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Legislative Document

No. 1634

H.P. 1218

House of Representatives, April 28, 2021

An Act To Create the Maine Generation Authority

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

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative GROHOSKI of Ellsworth.
Cosponsored by Senator WOODSOME of York and
Representatives: BLUME of York, CUDDY of Winterport, Senator: DIAMOND of
Cumberland.

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

2 **Sec. 1. 5 MRSA §12004-F, sub-§19** is enacted to read:

3 **19.**

4 Maine Generation Authority Board Legislative Per Diem 35-A MRSA§4205

5
6 **Sec. 2. 35-A MRSA §3210-H** is enacted to read:

7 **§3210-H. Maine Generation Authority surcharge**

8 Notwithstanding any provision of this Title to the contrary, the commission shall
9 ensure that the Maine Generation Authority surcharge as calculated pursuant to section
10 4221, subsection 4 is included in the retail rates of all electric ratepayers of all transmission
11 and distribution utilities in the State.

12 **Sec. 3. 35-A MRSA c. 42** is enacted to read:

13 **CHAPTER 42**

14 **MAINE GENERATION AUTHORITY**

15 **§4201. Short title**

16 This chapter may be known and cited as "the Maine Generation Authority Act."

17 **§4202. Findings and declaration of purpose**

18 **1. Public interest.** It is declared to be in the public interest and to be the policy of the
19 State to establish the Maine Generation Authority to issue revenue bonds that are backed
20 by all electric ratepayers in the State and paid for through rates established for delivery
21 service by the commission to achieve the purpose stated in subsection 2.

22 **2. Purpose.** It is the purpose of this chapter to facilitate the financing and ownership
23 by the authority of:

24 A. Energy generation projects that are located in the State that generate electricity
25 using renewable fuels or sources of energy, including, but not limited to, solar, wind,
26 water, wave, tidal and biomass that produce zero greenhouse gas emissions or, for those
27 projects located in federal waters in the Gulf of Maine, are capable of delivering all
28 electricity generated into Maine in amounts sufficient to meet or offset residential and
29 business energy requirements; and

30 B. Electricity storage systems located in Maine that can store sufficient quantities of
31 electricity generated by renewable generation projects to enable the State's electricity
32 grid to meet total demands for electricity at all times in the State.

33 **§4203. Definitions**

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

36 **1. Authority.** "Authority" means the Maine Generation Authority created in section
37 4204.

1 **2. Board.** "Board" means the Maine Generation Authority Board established pursuant
2 to section 4205.

3 **3. Bond.** "Bond" means and includes a bond or note or other evidence of indebtedness
4 authorized under this chapter, whether issued under or pursuant to a bond resolution, trust
5 indenture or loan or other security agreement.

6 **4. Energy storage system.** "Energy storage system" means a facility that achieves
7 commercial operations after January 1, 2022 that uses mechanical, chemical or thermal
8 processes for absorbing energy and storing it for a period of time for use at a later time.

9 **5. Environmental attributes.** "Environmental attributes" means any and all credits,
10 benefits, emissions reductions, offsets and allowances attributable to a renewable
11 generation project, the production of electrical energy from the renewable generation
12 project and its displacement of conventional energy generation, including:

13 **A.** Any avoided emissions of pollutants to the air, soil or water such as sulfur oxides,
14 nitrogen oxides, carbon monoxide and other pollutants;

15 **B.** Any avoided emissions of carbon dioxide, methane, nitrous oxide,
16 hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases
17 that have been determined by the United Nations Intergovernmental Panel on Climate
18 Change, or otherwise by law, to contribute to the actual or potential threat of altering
19 the Earth's climate by trapping heat in the atmosphere; and

20 **C.** Any reporting rights related to avoided emissions issued by the New England Power
21 Pool Generation Information System.

22 **6. Gulf of Maine.** "Gulf of Maine" means that part of the Atlantic Ocean extending
23 east from the shore of Maine for 200 nautical miles between 42 degrees north latitude and
24 45 degrees north latitude.

25 **7. Interconnection transmission facility.** "Interconnection transmission facility"
26 means a transmission line, together with all associated equipment and facilities, that is
27 constructed solely for the purpose of electrically and physically interconnecting a
28 renewable generation project or energy storage system to the transmission system of a
29 transmission and distribution utility.

30 **8. ISO-NE region.** "ISO-NE region" means the region in which the New England bulk
31 power system operated by the independent system operator of the New England bulk power
32 system or a successor organization is located.

33 **9. New England Power Pool Generation Information System.** "New England
34 Power Pool Generation Information System" means the generation information database
35 and certificate system operated by the New England Power Pool, as defined in section 4103,
36 its designee or successor entity, that accounts for the generation attributes of electricity
37 generated within New England.

38 **10. Output.** "Output" means any of the energy-related products produced by a
39 renewable generation project or energy storage system including energy, capacity and
40 ancillary services.

41 **11. Renewable generation project.** "Renewable generation project" means a facility
42 that achieves commercial operations after January 1, 2022 that generates electricity using
43 a fuel or source of energy that is renewable and that does not emit carbon dioxide when

1 used to generate electricity, including hydroelectric generators, onshore or offshore wind
2 power installations, solar photovoltaic arrays and installations, geothermal installations,
3 tidal power generators and biomass generators that are fueled using sustainably acquired
4 biomass fuels.

5 **12. Revenue fund.** "Revenue fund" means a fund established by a resolution
6 authorizing bonds of the authority as the initial depository for all operating income of the
7 authority and that may be used to pay certain operating expenses that are defined by bond
8 resolutions, before further transfers are made to funds for debt service, reserve maintenance
9 and general reserves.

10 **§4204. Maine Generation Authority established**

11 There is established a public body corporate and politic to be known as "the Maine
12 Generation Authority." The authority is an instrumentality of the State exercising public
13 and essential government functions and having perpetual succession. The exercise by the
14 authority of the powers conferred by this chapter is an essential governmental function of
15 the State.

16 **§4205. Board**

17 The authority is managed by the Maine Generation Authority Board as described in
18 this section.

19 **1. Qualifications.** The 8 members of the board are as follows:

20 A. The director of the Governor's Energy Office, established in Title 2, section 9, or
21 its successor, who is a nonvoting member and serves ex officio;

22 B. The director of the authority, appointed by the board pursuant to section 4206, who
23 is a nonvoting member and serves ex officio; and

24 C. The following 6 voting members, appointed by the Governor and subject to review
25 by the joint standing committee of the Legislature having jurisdiction over energy and
26 utility matters and to confirmation by the Senate:

27 (1) Two members, one from each of the State's 2 congressional districts; and

28 (2) Four at-large members who are residents of the State.

29 **2. Term.** Except for initially appointed members, each member appointed by the
30 Governor under subsection 1, paragraph C holds office for 6 years or until a qualified
31 successor has been confirmed. Each term expires on March 31st of the last year of the
32 term. The terms of the initially appointed members must be staggered so that no more than
33 one term expires in any given year. A member may be reappointed.

34 **3. Vacancy.** The term of a member appointed by the Governor is vacated if the
35 member dies, resigns, becomes incapacitated, is removed for cause or no longer meets a
36 requirement under which the member was appointed. By majority vote of the remaining
37 members, the board may declare and bring to the Governor's attention any circumstances
38 creating such a vacancy. When such a vacancy occurs, the Governor may appoint a
39 member to serve only for the unexpired portion of the term vacated.

40 **4. Removal.** The Governor may remove a member appointed by the Governor from
41 the board only for gross misconduct. For purposes of this subsection, "gross misconduct"
42 means financial malfeasance, a deliberate or reckless failure to attend to duties required for

1 governance of the authority or unexcused absences from 4 or more meetings of the board
2 in a 12-month period.

3 **5. Chair.** The Governor may appoint the chair from among members appointed to the
4 board by the Governor. In the absence of such appointment or if the position of chair is
5 vacated, the board may elect a chair from among the members of the board. The chair must
6 be appointed or elected for a one-year term at the board's annual meeting.

7 **6. Annual meetings; quorum; action.** The board shall convene annually at a meeting
8 held in September and more often as determined by the chair. Four voting members of the
9 board constitute a quorum. Four votes are required to act on any matter, although a lesser
10 number may adjourn a meeting.

11 **7. Compensation.** Voting members of the board appointed by the Governor are
12 compensated in accordance with Title 5, section 12004-F, subsection 19.

13 **8. Executive director.** At its annual meeting each September, the board shall appoint
14 or reappoint an executive director who is not a member of the board. An executive
15 director's first appointment is subject to review by the joint standing committee of the
16 Legislature having jurisdiction over energy and utility matters and to confirmation by the
17 Senate.

18 **9. Secretary and treasurer.** At its annual meeting each year, the board shall elect a
19 secretary and a treasurer, who may be the same person and need not be a member of the
20 board. The secretary and treasurer are responsible in their respective capacities directly to
21 the board and may be relieved of their duties only by the board. Before the issuance of any
22 bonds under this chapter, the secretary and the treasurer shall each execute a security bond
23 in the penalty of \$50,000. Each security bond must be approved by the Attorney General
24 and conditioned upon the faithful performance of the duties of the secretary and treasurer.
25 The bond must be filed in the office of the State Auditor.

26 **10. Compliance audits.** In addition to retaining an annual auditor, the board shall
27 retain a separate compliance auditor who shall:

- 28 A. Periodically monitor the authority's financial operations and management controls;
- 29 B. Test selected transactions for policy compliance;
- 30 C. Make quarterly findings directly to the board and to the joint standing committee
31 of the Legislature having jurisdiction over energy and utility matters;
- 32 D. Recommend to the board any necessary or advisable improvements to management
33 systems, policies or controls; and
- 34 E. Render an annual compliance and management report in conjunction with the report
35 of the authority's annual auditor.

36 **§4206. Administration of the authority; director**

37 **1. Appointment of director; compensation.** The board shall appoint, using a full and
38 competitive search process, a qualified full-time director of the authority. The director of
39 the authority serves at the pleasure of the board. The board shall establish the rate and
40 amount of compensation of the director.

41 **2. Responsibilities of director.** The director appointed by the board pursuant to
42 subsection 1:

1 A. Serves as an ex officio member of the board and as the liaison between the board
2 and the joint standing committee of the Legislature having jurisdiction over energy and
3 utility matters;

4 B. Is responsible for:

5 (1) Establishing an office for the authority;

6 (2) Hiring and organizing staff for the authority and determining their
7 qualifications, duties and compensation;

8 (3) Managing the authority's activities, programs, services and staff; and

9 (4) Performing other duties as the board considers appropriate; and

10 C. May delegate to employees of the authority any powers and duties that the director
11 considers appropriate.

12 **§4207. Powers of authority**

13 The authority may:

14 **1. Suits.** Sue and be sued;

15 **2. Seal.** Have a seal and alter the seal at pleasure;

16 **3. Personal property.** Acquire, hold and dispose of personal property for the
17 authority's purposes;

18 **4. Real property, rights or easements.** Acquire in the name of the authority, by
19 purchase, eminent domain, lease or otherwise, real property and rights or easements therein
20 located in the State or in federal waters in the Gulf of Maine determined by the authority
21 to be necessary or desirable for its purposes, and use that property for the authority's
22 purposes;

23 **5. Eminent domain.** Acquire real property as described in subsection 4 by the
24 exercise of the power of eminent domain in the manner provided by section 4210;

25 **6. Fees.** Charge to and collect fees from all electric ratepayers in the State and use the
26 proceeds of such fees for the purposes provided in this chapter, both as subject to and in
27 accordance with such agreement with bondholders as allowed pursuant to this chapter;

28 **7. Contracts.** Make contracts with the United States or any instrumentality or agency
29 of the United States; another state or any instrumentality, municipality or agency of another
30 state, including multi-state entities composed of other state agencies; this State or any of
31 its agencies, instrumentalities or municipalities; public corporations or bodies existing
32 therein; private corporations; partnerships; associations; and individuals for the:

33 A. Construction of renewable generation projects or electricity storage systems;

34 B. Operations and maintenance of renewable generation projects or electricity storage
35 systems owned by the authority; and

36 C. Provision of support services to the authority, including energy planning, energy
37 market sales, energy contract review, accounting, legal and other types of
38 administrative services, including start-up funding;

39 **8. Grants.** Accept grants and the cooperation of the United States or any agency
40 thereof in the construction, maintenance, reconstruction, operation and financing of the

1 authority and engage in any and all activities necessary to avail itself of that aid and
2 cooperation and repay any such grant or portion thereof;

3 **9. Employees.** Except as prohibited by section 4208, subsection 5, employ such
4 assistants and agents; engineering, energy, architectural and construction experts;
5 inspectors; attorneys; and such other employees as the authority considers necessary or
6 appropriate for its purposes.

7 **10. Additional powers.** Exercise any of its powers in the public domain of the United
8 States, unless the exercise of those powers is not permitted by the laws of the United States;

9 **11. Debt.** Borrow money, make, issue and sell at public or private sale negotiable
10 notes, bonds and other evidences of indebtedness or obligations of the authority for the
11 purposes set forth in this chapter and secure the payment of that obligation or any part
12 thereof by pledge of all or any of the operating revenues of the authority;

13 **12. Loan or security agreements.** Enter into loan or security agreements with one or
14 more lending institutions, including, but not limited to, banks, insurance companies and
15 pension funds, or trustees for those institutions for purposes for which bonds may be issued
16 and exercise with respect to such loan or security agreements all of the powers delineated
17 in this chapter for the issuance of bonds;

18 **13. Interim certificates.** Prior to the issuance of any bonds, issue interim certificates
19 in such manner and with such conditions as the authority may determine to be exchanged
20 for those bonds when issued;

21 **14. Legal services.** Use the Department of the Attorney General for general counsel,
22 bond counsel, labor defense, workers' compensation, legislative issues and other required
23 legal services on a fee-for-service basis at rates determined by the Attorney General;

24 **15. Efficiency Maine Trust.** Pursuant to section 4221, subsections 2 and 3, use the
25 Efficiency Maine Trust established in section 10103; and

26 **16. Other lawful action.** Take all lawful action necessary and incidental to the powers
27 set out in this section.

28 **§4208. Authority prohibitions**

29 The authority is prohibited from:

30 **1. Energy trading.** Energy trading, except to the extent necessary to sell the electricity
31 generated by renewable generation projects or stored in energy storage systems owned by
32 the authority;

33 **2. Energy contracting.** Entering into any short-term or long-term energy contracts
34 for speculation or hedging purposes;

35 **3. Provision of retail electricity service.** Providing retail electricity service to any
36 electricity ratepayer located in the State or acting in any manner as a competitive electricity
37 provider, as defined in section 3201;

38 **4. Sale or disposal of environmental attributes associated with renewable**
39 **generation project.** Selling or otherwise disposing of any environmental attribute in any
40 form derived from electricity generated by a renewable generation project owned by the
41 authority, except to a competitive electricity provider solely for the purpose of meeting

1 such provider's resource portfolio obligations related to load served in the State or through
2 the retirement of such environmental attribute for the authority's account; and

3 **5. Hiring.** Hiring as an employee of the authority any person to provide operations or
4 maintenance services for any renewable generation project or energy storage system owned
5 by the authority.

6 **§4209. Obligations of authority**

7 **1. General obligations.** All expenses incurred in carrying out this chapter must be
8 paid solely from funds provided to the authority pursuant to this chapter, and liability or
9 obligation may not be incurred under this chapter beyond the extent to which money has
10 been provided pursuant to this chapter.

11 **2. Contracting.** This subsection applies to the authority when entering into any
12 contracts.

13 A. Contractors and subcontractors on all authority construction and reconstruction
14 projects and for all operations and maintenance activities must be equal opportunity
15 employers and, in the case of any contracts in excess of \$250,000, shall also pursue, in
16 good faith, affirmative action programs designed to remedy underrepresentation of
17 minorities, women and persons with disabilities. The authority may by rule provide
18 for the enforcement of this requirement.

19 B. All authority construction and reconstruction projects are governed by the
20 prevailing wage provisions in Title 26, chapter 15.

21 C. Except as otherwise permitted by law, contracts for goods and services must be
22 awarded by the authority through a competitive procurement process. The requirement
23 for competitive procurement may be waived:

24 (1) By the executive director when the purchase is for \$50,000 or less and the
25 executive director determines that procurement from a single source is the most
26 economical, effective and appropriate means of fulfilling a demonstrated need;

27 (2) By the chair of the board when the chair determines that procurement is
28 required by a state of emergency; or

29 (3) By the board pursuant to a written finding that:

30 (a) Procurement from a single source is the most economical, effective and
31 appropriate means of fulfilling a demonstrated need;

32 (b) The service or product is uniquely available from only one source; or

33 (c) Only one known source can meet the authority's needs within the required
34 time.

35 D. When bond indentures require the authority to appoint an engineering consultant
36 who may thereby gain a disproportionate advantage when competing for other design
37 and inspection contracts, the authority shall adopt policies to mitigate this advantage
38 and promote a fair distribution of the available work among qualified competing
39 applicants.

40 **3. Bonds not to be pledges of State.** Authority revenue bonds issued under this
41 chapter, including any notes or other evidences of indebtedness or obligations defined to
42 be bonds under this chapter, may not be deemed to be a debt of the State or a pledge of the

1 faith and credit of the State, but these bonds are payable exclusively from the fund provided
2 in this chapter for that purpose from operating revenues. The bonds must contain a
3 statement on their face that the State is not obligated to pay the bond or the interest on the
4 bond and that the faith and credit of the State is not pledged to the payment of the principal
5 of or interest or premium on such bonds. The issuance of bonds or refunding of bonds
6 under this chapter may not directly or indirectly or contingently obligate the State to levy
7 or to pledge any form of taxation for the bonds or to make any appropriation for the
8 payment of the bonds or the interest or premium on the bonds.

9 **4. Annual report.** The authority shall report by December 1st of each year to the joint
10 standing committee of the Legislature having jurisdiction over energy and utility matters.
11 The report must include:

12 A. A description of actions taken by the authority pursuant to this chapter during the
13 preceding 12 months;

14 B. Audited financial statements for the prior fiscal year;

15 C. The charges or fees assessed by the authority on all electric ratepayers in the State;

16 D. An assessment of whether the renewable generation projects and energy storage
17 systems owned by the authority are sufficient to enable the authority to fulfill its
18 purpose;

19 E. A 5-year and 10-year plan for procuring renewable generation projects and energy
20 storage systems; and

21 F. Recommendations for changes to the laws relating to the development of renewable
22 generation projects and energy storage systems the authority determines to be
23 necessary to enable the State to meet its climate goals.

24 The annual report must be approved by the board before the report is presented to the joint
25 standing committee of the Legislature having jurisdiction over energy and utility matters.

26 **§4210. Property of authority; eminent domain**

27 The authority shall hold and acquire property as follows.

28 **1. Property of authority.** All property of the authority and all property held in the
29 name of the State pursuant to the provisions of this chapter are exempt from levy and sale
30 by virtue of any execution, and an execution or other judicial process is not a valid lien
31 upon property of the authority held pursuant to the provisions of this chapter.

32 **2. Sale or lease of property.** The authority may not lease, sell or otherwise convey,
33 or allow to be used, any of its real or personal property or easements in that property,
34 buildings or structures, for commercial purposes, except for electrical power, telegraph,
35 telephone, communications, water, sewer or pipeline facilities installed or erected by the
36 authority, or permitted to be installed or erected by the authority.

37 **3. Use of eminent domain.** Whenever a reasonable price cannot be agreed upon for
38 the purchase or lease of real property found necessary for the purposes of the authority or
39 whenever the owner is legally incapacitated or is absent or is unable to convey valid title
40 or is unknown, the authority may acquire by eminent domain any such real property
41 whether wholly or partly constructed or interest or interests therein and any land, rights,

1 easements and other property the authority determines necessary or convenient. Title to
2 any property taken by eminent domain must be in the name of the authority.

3 **4. Entry upon lands.** The authority and its authorized agents and employees may
4 enter upon any lands, waters and premises in the State for the purpose of making surveys,
5 soundings, drillings and examinations as the authority determines necessary or convenient
6 for the purpose of this chapter and the entry may not be deemed a trespass.

7 **5. Authority for transfers of interest in land to authority.** Notwithstanding any
8 provision of law to the contrary, all counties, municipalities and other political subdivisions
9 and all public agencies and commissions of the State and all public service corporations
10 and districts may lease, lend, grant or convey to the authority, upon the authority's request,
11 on such terms and conditions as the proper authorities of the counties, municipalities,
12 political subdivisions, agencies, commissions, public service corporations and districts
13 determine reasonable and fair and without the necessity for any advertisement, order of
14 court or other action or formality other than the regular and formal action of the authorities
15 concerned, any real or personal property or rights therein that may be necessary or
16 convenient to the effectuation of the authorized purposes of the authority, including real
17 and personal property or rights therein already devoted to public use. As used in this
18 subsection, the term "public service corporation" includes every public utility as defined in
19 section 102, subsection 13 and every corporation referred to in Title 13-C.

20 **§4211. Issuance of bonds**

21 The authority may issue bonds as provided in this section.

22 **1. Revenue bonds.** In addition to bonds outstanding pursuant to any other provision
23 of this chapter, the authority may provide by resolution from time to time for the issuance
24 of revenue bonds, including notes or other evidences of indebtedness or obligations defined
25 to be bonds under this chapter, but not exceeding \$1,500,000,000 in the principal amount
26 at any one time outstanding, exclusive of refunding, for any lawful purpose of the authority.

27 **2. Bonds; negotiable; not debt of State.** The bonds of the authority do not constitute
28 a debt of the State or of any agency or political subdivision of the State and are payable
29 solely from the operating revenues of the authority. Notwithstanding any provision of law
30 to the contrary, any bonds issued pursuant to this chapter are fully negotiable. If any of the
31 members or officers of the authority whose signatures appear on the bonds or coupons
32 cease to be members or officers before the delivery of the bonds, the signature is,
33 nevertheless, valid and sufficient for all purposes as if the members or officers had
34 remained in office until that delivery.

35 Whether or not the bonds are of such form and character as to be negotiable instruments
36 under Title 11, Article 8-A, the bonds are hereby made negotiable instruments within the
37 meaning of and for all the purposes of Title 11, Article 8-A, subject only to the provisions
38 of the bonds for registration.

39 It is the intention of this chapter that any pledge made by the authority in respect to the
40 bonds or notes is valid and binding from the time when the pledge is made, that the funds
41 or property so pledged and thereafter received by the authority is immediately subject to
42 the lien of that pledge without any physical delivery of those funds or property or further
43 act and that the lien of such a pledge is valid and binding as against all parties having claims
44 of any kind in tort, contract or otherwise against the authority irrespective of whether those

1 parties have notice of that lien. The resolution, trust indenture or any other instrument by
2 which a pledge is created need not be recorded.

3 The authority may, in the resolution authorizing prospective issues, provide as to those
4 bonds:

5 A. The manner of executing the bonds and coupons;

6 B. The form and denomination of the bonds;

7 C. Maturity dates;

8 D. The interest rate or rates on the bonds, which may be fixed or variable or a
9 combination of both;

10 E. For the redemption prior to maturity and the premium payable for the bonds;

11 F. The place or places for the payment of interest and principal;

12 G. For registration if the authority determines it to be desirable;

13 H. For the pledge of all or any of the operating revenues of the authority for securing
14 payment;

15 I. For the replacement of lost, destroyed or mutilated bonds;

16 J. For the setting aside of revenue funds and sinking funds and the regulation and
17 disposition of these revenues and funds and for limitations on reserves, if any,
18 established for capital outlay from operating revenues;

19 K. For limitations on the issuance of additional bonds;

20 L. For the procedure, if any, by which the contract with the bondholders may be
21 abrogated or amended;

22 M. For the manner of sale, which may be public or private, and purchase of the bonds;

23 N. For covenants against pledging any or certain of the operating revenues of the
24 authority;

25 O. For covenants fixing and establishing the charges and fees levied by the authority
26 on all electric ratepayers in the State so as to provide at all times funds that will be
27 sufficient:

28 (1) To pay all costs of operation and maintenance and necessary repairs of the
29 authority's renewable generation projects and energy storage facilities;

30 (2) To meet and pay the principal and interest of all such bonds as they severally
31 become due and payable;

32 (3) For the creation of reserves for the principal and interest of all such bonds and
33 for the meeting of contingencies and the operation and maintenance costs of the
34 authority as the authority determines; and

35 (4) To pay other lawful charges or costs for which the authority is responsible;

36 P. For other covenants as to charges and fees as the authority determines;

37 Q. For covenants as to the rights, liability, powers and duties arising upon the breach
38 by the authority of any covenant, condition or obligation;

1 R. For covenants as to the bonds to be issued and as to the issuance of the bonds in
2 escrow and otherwise and as to the use and disposition of the proceeds of the bonds;

3 S. For covenants as to the use of the authority's property and the maintenance and
4 replacement of the property and the insurance to be carried on the property and the use
5 and disposition of insurance money;

6 T. For limitations upon the exercise of the powers conferred upon the authority by this
7 chapter;

8 U. For the issuance of these bonds in series or in serial form or for a stated term of
9 years with or without mandatory retirements from a sinking fund or otherwise;

10 V. For the issuance, in addition to the issuance of notes and other evidences of
11 indebtedness or obligations authorized under this chapter, of notes in anticipation of
12 authorized bonds and for the exercise with respect to the bond anticipation notes of any
13 or all of its powers delineated in this chapter for the issuance of bonds; and

14 W. For the performance by the authority of any acts and things necessary or convenient
15 or desirable in order to secure its bonds or in the absolute discretion of the authority as
16 will tend to make the bonds more marketable notwithstanding that those acts or things
17 may not be enumerated in this chapter.

18 **§4212. Application of proceeds of bonds or notes in anticipation thereof**

19 Bonds must be applied as provided in this section.

20 **1. Application.** All money received from any bonds or bond anticipation notes issued
21 pursuant to this chapter must be applied solely:

22 A. To the payment of the cost of acquiring ownership of renewable generation projects,
23 energy storage systems or interconnection transmission facilities;

24 B. To the payment of the costs of issuance of the bonds;

25 C. To the creation of reasonable reserves for the payment of the principal of and
26 interest on those bonds, and to meet the cost of extraordinary repairs to or maintenance
27 of the property of the authority;

28 D. To repay the Efficiency Maine Trust, established in section 10103 for money
29 provided as start-up funds;

30 E. To the operating costs of the authority, including an allowance for working capital;
31 and

32 F. To the payment of any temporary notes of the authority the proceeds of which were
33 used for any of the purposes set out in this subsection.

34 **2. Lien created.** There is created and granted a lien upon the proceeds of the bonds
35 until so applied in favor of holders of the bonds or the trustee provided for under this chapter
36 in respect of the bonds.

37 **§4213. Bonds; how secured**

38 **1. Trust indentures.** At the discretion of the authority, bonds may be secured by a
39 trust indenture by and between the authority and a corporate trustee, which may be any
40 trust company or bank having the powers of a trust company within or outside of the State,
41 or by a loan or other security agreement with a lender or with such a trustee containing

1 provisions that may be included in a bond resolution or trust indenture under this chapter.
2 The trust indenture or loan or other security agreement may pledge or assign charges and
3 fees to be received by the authority but may not convey or mortgage the property of the
4 authority.

5 Either the resolution providing for the issuance of the bonds or the trust indenture or loan
6 or other security agreement may contain provisions for protecting and enforcing the rights
7 and remedies of the bondholders or other lenders or of the trustee, if any, as may be
8 reasonable and proper and not in violation of law, including:

9 A. Covenants setting forth the duties of the authority in relation to the acquisition of
10 property;

11 B. The construction, maintenance, operation, repair and insurance of the authority's
12 property;

13 C. The custody, safeguarding and application of all money; and

14 D. Any other provisions that the authority determines are necessary, convenient or
15 desirable for the security of bondholders and other lenders or of the trustee, if any.

16 Any trust indenture or loan or other security agreement may restrict the individual right of
17 action of bondholders or other lenders to the extent the authority determines is necessary,
18 convenient or desirable. All expenses incurred in carrying out the trust indenture or loan
19 or other security agreement may be treated as a part of the cost of the maintenance,
20 operation and repair of the authority's property.

21 **2. Other agreements.** The authority may enter into an agreement with a bank or
22 financial institution incorporated within or outside of the State as necessary or convenient
23 for the provision of trustee, paying agent, depository or other financial services in
24 connection with bonds issued by the authority pursuant to this chapter, and it is lawful for
25 any bank or trust company to enter into any such agreements with the authority and to
26 furnish indemnity bonds or to pledge any securities required by the authority.

27 **§4214. Interest rate agreements**

28 The authority is authorized to enter from time to time into agreements with another
29 party, on terms and conditions that the authority determines are necessary or convenient,
30 in which the authority agrees to make a payment to, or to receive a payment from, the other
31 party based on a comparison at a future date between an interest rate specified on the date
32 of the agreement and a rate derived on or about that future date from an interest rate index.
33 The authority is authorized to enter into any credit enhancement or liquidity agreement on
34 terms and conditions that the authority determines are necessary or convenient for carrying
35 out this section.

36 **§4215. Exemption from taxes**

37 The accomplishment by the authority of the authorized purpose stated in this chapter
38 being for the benefit of the people of the State and for the improvement of their commerce
39 and prosperity in which accomplishment the authority will be performing essential
40 governmental functions, the authority may not be required to pay any taxes or assessment
41 on any property acquired or used by it for the purposes provided in this chapter, nor may
42 the authority be required to pay any tax upon its income except as may be required by the
43 laws of the United States, and the bonds or other securities and obligations issued from the

1 authority, their transfer and the income therefrom, including any profits made on the sale
2 thereof, must at all times be free from taxation within the State.

3 **§4216. Refunding bonds**

4 The authority is authorized to provide by resolution for the issuance of revenue
5 refunding bonds of the authority, including notes or other obligations defined as bonds
6 under this chapter for the purpose of refunding any bonds then outstanding, including the
7 payment of any redemption premium thereon and any interest accrued or to accrue to the
8 date of redemption of these bonds; and, if determined advisable by the authority, for any
9 additional purpose for which bonds authorized by this chapter may be issued. The issuance
10 of the bonds, the maturities and other details thereof, the rights of the holders thereof and
11 the rights, duties and obligations of the authority in respect of those rights, duties and
12 obligations are governed by this chapter insofar as these rights, duties and obligations may
13 be applicable.

14 **§4217. Interim certificates**

15 Prior to the issuance of any bonds, the authority may issue interim certificates in such
16 manner and with such conditions as the authority may determine to be exchanged for the
17 bonds when issued.

18 **§4218. Sinking fund for payment of bonds**

19 **1. Establishment of sinking fund.** The authority's revenues, except such part as may
20 be required for the construction, reconstruction, operation and maintenance of the
21 authority's property, for the payment of the principal and the interest on the bonds of the
22 authority or otherwise in accordance with the provisions thereof, and after deducting the
23 operating expenses of the authority, must be set aside at such regular intervals as may be
24 provided in the resolution or trust indenture or loan or other security agreement, in a sinking
25 fund that is pledged to, and charged with, the payment of:

- 26 A. The interest upon those bonds as that interest falls due;
27 B. The principal of the bonds as that principal falls due;
28 C. The necessary fiscal agency charges for paying principal and interest; and
29 D. Any premiums upon bonds retired by call or purchase as provided in subsection 2.

30 **2. Use and disposition of sinking fund.** The use and disposition of the sinking fund
31 are subject to such rules as may be provided in the resolution authorizing the issuance of
32 bonds or in the related trust indenture or loan or other security agreement, but, except as
33 may otherwise be provided in that resolution or trust indenture or loan or other security
34 agreement, the sinking fund must be a fund for the benefit of all bonds issued under this
35 chapter without distinction or priority of one over another. Subject to the provisions of the
36 resolution authorizing the issuance of bonds or of the trust indenture or loan or other
37 security agreement, any money in the sinking fund in excess of an amount equal to one
38 year's interest on all bonds then outstanding may be applied to the purchase or redemption
39 of bonds. All bonds so purchased or redeemed must immediately be canceled and may not
40 again be issued.

41 **§4219. Trust funds**

1 Subject to any agreement with the bondholders, all revenue received by the authority,
2 after deducting expenditures required for the construction, reconstruction, operation and
3 maintenance of the property of the authority, for the payment of the principal and the
4 interest on the bonds of the authority or otherwise in accordance with the provisions
5 thereof, and after deducting the operating expenses of the authority, must be held and
6 invested by the authority to establish trust funds for reserve and sinking funds for the
7 retirement of bonded indebtedness.

8 **§4220. Provisions in case of default on bonds**

9 Except as may otherwise be provided in a bond resolution or trust indenture or loan or
10 security agreement, in the event that the authority defaults in the payment of principal or
11 interest on any of its bonds after the principal or interest falls due and that default continues
12 for a period of 60 days or defaults in any other agreement with the bondholders or with a
13 trustee under a trust indenture or loan or security agreement, the holders of 25% in
14 aggregate principal amounts of the bonds then outstanding by instrument filed in the office
15 of the Secretary of State duly acknowledged may appoint a trustee to represent the
16 bondholders for the purpose provided in this section. The trustee may upon the written
17 request of the holders of 25% in principal amount of the bonds then outstanding:

18 **1. Enforcement of rights of bondholders.** By mandamus or other suit, action or
19 proceeding at law or in equity enforce the rights of the bondholders;

20 **2. Suit upon bonds.** Bring suit upon the bonds;

21 **3. Enjoinment of acts or other things.** Enjoin any acts or other things that may be
22 unlawful or in violation of the rights of the bondholders; or

23 **4. Require accounting.** By action or suit in equity require the authority to account as
24 if it were trustee of an expressed trust for the bondholders. The trustee is entitled, as a
25 right, to the appointment of a receiver who may, to the extent that the authority could itself
26 do, enter and take possession of the facilities of the authority or any part thereof, the
27 revenue or receipts from which are or may be applicable to the payment of the bonds in
28 default, and operate and maintain the facilities and collect and receive all revenue thereafter
29 arising from the facilities in the same manner as the authority might do and shall deposit
30 all such money in a separate account and apply the money in such manner as the court
31 directs. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses
32 of the trustee and the receiver, if any, and all costs and disbursements allowed by the court
33 must be a first charge on any authority revenues, the revenues and receipts from which are
34 or may be applicable to the payment of the bonds so in default. The trustees, in addition,
35 have and possess all the powers necessary and appropriate for the exercise of any functions
36 specifically set forth in this section or incident to the general representation of the
37 bondholders in the enforcement and protection of their rights. Except as may otherwise be
38 provided in a bond resolution or trust indenture or loan or other security agreement, in
39 addition to other rights and limitations, any bondholder has the right by mandamus or other
40 suit, action or proceeding in law or in equity to enforce the bondholder's rights against the
41 authority, including the right to require the authority to carry out any agreement or covenant
42 and to perform its duties under this chapter.

43 **§4221. Authority operations**

1 **1. Capital and operating plans.** The executive director shall prepare annual capital
2 and operating plans and budgets for approval each year by the board. The annual capital
3 and operating plans must be for the period beginning July 1st and ending June 30th of the
4 following year. The plans and budgets must be presented to the board no later than
5 December 31st of each year according to this subsection.

6 A. The capital plan and budget each year must provide for the development and
7 ownership by the authority of renewable generation projects and energy storage
8 systems in the following cumulative amounts:

9 (1) By the end of 2024, 35 gigawatt hours of energy and 10 megawatts of energy
10 storage system capacity;

11 (2) By the end of 2025, 90 gigawatt hours of energy and 16 megawatts of energy
12 storage system capacity;

13 (3) By the end of 2026, 165 gigawatt hours of energy and 23 megawatts of energy
14 storage system capacity;

15 (4) By the end of 2027, 260 gigawatt hours of energy and 31 megawatts of energy
16 storage system capacity;

17 (5) By the end of 2028, 380 gigawatt hours of energy and 40 megawatts of energy
18 storage system capacity;

19 (6) By the end of 2029, 530 gigawatt hours of energy and 50 megawatts of energy
20 storage system capacity;

21 (7) By the end of 2030, 790 gigawatt hours of energy and 61 megawatts of energy
22 storage system capacity;

23 (8) By the end of 2031, 1,110 gigawatt hours of energy and 73 megawatts of
24 energy storage system capacity;

25 (9) By the end of 2032, 1,510 gigawatt hours of energy and 86 megawatts of
26 energy storage system capacity; and

27 (10) By the end of 2033, 2,000 gigawatt hours of energy and 100 megawatts of
28 energy storage system capacity.

29 B. The operating plan and budget each year must detail the costs of operating the
30 authority, including the following:

31 (1) Debt service obligations on the outstanding bonded indebtedness of the
32 authority;

33 (2) Issuance of new debt consistent with the capital plan and budget;

34 (3) Staffing requirements for the authority;

35 (4) Personnel costs, inclusive of benefits, overhead and administrative support
36 costs;

37 (5) Third-party contract costs for the operations, maintenance and repairs of the
38 authority's renewable generation projects and energy storage systems;

39 (6) Other costs to support the operations of the authority; and

1 (7) Revenues to the authority from the sale of output and environmental attributes
2 pursuant to section 4208, subsection 4 from renewable generation projects and
3 energy storage systems, as set forth in subsections 3, 4 and 5.

4 **2. Authority revenues.** The authority must receive start-up revenues in the form of a
5 \$1,000,000 loan from the Efficiency Maine Trust, established in section 10103, whose
6 terms must be a 3-year maturity at an interest rate of 3% per annum, and ongoing revenues
7 from the sale of output from the authority's renewable energy projects and energy storage
8 systems as described in subsection 3 and from charges levied on all electric ratepayers in
9 the State, as described in subsection 4. The start-up revenues must be available to the
10 authority within 30 days of the confirmation of the board.

11 **3. Revenues from sale of output.** The authority shall sell 100% of the output and
12 associated environmental attributes into the relevant wholesale markets in the ISO-NE
13 region. All sales must be at the spot market price or its equivalent for those outputs for
14 which a spot market does not exist. The authority shall contract with the Efficiency Maine
15 Trust, established in section 10103, to manage all such sales and to settle financially all
16 outputs and environmental attributes sold to the accounts of the authority. In no instance
17 may the beneficial title to the outputs or environmental attributes associated with any
18 renewable generation project or energy storage system owned by the authority be held by
19 any entity other than the authority prior to the point of sale.

20 **4. Surcharge.** The authority receives revenues from the Maine Generation Authority
21 surcharge levied pursuant to section 3210-H on all electric ratepayers in the State pursuant
22 to this subsection.

23 A. The annual revenue requirement for the authority must be equal to the sum of all
24 the costs included in the authority's annual operating plan and budget as set forth in
25 subsection 1.

26 B. Upon approval by the board of the authority's annual operating plan and budget as
27 set forth in subsection 1, the board shall set the authority's annual revenue requirement
28 for the 12-month period beginning on the next July 1st.

29 C. The executive director shall compute the surcharge levied on all electric ratepayers,
30 expressed as a dollars-per-kilowatt-hours amount to be collected from all electric
31 ratepayers in the State by first subtracting the total revenues from the sale of output and
32 environmental attributes from subsection 3 from the annual revenue requirement, then
33 dividing this amount by the projected total kilowatt-hours of electric load summed over
34 all electric ratepayers in the State for the 12-month period beginning on the next July
35 1st, and then multiplying this value by a factor equal to one plus the bad debt and
36 uncollectible percentage across all transmission and distribution utilities in the State
37 for the prior 12-month period.

38 D. The executive director shall submit to the commission the amount of the surcharge
39 to be levied on electric ratepayers and supporting documentation by February 15th of
40 each year.

41 E. If the surcharge to be levied on electric ratepayers is positive, the commission shall
42 direct all transmission and distribution utilities in the State to include in their rates for
43 all of their customers the Maine Generation Authority surcharge for the period July 1st
44 to June 30th of the following year and to remit all money collected by the transmission

1 and distribution utilities to the authority within 30 days of the commission's receipt of
2 that money.

3 F. If the surcharge to be levied on electric ratepayers is negative, the commission shall
4 set the surcharge equal to zero, and the authority shall use all surplus revenues in a
5 manner consistent with sections 4218 and 4219.

6 **§4222. Use of authority revenues**

7 **1. Approved uses.** The use of all authority revenues is limited to the following
8 purposes:

9 A. Maintenance, repair and operation of the renewable generation projects and energy
10 storage systems owned by the authority and the establishment of reserves required
11 therefor including, without limitation, reserves required or permitted by the resolutions
12 authorizing the issuance of bonds or by the trust indentures relating to those bonds, and
13 including any costs specially incurred by the authority;

14 B. Payment of the cost of any debt incurred by the authority, including, but not limited
15 to, payment of interest and principal on any bonds issued by the authority and payment
16 into any sinking funds;

17 C. Operations of the authority as set forth in the authority's operating plan and budget
18 approved by the board; and

19 D. Payments to reserve or sinking funds established by the authority to meet
20 anticipated future costs of the authority's capital plan and budget or to accomplish other
21 designated purposes for which the authority is authorized to issue bonds, as long as the
22 funding for those projects financed from reserves, together with the estimated future
23 costs thereof, have been approved by the authority.

24 **§4223. Freedom of access; confidentiality**

25 The proceedings of the board and records of the authority are subject to the freedom of
26 access laws under Title 1, chapter 13, except as specifically provided in this section.

27 **1. Confidential records.** The following records are designated as confidential for
28 purposes of Title 1, section 402, subsection 3, paragraph A:

29 A. A record obtained or developed by the authority that:

30 (1) A person, including the authority, to whom the record belongs or pertains has
31 requested be designated confidential and that the board has determined contains
32 information that gives the owner or a user an opportunity to obtain a business or
33 competitive advantage over another person who does not have access to the
34 information, except through the authority's records, or access to which by others
35 would result in a business or competitive disadvantage, loss of business or other
36 significant detriment, other than loss or denial of financial assistance from the
37 authority, to any person to whom the record belongs or pertains; or

38 (2) Contains information about the energy usage profile of an identifiable
39 customer of a transmission and distribution utility in the State;

40 B. A financial statement or tax return; or

1 C. The social security number, address, telephone number or e-mail address of a
2 customer that has participated or may participate in a program of or provide services
3 to the authority.

4 The authority shall provide to a legislative committee, on written request signed by the
5 chairs of that committee, any information or records, including information designated
6 confidential under this subsection, specified in the written request. The information or
7 records may be used only for the lawful purposes of the committee and in any action arising
8 out of any investigation conducted by it.

9 **2. Exceptions.** Notwithstanding subsection 1, the following are not confidential and
10 are public records:

11 A. Any otherwise confidential information the confidentiality of which the board
12 determines to have been satisfactorily and effectively waived;

13 B. Any otherwise confidential information that has already lawfully been made
14 available to the public; and

15 C. Impersonal, statistical or general information.

16 **3. Disclosure prohibited; further exceptions.** The director or a board member,
17 officer, employee, agent, other representative of the authority or other person may not
18 knowingly divulge or disclose records designated confidential by this section, except that
19 the board, in its discretion and in conformity with legislative freedom of access criteria in
20 Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information
21 of the following types or under the following circumstances:

22 A. If necessary in connection with processing any application for, obtaining or
23 maintaining financial assistance for any person;

24 B. To a financing institution or credit reporting service;

25 C. If necessary to comply with any federal or state law or rule or with any agreement
26 pertaining to financial assistance;

27 D. If necessary to ensure collection of any obligation in which the authority has or
28 may have an interest;

29 E. In any litigation or proceeding in which the authority has appeared, introduction for
30 the record of any information obtained from records designated confidential by this
31 section; or

32 F. Pursuant to a subpoena, request for production of documents, warrant or other order
33 by competent authority, as long as any such order appears to have first been served on
34 the person to whom the confidential information sought pertains or belongs and as long
35 as any such order appears on its face or otherwise to have been issued or made upon
36 lawful authority.

37 **§4224. Termination of authority**

38 The authority may not be dissolved until such time as:

39 **1. Legislature provides for termination.** The Legislature provides for its
40 termination; and

1 2. Issue revenue bonds for up to 100% of the costs of a renewable generation project
2 or electricity storage system, including capitalized interest during construction of the
3 project and system and working capital related to the operations and administration of the
4 authority; and

5 3. Enter into contracts with 3rd parties for the construction of renewable generation
6 projects or electricity storage systems, the operations and maintenance of renewable
7 generation projects or electricity storage systems owned by the authority and the provision
8 of support services to the authority, including energy planning, energy market sales, energy
9 contract review, accounting, legal and other types of administrative services.

10 To ensure that the activities of the authority do not expose ratepayers to additional
11 financial risks, the authority is explicitly prohibited from engaging in any of the following
12 activities:

13 1. Energy trading, except to the extent necessary to sell the electricity generated by
14 those renewable generation projects owned by the authority;

15 2. Entering into any short-term or long-term energy contracts for speculation or
16 hedging purposes;

17 3. Acting in any manner as a retail electricity supplier for any ratepayers located in any
18 utility service territory in the State;

19 4. Selling or otherwise disposing of any environmental credits or benefits in any form,
20 referred to as environmental attributes, derived from electricity generated by a renewable
21 generation project owned by the authority, except through the retirement of such
22 environmental attributes for the authority's account; and

23 5. Hiring persons to provide operations or maintenance services for any renewable
24 generation project owned by the authority.

25 The bill requires the authority to develop capital plans and budgets to meet specific
26 renewable generation and energy storage targets each year from 2024 to 2033, and allows
27 the authority to collect revenues from a Maine Generation Authority surcharge imposed on
28 all electric ratepayers in Maine.

29 It requires the authority to sell 100% of the output generated by each renewable
30 generation project or electricity storage system it owns into the relevant wholesale market
31 administered by New England independent system operator, ISO-NE, at the spot market
32 price or its equivalent for those components of electricity for which a spot market does not
33 exist. It directs the authority to contract with the Efficiency Maine Trust to enable all such
34 sales and to settle financially all outputs and environmental attributes sold to the accounts
35 of the authority. It stipulates that the beneficial title to the electricity generated by or any
36 environmental attribute associated with any renewable generation project or electricity
37 storage system owned by the authority may not be held by any entity other than the
38 authority prior to the point of its sale.

39 It allows the authority to borrow \$1,000,000 from the Efficiency Maine Trust as a 3-
40 year maturity loan at 3% to fund start-up costs of the authority and requires the trust to
41 provide this financial assistance to the authority. It provides that the authority is subject to
42 the same freedom of access and confidentiality provisions that apply to the Efficiency
43 Maine Trust.