

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2008

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Legislative Document

No. 2255

S.P. 885

March 11, 2008

**An Act To Protect Maine's Energy Sovereignty through the  
Designation of Energy Infrastructure Corridors and Energy Plan  
Development**

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Reference to the Committee on Utilities and Energy suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator BARTLETT of Cumberland. (GOVERNOR'S BILL)  
Cosponsored by Representative BLISS of South Portland and Senators: HOBBS of York,  
MILLS of Somerset, Representatives: BERRY of Bowdoinham, BLANCHARD of Old Town,  
FITTS of Pittsfield, FLETCHER of Winslow, PINGREE of North Haven, RINES of  
Wiscasset.

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

2 **PART A**

3 **Sec. A-1. 35-A MRSA §122** is enacted to read:

4 **§122. Energy infrastructure corridors**

5 **1. Commission designation.** The commission may designate corridors within the  
6 State for the purposes of siting energy infrastructure if the commission finds that energy  
7 infrastructure development within the corridor is reasonably likely to be in the public  
8 interest and consistent with environmental and land use laws and rules. The commission  
9 shall consider the establishment of energy infrastructure corridors in a public proceeding  
10 in which interested persons are provided an opportunity to be heard. The commission  
11 may commence the public proceeding on its own initiative or upon petition by an  
12 interested person.

13 **2. Energy infrastructure.** For purposes of this section, "energy infrastructure"  
14 includes electric transmission and distribution facilities, natural gas pipelines and other  
15 energy transport pipelines or conduits and associated appurtenances.

16 **3. Consultation.** Prior to designating an energy infrastructure corridor under  
17 subsection 1, the commission shall consult with the Department of Environmental  
18 Protection, the appropriate natural resource protection agencies and the municipalities in  
19 which the corridor would be located.

20 **4. Use of corridors; certificates.** A person may petition the commission for a  
21 certificate of public convenience and necessity for authorization to develop and use  
22 energy infrastructure within a designated energy infrastructure corridor under subsection  
23 1. The commission shall issue a certificate of public convenience and necessity if it finds  
24 that the development and use of energy infrastructure within a designated energy  
25 infrastructure corridor is in the public interest, complies with the State's environmental  
26 laws as determined by a review conducted pursuant to subsection 5 and is reasonably  
27 likely to:

28 **A. Minimize utility rates or increase the reliability of utility service;**

29 **B. Have the net effect of reducing the release of greenhouse gases; or**

30 **C. Enhance economic development within the State.**

31 A person may not engage in development or construction of energy infrastructure within  
32 an energy infrastructure corridor unless the person has obtained a certificate from the  
33 commission.

34 The commission shall conduct a public hearing on a petition for a certificate of public  
35 convenience and necessity. The commission shall issue an order within 6 months after  
36 the filing of a completed petition. The commission may approve or disapprove all or  
37 portions of a proposed project within a designated energy infrastructure corridor and shall  
38 make such orders regarding the project's character, size, installation and maintenance as  
39 are necessary, having regard for any increased costs caused by the orders.

1        **5. Environmental review.** Notwithstanding any other provision of law, the  
2 environmental review of projects proposed to be developed within an energy  
3 infrastructure corridor designated under subsection 1 must be conducted as specified in  
4 this subsection. The Department of Environmental Protection shall conduct a review of a  
5 proposed energy infrastructure project and shall provide certification to the commission  
6 as to whether the proposed project complies with the State's environmental laws. The  
7 environmental certificate must be issued in lieu of other environmental certificates and  
8 licenses. An applicant for a certificate shall provide the department with all necessary  
9 studies and documentation that the department requires to determine compliance with the  
10 State's environmental laws and reimburse the department for all costs of regulatory  
11 review including expenses for outside peer review or other consultants or experts  
12 assisting the department in its review. The certification of the department is a rebuttable  
13 presumption of compliance with the State's environmental laws in the commission's  
14 review of a petition for a certificate of public convenience and necessity pursuant to  
15 subsection 4 and must be implemented by the commission by incorporation in the  
16 commission's certificate. The department has jurisdiction to enforce the environmental  
17 certification and compliance with the State's environmental laws. The environmental  
18 certificate may require additional submissions, studies and conditional approvals.

19        **6. Zoning ordinances.** A person may petition the commission for an exemption  
20 from municipal zoning ordinances or other land use ordinances. The commission shall  
21 provide notice and the opportunity for the affected municipality to be heard after which  
22 the commission may wholly or partially exempt a project proposed to be developed  
23 within a designated energy infrastructure corridor under subsection 1 from a zoning  
24 ordinance if it determines that the exemption is reasonably necessary and in the public  
25 interest.

26        **7. Eminent domain.** The right of eminent domain is governed by this subsection.

27        A. Except on land where a utility satisfying the conditions set forth in paragraph B  
28 has an easement, fee or other right in real property:

29            (1) A person that receives a certificate of public convenience and necessity to  
30 develop energy infrastructure within an energy infrastructure corridor under this  
31 section has the right of eminent domain to the same extent that transmission and  
32 distribution utilities have the right of eminent domain to locate transmission lines  
33 pursuant to section 3136; and

34            (2) The commission may acquire interests in real property within a corridor for  
35 the ultimate benefit of electricity consumers, notwithstanding any transmission  
36 and distribution utility ownership of the real property. For the purposes of the  
37 exercise of eminent domain authorized by this subparagraph, the commission is  
38 both a person and the State.

39        B. A person or the commission may not exercise the right of eminent domain with  
40 respect to a utility's real property within that utility's service territory if the utility  
41 agrees that it will not:

1 (1) Assert or seek federal preemption to frustrate the commission's action  
2 resulting from a proceeding with respect to participation in a regional  
3 transmission organization; and

4 (2) Undertake any major transmission project in this State without commission  
5 approval.

6 **8. Rules.** The commission may by rule adopt standards and procedures to  
7 implement this section. Rules adopted pursuant to this subsection are routine technical  
8 rules as defined in Title 5, chapter 375, subchapter 2-A.

9 **PART B**

10 **Sec. B-1. 35-A MRSA §3210-C, sub-§3,** as amended by PL 2007, c. 293, §2, is  
11 further amended to read:

12 **3. Commission authority.** The commission may direct ~~large~~ investor-owned  
13 transmission and distribution utilities to enter into long-term contracts for:

14 A. Capacity resources; and

15 B. Any available energy associated with capacity resources contracted under  
16 paragraph A:

17 (1) To the extent necessary to fulfill the policy of subsection 2, paragraph A; or

18 (2) If the commission determines appropriate for purposes of supplying or  
19 lowering the cost of standard-offer service or otherwise lowering the cost of  
20 electricity for the ratepayers in the State. Available energy contracted pursuant to  
21 this subparagraph may be sold into the wholesale electricity market in  
22 conjunction with solicitations for standard-offer supply bids.

23 The commission may direct ~~large~~ investor-owned transmission and distribution utilities to  
24 enter into contracts under this subsection only as agents for their customers and only in  
25 accordance with this section. For purposes of this section, long-term contracts include  
26 contracts for differences or other financial instruments intended to buffer ratepayers in the  
27 State from potential negative impacts from transmission development. To the greatest  
28 extent possible, the commission shall develop procedures having the same legal and  
29 financial effect as the procedures used for standard-offer service pursuant to section 3212  
30 for ~~large~~ investor-owned transmission and distribution utilities.

31 The commission may enter into contracts for interruptible, demand response or energy  
32 efficiency capacity resources and contracts for differences or other financial instruments  
33 intended to buffer ratepayers in the State from potential negative impacts from  
34 transmission development. These contracts are not subject to the rules of the State  
35 Purchasing Agent.

36 Capacity resources contracted under this subsection may not exceed the amount  
37 necessary to ensure the reliability of the electric grid of this State or to lower customer  
38 costs as determined by the commission pursuant to rules adopted under subsection 10.

39 Unless the commission determines the public interest requires otherwise, a capacity  
40 resource may not be contracted under this subsection unless the commission determines

1 that the capacity resource is recognized as a capacity resource for purposes of any  
2 regional or federal capacity requirements.

3 **Sec. B-2. 35-A MRSA §3210-C, sub-§7**, as amended by PL 2007, c. 293, §4, is  
4 further amended to read:

5 **7. Disposition of resources.** ~~A large~~ An investor-owned transmission and  
6 distribution utility shall sell capacity resources and energy purchased pursuant to  
7 subsection 3 or take other action relative to such capacity resources and energy as  
8 directed by the commission.

9 **Sec. B-3. 35-A MRSA §3210-C, sub-§8**, as enacted by PL 2005, c. 677, Pt. C,  
10 §1, is amended to read:

11 **8. Cost recovery.** The commission shall ensure that ~~a large~~ an investor-owned  
12 transmission and distribution utility recovers in rates all costs of contracts entered into  
13 pursuant to subsection 3, including but not limited to any impacts on the utility's costs of  
14 capital. A price differential existing at any time during the term of the contract between  
15 the contract price and the prevailing market price at which the capacity resource is sold  
16 must be reflected in rates and may not be deemed to be imprudent.

17 **Sec. B-4. 35-A MRSA §3210-C, sub-§10**, as enacted by PL 2005, c. 677, Pt. C,  
18 §1, is amended to read:

19 **10. Rules.** The commission shall adopt rules to implement this section. In adopting  
20 rules, the commission shall consider the financial implications of this section on ~~large~~  
21 investor-owned transmission and distribution utilities. Rules adopted under this  
22 subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.  
23 The commission may not enter into or direct any ~~large~~ investor-owned transmission and  
24 distribution utility to enter into any contract pursuant to this section until rules are finally  
25 adopted under this subsection.

## 26 **PART C**

27 **Sec. C-1. 2 MRSA §9** is enacted to read:

### 28 **§9. Governor's Office of Energy Independence and Security**

29 **1. Office established.** The Governor's Office of Energy Independence and Security,  
30 referred to in this section as "the office," is established in the Executive Department to  
31 carry out responsibilities of the State relating to energy resources, planning and  
32 development. The office is directly responsible to the Governor.

33 **2. Director.** The director of the office shall:

34 **A.** Chair the Energy Resources Council;

35 **B.** In collaboration with the Energy Resources Council and other relevant state  
36 agencies, coordinate state energy policy;

37 **C.** Coordinate the dissemination of energy information to the public and the media;

- 1 D. Prepare a comprehensive state energy plan to be submitted to the Governor and  
2 Legislature by January 15, 2009 and updated every 2 years thereafter;
- 3 E. In collaboration with other relevant state agencies, private industry and nonprofit  
4 organizations, collect and analyze energy data that effects energy costs and  
5 availability in this State from all available sources;
- 6 F. Provide technical assistance and information to the Governor and the Legislature  
7 regarding the State's short-range and long-range energy needs and the resources to  
8 meet those needs; and
- 9 G. Seek funds and partnerships with public and private sources to support the goals  
10 of the office.

11 **Sec. C-2. 5 MRSA §3327, sub-§1**, as amended by PL 2005, c. 425, §2, is further  
12 amended to read:

13 **1. Council established; membership.** In order to facilitate more effective  
14 interagency coordination of the State's activities regarding energy issues, the Energy  
15 Resources Council, referred to in this chapter as the "council," is established. The chair  
16 of the council is the Director of the ~~State Planning Office~~ Governor's Office of Energy  
17 Independence and Security who is responsible for ensuring that the council carries out its  
18 responsibilities under this chapter. The membership of the council ~~is as follows~~ also  
19 includes the following:

- 20 A. The Director of the State Planning Office;
- 21 B. The chair of the Public Utilities Commission;
- 22 C. The Commissioner of Environmental Protection;
- 23 D. The Public Advocate;
- 24 E. The Commissioner of Transportation;
- 25 F. The Commissioner of Administrative and Financial Services;
- 26 G. The Commissioner of Economic and Community Development or the  
27 commissioner's designee;
- 28 H. The Director of the Maine State Housing Authority; and
- 29 I. The Commissioner of Conservation.

30 **Sec. C-3. 5 MRSA §3327, sub-§3**, as amended by PL 2003, c. 487, §1, is further  
31 amended to read:

32 **3. Quarterly meetings; staff; funding.** The council shall meet at least quarterly.  
33 The council shall prepare a work program for each year establishing priorities among its  
34 efforts. The ~~State Planning Office, within the Executive Department,~~ Governor's Office  
35 of Energy Independence and Security shall provide staff support.

- 36 A. A state agency applying for funds under the State Energy Program of the United  
37 States Department of Energy pursuant to 10 Code of Federal Regulations, Part 420

1 shall, as directed by the council, apply for funds to support the work of the council  
2 and its staff.

3 B. To the extent funds available pursuant to paragraph A are insufficient to fund  
4 fully staff support for the council, each member of the council shall enter into an  
5 agreement with the ~~State Planning Office~~ Governor's Office of Energy Independence  
6 and Security to share in the cost of providing the staff support.

7 C. The council may seek, and the Public Utilities Commission may provide, funds  
8 to the council pursuant to Title 35-A, section 3211-A, subsection 5-A.

9 **SUMMARY**

10 Part A of this bill establishes procedures to allow the Public Utilities Commission to  
11 designate corridors for the purpose of siting energy infrastructure, including electric  
12 transmission and distribution facilities and natural gas pipelines.

13 Part B of this bill also expands the commission's authority over all investor-owned  
14 transmission and distribution utilities, not just those utilities that serve more than 50,000  
15 retail customers.

16 Part C of this bill establishes in statute the Governor's Office of Energy Independence  
17 and Security and sets forth the policy and purpose of that office. Part C also specifies the  
18 duties and responsibilities of the director including replacing the Director of the State  
19 Planning Office, within the Executive Department, as the chair of the Energy Resources  
20 Council. The director of the office reports directly to the Governor.