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H.P. 1004

House of Representatives, March 26, 2019

**An Act To Amend Maine's Municipal Land Use and Eminent
Domain Laws Regarding Transmission and Distribution Utilities**

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 GRIGNON of Athens.

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

2 **Sec. 1. 30-A MRSA §4352, sub-§4**, as amended by PL 2009, c. 615, Pt. G, §1, is
3 further amended to read:

4 **4. Exemptions.** Real estate used or to be used by a public utility, as defined in Title
5 35-A, section 102, subsection 13, ~~by a person who is issued a certificate by the Public~~
6 ~~Utilities Commission under Title 35-A, section 122~~ or by a renewable ocean energy
7 project as defined in Title 12, section 1862, subsection 1, paragraph F-1 is wholly or
8 partially exempt from an ordinance only when on petition, notice and public hearing the
9 Public Utilities Commission determines that the exemption is reasonably necessary for
10 public welfare and convenience. The exemptions provided in this subsection do not
11 apply to elective transmission upgrades. The Public Utilities Commission shall adopt by
12 rule procedures to implement this subsection. Rules adopted pursuant to this subsection
13 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. For
14 purposes of this subsection, "elective transmission upgrade" means a proposed
15 transmission line for which a person developing the transmission line has agreed to pay
16 all of the costs of the transmission line without passing those costs on to the ratepayers.

17 **Sec. 2. 35-A MRSA §3136, sub-§1**, as amended by PL 2007, c. 148, §12, is
18 repealed and the following enacted in its place:

19 **1. Prior approval needed to take land for location of transmission lines carrying**
20 **5,000 volts or more.** A transmission and distribution utility may take and hold by right
21 of eminent domain lands and easements necessary for the proper location of its
22 transmission lines that are designed to carry voltages of 5,000 volts or more and of
23 necessary appurtenances, located within the territory in which the utility is authorized to
24 do public utility business, only if the public utility:

25 A. Obtains the prior approval of the body of government having jurisdiction over the
26 territory in which the land or easement is located;

27 B. Obtains the approval of the commission pursuant to subsection 4; and

28 C. Takes the land or easement in the same manner and under the same conditions as
29 set forth in chapter 65.

30 **Sec. 3. 35-A MRSA §3136, sub-§3**, as amended by PL 2007, c. 148, §13, is
31 further amended to read:

32 **3. Prior right to locate distribution lines and appurtenances in right-of-way**
33 **limits of public way.** Subject to prior approval of the body of government having
34 jurisdiction over the territory in which the land or easement is located and approval by the
35 commission under subsection 4, transmission and distribution utilities may take and hold
36 by right of eminent domain land or easements necessary for the proper location of their
37 distribution lines and the necessary appurtenances, but only where the transmission and
38 distribution utilities had a prior right to locate their distribution lines and necessary
39 appurtenances in the right-of-way limits of a public way and the body having jurisdiction
40 over the public way has caused the utility to remove its distribution lines and appurtenant

1 structures outside the right-of-way limits of the public way. This right does not apply to
2 lands or easements as specified in subsection 2, paragraphs B, C, D and E.

3 **Sec. 4. 35-A MRSA §3136, sub-§4**, as amended by PL 2007, c. 148, §14, is
4 further amended to read:

5 **4. Commission approval required; certificate of public convenience and**
6 **necessity; environmental factors.** A location to be taken by eminent domain for such
7 transmission or distribution lines must be approved first by the body of government
8 having jurisdiction over the territory in which the land or easement is located and then by
9 the commission before a transmission and distribution utility can exercise the right of
10 eminent domain granted in subsection 1 or subsection 3. The commission may not
11 approve a location to be taken by eminent domain for the construction, rebuilding or
12 relocation of a transmission line that requires a certificate of public convenience and
13 necessity under section 3132, unless the commission has issued a certificate of public
14 convenience and necessity for that transmission line. Environmental factors to be
15 considered for proper location of a transmission line are not subject to review by the
16 commission under this section when the location of the transmission line has received site
17 location of development approval under Title 38, section 484.

18 SUMMARY

19 This bill requires a transmission and distribution utility, prior to taking land or an
20 easement by eminent domain, to obtain the approval of the body of government having
21 jurisdiction over the land or easement. Following approval by the body of government,
22 the transmission and distribution utility is still required to obtain a certificate of public
23 convenience and necessity from the Public Utilities Commission.

24 The bill makes explicit that the exemption from municipal zoning ordinances
25 regarding real estate used by public utilities does not apply to an elective transmission
26 upgrade, which is a transmission line for which a person developing the transmission line
27 has agreed to pay all of the costs of developing the transmission line without passing
28 those costs on to ratepayers.