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An Act To Allow a Landowner To Erect Installations in or near a State or State Aid Highway

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

Whereas, this legislation will allow certain projects to proceed to address erosion control issues and these projects need to occur during this construction season; and

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,

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

Sec. 1. 23 MRSA §1401-A, as enacted by PL 2003, c. 452, Pt. L, §3 and affected by Pt. X, §2, is amended to read:

§ 1401-A. Installations restricted

1. Installing of buildings or fixtures. Except as provided in subsection 1-A, a person may not install, erect or construct, or cause to be installed, erected or constructed, installations such as buildings, gasoline pumps or other fixtures; in, upon or near any state or state aid highway, located as follows:

A. Within the full width of the right-of-way of any state or state aid highway as laid out by the State, the county or the town;

B. Within 33 feet of the center line of any state or state aid highway. This paragraph does not apply to installations or other property in existence on August 6, 1949. The commissioner has discretion to waive the application of this paragraph to the reconstruction of a building in the general location of the previously existing building if the commissioner determines that highway safety and the public welfare will not be adversely affected; or

C. Within 20 feet from the outside edge of any of the paved portion of any state or state aid highway having more than 2 travel lanes and having a total paved portion in excess of 24 feet in width. This paragraph does not apply to installations or other property in existence on September 1, 1955.

1-A. Limited waiver. The commissioner may grant a person a written waiver of any of the provisions of subsection 1 and permit the construction of a fixture in, upon or near a state or state aid highway located in a municipality if:

A. The commissioner receives a written statement from the municipal officers requesting or supporting the waiver;

B. The posted speed limit where the construction will occur is no more than 35 miles per hour; and

C. The commissioner determines that highway safety and public welfare will not be adversely affected.

The commissioner may include in the waiver any conditions the commissioner determines necessary to ensure public safety and welfare. Violation of the terms of a waiver constitutes a violation of this section.

2. Penalties. The following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$5 and not more than \$500 may be adjudged.

B. After having been adjudicated as having violated paragraph A, a person who unlawfully maintains any installations such as buildings, gasoline pumps or other fixtures for 30 days after the adjudication is subject to an additional fine of not more than \$50 for each day such installations are maintained.

3. Application. This section does not apply to the installations or other property devoted to the public use of any public utility or district and underground pipelines.

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

Effective May 30, 2007.