

## Office of Policy and Legal Analysis

Date: November 3, 2021  
To: Joint Standing Committee on Energy Utilities and Technology  
From: Deirdre Schneider, Legislative Analyst  
Re: LD 1634, An Act To Create the Maine Generation Authority

---

### Summary

This bill establishes the Maine Generation Authority as an instrumentality of the State that is authorized to issue revenue bonds for the purpose of facilitating the financing and ownership of energy generation projects and energy storage systems located in the State. It is modeled after the Maine Turnpike Authority.

It requires energy generation projects to be located in the State or in federal waters and to generate electricity using renewable fuels or sources of energy, including, but not limited to solar, wind, water, wave, tidal and biomass that produce zero greenhouse gas emission.

### Board

The Authority is proposed to be managed by a board consisting of eight members. Two members are non-voting, ex-officio members and include the director of the Governor's Energy Office and the director of the Authority. The other six members are to be appointed by the Governor, reviewed by committee and confirmed by the Senate and must include two members, one from each of the State's two congressional districts and four members who are residents of the State. The term of a member is 6 years.

It requires an annual audit and the retention of a separate compliance auditor to ensure proper financial operations and management controls.

It requires the board to annually appoint an executive director, who is not a board member. It requires an executive director's first appointment to be subject to committee review and confirmation by the Senate.

It also requires the board, through a competitive search process, to hire a full-time director of the Authority.

### Powers

This bill authorizes the authority to undertake the following activities in fulfillment of its purpose:

- Acquire fee simple ownership or easements in or enter long-term leases of real estate within the State or in federal waters in the Gulf of Maine (it provided the Authority with the power to use eminent domain to acquire real property and rights of easement);
- Issue revenue bonds for up to 100% of the costs of a renewable generation project or electricity storage system, including capitalized interest during construction of the project and system and working capital related to the operations and administration of the authority; and
- Enter into contracts with third-parties for the construction of renewable generation projects or electricity storage systems, the operations and maintenance of renewable generation projects or electricity storage systems owned by the authority and the provision of support services to the

authority, including energy planning, energy market sales, energy contract review, accounting, legal and other types of administrative services.

## **Prohibitions**

It prohibits the Authority from:

- Energy trading, except to the extent necessary to sell the electricity generated by project or stored in energy storage systems owned by the Authority;
- Entering into any short-term or long-term energy contracts for speculation or hedging purposes;
- Providing retail electricity service to any ratepayer in the State or acting in any manner as a competitive electricity provider;
- Selling or otherwise disposing of any environmental attribute in any form derived from electricity generated by a project, except to a competitive electricity provider solely for the purpose of meeting resource portfolio obligation related to load served in the State or through the retirement of such environmental attribute for the Authority's account; and
- Hiring as an employee of the Authority any person to provide operation or maintenance services for any project or system owned by the Authority.

## **Taxation**

As originally drafted, it exempts the Authority from taxes, except as may be required by the laws of the United States on its income and the bonds or other securities and obligations issued from Authority.

## **Funding**

It requires the Efficiency Maine Trust, upon request of the Authority, to provide a loan of \$1 million to the Authority for a term of three years at an interest rate of 3%/year.

This bill requires that a surcharge be levied on all electric ratepayers in the State and requires the PUC to direct all T&D utilities in the State to include in their rates the surcharge and remit all the money collected by T&D utilities within 30 days of receiving that money.

It also requires the Authority to contract with the Efficiency Maine Trust to manage the sale of the output and associated environmental attributes into the relevant wholesale markets in the ISO-NE region.

## **Annual Plans and Targets**

LD 1634 requires the executive director to prepare annual capital and operating plans and budgets to be approved by the board on an annual basis in order to provide for the development and ownership by the Authority of renewable generation projects and energy storage systems that meet the targets established in the bill. This bill proposes to achieve the development and ownership of 2000 gigawatt hours of energy and 100 megawatts of energy storage system capacity by 2033.

## **Debt Cap**

This bill specifies that the principal amount of indebtedness or obligation outstanding at any one time may not exceed \$1.5 billion.

## Confidential Records

This bill also proposes that certain information/records are to be considered confidential. If moving forward with this bill, the JUD Committee will need to review this proposal.

### List of People that Submitted Written Testimony and/or Spoke at the Hearing

**Proponents:** Representative Grohoski (Sponsor); Richard Silkman; Clifford Krolick; Dick Woodbury; Steve Weems, SEAM; Fortunat Mueller; David Bilski, MUUSAN; Susan Ely, NRCM; Steven Hudson, IECG; Samuel May; Amy Eshoo, Maine Climate Action Now; and Jonathan Fulford, Sierra Club;

**Opponents:** Ben Gilman, Maine State Chamber of Commerce; Matthew Marks, AGC of Maine; Jeremy Payne, MREA; and Debra Hart, Dirigo

**Neither for nor against:** James Cote, Versant Power; Melissa Winne, GEO; Phil Bartlett, PUC; Neal Goldberg, MMA; Barry Hobbins, OPA; and Michael Stoddard, EMT

### Information Provided in Testimony

- **Representative Grohoski** - Maine ratepayers are currently on the hook for the long-term contracts with renewable generators via the PUC competitive bid process, and so too will they be for projects competitively bid to and financed by the MGA. Except... those projects will cost less. Even with the current, generous federal tax credit for wind and solar, lower cost, non-taxable revenue bonds still outperform private financing.
- **Fortunat Mueller** – While supportive of the bill, it is unclear if this is intended to also support the development of generation. That is very different than financing and ownership. Should clarify this if moving forward.
- **Steve Weems, SEAM**- While in strong support of the stated purpose of the Authority these items may need further consideration:
  - The power of eminent domain;
  - The apparent exemption of the Authority from property taxes - It is not clear to us at this time whether the Authority would have any obligation, intention, or limitation about making payments in lieu of taxes (PILOTs);
  - The appointment process for the voting directors, specifically whether it might be preferable to insulate the Authority further from the Augusta political process by changing to direct popular election of the directors; and
  - The jurisdiction of the Maine Public Utilities Commission (PUC), if any, in the affairs of the Authority.
- **Dick Woodbury** - If there were no Maine Turnpike Authority, the highways and bridges of the state would still be publicly owned and could be built and maintained with low-interest government bonds, just like we authorize periodically for the road construction and maintenance activities of the Maine Department of Transportation. There is no particular interest rate advantage to the Maine Turnpike Authority over Maine DOT; the advantage is the use of toll revenues to pay off those bonds, rather than using tax revenues to pay off those bonds. In the case of the Maine

Generation Authority, the advantage is two-fold. Not only are the bonds backed by the future revenues from electricity users, rather than by taxpayers; it is also the very existence of the Maine Generation Authority that makes possible the low interest rate investments. This is a monumentally larger financial advantage that we can achieve only by creating the Maine Generation Authority; and that advantage is the only way we can achieve the electric generation and storage capacity needed to feasibly meet any transformational emissions-reduction target.

- **Steve Hudson, IECG** - As we have seen in Maine and every other state in the country, regardless of who makes the initial investments – private developers, investor-owned utilities, municipal utilities, electric cooperatives, or public utility commissions, the costs will ultimately be borne by ratepayers. The IECG wants these costs to be as low as possible. L.D. 1634 provides at least one low-cost option worth considering: the creation of the Maine Generation Authority.
- **Phil Bartlett, PUC**
  - Maine’s electricity ratepayers would pay for the Authority’s operations regardless of the prudence of its decision-making and future wholesale market prices. Depending on the costs of the projects and market prices, the Authority could create value for ratepayers or the Authority could create significant costs for ratepayers. What is clear is that the State’s ratepayers would bear all the risks of the Authority’s decision making and operations.
  - The ratepayer risk in funding the Authority as specified in the Act is different from that which occurs through long-term contracts at specified prices. Such contracts, by their nature, allocate risks among the State’s ratepayers as well as project developers. Under such contracts, the ratepayers are exposed to the risks of market price fluctuations, while the project developers bear the risk of cost overruns and operating expenses. Moreover, as a basic economic principle, a competitive bid process is the means by which developers can recover their actual costs while minimizing the rate impact to ratepayers. The approach contained in LD 1634 is contrary to the use of competition to reduce consumer costs. The Commission further notes that the introduction of a government agency into the competitive renewable development market may have negative consequences through actual or perceived competitive advantages to a governmental agency. This could lead to less competition from renewable resource developers for projects in Maine, potentially increasing overall costs.
  - The Commission also notes that Maine’s peak load is approximately 2100 MW and Maine currently has 4,500 MW of generating capacity in the State. Much of the energy produced by these plants is in excess of Maine’s demand and thus serves load in other states in the region. Maine has been a net exporter of power for many years. The picture is further complicated by transmission constraints, which create the potential for negative market prices and/or periodic curtailment of operations with a significant influx of new resources. Such negative pricing would increase above-market costs for ratepayers under existing long-term contracts. Given transmission constraints, it will be important to get the timing of development right, factoring in realistic estimates of load growth and possible transmission expansion.
- **Barry Hobbins, OPA** - This would be a major policy change. If there is interest from the committee, the OPA would advise potentially amending this bill to a resolve and designate it for further study. It is the opinion of the Office of the Public Advocate that this bill may go too far. One of the intended purposes of deregulation was to keep ratepayers protected from potentially

poor decision making by transmission and distribution entities. This bill would put them back on the hook, despite the lower surcharge, but this time through a state-run entity.

- **James Cote, Versant Power** – The Maine Generation Authority surcharge would be added to the retail electric rates of all transmission and distribution utility customers in Maine. This fee is proposed to be added to customer bills regardless of the quantifiable impact that the specific projects procured by the Authority will have on customers and rates in each respective utility.
- **Melissa Winne, GEO** - The GEO has concerns around the wide, sweeping nature of this legislation and potential unintended consequences of this vast change in ownership structure of the State’s electricity generation. The GEO would want to ensure that there is a clear understanding of how the details of this proposed Authority would be implemented and staffed, impacts to the energy markets and clean energy industry, tax implications for municipalities and the state and associated ratepayer costs or risk impacts of this legislation.
- **Jeremy Payne, MREA** - The bill also contemplates very prescriptive renewable and energy storage procurements, but there is very little, if any, information that indicates how those numbers were arrived at. We encourage the committee to drill down to better understand how, why, and whether those targets achieve the state’s goals.
- **Debra Hart, Dirigo**
  - Generation facilities, most of which are regulated by the Federal Energy Regulatory Commission (FERC) through participation in wholesale energy markets, operate in a competitive market that protects retail customers from high-cost energy from monopolistic generation companies. LD 1634 proposes to reinstate this captive customer market with one key exception – the ratepayers will get nothing in return for the money they pay to the Authority. The surcharge is really a tax on electric service; this bill should be referred to the Taxation Committee to determine whether a governmental entity may impose a charge for no reciprocal value outside of the State’s tax structure.
  - The bill proposed to levy a surcharge each year without oversight or rate regulation by the Maine Public Utilities Commission. The proposed structure deprives T&D utilities and their customers of any representation in rate changes.
- **Ben Gilman, Maine State Chamber of Commerce** - The proposal contained within LD 1634 would go from our current system of privately held power generation that competes in an open marketplace to a publicly owned generation authority. That is a significant shift and one with many potential unknown outcomes. Our current electric utility structure took years to develop and was debated thoroughly before the legislature. In fact, the discussions of our current system begin in 1995 and deregulation occurred in 2000. On policy decisions of such significance we urge this committee and the legislature to proceed with caution as there are so many unknowns to such a significant policy decision.
- **Matthew Marks, AGC** - Right now, the growing and vibrant renewable energy market have created so much work that you have existing bills to address the flooded market. That's why it appears unnecessary to create a new quasi-public agency to develop, own and operator generation. From a public policy standpoint, this proposal and shifting the direct burden for supporting it to the ratepayers should be studied before considering this change. As Maine works towards

aggressive renewable energy goals in Maine's climate action plan stopping the current investment and shifting to a model will undoubtedly have an impact on progress.

### **Issues/Notes**

- The usage of director of authority and executive director may be confusing. It appears the director's role is more administrative in nature, and the bill specifies that the board shall establish the rate and amount of compensation for this position. The executive director position requires confirmation by the Senate, but does not provide any details on the determination of compensation. The bill requires the executive director to prepare annual capital and operating plans and budgets for approval each year by the board; computation of the surcharge, etc.
- It is unclear if the Authority has any discretion in preparing annual capital and operating plans and budgets that do not achieve the targets established in the bill for each year beginning in 2024 and ending in 2033.

### **Fiscal Impact**

- Not yet determined.