

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1397

S. P. 535

In Senate, March 8, 1967

Referred to Committee on Highways. Sent down for concurrence and ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Ross of Piscataquis.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT to Revise Utility Location Permits in Public Highways.

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

Sec. 1. R. S., T. 35, § 2306, amended. Section 2306 of Title 35 of the Revised Statutes is amended by adding before the last paragraph the following new paragraph:

In addition to the foregoing, such corporations shall have the right to take and hold by right of eminent domain such land or easements as may be necessary for the proper location of their distribution lines and the necessary appurtenances thereto, but only where such corporations shall have had a prior right to locate their distribution lines and necessary appurtenances thereto in the right-of-way limits of any public way and the body having jurisdiction over said public way has caused such corporation to remove their distribution lines and appurtenant structures outside the right-of-way limits of said public way. This right shall not apply to lands and easements on or adjacent to any developed or undeveloped water power, not to lands or easements so closely paralleling existing wire lines of other utility corporations that the proposed distribution lines would substantially interfere with service rendered over said existing lines, except with the consent of the owners thereof, nor to lands and easements owned or used by railroad corporations.

Sec. 2. R. S., T. 35, § 2306, amended. The last paragraph of section 2306 of Title 35 of the Revised Statutes is amended to read as follows:

Any location to be so taken for such transmission or distribution lines shall be approved by the Public Utilities Commission.

Sec. 3. R. S., T. 35, § 2343, repealed and replaced. Section 2343 of Title 35 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 2343. Water companies may lay pipelines

Every water company organized under the general or special law of this State and authorized to do a public utility business in this State may lay its pipes in and under the roads and streets in any city or town in which it is authorized to supply water or through which it is necessary or convenient to lay the same to conduct water from its source of supply to enable it to render such service, subject to the conditions and under the restrictions provided in chapters 171 to 179. Such water utility shall procure a written location permit under section 2483.

The installation and maintenance of a water utility plant by a utility in accordance with such location permit shall constitute compliance by such utility with the requirements of the first sentence of section 2355.

Said water utility shall comply with sections 2483 to 2486.

Sec. 4. R. S., T. 35, §§ 2482 - 2483, repealed and replaced. Sections 2482 and 2483 of Title 35 of the Revised Statutes are repealed and the following enacted in place thereof:

§ 2482. Permits to construct lines

Except as otherwise provided, no such company, person or association shall construct lines upon and along highways and public roads, without making an application for and obtaining a written permit under section 2483.

§ 2483. Application for permit; procedure

In all cases in which a permit or the alteration of a permit is sought for a location in, under, over, upon, along or in any manner within the right-of-way limits of any public way, every corporation operating telegraphs or telephones or transmitting television signals by wire, and every corporation that owns, controls, operates or manages any pipeline within or through this State for the transportation as a common carrier for hire of oil, gas, gasoline, petroleum or any other liquids or gases, and every water company and every corporation making, generating, selling, distributing and supplying gas or electricity, and every water or sewer company, district or system privately or municipally owned, every municipally owned or operated firm alarm, police alarm or street lighting circuit or system and every cooperative organized under chapter 221 to 227 and any other person, firm or corporation engaged in the transmission of intelligence, heat, light, power or electricity shall procure a written location permit for its facilities from the applicable licensing authority, defined as follows:

1. Definitions.

A. "Applicable licensing authority" or "licensing authority" as used in this section shall mean:

- (1) The State Highway Commission, when the public way is a state, state aid or federal aid highway;
- (2) Selectmen of a town or the town council or other body where there is a special legislative charter, when the public way is a town road;
- (3) The municipality officers of a city, when the public way is a city street;

(4) The county commissioners, when the public way is in a plantation or unorganized township, and is not a state, state aid or federal highway.

B. "Facilities" as used in this section shall mean:

(1) If under the surface of the public way, pipes, cables and conduits;

(2) If on or over the surface of the public way, poles, guys, hydrants and any plant or equipment located on the surface of the public way.

2. Application. The application shall be in writing and describe the facility, the requested location, the minimum depth if an underground facility, the minimum height of any attached wires or cables, if an above ground facility, all in the manner and form which the licensing authority may require.

3. Notice. The applicant shall give public notice of the application by publishing the text of the same once in a newspaper circulated in the municipality or municipalities encompassing the limits of the proposed location.

A copy of any application filed with the State Highway Commission shall be sent to the town or city clerk of each municipality in which the public way is located, or to the clerk of the county commissioners in the case of a public way within a plantation or unorganized township.

4. Objection. Any person, firm or corporation claiming to be adversely affected by the proposed location described in the application shall file a written objection with the licensing authority within 14 days after publication by the applicant. The written objection shall state the cause. The objection shall be served by personal delivery in hand or by registered or certified mail.

5. Hearing. The licensing authority on receipt of a written objection shall fix a time and place for hearing, and 7 days' notice of hearing shall be given by registered or certified mail to the applicant and any person, firm or corporation filing lawful objections. At the hearing, the applicant shall first prove public notice of the application. Adjudication by the licensing authority on validity of the applicant's notice shall be final and conclusive. If the licensing authority finds either its notice of hearing or the applicant's notice of application defective, it may fix a new time and place for hearing and shall order appropriate notice to be published and shall adjourn the hearing to meet at the time and place fixed in its order, otherwise it shall proceed with the hearing.

6. Permits. The location permit shall specify the approximate location of the facility and the minimum depth of any pipes or conduits below, or the minimum height of any appurtenant wires or cables above, the earth's surface. The licensing authority may specify in the permit other requirements deemed necessary in the best interests of the public safety and use of the right-of-way and any waters it may cross so as not to incommode use for public travel or interrupt navigation.

7. Liability. Installation and maintenance of the facility and its appurtenances in accordance with the terms of the permit and the provisions of chapters 171 to 179 shall relieve the applicant of liability to others by reason of location of its facility and appurtenances and no person shall have any right of recovery

under the authority of Title 23, section 3655 by reason of such location, installation and maintenance, and the applicant will be liable only for its carelessness and negligence in the installation and maintenance.

8. Alteration. The procedure for an applicant to alter the terms of a location permit after construction or installation of the facility shall be the same as any original application for a permit. After installation of the facility the licensing authority may alter or amend the permit if the installation is deemed to impair the highway improvement or interfere with the free and safe flow of traffic.

9. Relocation. No location permit or alteration of any original location permit shall be required for relocation of the facility when such relocation is because of the construction, reconstruction or relocation of the way. The licensing authority shall issue a new location permit to evidence the legality of the relocation.

10. Replacement and additions. A new location permit is not required for the replacement of an existing facility or appurtenance, or for additions to the facility and appurtenances made within the terms of the existing permit.

11. Service lines. A location permit is not required to install a service extension to property abutting the right-of-way, and such service line facilities will be deemed legal structures.

12. Ordered and existing locations. No location permit is required for any facilities constructed in accordance with an order of the municipality issued in writing and signed by the municipal officers, or by county commissioners in the case of plantations or unorganized townships, and such facilities when installed in accordance with the order will be deemed legal structures.

No location permit is required for any facilities which existed within the limits of a private way prior to the legal acceptance of said private way as a public way, and such facilities will be deemed legal structures.

13. Records. The licensing authority shall maintain a record of all location permits issued and presently valid.

14. Appeals. The licensing authority shall give notice of their decision to the applicant and to any person filing objections as soon as may be practicable.

Any person, firm, or corporation aggrieved by a decision of the State Highway Commission or the county commissioners may appeal to the Superior Court in the manner provided in Title 23, sections 2063 to 2066, relating to highways.

In case of cities and towns, the decision of the municipal officers shall be filed with the clerk of the city or town within one week from the date thereof. Within 2 weeks from such filing, any person aggrieved may appeal from their decision by filing notice of appeal with a copy of the original petition and adjudication with the clerk of the city or town and with the clerk of the board of county commissioners. The commissioners shall immediately entertain such appeal and give 2 weeks' notice of the time and place of hearing, which time shall be within 30 days from the time such appeal is filed. Such hearing may be adjourned from time to time, not exceeding 30 days in all, and the commissioners shall file

their decision within 30 days from the time the hearing is closed and transmit a copy of the same to the applicant, any other parties to the appeal, and to the clerk of the city or town, who shall forthwith record it.

15. **Opening permits.** Notwithstanding any provisions in either sections 2343, 2482 or 2483, the applicant must procure opening permits before making any underground installation as provided in Title 23, section 54, and sections 3351 to 3359, and in Title 35, chapter 173.

The granting of a permit by the State Highway Commission, following application, notice, hearing and expiration of waiver of the appeal period, all as specified, shall constitute an agreement between the utility and the State.

The State Highway Commission shall have the exclusive rights, powers and duties of municipal officers under section 2489 when state, state aid and federal aid highways are affected.

Nothing herein shall be deemed to impair the rights of municipal officers under Title 30, section 2151, subsection 2, paragraph H.

Facilities and appurtenances heretofore installed, maintained and now in use within any public way together with any facilities and appurtenances hereafter installed and maintained in accordance with this section shall be deemed legal structures and the party maintaining the same shall be liable on account thereof only for acts of carelessness or negligence in the erection or maintenance of the same.

Sec. 5. R. S., T. 35, § 2489, amended. The first sentence of section 2489 of Title 35 of the Revised Statutes is amended to read as follows:

Whenever the municipal officers of any city or town having a population of more than 40,000 inhabitants, in which any person, firm or corporation maintains wires attached to poles located in any public street or way **other than a state, state aid, or federal aid highway, as defined in section 2483**, for conveying electric current or for the transmission of telephone or telegraph messages, determine, after notice and hearing, that public safety and the public welfare require the revocation of any location for poles already erected in any public street or way, they may revoke any such location and order such poles removed, which shall be done within a reasonable time by the person, firm or corporation owning said poles.