

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

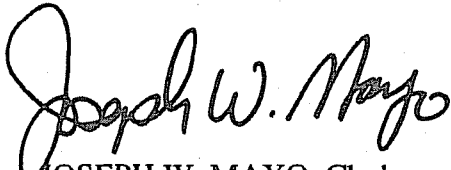
No. 1760

H.P. 1305

House of Representatives, January 20, 1994

An Act to Amend the Utility Location Permit Laws.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Utilities suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative SAXL of Bangor.
Cosponsored by Representatives: ADAMS of Portland, CLARK of Millinocket, HOLT of Bath,
MORRISON of Bangor, Senator: CLEVELAND of Androscoggin.

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

2
4 **Sec. 1. 35-A MRSA §2502, sub-§1-A** is enacted to read:

6 **1-A. Associated governmental entity.** "Associated
governmental entity" means:

8 A. The State, when the licensing authority is the
Department of Transportation;

10 B. The municipal government, when the licensing authority
is the municipal officers or their designees; and

12 C. The county government, when the licensing authority is
the county commissioners.

14 **Sec. 2. 35-A MRSA §2503, sub-§5**, as enacted by PL 1987, c.
16 141, Pt. A, §6, is amended to read:

18 **5. Permits.** The location permit shall specify the
20 approximate location of the facility and the minimum depth of any
22 pipes or conduits below, or the minimum height of any wires or
24 cables above, the earth's surface. The licensing authority may
specify in the permit other requirements determined necessary in
the best interests of the public safety and use of the
right-of-way ~~so as not to obstruct use for public travel.~~ Any
26 person who has been issued a permit shall provide to the
licensing authority plans of the facilities as built within 30
28 days after completion of the installation or laying of the
30 facilities.

32 **Sec. 3. 35-A MRSA §2503, sub-§§5-A, 5-B and 6-A** are enacted to
read:

34 **5-A. Fees.** The licensing authority may condition the
36 granting of a permit on an agreement by the applicant to pay an
annual fee to the licensing authority. The fee may apply only to
38 facilities installed or relocated after September 1, 1994. The
fee imposed on public utilities may not exceed \$5 per linear foot
40 for underground facilities and \$10 per pole or other aboveground
support used to carry wires, cables, pipelines or other
42 aboveground facilities. A fee per linear foot may not be charged
for aboveground facilities. The following may not be required to
44 pay an annual fee under this subsection:

46 A. Utilities or other entities owned and operated by the
State or by a municipality;

48 B. Consumer-owned utilities, rural electrification
50 cooperatives, as defined in section 3703, or any
quasi-municipal entity; or

2 C. Any public utility that pays real or personal property
4 taxes on facilities subject to the permit to a municipality
 or county where the facilities are located.

6 5-B. Indemnification provisions. The licensing authority
8 may require as a condition of the permit that the applicant agree
10 to indemnify the licensing authority and associated governmental
12 entity for any claims against the licensing authority or
 associated governmental entity arising out of the applicant's
 negligent use of the public way pursuant to an issued permit.

14 6-A Immunity. Notwithstanding the provisions of Title 14,
16 chapter 741, Title 23, section 3360-A or any other provisions of
18 law, a licensing authority and the associated governmental entity
20 are immune from all liability for any damage to any facilities
22 caused by any negligent act or omission of the licensing
 authority, associated governmental entity or of the employees,
 agents or representatives of either the licensing authority or
 associated governmental entity. The procurement of liability
 insurance coverage by the licensing authority or the associated
 governmental entity does not waive this immunity.

24 **Sec. 4. 35-A MRSA §2503, sub-§13, ¶C,** as enacted by PL 1987,
26 c. 141, Pt. A, §6, is amended to read:

28 C. In the case of municipalities, the decision of the
30 municipal officers or their designees shall be filed with
32 the clerk of the municipality within one week from the date
34 of the decision. Within 2 weeks from the filing, any person
36 aggrieved may appeal from their decision to the county
 commissioners by filing notice of appeal with a copy of the
 original petition and adjudication with the clerk of the
 municipality and with the clerk of the board of county
 commissioners.

38 (1) Once a person aggrieved files a notice of appeal
40 of a ~~revisien~~ decision made by a municipality, the
42 municipal officers may ~~review--a~~ reconsider that
44 ~~decision previously--made--by--them--to--reconsider--the~~
46 ~~issues--involved--or--they--may--act--as--a--review--board--to~~
48 ~~evaluate--a--decision--made--by--their--designees.~~ The
50 reconsideration may include review of the issues raised
 by the appeal, reassessment of the issues previously
 presented to the municipality or review of any actions
 taken or decisions made by the municipal officers'
 designees. The municipal officers may alter decisions
 during--the--2-week shall complete a reconsideration
 within 15 business days of the filing of an appeal with
 the county commissioners, unless the person aggrieved

2 agrees to an extension of the reconsideration period,
3 but--the--person--aggrieved--retains--the--initiative--to
4 pursue--the--appeal--if--not--satisfied--with--the--altered
5 decision. An agreement to an extension of a
6 reconsideration does not impair a person's right to
7 pursue an appeal under this paragraph. The municipal
8 officers shall notify the county commissioners whenever
9 a reconsideration is commenced or an agreement to an
10 extension is reached pursuant to this subparagraph and
11 the appeal is stayed for a period of 15 business days
12 from the date of the filing of the appeal and for the
13 term of any extension agreed to under this
14 subparagraph. Upon termination of the stay, the person
15 aggrieved, if not satisfied with the decision of the
16 municipal officers on reconsideration or if the
17 reconsideration is not completed, may pursue the
18 person's appeal and may amend the appeal to recognize
19 any decision of the municipal officers on
20 reconsideration.

21 (2) The county commissioners shall immediately
22 entertain the appeal and give 2 weeks' notice of the
23 time and place of hearing, which must be held commenced
24 within 30 days from the time the appeal is filed,
25 except that if a reconsideration is commenced pursuant
26 to subparagraph (1), the 30-day period runs from the
27 termination of the stay as provided in subparagraph
28 (1). The hearing may be adjourned from time to time,
29 not exceeding 30 days in all, and the commissioners
30 shall file their decision within 30 45 days from the
31 time the hearing is closed and transmit a copy of it to
32 the applicant, any other parties to the appeal and to
33 the clerk of the municipality, who shall immediately
34 record it.

35 (3) The decision of the county commissioners may be
36 appealed as a final agency action pursuant to Title 5,
37 chapter 375, subchapter VII. For purposes of the
38 tolling of time deadlines for appeal, the date of
39 decision of the county commissioners is the date the
40 notice of the decision is received by the clerk of the
41 municipality.

42
43 **Sec. 5. 35-A MRSA §2503, sub-§§19 and 20, as enacted by PL**
44 **1987, c. 141, Pt. A, §6, are amended to read:**

45
46 **19. Legal effect.** Existing facilities and appurtenances
47 maintained and now in use within a public way, together with any
48 facilities and appurtenances installed and maintained in
49 accordance with this section are deemed legal structures and the
50

2 party maintaining them is liable for maintaining them only for
3 acts of negligence in the erection or maintenance of them. The
4 failure of the licensing authority, without good cause, to grant
5 or deny a permit for which application is made within 60 90 days
6 of filing with the municipality constitutes the issuance of a
7 location permit. For purposes of this subsection, good cause
8 includes, but is not limited to, unfinished review of complex
9 transmission system plans requiring engineering expertise or site
10 inspection, the utilization of the settlement process established
11 in section 2523 and incomplete good faith negotiations between
12 parties concerning permit conditions.

13
14 **20. Exclusive method.** Compliance with this section by any
15 person is the exclusive method of obtaining the rights and
16 privileges conferred in this section and no person or cooperative
17 may be required, ~~with respect to the location of its facilities,~~
18 to comply with or be subject to any other law, including, but not
19 limited to, Title 30 30-A, chapter 240-A 165 in order to obtain
20 the rights and privileges conferred under this section with
21 regard to the location of facilities in a public way. Nothing in
22 this subsection exempts any person from compliance with any state
23 or local law or rule that is not related to the location of
24 facilities in the public way, including, but not limited to, the
25 provisions of Title 30-A, section 3008 and local ordinances
26 requiring the payment of franchise fees and the execution of a
27 franchise agreement before the use of the public right-of-way for
28 the provision of cable television services.

29 **Sec. 6. 35-A MRSA §2523** is enacted to read:

30 **§2523. Facilities in the public way; application to commission**
31 **when disagreement**

32
33 Whenever a licensing authority and public utility seeking to
34 undertake any activity requiring a permit under this chapter can
35 not agree upon the manner of construction or the location of
36 facilities or the payment of fees to the licensing authority,
37 either party may apply to the commission to resolve the dispute.
38 The commission's decision is binding upon the parties. The
39 public utility shall pay costs, other than attorney's fees,
40 except that, if the commission determines that the licensing
41 authority has been unreasonable in its position, the commission
42 may require the licensing authority or associated governmental
43 entity to pay costs, other than attorney's fees. A licensing
44 authority's insistence on the payment of any fee authorized under
45 this chapter may not be found to be unreasonable by the
46 commission. In its discretion, the commission may also resolve
47 any other dispute arising under a written agreement between the
48 public utility and the licensing authority providing for
49 commission review of the dispute.
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STATEMENT OF FACT

6 Currently, utilities have free access to public
8 rights-of-way, regardless of whether the service provided by the
10 utility is an essential service or part of a commercial venture.
12 In consequence of recent advances in telecommunications and other
14 technology, new types of utility facilities, such as fiber optic
cables, are now being placed in public ways. The nature of these
new facilities requires a new regulatory framework to address the
increased risks that are associated with these new facilities.

14

This bill makes the following changes to law.

16

18 1. It provides a definition of "associated governmental
entity."

20

22 2. It requires persons issued a permit to build facilities
in the public way to provide to the licensing authority plans of
the facilities as built within 30 days of their construction.

24

26 3. It permits licensing authorities to assess annual fees
for use of the public way. The fee is capped for underground and
aboveground facilities and applies only to facilities installed
or relocated after September 1, 1994. There are exemptions from
28 the fee for governmental and consumer-owned entities. An
exemption is also provided for public utilities that pay local
30 property taxes on permitted facilities to a municipality or to a
county.

32

34 4. It also permits licensing authorities to require as a
condition of a permit that the applicant agree to indemnify the
licensing authority or associated governmental entity for claims
36 arising out of the applicant's negligent use of the public way.

38

40 5. It creates immunity for licensing authorities and
associated governmental entities from all liability for damage to
any facilities in the public way, regardless of when installed,
caused by negligent act or omission of the licensing authority or
42 its employees or agents.

44

46 6. It clarifies and modifies the authority of
municipalities to reconsider permit decisions, extends the
deadline for county commissioners to complete a decision on an
appeal of a municipal decision and specifies a right of appeal
48 from a decision of the county commissioners.

50

7. It extends the deadline for an approval or denial of a
permit application by a licensing authority to 90 days. The bill

2 permits the licensing authority, for good cause, to take longer
than 90 days.

4 8. It requires the Public Utilities Commission to resolve
6 disputes in which a licensing authority and a public utility
8 applying for a permit can not agree on terms of a permit. This
10 provision also provides that unless the licensing authority is
12 found unreasonable in its position, the utility must pay the
costs of the proceeding, other than attorney's fees.

14 This document has not yet been reviewed to determine the
16 need for cross-reference, stylistic and other technical
amendments to conform existing law to current drafting standards.