

**OFFICE OF POLICY AND LEGAL ANALYSIS**

Date: July 24, 2020

To: Joint Standing Committee on Energy, Utilities and Technology

From: Lucia Nixon, Legislative Analyst

**Re: LD 1646, An Act To Restore Local Ownership and Control of Maine's Power Delivery Systems (Berry)**

LD 1646 creates the Maine Power Delivery Authority as a consumer-owned utility to acquire and operate all transmission and distribution systems in the State currently operated by the investor-owned transmission and distribution utilities. *For a detailed summary of LD 1646, please refer to the Work Session memo (bill analysis) dated 5/22/2019.*

**LD 1646 ACTIVITY – 1<sup>ST</sup> & 2<sup>ND</sup> REGULAR SESSION**

Summary: Public Hearing 5/14/2019; 11 Work Sessions between 5/22/2019-3/12/2020.

<b>DATE</b>	<b>Activity</b>	<b>Outcome</b>
April 25, 2019	Referred to Committee	
May 14, 2019	Public Hearing	
May 22, 2019	Work Session Held	Tabled
May 30, 2019	Work Session Held	Tabled
Jun 3, 2019	Work Session Held	Tabled
Jun 5, 2019	Work Session Held	Tabled
Jun 11, 2019	Work Session Held	Tabled
Jun 12, 2019	Work Session Held	Tabled
Jun 13, 2019	Work Session Held	Tabled
Jun 14, 2019	Work Session Held	Carryover Requested
Jun 17, 2019	Carry Over Approved	
Feb 13, 2020	Work Session Held	Tabled
Feb 26, 2020	Briefing: LEI Report	
Feb 27, 2020	Work Session Held	Tabled
Mar 12, 2020	Work Session Held	Tabled
Mar 17, 2020	Carry Over Approved	

## PROPOSED AMENDMENT “A”

Representative Berry has proposed an Amendment “A” to LD 1646, which was distributed to members and interested parties on Wednesday 7/22/20. Below is a summary of the changes that Amendment “A” makes to LD 1646, in order that they appear in the bill.

### 1. Purpose of MPDA (35-A section 4002)

- The amendment revises and clarifies the purpose of the Maine Power Delivery Authority to *improve reliability, stabilize rates and help Maine to meet the state’s climate goals.*

### 2. Composition of the MPDA Board (35-A section 4002, subsection 1)

- The amendment changes the composition of members of the MPDA board and required qualifications of members. It shifts the board from a *10-person appointed board*, in the bill, to a *13-person board that includes 6 members appointed by the Governor and 7 elected members.* The appointed members are required to have specific experience or expertise; the 7 elected members each represent 5 State Senate Districts and are required to meet the qualification and residency requirements of members of House.
- *Potential Issue – One Person, One Vote: As written, the proposed amendment includes 15 members on the permanent governance board with 6 gubernatorial appointees and 7 elected members (each representing 5 senate districts). Once you have an elected board, the “one person, one vote” provision of the Constitution comes into play. Structuring the board membership to include the 6 appointed members alongside the 7 elected members may potentially create issues because a resident who supports the Governor has more representation on the Board (elected member plus appointed members) than a resident who does not.*

### 3. Acquisition of IOUs by MPDA (35-A section 4003, subsection 5)

- The amendment *revises the process and terms for the acquisition of the facilities and property of the investor-owned utilities* by the MPDA proposed in the bill.
  - It prohibits any purchase or taking of facilities/property until 24 months after the law takes effect or 6 months after the first meeting of the MPDA board, whichever is later, and allows the board to extend that time by a majority vote; in comparison (the bill required the acquisition to occur within 12 months of the establishment of the board); and
  - It provides a process to determine a price for the acquisition of the utility facilities and property by MPDA as follows:
    - Requires MPDA to make a purchase price offer within 6 months of the first meeting of the board
    - If the MPDA and IOU cannot agree on a price, the IOU may petition the Superior Court to determine and order an alternative price

- The MPDA is authorized to take the subject facilities and property at the price determined by the court after any appeals have been resolved; or if the IOU does not petition the court, to take the facilities and property at the purchase price offer
- *Note: This is modeled on the approach outlined in the LEI Presentation to EUT on February 26, 2020.*

#### 4. Regulatory oversight and application to MPDA (35-A, section 4003, subsection 8)

- The amendment expands list of provisions of Title 35-A that apply to the MPDA; under the amendment, MPDA is subject to the following sections of law that are otherwise applicable to IOUs (**bolded** section numbers are added in Amendment A; plain text is included in the bill):
  - **Sec. 310 - Investigation of Rate Changes**
  - Sec. 3104 - Meter Readings
  - **Sec. 3132, 3132-A, 3132-B - Construction of Transmission Lines, Transmission Projects, Small T&D Projects**
  - **Sec. 3132-C, 3132-D – Non-Wires Alternatives**
  - **Sec. 3144 - Emergency Response Plans**
  - Sec. 3210-C sub 3,7,11 – Long-term Contracts for Capacity Resources
  - Sec. 3212 - Standard Offer
  - Sec. 3212-A - Green Power Offer
  - Sec. 3214 sub 2-A - Arrearage Management Plan
- **Potential Issue - Interpretation:** *This approach in LD 1646, and Amendment A, which pulls MPDA under regulations of PUC by reference to existing regulations that affect investor-owned transmission and distribution utilities may create issues and problems of interpretation. For instance, it's not clear if other PUC laws and powers do not apply to the MPDA or if they apply only through one of the named sections. The committee may want to consider instead requiring the PUC to either (a) develop a proposal and come back with proposed legislation to provides these types of oversight/regulation of MPDA in statute, or (b) to adopt a major substantive rule to govern this (in this case the law would give a description of the parameters for the rules, that includes some sort of reference to these provisions.*

#### 5. Payments in lieu of taxes (35-A section 4005, subsection 2)

- The amendment clarifies that the authority is **fully required to make payments in lieu of taxes** to any municipality, county or other political subdivision to which an investor-owned utility, whose facilities or the authority has acquired, paid taxes in the same amount of those taxes as if the utility had continued to own the property of facilities.
- In the bill this was contingent on the availability of sufficient revenue to make the payments.

**6. New provision - Transition Board (unallocated; section 7 of amendment)**

- The amendment adds a *new section to the bill that creates the Maine Power Delivery Authority Transition Board* to prepare for and assist in the establishment and initial operation of the MPDA.
- The Transition Board is composed of 11 voting members, 5 appointed by the Governor, 3 appointed by the President of the Senate, and 3 appointed by the Speaker of the House of Representatives.
- The board is required to conduct due diligence studies, evaluate the net public benefits of transition to the MPDA and develop a recommended outline for a transition plan and a business plan for the MPDA.
- The Office of the Public Advocate is required to provide staffing to the Transition Board.
- The board is required to 3 submit reports to EUT committee, with a 1<sup>st</sup> Report due December 2021, 2<sup>nd</sup> Report due April 2022, and Final Report due December 2022.

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**DRAFTING ISSUES RAISED BY STATE AGENCIES**

**1. State Treasurer:** The State Treasurer noted issues related to debt and tax exempt status as follows:

**A. Debt of the Authority:** Ensure that language in the bill is clear that debt of the authority is not a “general or moral obligation of the State.” Committee could consider the following language if it wishes to address this (see 35-A, sec 4006 on page 5, lines 38-41 of printed LD)

*\*Possible amendment*

**§ 4006. Governmental function**

The authority, as a public instrumentality, performs a governmental function in the carrying out of the provisions of this chapter, but no debt or liability of the authority may be considered a debt, ~~or~~ liability, **or general or moral obligation** of the State.

**B. Tax Exempt Status of Bonds:** The State Treasurer cautions the committee that the tax status of the bonds depends on ultimate use of bond proceeds and there is a specific prohibition on tax exempt financing for the acquisition of existing transmission assets (Rostenkowski rule) that would require some initial transactions to be taxable. (see 35-A sec 4005, subsec 1 on page 5, lines 12-22 of printed LD).

**2. Public Utilities Commission - Long-term contracting:** The PUC noted a potential conflict between the following two pieces of language included in the bill (also included in Amendment A) regarding ownership of capacity and energy by the authority:

- **Limits on authority; generating property** (See 35-A sec 4003, subsec 2, on page 3, lines 19-22 of printed LD). This language prohibits the MPDA from owning or operating generation and from purchase capacity or energy from a generator, except as the PUC may allow for the MPDA to “maintain or improve system reliability”;
- **Consumer-owned transmission and distribution utilities; application** (see 35-A sec 4003, subsec 8). This language states that MPDA is subject to the long-term contracting laws (35-A sec 3210-C subsections 3, 7, 11). Under those laws, the PUC may order utilities to enter long-term contracts to purchase capacity and energy associated with capacity resources (renewable resources).

**Note:** This may be covered in the section of LD 1646 and Amendment A entitled: **Review of Laws and Report** (see below) in that it directs PUC to examine all laws that may be affected by the Act or need to be changed as a result of this act.

**Sec. 6. Review of laws and report.** The Public Utilities Commission shall examine all laws that may be affected by this Act or need to be changed as a result of this Act, including laws governing the Maine Power Delivery Authority and laws relating to investor-owned transmission and distribution utilities that may be eliminated as a result of this Act. The commission shall determine any modifications to laws that may be necessary or appropriate as a result of this Act or to effectuate the purposes of this Act and shall submit proposed legislation **to implement those modifications** to the Joint Standing Committee on Energy, Utilities and Technology no later than January 15, ~~2020~~ **2022**. The Joint Standing Committee on Energy, Utilities and Technology may report out a bill relating to the subject matter of this Act to the Second Regular Session of the ~~129th~~ **130th** Legislature.

**3. Public Advocate:** The OPA noted questions regarding what happens with the law governing Municipal Electric Districts (also referred to as municipal power districts) under Title 35-A Chapter 39, if LD 1646 becomes law and recommended addressing whether any changes to Chapter 39 are needed.

**\*Possible amendment:** This may be covered by the **Review of Laws and Report** section, or language could be added in that section to ensure it is directly addressed:

**Sec. 6. Review of laws and report.** The Public Utilities Commission shall examine all laws that may be affected by this Act or need to be changed as a result of this Act, including laws governing the Maine Power Delivery Authority, laws governing consumer-owned transmission and distribution utilities and municipal power districts, and laws relating to investor-owned transmission and distribution utilities that may be eliminated as a result of this Act. The commission shall determine any modifications to laws that may be necessary or appropriate as a result of this Act or to effectuate the purposes of this Act and shall submit proposed legislation **to implement those modifications** to the Joint Standing Committee on Energy, Utilities and Technology no later than January 15, ~~2020~~ **2022**. The Joint Standing Committee on Energy, Utilities and Technology may report out a bill relating to the subject matter of this Act to the Second Regular Session of the ~~129th~~ **130th** Legislature.

**4. Judicial Branch:** The Judicial Branch noted an issue in the section of LD 1646 regarding acquisition of utility property (35-A section 4003, subsec 5, paragraph B, which is at page 4 lines 17-19 of printed LD), under which appeals of a decision of the MPDA would go directly to the Law Court. The Judicial Branch indicated that appeals should go to the Superior Court first and requested that change.

*Note:* The language noted by the Judicial Branch does not appear in the Proposed Amendment A. Under Amendment A there is a process that goes through Superior Court and the decision of the Superior Court may be appealed to the Law Court.