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An Act To Ensure Transmission and Distribution Utility Accountability

(GOVERNOR'S BILL)

130LR2562(01)

PROPOSED SHORT TITLE:  
ENSURE TRANSMISSION AND  
DISTRIBUTION UTILITY ACCOUNTAB  
(Subject to change)

130LR2562(01)

SPONSOR:

An Act To Ensure Transmission and Distribution Utility Accountability

Lead Cosponsor: (sign) \_\_\_\_\_

(print name) \_\_\_\_\_

Cosponsors pursuant to Joint Rule 206, subsection 1:

1. (sign) \_\_\_\_\_

(print name) \_\_\_\_\_

2. (sign) \_\_\_\_\_

(print name) \_\_\_\_\_

3. (sign) \_\_\_\_\_

(print name) \_\_\_\_\_

4. (sign) \_\_\_\_\_

(print name) \_\_\_\_\_

5. (sign) \_\_\_\_\_

(print name) \_\_\_\_\_

6. (sign) \_\_\_\_\_

(print name) \_\_\_\_\_

7. (sign) \_\_\_\_\_

(print name) \_\_\_\_\_

8. (sign) \_\_\_\_\_

(print name) \_\_\_\_\_

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

2 Sec. 1. 35-A MRSA §301, sub-§1-A is enacted to read:

3 1-A. Performance report card for transmission and distribution utilities. The  
4 commission shall adopt rules to establish minimum requirements for a transmission and  
5 distribution utility to ensure that the transmission and distribution utility meets the  
6 requirements of subsection 1. Rules adopted pursuant to this subsection are routine  
7 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

8 A. The rules must include specific, quantitative planning and operational standards for  
9 a transmission and distribution utility that reflect standard industry practices, including,  
10 but not limited to, standards for the following operations and activities:

11 (1) Reliability of service;

12 (2) Timeliness and responsiveness to customer requests for information or service;

13 (3) Frequency of customer complaints;

14 (4) Timeliness and accuracy of bills;

15 (5) Responsiveness to requests for interconnection by generators; and

16 (6) Timeliness of restoring service after storms.

17 B. Each calendar quarter, a transmission and distribution utility shall file with the  
18 commission quantifiable data sufficient for the commission to calculate and publish a  
19 quantitative score for each standard established by the commission pursuant to  
20 paragraph A.

21 C. The commission shall enforce this subsection and rules adopted pursuant to this  
22 subsection by initiating an adjudicatory proceeding to consider whether to impose an  
23 administrative penalty in accordance with section 1508-A, subsection 1, paragraph E.

24 Sec. 2. 35-A MRSA §301, sub-§5 is enacted to read:

25 5. Transmission and distribution utility report required; audits. If the commission  
26 has not made a rate determination for a transmission and distribution utility that serves  
27 more than 50,000 customers within the preceding 5 years, the utility shall submit a report  
28 to the commission that includes a comparison of the utility's actual costs with cost estimates  
29 used in the utility's most recent rate case to set rates. Upon a finding of the commission  
30 that there was a difference of more than 10% between the transmission and distribution  
31 utility's actual costs and estimated costs, the commission may:

32 A. Require an audit of the transmission and distribution utility in accordance with  
33 section 113; or

34 B. Disallow cost recovery in the transmission and distribution utility's future rate cases.

35 This subsection takes effect January 15, 2024.

36 Sec. 3. 35-A MRSA §1316, as amended by PL 1999, c. 398, Pt. A, §21 and affected  
37 by §§104 and 105, is further amended to read:

38 §1316. Testimony presented by employees of public utilities or, competitive service  
39 providers, affiliated interests or utility contractors to legislative committees  
40 and to, the Public Utilities Commission and the Public Advocate

1           **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
2 following terms have the following meanings.

3           A. "Employee" means a person who currently performs or formerly performed a  
4 service for wages or other remuneration under a contract of hire, expressed or implied,  
5 ~~but does not include an independent contractor for a public utility, competitive service~~  
6 ~~provider, affiliated interest or utility contractor.~~

7           A-1. "Affiliated interest" has the same meaning as in section 707, subsection 1,  
8 paragraph A.

9           B. "Employer" means a public utility ~~or~~, competitive service provider or affiliated  
10 interest licensed to do business in this State with one or more employees.

11           C. "Legislative committee" means a joint standing committee or a joint select  
12 committee of the Legislature, a task force, commission or council or any other  
13 committee established by the Legislature and composed wholly or partly of Legislators  
14 for the purpose of conducting legislative business.

15           D. "Own time" means an employee's vacation or personal time, earned as a condition  
16 of employment.

17           E. "Utility contractor" means a person that provides goods or services to a public utility  
18 or competitive service provider.

19           **2. Right of employees to provide testimony.** ~~Employees of a public utility or~~  
20 ~~competitive service provider~~ have the right to represent themselves and to testify before or  
21 provide information to a legislative committee ~~or~~, the commission or the Public Advocate  
22 on their own time. An employee ~~of a public utility or competitive service provider~~ who  
23 complies with this section may not be denied the right to testify before or provide  
24 information to a legislative committee ~~or~~, the commission or the Public Advocate.

25           **2-A. Right of utility contractors to provide testimony.** A utility contractor has the  
26 right to testify before or provide information to a legislative committee, the commission or  
27 the Public Advocate.

28           **3. Discharge of, threats to or discrimination against certain employees of utility**  
29 **service providers for testimony presented to legislative committees or, the commission**  
30 **or the Public Advocate.** ~~Unless otherwise provided for, a~~ A supervisor may not discharge,  
31 threaten or otherwise discriminate against an employee ~~of a public utility or competitive~~  
32 ~~service provider~~ regarding the employee's compensation, terms, conditions, location or  
33 privileges of employment because the employee, in compliance with this section, in good  
34 faith testifies before or provides information to a legislative committee ~~or to~~, the  
35 commission or the Public Advocate regarding the operation of the business of a public  
36 utility or competitive service provider or because the employee brings the subject matter  
37 of the testimony or information to the attention of a person having supervisory authority.

38           This subsection does not apply to an employee who has testified before or provided  
39 information to a legislative committee ~~or to~~, the commission or the Public Advocate unless  
40 the employee has first brought the subject matter of the testimony or information in writing  
41 to the attention of a person having supervisory authority with the employer and has allowed  
42 the employer a reasonable time to address the subject matter of the testimony or  
43 information. If appropriate, the employer shall respond in writing.

1           **4. Exceptions.** ~~The protection~~ protections created in ~~subsection~~ subsections 3 ~~does~~  
2 ~~and 9 do not apply to testimony or information that, upon reasonable inquiry by the~~  
3 ~~employee or utility contractor, would be found to be false, slanderous, libelous or~~  
4 ~~defamatory or to testimony that violates a term or condition of a collectively bargained~~  
5 ~~agreement or to testimony that discloses trade secrets or corporate strategy, the disclosure~~  
6 ~~of which would result in harm to the employer.~~

7           **5. Civil actions for injunctive relief or other remedies by employees.** An employee  
8 ~~of a public utility or competitive service provider who alleges a violation of rights under~~  
9 ~~this section and who has made reasonable efforts to exhaust all grievance procedures, as~~  
10 ~~provided for in the contract of employment or which that otherwise may be available at the~~  
11 ~~employee's place of employment, may bring a civil action, including an action for~~  
12 ~~injunctive relief, within 90 days after the occurrence of that alleged violation or after the~~  
13 ~~grievance procedure or similar process terminates. The action may be brought in the~~  
14 ~~Superior Court for the county where the alleged violation occurred, the county where the~~  
15 ~~complainant resides or the county where the person against whom the civil complaint is~~  
16 ~~filed resides. An employee must establish each and every element of the employee's case~~  
17 ~~by a preponderance of the evidence.~~

18           **5-A. Civil actions for injunctive relief or other remedies by utility contractors.** A  
19 utility contractor that alleges a violation of rights under this section may bring a civil action,  
20 including an action for injunctive relief, within 90 days after the occurrence of that alleged  
21 violation. The action may be brought in the Superior Court for the county where the alleged  
22 violation occurred, the county where the complainant resides or the county where the  
23 person against whom the civil complaint is filed resides. A utility contractor must establish  
24 each element of the utility contractor's case by a preponderance of the evidence.

25           **6. Remedies ordered by court.** A court, in rendering a judgment in an action brought  
26 pursuant to this section, may order reinstatement of the employee, the payment of back  
27 wages, full reinstatement of fringe benefits and seniority rights or any combination of these  
28 remedies. ~~A~~ If an employee or utility contractor is the prevailing party, a court may also  
29 shall award the ~~prevailing party~~ employee or utility contractor all or a portion of the costs  
30 of litigation, including reasonable ~~attorneys'~~ attorney's fees and witness fees, ~~if the court~~  
31 ~~determines that the award is appropriate.~~

32           **7. Collective bargaining rights.** This section does not diminish or impair the rights  
33 of a person under any collective bargaining agreement. A public utility, competitive service  
34 provider or affiliated interest may not enter into a collective bargaining agreement for the  
35 sole purpose of preventing employees from exercising their rights to testify before or  
36 provide information to a legislative committee, the commission or the Public Advocate  
37 pursuant to this section.

38           **8. Jury trial; common-law rights.** Any action brought under this section may be  
39 heard by a jury. Nothing in this section derogates any common-law rights of an employee  
40 or employer.

41           **9. Contracts with utility contractors.** If a utility contractor, in compliance with this  
42 section and in good faith, testifies before or provides information to a legislative committee,  
43 the commission or the Public Advocate, a public utility or competitive service provider  
44 may not respond by:

45           A. Terminating or threatening to terminate a contract with the utility contractor; or

1           B. Harming or threatening to harm the utility contractor financially.

2           10. Notice of rights required. A public utility and a competitive service provider  
3 shall notify the public utility's and the competitive service provider's employees, affiliated  
4 interests and utility contractors, respectively, of their rights under this section.

5           11. Penalties. The commission may impose penalties pursuant to violations of this  
6 section. This subsection does not apply in the case of an employee of a utility contractor  
7 alleging a violation under subsection 3.

8           12. Rulemaking. The commission may adopt rules to implement this section. Rules  
9 adopted pursuant to this section are routine technical rules as defined in Title 5, chapter  
10 375, subchapter 2-A.

11           **Sec. 4. 35-A MRSA §1508-A, sub-§1, ¶E** is enacted to read:

12           E. The commission may impose an administrative penalty on a transmission and  
13 distribution utility in an amount that does not exceed \$1,000,000 or 10% of its annual  
14 gross revenue received from ratepayers in the State, whichever amount is less, that fails  
15 for 2 consecutive calendar quarters or otherwise consistently fails to meet a standard  
16 established by the commission pursuant to section 301, subsection 1-A, paragraph A.  
17 Each calendar quarter that the transmission and distribution utility fails to meet the  
18 standard constitutes a separate offense. The commission shall use the proceeds from  
19 the penalty assessed under this paragraph to reduce energy costs for low-income  
20 customers.

21           **Sec. 5. 35-A MRSA §1513** is enacted to read:

22           §1513. Divestiture of underperforming transmission and distribution utility

23           The commission shall initiate an adjudicatory proceeding in accordance with this  
24 section and section 708, subsection 2, paragraph A, subparagraph (8) to determine whether  
25 divestiture of a transmission and distribution utility is warranted if the utility consistently  
26 fails to meet the standards established in section 301, subsection 1-A, paragraph A,  
27 consistently fails to meet the requirements of section 301, subsection 1 or is unable to fulfill  
28 its statutory duties as a public utility because it is financially impaired. If, at the conclusion  
29 of the adjudicatory proceeding, the commission determines that divestiture of a  
30 transmission and distribution utility is warranted, then the following procedures apply.

31           1. Consideration of proposals to acquire the utility or its assets. The commission  
32 shall request proposals from qualified buyers interested in acquiring the transmission and  
33 distribution utility or its assets and shall consider proposals to create a consumer-owned  
34 quasi-municipal corporation to acquire the utility or its assets.

35           2. Committee to develop proposal for consumer-owned quasi-municipal  
36 corporation. Within 30 days from the date the commission requests proposals from  
37 qualified buyers to purchase the transmission and distribution utility or its assets, a  
38 committee of 5 members must be appointed in accordance with this subsection to develop  
39 a proposal on behalf of a potential consumer-owned quasi-municipal corporation. The  
40 Governor shall appoint 3 members of the committee and the Public Advocate shall appoint  
41 2 members of the committee. The commission shall provide the committee with sufficient  
42 financial support to retain lawyers, investment bankers or consultants, as needed, to prepare  
43 a proposal to purchase the utility or its assets.

1 **3. Determination by the commission.** The commission shall order the owner of the  
2 transmission and distribution utility to divest the utility if a proposal from a qualified buyer  
3 or a proposal to create a consumer-owned quasi-municipal corporation:

4 A. Will result, over the long term, in net benefits to ratepayers in the form of lower  
5 rates or better service than the rates and service provided by the transmission and  
6 distribution utility;

7 B. Is for a fair and reasonable purchase price; and

8 C. Demonstrates, if the divestiture includes a sale of the transmission and distribution  
9 utility's assets, that the qualified buyer or consumer-owned quasi-municipal  
10 corporation will have at completion of divestiture sufficient financial and technical  
11 capability, expertise and experience to own and operate the utility and the ability to  
12 comply with all of the legal requirements of a transmission and distribution utility.

13 If more than one proposal meets the criteria established in this subsection, the commission  
14 shall order divestiture to the proposal that results in the greatest net benefits to ratepayers.

15 **Sec. 6. 35-A MRSA §3146** is enacted to read:

16 **§3146. Climate change protection plan**

17 No later than July 1, 2023, and every 2 years thereafter, a transmission and distribution  
18 utility shall submit to the commission a 10-year plan for addressing the expected effect of  
19 climate change on the utility's assets needed to transmit and distribute electricity to its  
20 customers. The commission shall request input from interested parties on the transmission  
21 and distribution utility's plan and shall order the transmission and distribution utility to take  
22 any action the commission determines is reasonable and necessary to ensure that the utility  
23 will be able to continue to meet the requirements of section 301, subsection 1 for the  
24 foreseeable future.

25 **Sec. 7. Adoption of rules by Public Utilities Commission establishing**  
26 **minimum requirements.** No later than June 30, 2023, the Public Utilities Commission  
27 shall adopt the rules required by the Maine Revised Statutes, Title 35-A, section 301,  
28 subsection 1-A.

29 **SUMMARY**

30 The purpose of this bill is to create greater accountability of transmission and  
31 distribution utilities to their ratepayers in order to ensure that the utilities are fulfilling their  
32 duties to provide safe, reasonable and adequate service at just and reasonable rates. This  
33 bill accomplishes the following.

34 1. It establishes administrative penalties for poor service to consumers and  
35 interconnecting generators.

36 2. It authorizes the Public Utilities Commission to perform audits of transmission and  
37 distribution utilities or disallow cost recovery under certain circumstances.

38 3. It requires transmission and distribution utilities to prepare and file plans with the  
39 Public Utilities Commission for addressing the expected effect of climate change.

40 4. It provides a mechanism for a transmission and distribution utility to sell the utility  
41 to a qualified buyer as a consequence of consistently poor service.

1           5. It clarifies and adds protections for utility contractors and certain employees of a  
2 public utility, competitive service provider, affiliated interest or utility contractor who  
3 testify before or provide information to a legislative committee, the Public Utilities  
4 Commission or the Public Advocate.