 (NEW).]

Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2009, c. 372, Pt. B, §3 (NEW) .]

6. **Self-dealing prohibited.** In the operation or dissolution of the trust, no part of the net earnings of the trust may benefit any trustee, officer or employee except that the trust may pay reasonable compensation for services rendered and otherwise hold, manage and dispose of its property in furtherance of the purposes of the trust.

[2009, c. 372, Pt. B, §3 (NEW) .]

7. **Recommendations; advisory groups.** The trust may make recommendations to the Governor, the Legislature and other public officials regarding energy efficiency, weatherization and renewable energy programs. The trust may establish technical advisory groups as needed for the purposes of gathering technical knowledge on any aspect of energy conservation or policy.

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW).

§10106. FREEDOM OF ACCESS; CONFIDENTIALITY

The proceedings of the board and records of the trust are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section. [2009, c. 1, §25 (COR).]

1. **Confidential records.** The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the trust that:

(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential;

(2) The board has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a

business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains;

(3) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and

(4) Contains the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust; and [2011, c. 343, §1 (AMD).]

B. A financial statement or tax return. [2009, c. 372, Pt. B, §3 (NEW).]

The trust shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or records, including information designated confidential under this subsection, specified in the written request. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it.

[2011, c. 343, §1 (AMD) .]

2. **Exceptions.** Notwithstanding subsection 1, the following are not confidential and are public records:

A. Any otherwise confidential information the confidentiality of which the board determines to have been satisfactorily and effectively waived; [2009, c. 372, Pt. B, §3 (NEW).]

B. Any otherwise confidential information that has already lawfully been made available to the public; and [2009, c. 372, Pt. B, §3 (NEW).]

C. Impersonal, statistical or general information. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

3. **Disclosure prohibited; further exceptions.** The director or a trustee, officer, employee, agent, other representative of the trust or other person may not knowingly divulge or disclose records designated confidential by this section, except that the board, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person; [2009, c. 372, Pt. B, §3 (NEW).]

B. To a financing institution or credit reporting service; [2009, c. 372, Pt. B, §3 (NEW).]

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance; [2009, c. 372, Pt. B, §3 (NEW).]

D. If necessary to ensure collection of any obligation in which the trust has or may have an interest; [2009, c. 372, Pt. B, §3 (NEW).]

E. In any litigation or proceeding in which the trust has appeared, introduction for the record of any information obtained from records designated confidential by this section; and [2009, c. 372, Pt. B, §3 (NEW).]

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as any such order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as any such order appears on its face or otherwise to have been issued or made upon lawful authority. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY
RR 2009, c. 1, §25 (COR). 2009, c. 372, Pt. B, §3 (NEW). 2011, c. 343, §1 (AMD).

§10107. CONFLICTS OF INTEREST; FINANCIAL DISCLOSURE STATEMENTS

Each trustee is an "executive employee" for purposes of Title 5, sections 18, 18-A and 19. A trustee or employee of the trust or a spouse or dependent child of any of those individuals may not receive any direct personal benefit from the activities of the trust in assisting any private entity. This section does not prohibit corporations or other entities with which a trustee is associated by reason of ownership or employment from participating in program activities with the trust if ownership or employment is made known to the board and the trustee abstains from voting on matters relating to that participation. [2009, c. 518, §9 (AMD).]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW). 2009, c. 518, §9 (AMD).

§10108. LIABILITY

1. **Bond.** All officers, directors, employees and other agents of the trust entrusted with the custody of funds of the trust or authorized to disburse the funds of the trust must be bonded either by a blanket bond or by individual bonds with a minimum limitation of $100,000 coverage for each person covered by the bond or bonds, or equivalent fiduciary liability insurance, conditioned upon the faithful performance of their duties. The premiums for the bond or bonds must be paid out of the assets of the trust.

[2011, c. 637, §5 (NEW) .]

2. **Indemnification.** Each trustee must be indemnified by the trust against expenses actually and necessarily incurred by the trustee in connection with the defense of any action or proceeding in which the trustee is made a party by reason of being or having been a trustee and against any final judgment rendered against the trustee in that action or proceeding.

[2011, c. 637, §5 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW). 2011, c. 637, §5 (RPR).

§10109. REGIONAL GREENHOUSE GAS INITIATIVE TRUST FUND

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

A. "Carbon dioxide allowance" has the same meaning as in Title 38, section 580-A, subsection 2. [2009, c. 372, Pt. B, §3 (NEW).]

B. "Trade association aggregator" means an entity that gathers individual members of a trade association together for the purpose of receiving electrical efficiency services or bidding on electrical efficiency contracts. [2009, c. 372, Pt. B, §3 (NEW).]

C. "Trust fund" means the Regional Greenhouse Gas Initiative Trust Fund established in subsection 2. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

2. **Establishment of Regional Greenhouse Gas Initiative Trust Fund.** The Regional Greenhouse Gas Initiative Trust Fund is established and is the successor to the fund that was established under former section 10008. The trust fund is established to support the goals and implementation of the carbon dioxide cap-and-trade program established under Title 38, section 580-B. The trust fund is established as a nonlapsing fund administered by the trust for the purposes established in this section. The trust is authorized to receive, and shall deposit in the trust fund and expend in accordance with this section, revenue resulting from the sale of carbon dioxide allowances, pursuant to Title 38, section 580-B, and any forward capacity market or other capacity payments from the regional transmission organization that may be attributable to projects funded by the trust under this section. The trust fund may not be used for any other purpose and money in the trust fund is considered to be held in trust for the purposes of benefiting consumers.

A. The trustees have a fiduciary duty to the customers of the State's transmission and distribution utilities in the administration of the trust fund. Upon accepting appointment as a trustee, each trustee must acknowledge the fiduciary duty to use the trust fund only for the purposes set forth in this section. [2009, c. 372, Pt. B, §3 (NEW).]

B. The trustees shall ensure that the goals and objectives of the trust fund, as established in this section and in rules adopted by the trust, are carried out. The trustees shall represent the interests of the trust fund in the development of the triennial plan. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

3. **Ceiling on energy efficiency spending.**

[2013, c. 369, Pt. A, §14 (RP) .]

4. **Expenditures; projects.** The trust fund must be expended in accordance with this subsection.

A. During fiscal years 2013-14, 2014-15 and 2015-16, not less than 50% of the trust funds received during those years must be allocated for measures, investments and arrangements that reduce electricity consumption or reduce greenhouse gas emissions and lower energy costs at commercial or industrial facilities, and 35% of the funds received by the trust fund during those years must be used for investment in measures that lower residential heating energy demand and reduce greenhouse gas emissions. The measures that lower residential heating demand must be fuel-neutral and may include, but are not limited to, energy efficiency improvements to residential buildings and upgrades to efficient heating systems that will reduce residential energy costs and greenhouse gas emissions, as determined by the board. The trust shall transfer to the commission 15% of funds received by the trust fund during fiscal years 2013-14, 2014-15 and 2015-16, which the commission shall direct transmission and distribution utilities to disburse to ratepayers in a manner that provides maximum benefit to the Maine economy. Subject to the apportionment pursuant to this subsection, the trust shall fund conservation programs that give priority to measures with the highest benefit-to-cost ratio, as long as cost-effective collateral efficiency opportunities are not lost, and that:

(1) Reliably reduce greenhouse gas production and heating energy costs by fossil fuel combustion in the State at the lowest cost in funds from the trust fund per unit of emissions; or

(2) Reliably reduce the consumption of electricity in the State at the lowest cost in funds from the trust fund per kilowatt-hour saved. [2013, c. 369, Pt. A, §15 (AMD).]

B. Expenditures from the trust fund relating to conservation of electricity and mitigation or reduction of greenhouse gases must be made predominantly on the basis of a competitive bid process for long-term contracts, subject to rules adopted by the board under section 10105. Rules adopted by the board to implement the competitive bid process under this paragraph may not include an avoided cost methodology for compensating successful bidders. Bidders may propose contracts designed to produce greenhouse gas savings or electricity conservation savings, or both, on a unit cost basis. Contracts must be commercially reasonable and may require liquidated damages to ensure performance. Contracts must provide sufficient certainty of payment to enable commercial financing of the conservation measure purchased and its installation. [2009, c. 372, Pt. B, §3 (NEW).]

C. The board may target bid competitions in areas or to participants as they consider necessary, as long as the requirements of paragraph A are satisfied. [2009, c. 372, Pt. B, §3 (NEW).]

D. Community-based renewable energy projects, as defined in section 3602, subsection 1, may apply for funding from the trust to the extent they are eligible under paragraph A. [2013, c. 369, Pt. A, §16 (AMD).]

E. The size of a project funded by the trust fund is not limited as long as funds are awarded to maximize energy efficiency and support greenhouse gas reductions and to fully implement the triennial plan. [2009, c. 372, Pt. B, §3 (NEW).]

F. No more than $800,000 of trust fund receipts in any one year may be used for the costs of administering the trust fund pursuant to this section. The limit on administrative costs established in this paragraph does not apply to the following costs that may be funded by the trust fund:

(1) Costs of the Department of Environmental Protection for participating in the regional organization as defined in Title 38, section 580-A, subsection 20 and for administering the allowance auction under Title 38, chapter 3-B; and

(2) Costs of the Attorney General for activities pertaining to the tracking and monitoring of allowance trading activity and managing and evaluating the trust's funding of conservation programs. [2009, c. 372, Pt. B, §3 (NEW).]

G. In order to minimize administrative costs and maximize program participation and effectiveness, the trustees shall, to the greatest extent feasible, coordinate the delivery of and make complementary the energy efficiency programs under this section and other programs under this chapter. [2009, c. 372, Pt. B, §3 (NEW).]

H. The trust shall consider delivery of efficiency programs by means of contracts with service providers that participate in competitive bid processes for reducing energy consumption within individual market segments or for particular end uses. [2009, c. 372, Pt. B, §3 (NEW).]

I. A trade association aggregator is eligible to participate in competitive bid processes under this subsection. [2009, c. 372, Pt. B, §3 (NEW).]

J. Trust fund receipts must, upon request by the Department of Environmental Protection, fund research approved by the Department of Environmental Protection in an amount of up to $100,000 per year to develop new categories for carbon dioxide emissions offset projects, as defined in Title 38, section 580-A, subsection 6, that are located in the State. Expenditures on research pursuant to this paragraph are not considered administrative costs under paragraph F, subparagraph (1). [2013, c. 369, Pt. A, §17 (AMD).]

[2013, c. 369, Pt. A, §§15-17 (AMD) .]

5. **Effective date.** This section takes effect July 1, 2010.

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY

2009, c. 372, Pt. B, §3 (NEW). 2009, c. 565, §6 (AMD). 2009, c. 565, §9 (AFF). 2013, c. 369, Pt. A, §§14-17 (AMD).

§10110. ELECTRIC EFFICIENCY AND CONSERVATION PROGRAMS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

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

A. "Administrative costs" means costs of the trust that are funded pursuant to and associated with the implementation of this section, including, but not limited to, costs of program planning and evaluation, costs of securing necessary expertise, costs associated with contract formation and administration and costs of monitoring and enforcing contractual obligations. [2009, c. 372, Pt. B, §3 (NEW).]

B. "Administration fund" means the conservation administration fund established by the trust pursuant to subsection 8. [2009, c. 372, Pt. B, §3 (NEW).]

C. "Conservation programs" means programs developed by the trust pursuant to this section designed to reduce inefficient electricity use. [2009, c. 372, Pt. B, §3 (NEW).]

D. "Prior conservation efforts" means programs to promote conservation undertaken at the direction or with the authorization of the commission prior to March 1, 2002. [2009, c. 372, Pt. B, §3 (NEW).]

E. "Program fund" means the conservation program fund established by the trust pursuant to subsection 7. [2009, c. 372, Pt. B, §3 (NEW).]

F. "Service provider" means a public or private provider of energy conservation services or an entity selected by the trust to contract with such providers or otherwise arrange the delivery of conservation programs. [2009, c. 372, Pt. B, §3 (NEW).]

G. "Trade association aggregator" means an entity that gathers individual members of a trade association together for the purpose of receiving electrical efficiency services or bidding on electrical efficiency contracts. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

2. **Programs.** The trust shall develop and implement conservation programs to help reduce energy costs for electricity consumers in the State by the maximum amount possible. The trust shall establish and, on a schedule determined by the trust, revise objectives and an overall energy strategy for conservation programs. Conservation programs implemented by the trust must be consistent with the objectives and an overall energy strategy developed by the trust and approved by the commission and be cost-effective, as defined by the board by rule. In defining "cost-effective," the board may consider the extent to which a program promotes sustainable economic development or reduces environmental damage to the extent the board can quantify or otherwise reasonably identify such effects. Consistent with the other requirements of this section, the trust, in adopting and implementing conservation programs, shall seek to encourage efficiency in electricity use, provide incentives for the development of new, energy-efficient business activity in the State and take into account the costs and benefits of energy efficiency and conservation to existing business activity in the State.

A. The trust shall consider, without limitation, conservation programs that:

(1) Increase consumer awareness of cost-effective options for conserving energy;

(2) Create more favorable market conditions for the increased use of energy-efficient products and services;

(3) Promote sustainable economic development and reduce environmental damage;

(4) Reduce the price of electricity over time for all consumers by achieving reductions in demand for electricity during peak use periods; and

(5) Reduce total energy costs for electricity consumers in the State by increasing the efficiency with which electricity is consumed. [2009, c. 372, Pt. B, §3 (NEW).]

B. The trust, with regard to funds available to the trust under this section, shall:

(1) Target at least 10% of funds for electricity conservation collected under subsection 4 or 4-A or $2,600,000, whichever is greater, to programs for low-income residential consumers, as defined by the board by rule;

(2) Target at least 10% of funds for electricity conservation collected under subsection 4 or 4-A or $2,600,000, whichever is greater, to programs for small business consumers, as defined by the board by rule; and

(3) To the greatest extent practicable, apportion remaining funds among customer groups and geographic areas in a manner that allows all other customers to have a reasonable opportunity to participate in one or more conservation programs. [2013, c. 369, Pt. A, §18 (AMD).]

C. The trust shall hold at least one public hearing and invite, accept, review and consider comments and suggestions from interested parties prior to adopting or substantially revising conservation programs or the objectives and overall strategy for conservation programs. [2009, c. 372, Pt. B, §3 (NEW).]

D. The trust shall monitor conservation planning and program development activities in the region and around the country. [2009, c. 372, Pt. B, §3 (NEW).]

E. The trust shall implement conservation programs by contracting with service providers in accordance with subsection 3. [2009, c. 372, Pt. B, §3 (NEW).]

F. The trust shall monitor and evaluate the delivery of conservation programs by service providers and assess the cost-effectiveness of programs in meeting the objectives and overall strategy established by the trust. [2009, c. 372, Pt. B, §3 (NEW).]

G. The trust, to the extent possible, shall coordinate its efforts with other agencies of the State with energy-related responsibilities. [2009, c. 372, Pt. B, §3 (NEW).]

H. The trust shall secure sufficient technical and administrative expertise to carry out its responsibilities pursuant to this section by:

(1) Contracting with appropriate entities with relevant expertise and experience;

(2) Establishing one or more advisory groups composed of persons with relevant expertise and experience; or

(3) Any other reasonable means developed by the trust. [2009, c. 372, Pt. B, §3 (NEW).]

I. The trust may coordinate its efforts under this section with similar efforts in other states in the northeast region and enter into agreements with public agencies or other entities in or outside of the State for joint or cooperative conservation planning or conservation program delivery, if the trust finds that such coordination or agreements would provide demonstrable benefits to citizens of the State and be consistent with this section, the conservation programs and the objectives and overall strategy for the conservation programs. [2009, c. 372, Pt. B, §3 (NEW).]

J. The trust shall encourage school facility managers to complete an energy efficiency training and certification program established and conducted by the trust under this section. To the extent the trust determines necessary and appropriate to meet the goals of this paragraph, the trust may, in accordance with the requirements of this section, establish incentive mechanisms to encourage participation in this program. For purposes of this paragraph, "school facility managers" means persons employed by school

administrative units in this State who are responsible for the design or operation of school administrative unit facilities or the heating, ventilation or air conditioning systems or equipment used in such facilities. [2009, c. 372, Pt. B, §3 (NEW).]

K. The trust shall provide programs developed in partnership with energy providers, such as transmission and distribution utilities, to provide consumers with information on energy options to promote energy efficiency and increased use of alternative energy resources in the State. [2011, c. 637, §6 (NEW).]

L. (TEXT EFFECTIVE UNTIL 9/30/18) (TEXT REPEALED 9/30/18) Pursuant to section 3214, subsection 2-A, the trust shall work with transmission and distribution utilities and other stakeholders to provide access to a complementary low-income energy efficiency program for participants in the arrearage management programs in order to help reduce participants' energy consumption.

This paragraph is repealed September 30, 2018. [2013, c. 556, §2 (NEW).]

[2013, c. 556, §2 (AMD) .]

3. **Implementation.** The trust shall seek to implement the delivery of conservation programs in all regions of the State on an equitable basis and to citizens at all income levels. The trust may arrange the delivery of conservation programs by contracting with service providers. The trust shall select service providers in accordance with this subsection.

A. The trust shall select service providers through a competitive bidding process. [2009, c. 372, Pt. B, §3 (NEW).]

B. To the extent practicable, the trust shall encourage the development of resources, infrastructure and skills within the State by giving preference to in-state service providers. [2009, c. 372, Pt. B, §3 (NEW).]

C. Notwithstanding paragraph A:

(1) The trust may select a service provider for one or more conservation programs without employing a competitive bidding process if the trust finds that the selection of the service provider will promote the efficient and effective delivery of conservation programs and is consistent with the objectives and overall strategy of the conservation programs; and

(2) For the delivery of conservation programs to low-income residential consumers, the commission, without employing a competitive bidding process, may use the delivery system for the Weatherization Assistance for Low-income Persons Program administered through the United States Department of Energy and the network of for-profit and not-for-profit entities who have held contracts with transmission and distribution utilities to deliver conservation services to low-income and residential customers. [2009, c. 372, Pt. B, §3 (NEW).]

In accordance with section 10105, the trust is not subject to rules adopted by the State Purchasing Agent in selecting service providers pursuant to this subsection. The board shall adopt rules establishing procedures governing the selection of service providers under this subsection. The board shall consult with the State Purchasing Agent in developing the rules.

A trade association aggregator is eligible to participate in competitive bid processes under this subsection.

[2009, c. 372, Pt. B, §3 (NEW) .]

4. (TEXT EFFECTIVE UNTIL 7/1/15) **Funding level; base assessment.** The commission shall assess transmission and distribution utilities to collect funds for conservation programs and administrative costs in accordance with this subsection and shall make other assessments in accordance with subsection 5. The amount of all assessments by the commission under this subsection plus expenditures of a transmission and

distribution utility associated with prior conservation efforts must result in conservation expenditures by each transmission and distribution utility, not including expenditures on assessments under subsection 5, that are fixed at a rate of 0.145 cent per kilowatt-hour.

[2009, c. 372, Pt. B, §3 (NEW) .]

4. (TEXT REPEALED 7/1/15) **Funding level; base assessment.**

[2013, c. 369, Pt. A, §30 (AFF); 2013, c. 369, Pt. A, §19 (RP) .]

4-A. (TEXT EFFECTIVE 1/1/15) **Procurement of cost-effective energy efficiency resources.** The commission shall ensure that transmission and distribution utilities on behalf of their ratepayers procure all electric energy efficiency resources found by the commission to be cost-effective, reliable and achievable pursuant to section 10104, subsection 4, except that the commission may not require the inclusion in rates under this subsection of a total amount that exceeds 4% of total retail electricity transmission and distribution sales in the State as determined by the commission by rule. The cost of procurement of cost-effective electric energy efficiency resources is a just and reasonable element of rates. The commission may issue any appropriate orders to transmission and distribution utilities necessary to achieve the goals of this subsection. When determining the amount of cost-effective electric energy efficiency resources to be procured under this subsection, the commission shall:

A. Consider electric energy efficiency resources that are reasonably foreseeable to be acquired by the trust using all other sources of revenue, including, but not limited to, the Regional Greenhouse Gas Initiative Trust Fund under section 10109; [2013, c. 369, Pt. A, §20 (NEW); 2013, c. 369, Pt. A, §30 (AFF).]

B. Ensure that calculations of avoided energy costs and the budget identified by the trust in its triennial plan as needed to capture all cost-effective electric energy efficiency resources are reasonable, based on sound evidence and make use of best practices across the region; and [2013, c. 369, Pt. A, §20 (NEW); 2013, c. 369, Pt. A, §30 (AFF).]

C. Maximize total electricity savings for all ratepayers. [2013, c. 369, Pt. A, §20 (NEW); 2013, c. 369, Pt. A, §30 (AFF).]

The commission shall consider gross efficiency savings for the purpose of determining savings that are cost-effective, reliable and achievable and shall consider both net and gross efficiency savings for the purpose of determining the appropriateness of the amount identified by the trust in its triennial plan as needed to capture all cost-effective electric energy efficiency resources.

Rules adopted under this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A.

[2013, c. 369, Pt. A, §20 (NEW); 2013, c. 369, Pt. A, §30 (AFF) .]

5. **Other assessments on transmission and distribution utilities.**

[2013, c. 369, Pt. A, §21 (RP) .]

6. **Transmission and subtransmission voltage level.** After July 1, 2007, electricity customers receiving service at transmission and subtransmission voltage levels are not eligible for conservation programs undertaken under this section, and those customers are not required to pay in rates any amount associated with the assessment imposed on transmission and distribution utilities under subsection 4 , or any amount associated with any procurement of energy efficiency resources by transmission and distribution utilities ordered under subsection 4-A. To remove the amount of the assessment under subsection 4, the commission

shall reduce the rates of such customers by 0.145 cent per kilowatt-hour. For the purposes of this section, "transmission voltage levels" means 44 kilovolts or more, and "subtransmission voltage levels" means 34.5 kilovolts.

[2013, c. 369, Pt. A, §22 (AMD) .]

7. **Conservation program fund.** The trust shall establish a conservation program fund to be used solely for conservation programs.

A. The commission shall deposit all assessments collected pursuant to this section, other than funds deposited in the administration fund, into the program fund. [2009, c. 372, Pt. B, §3 (NEW).]

B. Any interest earned on funds in the program fund must be credited to the program fund. [2009, c. 372, Pt. B, §3 (NEW).]

C. Funds not spent in any fiscal year remain in the program fund to be used for conservation programs. [2009, c. 372, Pt. B, §3 (NEW).]

D. The commission or the trust may apply for and receive grants from state, federal and private sources for deposit in the program fund and also may deposit in the program fund any grants or other funds received by or from any entity with which the commission or trust has an agreement or contract pursuant to this section if the commission receives prior written consent from the trust that receipt of those funds would be consistent with the purposes of this section. If the commission or trust receives any funds pursuant to this paragraph, it shall establish a separate account within the program fund to receive the funds and shall keep those funds and any interest earned on those funds segregated from other funds in the program fund. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

8. **Administration fund.** The trust may transfer up to 9% of funds collected pursuant to this section to its administration fund to be used solely to defray administrative costs. Any interest on funds in the administration fund must be credited to the administration fund and any funds unspent in any fiscal year must either remain in the administration fund to be used to defray administrative costs or be transferred to the program fund.

[2013, c. 369, Pt. A, §23 (AMD) .]

9. **Prior conservation efforts.** Except as otherwise directed by the commission, transmission and distribution utilities shall continue to administer contracts associated with prior conservation efforts. Such contracts may not be renewed, extended or otherwise modified by transmission and distribution utilities in a manner that results in any increased expenditures associated with those contracts.

[2009, c. 372, Pt. B, §3 (NEW) .]

10. **Funds held in trust.** All funds collected from electricity consumers pursuant to this section are collected under the authority and for the purposes of this section and are deemed to be held in trust for the purposes of benefiting electricity consumers. In the event funds are not expended or contracted for expenditure within 2 years of being collected from consumers, the commission shall ensure that the value of those funds is returned to consumers.

[2013, c. 369, Pt. A, §24 (AMD) .]

11. **Resolution of disputes.** Upon receipt of an appropriate filing by a party to a contract relating to prior conservation efforts, the commission shall adjudicate a dispute relating to the interpretation or administration of the contract by the transmission and distribution utility.

In the case of a dispute filed after April 5, 2002, the commission shall refer the dispute to commercial arbitration in accordance with this paragraph. Each party to the contract shall select an arbitrator who is not a current employee of the party. The selected arbitrators shall then select a 3rd arbitrator. If the arbitrators cannot agree on the 3rd arbitrator, each party shall submit to the commission a list of at least 3 arbitrators who have no previous or current interest in the contract and, to the extent practicable, have special competence and experience with respect to the subject matter involved in the dispute. The commission shall choose the 3rd arbitrator from among the persons on the lists provided by the parties. After their selection, the arbitrators shall promptly hear and determine the controversy pursuant to the rules of the American Arbitration Association for the conduct of commercial arbitration proceedings, except that if such rules conflict with any procedural rules established by the commission or applicable provisions of the laws of this State relating to arbitration, the applicable commission rules or provisions of state law govern the arbitration. The arbitrators shall submit their decision to the commission.

A. The commission shall accept or reject the decision within 30 days of its submission, unless the commission requires additional time, in which case it may extend its review for another 30 days. [2009, c. 372, Pt. B, §3 (NEW).]

B. If the commission does not reject the decision within 30 days or, if it extends its review period an additional 30 days, within 60 days, the decision is deemed accepted. [2009, c. 372, Pt. B, §3 (NEW).]

C. If the commission rejects the decision, the commission shall adjudicate the dispute. [2009, c. 372, Pt. B, §3 (NEW).]

A decision by the commission under this subsection, including a decision by the arbitrators that is deemed accepted by the commission pursuant to paragraph B, is enforceable in a court of law.

[2009, c. 372, Pt. B, §3 (NEW) .]

12. **Ratemaking and cost recovery.** The assessments charged to transmission and distribution utilities under this section are just and reasonable costs for rate-making purposes and must be reflected in the rates of transmission and distribution utilities.

[2009, c. 372, Pt. B, §3 (NEW) .]

13. **Rules.** The trust shall adopt rules necessary to implement this section. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 372, Pt. B, §3 (NEW) .]

14. **Effective date.** This section takes effect July 1, 2010.

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW). 2009, c. 518, §10 (AMD). 2011, c. 637, §6 (AMD). 2013, c. 369, Pt. A, §§18-24 (AMD). 2013, c. 369, Pt. A, §30 (AFF). 2013, c. 556, §2 (AMD).

§10111. NATURAL GAS CONSERVATION PROGRAM

1. **Program established.** In accordance with the goals and objectives of the triennial plan, the trust shall establish a cost-effective conservation program to promote the efficient use of natural gas. Each gas utility in the State that serves at least 5,000 residential customers shall contribute data and other relevant information to assist in the development of the program. In determining whether the program is cost-effective, the trust may consider whether it promotes sustainable economic development or reduces greenhouse gas emissions to the

extent the trust can quantify or otherwise reasonably identify such effects. The trust shall seek to encourage efficiency in natural gas use, provide incentives for the development of new, energy-efficient business activity in the State and take into account the cost and benefits of energy efficiency and conservation to existing business activity in the State.

A. The trust shall consider, without limitation, a natural gas conservation program that:

(1) Increases consumer awareness of cost-effective options for conserving energy;

(2) Creates more favorable market conditions for the increased use of efficient products and services; and

(3) Promotes sustainable economic development and reduces environmental damage. [2009, c. 372, Pt. B, §3 (NEW).]

B. The trust shall apportion available funds such that:

(1) A reasonable percentage of the available funds is directed to programs for low-income residential consumers, as defined by the trust. The trust shall establish the percentage based on an assessment of the opportunity for cost-effective conservation measures for such consumers, including an assessment of the number of low-income residential consumers that may be eligible for such programs;

(2) A reasonable percentage of the available funds is directed to programs for small business consumers, as defined by the trust. The trust shall establish the percentage based on an assessment of the opportunity for cost-effective conservation measures for such consumers. In defining "small business" for the purposes of this subparagraph, the trust shall consider definitions of that term used for other programs in this State that assist small businesses; and

(3) To the greatest extent practicable, the remaining available funds are apportioned in a manner that allows all other consumers to have a reasonable opportunity to participate in one or more conservation programs. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

2. **Funding level.** The natural gas conservation fund, which is a nonlapsing fund, is established to carry out the purposes of this section. The commission shall assess each gas utility, in accordance with the triennial plan, an amount necessary to capture all cost-effective energy efficiency that is achievable and reliable. All amounts collected under this subsection must be transferred to the natural gas conservation fund. Any interest on funds in the fund must be credited to the fund. Funds not spent in any fiscal year remain in the fund to be used for the purposes of this section.

The assessments charged to gas utilities under this section are just and reasonable costs for rate-making purposes and must be reflected in the rates of gas utilities.

All funds collected pursuant to this section are collected under the authority and for the purposes of this section and are deemed to be held in trust for the purposes of benefiting natural gas consumers served by the gas utilities assessed under this subsection. In the event funds are not expended or contracted for expenditure within 2 years of being collected from consumers, the commission shall ensure that the value of those funds is returned to consumers.

Rules adopted by the commission under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 369, Pt. A, §25 (AMD) .]

3. **Rules.** The trust may adopt rules necessary to implement this section. Rules adopted by the trust under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 372, Pt. B, §3 (NEW) .]

4. **Effective date.** This section takes effect July 1, 2010.

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW). 2011, c. 637, §7 (AMD). 2013, c. 369, Pt. A, §25 (AMD).

§10112. SOLAR AND WIND ENERGY REBATE PROGRAM

(REPEALED)

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW). MRSA T. 35-A, §10112, sub-§7 (RP).

§10113. TRAINING FOR INSTALLERS OF SOLAR EQUIPMENT

1. **Installation training.** To the extent that funds and resources allow, the trust shall establish training programs for installers of solar equipment that most effectively meet the needs of the public. The trust:

A. May develop separate programs for different solar technologies or applications when the trust determines that the skills or training for the installation of those technologies or applications merit the distinction; [2009, c. 372, Pt. B, §3 (NEW).]

B. Shall confer with the Plumbers' Examining Board and the Electricians' Examining Board when it develops the course content and requirements; [2009, c. 372, Pt. B, §3 (NEW).]

C. Shall determine the content of the training, the hours required for course completion and the manner in which applicants must demonstrate proficiency in solar equipment installation; [2009, c. 372, Pt. B, §3 (NEW).]

D. Shall issue a certificate of completion to individuals who meet the requirements the trust has established; [2009, c. 372, Pt. B, §3 (NEW).]

E. May establish reasonable course fees. All fees must be paid to the Treasurer of State to be used by the trust for the purposes of this section; [2009, c. 372, Pt. B, §3 (NEW).]

F. Shall determine terms for the expiration and renewal of an applicant's certificate of completion; and [2009, c. 372, Pt. B, §3 (NEW).]

G. Shall determine an appropriate means of maintaining recognition of the training received by persons holding certificates issued pursuant to former section 10002 or former Title 32, chapter 87. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

2. **Qualifications for installing solar equipment.** A certificate of completion issued by the trust pursuant to subsection 1 does not exempt the holder from any applicable licensing requirements for activities involved in installing solar equipment, including but not limited to licensing requirements established in Title 32, chapter 17 or 49.

[2009, c. 372, Pt. B, §3 (NEW) .]

3. **Effective date.** This section takes effect July 1, 2010.

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW).

§10114. TRAINING FOR ENERGY AUDITORS

1. **Auditor training.** To the extent that funds and resources allow, the trust shall set standards for training programs for energy auditors that most effectively meet the needs of the public and that satisfy the requirements of funding sources. For the purposes of this subsection, an energy auditor is a person who is trained to prepare a report that delineates the energy consumption characteristics of a building, identifies appropriate energy efficiency operations and maintenance procedures and recommends appropriate energy efficiency measures. The trust:

A. May develop separate programs for audits of different building types and functions when the trust determines that the skills or training needed to perform these audits merit the distinction; [2009, c. 372, Pt. B, §3 (NEW).]

B. Shall determine the content of the training, the hours required for course completion and the manner in which applicants must demonstrate proficiency in energy auditing; [2009, c. 372, Pt. B, §3 (NEW).]

C. Shall issue a certificate of completion to individuals who meet the requirements the trust has established; [2009, c. 372, Pt. B, §3 (NEW).]

D. May establish reasonable course fees. All fees collected by the trust must be used for the purposes of this section; [2009, c. 372, Pt. B, §3 (NEW).]

E. Shall determine terms for the expiration and renewal of an applicant's certificate of completion; [2009, c. 372, Pt. B, §3 (NEW).]

F. Shall determine an appropriate means of maintaining recognition of the training received by persons holding a certification; [2009, c. 372, Pt. B, §3 (NEW).]

G. Shall work with state agencies and other interested parties to establish certification standards for energy auditors who perform work under programs administered by the trust; and [2009, c. 372, Pt. B, §3 (NEW).]

H. Shall recognize other established training programs that offer certification consistent with the trust's energy auditor training standards. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

2. **Effective date.** This section takes effect July 1, 2010.

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW).

§10115. FEDERAL ENERGY PROGRAMS

1. **Programs.** The trust shall oversee and administer:

A. The United States Department of Energy State Energy Program; and [2009, c. 372, Pt. B, §3 (NEW).]

B. Other federally funded programs and projects related to trust programs. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

2. **Effective date.** This section takes effect July 1, 2010.

[2009, c. 372, Pt. B, §3 (NEW) .]

3. **Use of funds.** All funds received pursuant to this section must be expended in accordance with the requirements of sections 10103, 10104 and 10105, unless specifically prohibited by federal law or regulation. Funds to be expended for programs or projects related to weatherization and energy-efficient use of fossil fuels for heating must be deposited in the Heating Fuels Efficiency and Weatherization Fund established in section 10119 and expended in accordance with that section. The trust may transfer any federal funds received pursuant to 42 United States Code, Sections 6321 to 6326 (2009) to the appropriate state agency as it considers necessary to the extent that such funds are designated for a purpose that falls outside the energy efficiency and alternative energy programs that the trust oversees and administers.

[2009, c. 518, §11 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW). 2009, c. 518, §11 (AMD).

§10116. ENERGY CONSERVATION SMALL BUSINESS REVOLVING LOAN PROGRAM

1. **Program and fund.** The trust shall establish the Energy Conservation Small Business Revolving Loan Program, referred to in this subsection as "the program," and the Energy Conservation Small Business Revolving Loan Fund, referred to in this subsection as "the fund." The fund consists of federal capitalization grants and awards made to the State for the purposes for which the fund is established; any amounts that the trust deposits in the fund from the assessment on transmission and distribution utilities pursuant to section 10110 or from other program funds, to the extent that use of such funds for the program will be consistent with the requirements governing the use of such funds; principal and interest received from the repayment of loans made from the fund; any interest earned on investment of fund balances; and other funds from any public or private source received for the purposes for which the fund is established. The fund is a nonlapsing revolving fund account.

A. The trust shall credit all repayments of loans made to businesses, including interest, penalties and other fees and charges related to fund loans, to the fund account. [2009, c. 372, Pt. B, §3 (NEW).]

B. Money in the fund not needed to meet the current obligations of the program must be deposited with the Treasurer of State to the credit of the fund account and may be invested in such manner as is provided by law. Interest received on that investment must be credited to the fund account. [2009, c. 372, Pt. B, §3 (NEW).]

C. At the end of each fiscal year, all unencumbered balances in the fund account may be carried forward to be used for the purposes specified in this subsection. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

2. **Effective date.** This section takes effect July 1, 2010.

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW).

§10117. ENERGY EFFICIENCY OF RENTAL PROPERTIES

1. **Residential energy efficiency disclosure statement.** The trust and the Maine State Housing Authority shall prepare a residential energy efficiency disclosure statement form for landlords and other lessors of residential properties to use to disclose to tenants and lessees information about the energy

efficiency of the property in order to comply with Title 14, section 6030-C. The trust and the Maine State Housing Authority shall post and maintain the statement form required by this subsection on the Internet in a format that is easily accessible by the public.

[2009, c. 372, Pt. B, §3 (NEW) .]

2. **Suggested energy efficiency standards.** The trust and the Maine State Housing Authority shall prepare suggested energy efficiency standards for landlords and other lessors of residential property that is used by a tenant or lessee as a primary residence. The trust and the Maine State Housing Authority shall post and maintain the standards required by this subsection on the Internet in a format that is easily accessible by the public.

[2009, c. 372, Pt. B, §3 (NEW) .]

3. **Effective date.** This section takes effect July 1, 2010.

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW).

§10118. PUBLIC INFORMATION AND OUTREACH

1. **General.** The trust shall provide to the public information about renewable energy technologies and energy efficiency practices. In providing this information, the trust shall consider:

A. The aspects of renewable energy technologies and energy efficiency practices about which the public needs information; [2009, c. 372, Pt. B, §3 (NEW).]

B. The most effective means of providing the information; and [2009, c. 372, Pt. B, §3 (NEW).]

C. The members of the public who would most benefit from the information. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

2. **Funding.** The trust may seek federal funding for the purposes of this section and, to the extent necessary, may charge reasonable fees to cover the costs of training or other services provided pursuant to this section. All fees must be paid to the trust and used to reimburse the trust for its expenses in providing the service for which the fee is charged.

[2009, c. 372, Pt. B, §3 (NEW) .]

3. **Effective date.** This section takes effect July 1, 2010.

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW).

§10119. HEATING FUELS EFFICIENCY AND WEATHERIZATION FUND

1. **Fund established; use of money.** The Heating Fuels Efficiency and Weatherization Fund, referred to in this section as "the fund" is established. The fund is a nonlapsing fund and is administered by the trust in accordance with this section. Any interest earned on funds in the fund must be credited to the fund, and funds not spent in any fiscal year remain in the fund to be used in accordance with this section. The trust may receive and deposit in the fund funds from the following sources:

A. Any funds collected from an assessment on heating fuels; [2009, c. 372, Pt. B, §3 (NEW).]

B. Federal funds and awards that may be used for the purposes of this section; [2009, c. 652, Pt. A, §49 (AMD).]

C. The proceeds of any bonds issued for the purposes of this section; [2009, c. 372, Pt. B, §3 (NEW).]

D. Principal and interest received from the repayment of loans made from the fund; [2009, c. 372, Pt. B, §3 (NEW).]

E. Any interest earned on investment of fund balances; and [2009, c. 372, Pt. B, §3 (NEW).]

F. Any other funds from public or private sources received in support of the purposes for which the fund is established. [2009, c. 372, Pt. B, §3 (NEW).]

The trust may annually deposit funds received pursuant to this section into the administration fund, to a maximum in any fiscal year of 10% of the revenues received under this section.

[2009, c. 652, Pt. A, §49 (AMD) .]

2. **Program.** All funds deposited in the fund must be administered by the trust in accordance with the following.

A. All funds deposited in the fund must be administered by the trust to reduce heating fuel consumption consistent with the purpose and targets of the trust and the triennial plan to achieve the following goal:

(1) By 2030, to provide cost-effective energy efficiency and weatherization measures to substantially all homes and businesses whose owners wish to participate in programs established by the trust under this section. [2009, c. 372, Pt. B, §3 (NEW).]

B. Funds from the fund may be used only for programs that provide cost-effective energy efficiency and weatherization measures for the benefit of heating fuel customers or to efficiency service providers serving those customers and in accordance with the following.

(1) Program categories must include low-income, single-family and 2-family residential units, multifamily residential units, small business, commercial and institutional and such other categories as the trust determines appropriate;

(2) Within program categories, the trust may differentiate between programs for new construction and existing buildings; and

(3) Cost-effective energy efficiency measures must include measures that improve the energy efficiency of energy-using systems, such as heating and cooling systems, through system upgrades or conversions, including conversions to energy-efficient systems that rely on renewable energy sources or systems that rely on effective energy efficiency technologies. [2009, c. 372, Pt. B, §3 (NEW).]

C. Program designs approved by the trust must contain:

(1) Incentives to consumers to purchase and install cost-effective efficiency and weatherization products and services identified by a certified energy auditor, except in the case of programs to deliver education, training or certifications;

(2) A schedule of customer copayments and loan options for prescribed products and services. Programs for low-income consumers may provide exemptions from the copayment and schedule;

(3) A plan for integrating delivery of heating fuel efficiency and weatherization measures with electric efficiency measures; and

(4) A system for the equitable allocation of costs among the contributing funds or subaccounts administered by the trust when more than one efficiency opportunity is identified. [2009, c. 372, Pt. B, §3 (NEW).]

D. Other eligible program measures may include, but are not limited to, training or certification of energy auditors, insulation installers, mechanical heating system installers and maintenance technicians and building energy inspectors. [2009, c. 372, Pt. B, §3 (NEW).]

[2009, c. 372, Pt. B, §3 (NEW) .]

3. **Rulemaking.** The board may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 372, Pt. B, §3 (NEW) .]

4. **Effective date.** This section takes effect July 1, 2010.

[2009, c. 372, Pt. B, §3 (NEW) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW). 2009, c. 652, Pt. A, §49 (AMD).

§10120. COMMISSION OVERSIGHT OF EFFICIENCY MAINE TRUST

1. **Measures of performance.** The trust shall incorporate measures of performance in the triennial plan. The measures of performance must define the electricity, natural gas and heating fuel savings targets established in section 10104, subsection 4, paragraph F and specify the measures for assessing progress in meeting the targets. The commission shall ratify measures of performance incorporated in the triennial plan if it finds that these measures satisfy the requirements of this chapter, including the principles described in section 10104, subsection 2, and are in the public interest. The commission and the trust may revise one or more of the measures of performance in the triennial plan at any time by mutual agreement.

[2009, c. 372, Pt. B, §3 (NEW) .]

2. **Regulation.** The trust may not expend any funds from assessments made under this chapter until the commission approves the triennial plan. The commission upon recommendation of the Public Advocate or the Attorney General may open an investigation of practices or acts of the trust. If the commission, upon investigation, finds that the trust has failed to comply with any requirement of this chapter or other requirements of law in the use or expenditure of any funds from assessments made under this chapter, the commission may issue an appropriate order directing the trust to take necessary actions to bring the trust into compliance with the law and may suspend or limit the authority of the trust to expend or encumber any funds derived from assessments made under this chapter until the commission finds the trust has come into compliance with the law. The commission may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 372, Pt. B, §3 (NEW) .]

3. **Oversight and evaluation fund.** The commission shall establish an oversight and evaluation fund to be used solely to defray the commission's projected costs of ongoing oversight of the trust's programs and results, including but not limited to reviewing the trust's calculation of program costs and benefits,

measurement and verification procedures and program evaluations and reviewing and approving the triennial plan. The commission may use funds to contract with expert 3rd-party resources to provide technical assistance or impartial evaluation of the performance of energy efficiency programs administered by the trust. The commission may assess the trust an amount not to exceed 1% of the total funds administered by the trust, and the trust shall transfer that amount to the commission to be deposited into the oversight and evaluation fund. Any interest on funds in the oversight and evaluation fund must be credited to the oversight and evaluation fund and any funds unspent in any fiscal year must either remain in the oversight and evaluation fund to be used for the purposes specified in this subsection or be transferred to the trust for deposit in appropriate program funds.

[2013, c. 369, Pt. A, §26 (AMD) .]

SECTION HISTORY
2009, c. 372, Pt. B, §3 (NEW). 2013, c. 369, Pt. A, §26 (AMD).

§10121. ENERGY EFFICIENCY AND RENEWABLE RESOURCE FUND

1. **Funding for energy efficiency and renewable resource research and development; community demonstration projects; rebates for cost-effective energy efficiency and renewable energy technologies.** The trust by rule shall establish and administer a program allowing retail consumers of electricity to make voluntary contributions to fund energy efficiency and renewable resource research and development, to fund community demonstration projects using energy efficiency and renewable energy technologies and to fund rebates for cost-effective energy efficiency and renewable energy technologies. The program must:

A. Include a mechanism for customers to indicate their willingness to make contributions; [2009, c. 565, §7 (NEW); 2009, c. 565, §9 (AFF).]

B. Provide that transmission and distribution utilities collect and account for the contributions and forward them to the trust; [2009, c. 565, §7 (NEW); 2009, c. 565, §9 (AFF).]

C. Provide for a distribution of the funds through a competitive bid process to the University of Maine System, the Maine Maritime Academy or the Maine Community College System for energy efficiency and renewable resource research and development; [2011, c. 637, §8 (AMD).]

D. Provide for a distribution of the funds through a competitive bid process to Maine-based nonprofit organizations that qualify under the federal Internal Revenue Code, Section 501(c)(3), consumer-owned transmission and distribution utilities, community-based nonprofit organizations, community action programs, municipalities, quasi-municipal corporations or districts as defined in Title 30-A, section 2351, community-based renewable energy projects as defined in section 3602, subsection 1 and school administrative units as defined in Title 20-A, section 1 for community demonstration projects using energy efficiency and renewable energy technologies; [2011, c. 637, §8 (AMD).]

E. Provide for an annual distribution of 35% of the funds to the Maine Technology Institute to support the development and commercialization of energy efficiency and renewable energy technologies; and [2011, c. 637, §8 (AMD).]

F. Provide rebates for cost-effective energy efficiency and renewable energy technologies as determined by the trust. [2011, c. 637, §8 (AMD).]

[2011, c. 637, §8 (AMD) .]

2. **Fund established.** There is established the Energy Efficiency and Renewable Resource Fund, referred to in this section as "the fund." The fund is a nonlapsing fund administered by the trust. All funds collected by the trust pursuant to subsection 1 must be deposited in the fund for distribution by the trust in accordance with subsection 1. The trust may seek and accept funding for the program established pursuant to subsection 1 from other sources, public or private. Any funds accepted for use in the program established

pursuant to subsection 1 must be deposited in the fund. Funds not spent in any fiscal year remain in the fund to be used for the purposes of this section. Any interest earned on funds in the fund must be credited to the fund.

The trust may allocate funds pursuant to subsection 1, paragraphs C, D and F from the fund to most effectively meet the objectives of the triennial plan pursuant to section 10104, subsection 4.

[2011, c. 637, §8 (AMD) .]

3. **Report.** The trust shall report by December 1st of each year to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters on the fund. The report must include:

A. A description of actions taken by the trust pursuant to subsections 1 and 2 during the prior 12 months; [2009, c. 565, §7 (NEW); 2009, c. 565, §9 (AFF).]

B. An accounting of total deposits into and expenditures from the fund during the prior 12 months; and [2009, c. 565, §7 (NEW); 2009, c. 565, §9 (AFF).]

C. A description of any research and development or community demonstration project that received a distribution from the fund during the prior 12 months, including its objectives, current status and results. [2009, c. 565, §7 (NEW); 2009, c. 565, §9 (AFF).]

[2009, c. 565, §7 (NEW); 2009, c. 565, §9 (AFF) .]

4. **Rulemaking.** The trust shall adopt rules to implement this section. The rules must include, but are not limited to:

A. Selection criteria for the competitive bid process pursuant to subsection 1, paragraphs C and D, including, but not limited to, the cost-effectiveness of the project or development and the likelihood that the renewable energy technology will be adopted on a broader scale in this State; and [2011, c. 314, §4 (NEW).]

B. Qualification criteria for rebates for energy efficiency and renewable energy technologies pursuant to subsection 1, paragraph F, including, but not limited to, cost-effectiveness and quality assurance requirements. [2011, c. 637, §8 (AMD).]

Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2011, c. 637, §8 (AMD) .]

SECTION HISTORY
2009, c. 565, §7 (NEW). 2009, c. 565, §9 (AFF). 2011, c. 314, §§2-4 (AMD). 2011, c. 637, §8 (AMD).

§10122. HEALTH CARE FACILITY PROGRAM

The trust shall develop and implement a process to review projects undertaken by health care facilities that are directed solely at reducing energy costs through energy efficiency, renewable energy technology or smart grid technology and to certify those projects that are likely to be cost-effective. If a project is certified as likely to be cost-effective by the trust, the review process serves as an alternative to the certificate of need process established pursuant to Title 22, section 329, subsection 3. [2011, c. 424, Pt. A, §6 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

SECTION HISTORY
2011, c. 424, Pt. A, §6 (NEW). 2011, c. 424, Pt. E, §1 (AFF).

§10123. SCHOOL ENERGY SAVINGS PROGRAM

To the extent funds are available, the trust shall develop a program to provide energy savings improvements to kindergarten to grade 12 schools, including charter schools and private schools. Under this program, the trust may: [2013, c. 366, §1 (NEW).]

1. **Energy audits.** Provide incentives and technical support for an energy audit of a school facility;

[2013, c. 366, §1 (NEW) .]

2. **Energy measures.** Provide financial assistance for energy measures identified in an energy audit as likely to achieve total savings within 10 years that are greater than the total costs of the measures; and

[2013, c. 366, §1 (NEW) .]

3. **School payments.** Accept payments from schools, including, but not limited to, payments equal to or less than the value on monthly energy bills of the energy savings as a result of the energy measures. These payments may include costs to develop and oversee the project, administer the program and service loans.

[2013, c. 366, §1 (NEW) .]

SECTION HISTORY
2013, c. 366, §1 (NEW).

Chapter 99: PROPERTY ASSESSED CLEAN ENERGY

§10151. SHORT TITLE

This chapter may be known and cited as "the Property Assessed Clean Energy Act" or "the PACE Act." [2009, c. 591, §1 (NEW).]

SECTION HISTORY
2009, c. 591, §1 (NEW).

§10152. DECLARATION OF PUBLIC PURPOSE

It is declared that the establishment and implementation of property assessed clean energy, or PACE, programs to finance energy savings improvements are public purposes. [2009, c. 591, §1 (NEW).]

SECTION HISTORY
2009, c. 591, §1 (NEW).

§10153. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 591, §1 (NEW).]

1. **Energy savings improvement.** "Energy savings improvement" means an improvement to qualifying property that, as determined by the trust, is new and permanently affixed to qualifying property and that:

A. Will result in increased energy efficiency and substantially reduced energy use and:

(1) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the trust; or

(2) Involves weatherization of residential, commercial or industrial property in a manner approved by the trust; or [2009, c. 591, §1 (NEW).]

B. Involves a renewable energy installation, an electric thermal storage system or any heating equipment that meets or exceeds standards established or approved by the trust. [2011, c. 84, §1 (AMD).]

[2011, c. 84, §1 (AMD) .]

2. **PACE agreement.** "PACE agreement" means an agreement that authorizes the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.

[2009, c. 591, §1 (NEW) .]

3. **PACE assessment.** "PACE assessment" means an assessment made against qualifying property to repay a PACE mortgage.

[2009, c. 591, §1 (NEW) .]

4. **PACE mortgage.** "PACE mortgage" means a mortgage securing a loan made pursuant to a PACE program to fund energy savings improvements on qualifying property.

[2009, c. 591, §1 (NEW) .]

5. **PACE ordinance.** "PACE ordinance" means an ordinance adopted by the legislative body of a municipality for the purpose of participating in a PACE program.

[2009, c. 591, §1 (NEW) .]

6. **PACE program.** "PACE program" means a program established under this chapter by the trust or a municipality under which property owners can finance energy savings improvements on qualifying property.

[2009, c. 591, §1 (NEW) .]

7. **Qualifying property.** "Qualifying property" means real property located in a municipality that participates in a PACE program pursuant to this chapter.

[2009, c. 591, §1 (NEW) .]

8. **Renewable energy installation.** "Renewable energy installation" means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, biomass systems including but not limited to masonry stoves and wood pellet systems, landfill gas to energy systems, geothermal systems, wind systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.

[2013, c. 157, §1 (AMD) .]

9. **Trust.** "Trust" means the Efficiency Maine Trust established in section 10103.

[2009, c. 591, §1 (NEW) .]

SECTION HISTORY
2009, c. 591, §1 (NEW). 2011, c. 84, §1 (AMD). 2013, c. 157, §1 (AMD).

§10154. PACE PROGRAMS

1. **Establishment; funding.** The trust or a municipality that has adopted a PACE ordinance may establish a PACE program funded by funds awarded to the State under the federal Energy Efficiency and Conservation Block Grant Program or by any other funds available for this purpose. Notwithstanding any other provision of law, after July 1, 2010, the trust may use funds from its administrative fund or program funds to pay reasonable administrative expenses of the trust or a municipality incurred to carry out the purposes of this chapter.

[2009, c. 591, §1 (NEW) .]

2. **Program administration; municipal participation and liability.** A PACE program must be administered as follows.

A. A municipality that has adopted a PACE ordinance may:

(1) Administer the functions of a PACE program, including, but not limited to, entering into PACE agreements with property owners and collecting PACE assessments; or

(2) Enter into a contract with the trust to administer some or all functions of the PACE program for the municipality. [2009, c. 591, §1 (NEW).]

B. The trust may enter into contracts with municipalities that have adopted PACE ordinances to administer PACE program functions in such municipalities. [2009, c. 591, §1 (NEW).]

C. Notwithstanding any other provision of law to the contrary, municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the trust or to any other person for claims, of whatever kind or nature, under or related to a PACE program established under subsection 1, including, without limitation, claims for or related to uncollected PACE assessments. [2009, c. 591, §1 (NEW).]

D. Other than the fulfillment of its obligations specified in a PACE agreement, a municipality has no liability to a property owner for or related to energy savings improvements financed under a PACE program. [2009, c. 591, §1 (NEW).]

[2009, c. 591, §1 (NEW) .]

3. **Quality assurance system.** Subject to the availability of funds, the trust shall, within 9 months of the establishment of a PACE program under subsection 1, adopt by rule a comprehensive quality assurance system for the PACE program. In developing a quality assurance system under this subsection, the trust must consult with industry stakeholders, including, but not limited to, representatives of energy efficiency programs, contractors and environmental, energy efficiency and labor organizations.

[2009, c. 591, §1 (NEW) .]

4. **Terms and conditions.** The trust may, by rule, establish terms and conditions under which municipalities and property owners may participate in a PACE program established under subsection 1, which may include, but are not limited to, terms and conditions related to program design, implementation and administration, cost sharing, collection of PACE assessments, establishment of PACE mortgages, recording of liens and management of federal grant funds and terms and conditions to ensure the collection of data required to quantify carbon savings and to facilitate access to and eligibility for voluntary carbon markets, for federal grants for energy efficiency and for other incentive programs that support energy savings improvements.

A. Rules adopted pursuant to this subsection may incorporate any federal standard, quality control measure or other requirement established for federal energy efficiency programs as long as the standard, measure or requirement is consistent with the quality assurance system adopted under subsection 3. [2009, c. 591, §1 (NEW).]

B. The trust may vary the terms and conditions established under this subsection applicable to a participating municipality from those of other participating municipalities by mutual agreement with that municipality. [2009, c. 591, §1 (NEW).]

[2009, c. 591, §1 (NEW) .]

5. **Model documents; educational materials.** Subject to the availability of funds, the trust shall develop and provide to municipalities model PACE ordinances, model PACE agreements, other model forms and documents and educational materials for use by municipalities in the implementation of PACE programs.

[2009, c. 591, §1 (NEW) .]

SECTION HISTORY
2009, c. 591, §1 (NEW).

§10155. CONSUMER UNDERWRITING AND DISCLOSURE

1. **Underwriting.** A PACE agreement entered into pursuant to a PACE program must comply with underwriting requirements established by rule by the trust. In adopting such rules, the trust shall seek advice from the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection and consumer credit industry stakeholders. Underwriting requirements established by the trust must, at a minimum:

A. Limit the amount of a PACE mortgage for qualifying property that is residential property to $15,000; [2009, c. 591, §1 (NEW).]

B. Require debt-to-income ratios of not more than 50% for qualifying property that is residential property; [2009, c. 591, §1 (NEW).]

C. Provide that the term of the PACE agreement not exceed the estimated useful life of the financed energy savings improvements; [2009, c. 591, §1 (NEW).]

D. Require that financed energy savings improvements are cost-effective; [2009, c. 591, §1 (NEW).]

E. Require proof of ownership of the qualified property; [2009, c. 591, §1 (NEW).]

F. Require that the qualified property:

(1) Is current on property taxes and sewer charges;

(2) Has no outstanding and unsatisfied tax or sewer liens;

(3) Is not subject to a reverse mortgage; and

(4) Is not subject to a mortgage or other lien on which there is a recorded notice of default, foreclosure or delinquency that has not been cured; [2009, c. 591, §1 (NEW).]

G. Require that the owner or owners of the qualified property certify that there are no overdue payments on mortgages secured by the property; and [2009, c. 591, §1 (NEW).]

H. Require escrows for PACE assessment payments when appropriate. [2009, c. 591, §1 (NEW).]

[2009, c. 591, §1 (NEW) .]

2. **Consumer disclosure; truth in lending.** A PACE agreement entered into pursuant to a PACE program must provide consumer disclosure consistent with the principles of truth in lending as specified in rules adopted by the trust. In adopting such rules, the trust shall seek advice from the Department of

Professional and Financial Regulation, Bureau of Consumer Credit Protection and consumer credit industry stakeholders. Notwithstanding Title 9-A, section 1-202, PACE mortgages are not subject to the Maine Consumer Credit Code, Article 8-A.

[2011, c. 427, Pt. D, §25 (AMD) .]

3. **Consumer privacy.** The provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999), and the applicable implementing federal regulations regarding the privacy of consumer information, apply to all consumer financial information obtained by the trust or municipalities or their designees in implementing PACE programs under this chapter.

[2009, c. 591, §1 (NEW) .]

SECTION HISTORY
2009, c. 591, §1 (NEW). 2011, c. 427, Pt. D, §25 (AMD).

§10156. PACE MORTGAGES; COLLECTION OF PACE ASSESSMENTS; PRIORITY

1. **Collection of assessments.** PACE assessments do not constitute a tax but may be assessed and collected by the trust, a municipality or an agent designated by the trust or a municipality in any manner allowed under the PACE program, consistent with applicable laws.

[2009, c. 591, §1 (NEW) .]

2. **Notice; filing.** A notice of a PACE agreement must be filed in the appropriate registry of deeds. The filing of this notice creates a PACE mortgage against the property subject to the PACE assessment until the amounts due under the terms of the PACE agreement are paid in full. A notice filed under this subsection must, at a minimum, include:

A. The amount of funds disbursed or to be disbursed pursuant to the PACE agreement; [2009, c. 591, §1 (NEW).]

B. The names and addresses of the current owners of the qualifying property subject to the PACE assessment; [2009, c. 591, §1 (NEW).]

C. A description of the property subject to the PACE assessment, including its tax map and lot number; [2009, c. 591, §1 (NEW).]

D. The duration of the PACE agreement; and [2009, c. 591, §1 (NEW).]

E. The name and address of the entity filing the notice. [2009, c. 591, §1 (NEW).]

[2009, c. 591, §1 (NEW) .]

3. **Priority.** Except as provided in paragraph A, the priority of a PACE mortgage created under subsection 2 is determined based on the date of filing of notice required under subsection 2 and applicable law. A PACE mortgage is not entitled to any special or senior priority.

A. If a property owner's PACE assessment payments are current, upon the refinancing, sale or transfer of the qualifying property, other than a judicial sale or foreclosure, the PACE mortgage is junior and subordinate in priority to the first mortgage used to refinance an existing mortgage or a first mortgage of a subsequent purchaser or transferee, regardless of the date of the recording of the refinanced first mortgage or the first mortgage of the subsequent purchaser or transferee. [2009, c. 591, §1 (NEW).]

B. If a property owner's PACE assessment payments are delinquent, the past due assessments must be satisfied prior to or contemporaneously with the refinancing, sale or transfer of the qualifying property, other than a judicial sale or foreclosure. [2009, c. 591, §1 (NEW).]

[2009, c. 591, §1 (NEW) .]

4. **Judicial sale or foreclosure.** In the event of a judicial sale or foreclosure of a property subject to a PACE mortgage, all parties with mortgages or liens on that property, including without limitation PACE mortgagees, must receive on account of such mortgages or liens sale proceeds in accordance with the priority established by applicable law. Following a judicial sale or foreclosure, any deficiency with respect to amounts previously secured by a PACE mortgage must be satisfied from the reserve fund established under subsection 6.

[2009, c. 591, §1 (NEW) .]

5. **Release of mortgage.** A municipality shall discharge a PACE mortgage created under subsection 2 upon full payment of the amount specified in the PACE agreement. The discharge of a PACE mortgage under this subsection must be filed with the appropriate registry of deeds.

[2009, c. 591, §1 (NEW) .]

6. **Reserve fund.** The trust shall create a reserve fund to protect the trust in the event of a judicial sale or foreclosure of qualifying property subject to a PACE mortgage. The reserve fund may be funded by the trust using grant funds or interest charged on PACE mortgages. The reserve fund must be funded at a level sufficient to offset past due balances on PACE assessments and any remaining principal balances on those assessments, as reasonably predicted based on good lending practices.

[2009, c. 591, §1 (NEW) .]

SECTION HISTORY
2009, c. 591, §1 (NEW).

§10157. PROPERTY OWNERS

1. **Purchase of goods and services.** A property owner who has entered into a PACE agreement under this chapter may purchase directly all goods and services for the energy savings improvements described in the PACE agreement, subject to vendor certification by the trust and other requirements of the trust. Goods and services purchased by a property owner for the energy savings improvements under a PACE agreement are not subject to any public procurement ordinance or statute.

[2009, c. 591, §1 (NEW) .]

2. **Rights; carbon emissions reductions.** Property owners retain all rights under contract or law against parties other than the municipality or the trust with respect to energy savings improvements financed through PACE agreements, except that all rights related to carbon emissions reductions resulting from those improvements are deemed to be assigned by the property owner to the trust and are held by the trust.

[2009, c. 591, §1 (NEW) .]

SECTION HISTORY
2009, c. 591, §1 (NEW).

§10158. ANNUAL REPORT

The trust shall report annually on the implementation of this chapter as part of the report required under section 10104, subsection 5. [2009, c. 591, §1 (NEW).]

SECTION HISTORY
2009, c. 591, §1 (NEW).

§10159. RULEMAKING

Rules adopted under this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 591, §1 (NEW).]

SECTION HISTORY
2009, c. 591, §1 (NEW).

§10160. CONSTRUCTION; HOME RULE

Nothing in this chapter may be construed to limit the home rule authority of a municipality. [2009, c. 591, §1 (NEW).]

SECTION HISTORY
2009, c. 591, §1 (NEW).

§10161. CONSTRUCTION; CARBON EMISSIONS REDUCTIONS

Nothing in this chapter is intended to or may be construed to constitute a mandate that would prevent the sale of carbon emissions reductions into a voluntary carbon market. [2009, c. 591, §1 (NEW).]

SECTION HISTORY
2009, c. 591, §1 (NEW).

§10162. CONFORMITY TO CHANGED STANDARDS

If standards are adopted by any state or federal agency subsequent to a municipality's adoption of a PACE ordinance or participation in a PACE program and those standards substantially conflict with the municipality's manner of participation in the PACE program, the municipality shall take necessary steps to conform its participation to those standards. [2009, c. 591, §1 (NEW).]

SECTION HISTORY
2009, c. 591, §1 (NEW).

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