

# MAINE STATE LEGISLATURE

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L.D. 1973

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UTILITIES AND ENERGY

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
120TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1472, L.D. 1973, Bill, "An Act Regarding Utility Easements"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 35-A MRSA §2311, as amended by PL 1991, c. 743, §1, is further amended to read:

**§2311. Lines along railroads; application to Public Utilities Commission when disagreement**

A person maintaining or operating a telephone or electric line may construct a line across, upon or along any railroad with the written permit of the person owning or operating the railroad. If the person seeking to construct the line cannot maintaining or operating a telephone or electric line and the person owning or operating the railroad can not agree with the parties operating the railroad, as to constructing the construction or manner of construction of lines upon, along or across the railroad or as to the manner in which lines may be continued operation of lines constructed upon, along or across the railroad, either party may apply to the commission, who, after notice to those interested, shall hear and determine the matter and make their award, which. The commission's decision is binding upon the parties. The commission may grant the person seeking to construct or operate a line a permit with appropriate terms and conditions to construct or operate the line along, upon or across the railroad or, in the case of a line across the railroad, authorize, subject to appropriate terms and conditions,

**COMMITTEE AMENDMENT**

2 the person to take by eminent domain an easement across the  
3 railroad. The taking of an easement authorized by the commission  
4 pursuant to this section must be in accordance with the  
5 procedures established in chapter 65. This section does not  
6 permit the commission to authorize the taking of an easement over  
7 lands owned by the State. The person seeking to construct lines  
8 on the railroad shall pay the expenses of the hearing, except  
9 that if the commission finds that parties owning or operating the  
10 railroad have unreasonably refused their consent, those parties  
11 shall pay the expenses. Without limiting the commission's  
12 jurisdiction under this section, if a railroad company and a  
13 telephone or electric transmission and distribution utility enter  
14 into an agreement involving a utility crossing of railroad  
15 property and that agreement or some other agreement provides that  
16 the commission shall resolve disputes arising under the original  
17 agreement, the commission may resolve those disputes. As used in  
18 this section, the term "railroad" includes, but is not limited  
19 to, a railroad whose abandonment has been approved pursuant to 49  
20 United States Code, chapter 109.

21 **Sec. 2. 35-A MRSA §3136, sub-§2,** as enacted by PL 1987, c.  
22 141, Pt. A, §6, is amended to read:

23 **2. Right of eminent domain not applicable.** The right of  
24 eminent domain granted in subsection 1 does not apply to:

25 A. Lands or easements located within 300 feet of an  
26 inhabited dwelling;

27 B. Lands or easements on or adjacent to any developed or  
28 undeveloped water power;

29 C. Lands or easements so closely paralleling existing wire  
30 lines of other utilities that the proposed transmission  
31 lines would substantially interfere with service rendered  
32 over the existing lines, except with the consent of the  
33 owners; and

34 D. Lands or easements owned or used by railroad  
35 corporations, except as authorized pursuant to section  
36 2311; and

37 E. Lands or easements owned by the State.

38 **Sec. 3. 35-A MRSA §3136, sub-§3,** as amended by PL 1999, c.  
39 398, Pt. A, §51 and affected by §§104 and 105, is further amended  
40 to read:

41 **3. Prior right to locate distribution lines and**  
42 **appurtenances in right-of-way limits of public way.** Transmission  
43 and distribution utilities may take and hold by right of eminent  
44 domain

2 domain land or easements necessary for the proper location of  
3 their distribution lines and the necessary appurtenances, but  
4 only where the transmission and distribution utilities had a  
5 prior right to locate their distribution lines and necessary  
6 appurtenances in the right-of-way limits of a public way and the  
7 body having jurisdiction over the public way has caused the  
8 utility to remove its distribution lines and appurtenant  
9 structures outside the right-of-way limits of the public way.  
10 This right does not apply to lands or easements as specified in  
11 subsection 2, paragraphs B, C and, D and E.

12 **Sec. 4. 35-A MRSA §4710, sub-§6**, as enacted by PL 1999, c.  
13 605, §2 and affected by §3, is amended to read:

14 **6. Pipelines constructed over or across railroad or public**  
15 **utility.** A natural gas utility may construct a natural gas  
16 pipeline over or across the location of a railroad or public  
17 utility by agreement with the railroad or public utility or, in  
18 the event of failure to agree, with the commission's approval and  
19 in a place and manner and under conditions determined by the  
20 commission. Notwithstanding subsection 4, paragraph D, the  
21 commission's approval of a natural gas utility's crossing of a  
22 railroad may include authorization pursuant to this section for  
23 the natural gas utility to take by eminent domain an easement  
24 across the railroad. For purposes of this section "railroad"  
25 includes, but is not limited to, a railroad whose abandonment has  
26 been approved pursuant to 49 United States Code, chapter 109.  
27 This subsection does not permit the commission to authorize the  
28 taking of an easement over lands owned by the State. All work on  
29 the property ~~of~~ of a railroad or public utility must be done  
30 under the supervision and to the satisfaction of the railroad or  
31 public utility, but at the natural gas utility's expense.

34 **Sec. 5. 35-A MRSA §6501, sub-§3**, as enacted by PL 1987, c.  
35 141, Pt. A, §6, is amended to read:

36 **3. Exceptions.** This Except as otherwise provided by law,  
37 this chapter does not apply to:

38 A. Property taken by the United States, the State of Maine,  
39 a county or municipality of the State, a quasi-municipal  
40 corporation or steam railroad corporation; and

41 B. Property which, when taken, is being or is necessary to  
42 be used by the owner in the performance of a public duty.'

43 Further amend the bill by inserting at the end before the  
44 summary the following:  
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**FISCAL NOTE**

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The Public Utilities Commission will incur some minor additional costs to grant easements to persons seeking to construct or operate a line across a railroad. These costs can be absorbed within the commission's existing budgeted resources.'

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**SUMMARY**

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This amendment replaces the bill. This amendment:

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1. Authorizes the Public Utilities Commission to allow a natural gas utility or a person maintaining or operating a telephone or electric line to acquire an easement to run a line across a railroad, including an abandoned railroad; and

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2. Clarifies that the commission can not authorize a natural gas utility or a person maintaining or operating a telephone or electric line to acquire by eminent domain land owned by the State.

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The amendment also adds a fiscal note to the bill.