Central Maine Power Company
Testimony in Opposition to LD 1708
An Act to Create the Pine Tree Power Company

May 20, 2021

Chairman Lawrence, Chairman Berry, and members of the Energy, Utilities and Technology Committee:

My name is Joshua Dunlap and I live in Scarborough, having been born and raised in central Maine. I am an attorney at Pierce Atwood LLP and I am before you today representing Central Maine Power Company ("CMP") in opposition to LD 1708, "An Act to Create the Pine Tree Power Company, a Nonprofit Utility, To Deliver Lower Rates, Reliability and Local Control for Maine Energy Independence." These written comments do not address the likelihood that the legislation will deliver on the promises set out in its title, but instead focus on some of the constitutional and other legal infirmities of the proposed legislation.

Most significantly, as explained below, the bill creates substantial potential liability for the State of Maine. Because the legislation is unconstitutional, it will generate lengthy and complex litigation in which the State could end up, at a minimum, paying the attorneys' fees incurred by the utility companies in striking down the law. Even if the law were not struck down in its entirety as unconstitutional, the State would still be at substantial risk. Because the bill does not provide for paying just compensation to the owner of the seized utilities for the value of the utility as a going concern, the people of Maine would have to pay for the attorneys' fees incurred by the utilities in pursuing the proper measure of compensation and would also have to foot the bill for paying the difference between the amount of compensation contemplated in the bill and the utilities' value as a going enterprise. The bill also creates other legal issues.

I. LD 1708 violates the Takings Clauses of the U.S. and Maine Constitutions.

Because LD 1708 contemplates involuntary seizure of private property, the bill triggers the protections of the Takings Clauses of the U.S. and Maine Constitutions. The Fifth Amendment of the U.S. Constitution prohibits the taking of private property without just compensation. *See* U.S. Const. amend. V. The Maine Constitution similarly provides that "[p]rivate property shall not be taken for public uses without just compensation; nor unless the public exigencies require it." Me. Const. art. I, § 21.

A. LD 1708 does not meet the exigency test.

For any taking to lawfully occur, there must be both a public purpose and public exigency. *Blanchard v. Dep't of Transp.*, 2002 ME 96, ¶ 27, 798 A.2d 1119; *see Bayberry Cove Children's Land Trust v. Town of Steuben*, 2018 ME 28, ¶ 8, 180 A.3d 119; *Brown v. Warchalowski*, 471

A.2d 1026, 1029. Absent public purpose and exigency, then the law must be struck down and the State cannot take the property at all. If there is a public purpose and exigency, then the property can be taken, but the affected property owner must be provided just compensation for the taking.

As an initial matter, LD 1708 is flawed because it contains no legislative finding of exigency. *See Brown*, 471 A.2d. at 1035 (Me. 1984) (Wathen, C.J., concurring) (noting a law is unconstitutional "without a finding of any public necessity or convenience").

In any event, there is no apparent basis for a finding of public exigency. Any such finding would need to satisfy the following three-part test: (1) the taking was necessary; (2) the property interest was taken only to the extent necessary; and (3) the property is suitable for the particular public use for which it was taken. *Bayberry*, 2018 ME 28, ¶ 9; *see Blanchard*, 2002 ME 96, ¶ 43 (Saufley, C.J., dissenting) (noting that any finding of public exigency must be rational, and citing *Ace Ambulance Serv., Inc. v. City of Augusta*, 337 A.2d 661, 663 (Me. 1975)).

There is no public need for the taking. The goal of the bill (to the extent it can be ascertained with no finding of public exigency) appears to be obtaining greater reliability and/or lower rates. Others have explained how this cannot occur, and further, how regulatory oversight could be weakened through public ownership. Indeed, it appears that the bill would require ratepayers to pay the complete cost of service, including debt service, no matter how high the interest rate, and with no regulatory constraint for the rates to be just and reasonable.

In the absence of any benefit to the public, the goal of transferring ownership alone reflects no public exigency. *See Carey v. Bliss*, 151 Mass. 364, 379-80, 25 N.E. 92 (1890); *The Boston Water Power Co. v. The Boston and Worcester Rail Road Corp.*, 40 Mass. 360, 393 (1839).[1] Transfer of ownership, however, is all that LD 1708 would accomplish. LD 1708 provides that the new public municipal corporation shall contract with a nongovernmental entity to operate the new utility, and all its employees shall be deemed private. Further, the bill provides that the bonds to fund the seizure are not to be backed by the State. Thus the practical change effected by the legislation is simply that operation will be shifted from one private entity to another.

Something more is required. Under Maine law, a finding of inadequacy of service is necessary to show public need. *See* 35 M.R.S. §§ 2102, 2105; *Standish Telephone Co. v. P.U.C.*, 499 A.2d 458, 462 (Me. 1985). At a minimum, some rational finding and explanation as to how the ownership transfer alone would address a need and benefit the people of Maine is required.

Even if there were a public need for the taking, the bill is not adequately targeted – as required by the second part of the exigency test. The broad applicability of the law, and its lack of precision as to what property is being taken, demonstrates that the utilities property was not "taken only to the extent necessary." LD 1708 provides that, within a specified period, the public municipal corporation shall purchase or acquire by eminent domain all "utility facilities"

[1] Massachusetts has a similar exigency requirement. *See* Mass. Const. part I, Art. X.

in the State owned or operated or held for future use by any investor-owned T&D utility, and may also purchase or acquire by eminent domain any other investor-owned T&D "utility property" should the public municipal corporation determine such an acquisition to be in the interest of its customer-owners. Setting aside the problem with the measure of compensation and other issues raised by this approach (*see infra*), it is unclear how there can be an exigency to take some but not all utility assets, and only those not owned by consumer-owned utilities.

Finally, the chapter 65 procedure referenced for the condemnation of utility facilities and property does not provide for review of the propriety of the taking. *See* 35-A M.R.S. § 6505(2). An entity whose property is being taken must have an opportunity to challenge the taking on the basis that constitutional public use and exigency requirements have not been met.

B. LD 1708 does not meet the requirement for just compensation.

Even if the taking satisfied the public exigency test, the measure provided in the bill for compensating the owners of the seized assets does not meet constitutional requirements.

Under the Taking Clause, a condemning statute must designate the procedural means to obtain the necessary just compensation. *See Jordan v. Town of Canton,* 265 A.2d 96, 100 (Me. 1970). LD 1708 sets a method for determining compensation that is constitutionally deficient.

For the measure of compensation to be "just" under the Constitution, the property owner must be provided the "exact equivalent" of the monetary worth of the value of the property taken. *Orono-Veazie Water District v. Penobscot County Water Co.*, 348 A.2d 249 (Me. 1975) (striking down act condemning utility property for failure to provide equivalent money worth); *see Rangeley Water Co. v. Rangeley Water Dist.*, 1997 ME 32, ¶ 18, 691 A.2d 171.

The touchstone for just compensation is fair market value. *See Curtis v. Maine State Highway Commission,* 160 Me. 262, 266, 203 A.2d 451, 453 (1966). The test of fair market value is "the value of the [property] for its best and highest use at the time of the taking or in the foreseeable future." *Id.* The owner whose property is subject to a taking is "to be made whole insofar as money can compensate." *Id*.[2]

The distinction in LD 1708 between "facilities" and "property" – requiring purchase of utility "facilities" but merely permitting the purchase of utility "property" – runs afoul of the requirement to provide just compensation because it is a transparent effort to avoid paying compensation for the value of the seized utility as a whole. The property taken by LD 1708 includes the utilities' right to operate as a going concern. *See Morris County Transfer Station, Inc. v. Frank's Sanitation Service, Inc.*, 617 A.2d 291, 293 (N. J. Super. Ct. App. Div. 1992) ("It is settled that a franchise granted by the State in return for the performance of a public service,

[2] Three valuation methodologies commonly used alone or in combination are similar sales analysis, income or capitalization, and reproduction cost less compliance. *See Rangeley Water Co.*, 1997 ME 32, ¶ 9, 691 A.2d 171.

such as a public utility franchise, constitutes a property right." (citing *Frost v. Corporation Comm. of Oklahoma*, 278 U.S. 515 (1929)); *New York Elec. Lines Co. v. Empire City Subway Co.*, 235 U.S. 179, 193 (1914); *Monongahela Nav. Co. v. United States*, 148 U.S. 312, 328-29 (1893).) As such, the proper measure of a taking includes more than just physical assets and property rights; it includes the value of the going concern as well. In *Brunswick & T. Water Dist. v. Maine Water Co.,* 99 Me. 371, 59 A. 537 (1904), the Law Court wrote:

> Now, what is the property which the district has taken by the power of eminent domain? In the first place, it is a structure, pure and simple, consisting of pipes, pumps, engines, reservoirs, machinery, and so forth, with land rights and water rights. . . . But, more than this, it is a structure in actual use; a use remunerative to some extent. It has customers. It is actually engaged in business. It is a going concern. The value of the structure is enhanced by the fact that it is being used in, and in fact is essential to, a going concern business.

Id. at 539. The State therefore cannot simply cherry pick from the utilities' assets, without compensating for the loss of value of the property from which those assets have been severed. The Law Court has left no ambiguity on this point. In *East Boothbay Water Dist. v. Inhabitants of the Town of Boothbay Harbor,* 158 Me. 32, 177 A.2d 659 (1962), the Law Court considered a law authorizing a water district to purchase the utility properties and franchises owned by the Town of Boothbay Harbor. As the Law Court stated:

> The language of section 10 as painstakingly corelated [*sic*] with that of section 9 preponderates very appreciably to the conclusion that in section 10 the Legislature purposed to designate 'the entire plant, properties, rights,' etc. of the defendant rather than to denote 'all or part of the entire plant,' etc. Such is the abiding and persistent impression engendered. And were that objective reality not so, the contrary would be regrettable and grievous. An election accorded to the plaintiff to condemn selectively a portion of the defendants' franchises or assets in plaintiff's domain and to prescind at will from the remainder of such properties could be obviously productive of resultants very partial to the plaintiff and sacrificial or even crippling for the defendant whose license to function in plaintiff's territory has not been repealed.

Id., 158 Me. at 40, 177 A.2d at 664; *see id.*, 158 Me. at 41, 177 A.2d at 664 ("If the plaintiff elects to condemn it must appropriate and pay the fair and equitable worth of all the franchises and assets of defendant in plaintiff's territory with the single exception of defendant's corporate franchise."). *See also CMP v. Town of Moscow*, 649 A.2d 320 (Me. 1994) (noting propriety of municipal assessors' valuation of a hydroelectric project based on a combination of project's replacement value and value as a "going concern"); *Merrill Trust Co. v. State,* 417 A.2d 435, 440 (Me. 1980) (just compensation includes not only the value of the part taken but the damages accruing to the residue, *i.e.*, severance damages).

In sum, the State cannot avoid paying for the entire value of the T&D utilities by attempting to distinguish between "facilities" and "property," and must pay just compensation, *i.e*. fair market value, for the whole.

II. LD 1708 violates the Due Process, Commerce, and Equal Protection Clauses of the U.S. and Maine Constitutions.

L.D. 1708 suffers from a host of additional constitutional flaws. It implicates numerous provisions of the U.S. and Maine Constitutions, including the Due Process Clause, the Equal Protection Clause, and the Commerce Clause. These are addressed in brief below.

Due Process Clause. L.D. 1708 runs afoul of the Due Process Clause. A law that is too vague violates principles of Due Process under both the U.S. and Maine Constitutions. *See Cobb v. Bd. of Counseling Prof'ls Licensure*, 2006 ME 48, ¶ 57, 896 A.2d 271, 286. The bill contains inconsistencies that render it suspect under this void-for-vagueness rule. For example, the bill provides both that the Superior Court shall render a decision as to the purchase price for T&D utilities' facilities and properties, while also providing that the public municipal corporation's eminent domain powers shall be exercised in the same manner and under the same conditions as set forth under chapter 65 of Title 35-A. A chapter 65 procedure involves proceedings before county commissioners relating to the assets within the borders of that county. Does this bill truly contemplate dozens of county-wide proceedings? And, if so, how are those proceedings to work given that they contemplate damages being set by county commissioners, not the Superior Court? And how could appeal from a chapter 65 proceeding be taken if the only issue that can be appealed is the amount of damages – an issue that the county commissioners may or may not be able to address? The powers bestowed upon the newly-created municipal corporation, unconstrained by regulatory oversight by the Public Utilities Commission and infected with vague procedures, violate due process principles.

LD 1708 also creates due process issues aside from the takings process itself. In its "fitness to serve" provision, the bill states that a T&D utility with 50,000 or more customers must be deemed unfit to serve and must be sold if the PUC finds that two of three criteria have been met. These criteria relate to customer satisfaction, reliability, and cost. These criteria are suspect as unduly vague. It is entirely unclear what it means to have "repeatedly" reported reliability that is in the lowest decile of utilities of a similar size, or to have "repeatedly" charged rates in the highest decile among utilities of a similar size. The "fitness to serve" provision also suffers from other due process flaws, in that it purports to establish as a criterion for determining fitness whether or not a utility has been "repeatedly . . . rated in the lowest decile of utilities of a similar size for customer satisfaction on a reputable national survey of utility business or retail customers." In addition to being void for vagueness, this provision violates the nondelegation doctrine. The Maine Constitution specifically distributes the powers of government to the legislative, executive, and judicial branches. *See* Me. Const. art. III, §§ 1, 2. The "fitness to serve" provision would give to unspecified private survey organizations the power to determine a utility's fitness to serve. It is unlawful to delegate such powers to private organizations. *See Corning Glass Works v. Ann & Hope, Inc. of Danvers*, 363 Mass. 409, 423

(1973) (unlawful to permit manufacturer or distributor of a product to fix a minimum retail price, because that would allow policy decisions to be made by private entities).

Further, as a practical matter, at least as to CMP, not all the assets needed for its T&D delivery system to function properly are located within the State of Maine. But the State has no jurisdiction over and cannot condemn assets outside its borders. An attempt to seize property outside the borders of the State violates both the Due Process and Commerce Clauses. *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571-72 (1996) (states may not impose sanctions on economic actors with the intent of changing conduct in other states); *Hartford Accident & Indem. Co. v. Delta & Pine Land Co*., 292 U.S. 143, 149 (1943) (under Due Process Clause, state may not extend the effect of its laws beyond its borders to as to destroy or impair rights elsewhere); *New York Life Ins. Co. v. Dodge*, 246 U.S. 357, 376-77 (1918).

Commerce Clause. LD 1708 also gives rise to other Commerce Clause issues. Placing an excessive burden on interstate commerce without adequate justification is unconstitutional. *See Pike v. Bruce Church, Inc.*, 297 U.S. 137, 145 (1970). The Commerce Clause thus prevents states from burdening interstate commerce through the exercise of the takings power. Given the interrelated nature of the interstate power delivery system, the condemnation proposed in the bill runs afoul of the Commerce Clause. *See Burlington N. v. Fort Bend County*, 2009 WL 1172704, at * 2-3 (S.D. Tex. Apr. 29, 2009) (railroad adequately alleged that the town's exercise of eminent domain impermissibly burdened interstate commerce); *City of Oakland v. Oakland Raiders*, 220 Cal. Rptr. 153, 158 (Ct. App. 1985) (striking down a municipal condemnation under the Commerce Clause because it would interfere with the "national economy").

Equal Protection Clause. L.D. 1708 violates equal protection principles. The bill discriminates between privately owned and "consumer-owned" T&D utilities based on no articulated or apparent rational basis. Such discrimination is suspect under Maine law. In *Dickinson v. Maine Pub. Serv. Co.*, 233 A.2d 435 (Me. 1966), the Law Court considered the constitutionality of 1965 amendments to the Public Utility Code that purported to vest cooperatives with an exclusive franchise territory and other rights traditionally reserved to public utilities, but at the same time did not subject the cooperatives to regulation and control over their rates and borrowings. The Law Court held that this violated the Equal Protection Clause:

> [W]hen the effect of legislation [is] to confer upon the cooperative territorial immunity without at the same time imposing upon it the same requirements with respect to non-discriminatory public service, regulation and control as are imposed upon all competing public utilities offering the identical service, the competitors were thereby deprived of equal protection of the laws.

Dickinson, 223 A.2d at 440. Likewise, LD 1708 deprives private T&D utilities of equal protection of the laws by targeting them for purposes of the exercise of eminent domain.

Contracts Clause. L.D. 1708 destroys public utilities' franchise right to serve exclusively absent a necessity finding under 35-A M.R.S. § 2102 by seizing T&D utility assets. Third-party contracts

would also be impaired by such seizures. As such, the Contract Clause of the U.S. and Maine Constitutions are implicated. U.S. Const., Art. I, § 10; Me. Const., Art. I, § 11.

The federal courts apply a three-part test for violation of the Clause:

> First, the court will assess the degree of substantiality of the impairment of the contract. Second, if a substantial impairment has occurred, the court will inquire whether there is a significant and legitimate public purpose behind the legislation. Third, if such a purpose has been identified, the court will then determine whether or not the particular impairment is appropriate to the accomplishment of public purpose, in which regard the court will generally defer to the legislative judgment.

Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 410 (1983).

Seizing the assets needed to provide service obviously substantially impairs the utilities' contracts. The remaining two parts of the test raise the same issues as discussed with respect to the Takings Clause in terms of a rational legislative finding of necessity.

The Law Court, however, has applied a stricter test under Maine's counterpart to the Contract Clause: any legislation that lessens the value of a contract to the parties, or lessens the efficacy of the means by which a party can enforce the contract, impairs the obligation and is therefore unconstitutional. *Portland Savings Bank. v. Landry*, 372 A.2d 573, 576 (Me. 1977); *Canal National Bank v. SAD No. 3*, 160 Me. 309, 203 A.2d 734 (1964). While Maine law has converged in some respects with federal law as to the Contract Clause analysis, the decision in *Landry* has never been overruled. *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 41 n. 7, 856 A.2d 1183. This raises additional questions regarding the constitutionality of the bill.

III. Other legal considerations.

A. LD 1708 creates substantial liability for the people of Maine, including legal fees.

Aside from the substantive constitutional deficiencies in L.D. 1708, the bill raises further difficulties for the State of Maine. Procedurally, a constitutional challenge to LD 1708 would be pursued under 42 U.S.C. § 1983, exposing the State to paying the plaintiff's attorneys fees when the plaintiff utility prevails. 42 U.S.C. § 1988. Typically, utility condemnations take many years of litigation, creating fees potentially in the millions for both sides of the dispute.[3]

Notably, there is no way for the State to escape these risks if and when courts address the flaws in the bill. The State would, at the very least, have to pay compensation and fees for a

[3] *E.g*. Sacramento Municipal Utility District (23 years); Long Island Lighting Company (13 years); Las Cruces (NM) / El Paso Electric (12 years); City of Nashua (NH) / Pennichuck Water Company (10 years); City of Boulder (CO) / Xcel Energy (9 years and counting).

temporary taking if the utility whose assets are seized ultimately prevails in court in arguing that the taking was illegal or the compensation mandated by the bill on its face is too small – even if the State wanted to change its mind about the taking (even assuming that were statutorily possible, given that the bill does not so provide) and not create a public municipal corporation. There would be no non-State-backed bonding mechanism to pay for those attorney's fees and compensation – the State itself, and thus Maine taxpayers, would be liable and have to pay these sums.[4]

Indeed, if LD 1708 survived legal scrutiny with only the infirmity found by the court the bill's attempt to divide between "utility facilities" and "utility property" for purposes of determining the extent of the taking and thus just compensation, there is no going back once property has been taken. Under such circumstances, the people of Maine would have to pay whatever an impartial tribunal found to be the actual fair market value of the seized utilities as going concerns. Accordingly, no matter how high the purchase prices and how much the debt service will be required to pay for these multi-billion dollar seizures, the people would be on the hook for the full cost because the bill requires a complete pass-through of all of the public municipal corporation's borrowing costs. There would be no escape from rising rates for consumers.

B. LD 1708's referendum provision creates additional legal issues.

LD 1708's referendum provision creates unconscionable results when viewed in conjunction with LD 194, which prohibits participation by foreign government-owned entities in referendum campaigns. Because some T&D utilities in Maine (such as Versant Power) might qualify as a foreign government-owned entities under LD 194, it is possible that adoption of both LD 194 and LD 1708 would leave such utilities without recourse to participate in the Pine Tree Power referendum campaign – even though, if successful, the referendum campaign would result in a taking of their property. Prohibiting an entity from participating in a campaign that could result in a deprivation of its property is the height of unfairness and raises a host of due process and free speech concerns. *See VAMOS, Concertacion Ciudadana, Inc. v. Puerto Rico*, 494 F. Supp. 3d 104 (D.P.R. 2020) (law restricting participation in referendum campaign violated due process and the First Amendment); *Opinion of the Justices*, 461 A.2d 701 (Me. 1983) (concluding that limitations on corporate participation with respect to "political referenda and other such measures" would violate the First Amendment).

C. LD 1708 creates labor law issues.

LD 1708 also would create substantial issues under federal and state labor laws. LD 1708

[4] Typically, the compensation that must be paid far exceeds what was originally contemplated by the condemnor, even with an original understanding of the fair market value measure. For example, in the City of Missoula's acquisition of Mountain Water, the City acquired the water utility at almost twice the price originally projected and was separately ordered to pay certain litigation costs. The City of Nashua calculated $85 million to acquire Pennichuck Water Company, and the New Hampshire Public Utilities Commission ordered payment of $203 million. The costs of the state-wide T&D seizure contemplated in LD 1708 would far exceed these amounts given the size of the taking contemplated by the bill.

purports to make the employees of the operator "private employees" with all the rights of such employees under the law. This provision, however, is likely legally ineffective and the employees of the operator hired to operate the T&D systems for Pine Tree Power would be found to be "public employees" under federal and state law. As such, the employees would not have rights under the National Labor Relations Act (NLRA) and instead would be subject to Maine law governing labor relations for public employees. Under Maine law, these public employees would not have the right to strike. 26 M.R.S. § 964(2).

The operator would not be an employer subject to the NLRA. Any employer that is a "political subdivision" of a state is not subject to the NLRA. 29 U.S.C. § 152(2). The Supreme Court has stated that any entity "administered by individuals who are responsible to public officials or the general electorate" constitutes a political subdivision. *NLRB v. Natural Gas Utility District of Hawkins County,* 402 U.S. 600, 605 (1971). Any operator would clearly be responsible to public officials. The Pine Tree Power Company is governed by an elected board, § 4002, has the power of eminent domain, § 4003, is a public municipal corporation for tax purposes and may issue tax exempt bonds, § 4005, and is subject to FOAA, § 4008. The Supreme Court has found that these factors demonstrate that an employer is a political subdivision. *Hawkins County*, 402 U.S. at 606-09 (utility district was a political subdivision because its commissioners were appointed by an elected official and it had the power of eminent domain, was subject to freedom of access laws, and could issue tax exempt bonds).

Because Pine Tree Power Company is a political subdivision of the State, it is a "public employer" for purposes of the Maine Public Employees Labor Relations Law. Maine law defines a "public employer" to encompass any "political subdivision" as defined under the NLRA. *See* 26 M.R.S. § 962(7)(b)(2) ("public employer" includes "any employer not covered by any other state or federal collective bargaining law that is . . . administered by individuals responsible to public officials or to the general electorate"). It does not matter, for purposes of Maine law, that a private company would operate the utility on behalf of the Pine Tree Power Company. The Maine Law Court has held that a private entity "acting on behalf of" a municipality is nonetheless a "public employer." *Baker Bus Serv., Inc. v. Keith*, 416 A.2d 727, 730-31 (Me. 1980) (finding that a private business entity hired to operate school buses for a municipality was "for all practical purposes, the *alter ego* of the municipality" and must be treated "the same as the municipality itself"). Accordingly, the operator's employees would be treated as employees of the municipal corporation created under LD 1708 – with all the restrictions that classification entails. Maine law precludes public employees from striking. *See id.* § 964(2).

Even if the operative provisions in LD 1708 making the employees of the operator "private employees" could be enforced under state and federal law, the NLRA would pre-empt the portion of Section 4003(4) which purports to mandate that the operator must honor the existing collective bargaining agreements of the investor owned T&D utilities. Under the NLRA, a state cannot tell a private employer what to include in its CBA. *See Golden State Transit Corp. v. City of Los Angeles*, 475 U.S. 608, 613-19 (1986) (city preempted from entering upon substantive aspects of the bargaining process by imposing conditions on the employer). At most, a state can set "minimum standards," like a minimum wage, but it cannot dictate terms

and conditions. That must be left to collective bargaining between the operator – employer and the bargaining unit.

IV. Conclusion

The bill is constitutionally flawed and will therefore put the State of Maine, and its taxpayers and ratepayers, in an untenable position. Its referendum provision and labor provision also create significant legal problems. Accordingly, I respectfully encourage the Committee to vote LD 1708 ought not to pass.