

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1786

H.P. 1274

House of Representatives, February 18, 2010

An Act Regarding Energy Infrastructure Development

Reported by Representative HINCK of Portland for the Joint Standing Committee on Utilities and Energy pursuant to Public Law 2009, chapter 372, Part F, section 4, subsection 6.

Reference to the Committee on Utilities and Energy suggested and ordered printed pursuant to Joint Rule 218.

Millicent M. MacFarland

MILLICENT M. MacFARLAND

Clerk

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

2 PART A

3 Sec. A-1. 5 MRSA §12004-G, sub-§30-D is enacted to read:

4 30-D.

5 Public Utilities Interagency Review Not Authorized 35-A MRSA §122,
6 Panel sub-§1-B

7 Sec. A-2. 35-A MRSA §122, as enacted by PL 2007, c. 656, Pt. A, §3, is
8 amended to read:

9 §122. Energy infrastructure corridors

10 1. **Definitions.** As used in this section, unless the context otherwise indicates, the
11 following terms have the following meanings.

12 A. "Department" means the Department of Environmental Protection.

13 B. "Energy infrastructure" includes electric transmission and distribution facilities,
14 generation interconnection transmission facilities, natural gas transmission lines,
15 carbon dioxide pipelines and other energy transport pipelines or conduits. "Energy
16 infrastructure" does not include ~~generation interconnection transmission facilities or~~
17 energy generation facilities.

18 C. "Energy infrastructure corridor" ~~or "corridor"~~ means a geographic area within the
19 State designated ~~by the commission~~ in accordance with this section for the purposes
20 of siting energy infrastructure. "Energy infrastructure corridor" includes statutory
21 corridors and petitioned corridors.

22 D. "Generation interconnection transmission facility" has the same meaning as in
23 section 3132, subsection 1-B.

24 D-1. "Petitioned corridor" means an energy infrastructure corridor designated by the
25 commission in accordance with subsection 2.

26 E. ~~"Interested person~~ Potential developer" means a person that can demonstrate to
27 the commission the financial and technical capability to engage in the development
28 and construction of energy infrastructure.

29 F. "Project" means the development or construction of energy infrastructure within
30 an energy infrastructure corridor.

31 F-1. "Proprietary information" means information that is a trade secret or production,
32 commercial or financial information the disclosure of which would impair the
33 competitive position of the person who submitted the information and would make
34 available information not otherwise publicly available.

35 F-2. "Searsport-Loring corridor" means the real estate, real property rights and
36 easements and infrastructure associated with the existing pipeline and associated
37 easement corridor extending from Searsport to the former Loring Air Force Base in

1 Limestone, Maine, as granted and conveyed by the United States Air Force to the
2 Loring Development Authority of Maine in 2005, together with such additional
3 rights, property, easement scope and physical rights of way as may have been or may
4 be acquired, as are necessary to effectuate the intent of the parties to the leases,
5 easements and agreements existing on the effective date of this paragraph and as may
6 be reasonably necessary or desirable to further develop the Searsport-Loring corridor
7 as a statutory corridor for use pursuant to subsection 1-B.

8 F-3. "Statutory corridor" means an energy infrastructure corridor designated under
9 subsection 1-A.

10 G. "Tribe" includes the Penobscot Nation, as defined in Title 30, section 6203,
11 subsection 10; the Passamaquoddy Tribe, as defined in Title 30, section 6203,
12 subsection 7; the Houlton Band of Maliseet Indians, as defined in Title 30, section
13 6203, subsection 2 and the Aroostook Band of Micmacs, as defined in Title 30,
14 section 7202, subsection 1.

15 **1-A. Statutory corridors designated.** The following areas are designated as
16 statutory corridors:

17 A. The Interstate 95 corridor, including that portion of Interstate 95 designated as the
18 Maine Turnpike, in accordance with the provisions of subsection 1-C;

19 B. The Interstate 295 corridor; and

20 C. The Searsport-Loring corridor, subject to the following provisions.

21 (1) The Searsport-Loring corridor may be used, developed and expanded for
22 energy infrastructure consistent with any leases, easements or other agreements
23 in effect on the effective date of this subsection. It is not a statutory corridor until
24 the expiration or termination of such leases, easements or other agreements.

25 (2) The executive director of the Loring Development Authority of Maine shall
26 notify the Interagency Review Panel under subsection 1-B when any leases,
27 easements or other agreements in effect on the effective date of this subsection
28 affecting or otherwise pertaining to the Searsport-Loring corridor have expired or
29 otherwise terminated.

30 **1-B. Use of statutory corridors; Interagency Review Panel.** The Interagency
31 Review Panel, as established in Title 5, section 12004-G, subsection 30-D and referred to
32 in this subsection as "the panel," shall oversee the use of statutory corridors in accordance
33 with this section.

34 A. The panel includes the following members:

35 (1) The Director of the Governor's Office of Energy Independence and Security
36 within the Executive Department or the director's designee;

37 (2) The Commissioner of Administrative and Financial Services or the
38 commissioner's designee;

39 (3) The Commissioner of Economic and Community Development or the
40 commissioner's designee; and

1 (4) The commissioner of each department or the director of any other state
2 agency that owns or controls land or assets within the statutory corridor under
3 consideration or that commissioner's or director's designee.

4 B. The panel shall identify an initial range of value for the use of state-owned land or
5 assets within a statutory corridor. The initial range of value must be determined by a
6 professional appraiser who meets the qualifications of paragraph F.

7 C. The panel shall establish and implement a regular process for soliciting, accepting
8 and evaluating energy infrastructure proposals for use of a statutory corridor. As part
9 of this process, the panel shall provide public notice of the availability of the statutory
10 corridor for energy infrastructure development, a description of the type of
11 development anticipated in the statutory corridor and the opportunity for potential
12 developers to submit proposals for use of the statutory corridor.

13 D. The panel shall evaluate and render a decision on an energy infrastructure
14 proposal for use of a statutory corridor on the basis of the long-term public interest of
15 the State in accordance with this paragraph.

16 (1) The panel shall deny an energy infrastructure proposal that does not:

17 (a) Enhance opportunities for energy generation within the State; and

18 (b) Significantly and measurably reduce electric rates or other relevant
19 energy costs for residents and businesses within the State.

20 (2) The panel may accept an energy infrastructure proposal only if the panel
21 finds that the proposal is in the long-term public interest of the State. In
22 determining whether the proposal is in the long-term public interest, the panel
23 shall, at a minimum, consider the extent to which the proposal:

24 (a) Enhances opportunities for energy generation within the State, including
25 access to the proposed energy infrastructure for renewable energy generation;

26 (b) Significantly and measurably reduces electric rates or other relevant
27 energy costs for residents and businesses within the State;

28 (c) Maximizes long-term economic benefits for the State, including but not
29 limited to direct financial benefits, employment opportunities and economic
30 development;

31 (d) Ensures efficient use of the statutory corridor through collocation of
32 energy infrastructure, collaboration between energy infrastructure developers
33 and the preservation of options for future uses;

34 (e) Minimizes conflict with the public purposes for which the state-owned
35 land or asset is owned and any management plans for the land or asset within
36 the statutory corridor and, when necessary, mitigates unavoidable impacts;

37 (f) Limits and mitigates the effects of energy infrastructure on the landscape,
38 including but not limited to using underground installation when
39 economically and technically feasible;

40 (g) Increases the energy reliability, security and independence of the State;
41 and

1 (h) Reduces the release of greenhouse gases.

2 E. If a proposal is accepted pursuant to paragraph D, the panel may enter into
3 negotiations with the potential developer who submitted the proposal regarding a
4 long-term occupancy agreement with the State for the use of the statutory corridor, in
5 accordance with this paragraph.

6 (1) The panel shall negotiate the terms of the occupancy agreement, including
7 but not limited to the length of the agreement and compensation to the State for
8 use of the statutory corridor. In negotiating the occupancy agreement, the panel
9 shall take into account existing legal commitments, contractual obligations,
10 reasonable investment-backed expectations and relevant prior state investments,
11 when applicable.

12 (2) Compensation to the State may be in the form of payments made on an
13 annual basis or the functional or financial equivalent, discounted prices for
14 energy products or services, partial ownership by the State of the energy
15 infrastructure on the basis of the value of the statutory corridor in proportion to
16 the energy infrastructure as a whole, or other appropriate form. The terms of
17 compensation may include provisions for periodic adjustment of the
18 compensation to the State over time and reimbursement of costs to the state
19 agency or agencies that own or control the statutory corridor.

20 (3) Negotiation of compensation to the State must be based on at least one
21 independent appraisal performed by a professional appraiser in accordance with
22 paragraph F. An independent appraisal performed under this subparagraph must,
23 at a minimum, consider the costs that will be avoided by the potential developer,
24 including but not limited to the costs of acquisition, lease or rental of private
25 land, the costs of property taxes on private land, the costs of surveying, appraisal,
26 environmental, engineering and other work necessary for use of private land, the
27 costs of time and potential conflict regarding the use of private land, the unique
28 and limited nature of the state-owned land or asset, the revenues estimated to be
29 generated by the use of the state-owned land or asset and other relevant factors.

30 F. The panel shall contract for the services of a professional appraiser or appraisers
31 to assist the panel in its duties under this subsection. The professional appraiser
32 contracted under this paragraph must:

33 (1) Have demonstrated experience in the valuation and evaluation of utility
34 corridors or transportation corridors;

35 (2) Hold a professional designation from a nationally recognized organization of
36 appraisers; and

37 (3) Be licensed by this State as a certified general real property appraiser in
38 accordance with Title 32, section 14035 or hold a comparable license from
39 another state.

40 The cost of the services of a professional appraiser who provides services in
41 accordance with this paragraph must be paid by potential developers submitting
42 proposals for use of the corridor under this subsection in proportion to the amount of
43 time spent by the appraiser on each potential developer's proposal.

1 G. The following proprietary information, as it pertains to the sale, lease or use of
2 state-owned land or assets under the provisions of this subsection or activities in
3 preparation for such sale, lease or use, is confidential within the meaning of Title 1,
4 section 402, subsection 3, paragraph A and may not be released by the panel or the
5 state agency involved:

6 (1) Proprietary information in the possession of the state agency; and

7 (2) Proprietary information in the possession of the panel or a professional
8 appraiser assisting the panel.

9 H. No later than February 1st of each year, the panel shall provide a written report to
10 the joint standing committee of the Legislature having jurisdiction over utilities and
11 energy matters that documents the activities of and actions taken by the panel under
12 this subsection during the previous calendar year.

13 **1-C. Maine Turnpike Authority easement; Interstate 95 corridor.** The Maine
14 Turnpike Authority shall grant an easement to the Department of Transportation along
15 that portion of Interstate 95 designated as the Maine Turnpike to allow its use as part of
16 the Interstate 95 statutory corridor. The Maine Turnpike Authority and the Department of
17 Transportation shall negotiate the terms, size and location of the easement, which must be
18 consistent with Maine Turnpike engineering standards and the compensation, which may
19 be no greater than the administrative costs associated with the transfer of this easement.
20 Notwithstanding Title 23, chapter 24, any revenues generated from the use of the
21 easement as part of the Interstate 95 statutory corridor, including use under an occupancy
22 agreement pursuant to subsection 1-B, paragraph E, must be deposited in the energy
23 infrastructure benefits fund established under Title 5, section 282, subsection 9.

24 **2. Designation of petitioned corridors.** The commission may, upon petition,
25 designate energy infrastructure petitioned corridors in accordance with this subsection.

26 A. The commission may designate ~~an energy infrastructure~~ a petitioned corridor only
27 by rule. Rules adopted pursuant to this subsection are major substantive rules as
28 defined in Title 5, chapter 375, subchapter 2-A.

29 (1) The rulemaking to designate ~~an energy infrastructure~~ a petitioned corridor
30 must include a public hearing in which any member of the public may submit
31 oral or written testimony or comments, which must be incorporated into the rule-
32 making record in accordance with Title 5, section 8052, subsection 1. The
33 commission shall provide an opportunity for examination of the petitioner at a
34 rule-making hearing. The commission shall allow for written comments by any
35 member of the public up to 7 days prior to the hearing. The commission shall
36 allow a second round of written comments to be filed within 10 days of the
37 hearing or within such longer time as the commission may direct.

38 (2) In any rulemaking regarding the designation of ~~an energy infrastructure~~ a
39 petitioned corridor, the commission shall address all written comments, including
40 those submitted pursuant to subsection 3, and state its rationale for adopting or
41 rejecting any proposals or recommendations contained in those written
42 comments.

1 (3) A designation of ~~an energy infrastructure~~ a petitioned corridor must be based
2 on substantial evidence in the record of the rule-making hearing.

3 B. The commission may commence a proceeding to designate ~~an energy~~
4 ~~infrastructure~~ a petitioned corridor only upon the filing of a petition for the
5 designation of a petitioned corridor by the Office of the Public Advocate, the
6 Executive Department, Governor's Office of Energy Independence and Security or ~~an~~
7 ~~interested person~~ a potential developer.

8 C. The commission shall dismiss a petition for the designation of ~~an energy~~
9 ~~infrastructure~~ a petitioned corridor filed under this subsection if, ~~after~~ on the basis of
10 a preliminary review; ~~if after the preliminary review~~ the commission determines that
11 the petition:

12 (1) Does not contain sufficient information to support the designation of ~~an~~
13 ~~energy infrastructure~~ a petitioned corridor; or

14 (2) Was filed by a person other than ~~the Office of the Public Advocate,~~
15 ~~Executive Department, Governor's Office of Energy Independence and Security~~
16 ~~or an interested person as defined by subsection 1, paragraph E~~ a person listed in
17 paragraph B.

18 D. The commission may designate ~~an energy infrastructure~~ a petitioned corridor only
19 if the commission finds, ~~after consultation with state agencies and other entities as~~
20 ~~required under subsection 3,~~ that a statutory corridor, a previously designated
21 petitioned corridor or an abandoned railroad corridor owned or controlled by the
22 Department of Transportation cannot meet the needs of the proposed energy
23 infrastructure and that the future development of energy infrastructure within the
24 petitioned corridor is reasonably likely to be:

25 (1) In the public interest, including, but not limited to, consideration of:

26 (a) Encouraging ~~collocation~~ collocation of energy infrastructure;

27 (b) Enhancing the efficient utilization of existing energy infrastructure; and

28 (c) Limiting impacts on the landscape; and

29 (2) Consistent with environmental and land use laws and rules of the State. A
30 finding that the future development of energy infrastructure within the petitioned
31 corridor is reasonably likely to be consistent with environmental and land use
32 laws and rules of the State under this paragraph has no evidentiary value in a
33 subsequent consolidated environmental permit proceeding undertaken by the
34 department pursuant to subsection 6.

35 E. In designating a ~~geographic area as an energy infrastructure~~ petitioned corridor,
36 the commission shall limit the geographic area of the petitioned corridor to an area no
37 greater in breadth and scope than is necessary to achieve the purposes of this section.

38 F. The commission may not designate ~~an energy infrastructure~~ a petitioned corridor
39 ~~that is located on~~ in any of the following lands:

40 (1) Houlton Band Trust Land, as defined in Title 30, section 6203, subsection
41 2-A;

- 1 (2) Passamaquoddy Indian territory, as defined in Title 30, section 6203,
2 subsection 6;
- 3 (3) Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9;
- 4 (4) Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection
5 2;
- 6 (5) Lands that constitute a park as defined in Title 12, section 1801, subsection 7
7 and Baxter State Park; and
- 8 (6) Federally owned land.

9 **3. Petitioned corridors; notification and consultation prior to designation.** Prior
10 to designating an ~~energy infrastructure~~ a petitioned corridor under subsection 2, the
11 commission shall, at a minimum, notify, consult with and accept comments from:

- 12 A. The department;
13 A-1. A state agency that owns or controls land or assets within the proposed corridor,
14 within a statutory corridor or within a previously designated petitioned corridor;
15 A-2. The Department of Transportation regarding potential use of abandoned
16 railroad corridors owned or controlled by the department;
- 17 B. Appropriate state and federal energy and natural resources protection agencies, as
18 specified by rules adopted pursuant to subsection 9;
- 19 C. The municipalities in which the petitioned corridor would be located;
- 20 D. The Maine Land Use Regulation Commission and the counties in which the
21 petitioned corridor would be located, if the ~~proposed energy infrastructure~~ petitioned
22 corridor, or any portion of the petitioned corridor, is would be located within
23 unorganized or deorganized territories of the State; and
- 24 E. A tribe, if the ~~proposed energy infrastructure~~ petitioned corridor, or any portion of
25 the petitioned corridor, is would be located on land of a tribe other than those lands
26 specified in subsection 2, paragraph F.

27 **4. ~~Use of corridors; certificate and permit required.~~** ~~Development or construction~~
28 ~~of energy infrastructure within an energy infrastructure corridor is governed by this~~
29 ~~subsection.~~

- 30 ~~A. A transmission and distribution utility may not engage in development or~~
31 ~~construction of a transmission line covered by section 3132 within an energy~~
32 ~~infrastructure corridor, unless:~~
33 ~~(1) The commission has issued a certificate of public convenience and necessity~~
34 ~~approving the transmission line in accordance with section 3132; and~~
35 ~~(2) The department has issued a consolidated environmental permit approving the~~
36 ~~project in accordance with subsection 6.~~
- 37 ~~B. A transmission and distribution utility may not engage in development or~~
38 ~~construction of energy infrastructure other than a transmission line covered by section~~
39 ~~3132 within an energy infrastructure corridor, unless:~~

1 ~~(1) The commission has issued a corridor use certificate approving the project in~~
2 ~~accordance with subsection 5; and~~

3 ~~(2) The department has issued a consolidated environmental permit approving the~~
4 ~~project in accordance with subsection 6.~~

5 ~~C. A person that is not a transmission and distribution utility may not engage in~~
6 ~~development or construction of energy infrastructure within an energy infrastructure~~
7 ~~corridor, unless:~~

8 ~~(1) The commission has issued a corridor use certificate approving the project in~~
9 ~~accordance with subsection 5; and~~

10 ~~(2) The department has issued a consolidated environmental permit approving the~~
11 ~~project in accordance with subsection 6.~~

12 **4-A. Use of energy infrastructure corridors; requirements.** Development or
13 construction of energy infrastructure within an energy infrastructure corridor is governed
14 by this subsection.

15 **A. A person may not engage in development or construction of energy infrastructure**
16 **within a statutory corridor, unless:**

17 (1) The person has entered into an occupancy agreement with the Interagency
18 Review Panel in accordance with subsection 1-B and in compliance with
19 applicable state and federal rules, regulations and laws;

20 (2) The department has issued a consolidated environmental permit for the
21 project in accordance with subsection 6; and

22 (3) If the project is a transmission line that requires a certificate of public
23 convenience and necessity under section 3132, the commission has issued a
24 certificate of public convenience and necessity for the transmission line.

25 **B. A person may not engage in development or construction of energy infrastructure**
26 **within a petitioned corridor, unless:**

27 (1) The department has issued a consolidated environmental permit for the
28 project in accordance with subsection 6;

29 (2) The commission has issued a corridor use certificate for the project in
30 accordance with subsection 5-A; and

31 (3) If the project is a transmission line that requires a certificate of public
32 convenience and necessity under section 3132, the commission has issued a
33 certificate of public convenience and necessity approving the transmission line.

34 **5. Corridor use certificate.** Whenever a person proposes to develop or construct
35 energy infrastructure within an energy infrastructure corridor, except for a transmission
36 and distribution utility that proposes a transmission line subject to the requirements of
37 section 3132, that person shall file with the commission a petition for a corridor use
38 certificate. The petition for the corridor use certificate must contain such information as
39 the commission by rule requires. The commission shall process a petition for a corridor

1 use certificate in an adjudicatory proceeding. The commission shall issue a corridor use
2 certificate upon a finding that the project is:

3 A. In the public interest; and

4 B. Reasonably likely to:

5 (1) Minimize utility rates or increase the reliability of utility service;

6 (2) Have the net effect of reducing the release of greenhouse gases; or

7 (3) Enhance economic development within the State.

8 **5-A. Corridor use certificate.** Whenever a person proposes to develop or construct
9 energy infrastructure within a petitioned corridor, that person shall file with the
10 commission a petition for a corridor use certificate. The petition for the corridor use
11 certificate must contain such information as the commission by rule requires. The
12 commission shall process a petition for a corridor use certificate in an adjudicatory
13 proceeding. The commission shall evaluate and render a decision on any petition for a
14 corridor use certificate on the basis of the long-term public interest of the State in
15 accordance with this subsection.

16 A. The commission shall deny any petition for a corridor use certificate upon a
17 finding that the proposed energy infrastructure would not:

18 (1) Enhance opportunities for energy generation within the State; and

19 (2) Significantly and measurably reduce electric rates or other relevant energy
20 costs for residents and businesses within the State.

21 B. The commission may issue a corridor use certificate for an energy infrastructure
22 proposal only if the commission finds that the proposal is in the long-term public
23 interest of the State. In determining whether the proposal is in the long-term public
24 interest the commission shall, at a minimum, consider the extent to which the
25 proposed energy infrastructure would:

26 (1) Enhance opportunities for energy generation within the State, including
27 access to the proposed energy infrastructure for renewable energy generation;

28 (2) Significantly and measurably reduce electric rates or other relevant energy
29 costs for residents and businesses within the State;

30 (3) Maximize long-term economic benefits for the State, including but not
31 limited to direct financial benefits, employment opportunities and economic
32 development;

33 (4) Ensure efficient use of the petitioned corridor through collocation of energy
34 infrastructure, collaboration between energy infrastructure developers and the
35 preservation of options for future uses;

36 (5) Minimize conflict with the public purposes for which the state-owned land or
37 asset is owned and any management plans for the land or asset within the
38 petitioned corridor and, when necessary, mitigate unavoidable impacts;

1 (6) Limit and mitigate the effects of energy infrastructure on the landscape,
2 including but not limited to using underground installation when economically
3 and technically feasible;

4 (7) Increase energy reliability, security and independence of the State; and

5 (8) Reduce the release of greenhouse gases.

6 The commission shall establish by rule procedures to minimize duplicative filing and
7 review requirements for the corridor use certificate for any transmission line that
8 requires a certificate of public convenience and necessity under section 3132.

9 **6. Environmental review; consolidated environmental permit.** Whenever a
10 person proposes to develop or construct energy infrastructure within an energy
11 infrastructure corridor, that person shall file with the department an application for a
12 consolidated environmental permit. The department shall adopt by rule pursuant to
13 subsection 9 a process for the review of applications and the issuance of the consolidated
14 environmental permit in accordance with this subsection. The department may request
15 comments from and consult with other agencies and programs that are required by law to
16 issue separate approvals for some or all projects.

17 A. A consolidated environmental permit issued by the department takes the place of
18 any other permits or licenses that the department would otherwise require for the
19 proposed project.

20 B. The application for a consolidated environmental permit must contain such
21 information as the department requires, including, but not limited to, all studies and
22 documentation necessary to determine whether the proposed project is in compliance
23 with the environmental laws of the State administered by the department.

24 C. The applicant for a consolidated environmental permit shall pay a fee specified by
25 rule and reimburse the department for any additional costs of regulatory review,
26 including expenses for outside peer review or other consultants or experts assisting
27 the department in its review. Outside review of applications under this subsection is
28 governed by Title 38, section 344-A, except that the Commissioner of Environmental
29 Protection is not required to obtain the consent of the applicant to enter into an
30 agreement with an outside reviewer or require that the costs of the outside review be
31 reimbursed by the applicant.

32 D. The department shall issue its decision on an application for a consolidated
33 environmental permit within a timeframe specified by department rule or guideline.
34 The decision may specify approval, denial or approval in part and denial in part. A
35 proposed project may not be undertaken if it is denied in whole or in part by the
36 department.

37 E. Upon issuance of a consolidated environmental permit, the department shall
38 certify to the commission that the permit has been issued and whether the proposed
39 project complies, in part or in whole, with the environmental laws of the State
40 administered by the department and whether other agencies and programs that are
41 required by law to issue separate approvals for some or all aspects of the project have
42 taken final agency action on those matters requiring their separate approval.

43 F. The department shall enforce the terms of the consolidated environmental permit.

1 G. The terms of the consolidated environmental permit may require additional
2 submissions by the permit holder, studies and approvals with conditions.

3 If the department receives an application for a permit to develop or construct energy
4 infrastructure within an energy infrastructure corridor prior to adopting a rule to
5 implement this subsection, the department shall process the application in accordance
6 with the department's existing review and permitting procedures.

7 6-A. Revenues. Except as otherwise provided by law, including the Constitution of
8 Maine, revenues generated from the use of state-owned land and assets within energy
9 infrastructure corridors must be deposited in the energy infrastructure benefits fund
10 established in Title 5, section 282, subsection 9.

11 **7. Eminent domain.** This subsection grants and limits certain rights of eminent
12 domain with respect to energy infrastructure corridors.

13 A. The eminent domain authority of a transmission and distribution utility within an
14 energy infrastructure corridor is governed by section 3136.

15 B. Subject to approval by the commission, a person that is not a transmission and
16 distribution utility that receives a certificate of public convenience and necessity
17 under section 3132 or a corridor use certificate under subsection 5 5-A to develop
18 energy infrastructure, other than generation interconnection transmission facilities,
19 within an energy infrastructure corridor may take and hold by right of eminent
20 domain lands and easements within that corridor necessary for the proper location of
21 the energy infrastructure covered by the certificate of public convenience and
22 necessity or the corridor use certificate in the same manner and under the same
23 conditions as set forth in chapter 65. The right of eminent domain granted in this
24 paragraph does not apply to:

- 25 (1) Lands or easements located within 300 feet of an inhabited dwelling;
- 26 (2) Lands or easements on or adjacent to any developed or undeveloped water
27 power;
- 28 (3) Lands or easements so closely paralleling existing wire lines of other utilities
29 that the proposed energy infrastructure would substantially interfere with service
30 rendered over the existing lines, except with the consent of the owners;
- 31 (4) Lands or easements owned or used by railroad corporations, except as
32 authorized pursuant to section 2311;
- 33 (5) Lands or easements owned by the State; and
- 34 (6) Transmission and distribution plant that is owned, controlled, operated or
35 managed by a transmission and distribution utility on the effective date of this
36 section.

37 C. The commission may take and hold by right of eminent domain lands and
38 easements within an energy infrastructure corridor in accordance with this paragraph,
39 notwithstanding any transmission and distribution utility ownership of the lands or
40 easements.

1 (1) The commission may exercise the authority under this paragraph only in an
2 adjudicatory proceeding upon a petition by the Office of the Public Advocate or
3 the Executive Department, Governor's Office of Energy Independence and
4 Security demonstrating that such action is urgently needed to avoid substantial
5 harm to electricity consumers regarding anticipated activity associated with an
6 energy infrastructure corridor. A determination by the commission that the
7 exercise of eminent domain under this paragraph is urgently needed to avoid
8 substantial harm to electricity consumers regarding anticipated activity associated
9 with an energy infrastructure corridor constitutes reviewable final agency action.

10 (2) The amount of any lands or easements taken by the commission pursuant to
11 this subsection may be no greater than is required to avoid the harm to electricity
12 consumers identified under subparagraph (1).

13 (3) The right of eminent domain granted in this paragraph does not apply to
14 personal property, fixtures or improvements that constitute transmission and
15 distribution plant.

16 (4) The commission may exercise the right of eminent domain for the purposes of
17 this paragraph in the same manner and under the same conditions as set forth in
18 chapter 65. For the purposes of the exercise of eminent domain authorized by
19 this paragraph, the commission is both a person and the State.

20 (5) The commission is authorized to assess transmission and distribution utilities
21 to the extent necessary to obtain sufficient funds to pay for lands and easements
22 taken pursuant to this subsection.

23 (6) The commission, in an adjudicatory proceeding upon petition by the Office of
24 the Public Advocate or the Executive Department, Governor's Office of Energy
25 Independence and Security, may transfer or convey to any person or state agency
26 lands and easements once acquired, except that a transmission and distribution
27 utility whose lands or easements were taken pursuant to this paragraph must be
28 given the first opportunity to acquire the lands or easements to the extent
29 necessary or useful in the performance of its duties as a transmission and
30 distribution utility.

31 (7) The commission shall report on the circumstances of any taking by eminent
32 domain to the joint standing committee of the Legislature having jurisdiction
33 over utilities and energy matters during the next regular session of the Legislature
34 following the acquisition of lands or easements by eminent domain.

35 **8. Utility service territory.** Nothing in this section modifies existing restrictions on
36 entities providing service within a public utility's service territory provided under chapter
37 21.

38 **9: Rules.** The commission and the department, as appropriate, shall adopt by rule
39 standards and procedures to implement this section. Rules adopted pursuant to this
40 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A,
41 except that rules adopted by the commission for the designation of ~~an energy~~
42 infrastructure a petitioned corridor, pursuant to subsection 2, paragraph A, are major
43 substantive rules.

1 The director shall provide a report to the joint standing committee of the Legislature
2 having jurisdiction over utilities and energy matters annually by January 15th regarding
3 the use of revenues from the energy infrastructure benefits fund. The report must
4 document the revenues transferred from the energy infrastructure benefits fund to the
5 trust during the most recently completed fiscal year and the current fiscal year and
6 amounts and uses of money expended by the trust in accordance with this subsection
7 during the most recently completed and the current fiscal year.

8 **PART C**

9 **Sec. C-1. 2 MRSA §9, sub-§3, ¶C,** as amended by PL 2009, c. 372, Pt. H, §2, is
10 further amended to read:

11 C. In consultation with the Efficiency Maine Trust Board, established in Title 5,
12 section 12004-G, subsection 10-C, prepare and submit a comprehensive state energy
13 plan to the Governor and the Legislature by January 15, 2009 and submit an updated
14 plan every 2 years thereafter. Within the comprehensive state energy plan, the
15 director shall identify transmission capacity and infrastructure needs and recommend
16 appropriate actions to facilitate the development and integration of new renewable
17 energy generation within the State and support the State's renewable resource
18 portfolio requirements specified in Title 35-A, section 3210 and wind energy
19 development goals specified in Title 35-A, section 3404;

20 **Sec. C-2. 2 MRSA §9, sub-§4** is enacted to read:

21 **4. Advice to state agencies.** The director shall advise state agencies regarding
22 energy-related principles for agencies to consider, along with the laws and policies
23 governing those agencies, in conjunction with the sale, lease or other allowance for use of
24 state-owned land or assets for the purpose of development of energy infrastructure, as
25 defined by Title 35-A, section 122, subsection 1, paragraph B. At a minimum, the
26 director shall consider the following principles in advising state agencies under this
27 subsection:

28 A. Enhancing opportunities for energy generation within the State, including access
29 to the proposed energy infrastructure for renewable energy generation;

30 B. Significantly and measurably reducing electric rates or other relevant energy costs
31 for residents and businesses within the State;

32 C. Maximizing long-term economic benefits for the State, including but not limited
33 to direct financial benefits, employment opportunities and economic development;

34 D. Ensuring efficient use of the state-owned land or asset through collocation of
35 energy infrastructure, collaboration between energy infrastructure developers and
36 preservation of options for future uses;

37 E. Minimizing conflict with the public purposes for which the state-owned land or
38 asset is owned and any management plans for the land or asset and, when necessary,
39 mitigating unavoidable impacts;

1 F. Limiting and mitigating the effects of energy infrastructure on the landscape,
2 including but not limited to using underground installation when economically and
3 technically feasible;

4 G. Increasing the State's energy independence, reliability and security;

5 H. Reducing the release of greenhouse gases;

6 I. Avoiding wherever possible the use of lands subject to the provisions of the
7 Constitution of Maine, Article IX, Section 23; and

8 J. Maximizing the benefit realized from this State's strategic location within New
9 England and the northeastern region.

10 **Sec. C-3. 35-A MRSA §3132, sub-§13**, as amended by PL 2009, c. 123, §6, is
11 further amended to read:

12 **13. Public lands.** The State, any agency of the State or any political subdivision of
13 the State may not sell, lease or otherwise convey any interest in public land, other than a
14 future interest or option to purchase an interest in land that is conditioned on satisfaction
15 of the terms of this subsection, to any person for the purpose of constructing a
16 transmission line subject to this section, unless the person has received a certificate of
17 public convenience and necessity from the commission pursuant to this section.

18 A person who has bought, leased or otherwise been conveyed any interest in public land
19 for the purpose of constructing a transmission line may not undertake construction of that
20 line except under the terms of the certificate of public convenience and necessity as
21 originally issued for that transmission line by the commission or as modified by order of
22 the Department of Environmental Protection under subsection 7 or under the terms of an
23 amended certificate of public convenience and necessity issued by the commission or
24 deemed to have been issued by the commission under subsection 11-A.

25 As used in this subsection, "public land" means land that is owned or controlled by the
26 State, by an instrumentality of the State or by a political subdivision of the State.

27 As used in this subsection, "future interest or option to purchase an interest in land"
28 includes an option, purchase and sale agreement or other equivalent legal instrument that
29 conveys the intent to pursue a future sale, lease or other conveyance of land.

30 **Sec. C-4. Legislative review; implementation.** The joint standing committee of
31 the Legislature having jurisdiction over utilities and energy matters shall review the
32 implementation of this Act during the First Regular Session of the 125th Legislature.
33 Based on its review, the joint standing committee may submit a bill relating to this Act to
34 the First Regular Session of the 125th Legislature.

35 **Sec. C-5. Department of Transportation report.** By January 15, 2011, the
36 Department of Transportation shall report to the joint standing committee of the
37 Legislature having jurisdiction over utilities and energy matters regarding current and
38 potential uses of abandoned railroad corridors owned or controlled by the department for
39 energy infrastructure development.

1

SUMMARY

2 This bill amends the laws governing energy infrastructure corridors to designate
3 several state-owned energy infrastructure corridors as "statutory corridors" and to
4 continue a petition process for "petitioned corridors." The bill establishes a process for
5 the State to use when entering into occupancy agreements for construction and
6 development of energy infrastructure within statutory corridors. It establishes an
7 interagency review panel to oversee the use of the statutory corridors, including
8 soliciting, accepting and evaluating proposals for the use and establishing standards for
9 approval of the use of statutory corridors to ensure that their use is in the long-term best
10 interests of the State. It requires a long-term occupancy agreement, a consolidated
11 environmental permit from the Department of Environmental Protection and, if the
12 project is a transmission line, a certificate of public convenience and necessity from the
13 Public Utilities Commission.

14 The bill establishes standards for the use of a petitioned corridor, requiring all
15 projects to obtain a corridor use certificate from the Public Utilities Commission and
16 requiring the Public Utilities Commission to deny projects that do not enhance
17 opportunities for energy generation in the State and significantly and measurably reduce
18 electric rates or other relevant energy costs for residents and businesses within the State.

19 The bill requires that, except when prohibited by law, including the Constitution of
20 Maine, all revenues generated from the use of state-owned land and assets within energy
21 infrastructure corridors be deposited in an energy infrastructure benefits fund and from
22 there transferred to the Efficiency Maine Trust and used on a competitive basis to ensure
23 the steady transition to energy independence and security. It requires the Efficiency
24 Maine Trust, in the expenditure of funds, to give preference to proposals in 3 specific
25 categories, with no more than 50% of expenditures in any one fiscal year devoted to any
26 one category.

27 The bill amends the laws governing the repeal date for the energy infrastructure
28 corridor laws, changing the date from July 30, 2011 to July 30, 2015.

29 The bill requires annual reports to the joint standing committee of the Legislature
30 having jurisdiction over utilities and energy matters from the interagency review panel
31 regarding the activities of the panel in overseeing use of the statutory corridors and from
32 the Efficiency Maine Trust regarding expenditure of funds from the energy infrastructure
33 benefits fund. In addition, it requires the Department of Transportation to report by
34 January 15, 2011 regarding current and potential uses of abandoned railroad corridors for
35 energy infrastructure development. Finally, the bill requires the joint standing committee
36 of the Legislature having jurisdiction over utilities and energy matters to review the
37 implementation of this legislation during the First Regular Session of the 125th
38 Legislature and authorizes the committee to submit a bill based on its review.