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.

Presented by Representative GRIGNON of Athens.
Be it enacted by the People of the State of Maine as follows:

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

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

Sec. 2. 35-A MRSA §3136, sub-§1, as amended by PL 2007, c. 148, §12, is repealed and the following enacted in its place:

1. Prior approval needed to take land for location of transmission lines carrying 5,000 volts or more. 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, only if the public utility:

   A. Obtains the prior approval of the body of government having jurisdiction over the territory in which the land or easement is located;
   
   B. Obtains the approval of the commission pursuant to subsection 4; and
   
   C. Takes the land or easement in the same manner and under the same conditions as set forth in chapter 65.

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

3. Prior right to locate distribution lines and appurtenances in right-of-way limits of public way. Subject to prior approval of the body of government having jurisdiction over the territory in which the land or easement is located and approval by the commission under subsection 4, transmission and distribution utilities may take and hold by right of eminent domain land or easements necessary for the proper location of their distribution lines and the necessary appurtenances, but only where the transmission and distribution utilities had a prior right to locate their distribution lines and necessary appurtenances in the right-of-way limits of a public way and the body having jurisdiction over the public way has caused the utility to remove its distribution lines and appurtenant
structures outside the right-of-way limits of the public way. This right does not apply to lands or easements as specified in subsection 2, paragraphs B, C, D and E.

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; environmental factors. A location to be taken by eminent domain for such transmission or distribution lines must be approved first by the body of government having jurisdiction over the territory in which the land or easement is located and then 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. 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.

SUMMARY

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

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