

STATE OF MAINE

—
 IN THE YEAR OF OUR LORD
 TWO THOUSAND AND SEVENTEEN

—
 S.P. 528 - L.D. 1503

**An Act To Amend Criteria for Issuing a Certificate of Approval for Certain
 Projects under the Finance Authority of Maine Act**

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

Whereas, it is likely that applicants will seek financing for projects using the Revenue Obligation Securities Program before this Act takes effect if it is not enacted on an emergency basis; and

Whereas, if this Act is not enacted on an emergency basis, applicants could obtain financing without sufficient credit safeguards to protect against the calling upon the moral obligation of the State, leading to undue losses to the State; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 10 MRSA §1043, sub-§2, ¶O, as amended by PL 2015, c. 504, §3, is further amended to read:

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

(1) The energy distribution system project or the energy generating system project has received all authorizations or certifications from the Public Utilities Commission necessary for construction and operation of the project. The authority may issue a certificate of approval for a project that has received conditional approvals or certifications from the commission, except that the authority's certificate becomes legally effective only upon fulfillment of the

conditional provisions of the commission's certificates or approvals. If the commission has approved rates to be charged by the project or has issued a certificate of public convenience and necessity for the project, the authority shall take into consideration any findings and conclusions of law of the commission, including any findings and conclusions pertaining to the need for the project and the financial viability of the project.

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

(3) The authority has determined that the applicant is creditworthy and that there is a ~~reasonable~~ strong likelihood that the revenue obligation securities will be repaid through the revenues of the project and any other sources of revenues and collateral pledged to the repayment of those securities. In order to make these determinations, the authority shall consider such factors as it considers necessary and appropriate in light of the special purpose or other nature of the business entity owning the project and the specific purposes of the project to measure and evaluate the project and the sufficiency of the pledged revenues to repay the obligations, including, but not limited to:

(a) Whether the individuals or entities obligated to repay the obligations have demonstrated sufficient revenues from the project or from other sources to repay the obligations and a reasonable probability that those revenues will continue to be available for the term of the revenue obligation securities;

(b) Whether the applicant demonstrates a reasonable probability that the project will continue to operate and provide the public benefits projected to be created for the term of the revenue obligation securities;

(c) Whether the applicant's creditworthiness is demonstrated by factors such as its historical financial performance, management ability, plan for marketing its product or service and ability to access conventional financing;

(d) Whether the applicant meets or exceeds industry average financial performance ratios commonly accepted in determining creditworthiness in that industry;

(e) Whether the applicant demonstrates that the need for authority assistance is due to the reduced cost and increased flexibility of the financing for the project that result from authority assistance and not from an inability to obtain necessary financing without the capital reserve fund security provided by the authority;

(f) Whether collateral securing the repayment obligation is reasonably sufficient under the circumstances;

(g) Whether the proposed project enhances the opportunities for economic development;

(h) The effect that the proposed project financing has on the authority's financial resources;

(i) The financial performance of similar projects;

(j) The need for the project, as determined by the Public Utilities Commission and as indicated by any comments provided by the Director of the Governor's Energy Office, other public officials and members of the public;

(k) The nature and extent of customer commitment to use the project or the fuel or energy the project distributes, transmits or generates;

(l) The cost advantages to end users of the fuel or energy to be distributed, transmitted or generated by the project, to the extent those advantages may affect market penetration by the project; and

(m) The nature and extent of the applicant's equity contribution to payment of the costs of the project; such a contribution may not be less than 25% of the expected cost of the project.

This paragraph is repealed January 1, 2020.

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