

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 667 - L.D. 908

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

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

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

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Sec. 1. 35-A MRSA §4702, as repealed and replaced by PL 1999, c. 718, §15, is repealed.

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

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

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.

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:

A. Ten or more customers;

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;

(4) Require operators to participate in the underground facility damage prevention system established under Title 23, section 3360-A;

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

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

D. In applying the atmospheric corrosion control standards established by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration to liquefied petroleum gas systems, the commission shall 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.

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

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

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.

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor