

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FOUR

—
S.P. 880 - L.D. 2087

**An Act to Protect Property Owners by Making Certain Changes to the Laws
Governing the Use of Eminent Domain by Transmission and Distribution
Utilities**

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 needs to take effect before the expiration of the 90-day period in order to provide appropriate protections to landowners in the State and to direct the Public Utilities Commission to establish notice requirements and develop educational materials related to proposed high-impact electric transmission lines; 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. 12 MRSA §598-C, as enacted by PL 2021, c. 654, §1, is amended to read:

§598-C. Process for determination of reduction or substantially altered use of designated land

The Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands shall adopt rules to establish an objective evaluation process for determining if a proposed activity on land designated under this chapter and under the jurisdiction of the bureau would cause the land to be reduced or the uses of the land to be substantially altered. In the case of a high-impact electric transmission line crossing or utilizing such land or a portion of such land that is a rail trail or recreational corridor or land of similar configuration, as determined by the bureau, the rules must include criteria for determining that the high-impact electric transmission line would not cause the land to be reduced or the uses of the land to be substantially altered. In adopting the rules, the bureau shall observe the requirements relating to designated lands in the Constitution of Maine, Article IX, Section 23 and ensure proper exercise of the bureau's public trust responsibility. These rules must also include provisions for public notice and comment before authorizing any such activity

and for determining the appropriate instrument to be used to authorize that activity, including but not limited to whether an easement, lease, license or other instrument should be used. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 35-A MRSA §3132, sub-§6-C, as enacted by IB 2021, c. 1, §4, is amended to read:

6-C. High-impact electric transmission line; legislative approval. In addition to obtaining a certificate of public convenience and necessity, a high-impact electric transmission line may not be constructed anywhere in the State without first obtaining the approval of the Legislature, except that any high-impact electric transmission line crossing or utilizing public lands designated by the Legislature pursuant to Title 12, section 598-A, other than service land, is deemed to substantially alter the land and must be approved by the vote of 2/3 of all the members elected to each House of the Legislature.

For the purposes of this subsection, "service land" means public lands designated by the Legislature pursuant to Title 12, section 598-A that are:

A. A former railroad right-of-way that is no longer used for rail service and is owned by the State and used as a recreational trail; and

B. Any other public land for which the crossing or utilization by a proposed high-impact electric transmission line satisfies the criteria established by rule adopted pursuant to Title 12, section 598-C for a determination by the Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands that the high-impact electric transmission line's crossing or utilization does not constitute a reduction or substantial alteration of those lands.

Sec. 3. 35-A MRSA §3136, sub-§1, as amended by PL 2007, c. 148, §12, is further amended to read:

1. Land necessary for location of transmission lines carrying 5,000 volts. Subject to approval by the commission under subsection 4 and the requirements of subsection 6, if applicable, a transmission and distribution utility may take and hold by right of eminent domain lands and easements necessary for the proper location of its transmission lines that are designed to carry voltages of 5,000 volts or more and of necessary appurtenances, located within the territory in which the utility is authorized to do public utility business, in the same manner and under the same conditions as set forth in chapter 65. Notwithstanding section 6501, subsection 1 and section 6507, subsection 4, owners are entitled to damages for all property taken by eminent domain in accordance with subsection 5.

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

4. Commission approval required; certificate of public convenience and necessity; offer requirements for high-impact electric transmission line; environmental factors. A location to be taken by eminent domain for such transmission or distribution lines must be approved by the commission before a transmission and distribution utility can exercise the right of eminent domain granted in subsection 1 or subsection 3. The commission may not approve a location to be taken by eminent domain for the construction, rebuilding or relocation of a transmission line that requires a certificate

of public convenience and necessity under section 3132, unless the commission has issued a certificate of public convenience and necessity for that transmission line and, for a high-impact electric transmission line, the transmission and distribution utility has met the offer requirements described in paragraph A. Environmental factors to be considered for proper location of a transmission line are not subject to review by the commission under this section when the location of the transmission line has received site location of development approval under Title 38, section 484.

A. If the transmission and distribution utility is seeking commission approval for the taking of a location by eminent domain for the construction, rebuilding or relocation of a high-impact electric transmission line on a lot or parcel of real property that is 200 contiguous acres or less and the transmission and distribution utility seeks to take less than the entire property, the transmission and distribution utility must demonstrate to the commission that, in its negotiations with the owner of the property for a voluntary acquisition of the location, it made both an offer for the taking of title to the entire property in fee simple absolute and an offer for the taking of only that portion of the property sought by the utility and that the owner did not accept either offer.

Sec. 5. 35-A MRSA §3136, sub-§5 is enacted to read:

5. Owner entitled to damages. The owner of a property taken by eminent domain by a transmission and distribution utility for the construction, rebuilding or relocation of a transmission line is entitled to damages for all property taken, which must be determined using the methods set forth in Title 23, sections 154 to 154-F.

Sec. 6. 35-A MRSA §3136, sub-§6 is enacted to read:

6. Taking by transmission and distribution utility of location on property that is 200 acres or less for high-impact electric transmission line; owner option. If the commission, in accordance with subsection 4, approves a taking by eminent domain by a transmission and distribution utility for the construction, rebuilding or relocation of a high-impact electric transmission line when the location subject to the taking is a lot or parcel of real property that is 200 contiguous acres or less and the transmission and distribution utility seeks and the commission has approved a taking of less than the entire property, the following requirements apply:

A. The damages estimated by the county commissioners in accordance with section 6503, subsection 2 must include 2 estimates, one for the taking of title to the entire property in fee simple absolute and one for the taking of only that portion of the property approved for a taking by the commission; and

B. The owner of the property has the option to require the transmission and distribution utility to take the entire property in fee simple absolute and, if the owner elects to require the transmission and distribution utility to take the entire property, the commission shall approve the taking of the entire property.

Sec. 7. 35-A MRSA §3136, sub-§7 is enacted to read:

7. Property taken for high-impact electric transmission line; notice and educational materials. The commission shall adopt routine technical rules regarding the provision of notice to an owner of real property whose property may be taken by eminent domain for the construction, rebuilding or relocation of a high-impact electric transmission line by an entity selected to construct a high-impact electric transmission line pursuant to

section 3210-I, subsection 2, or a transmission and distribution utility as well as to an owner of real property whose property abuts the proposed high-impact electric transmission line. The notice must include educational materials that include, but are not limited to, materials describing the high-impact electric transmission line development process and must be sent by certified mail. The rules must establish requirements for the notice and educational materials including:

- A. The appearance and contents of the notice and materials;
- B. The appearance of the envelope that includes the notice and materials;
- C. The information to be included relating to the high-impact electric transmission line development process;
- D. The information that describes the scope of the proposed high-impact electric transmission line;
- E. The rights and opportunities of an owner of real property to participate in the development process;
- F. Resources that may be available to assist an owner of real property, which may include resources for legal assistance; and
- G. The time frame for when the notice and educational materials must be sent to an owner of real property.

The commission shall review and approve the notice and educational materials the transmission and distribution utility or entity is required to send before the notice and educational materials are provided to an owner of real property. The commission may request that a state agency or other commission review any educational materials that address activities relating to the high-impact electric transmission line development process that are undertaken by that other state agency or other commission.

Sec. 8. 35-A MRSA §3136, sub-§8 is enacted to read:

8. High-impact electric transmission line; fees and expenses incurred by property owner. A transmission and distribution utility that takes a location by eminent domain for the construction, rebuilding or relocation of a high-impact electric transmission line is responsible for a property owner's fees and expenses associated with seeking an award of damages in accordance with this subsection.

A. If the award for damages, as determined by the county commissioners in accordance with section 6503, subsection 2 or the Superior Court in accordance with section 6507, is more than 40% and at least \$25,000 greater than the last written offer of compensation prior to the property owner's or transmission and distribution utility's filing of a request for the determination of damages or an appeal of such determination to the Superior Court, the county commissioners or the court shall award the owner reasonable attorney's fees, litigation expenses, appraisal fees, other experts' fees and other related costs in addition to other compensation authorized by this section.

B. If the award for damages is at least 20%, but not more than 40%, and at least \$10,000 greater than the last written offer of compensation, the county commissioners or the court may award reasonable fees and expenses described in paragraph A.

C. No attorney's fees may be awarded under this subsection if the award of damages is \$25,000 or less.

D. If the award of damages is less than 20% greater than the last written offer of compensation, the owner of the property is responsible for the owner's own costs.

For the purposes of this subsection, "last written offer of compensation" means the last offer of compensation made by the transmission and distribution utility and, in the case of a taking of only a portion of a lot or parcel of real property, the last offer made for the portion of the property sought by the transmission and distribution utility. "Last written offer of compensation" does not include the offer for the taking of title to the entire property in fee simple absolute as required by subsection 4.

Sec. 9. 35-A MRSA §3136, sub-§9 is enacted to read:

9. Definition. For the purposes of this section, "high-impact electric transmission line" means a transmission line of any length that is:

A. Constructed to transmit direct current electricity; or

B. Capable of operating at 345 kilovolts or more; and

(1) Is not a generator interconnection transmission facility as defined in section 3132, subsection 1-B; and

(2) Is not constructed primarily to provide electric reliability, as determined by the commission.

Sec. 10. 38 MRSA §485-A, sub-§1-D is enacted to read:

1-D. Hearing required; transmission line. If an application for the development and construction of a transmission line or lines requiring approval under this article is received by the department, the department or the board, as applicable, shall hold a hearing in accordance with section 486-A and may not issue an order without a hearing.

Sec. 11. 38 MRSA §486-A, sub-§2-A is enacted to read:

2-A. Developer; route analysis public participation. The department shall require an applicant who has submitted an application pursuant to section 485-A related to the development and construction of a transmission line or lines requiring approval under this article to demonstrate to the department that the applicant conducted one or more public meetings regarding the transmission line or lines prior to the submission of its application. Such public meetings must include the presentation of information regarding the proposed transmission line or lines, including, but not limited to, proposed route information, and provide an opportunity for public participation and comment. Information presented and public comments received at the public meetings must be made publicly available and be part of the record of any department or board proceeding.

Sec. 12. Rulemaking. The Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands shall adopt major substantive rules pursuant to the Maine Revised Statutes, Title 12, section 598-C to provide, in the case of a high-impact electric transmission line crossing or utilizing land designated under Title 12, chapter 202-A, or a portion of such designated land, that is a rail trail or recreational corridor or land of similar configuration, criteria for determining that the high-impact electric transmission line would

not cause the land to be reduced or the uses of the land to be substantially altered. The bureau shall submit the provisionally adopted rules to the 132nd Legislature for review.

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