



# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1761

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H.P. 1263

House of Representatives, February 6, 2014

**An Act To Ensure That Large Public Utility Reorganizations  
Advance the Economic Development and Information Access Goals  
of the State**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND

Clerk

Presented by Representative HOBBS of Saco.

Cosponsored by Senator JACKSON of Aroostook and

Representatives: BERRY of Bowdoinham, CAREY of Lewiston, Speaker EVES of North Berwick, GILBERT of Jay, STUCKEY of Portland, TIPPING-SPITZ of Orono, Senator:

President ALFOND of Cumberland.

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

2 **Sec. 1. 35-A MRSA §708, sub-§2, ¶A,** as enacted by PL 1987, c. 141, Pt. A, §6,  
3 is repealed.

4 **Sec. 2. 35-A MRSA §708, sub-§2, ¶¶A-1 and A-2** are enacted to read:

5 A-1. Unless exempted by rule or order of the commission, a reorganization in which  
6 any of the public utilities that are parties to the proposed transaction has gross annual  
7 state revenues exceeding \$50,000,000 may not take place without the approval of the  
8 commission.

9 (1) Before approving a reorganization in which any of the public utilities that are  
10 parties to the proposed transaction has gross annual state revenues exceeding  
11 \$50,000,000, the commission must find that the proposal will:

12 (a) Advance the economic development and information access goals of the  
13 State as set forth in section 7101, subsections 2 and 4 to the extent applicable  
14 to the type of public utilities involved;

15 (b) Result in short-term and long-term economic benefits to ratepayers;

16 (c) Be consistent with the interests of the public utility's investors; and

17 (d) Be consistent with the interests of the public utility's employees.

18 (2) In granting its approval under subparagraph (1), the commission shall impose  
19 such terms, conditions or requirements as in its judgment are necessary to ensure  
20 that the reorganization provides an affirmative benefit to the public. These  
21 conditions must include provisions that ensure:

22 (a) That the commission has reasonable access to books, records, documents  
23 and other information relating to the public utility or any of its affiliates,  
24 except that the commission may not have access to trade secrets unless  
25 access is essential to the protection of the interests of ratepayers or investors.  
26 The commission shall afford trade secrets and other information such  
27 protection from public disclosure as is provided in the Maine Rules of Civil  
28 Procedure;

29 (b) That the commission has all reasonable powers to detect, identify, review  
30 and approve or disapprove all transactions between affiliated interests;

31 (c) That the public utility's ability to attract capital on reasonable terms,  
32 including the maintenance of a reasonable capital structure, is not impaired;

33 (d) That the ability of the public utility to provide safe, reasonable and  
34 adequate service is not impaired;

35 (e) That the public utility continues to be subject to applicable laws,  
36 principles and rules governing the regulation of public utilities;

37 (f) That the public utility's credit is not impaired or adversely affected;

- 1                   (g) That reasonable limitations are imposed upon the total level of  
2                   investment in nonutility business, except that the commission may not  
3                   approve or disapprove of the nature of the nonutility business;
- 4                   (h) That the commission has reasonable remedial power, including, but not  
5                   limited to, the power, after notice to the public utility and all affiliated  
6                   entities of the issues to be determined and the opportunity for an adjudicatory  
7                   proceeding, to order divestiture of or by the public utility in the event that  
8                   divestiture is necessary to protect the interests of the public utility, ratepayers  
9                   or investors. A divestiture order must provide a reasonable period within  
10                  which the divestiture must be completed;
- 11                  (i) That ratepayers, the public utility's investors and the public utility's  
12                  employees are not adversely affected by the reorganization;
- 13                  (j) That the reorganization does not result in the subsidization by the public  
14                  utility of activities that are not connected to the provision of public utility  
15                  services to ratepayers;
- 16                  (k) That the reorganization is not likely to have a significant adverse effect  
17                  on competition in those markets over which the commission has jurisdiction;
- 18                  (l) That the reorganization is not likely to result in any adverse rate impact  
19                  on the public utility's retail customers; and
- 20                  (m) That the reorganization does not adversely affect the location and the  
21                  accessibility of the public utility's management and operations and does not  
22                  adversely affect the proportion and number of the public utility's employees  
23                  who reside in the State.

24                  A-2. Unless exempted by rule or order of the commission, a reorganization of a  
25                  public utility other than a public utility subject to paragraph A-1 may not take place  
26                  without the approval of the commission.

27                  (1) The reorganization of a public utility other than a public utility subject to  
28                  paragraph A-1 may not be approved by the commission unless it is established by  
29                  the applicant for approval that the reorganization is consistent with the interests  
30                  of the public utility's ratepayers and investors. The commission shall rule upon a  
31                  request for approval of a reorganization under this subparagraph within 60 days  
32                  of the filing of the request for approval. If it determines that the necessary  
33                  investigation cannot be concluded within 60 days, the commission may extend  
34                  the period for a further period of no more than 120 days.

35                  (2) In granting its approval under subparagraph (1), the commission shall impose  
36                  such terms, conditions or requirements as in its judgment are necessary to protect  
37                  the interests of ratepayers. These conditions must include provisions that ensure:

38                  (a) That the commission has reasonable access to books, records, documents  
39                  and other information relating to the public utility or any of its affiliates,  
40                  except that the commission may not have access to trade secrets unless  
41                  access is essential to the protection of the interests of ratepayers or investors.  
42                  The commission shall afford trade secrets and other information such

- 1                   protection from public disclosure as is provided in the Maine Rules of Civil  
2                   Procedure;
- 3                   (b) That the commission has all reasonable powers to detect, identify, review  
4                   and approve or disapprove all transactions between affiliated interests;
- 5                   (c) That the public utility's ability to attract capital on reasonable terms,  
6                   including the maintenance of a reasonable capital structure, is not impaired;
- 7                   (d) That the ability of the public utility to provide safe, reasonable and  
8                   adequate service is not impaired;
- 9                   (e) That the public utility continues to be subject to applicable laws,  
10                  principles and rules governing the regulation of public utilities;
- 11                  (f) That the public utility's credit is not impaired or adversely affected;
- 12                  (g) That reasonable limitations are imposed upon the total level of  
13                  investment in nonutility business, except that the commission may not  
14                  approve or disapprove of the nature of the nonutility business;
- 15                  (h) That the commission has reasonable remedial power, including, but not  
16                  limited to, the power, after notice to the public utility and all affiliated  
17                  entities of the issues to be determined and the opportunity for an adjudicatory  
18                  proceeding, to order divestiture of or by the public utility in the event that  
19                  divestiture is necessary to protect the interests of the public utility, ratepayers  
20                  or investors. A divestiture order must provide a reasonable period within  
21                  which the divestiture must be completed; and
- 22                  (i) That neither ratepayers nor investors are adversely affected by the  
23                  reorganization.

24                  **Sec. 3. 35-A MRSA §708, sub-§4**, as enacted by PL 1987, c. 141, Pt. A, §6, is  
25                  amended to read:

26                  **4. Filing fee.** Within 30 days after the application for approval of a reorganization is  
27                  filed pursuant to subsection 2, the commission may order the applicant to pay a filing fee  
28                  not to exceed \$50,000; if the commission determines that the application may involve  
29                  issues ~~which~~ that will necessitate significant additional costs to the commission except  
30                  that, in the case of a public utility subject to subsection 2, paragraph A-1, the commission  
31                  may order the applicant to pay a filing fee not to exceed \$100,000. The applicant may  
32                  request the commission to waive all or a portion of the filing fee. The commission shall  
33                  rule on the request for waiver within 30 days. Notwithstanding any other provision of  
34                  law, filing fees paid as required in this subsection ~~shall~~ must be segregated, apportioned  
35                  and expended by the commission for the purposes of processing the application. Any  
36                  portion of the filing fee that is received from an applicant and is not expended by the  
37                  commission to process the application ~~shall~~ must be returned to the applicant.

38                  **Sec. 4. 35-A MRSA §1101, sub-§1-A** is enacted to read:

39                  **1-A. Standard of approval for sales, mergers and consolidations of large public**  
40                  **utilities.** Before authorizing a sale, merger, consolidation or other disposition of property  
41                  subject to subsection 1 in which any of the public utilities that are parties to the proposed

1 transaction has gross annual state revenues exceeding \$50,000,000, the commission must  
2 find that the proposal:

3 A. Advances the economic development and information access goals of the State as  
4 set forth in section 7101, subsections 2 and 4 to the extent applicable to the type of  
5 public utilities involved;

6 B. Results in short-term and long-term economic benefits to ratepayers;

7 C. Is consistent with the interests of the public utility's investors; and

8 D. Is consistent with the interests of the public utility's employees.

9 The commission shall impose such terms, conditions or requirements as in its judgment  
10 are necessary to ensure that the transaction provides an affirmative benefit to the public.  
11 These conditions must include provisions that ensure that the transaction meets each of  
12 the factors set forth in section 708, subsection 2, paragraph A-1, subparagraph (2).

13 **Sec. 5. 35-A MRSA §1103, sub-§1-A** is enacted to read:

14 **1-A. Standard of approval for sales of large public utilities.** Before authorizing a  
15 sale or other disposition of stock subject to subsection 1 in which any of the public  
16 utilities that are parties to the proposed transaction has gross annual state revenues  
17 exceeding \$50,000,000, the commission must find that the proposal:

18 A. Advances the economic development and information access goals of the State as  
19 set forth in section 7101, subsections 2 and 4 to the extent applicable to the type of  
20 public utilities involved;

21 B. Results in short-term and long-term economic benefits to ratepayers;

22 C. Is consistent with the interests of the public utility's investors; and

23 D. Is consistent with the interests of the public utility's employees.

24 The commission shall impose such terms, conditions or requirements as in its judgment  
25 are necessary to ensure that the transaction provides an affirmative benefit to the public.  
26 These conditions must include provisions that ensure that the transaction meets each of  
27 the factors set forth in section 708, subsection 2, paragraph A-1, subparagraph (2).

28 **Sec. 6. Application.** Notwithstanding the Maine Revised Statutes, Title 1, section  
29 302, this Act applies to any decision made by the Public Utilities Commission on or after  
30 the effective date of this Act, including decisions made in proceedings pending at the  
31 time this Act takes effect.

## 32 SUMMARY

33 This bill requires the Public Utilities Commission to approve a sale, merger,  
34 consolidation or reorganization involving a public utility with gross annual state revenues  
35 greater than \$50,000,000 only when it is satisfied that the proposal will advance the  
36 economic development and information access goals of the State, result in economic  
37 benefits to ratepayers and be consistent with the interests of investors and public utility  
38 employees. The bill also allows the commission to charge a filing fee of up to \$100,000

1 to an applicant for reorganization when the applicant is a public utility that has gross  
2 annual state revenues greater than \$50,000,000. In the case of a public utility with gross  
3 annual state revenues totaling \$50,000,000 or less, the standard under this bill is the same  
4 standard as is currently applicable.