

# MAINE STATE LEGISLATURE

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Date: 5/19/11

L.D. 908

(Filing No. H-298)

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### ENERGY, UTILITIES AND TECHNOLOGY

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#### STATE OF MAINE

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#### HOUSE OF REPRESENTATIVES

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#### 125TH LEGISLATURE

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#### FIRST REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 667, L.D. 908, Bill, "An Act Regarding Gas Utilities under the Safety Jurisdiction of the Public Utilities Commission"

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Amend the bill by striking out everything after the title and before the summary and inserting the following:

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**'Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

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**Whereas,** it is crucial to immediately establish a new framework for safety regulation of certain gas utilities that is not overly burdensome but adequately protects public safety; and

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**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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**Sec. 1.** 35-A MRSA §4702, as repealed and replaced by PL 1999, c. 718, §15, is repealed.

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**Sec. 2.** 35-A MRSA §4702-A is enacted to read:

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**§4702-A. Safety jurisdiction only over certain gas utilities**

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The commission may regulate certain gas utilities in accordance with this section as an agent of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration pursuant to 49 United States Code, Section 60105.

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**1. Jurisdiction.** A gas utility owning, controlling, operating or managing a central tank system or a liquefied petroleum gas system is subject to the jurisdiction of the commission solely with respect to safety if that system serves:

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A. Ten or more customers;

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B. More than one customer and any portion of the central tank system or liquefied petroleum gas system is located in a public place; or

C. One customer and a portion of the central tank system or liquefied petroleum gas system is located off the customer's premises in a public place.

In regulating gas utilities under this section, the commission may not interpret "public place" to include a motel room, hotel room, rented cottage or other rented or leased living space unless the commission receives written notice from the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration that this exclusion is incompatible with the administration's interpretation of 49 Code of Federal Regulations, Section 192.1 and the commission by rule establishes a definition of "public place" consistent with that written notice. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

2. Limitations; liquefied petroleum gas systems. Regulation of liquefied petroleum gas systems under this section is governed by this subsection. As used in this subsection, unless the context otherwise indicates, "jurisdictional system" means a liquefied petroleum gas system subject to the jurisdiction of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration under 49 Code of Federal Regulations, Section 192.1, and "operator" means the operator of a jurisdictional system.

A. The commission may regulate liquefied petroleum gas systems only to the extent the system is subject to the jurisdiction of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration under 49 Code of Federal Regulations, Section 192.1.

B. The commission shall regulate jurisdictional systems and operators under this section in accordance with the minimum standards established by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration as adopted by reference by the commission by rule. Rules adopting by reference the minimum standards established by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

C. The commission may not adopt or enforce any rule governing jurisdictional systems or operators, including but not limited to rules establishing definitions or standards, except as specifically authorized in this paragraph, paragraph B or subsection 1. The commission may by rule:

- (1) Identify and certify operators;
- (2) Require jurisdictional systems to be registered with the commission. The commission may not impose an administrative penalty under section 1508-A that exceeds \$5,000 for failure to register a jurisdictional system;
- (3) Prohibit delivery of liquefied petroleum gas to a customer if an operator has determined that piping or other equipment owned by the customer makes continued delivery unsafe. Nothing in this subparagraph permits the commission to require an operator to inspect, maintain or otherwise oversee customer-owned piping or other equipment;

# COMMITTEE AMENDMENT

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COMMITTEE AMENDMENT "A" to H.P. 667, L.D. 908

- 1           (4) Require operators to participate in the underground facility damage  
2           prevention system established under Title 23, section 3360-A;
- 3           (5) Define "combustible material";
- 4           (6) Establish reasonable requirements for operators to keep on file maps or  
5           drawings of jurisdictional systems;
- 6           (7) Establish reasonable standards for the protection of jurisdictional systems  
7           from reasonably foreseeable damages that may be caused by motorized vehicles  
8           or snow, ice or other weather-related conditions;
- 9           (8) Establish reasonable requirements for the installation of warning tape and  
10           tracer wires on plastic pipes installed by operators;
- 11           (9) Establish reasonable requirements for operators to mark containers owned by  
12           the operators and located on customer property;
- 13           (10) Establish reasonable requirements for the use of directional boring by  
14           operators for the installation of piping for jurisdictional systems;
- 15           (11) Establish reasonable odor verification requirements for liquefied petroleum  
16           gas delivered to customers by operators; and
- 17           (12) Establish enforcement procedures. The enforcement procedures must  
18           provide for informal disposition of possible violations, including procedures that  
19           allow a person to correct a violation without penalty, informal conferences to  
20           resolve disputes about violations, consent agreements to resolve enforcement  
21           actions and other means of avoiding adjudicatory proceedings and the imposition  
22           of administrative penalties when informal means of enforcement are adequate to  
23           ensure public safety.

24           Rules adopted under this paragraph are major substantive rules as defined in Title 5,  
25           chapter 375, subchapter 2-A.

26           D. In applying the atmospheric corrosion control standards established by the United  
27           States Department of Transportation Pipeline and Hazardous Materials Safety  
28           Administration to liquefied petroleum gas systems, the commission shall consider  
29           atmospheric corrosion to be a condition exhibiting signs of deterioration, including  
30           pitting or loss of metal. The commission may not consider surface rust or loss of  
31           paint coating to constitute atmospheric corrosion.

32           **Sec. 3. 35-A MRSA §4710, first ¶,** as enacted by PL 1999, c. 605, §2 and  
33           affected by §3, is amended to read:

34           Subject to the provisions of this section, a natural gas utility may take and hold by  
35           right of eminent domain lands or rights in lands necessary to the safe, economical and  
36           efficient operation of a pipeline and to the provision of adequate service to the public.  
37           For purposes of this section, the term "natural gas utility" means an intrastate natural gas  
38           pipeline utility or a gas utility other than a gas utility over which the commission's  
39           jurisdiction is limited pursuant to section 4702 ~~4702-A~~.

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**Sec. 4. Regulatory reform; regulation of gas safety.** Until rules have been adopted by the Public Utilities Commission pursuant to the Maine Revised Statutes, Title 35-A, section 4702-A, the commission shall enforce the minimum standards established by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration under 49 Code of Federal Regulations, Parts 191, 192 and 199 as in effect on the effective date of this Act.

The commission may not enforce rules adopted by the commission governing the safety and operation standards for liquefied petroleum gas systems existing on the effective date of this Act.

Until rules establishing specific enforcement procedures have been adopted by the commission pursuant to Title 35-A, section 4702-A, the commission shall use its discretion to informally resolve violations of standards established by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration and to avoid imposing administrative penalties under Title 35-A, section 1508-A to the extent consistent with the commission's responsibility to ensure adequate public safety.

The commission shall examine in consultation with operators of liquefied petroleum gas systems what rules may be appropriate to implement Title 35-A, section 4702-A. Consistent with the results of its examination, the commission shall conduct a rule-making proceeding to provisionally adopt rules to implement Title 35-A, section 4702-A and shall submit those rules for legislative review by January 15, 2012.

The commission shall work with the Maine Energy Marketers Association to develop a written request for the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration to provide a written interpretation of whether certain liquefied petroleum gas systems come within the scope of 49 Code of Federal Regulations, Section 192.1. The commission shall submit to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration any jointly agreed upon request.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.'

**SUMMARY**

This amendment replaces the bill and establishes parameters for the Public Utilities Commission's safety regulation of liquefied petroleum gas systems. This amendment:

1. Authorizes the commission to regulate such systems as an agent of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration and only to the extent the system is subject to the jurisdiction of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration;
2. Prohibits the commission, in determining whether a system is subject to regulation, from determining a "public place" to include a motel room, hotel room, rented cottage or other rented or leased living space unless the commission receives written notice from the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration that this exclusion is incompatible with the

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administration's interpretation of 49 Code of Federal Regulations, Section 192.1 and the commission by major substantive rule establishes a definition of "public place" consistent with that written notice;

3. Requires the commission to regulate such systems in accordance with the minimum standards of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration, but allows the commission to regulate certain specific additional safety issues through major substantive rules;

4. Requires the commission, in applying the atmospheric corrosion control standards established by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration, to consider atmospheric corrosion to be a condition exhibiting signs of deterioration, including pitting or loss of metal. The commission may not consider surface rust or loss of paint coating to constitute atmospheric corrosion;

5. Provides that the commission may not continue to enforce its existing rules governing the safety and operation standards for liquefied petroleum gas systems but must conduct an examination in consultation with operators of liquefied petroleum gas systems of what rules, beyond the federal minimum standards, may be appropriate to implement the new requirements of the Maine Revised Statutes, Title 35-A, section 4702-A. Consistent with the results of its examination, the commission is required to conduct a rule-making proceeding to provisionally adopt rules to implement Title 35-A, section 4702-A and to submit those rules for legislative review by January 15, 2012;

6. Directs the commission to work with the Maine Energy Marketers Association to develop a request to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration for a written interpretation of whether certain liquefied petroleum gas systems come within the scope of 49 Code of Federal Regulations, Section 192.1. The request must be cooperatively developed and the questions presented agreed to jointly; and

7. Adds an emergency preamble and emergency clause to the bill.

**FISCAL NOTE REQUIRED**  
**(See attached)**



Approved: 05/03/11 *MAC*

# 125th MAINE LEGISLATURE

LD 908

LR 767(02)

**An Act Regarding Gas Utilities under the Safety Jurisdiction of the Public Utilities Commission**

**Fiscal Note for Bill as Amended by Committee Amendment "A"**

**Committee: Energy, Utilities and Technology**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - Other Special Revenue Funds

### Fiscal Detail and Notes

Establishing new parameters for safety regulation by the Public Utilities Commission (PUC) regarding liquefied petroleum gas distribution systems and requiring related rulemaking will result in minor additional costs to the PUC which can be absorbed within existing budgeted resources.