

I. OVERVIEW

A. Guiding Policies

The proposal, as specified in the legislation outlined below, is guided by the following policy values:

1. Maximizing the public benefit realized from the use of state-owned lands and assets for energy infrastructure development
2. Providing economic benefits for the State, including but not limited to financial benefits;
3. Encouraging co-location and efficient utilization of energy infrastructure within the corridor, including collaboration between energy infrastructure developers and options for future uses;
4. Providing access to energy infrastructure within the corridor for renewable energy generation projects within the State;
5. Limiting impacts of energy infrastructure on the landscape, including but not limited to underground installation;
6. Stabilizing and reducing, when possible, electricity rates and energy costs; utilizing long-term contracts, power purchase agreements and other mechanisms to deliver lower costs;
7. Increasing reliability and security of the energy delivery system within the State;
8. Enhancing jobs and economic development within the State through thoughtful planning of energy infrastructure corridors and interconnection opportunities;
9. Maximizing the public benefit realized from Maine's strategic location within New England and the northeastern region;
10. Ensuring that the use of state-owned corridors for energy infrastructure minimizes conflict with the public purposes for which the land or corridor is owned (such as the free and safe flow of traffic in highway corridors) and any management plans for the land within the corridor;
11. Ensuring that the terms of use of state-owned corridors are formalized in a written occupancy agreement, as appropriate, negotiated between the State and the user, that provides annual compensation to the State and reflects the value of the corridor as measured through at least one, independent appraisal performed by a formally certified appraiser; and
12. Create public/private partnerships to enhance the economic, environmental and energy security of the state.

B. Summary of Proposed Legislation

The proposed legislation amends the “energy infrastructure corridors” law to establish law several state-owned energy infrastructure corridors and also establish a process for the State to enter into occupancy agreements for construction and development of energy infrastructure within those established corridors. The proposed legislation also moves the “sunset” on the energy infrastructure corridors law from 2011 to 2015.

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1. Energy infrastructure corridors established in law. The proposed legislation establishes the I-95 corridor and the I-295 corridor as energy infrastructure corridors.

2. Occupancy agreements to use statutorily established corridors. The proposed legislation defines an interagency review panel, including representatives of DAFS, OEIS, DOT and DOC, which is responsible for overseeing the review of proposals to use statutorily established corridors. The review panel, with assistance from a certified appraiser, establishes an initial value for the corridor; develops and issues a request for proposals for use of the corridor; evaluates proposals on the basis of certain criteria guided by the long-term public interest of the State; and negotiates with selected bidders to enter into long-term occupancy agreements with the State for use of the corridor that include annual compensation to the State.

3. Requirements for use of energy infrastructure corridors. Under the proposed legislation, a developer of energy infrastructure must obtain the following agreements and approvals prior to construction or development within a corridor:

- **Corridor established in law requires:** (1) occupancy agreement with the State; (2) consolidated environmental permit from DEP; and (3) if the project is a transmission line, a certificate of public convenience and necessity from the PUC
- **Corridor designated by the PUC upon petition requires:** (1) consolidated environmental permit from DEP; and (2) corridor use certificate from the PUC or, if the project is a transmission line, a certificate of public convenience and necessity from the PUC

4. Sunset. The legislation proposes to move the “sunset” on the energy infrastructure corridor law from July 30, 2011 to July 30, 2015.

II. PROPOSED LEGISLATION

35-A MRSA section 122 is amended to read:

§122. Energy infrastructure corridors

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Department" means the Department of Environmental Protection.

B. "Energy infrastructure" includes electric transmission and distribution facilities, generation interconnection transmission facilities natural gas transmission lines, carbon dioxide pipelines and other energy transport pipelines or conduits. "Energy infrastructure" does not include ~~generation interconnection transmission facilities or~~ energy generation facilities.

Note: This, in conjunction with an exemption from the "corridor use certificate" requirement for generation interconnection transmission facilities under subsection 4-A, implements the recommendation of the March 12, 2009 report by DEP.

C. "Energy infrastructure corridor" or "corridor" means a geographic area within the State established under subsection 1-A or designated by the commission in accordance with ~~this section~~ subsection 2 for the purposes of siting energy infrastructure.

D. "Generation interconnection transmission facility" has the same meaning as in section 3132, subsection 1-B.

D-1. "Interagency review panel" includes:

(1) The director of the Governor's Office of Energy Independence and Security or the director's designee;

(2) The Commissioner of Administrative and Financial Services or the commissioner's designee;

(3) The Commissioner of Transportation or the commissioner's designee; and

(4) The Commissioner of Conservation or the commissioner's designee.

E. "Interested person" means a person that can demonstrate to the commission the financial and technical capability to engage in the development and construction of energy infrastructure.

Drafting Note: Perhaps consider making this term more descriptive; possibly "interested developer" or "qualified developer"?

F. "Project" means the development or construction of energy infrastructure within an energy infrastructure corridor.

G. "Tribe" includes the Penobscot Nation, as defined in Title 30, section 6203, subsection 10; the Passamaquoddy Tribe, as defined in Title 30, section 6203, subsection 7; the Houlton Band of Maliseet Indians, as defined in Title 30, section 6203, subsection 2 and the Aroostook Band of Micmacs, as defined in Title 30, section 7202, subsection 1.

NEW SUBSECTION ENACTED

1-A. Energy infrastructure corridors; established by law.

A. The following areas are established as energy infrastructure corridors:

- (1) The Interstate 95 corridor, except that portion of Interstate 95 designated as the Maine Turnpike; and
- (2) The Interstate 295 corridor.

<p><i>Question for discussion:</i> Establish any other areas as corridors? -Maine Turnpike corridor? -Abandoned state-owned railroad corridors? -Loring to Searsport corridor? -Other transportation corridors owned or controlled by the State that DOT determines are suitable for energy infrastructure development”?</p>

B. The interagency review panel shall establish an **initial value** for the use of state-owned property within any energy infrastructure corridor established in this subsection. The initial value may be a range of value and must be based on an independent appraisal performed by a certified appraiser as specified in paragraph G.

C. After an initial value is established under paragraph B, the interagency review panel shall develop and issue a **request for proposals** for use of the corridor. The interagency review panel shall review and **evaluate any proposal** submitted in response to the request. Proposal evaluation must be **based on the long-term public interest**, including but not limited to:

- (1) Economic benefits for the State, including but not limited to financial benefits;
- (2) Co-location and efficient utilization of energy infrastructure within the corridor, including collaboration between energy infrastructure developers and options for future uses;
- (3) Access to energy infrastructure within the corridor for renewable energy generation projects;
- (4) Minimizing conflict with the public purposes for which the land or corridor is owned and any management plans for the land within the corridor;

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(4) Limiting impacts of energy infrastructure on the landscape, including but not limited to underground installation;

(5) Stabilization and reduction of electricity rates and energy costs;

(6) Increasing reliability and security of the energy delivery system within the State; and

(7) Enhancing jobs and economic development within the State.

Question for discussion: Any suggested changes/additions to this list of criteria for the review panel to use in evaluating bids to use the corridor?

E. On the basis of the evaluation of proposals under paragraph D, the interagency review panel may select one or more applicants to enter into a **long-term occupancy agreement** with the State for the use of an energy infrastructure corridor. The interagency review panel shall negotiate with the bidder regarding the terms of the occupancy agreement including, but not limited to, the length of the agreement, **annual compensation to the State** and provisions for periodic adjustment of the annual compensation over time. Annual compensation may be in the form of payment, discounted price for energy products or services, or other appropriate form.

Negotiation of annual compensation to the State must be based on at least one **independent appraisal** performed by a formally certified appraiser as specified in paragraph G. An independent appraisal performed under this paragraph must, at a minimum, include the costs that will be avoided by the bidder, including but not limited to, the costs of acquisition, lease or rental of private land, the costs of property taxes on private land, the costs of surveying, appraisal, environmental, engineering and other work necessary for use of private land, the costs of time and potential conflict regarding the use of private land, the unique and limited nature of public assets, the revenues estimated to be generated by the use of the public asset, and other relevant factors;

Question for discussion: Would it be appropriate or necessary to designate certain negotiations as confidential? If so, at what point, or points, in the process?

F. **Revenues** generated from the use of state-owned land within energy infrastructure corridors established in this subsection must be deposited in the **Energy Independence Fund** established in Title 5, section 282, subsection 9.

Note: See permitted uses of the Fund under Title 5 section 282, subsection 9 [inserted at the end of this document] and review for possible amendments.

G. The interagency review panel shall **contract for the services of a certified appraiser** experienced in the valuation and evaluation of utility corridors and transportation corridors, as appropriate, to assist the panel in the development of the initial value under

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paragraph B, the evaluation of proposals under paragraph C, and the negotiation with one or more bidders under paragraph D. The cost of the services of the certified appraiser who provides services under paragraph D and E must be paid by any bidders under those paragraphs in proportion to the amount of time spent by the appraiser on that bidder's proposal.

2. Designation of energy infrastructure corridors upon petition. The commission may, upon petition, designate energy infrastructure corridors in accordance with this subsection.

A. The commission may designate an energy infrastructure corridor only by rule. Rules adopted pursuant to this subsection are ***major substantive** rules as defined in Title 5, chapter 375, subchapter 2-A.

(1) The rulemaking to designate an energy infrastructure corridor must include a public hearing in which any member of the public may submit oral or written testimony or comments, which must be incorporated into the rule-making record in accordance with Title 5, section 8052, subsection 1. The commission shall provide an opportunity for examination of the petitioner at a rule-making hearing. The commission shall allow for written comments by any member of the public up to 7 days prior to the hearing. The commission shall allow a second round of written comments to be filed within 10 days of the hearing or within such longer time as the commission may direct.

(2) In any rulemaking regarding the designation of an energy infrastructure corridor, the commission shall address all written comments, including those submitted pursuant to subsection 3, and state its rationale for adopting or rejecting any proposals or recommendations contained in those written comments.

(3) A designation of an energy infrastructure corridor must be based on substantial evidence in the record of the rule-making hearing.

****Question for discussion:*** Consider whether to change rulemaking to “routine technical” instead, while still keeping requirements of (1), (2) and (3). Review timeline and requirements of each and implications for corridor designation process.

B. The commission may commence a proceeding to designate an energy infrastructure corridor only upon the filing of a petition for the designation of a corridor by the Office of the Public Advocate, the Executive Department, Governor's Office of Energy Independence and Security or an interested person.

C. The commission shall dismiss a petition for the designation of an energy infrastructure corridor filed under this subsection if, after preliminary review, the commission determines that the petition:

(1) Does not contain sufficient information to support the designation of an energy infrastructure corridor; or

(2) Was filed by a person other than the Office of the Public Advocate, Executive Department, Governor's Office of Energy Independence and Security or an interested person as defined by subsection 1, paragraph E.

D. The commission **may designate an energy infrastructure corridor** only if the commission finds that the future development of energy infrastructure within the corridor is reasonably likely to be:

(1) In the public interest, including, but not limited to, consideration of:

- (a) Encouraging colocation of energy infrastructure;
- (b) Enhancing the efficient utilization of existing energy infrastructure; and
- (c) Limiting impacts on the landscape; and

(2) Consistent with environmental and land use laws and rules of the State. A finding that the future development of energy infrastructure within the corridor is reasonably likely to be consistent with environmental and land use laws and rules of the State under this paragraph has no evidentiary value in a subsequent consolidated environmental permit proceeding undertaken by the department pursuant to subsection 6.

Note: This is the current law governing the PUC decision of whether to designate a new corridor that has been proposed by petition.

E. In designating a geographic area as an energy infrastructure corridor, the commission shall limit the geographic area of the corridor to an area no greater in breadth and scope than is necessary to achieve the purposes of this section.

F. The commission may not designate an energy infrastructure corridor that is located on any of the following lands:

- (1) Houlton Band Trust Land, as defined in Title 30, section 6203, subsection 2-A;
- (2) Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6;
- (3) Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9;
- (4) Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2;
- (5) Lands that constitute a park as defined in Title 12, section 1801, subsection 7 and Baxter State Park; and
- (6) Federally owned land.

3. Consultation and notification required; comments. Prior to designating an energy infrastructure corridor under subsection 2, the commission shall, at a minimum, notify, consult with and accept comments from:

- A. The department;
- B. Appropriate state and federal energy and natural resources protection agencies, as specified by rules adopted pursuant to subsection 9;
- C. The municipalities in which the corridor would be located;
- D. The Maine Land Use Regulation Commission, if the proposed energy infrastructure corridor, or any portion of the corridor, is located within unorganized or deorganized territories of the State; and

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E. A tribe, if the proposed energy infrastructure corridor, or any portion of the corridor, is located on land of a tribe other than those lands specified in subsection 2, paragraph F.

Drafting note: The text in sub§4 is being reorganized into sub§4-A, which follows below. The substance of sub§4 is not being eliminated. Reasons for reorganization: due to changes in the Certificate of Public and Convenience and Necessity (CPCN) law that occurred after the enactment of §122 which eliminated the distinction between a T&D utility and a non-utility developer of a transmission line, the organization in sub§4 no longer makes sense; also, the addition in this proposal of statutorily designated corridors as a second category of corridor, called for a new organization of this material.

4. Use of corridors; certificate and permit required. — Development or construction of energy infrastructure within an energy infrastructure corridor is governed by this subsection.

~~A. A transmission and distribution utility may not engage in development or construction of a transmission line covered by section 3132 within an energy infrastructure corridor, unless:~~

- ~~(1) The commission has issued a certificate of public convenience and necessity approving the transmission line in accordance with section 3132; and~~
- ~~(2) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6.~~

~~B. A transmission and distribution utility may not engage in development or construction of energy infrastructure other than a transmission line covered by section 3132 within an energy infrastructure corridor, unless:~~

- ~~(1) The commission has issued a corridor use certificate approving the project in accordance with subsection 5; and~~
- ~~(2) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6.~~

~~C. A person that is not a transmission and distribution utility may not engage in development or construction of energy infrastructure within an energy infrastructure corridor, unless:~~

- ~~(1) The commission has issued a corridor use certificate approving the project in accordance with subsection 5; and~~
- ~~(2) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6.~~

4-A. Use of energy infrastructure corridors; approvals required. Development or construction of energy infrastructure within an energy infrastructure corridor established under subsection 1-A or designated under subsection 2 is governed by this subsection.

A. A person may not engage in development or construction of energy infrastructure within an energy infrastructure corridor established under subsection 1-A, unless:

- (1) The person has entered an occupancy agreement with the State in accordance with subsection 1-A;
- (2) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6; and

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(3) If the project is a transmission line that requires a certificate of public convenience and necessity under section 3132, the commission has issued a certificate of public convenience and necessity approving the transmission line.

B. A person may not engage in development or construction of energy infrastructure within an energy infrastructure corridor designated by the commission upon petition under subsection 2, unless:

(1) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6; and

(2) The commission has issued a corridor use certificate approving the project in accordance with subsection 5, ***except that a corridor use certificate is not required for a generation interconnection transmission facility*, or, if the project is a transmission line that requires a certificate of public convenience and necessity under section 3132, the commission has issued a certificate of public convenience and necessity approving the transmission line.

****Note:** This exemption (see above and below) from the “corridor use certificate” requirement for generation interconnection transmission facilities in conjunction with the amendment to the definition of “energy infrastructure” under subsection 1, implements the recommendation of the March 12, 2009 report by DEP.

5. Corridor use certificate. Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure corridor designated by the commission under subsection 2, except for a transmission and distribution utility that proposes other than a transmission line subject to the requirements of that requires a certificate of public convenience and necessity under section 3132 or a ***generation interconnection transmission facility*, that person shall file with the commission a petition for a corridor use certificate. The petition for the corridor use certificate must contain such information as the commission by rule requires. The commission shall process a petition for a corridor use certificate in an adjudicatory proceeding. The commission shall issue a corridor use certificate upon a finding that the project is:

A. In the public interest; and

B. Reasonably likely to:

(1) Minimize utility rates or increase the reliability of utility service;

(2) Have the net effect of reducing the release of greenhouse gases; or

(3) Enhance economic development within the State.

Note: If the project is in a statutorily established corridor, a corridor use certificate is not required (the occupancy agreement effectively takes its place).

6. Environmental review; consolidated environmental permit. Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure corridor, that person shall file with the department an application for a consolidated environmental permit. The department shall adopt by rule pursuant to subsection 9 a process

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for the review of applications and the issuance of the consolidated environmental permit in accordance with this subsection. The department may request comments from and consult with other agencies and programs that are required by law to issue separate approvals for some or all projects.

- A. A consolidated environmental permit issued by the department takes the place of any other permits or licenses that the department would otherwise require for the proposed project.
- B. The application for a consolidated environmental permit must contain such information as the department requires, including, but not limited to, all studies and documentation necessary to determine whether the proposed project is in compliance with the environmental laws of the State administered by the department.
- C. The applicant for a consolidated environmental permit shall pay a fee specified by rule and reimburse the department for any additional costs of regulatory review, including expenses for outside peer review or other consultants or experts assisting the department in its review. Outside review of applications under this subsection is governed by Title 38, section 344-A, except that the Commissioner of Environmental Protection is not required to obtain the consent of the applicant to enter into an agreement with an outside reviewer or require that the costs of the outside review be reimbursed by the applicant.
- D. The department shall issue its decision on an application for a consolidated environmental permit within a timeframe specified by department rule or guideline. The decision may specify approval, denial or approval in part and denial in part. A proposed project may not be undertaken if it is denied in whole or in part by the department.
- E. Upon issuance of a consolidated environmental permit, the department shall certify to the commission that the permit has been issued and whether the proposed project complies, in part or in whole, with the environmental laws of the State administered by the department and whether other agencies and programs that are required by law to issue separate approvals for some or all aspects of the project have taken final agency action on those matters requiring their separate approval.
- F. The department shall enforce the terms of the consolidated environmental permit.
- G. The terms of the consolidated environmental permit may require additional submissions by the permit holder, studies and approvals with conditions.

If the department receives an application for a permit to develop or construct energy infrastructure within an energy infrastructure corridor prior to adopting a rule to implement this subsection, the department shall process the application in accordance with the department's existing review and permitting procedures.

7. Eminent domain. This subsection grants and limits certain rights of eminent domain with respect to energy infrastructure corridors.

- A. The eminent domain authority of a transmission and distribution utility within an energy infrastructure corridor is governed by section 3136.
- B. Subject to approval by the commission, a person that is not a transmission and distribution utility that receives a certificate of public convenience and necessity under

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section 3132 or a corridor use certificate under subsection 5 to develop energy infrastructure within an energy infrastructure corridor may take and hold by right of eminent domain lands and easements within that corridor necessary for the proper location of the energy infrastructure covered by the certificate of public convenience and necessity or the corridor use certificate in the same manner and under the same conditions as set forth in chapter 65. The right of eminent domain granted in this paragraph does not apply to:

- (1) Lands or easements located within 300 feet of an inhabited dwelling;
- (2) Lands or easements on or adjacent to any developed or undeveloped water power;
- (3) Lands or easements so closely paralleling existing wire lines of other utilities that the proposed energy infrastructure would substantially interfere with service rendered over the existing lines, except with the consent of the owners;
- (4) Lands or easements owned or used by railroad corporations, except as authorized pursuant to section 2311;
- (5) Lands or easements owned by the State; and
- (6) Transmission and distribution plant that is owned, controlled, operated or managed by a transmission and distribution utility on the effective date of this section.

C. The commission may take and hold by right of eminent domain lands and easements within an energy infrastructure corridor in accordance with this paragraph, notwithstanding any transmission and distribution utility ownership of the lands or easements.

- (1) The commission may exercise the authority under this paragraph only in an adjudicatory proceeding upon a petition by the Office of the Public Advocate or the Executive Department, Governor's Office of Energy Independence and Security demonstrating that such action is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor. A determination by the commission that the exercise of eminent domain under this paragraph is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor constitutes reviewable final agency action.
- (2) The amount of any lands or easements taken by the commission pursuant to this subsection may be no greater than is required to avoid the harm to electricity consumers identified under subparagraph (1).
- (3) The right of eminent domain granted in this paragraph does not apply to personal property, fixtures or improvements that constitute transmission and distribution plant.
- (4) The commission may exercise the right of eminent domain for the purposes of this paragraph in the same manner and under the same conditions as set forth in chapter 65. For the purposes of the exercise of eminent domain authorized by this paragraph, the commission is both a person and the State.
- (5) The commission is authorized to assess transmission and distribution utilities to the extent necessary to obtain sufficient funds to pay for lands and easements taken pursuant to this subsection.

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(6) The commission, in an adjudicatory proceeding upon petition by the Office of the Public Advocate or the Executive Department, Governor's Office of Energy Independence and Security, may transfer or convey to any person or state agency lands and easements once acquired, except that a transmission and distribution utility whose lands or easements were taken pursuant to this paragraph must be given the first opportunity to acquire the lands or easements to the extent necessary or useful in the performance of its duties as a transmission and distribution utility.

(7) The commission shall report on the circumstances of any taking by eminent domain to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters during the next regular session of the Legislature following the acquisition of lands or easements by eminent domain.

8. Utility service territory. Nothing in this section modifies existing restrictions on entities providing service within a public utility's service territory provided under chapter 21.

9. Rules. The commission and the department, as appropriate, shall adopt by rule standards and procedures to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted by the commission for the designation of an energy infrastructure corridor, pursuant to subsection 2, paragraph A, are **major substantive rules**.

<p>*Question for discussion: Again, consider whether to change rulemaking to “routine technical” instead, while still keeping requirements of (1), (2) and (3). Discuss timeline and requirements of each and implications for corridor designation process.</p>

10. Repeal. This section is repealed July 30, ~~2011~~ 2015.

ENERGY INDEPENDENCE FUND

Note: This is the law establishing the Energy Independence Fund which is referenced in section 122, subsection 1-A, paragraph F.

5 MRSA §282, sub-§9:

9. Energy independence fund; revenues from occupancy of state assets. To establish an energy independence fund for revenues derived from the use of state assets for energy transmission systems. Each fiscal year, the first \$50,000,000 in revenues collected from such use must be transferred by the Treasurer of State to the Efficiency Maine Trust for deposit by the trust in program funds pursuant to Title 35-A, section 10103, subsection 4. After the initial transfer each fiscal year, the Treasurer shall deposit additional revenues received into an energy independence fund, which must be used for the following purposes:

- A. To ensure the methodical transition to energy independence and security for the people, communities, economy and environment of the State;
- B. To invest in and transform the ways homes and businesses are heated, energy is used and people and cargo are transported;
- C. To gain independence from foreign oil and to maximize energy efficiency, to enhance renewable energy sources and to invest in an economic development strategy to ensure a vibrant, environmentally sound and prosperous future; and
- D. To reduce energy costs statewide.