

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1206

H.P. 870

House of Representatives, March 12, 2019

An Act To Improve Aboveground Utilities' Responsiveness to Public Interests

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative BEEBE-CENTER of Rockland.
Cosponsored by Senator WOODSOME of York and
Representatives: BERRY of Bowdoinham, CAIAZZO of Scarborough, DOUDERA of
Camden.

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

2 **Sec. 1. 30-A MRSA c. 169** is enacted to read:

3 **CHAPTER 169**

4 **RIGHTS-OF-WAY**

5 **§3621. Municipal management of public rights-of-way under municipal jurisdiction**

6 **1. Definitions.** As used in this chapter, unless the context otherwise indicates, the
7 following terms have the following meanings.

8 A. "Facilities" has the same meaning as in Title 35-A, section 2502, subsection 3.

9 B. "Public right-of-way beneficiary" means:

10 (1) A provider of cellular or wireless telecommunications service as defined in
11 Title 25, section 2921, subsection 2-B;

12 (2) A cable television system as defined in section 2001, subsection 3; and

13 (3) A telephone utility or transmission and distribution utility as defined in Title
14 35-A, section 102, subsections 19 and 20-B, respectively.

15 **2. Conditions necessary to ensure public health, safety and welfare.** In order to
16 more appropriately allocate scarce right-of-way space and better control the increase of
17 expenses incurred by municipalities for the provision of services related to and
18 management of rights-of-way necessary to public health, safety and welfare as required
19 by state law, a municipality may impose standards as a condition of a license or permit
20 issued pursuant to Title 35-A, section 2503 to a public right-of-way beneficiary.
21 Notwithstanding any provision of law to the contrary, a municipality may require as a
22 condition of a license or permit issued pursuant to Title 35-A, section 2503 the payment
23 of a fee necessary to ensure that the costs associated with the public right-of-way
24 beneficiary's use and occupation of the right-of-way are not borne solely by the taxpayers
25 of the municipality.

26 **3. Alteration, removal or relocation of facilities.** Upon written demand of a
27 municipality, a public right-of-way beneficiary shall alter, remove or relocate, as
28 specified by the municipality, the public right-of-way beneficiary's facilities within 180
29 days of the date the written demand is issued by the municipality.

30 **4. Penalty.** A public right-of-way beneficiary that fails to comply with a
31 requirement of this chapter is subject to a fine established by ordinance in an amount not
32 to exceed \$1,000 per day that the public right-of-way is in violation. The failure of a
33 public right-of-way beneficiary to pay a fine assessed by a municipality pursuant to this
34 subsection is grounds for refusal to issue new location permits or licenses to that public
35 right-of-way beneficiary.

36 **Sec. 2. 35-A MRSA §2501, sub-§2,** as amended by PL 2017, c. 199, §3, is
37 further amended to read:

1 **2. Applicability of section 2503.** Except as otherwise provided, a person may not
2 construct or place facilities upon and along highways and public roads without applying
3 for and obtaining a written location permit from the applicable licensing authority under
4 section 2503. Included within this requirement is every person operating telephones or
5 transmitting television signals by wire; every person that owns, controls, operates or
6 manages any pipeline within or through this State for the transportation as a common
7 carrier for hire of oil, gas, gasoline, petroleum or any other liquids or gases; every water
8 utility and every person making, generating, selling, distributing and supplying gas or
9 electricity; every water utility or sewer company, district or system privately or
10 municipally owned; every municipally owned or operated fire alarm, police alarm or
11 street lighting circuit or system; every cooperative organized under chapter 35; the
12 University of Maine System, for purposes described in section 2301-A; every dark fiber
13 provider; every unlit fiber provider as defined in section 711, subsection 7, paragraph E;
14 every telecommunications service provider as defined in section 711, subsection 7,
15 paragraph C; every information service provider as defined in section 711, subsection 7,
16 paragraph A; and any other person engaged in telecommunications or the transmission of
17 heat or electricity.

18 **Sec. 3. 35-A MRSA §2503, sub-§5-A** is enacted to read:

19 **5-A. Licenses.** The licensing authority may adopt annual licensing requirements for
20 a telephone utility and for a provider of cellular or wireless telecommunications service
21 as defined in Title 25, section 2921, subsection 2-B. The licensing authority may specify
22 in the license reasonable requirements the licensing authority determines necessary to the
23 public interest or authority purposes.

24 **Sec. 4. 35-A MRSA §2503, sub-§§8 and 9,** as enacted by PL 1987, c. 141, Pt.
25 A, §6, are amended to read:

26 **8. Relocation.** ~~No~~ A location permit or alteration of any original location permit is
27 not required for relocation of the facility when the relocation is because of the
28 construction, reconstruction or relocation of the way, except when required by federal law
29 applicable to highways that have been designated for federal aid. The licensing authority,
30 except in such cases of federal aid construction, shall issue a new location permit to
31 evidence the legality of the relocation. When relocation is required by the licensing
32 authority due to the construction, reconstruction, relocation or other improvement of the
33 way, facility owners are responsible for their own expenses related to relocating their
34 facilities.

35 **9. Replacement and additions.** ~~A~~ The licensing authority may require a new
36 location permit is not required for the replacement of an existing facility or appurtenance
37 or for additions to the facility and appurtenances ~~made within the terms of the existing~~
38 ~~permit.~~

39 **Sec. 5. 35-A MRSA §2503, sub-§20,** as amended by PL 1995, c. 254, §5, is
40 further amended to read:

41 **20. Exclusive method.** Compliance with this section by any person is the exclusive
42 method of obtaining the rights and privileges conferred in this section and ~~no~~ a person or

1 cooperative may not be required, with respect to the location of its facilities, to comply
2 with or be subject to any other law, including, but not limited to, Title 30-A, chapter 165.
3 This subsection may not be construed to limit the ability of the licensing authority to
4 impose standards as conditions of licenses or permits pursuant to this section and
5 pursuant to Title 30-A, section 3621.

6 **Sec. 6. 35-A MRSA §2503, sub-§21**, as repealed and replaced by PL 2015, c.
7 216, §3, is further amended to read:

8 **21. Default standards.** This subsection governs standards applied by local licensing
9 authorities with respect to underground locations. This subsection may not be construed
10 to limit the ability of the licensing authority to impose additional reasonable standards as
11 conditions of licenses or permits pursuant to this section and Title 30-A, section 3621.

12 A. As used in this subsection, unless the context otherwise indicates, the following
13 terms have the following meanings.

14 (1) "Local licensing authority" means municipal officers or their designees or
15 county commissioners.

16 (2) "Underground location standards" means standards governing the location
17 and depth of and distance between utility facilities, including the underground
18 portion of aboveground facilities such as utility pole bases.

19 B. For all state and state-aid highways within compact areas of urban compact
20 municipalities as defined in Title 23, section 754, rules adopted by the Department of
21 Transportation under subsection 16 serve as the minimum standard.

22 C. Except within areas identified in paragraph B, a local licensing authority may
23 adopt underground location standards for utility facilities within its jurisdiction as
24 designated in section 2502, subsection 1, paragraph A or B. If a local licensing
25 authority has not adopted underground location standards for utility facilities, the
26 underground location standards adopted by the Department of Transportation under
27 subsection 16 govern.

28 D. A local licensing authority that has not adopted underground location standards
29 for utility facilities in accordance with paragraph C may grant exceptions to the
30 underground location standards adopted by the Department of Transportation under
31 subsection 16 if the licensing authority finds one of the following:

32 (1) Application of the underground location standards would present an
33 exceptional hardship or unreasonable cost under the circumstances and
34 alternative standards will adequately ensure public safety;

35 (2) All affected parties, as determined by the local licensing authority, have
36 agreed to alternative underground location standards that will adequately ensure
37 public safety;

38 (3) A unique situation exists that requires an adjustment of the standards in a
39 manner that ensures public safety; or

40 (4) The underground location standards exceed the limits of the available space
41 within the right-of-way.

1 E. The owners of a new, planned underground utility facility shall coordinate directly
2 with owners of existing underground utility facilities in the public way during the
3 design phase of the new, planned facility. Both the new and existing facility owners
4 shall make reasonable accommodation for each other's facilities in accordance with
5 applicable underground location standards to allow ease of access to and maintenance
6 of those facilities and adequately ensure public safety.

7

SUMMARY

8 This bill provides specific authority to a municipality or other applicable licensing
9 authority to manage public rights-of-way, to issue licenses or permits for the use of those
10 rights-of-way by utilities such as wireless telecommunications service providers and
11 cable television systems and to charge a fee for the license or permit. A municipality or
12 applicable licensing authority may order a utility to alter, remove or relocate its facilities.
13 A utility that fails to comply with a written order of a municipality to alter, remove or
14 relocate the utility's facilities is subject to a fine of up to \$1,000 per day for each day the
15 utility remains in violation of the order of the municipality.