

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1929

S.P. 679

In Senate, March 17, 1999

**An Act Concerning Damage to Lands and Natural Resources Caused by
Natural Gas Pipelines.**

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 TREAT of Kennebec.
Cosponsored by Representative COWGER of Hallowell and
Senators: KILKELLY of Lincoln, LONGLEY of Waldo, NUTTING of Androscoggin,
PINGREE of Knox, Representatives: BULL of Freeport, RINES of Wiscasset, SHIAH of
Bowdoinham, WATSON of Farmingdale.

2 C. Establish a fee for services in an amount not to exceed
4 \$175 for every 4 hours of mediation services provided. In
6 addition, the landowner is responsible for the costs of
8 providing notice as required under subsection 7.

10 3. Application; eligibility. A landowner may apply for
12 mediation under this subchapter if that landowner:

14 A. Has suffered harm as a result of an act or omission by a
16 person surveying, constructing, operating or maintaining a
18 natural gas pipeline on, over or under the landowner's land;

20 B. Applies for mediation under subsection 4:

22 (1) With respect to any dispute concerning acts or
24 omissions occurring during the construction of the
26 pipeline, within one year of the completion of pipeline
28 construction on the property; or

30 (2) With respect to any dispute concerning acts or
32 omissions occurring after the construction of the
34 pipeline, within one year of the act or omission;

36 C. With respect to any claim regarding future crop
38 deficiency, provides notice to the entity against whom the
40 claim is made at least 30 days prior to the crop harvest in
42 order to allow the entity to assess crop deficiency;

44 D. Has sought and failed to reach satisfactory agreement or
46 settlement with the entity responsible for the harm; and

48 E. Submit to the Superior Court clerk all necessary fees at
50 the time of application.

52 4. Submission of application for mediation. A landowner
54 may apply for mediation under this subchapter by filing an
56 application for mediation with the Superior Court clerk in the
58 county in which the land that is the subject of the conflict is
60 located. The Superior Court clerk shall forward the application
62 to the Court Mediation Service.

64 5. Stay of filing period. Notwithstanding any other
66 provision of law, the period of time allowed by law or by rules
68 of the court for any person to file for judicial review in any
70 state court of any claim related to a dispute for which mediation
72 is requested under this subchapter is stayed for 30 days beyond
74 the date the mediator files the report required under subsection
76 12 with the Superior Court clerk, but in no case longer than 120
78 days from the date the landowner files the application for
80 mediation with the Superior Court clerk.

82 6. Purpose; conduct of mediation. The purpose of a
84 mediation under this subchapter is to facilitate a mutually

2 acceptable solution to a dispute in accordance with applicable
3 principles of property law, the terms of any easement and the
4 terms of any governmental permits issued with respect to the
5 pipeline. The mediated settlement may include penalties for
6 noncompliance with the terms of the easement or of any government
7 permits as well as requirements that one or more parties to the
8 mediation undertake restoration and mitigation measures.

9
10 The mediator, whenever possible and appropriate, shall conduct
11 the mediation in the county in which the land that is the subject
12 of the conflict is located.

13
14 7. Schedule; notice; participants. The mediator is
15 responsible for scheduling all mediation sessions. The mediator
16 shall provide the names and addresses of the landowner and the
17 entity with whom the landowner has a dispute and a copy of the
18 notice of the mediation schedule to the Superior Court clerk, who
19 shall mail the notices.

20
21 8. Parties to mediation. A mediator shall include in the
22 mediation process any person the mediator determines is necessary
23 for effective mediation. A mediator may exclude or limit a
24 person's participation in mediation when the mediator determines
25 that exclusion or limitation necessary for effective mediation.

26
27 9. Sharing of costs. Participants in the mediation may
28 share the costs of mediation after the initial 4 hours of
29 mediation services have been provided.

30
31 10. Admissibility. The admissibility in court of conduct
32 or statements made during mediation, including offers of
33 settlement, is governed by the Maine Rules of Evidence, Rule
34 408(a) for matters subsequently heard in a state court and
35 Federal Rules of Evidence, Rule 408 for matters subsequently
36 heard in a federal court.

37
38 11. Agreements. A mediated agreement must be in writing.
39 The landowner and the entity with whom the landowner is in
40 dispute must sign the agreement as participants and the mediator
41 must sign as the mediator.

42
43 12. Mediator's report. Within 90 days after the landowner
44 files an application for mediation, the mediator shall file a
45 report with the Superior Court clerk. The mediator shall file
46 the report as soon as possible if the mediator determines that a
47 mediated agreement is not possible. The report must contain:

48 A. The names of the mediation participants;

2 B. The nature of any agreements reached during the course
3 of mediation and what further action is required of any
4 person;

6 C. The nature of any issues remaining unresolved and the
7 mediation participants involved in those unresolved issues;
8 and

10 D. A copy of any written agreement under subsection 11.

12 The terms of any mediated agreement are enforceable in the
13 Superior Court. If the parties fail to reach a mediated
14 settlement, any party may file an appropriate civil action for
15 remedies in accordance with applicable law.

16 **Sec. 3. 33 MRSA §459 is enacted to read:**

18 **§459. Easements for natural gas pipelines**

20 An easement or other property interest established or
21 granted after the effective date of this section for the purpose
22 of allowing the construction, maintenance or operation of a
23 natural gas pipeline is subject to this section.

24 **1. Right to cancel.** An easement or other property interest
25 for the construction, maintenance or operation of a natural gas
26 pipeline does not become effective until 7 business days after
27 the date of the contract granting the easement or other property
28 interest. Any easement or other instrument filed in a registry
29 of deeds concerning a property interest subject to this section
30 must clearly state its effective date in accordance with the
31 provisions of this section. A landowner or person serving in a
32 fiduciary capacity in the landowner's behalf may cancel an
33 agreement granting the easement or other interest by providing
34 notice delivered by certified mail to the easement holder's
35 principal place of business within 7 business days after the date
36 of the contract granting the easement or other property
37 interest. The right to cancel is not waivable. A person seeking
38 to acquire an easement or other property interest for the
39 construction, maintenance or operation of a natural gas pipeline
40 shall:

42 **A. Inform a landowner or the landowner's fiduciary in**
43 **writing prior to the signing of any agreement concerning**
44 **interests in land of the landowner's right to cancel under**
45 **this section; and**

48 **B. Provide to the landowner or the landowner's fiduciary a**
49 **form in duplicate for providing a notice of cancellation**
50 **under this section. The text of this section must appear on**
51 **the form.**

2 A landowner, either directly or through a fiduciary, may exercise
3 the right of cancellation under this section only once for each
4 pipeline project proposed over the landowner's land.

6 2. Right to negotiate the annual fee. A person granting an
7 easement or other property interest to another for the
8 construction, maintenance or operation of a natural gas pipeline
9 may negotiate an annual fee for the use of the easement or
10 property interest. Any annual fee negotiated under this
11 subsection runs with the land and is payable to the owner of
12 record.

14

16

SUMMARY

18

This bill does the following.

20 1. It establishes a mediation program for resolving
21 disputes concerning use of easements held by natural gas pipeline
22 companies.

24 2. It establishes that an easement or other property
25 interest for the construction, maintenance or operation of a
26 natural gas pipeline does not become effective until 7 business
27 days after the date of the contract granting the easement or
28 other property interest and permits the landowner to cancel the
29 easement in the 7-day period.

30

32 3. It permits landowners to negotiate an annual fee for the
use of easements held by natural gas pipeline companies. Such
fees run with the land.