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Date: (Filing No. H-)

ENERGY, UTILITIES AND TECHNOLOGY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

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

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

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Sec. 1. 35-A MRSA §4702, as repealed and replaced by PL 1999, c. 718, §15, is repealed.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

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

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

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

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

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

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

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

35 (1) Identify and certify operators;

36 (2) Require jurisdictional systems to be registered with the commission. The
37 commission may not impose an administrative penalty under section 1508-A that
38 exceeds \$5,000 for failure to register a jurisdictional system;

39 (3) Prohibit delivery of liquefied petroleum gas to a customer if an operator has
40 determined that piping or other equipment owned by the customer makes
41 continued delivery unsafe. Nothing in this subparagraph permits the commission
42 to require an operator to inspect, maintain or otherwise oversee customer-owned
43 piping or other equipment;

- 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.

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

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

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

13 5. Provides that the commission may not continue to enforce its existing rules
14 governing the safety and operation standards for liquefied petroleum gas systems but
15 must conduct an examination in consultation with operators of liquefied petroleum gas
16 systems of what rules, beyond the federal minimum standards, may be appropriate to
17 implement the new requirements of the Maine Revised Statutes, Title 35-A, section
18 4702-A. Consistent with the results of its examination, the commission is required to
19 conduct a rule-making proceeding to provisionally adopt rules to implement Title 35-A,
20 section 4702-A and to submit those rules for legislative review by January 15, 2012;

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

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

28 **FISCAL NOTE REQUIRED**

29 **(See attached)**