

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-21-212

CHRISTOPHER J. CAIAZZO,

Appellant

v.

SHENNA BELLOWS, in her capacity as Secretary of State
for the State of Maine, and THOMAS SAVIELLO,

Appellees,

On Appeal from the Cumberland County Superior Court
Docket No. AP-21-13

APPENDIX

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Date filed: 06/03/2021 CUMBERLAND
COUNTY

Justice John O'Neil Jr
Docket No. AP-21-013

Action: Rule 80C Appeal

Christopher J. Caiazzo

Shenna Bellows as Secretary of
State

Vs.

Intervenor (added 6/15/21)
Thomas B. Saviello

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Appellant/Defendant's Attorney

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Date of Entry
2021

June 3 Received 06/03/21.
Verified Petition for Review of Final Agency Action filed.
Filing fee of \$175.00 paid.

June 8 Received 06/07/21.
Joint Motion for Scheduling Order with Proposed Scheduling Order.

" " On 6/8/21.
Scheduling Order issued:
1. The agency shall produce its record by Wednesday, June 9.
2. Petitioner's brief is due Wednesday, June 16.
3. Respondent's brief is due Wednesday, June 23.

4. Petitioner's reply brief is due Monday, June 28.
Oral argument will be set between 6/29/21 and 7/2/21. See order for details.
Copies to parties/counsel 6/8/21.

June 10	Received 6/9/21. Agency Record filed pursuant to M.R. Civ. P. 80C(f).
June 14	Received 6/14/21 Unopposed Motion to Intervene of Thomas B. Saviello with Proposed Order filed.
" "	On 6/14/21 File sent to J. O'Neil for review.
" "	Received 6/14/21. Petitioner's Motion for Additional Evidence with Proposed Order filed.
June 16	On 6/16/21. Order on Motion to Intervene of Thomas B. Saviello filed. (O'Neil, J. signed 6/15/21) Upon review of the Unopposed Motion to Intervene of Thomas B. Saviello, pursuant to 21-A M.R.S. § 905(2), the Motion is hereby GRANTED. Copies to Parties/Counsel 6/16/21.
June 17	Received 06/16/21. Petitioner's Brief Requesting Reversal of the Secretary of State's Determination filed.
June 18	Received 6/18/21. Notice of Appearance of Adam R. Cote, Esq. on behalf of Intervenor filed. Notice of Appearance of Sara R. Cressy, Esq. on behalf of Intervenor filed. Notice of Appearance of Jeana M. McCormick, Esq. on behalf of Intervenor filed.
June 24	Received 6/23/21. Brief of Intervenor Thomas B. Saviello in Support of the Secretary of State's Decision filed.
" "	Received 6/23/21. Opposition of Intervenor Thomas B. Saviello to Petitioner's Motion for Additional Evidence filed.

" " Received 6/23/21.
Secretary of State's Rule 80C Brief filed.

" " Received 6/23/21.
Secretary of State's Opposition to Petitioner's Motion to Take Additional Evidence filed.

" " On 6/24/21.
Order on Motion for Additional Evidence filed (O'Neil, J. 6/24/21).
Given that the records are already submitted and will not require a Testimonial hearing they may be considered part of the record. The issue of relevancy and materiality remain to be decided. Copies to Parties/Counsel 6/24/21.

" " On 6/24/21.
Hearing for Oral Argument scheduled for 6/29/21 @1:00 pm. Notice of Oral Argument filed. Copies emailed to parties 6/24/21.

June 28 On 6/28/21.
Petitioner's Reply Brief in Support of its 80C Petition filed.

June 29 On 6/29/21.
Oral Argument Hearing held via Zoom. Justice O'Neil presided. Joshua Dunlap, Esq appeared on behalf of Petitioner. Jonathan Bolton, AAG appeared on behalf of Secretary of State Shenna Bellows. Jeana McCormick, Esq appeared on behalf of Intervenor. Digitally recorded 1:00:22 pm to 2:00:01 pm.

July 6 On 7/6/21.
Decision and Order filed (O'Neil, J. 7/6/21)
The decision of the Secretary of State is hereby AFFIRMED. The Clerk is directed to enter this order into the docket by reference pursuant to M.R.Civ.P. 79(a). Copies mailed/in-hand to Parties/Counsel 7/6/21.

July 09 Received 7/9/21.
Plaintiff's Notice of Appeal of Order dated 7/6/21 filed and Appeal fee of \$175.00 paid. Date-stamped copies of the Notice of Appeal were sent to Counsel on 7/9/21.

" " On 7/9/21.
Canned copies of Plaintiff's Notice of Appeal with Docket Record and Appeal Checklist sent to the Clerk of the Law Court on 7/9/21.

July 12

Received 7/12/21.

Order Establishing Course of Appeal filed (Gorman, J. 7/12/21).

1. The Clerk of the Superior Court must transmit the record on appeal to the Clerk of the Law Court on or before Monday, July 12, 2021 at 4:00 p.m.
2. Any interested person or organization may file a brief as an amicus curiae pursuant to M.R.App.P. 9(e) without consent of the parties or separate leave of the Court.
3. The Parties and any amici must file their briefs and submit the required electronic versions of their briefs, and Caiazzo must file the appendix, on or before Monday, July 19, 2021, at 3:00 p.m.
4. No reply briefs or other briefing is permitted.
5. The Court will hold oral argument in this appeal on Wednesday, July 21, 2021, at 1:30 p.m. via videoconference. Only the audio of the videoconference will be streamed on the Court's Website.

" "

On 7/12/21.

Record on appeal sent to Law Court together with attested copy of Superior Court docket record and Cover Sheet for Transmission of Record to Law Court.

" "

Received 7/12/21.

Receipt of Clerk's Record in Law Court filed.

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-21-13

CHRISTOPHER J. CAIAZZO,

Petitioner

v.

SHENNA BELLOWS, in her capacity of
Secretary of State for the State of Maine

DECISION AND ORDER

Respondent

and

THOMAS B. SAVIELLO,

Intervenor

RECEIVED CLERK'S OFFICE
JULY 10 2021

The matter before the court is petitioner Christopher J. Caiazzo's ("petitioner") appeal of respondent Secretary of State Shenna Bellows's ("Secretary") May 24, 2021 decision to write a single ballot question for the direct initiative entitled "An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region" ("initiative"). Intervenor Thomas B. Saviello ("intervenor") has also submitted a brief in support of the Secretary's decision. For the following reasons, the decision will be affirmed.

I. Background

The initiative at issue arises out of an application submitted to the Secretary by intervenor on September 16, 2020. (R. 1.) The Secretary made non-substantive changes to the proposed legislation so that it would conform to legislative drafting standards. (R. 5.) Intervenor consented

to all changes made by the Secretary. (R. 9.) The Secretary's office then prepared a petition form to be circulated to voters. (R. 10-13.)

The petition circulated to voters for signature described a single Act entitled "An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region." (R. 10-13.) The bill proposed in the initiative has six sections which make several changes to current statutes. (R. 10-13.)

First, the initiative would amend 12 M.R.S. § 1852(4) to require legislative approval of leases of public reserved lands by the Bureau of Parks and Lands ("BPL") for a variety of uses. (R. 7.) Section 1 would amend § 1852(4) to require that any lease of public reserved land by the BPL for transmission lines and facilities, landing strips, pipelines and railroad tracks is deemed to substantially alter the use of the land within the meaning of article IX, section 23 of the Maine Constitution and therefore requires approval by a 2/3 vote of all members elected to each House of the Legislature. (R. 7;) Me. Const. art. IX, § 23. This requirement would be retroactive to September 16, 2014. (R. 7.)

Second, the initiative would amend 35-A M.R.S. §§ 3131-32 to remove references to a repealed statute that governed "energy infrastructure corridors." (*Id.*) These references would be removed by Sections 2 and 3 of the initiative. (*Id.*)

Third, Section 4 of the initiative would amend 35-A M.R.S. § 3132 to require legislative approval for construction of "high-impact electric transmission lines." (*Id.*) Section 4 would further require that high-impact electric transmission lines that cross or utilize public lands be deemed to substantially alter the land and therefore require a 2/3 vote of all members elected to

each House of the Legislature to be approved. (R. 7-8.) Section 6 would make this amendment retroactive to September 16, 2020. (R. 8.)

Fourth, Section 5 of the initiative would amend 35-A M.R.S. § 3132 to ban construction of high-impact electric transmission lines in a region referred to as the “Upper Kennebec Region.”

(R. 8.) Section 5 would define the “Upper Kennebec Region” as:

the approximately 43,300 acres of land located between the Town of Bingham and Wyman Lake, north along the Old Canada Road, Route 201, to the Canadian border, and eastward from the Town of Jackman to encompass Long Pond and westward to the Canadian border, in Somerset County and Franklin County.

(R. 8.) Section 6 would make this amendment retroactive to September 16, 2020. (R. 8.)

The initiative petition was submitted to the Office of the Secretary of State on January 21, 2021. (R. 14.) On February 22, 2021, the Secretary issued a written decision determining the validity of the petition, deciding that 80,506 Maine voters validly signed the petition. (R. 14-15.) As this exceeded the 63,067 signatures required, the Secretary concluded that the petition was valid. (R. 15.) This decision was not appealed.

The initiated bill was then presented to the first regular session of the 130th Legislature. (R. 16.) The Legislature adjourned *sine die* on March 30, 2021 without enacting the proposed measure without change. (R. 16.) Governor Janet Mills issued a proclamation requiring that an election be held on November 2, 2021 for a referendum vote on the initiative. (R. 16.)

On April 13, 2021, the Secretary released proposed language for the ballot question on the initiative for public comment. (R. 17.) The draft version of the question read as follows:

Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to vote on other such projects in Maine retroactive to 2014, with a two-thirds vote required if a project uses public lands?”

(R. 17.) The public submitted 119 comments, some in favor of the proposed wording and some against. (R. 18-189.) Petitioner submitted a comment suggesting that the Secretary split the initiative into multiple questions. (R. 33-35.) Petitioner suggested that the initiative involves three issues that could be split into three separate questions without negating the intent of the proponents of the initiative, which he believed was “to block the construction of the New England Energy Connect transmission project.”¹ (R. 35.) Petitioner suggested that the ballot question be split into the following three questions:

Do you want to require retroactive to 2014 that the Legislative [sic] approve by a two-thirds vote any lease or conveyance of public reserved lands to be used for transmission lines and facilities, landing strips, pipelines or railroad tracks?

Do you want to require retroactive to 2020 the Legislature to approve the construction of any high impact transmission lines in Maine, with a two-thirds vote required if a project crosses public lands?

Do you want to ban retroactive to 2020 the construction of high-impact electric transmission lines in the Upper Kennebec Region?

(R. 35.) Petitioner argued that provisions of the initiative associated with any one of these questions, if passed, would interfere with the construction of the NECEC project. (R. 35.)

On May 24, 2021, the Secretary released the final wording for the ballot question associated with the initiative. The Secretary determined that the ballot question will be worded as follows:

Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to approve all other such projects anywhere in Maine, both retroactively to 2020, and to require the Legislature, retroactively to 2014, to approve by a two-thirds vote such projects using public land?

¹ The New England Clean Energy Connect Project (“NECEC Project”) is a high voltage direct current transmission line intended to bring 1,200 megawatts of hydropower electricity from Quebec into the Maine and Northern New England power grid. See *NextEra Energy Resources, LLC v. Pub. Utils. Comm’n*, 2020 ME 34, ¶¶ 1, 3, 227 A.3d 1117. The NECEC project itself is not the subject of this litigation, though the parties agree that one of the goals of the initiative is to block its construction.

(R. 190.) Petitioner timely filed this appeal, claiming that the Secretary erred by failing to split the question into three separate questions as he suggested in his public comment to the draft version of the ballot question.

II. Standard of Review

21-A M.R.S. § 905(2) (2021) grants any voter who did not sign the application or petition for the direct initiative of legislation the right to appeal the decision of the Secretary of State to approve the petition by commencing an action in the Superior Court. This action is conducted in accordance with M.R. Civ. P. 80C, except as modified by § 905(2). *Id.* § 905(2) further provides:

In reviewing the decision of the Secretary of State, the court shall determine whether the description of the subject matter is understandable to a reasonable voter reading the question for the first time and will not mislead a reasonable voter who understands the proposed legislation into voting contrary to that voter's wishes.

Id. Accordingly, the court is required to “independently determine whether the ballot question is understandable and not misleading.” *Olson v. Sec’y of State*, 1997 ME 30, ¶ 4, 689 A.2d 605. In a Rule 80C appeal, the court reviews the Secretary’s decision for “findings not supported by the evidence, errors of law, or abuse of discretion.” *Knutson v. Dep’t of Sec’y of State*, 2008 ME 124, ¶ 8, 954 A.2d 1054. When interpreting a statute on an 80C appeal the court “first effectuate[s] the plain language of the statute.” *Id.* ¶ 9. If the language is ambiguous, the court “defer[s] to the Secretary’s interpretation if that interpretation is reasonable.” *Id.* ¶ 9.

Petitioner has not challenged the Secretary’s decision on the grounds that the ballot question was misleading or not understandable. Therefore, the court will proceed under a M.R. Civ. P. 80C standard, as provided by § 905(2).

III. Discussion

There are two questions presented by this appeal. First, is the Secretary required by 21-A M.R.S. § 906(6)(A) to prepare multiple questions for inclusion on the ballot for a ballot initiative that addresses multiple issues? Second, if the Secretary is so required, was she required to prepare multiple questions in this case?

Intervenor has raised the threshold issue of whether the court has jurisdiction to hear a challenge based on 21-A M.R.S. § 906(6)(A). Intervenor argues that § 905(2) and *Olson*, limit the court's review of the wording of a ballot question to a determination of whether the question is misleading or not understandable. § 905(2) states that any action appealing the language of a ballot question "must be conducted in accordance with Maine Rules of Civil Procedure, Rule 80C, except as modified by this section." § 905(2) modifies M.R. Civ. P. 80C in only one respect: it requires the court "independently determine whether the ballot question is understandable and not misleading." *Olson*, 1997 ME 30, ¶ 4, 689 A.2d 605. Intervenor reads § 905(2) and *Olson* to limit the court's review to *only* this independent determination. This is at odds with the plain language of § 905(2), which clearly states that "except as modified by this section," an appeal under § 905(2) will be conducted in accordance with M.R. Civ. P. 80C. In other words, unless the petitioner is challenging the Secretary's decision on the grounds that the ballot question is misleading or not understandable, the court reviews the decision for "findings not supported by the evidence, errors of law, or abuse of discretion." *Knutson*, 2008 ME 124, ¶ 8, 954 A.2d 1054. The court has jurisdiction and will proceed using a M.R. Civ. P. 80C standard.

A. Plain Language

Statutory interpretation begins with the plain terms of the statute to determine whether they are ambiguous. *Corinth Pellets, LLC v. Arch Specialty Ins. Co.*, 2021 ME 10, ¶ 21, 246

A.3d 586. Petitioner, intervenor and respondent all argue that 21-A M.R.S. § 906(6)(A) (2021) unambiguously supports their position. § 906(6)(A) provides:

A. The Secretary of State shall advise petitioners that the proper suggested format for an initiative question is a separate question for each issue. In determining whether there is more than one issue, each requiring a separate question, considerations include whether:

- (1) A voter would reasonably have different opinions on the different issues;
- (2) Having more than one question would help voters to better understand the subject matter; and
- (3) The questions are severable and can be enacted or rejected separately without negating the intent of the petitioners.

Petitioner argues that the court should read this provision to impose two duties on the Secretary.

First, petitioner argues, the Secretary is required to give initiative petitioners notice that the “proper suggested format” for initiative ballot language is a separate question for each issue.

(Reply Br. 3.) Petitioner finds this duty in the first sentence of § 906(6)(A). Second, petitioner argues, the Secretary is required to prepare final ballot language with only one issue per question, even if the approved petition does not contain multiple questions. (Reply Br. 15.)

Petitioner finds this duty in the use of the word “requiring” in the second sentence of § 906(6)(A).

A voter who wishes to initiate proceedings for a direct initiative of legislation in Maine must first submit a written application to the Secretary of State. 21-A M.R.S. § 901. The Secretary must then “review the proposed law for a direct initiative of legislation within 15 business days after receipt of the application.” 21-A M.R.S. § 901(3-A). The Secretary may choose to either reject the application or provide a “first revised draft” of the initiative legislation to the applicant within that time. *Id.* The applicant has the choice to either accept or reject those modifications, and may submit subsequent drafts for review under the same process. *Id.* Once the

applicant agrees to the final language of the proposed law, the Secretary proceeds to design the petition form. *Id.* This petition form may then be circulated to voters. *Id.* Petitioner argues that the Secretary is required to advise initiative petitioners of the “proper suggested format” for initiative ballot language during this revision process.

Once initiative petitioners have gathered the necessary signatures and the Legislature adjourns *sine die* without enacting the proposed legislation, the Secretary has 10 business days to give public notice of the proposed ballot question to be submitted to voters during the next election. 21-A M.R.S. § 905-A. After giving notice of the proposed ballot question, the Secretary must provide a 30-day public comment period “for the purpose of receiving comments on the content and form of proposed questions to be placed on the ballot for any pending initiatives.” *Id.* After the public comment period closes, the Secretary has 10 days to write the final wording for any pending initiative. *Id.* The Secretary must prepare the ballots for referendum questions in accordance with the provisions in 21-A M.R.S. § 906. Petitioner argues that the Secretary’s second duty under § 906(6)(A) is to write the ballot question in such a way as to ensure that each question presents only one issue by applying the factors enumerated in § 906(6)(A).

The plain language of § 906(6)(A) does not support petitioner’s reading. The first sentence of § 906(6)(A) reads: “The Secretary of State shall advise petitioners that the proper suggested format for an initiative question is a separate question for each issue.” The two key words in this sentence are “advise” and “suggested.” The parties agree that the word “advise” means that the only duty created by this sentence is for the Secretary to notify initiative petitioners of the “proper suggested format” of initiative ballot questions. The parties further agree that the term “suggested” has a non-mandatory meaning. The word “suggested” immediately precedes the word “format,” which in ordinary English grammar means that

“suggested” is acting as an adjective modifying the noun “format.” Therefore, the most sensible reading of this sentence is that the statute requires the Secretary to notify initiative petitioners that Maine law prefers initiatives presented to the people in a format of one question per issue as defined by the statutory factors, but that this format is merely “suggested,” i.e., non-mandatory.²

Petitioner’s interpretation of the first sentence of § 906(6)(A) would render the word “suggested” surplusage. Petitioner argues that his interpretation gives full effect to the term “suggested” because the Secretary would not make the final determination on whether the initiative requires multiple questions until later, when she prepares the final language of the ballot question. However, § 906(6)(A) does not state that the Secretary must provide initiative petitioners with suggested *wording* of the initiative, only that she advise them of the “proper suggested *format*,” which is “a separate question for each issue.” If the format is mandatory, as petitioner suggests, the sentence would read: “The Secretary of State shall advise petitioners that the proper format for an initiative question is a separate question for each issue.”

Petitioner argues that the use of the term “requiring” in the second sentence means that the statute must be read as imposing two duties at different stages of the initiative process. The second sentence of § 906(6)(A) begins with the phrase “In determining whether there is more than one issue, each requiring a separate question . . .” This is clearly referring to the “proper suggested format,” that is, “a separate question for each issue.” The court cannot read the second sentence of § 906(6)(A) in isolation from the first when the second sentence by its plain language is elaborating on the considerations for determining whether there are separate issues in the same

² The statute does not specify when the Secretary’s duty to advise initiative petitioners about the “proper suggested format” of initiative ballot questions arises during the initiative process. However, reading the statutory scheme as a whole, this duty must arise before the Secretary approves the language that will be circulated with the petition, as this is the last stage of the process where initiative petitioners have direct control over the language of the initiative. See 21-A M.R.S. § 901.

ballot initiative, which the first sentence states is contrary to the “proper suggested format.”

While it is true that the statute states that each issue requires a separate question, read as an elaboration of the first sentence the only significance of the term “requiring” is to clarify what the Secretary must communicate to the initiative petitioners. In other words, the Secretary must advise initiative petitioners that the proper suggested format for initiative questions is to present each issue as a separate question, and *initiative petitioners* should consider the statutory factors to decide whether their petition requires multiple questions. This language does not, however, suggest that the Secretary is obligated to make this determination herself when she writes the final language for the ballot initiative.

§ 906(6)(A) does not mention the Secretary’s obligation to prepare the final ballots. This is a conspicuous absence because §§ 906(6)(B)-(E) specifically concern the final preparation of ballot language. § 906(6)(B) provides: “The Secretary of State shall write the question in a clear, concise and direct manner that describes the subject matter of the people’s veto or direct initiative as simply as possible.” § 906(6)(C) further requires that “[t]he question for a direct initiative must be phrased so that an affirmative vote is in favor of the direct initiative.” § 906(6)(D) adds additional requirements where the Legislature adopts a competing measure, requiring the Secretary to “clearly designate the competing question and legislation as a competing measure and allow voters to indicate whether they support the direct initiative, support the competing measure or reject both.” § 906(6)(E) governs ballots where there are multiple direct initiatives on the same general subject, providing that “the Secretary of State shall write the questions in a manner that describes the differences between the initiatives.” The fact that § 906(6)(A) requires the Secretary to “advise petitioners” of the “proper suggested format”

for initiative questions, rather than “write the question” in a particular way, further supports the reading that § 906(6)(A) does not apply to the Secretary’s final preparation of the ballot question.

A comparison between the language of § 906(6)(A) and § 906(6-A) is also instructive.

21-A M.R.S. § 906(6-A) (2021) provides the proper format for Legislature-initiated referenda:

6-A. Wording of referendum questions enacted by the Legislature. The proper format for a statutory referendum enacted by the Legislature is a separate question for each issue. In determining whether there is more than one issue, each requiring a separate question, considerations include whether;

- A. A voter would reasonably have different opinions on the different issues;
- B. Having more than one question would help voters to better understand the subject matter; and
- C. The Legislature determines the questions are severable and can be enacted or rejected separately without negating the intent of the Legislature.

The first sentence of § 906(6)(A) differs from the first sentence of § 906(6-A) in two important respects. First, § 906(6)(A) refers to the “proper suggested format” for an initiative question, instead of the “proper format” referred to in § 906(6-A). Second, § 906(6)(A) contains the phrase “The Secretary of State shall advise petitioners,” which has no parallel in § 906(6-A). Also, § 906(6-A)(C) specifies that the Legislature is the entity determining whether questions are severable, whereas § 906(6)(A)(C) only states the “questions are severable” without vesting the authority to make this determination in any particular person or entity.

The differences between § 906(6)(A) and § 906(6-A) also support the interpretation that the “proper suggested format” is non-mandatory. The Legislature used exclusively mandatory language for the format of Legislature-initiated referenda, but used non-mandatory language for the format of direct initiatives. § 906(6)(A) states that the Secretary must “advise” petitioners of the “suggested” format for referendum questions. If this format was meant to be mandatory, the

Legislature would have more closely imitated the language in § 906(6-A) and written the “proper format.” Also, the Legislature could have clarified further by writing § 906(6)(A)(C) as follows: “The Secretary of State determines the questions are severable and can be enacted or rejected separately without negating the intent of the petitioners.” This would clearly state that it was incumbent on the Secretary to make the determination whether the ballot question should be split. Instead, the statute is silent as to who makes this determination in the context of a direct initiative. The differences between these statutory provisions indicate that the Legislature intended the format for Legislature-initiated referenda to be mandatory, but intended the format for direct initiatives to be “suggested,” i.e., non-mandatory.

Petitioner argues that interpreting the statute to not require the Secretary to independently determine whether the initiative proposal must be split into separate questions when drafting the final language for ballot questions raises constitutional concerns. Specifically, petitioner argues that if the Secretary is not required to independently determine whether the ballot initiative requires multiple questions, this abdicates her constitutional authority to prepare the ballots for direct initiatives. *See* Me. Const. art. IV, pt. 3, § 20. The Maine Constitution provides that “the Secretary of State shall prepare the ballots in such form as to present the question or questions concisely and intelligibly.” *Id.* There is nothing in this passage to suggest that the Secretary must apply the § 906(6)(A) factors to present the question “concisely” or “intelligibly.” *Id.* Petitioner does not dispute that the Secretary drafted the ballot question in a concise and intelligible manner. Petitioner’s constitutional arguments are unavailing.

The plain language of § 906(6)(A) supports the Secretary’s position. § 906(6)(A) only requires the Secretary to advise initiative petitioners of Maine’s preference for ballot initiatives

that have one issue per question and to notify them of the statutory factors guiding this determination.

B. Legislative History

The statute is unambiguous, so an analysis of the legislative history is, strictly speaking, unnecessary. *See City of Bangor v. Penobscot Cnty.*, 2005 ME 35, ¶ 13, 901 A.2d 177. However, because this is a novel issue of statutory interpretation that concerns the constitutional power of the people of Maine to legislate by direct initiative, the court will conduct a brief analysis of the legislative history materials relevant to § 906(6)(A). *See* Me. Const. art. IV, pt. 3, § 20. Fortunately, these materials support the plain language of the statute.

§ 906(6)(A) was first enacted in 1993 as part of L.D. 1488, “An Act to Clarify the Process for a Direct Initiative of Legislation and to simplify Questions Presented to the Voters at a Referendum.” *See* P.L. 1993, ch. 352, §§ 1-4. L.D. 1488 repealed an earlier version of 21-A M.R.S. § 906 which required the Secretary to phrase all initiative questions as follows: “Do you favor the changes in Maine law concerning (the subject matter of the law) proposed by citizen petition?” P.L. 1987, ch. 119. L.D. 1488 replaced the formulaic wording of initiative questions with more flexible standards now codified at 21-A M.R.S. §§ 906(6)(B)-(E).³ L.D. 1488, § 3 (116th Legis. 1993).

The original version of L.D. 1488 included the provision now codified at § 906(6-A). L.D. 1488, § 4 (116th Legis.). § 906(6)(A) was subsequently added to L.D. 1488 by amendment. Comm. Amend. A to L.D. 1488, No. H-497 (116 Legis. 1993.) As noted above, § 906(6)(A) and § 906(6-A) are substantially similar, with a few exceptions. There are no legislative history

³ Some of these provisions have been subsequently amended, but still exist in substantially similar form as they were enacted in 1993. *See* P.L. 2019, ch. 414, § 1. These amendments do not affect the court’s analysis of the legislative history.

materials that explain why the drafters of § 906(6)(A) changed “proper format” to “proper suggested format” when they drafted § 906(6)(A), nor do any materials explain the intention behind the inclusion of the term “advise” in § 906(6)(A).

The fact that § 906(6)(A) was enacted at the same time as § 906(6-A) indicates, at least, that the Legislature knew how to direct a government entity to limit ballot questions to one issue per question. The fact that § 906(6)(A), which contains non-mandatory language, was drafted *after* § 906(6-A), which contains mandatory language, indicates that the use of non-mandatory language in § 906(6)(A) was intentional. Clearly, if the Legislature wished to direct the Secretary to split ballot questions by issue, instead of only advising petitioners of the suggested format for ballot questions, it knew how to do so. The fact that the Legislature did not choose to write § 906(6)(A) with mandatory language mirroring § 906(6-A) suggests that the Legislature did not intend § 906(6)(A) to impose a mandatory duty on the Secretary to split ballot questions if they contain multiple issues.

The legislative history of § 906(6)(A) supports its plain meaning. The Secretary does not have a mandatory duty pursuant to § 906(6)(A) to prepare ballot questions for direct initiatives with only one issue per question. Therefore, the Secretary did not err by preparing the question in its current form.

The entry is

The decision of the Secretary of State is hereby AFFIRMED.

The Clerk is directed to enter this order into the docket by reference pursuant to M.R.Civ.P. 79(a).

Date: 7/6, 2020



John O'Neil
Justice, Superior Court

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
DOCKET NO. _____

CHRISTOPHER J. CAIAZZO

Petitioner

v.

SHENNA BELLOWS, in her capacity of
Secretary of State for the State of Maine

Respondent

**VERIFIED PETITION FOR REVIEW
OF FINAL AGENCY ACTION**

Pursuant to 21-A M.R.S. § 905, 5 M.R.S. § 11001, and M.R. Civ. P. 80C, Petitioner Christopher J. Caiazzo hereby petitions this Court to reverse the decision by Secretary of State Shenna Bellows (the “Secretary”) regarding the wording of the ballot question for the citizen initiative entitled “An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region” (hereafter, the “Initiative”) that will appear on the November 2, 2021 ballot. The proposed wording violates the requirements of Maine law under 21-A M.R.S. § 906.

PARTIES

1. Petitioner Christopher J. Caiazzo is a registered Maine voter who resides in Scarborough, Cumberland County, Maine. He is also a member of the Maine House of Representatives, representing House District #28, which covers part of Scarborough. Representative Caiazzo strongly supports the New England Clean Energy Connect Project (the “NECEC Project”) because of the environmental and economic benefits it will bring to Maine, and will suffer harm should Secretary Bellow’s determination regarding the wording of the ballot

PETITION FOR REVIEW OF FINAL AGENCY ACTION

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question for the Initiative stand. Representative Caiazzo is opposed to the Initiative and will suffer direct injury if the Initiative passes, including by payment of higher electricity charges if the NECEC Project is barred by the Initiative. Representative Caiazzo also has a direct interest in ensuring that he is not deprived of the opportunity to vote on a separate question for each issue presented by the Initiative, and is entitled to appeal under 21-A M.R.S. § 905(2).

2. Respondent Shenna Bellows, in her official capacity as Secretary of State for the State of Maine, is the constitutional officer charged with administering Title 21-A, Chapter 11, which governs proposed direct petitions for initiated legislation, including the requirements concerning the wording of ballots for citizen initiatives. She has the statutory authority and obligation to determine the form of the ballot question for citizen initiatives.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over this petition for review pursuant to 5 M.R.S. § 11001(1) and 21-A M.R.S. § 905(2).

4. The Court may exercise personal jurisdiction over the Secretary because this petition seeks review of actions taken by the Secretary, in her official capacity as an officer of the State of Maine under the Maine Constitution.

5. Venue is proper in Cumberland County pursuant to 5 M.R.S. § 11002(1)(B) because Petitioner resides in Cumberland County.

FACTUAL AND LEGAL BACKGROUND

The NECEC Project

6. The NECEC Project is a high voltage direct current transmission line that will bring 1,200 megawatts of clean hydropower from Quebec into Maine and the New England power grid, proposed for construction in western Maine. The Maine Public Utilities Commission has found the Project to be in the public interest, and the Project has received the

necessary permits from the Maine Department of Environmental Protection, the Army Corps of Engineers, and the United States Department of Energy. Construction on the Project has begun.

7. The NECEC Project will constitute an investment of approximately \$1 billion of new electricity transmission infrastructure in Maine. This investment will produce thousands of jobs in Maine during construction of the project, fund over \$250 million in rate relief, economic development, carbon reduction, education and other benefits for Maine and result in approximately \$18 million in additional property taxes annually for the host communities. The NECEC Project and the clean hydropower it will deliver to Maine also will significantly lower the cost of electricity in Maine and across the New England region, and remove upwards of 3.6 million metric tons of carbon emissions annually from the Earth's atmosphere (the equivalent of removing 700,000 cars from the road) by decreasing New England's reliance on fossil fuels for the region's electricity needs.

8. The Law Court has affirmed the Public Utilities Commission's findings that "the value to Maine resulting from the NECEC's energy price suppression effect would amount to \$14 – \$44 million annually, and capacity market price reduction for Maine residents in the amount of \$19 million annually over the first ten years." *NextEra Energy Res., LLC v. Me. Pub. Utils. Comm'n*, 2020 ME 34, ¶ 30. The Law Court has also affirmed the Public Utilities Commission's findings that the Project would result in "enhancements to transmission reliability and supply reliability and diversity," as well as "a reduction of greenhouse gas emissions." *Id.* The Law Court also affirmed the Public Utilities Commission's findings that "the project would have a positive impact on Maine's gross domestic product, averaging \$94-98 million during the project's construction period." *Id.*

9. The electric generators in New England that burn fossil fuels oppose the NECEC Project precisely because it will significantly lower their revenues and reduce New England's reliance on the more expensive electricity they produce, which electricity adds carbon to the atmosphere and exacerbates climate change. The fossil fuel electric generators have funded various groups in Maine, including the political action committee No CMP Corridor, for the purpose of advocating against and attempting to block the construction of the NECEC Project.

Efforts to Bar Construction of the NECEC Projects via Citizen Initiative

10. Opponents of the NECEC Project have sought to bar construction of the Project via the citizen initiative process.

11. In August 2019, Thomas Saviello and other voters filed an application for a citizen initiative (the "2020 Initiative") that would have directed the Maine Public Utilities Commission to "find that the construction and operation of the NECEC transmission project are not in the public interest and that there is not a public need for the NECEC transmission project" and to deny a Certificate of Public Convenience and Necessity for the Project.

12. After proponents of the 2020 Initiative submitted petitions on February 3, 2020, the Secretary of State certified the initiative for inclusion on the November 2020 ballot.

13. On August 13, 2020, the Maine Law Court determined that the 2020 Initiative "fail[ed] to meet the constitutional requirements for inclusion on the ballot because it exceed[ed] the scope of the people's legislative powers conferred by article IV, part 3, section 18 of the Maine Constitution." *See Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, ¶ 2. As a result, the 2020 Initiative did not appear on the ballot in November 2020.

14. On or about September 15, 2020, Thomas Saviello and a group of voters filed an application for another citizen initiative that would also ban the NECEC Project, namely, the Initiative that is the subject of the present action.

15. The political action committee supporting the Initiative, No CMP Corridor, has stated that the purpose of the Initiative is to end the NECEC Project. No CMP Corridor has stated the following on its website, nocmpcorridor.com:

HELP US STOP THE CMP CORRIDOR

Mainers don't benefit from CMP's destructive transmission corridor project, and they have made it clear every step of the way that they don't want it, but their voices haven't been heard by bureaucrats in Augusta. That's why a group of concerned citizens banded together to form No CMP Corridor. We are a grassroots, volunteer-driven organization with a simple goal: give the people of Maine a voice through a citizens' referendum.

Nobody thought we, everyday citizens, could go toe-to-toe with CMP and their foreign investors. But against all odds (and in the dead of winter), we collected more than enough signatures to bring this issue to a statewide vote in November of 2020.

Then the highest judicial Court of Maine sided with CMP and ruled our 2020 referendum unconstitutional, effectively silencing Mainers' voice in the matter.

While we had lost the battle, we knew the war was far from over. So we filed another referendum and are now gathering signatures to get on the ballot in 2021. Our new referendum is worded in a way that we are confident, completely constitutional and allow Mainers to express their choice about this project.

To read a short summary about our new Initiative, click [HERE](#).

To read the full petition language, click [HERE](#).

We did not and will not stand idly by while a large, untrustworthy corporation degrades our best resources for their exclusive financial gain. We are more than an extension cord for Massachusetts.

The bottom line is that CMP has failed to reliably deliver power right here in Maine, and their constant drive to put profits ahead of ratepayers has resulted in poor customer service, multiple state investigations and their dubious reputation as the lowest rated power utility company in the nation.

So while they spend record sums of money on fancy ad campaigns to deceive the voters, we will continue to fight them every step of the way. CMP cannot be trusted, and we will not allow them to permanently alter our way of life to make millions of dollars off the backs of rural Mainers.

This is a bad deal for Maine! We hope you will join us in putting an end to this destructive project once and for all.

- Sandi Howard, No CMP Corridor

16. In a September 16, 2020 press release, No CMP Corridor stated the following:

Opponents of the Central Maine Power's (CMP) proposed corridor filed ballot initiative language today to begin the process of allowing Maine voters an opportunity to weigh in on this incredibly unpopular project. After ballot initiative language is approved by the Maine Secretary of State, Maine registered voters will be collecting the required signatures to place this initiative on the ballot in 2021.

Former State Senator and State Representative Tom Saviello filed the language today with the Secretary of State. He was joined by five other Maine voters who were deeply concerned about the impacts of this project and the inability of all Mainers to have a say when it comes to this for-profit project.

See https://www.nocmpcorridor.com/9_16_20_press_release2.

17. On October 30, 2020, the Secretary of State accepted the application for the Initiative and issued the form petition for it.

18. On that same day, No CMP Corridor issued a press release stating the following:

A new statewide effort to stop Central Maine Power's 145-mile transmission line through Maine began today in Augusta. This new referendum includes a three part question that would restore the voice of the people by:

1. Requiring legislative approval for any high impact electrical transmission line that is more than 50 miles (Retroactive to 9/16/2020)
2. Putting a geographic prohibition on building high impact electrical transmission lines in the Upper Kennebec region (Retroactive to 9/16/2020)
3. Reaffirming the Maine Constitution's requirement that the Legislature approves leases, like CMP's, that cross public lands if they significantly alter the use of those lands. (retroactive to 9/16/2014)

Former State Senator and State Representative Tom Saviello filed paperwork in September to begin a new statewide initiative campaign. Today, the Maine Secretary of State provided the paperwork necessary for signature collection to begin.

"As I've said from the very beginning, this transmission project is a bad deal for Maine and for Maine people," Saviello said.

See https://www.nocmpcorridor.com/10_30_20_press_release.

19. No CMP Corridor also stated the following in a newsletter dated November 1, 2020: "Two days ago was the official launch of our new referendum effort to stop CMP's destructive corridor project" See https://www.nocmpcorridor.com/11_1_newsletter.

20. On January 21, 2021, the proponents of the Initiative submitted petitions to the Secretary of State signed by Maine voters.

21. That same day, No CMP Corridor issued a press release stating the following:

Sandi Howard, the leader of the No CMP Corridor PAC, Thomas Saviello, a former state legislator, and Darryl Wood, an activist from New Sharon today delivered over 100,000 signatures to Secretary of State Shenna Bellows. These signatures reflect a successful citizens' signature collection effort that overcame challenges

posed by winter weather and Covid 19 protocols, ensuring that voters will be able to have the final say on CMP's unpopular NECEC Corridor later this year.

"An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserve Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region" will be on the ballot this November. If enacted, the new law will be retroactive and therefore effectively will block the project.

This referendum, which is three parts would:

1. Require legislative approval for any high impact electrical transmission line (more than 50 miles). (Retroactive to 9/16/2020)
2. Put a geographic prohibition on building high impact electrical transmission lines in the Upper Kennebec region. (Retroactive to 9/16/2020)
3. Reaffirm the Maine Constitution's requirement that the Legislature approve leases, like CMP's, to cross public lands if they significantly alter the use of those lands. (Retroactive to 9/16/2014)

See https://www.nocmpcorridor.com/1_21_21_press_release.

22. On February 22, 2021, the Secretary of State certified the Initiative to be submitted to the Maine Legislature in accordance with constitutional and statutory requirements.

23. The Legislature did not enact the Initiative without change prior to adjourning its first regular session *sine die* on March 30, 2021.

24. Accordingly, the Initiative will be placed on the ballot for the November 2021 election. See Me. Const. art. IV, pt. 3, § 18.

The Initiative

25. A true and correct copy of the Initiative's legislative language, as included on the form petition, is attached hereto as **Exhibit A**.

26. The Initiative, if approved by Maine voters, would amend Titles 12 and 35-A of the Maine Revised Statutes in three distinct, substantive respects.

27. First, it would amend 12 M.R.S. § 1852(4) to require legislative approval of leases of public reserved lands by the Bureau of Parks and Lands (the “BPL”) for certain uses listed in the Initiative. Section 1 of the Initiative would mandate that any lease of public reserved land by the BPL for transmission lines and facilities is deemed to substantially alter the use of the lease land within the meaning of article IX, section 23 of the Maine Constitution and therefore requires approval by a 2/3 vote of all members elected to each House of the Legislature. This requirement would apply retroactively to September 16, 2014.

28. Second, it would amend 35-A M.R.S. § 3132 to require legislative approval of the construction of “high impact electric transmission lines.” Section 4 of the Initiative would mandate that a high impact electric transmission line may not be constructed without first obtaining legislative approval, and that any high impact electric transmission line crossing public lands designated by the Legislature pursuant to Title 12, section 598-A is deemed to substantially alter the land and therefore requires approval by a 2/3 vote of all members elected to each House of the Legislature. This requirement would apply retroactively to September 16, 2020.

29. Third, it would amend 35-A M.R.S. § 3132 to ban the construction of “high impact electric transmission lines” in the “Upper Kennebec Region” as that term is defined in the Initiative. Section 5 of the Initiative would mandate that no high impact electric transmission line may be constructed in the Upper Kennebec Region, which includes approximately 43,300 acres of land in Somerset County and Franklin County.

30. These three substantive changes are described in the Initiative’s official summary, provided by the Revisor of Statutes and approved by the Secretary pursuant to 21-A M.R.S. § 901(5), as follows:

This initiated bill requires the approval of the Legislature for the construction of high-impact electric transmission lines and provides that high-impact electric

transmission lines crossing or utilizing public lands must be approved by 2/3 of all the members elected to each House of the Legislature. This initiated bill also prohibits the construction of high-impact electric transmission lines in the Upper Kennebec Region. These provisions apply retroactively to September 16, 2020, the date of filing of this initiative.

This initiated bill also requires the approval of 2/3 of all the members elected to each House of the Legislature for any use of public lands for transmission lines and facilities and certain other projects. This provision applies retroactively to September 16, 2014.

See Exhibit A.

Maine Law Governing Ballot Questions

31. Maine law provides that the “Secretary of State shall prepare the ballots for referendum questions.” 21-A M.R.S. § 906; *see id.* § 905-A.

32. Maine law sets forth various requirements for the wording of a ballot question. For instance, the Secretary of State must “write the question in a clear, concise and direct manner that describes the subject matter of the . . . direct initiative as simply as possible.” 21-A M.R.S. § 906(6)(B). Further, “[t]he question for a direct initiative must be phrased so that an affirmative vote is in favor of the initiative.” *Id.* § 906(6)(C).

33. Maine law also addresses the Secretary’s obligations regarding the preparation of ballot question wording for initiatives involving multiple issues. Section 906 states:

Wording of ballots for people’s veto and direct initiative referenda. Ballots for a statewide vote on a people’s veto referendum or a direct initiative must set out the question or questions to be voted on as set forth in this subsection.

A. The Secretary of State shall advise petitioners that the proper suggested format for an initiative question is a separate question for each issue. In determining whether there is more than one issue, each requiring a separate question, considerations include whether:

- (1) A voter would reasonably have different opinions on the different issues;
- (2) Having more than one question would help voters to better understand the subject matter; and
- (3) The questions are severable and can be enacted or rejected separately without negating the intent of the petitioners.

21-A M.R.S. § 906(6)(A).

The Ballot Question

34. On April 13, 2021, pursuant to 21-A M.R.S. §§ 901(4) and 905-A, the Secretary released proposed language for the ballot question related to the Initiative. The proposed language was as follows:

Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to vote on other such projects in Maine retroactive to 2014, with a two-thirds vote required if a project uses public lands?

See <https://www.maine.gov/sos/news/2021/ballotwordingtransmissionline.html>.

35. As required by 21-A M.R.S. § 905-A, the Secretary accepted public comments regarding the form of the question for a 30-day period ending on Thursday, May 13, 2021.

36. Members of the public submitted comments regarding the form of the question. The Secretary received 119 comments on the proposed ballot question during the 30-day public comment period.

37. Petitioner submitted comments requesting that the Secretary prepare multiple questions to address the separate issues in the Initiative. A true and correct copy of the comments are attached hereto as **Exhibit B**.

38. Petitioner requested multiple questions for the following reasons, as stated in his comments to the Secretary. First, Maine voters could reasonably have different opinions on the different law changes proposed by the initiative. Second, having separate questions addressing each of the proposed law changes would help the voters better understand the subject matter of each change. Third, the proposed law changes are separate and distinct and could be enacted or rejected separately without negating the intent of the proponents of the initiative.

39. On May 24, 2021, pursuant to 21-A M.R.S. § 905-A, the Secretary released the final wording for the ballot question related to the Initiative. The Secretary prepared a single question. The Secretary determined that the question will be as follows:

Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to approve all other such projects anywhere in Maine, both retroactively to 2020, and to require the Legislature, retroactively to 2014, to approve by a two-thirds vote such projects using public land?

See <https://www.maine.gov/sos/news/2021/referendumquestionwording.html>.

COUNT I – REVERSAL OF THE SECRETARY OF STATE’S DECISION PURSUANT TO 21-A M.R.S. § 905, 5 M.R.S. § 11001, AND M.R. CIV. P. 80C

40. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth herein.

41. Subsection (6) of 21-A M.R.S. § 906 provides that “[b]allots for a statewide vote on . . . a direct initiative *must* set out the *question or questions* to be voted on as set forth in this subsection.” (Emphasis added).

42. Subsection (6)(A) of 21-A M.R.S. § 906 further provides that the “proper” format for an initiative question “is a separate question for each issue.”

43. Subsection (6)(A) of 21-A M.R.S. § 906 sets forth the criterion for determining “whether there is more than one issue, each *requiring* a separate question,” including whether (1) “[a] voter would reasonably have different opinions on the different issues”; (2) “[h]aving more than one question would help voters to better understand the subject matter;” and (3) “[t]he questions are severable and can be enacted or rejected separately without negating the intent of the petitioners.” (Emphasis added).

44. The Initiative raises separate and distinct issues that should be presented to the voters in separate questions, as required by Section 906(6)(A).

45. First, Maine voters could reasonably have different opinions on the different changes to Maine statutes proposed by the initiative. For example, a voter could support restrictions on the use of public reserved lands while at the same time opposing restrictions on the construction of new transmission lines, which may provide economic or environmental benefits to Maine, or vice versa.

46. Second, having separate questions addressing each of the proposed changes to Maine statutes would help the voters better understand the subject matter of each change. The single ballot question proposed by the Secretary attempts to combine all three issues proposed by the Initiative, resulting in a compound question, which makes no reference whatsoever to leases of public reserved lands.

47. Third, the proposed changes to Title 12 and Title 35-A are severable and could be enacted or rejected separately without negating the intent of the proponents of the Initiative.

a. The proposed changes to Title 12 and Title 35-A are severable. A legislative provision is severable if it is not so integral to the statute that the Legislature would have only enacted it as a whole. Here, the provisions of the Initiative are distinct, and do not depend on one another. The Legislature has in fact considered adopting bills containing portions of the Initiative on a stand-alone basis. *See, e.g.*, L.D. 471 (130th Legis. 2021).

b. The proposed changes to Title 12 and Title 35-A could be enacted or rejected separately without negating the intent of the proponents of the Initiative. Based on public statements of the proponents, the intent of the Initiative is to bar construction of the NECEC Project. Each of the three distinct changes proposed in the Initiative targets the Project and any one of the them, individually, has the potential to bar construction of

it because the Project (1) requires a lease of public reserved lands for the construction of the transmission line; (2) could constitute a “high impact transmission line” under the definition of this term; and (3) will be constructed in part in the “Upper Kennebec Region” as defined in the Initiative.

48. Proponents of the Initiative have publicly stated that the Initiative has “three parts” and that it is a “three part question.”

49. Because the Initiative raises separate and distinct issues that should be presented to the voters in separate questions pursuant to 21-A M.R.S. § 906(6)(A), the initiative must be presented on the ballot using separate questions. For example, the initiative could be presented in the following three questions:

Do you want to require, retroactive to 2014, that the Legislative approve by a two-thirds vote any lease or conveyance of public reserved lands to be used for transmission lines and facilities, landing strips, pipelines, or railroad tracks?

Do you want to require, retroactive to 2020, the Legislature to approve the construction of any high impact electric transmission lines in Maine, with a two-thirds vote required if a project crosses public lands?

Do you want to ban, retroactive to 2020, the construction of high-impact electric transmission lines in the Upper Kennebec Region?

50. Because the Initiative raises separate and distinct issues that should be presented to the voters in separate questions pursuant to 21-A M.R.S. § 906(6)(A), the Secretary erred by preparing a single question.

WHEREFORE, Petitioner requests that the Court:

- a) Vacate the Secretary’s approved ballot question;
- b) Remand to the Secretary with instructions to amend the ballot question as set forth above;
- c) Enter judgment in Petitioner’s favor; and
- d) Grant such other relief as the Court deems just and proper.

DATED: June 3, 2021


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*Attorneys for Petitioner Representative
Christopher J. Caiazzo*

VERIFICATION

I, Christopher Caiazzo, declare under penalty of perjury that the factual allegations of the foregoing Petition are true and correct, based on my personal knowledge, except where alleged on information and belief in which case I believe them to be true.

Executed on June 3, 2020, at Portland, Maine.

By:


Christopher J. Caiazzo

STATE OF MAINE
Cumberland, ss

Personally appeared before me the above-named Christopher J. Caiazzo, and made oath that the statements made and verified by him herein are true.

Dated June 3, 2020


~~Notary Public~~ Attorney
My Commission Expires:

PETITION FOR REVIEW OF FINAL AGENCY ACTION

13249077.3

EXHIBIT A

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §1852, sub-§4, as enacted by PL 1997, c. 678, §13 and amended by PL 2013, c. 405, Pt. A, §24, is further amended to read:

4. Lease of public reserved land for utilities and rights-of-way. The bureau may lease the right, for a term not exceeding 25 years, to:

- A. Set and maintain or use poles, electric power transmission and telecommunication transmission lines and facilities, roads, bridges and landing strips;
- B. Lay and maintain or use pipelines and railroad tracks; and
- C. Establish and maintain or use other rights-of-way.

Any such poles, transmission lines and facilities, landing strips, pipelines and railroad tracks under this subsection are deemed to substantially alter the uses of the land within the meaning of the Constitution of Maine, Article IX, Section 23, and a lease or conveyance for the purpose of constructing and operating such poles, transmission lines and facilities, landing strips, pipelines and railroad tracks under this subsection may not be granted without first obtaining the vote of 2/3 of all the members elected to each House of the Legislature.

Notwithstanding Title 1, section 302 or any other provision of law to the contrary, this subsection applies retroactively to September 16, 2014.

Sec. 2. 35-A MRSA §3131, sub-§4-A, as enacted by PL 2009, c. 655, Pt. A, §3, is amended to read:

4-A. High-impact electric transmission line. "High-impact electric transmission line" means a transmission line greater than 50 miles in length ~~that is not located in a statutory corridor, as defined in section 122, subsection 1, paragraph F 4, or a petitioned corridor, as defined in section 122, subsection 1, paragraph D 1, and~~ 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. 3. 35-A MRSA §3132, sub-§6-A, as enacted by PL 2009, c. 655, Pt. A, §5, is amended to read:

6-A. High-impact electric transmission line; certificate of public convenience and necessity. The commission shall evaluate and render a decision on any petition for a certificate of public convenience and necessity for a high-impact transmission line ~~in accordance with section 122, subsection 1-D.~~

Sec. 4. 35-A MRSA §3132, sub-§6-C is enacted 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 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.

Sec. 5. 35-A MRSA §3132, sub-§6-D is enacted to read:

6-D. High-impact electric transmission line; geographic prohibition. Notwithstanding subsection 6-C, a high-impact electric transmission line may not be constructed in the Upper Kennebec Region. For the purpose of this subsection, "Upper Kennebec Region" means the approximately 43,300 acres of land located between the Town of Bingham and Wyman Lake, north along the Old Canada Road, Route 201, to the Canadian border, and eastward from the Town of Jackman to encompass Long Pond and westward to the Canadian border, in Somerset County and Franklin County.

Sec. 6. 35-A MRSA §3132, sub-§6-E is enacted to read:

6-E. Retroactivity. Notwithstanding Title 1, section 302 or any other provision of law to the contrary, subsections 6-C and 6-D apply retroactively to September 16, 2020 and apply to any high-impact electric transmission line the construction of which had not commenced as of that date.

SUMMARY

This initiated bill requires the approval of the Legislature for the construction of high-impact electric transmission lines and provides that high-impact electric transmission lines crossing or utilizing public lands must be approved by 2/3 of all the members elected to each House of the Legislature. This initiated bill also prohibits the construction of high-impact electric transmission lines in the Upper Kennebec Region. These provisions apply retroactively to September 16, 2020, the date of filing of this initiative.

This initiated bill also requires the approval of 2/3 of all the members elected to each House of the Legislature for any use of public lands for transmission lines and facilities and certain other projects. This provision applies retroactively to September 16, 2014.

EXHIBIT B

May 13, 2021

Via Email to PublicCommentSOS@Maine.gov

Secretary of State
Attn: Public Comment
148 State House Station
Augusta, ME 04333-0148

Re: Proposed Initiative Ballot Question - *An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region*

Dear Secretary Bellows:

I am writing in regards to the request for public comment regarding the language of the above-referenced Proposed Initiative Ballot Question. On April 13, 2021, you proposed that the ballot question initiative be worded as follows:

Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to vote on other such projects in Maine retroactive to 2014, with a two-thirds vote required if a project uses public lands?

I write to express my objection to this wording on the grounds that it does not comply with 21-A M.R.S. §906(6)(A). As discussed below, this statute requires that ballots for a statewide vote on an initiative include separate questions for each issue raised by the initiative.

Section 906(6)(A) provides:

6. Wording of ballots for people's veto and direct initiative referenda. Ballots for statewide vote on a people's veto referendum or a direct initiative must set out the question or questions to be voted on as set forth in this subsection.

- A. The Secretary of State shall advise petitioners that the proper suggested format for an initiative question is a separate question for each issue. In determining whether there is more than one issue, each requiring a separate question, considerations include whether:
- (1) A voter would reasonably have different opinions on the different issues;
 - (2) Having more than one question would help voters better understand the subject matter; and
 - (3) The questions are severable and can be enacted or rejected separately without negating the intent of the petitioners.

The initiative in question here seeks to have the voters change provisions of Titles 12 and 35-A of Maine law in three different, substantive respects:

- 1) to require Legislative approval of leases of public reserved lands for certain uses listed in the initiative (“transmission lines and facilities, landing strips, pipelines and railroad tracks”) by a 2/3 vote (Section 1 – modifying 12 M.R.S. §1852);
- 2) to require Legislative approval of the construction of “high impact transmission lines” (Section 4 – modifying 35-A M M.R.S. §3132); and
- 3) to ban the construction of high impact transmission lines in the “Upper Kennebec Region” as that term is defined in the initiative (Section 5 – modifying 35-A M M.R.S. §3132).

Each of these changes would have its own retroactive effective date per the terms of the initiative (Sections 1 and 6).

These proposed changes raise separate and distinct issues that should be presented to the voters in separate questions in accordance with the considerations articulated in Section 906(6)(A).

First, Maine voters could reasonably have different opinions on the different law changes proposed by the initiative. For example, a voter could support restrictions on the use of public reserved lands, while at the same time opposing restrictions on the construction of new transmission lines, which may provide economic or environmental benefits to Maine or vice versa. Likewise, voters may have different views on the appropriateness of Legislative approval requirements that mandate super-majority votes and/or apply retroactively.

Second, having separate questions addressing each of the proposed law changes would help the voters better understand the subject matter of each change, as reflected in the separate questions proposed below. In contrast, the single ballot question proposed by you attempts to combine all three issues proposed by the initiative, resulting in a compound question, which does not address directly the proposed change in Section 1 of the law regarding the leases of public reserved land.

Third, the proposed law changes are separate and distinct and could be enacted or rejected separately without negating the intent of the proponents of the initiative. Based on public statements of the proponents, the intent of the initiative is to block the construction of the New England Clean Energy Connect transmission project, also referred to as the Clean Energy Corridor (the “NECEC”). It is my understanding that each of the proposed law changes is intended to impact the NECEC in a separate way because the project (1) requires a lease of public reserved lands for the construction of the transmission line; (2) constitutes a “high impact transmission line” under the definition of this term; and (3) will be constructed in part in the “Upper Kennebec Region” as this term is defined in the initiative. The proposed law changes thus appear severable and, in fact, I understand that the Maine Legislature itself is currently considering separate bills that would enact some of the changes proposed by the initiative on a stand-alone basis. *See, e.g.,* LDs 170, 471 and 1587.

For these reasons, the initiative should be presented on the ballot using multiple questions. For example, the initiative could be presented in the following three questions:

Do you want to require retroactive to 2014 that the Legislature approve by a two-thirds vote any lease or conveyance of public reserved lands to be used for transmission lines and facilities, landing strips, pipelines, or railroad tracks?

Do you want to require retroactive to 2020 the Legislature to approve the construction of any high impact transmission lines in Maine, with a two-thirds vote required if a project crosses public lands?

Do you want to ban retroactive to 2020 the construction of high-impact electric transmission lines in the Upper Kennebec Region?

Formulating the ballot questions in this way accurately tracks the three separate and distinct substantive legal changes proposed by the initiative in accordance with Section 906(6)(A). These questions also present the issues for voter consideration in a clear, concise and direct manner that describes the subject matter of the initiative as simply as is possible as required by Section 906(6)(B). Regardless of the precise formulation, more than one ballot question is necessary.

Thank you in advance for your attention to these comments.

Warmest regards,

Rep. Christopher J. Caiazzo
Maine House District 28

Secretary Bellows announces final wording of referendum question

AUGUSTA – The wording of the citizens’ initiative question entitled “**An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region**” that will appear on the Tuesday, Nov. 2, 2021 Referendum Election ballot is now finalized, Secretary of State Shenna Bellows announced Monday. The question will be as follows:

“Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to approve all other such projects anywhere in Maine, both retroactively to 2020, and to require the Legislature, retroactively to 2014, to approve by a two-thirds vote such projects using public land?”

The full text of the proposed bill is available for viewing on the Bureau of Corporations, Elections and Commissions’ [Citizens’ Initiatives webpage](#), along with proponent information. Secretary Bellows received 119 comments on the proposed ballot question during the 30-day public comment period, which was open Tuesday, April 13 through Thursday, May 13. These comments, from individuals and organizations throughout the state, were taken into consideration to draft the final language of the ballot question.

“Translating a proposed law into a single question on the ballot is an important task,” said Secretary Bellows. “Maine voters should be able to read a question and make an accurate decision when they vote, and I think we’ve accomplished that here.”

The Bureau of Corporations, Elections and Commissions will be creating a Citizens’ Guide to the 2021 Election in the coming months and all voters are encouraged to read it to inform themselves of the details of the bill.

In addition to the citizens’ initiative question, the November Referendum Election ballot may also include bond issues, Constitutional Resolutions or other referenda questions that the Legislature chooses to send to the voters. Any such ballot questions will be included on the [Upcoming Elections](#) page.

For more information about the November 2021 election, visit <http://maine.gov/sos/cec/elec/upcoming/index.html>. Information on voter registration and locating your polling place can also be found on the [Corporations, Elections and Commissions website](#).

###

STATE OF MAINE
APPLICATION FOR CITIZEN INITIATIVE

APPLICANT INFORMATION: (List the contact person for the initiative proponents.)

Name of Applicant: Thomas B Savello
Mailing Address: 60 Applegate Ln
Municipality of Residence: Wilton
Home Phone: 207-695-3420 Work Phone: 207-240-5496 FAX: _____

I hereby invoke the citizen initiative procedure provided for by the Constitution of Maine, Article IV, Part Third and governed by Title 21-A M.R.S.A. Chapter 11. Attached is a draft of the legislation for consideration under these provisions.

Thomas B Savello
Signature of Applicant

Subscribed and sworn before me on

Sept 16, 2020
(Date)

Diane L Dunham
(Signature of Notary Public or Agent of the Secretary of State) **Diane L Dunham**
Notary Public State of Maine
My Commission Expires
June 23, 2026

Diane L Dunham
(Print Name of Notary Public or Agent of the Secretary of State)

DESIGNATED VOTER INFORMATION: (List five voters, other than the applicant, to receive notices of proceedings.) Please list voter's name, as it appears on the voting list, the mailing address, telephone number, (if published), the municipality of legal residence (where registered to vote), and voter's signature.

1. Christine M Geisser
60 Applegate Lane
Wilton ME 04794
Phone: 207 860-6199
Municipality of Residence: Wilton
Signature: Christine M Geisser

2. Jonathan Troy Hull
PO Box 371
Farmington ME 04938
Phone: 207 653 1575
Municipality of Residence: Starks
Signature: Jonathan Hull

3. Theresa E York
PO Box 816
Farmington Maine
Phone: 207-491-7411
Municipality of Residence: Farmington
Signature: Theresa E York

4. Wendy A. Hush
256 Perham St.
Farmington, Me. 04938
Phone: (207) 778-2586
Municipality of Residence: FARMINGTON
Signature: Wendy A. Hush

5. Robert C. York
PO Box 546
Farmington, ME 04938
Phone: (207) 779-0505
Municipality of Residence: FARMINGTON
Signature: Robert C York

RECEIVED

SEP 16 2020

OFFICE OF SECRETARY OF STATE
AUGUSTA, MAINE

R 001

An Act To Ensure Legislative Approval of Certain Transmission Lines and Other Linear Projects on Public Land

Whereas, high-impact transmission lines present a unique threat to the environment, and the recreational and commercial opportunities central to the State's health and well-being;

Whereas, the Upper Kennebec Region contains critical cold-water fisheries, deer wintering yards, and many other important wildlife resources, provides crucial recreational opportunities for visitors from Maine and elsewhere which are vital to the economy of the region, as well as sustainable timber harvesting;

Whereas, Article IX, section 23 of the Maine Constitution was enacted to protect the State's public lands by requiring the approval of 2/3 of the Legislature for any conveyance of public land that substantially alters its use;

Whereas, transmission lines and similar linear facilities by definition substantially alter the uses and enjoyment of these critical public lands; and

Whereas, the People of the State of Maine wish to ensure that conveyances of interests in public lands for such uses are presented for approval to the Legislature,

Now, therefore, be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §3131, sub-§4-A is amended to read:

4-A. High-impact electric transmission line. "High-impact electric transmission line" means a transmission line greater than 50 miles in length ~~that is not located in a statutory corridor, as defined in section 122, subsection 1, paragraph F 4, or a petitioned corridor, as defined in section 122, subsection 1, paragraph D 1,~~ and 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. 2. 35-A MRSA §3132, sub-§6-A is amended to read:

6-A. High-impact electric transmission line; certificate of public convenience and necessity. The commission shall evaluate and render a decision on any petition for a certificate of public convenience and necessity for a high-impact transmission line ~~in accordance with section 122, subsection 1-D.~~

Sec. 3. 35-A MRSA §3132, sub-§6-C is enacted to read:

6-C. High-impact electric transmission line; legislative approval. In addition to obtaining a certificate of public convenience and necessity, no high-impact transmission line may be constructed anywhere in the State of Maine without first obtaining the vote of 2/3 of all the members elected to each House of the Legislature.

Sec. 4. 35-A MRSA §3132, sub-§6-D is enacted to read:

6-D. High-impact electric transmission line; geographic prohibition. Notwithstanding section 6-C, no high-impact transmission line may be constructed in the Upper Kennebec Region. For the purpose of this section, "Upper Kennebec Region" means the approximately 43,300 acres of lands located between the town of Bingham and Wyman lake, north along the Old Canada Road (US 201) to the Canadian border, and eastward from Jackman to encompass Long Pond and westward to the Canadian border, in Somerset and Franklin Counties.

Sec. 5. 35 MRSA §3132, sub-§6-E is enacted to read:

6-E. Retroactivity. Notwithstanding 1 MRSA §302 or any other law, sections 6-C and 6-D are retroactive to September 16, 2020, and apply to any high-impact electric transmission line the construction of which had not commenced as of that date.

Sec. 6. 12 M.R.S. §1852 (4) is amended to read:

4. Lease of public reserved land for utilities and rights-of-way. The bureau may lease the right, for a term not exceeding 25 years, to:

- A. Set and maintain or use poles, electric power transmission and telecommunication transmission lines and facilities, roads, bridges and landing strips;

- B. Lay and maintain or use pipelines and railroad tracks; and
- C. Establish and maintain or use other rights-of-way,

provided, however, that any such poles, transmission lines and facilities, , landing strips, pipelines, and railroad tracks shall be deemed to substantially alter the uses of the land within the meaning of Article IX, section 23 of the Maine Constitution and no lease or conveyance for the purpose of constructing and operating such facilities may be granted without first obtaining the vote of 2/3 of all the members elected to each House.

Notwithstanding 1 MRSA §302 or any other law, this section is retroactive to September 16, 2014.

SUMMARY

In recognition of the potential impacts to the environment and people of Maine from high-impact transmission lines, this initiated bill requires the approval of 2/3 of the Legislature for the construction of such lines. High-impact transmission lines are already defined in existing law.

This initiated bill also exercises the Legislature's zoning authority to prohibit high-impact transmission lines in the Upper Kennebec Region because of that region's high value wildlife, recreation and logging values.

These provisions are made retroactive to September 16, 2020, the date of filing of this initiative.

This initiated bill also requires the approval of 2/3 of the Legislature for any use of public lands for transmission lines and similar linear projects, as required by Article IX, section 23 of the Maine Constitution and reflected in the historic practices of the Bureau of Parks and Lands.

This provision is made retroactive to September 16, 2014, to ensure that any leases or other conveyance of public lands for these purposes within the six-year statute of limitations period has been properly presented to the Legislature and will be henceforth.



Matthew Dunlap
Secretary of State

Department of the Secretary of State
Bureau of Corporations, Elections and Commissions

Julie L. Flynn
Deputy Secretary of State

October 7, 2020

Mr. Thomas B. Saviello
60 Applegate Lane
Wilton, ME 04294
VIA EMAIL (drtom16@hotmail.com) & US MAIL

Dear Mr. Saviello:

In accordance with Title 21-A, section 901, I am providing the draft legislation prepared with the assistance of the Office of the Revisor of Statutes for the citizen initiative that you filed in our office on September 16, 2020. The initiated bill printed on the petition will be entitled "An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region." The Revisor's Office has edited the proposed legislation to bring it into conformity with the drafting conventions used in the Maine Revised Statutes while endeavoring to retain the full substance of your proposal.

To comply with drafting conventions, the following changes have been made in the redraft of the initiative petition:

1. The preamble has been removed;
2. In the Maine Revised Statutes, Title 12, section 1852, subsection 4, paragraph A, the phrase "lines and" before "facilities" has been added;
3. In Title 12, section 1852, subsection 4, paragraph C, the phrase "such facilities" has been changed to "such poles, transmission lines and facilities, landing strips, pipelines and railroad tracks" to be consistent with the first portion of the sentence; and
4. In Title 35-A, section 3132, subsection 6-C, the phrase "is deemed to" before "substantially alter" has been added to be consistent with the use of this phrase in Title 12, section 1852, subsection 4.

Please review the draft legislation and advise me in writing as to your acceptance, or of any changes you wish to make. Once this office receives written consent to the final language of the proposed law, the Office of Fiscal and Program Review must prepare an estimate of the fiscal impact of the legislation within 15 business days. The fiscal statement will be printed as part of the petition form that will be provided for circulation. You may reach me by telephone at 624-7650, by fax at 287-5428 or by email at Melissa.packard@maine.gov.

101 State House Station, Augusta, Maine 04333-0101
www.Maine.gov/sos/cec; tel. 207-624-7736

R 005

Please note that in approving the form of this petition, the Secretary of State's Office is expressing no view as to the validity of the proposed initiative.

I have also provided a blank Petition Organization Registration Application. Title 21-A, Maine Law on Elections, § 903-C, sub-§1 requires a petition organization to register with the Secretary of State prior to organizing, supervising or managing the circulation of petitions for a direct initiative or a people's veto referendum. This registration application must include a list of all individuals hired by the petition organization for the purpose of circulating petitions or organizing, supervising or managing the circulation process. Petition organization means a business entity that receives compensation for organizing, supervising or managing the circulation of petitions for a direct initiative or a people's veto referendum. If you intend to hire or create a petition organization for this petition, please complete this form and file it with our office at the time we meet with you to issue the petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa K. Packard", with a long, sweeping horizontal line extending to the right.

Melissa K. Packard
Director of Elections

Enclosure

Cc: Christine M. Geisser, Jonathan Troy Hull, Theresa E. York, Wendy A. Huish, Robert C. Yorks

R 006

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §1852, sub-§4, as enacted by PL 1997, c. 678, §13 and amended by PL 2013, c. 405, Pt. A, §24, is further amended to read:

4. Lease of public reserved land for utilities and rights-of-way. The bureau may lease the right, for a term not exceeding 25 years, to:

- A. Set and maintain or use poles, electric power transmission and telecommunication transmission lines and facilities, roads, bridges and landing strips;
- B. Lay and maintain or use pipelines and railroad tracks; and
- C. Establish and maintain or use other rights-of-way.

Any such poles, transmission lines and facilities, landing strips, pipelines and railroad tracks under this subsection are deemed to substantially alter the uses of the land within the meaning of the Constitution of Maine, Article IX, Section 23, and a lease or conveyance for the purpose of constructing and operating such poles, transmission lines and facilities, landing strips, pipelines and railroad tracks under this subsection may not be granted without first obtaining the vote of 2/3 of all the members elected to each House of the Legislature.

Notwithstanding Title 1, section 302 or any other provision of law to the contrary, this subsection applies retroactively to September 16, 2014.

Sec. 2. 35-A MRSA §3131, sub-§4-A, as enacted by PL 2009, c. 655, Pt. A, §3, is amended to read:

4-A. High-impact electric transmission line. "High-impact electric transmission line" means a transmission line greater than 50 miles in length ~~that is not located in a statutory corridor, as defined in section 122, subsection 1, paragraph F 4, or a petitioned corridor, as defined in section 122, subsection 1, paragraph D 1, and 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. 3. 35-A MRSA §3132, sub-§6-A, as enacted by PL 2009, c. 655, Pt. A, §5, is amended to read:

6-A. High-impact electric transmission line; certificate of public convenience and necessity. The commission shall evaluate and render a decision on any petition for a certificate of public convenience and necessity for a high-impact transmission line ~~in accordance with section 122, subsection 1-D.~~

Sec. 4. 35-A MRSA §3132, sub-§6-C is enacted 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 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.

Sec. 5. 35-A MRSA §3132, sub-§6-D is enacted to read:

6-D. High-impact electric transmission line; geographic prohibition. Notwithstanding subsection 6-C, a high-impact electric transmission line may not be constructed in the Upper Kennebec Region. For the purpose of this subsection, "Upper Kennebec Region" means the approximately 43,300 acres of land located between the Town of Bingham and Wyman Lake, north along the Old Canada Road, Route 201, to the Canadian border, and eastward from the Town of Jackman to encompass Long Pond and westward to the Canadian border, in Somerset County and Franklin County.

Sec. 6. 35-A MRSA §3132, sub-§6-E is enacted to read:

6-E. Retroactivity. Notwithstanding Title 1, section 302 or any other provision of law to the contrary, subsections 6-C and 6-D apply retroactively to September 16, 2020 and apply to any high-impact electric transmission line the construction of which had not commenced as of that date.

SUMMARY

This initiated bill requires the approval of the Legislature for the construction of high-impact electric transmission lines and provides that high-impact electric transmission lines crossing or utilizing public lands must be approved by 2/3 of all the members elected to each House of the Legislature. This initiated bill also prohibits the construction of high-impact electric transmission lines in the Upper Kennebec Region. These provisions apply retroactively to September 16, 2020, the date of filing of this initiative.

This initiated bill also requires the approval of 2/3 of all the members elected to each House of the Legislature for any use of public lands for transmission lines and facilities and certain other projects. This provision applies retroactively to September 16, 2014.

9-7-20

Melissa K. Packard

Director of Elections and APA

(207) 624-7650

I accept the changes proposed to the petition will be entitled "An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region."

Could you provide me with a better understanding why the preamble was not included.



Thomas Saviello

RECEIVED

OCT 08 2020

OFFICE OF SECRETARY OF STATE
AUGUSTA, MAINE

R 009

An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region

DATE OF ISSUANCE: October 30, 2020

Filing Deadline for the November 2021 Ballot: January 21, 2021

18 month petition expiration date: April 30, 2022

Freedom of Citizen Information: Before a registered voter signs any initiative petition, signature gatherers must offer the voter the opportunity to read the proposed initiative summary and fiscal impact statement prepared by the Secretary of State.

SUMMARY OF PROPOSED INITIATIVE

This initiated bill requires the approval of the Legislature for the construction of high-impact electric transmission lines and provides that high-impact electric transmission lines crossing or utilizing public lands must be approved by 2/3 of all the members elected to each House of the Legislature. This initiated bill also prohibits the construction of high-impact electric transmission lines in the Upper Kennebec Region. These provisions apply retroactively to September 16, 2020, the date of filing of this initiative.

This initiated bill also requires the approval of 2/3 of all the members elected to each House of the Legislature for any use of public lands for transmission lines and facilities and certain other projects. This provision applies retroactively to September 16, 2014.

ESTIMATE OF FISCAL IMPACT

This citizen initiative would require the approval of 2/3 of all the members elected to each House of the Legislature for the construction of high-impact electric transmission lines in the State and for leases of public reserved lands for utilities and rights-of-way, retroactively applied to September 16, 2014. The initiative would also prohibit any construction of a high-impact electric transmission line in the Upper Kennebec region of the State that has not commenced construction by September 16, 2020.

These provisions may reopen the Public Utilities Commission's (PUC's) deliberative process related to certain projects and cause termination of a recently negotiated lease that would otherwise have generated at least \$65,000 annually for the next 25 years to the Public Reserved Lands Management Fund managed by the Department of Agriculture, Conservation and Forestry (ACF). This lease was to be increased by the Consumer Price Index each year and would have been subject to an appraisal of fair market value within one year. No estimate can be made at this time of additional loss of revenue that may result from other current and future leases that might be affected by this initiative.

Any additional costs to the PUC or the ACF resulting from this initiative are

- A. Set and maintain or use poles, electric power transmission and telecommunication transmission lines and facilities, roads, bridges and landing strips;
- B. Lay and maintain or use pipelines and railroad tracks; and
- C. Establish and maintain or use other rights-of-way.

Any such poles, transmission lines and facilities, landing strips, pipelines and railroad tracks under this subsection are deemed to substantially alter the uses of the land within the meaning of the Constitution of Maine, Article IX, Section 23, and a lease or conveyance for the purpose of constructing and operating such poles, transmission lines and facilities, landing strips, pipelines and railroad tracks under this subsection may not be granted without first obtaining the vote of 2/3 of all the members elected to each House of the Legislature.

Notwithstanding Title 1, section 302 or any other provision of law to the contrary, this subsection applies retroactively to September 16, 2014.

Sec. 2. 35-A MRSA §3131, sub-§4-A, as enacted by PL 2009, c. 655, Pt. A, §3, is amended to read:

4-A. High-impact electric transmission line. "High-impact electric transmission line" means a transmission line greater than 50 miles in length ~~that is not located in a statutory corridor, as defined in section 122, subsection 1, paragraph F 4, or a petitioned corridor, as defined in section 122, subsection 1, paragraph D 1, and 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. 3. 35-A MRSA §3132, sub-§6-A, as enacted by PL 2009, c. 655, Pt. A, §5, is amended to read:

6-A. High-impact electric transmission line; certificate of public convenience and necessity. The commission shall evaluate and render a decision

within the scope of normal budgeted activities and are not anticipated to require supplemental appropriations or allocations. It is also assumed that any required legislative considerations and approvals would occur within currently planned sessions of the Legislature and could be absorbed within existing budgeted resources. Provisions prohibiting the construction of high-impact transmission lines in the Upper Kennebec region and those requiring retroactive Legislative approval of projects already approved by the PUC or leases already negotiated by the AFC may result in litigation against the State initiated by the parties impacted. No estimate is made at this time on the potential cost to the Attorney General to defend or participate in such litigation.

To the Legislature of the State of Maine:

In accordance with Section 18 of Article IV, Part Third of the Constitution of the State of Maine, the electors of the State of Maine, qualified to vote for Governor, residing in said State, whose names have been certified on this petition, hereby respectfully propose to the Legislature for its consideration the following entitled legislation: "An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region."

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §1852, sub-§4, as enacted by PL 1997, c. 678, §13 and amended by PL 2013, c. 405, Pt. A, §24, is further amended to read:

4. Lease of public reserved land for utilities and rights-of-way. The bureau may lease the right, for a term not exceeding 25 years, to:

on any petition for a certificate of public convenience and necessity for a high-impact transmission line in accordance with section 122, subsection 1-D.

Sec. 4. 35-A MRSA §3132, sub-§6-C is enacted 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 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.

Sec. 5. 35-A MRSA §3132, sub-§6-D is enacted to read:

6-D. High-impact electric transmission line; geographic prohibition. Notwithstanding subsection 6-C, a high-impact electric transmission line may not be constructed in the Upper Kennebec Region. For the purpose of this subsection, "Upper Kennebec Region" means the approximately 43,300 acres of land located between the Town of Bingham and Wyman Lake, north along the Old Canada Road, Route 201, to the Canadian border, and eastward from the Town of Jackman to encompass Long Pond and westward to the Canadian border, in Somerset County and Franklin County.

Sec. 6. 35-A MRSA §3132, sub-§6-E is enacted to read:

6-E. Retroactivity. Notwithstanding Title 1, section 302 or any other provision of law to the contrary, subsections 6-C and 6-D apply retroactively to September 16, 2020 and apply to any high-impact electric transmission line the construction of which had not commenced as of that date.

INSTRUCTIONS FOR CIRCULATION

PETITIONER – MUST:

- BE A MAINE REGISTERED VOTER
- SIGN NAME AS IT APPEARS ON THE VOTING LIST
- SIGN ONLY ONCE
- **NOT** SIGN ANOTHER'S NAME
- PRINT NAME; DATE OF SIGNING; STREET ADDRESS & MUNICIPALITY OF RESIDENCE (UNLESS PRINTED BY CIRCULATOR)

PETITION CIRCULATOR – MUST:

- BE A MAINE RESIDENT & REGISTERED VOTER
- COMPLETE THE CIRCULATOR'S VERIFICATION
- TAKE THE OATH BEFORE A NOTARY PUBLIC PRIOR TO SUBMISSION OF PETITIONS TO REGISTRAR
- **NOT** COLLECT SIGNATURES AFTER TAKING OATH

WARNING: MAKING A FALSE STATEMENT BY THE CIRCULATOR, SIGNING A PETITION WITH THE NAME OF ANOTHER, OR SIGNING A NAME MORE THAN ONCE ON THESE PETITIONS IS A CLASS E CRIME.

REGISTRAR – MUST:

- DATE AND TIME STAMP PETITION INDICATING WHEN IT IS RECEIVED
- COMPLETE THE "REGISTRAR USE ONLY" SPACE USING THE CODES DESCRIBED IN THE BOX TO THE RIGHT
- COMPLETE AND SIGN THE CERTIFICATION BY INDICATING WHICH NAMES ON THE PETITION APPEAR ON THAT MUNICIPALITY'S VOTING LIST

NOTE: IF THE SIGNATURE ALONE SUFFICIENTLY IDENTIFIES THE VOTER, IT SHOULD BE ACCEPTED.

CERTIFICATION CODE FOR VALID SIGNATURES:

✓ INDIVIDUAL SIGNING PETITION IS A REGISTERED VOTER

THE MOST COMMON REASONS FOR REJECTION OF SIGNATURES OR PETITIONS (WITH APPLICABLE CODES) ARE AS FOLLOWS:

OF INDIVIDUAL SIGNATURES

DUP	INDIVIDUAL PREVIOUSLY SIGNED THE PETITION (DUPLICATE NAME)
NR	INDIVIDUAL IS NOT A REGISTERED VOTER
DATE	INDIVIDUAL SIGNED AFTER THE DATE OF CIRCULATOR'S VERIFICATION
ANO	INDIVIDUAL'S SIGNATURE MADE BY ANOTHER PERSON
SIG	INDIVIDUAL DID NOT SIGN THE PETITION (PRINTED NAME ONLY)

OF ENTIRE PETITIONS

CERT	THE REGISTRAR'S CERTIFICATION IS NOT COMPLETED OR IS NOT SIGNED
ALT	INFORMATION WRITTEN ON THE PETITION HAS BEEN ALTERED IN A MATERIAL WAY
OATH	THE CIRCULATOR'S VERIFICATION IS NOT COMPLETED OR IS NOT SIGNED
OATH	THE CIRCULATOR DID NOT TAKE THE OATH BEFORE A VALID NOTARY PUBLIC
OATH	THE NOTARY DID NOT COMPLETE OR SIGN THE NOTARIZATION
OWN	THE NOTARY IS AN IMMEDIATE FAMILY MEMBER OF THE CIRCULATOR
FORM	THE PETITION IS NOT IN THE FORM APPROVED BY THE SECRETARY OF STATE (e.g. PAGES MISSING, DAMAGED OR OUT OF ORDER, ETC.)

Please Turn Over for Signature Lines and Circulator's Oath

Printed Name of Circulator

Unique Identifying Number

An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region

Registrar use only	SIGNATURE	DATE SIGNED	ACTUAL STREET ADDRESS (Not P.O. Box)	MUNICIPALITY (Where Registered)	NAME PRINTED
1.					
2.					
3.					
4.					
5.					
6.					
7.					
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CIRCULATOR'S OATH

I hereby make oath that I am the Circulator of this petition; that I personally witnessed all of the signatures to this petition; and, to the best of my knowledge and belief, each signature is that of the person whose name it purports to be.

Signature of Circulator _____ Printed Name _____

Signature of Notary _____ Printed Name _____

Subscribed to and sworn before me on this date: _____ (Date must be completed by Notary)

Date my Notary Commission expires: _____

REGISTRAR'S CERTIFICATION

Municipality _____ TOTAL VALID _____ TOTAL INVALID _____

I hereby certify that the names of all the petitioners listed as valid appear on the voting list as qualified to vote for Governor.

DATE & TIME PETITION RECEIVED:

Signature of Registrar: _____

Date petition certified: _____

PETITION LOG

FOR SECRETARY OF STATE USE ONLY

PETITION #: _____ VALID: _____ INVALID: _____

INVALID REASON SIGNATURE LINES

S.O.S. STAFF: _____

COMMENTS:

Please Turn Over for Summary, Fiscal Impact, Legislation and Instructions

STATE OF MAINE
OFFICE OF THE SECRETARY OF STATE

Determination of the Validity of a Petition for Initiated Legislation Entitled:

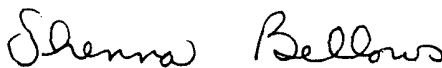
“An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region”

1. On January 21, 2021, 25,058 petitions containing 95,622 signatures were submitted to the Secretary of State pursuant to the Constitution of Maine, Article IV, Part Third, Section 18 on behalf of the above-entitled initiated legislation.¹
2. Following a review of these 25,058 petitions I find the following signatures to be invalid for the following reasons:
 - A. 9,868 signatures are invalid because they were not certified by the registrar as belonging to a registered voter in that municipality. (REG)
 - B. 2,346 signatures are invalid because they are duplicates of signatures already counted. (DUP)
 - C. 759 signatures are invalid because the signature of the notary administering the circulator’s oath did not match the signature on file and it could not be determined that the signature was made by that person. (OATSIG)
 - D. 502 signatures are invalid because the voter’s signature was crossed out on the petition form. (WD)
 - E. 305 signatures are invalid because the voter dated his or her signature after the date of the circulator’s oath or the voter’s signature was not dated and it could not be determined that the voter signed the petition before the circulator took the oath. (DATE)
 - F. 266 signatures are invalid because the circulator did not file a circulator’s affidavit at the time the petitions were filed with the Secretary of State. (AFF)
 - G. 236 signatures are invalid because the voter failed to provide a signature. (SIG)
 - H. 194 signatures are invalid because of material alterations to the petition. (ALT)
 - I. 175 signatures are invalid because the petition was submitted to the municipal registrar for determination of whether the petitioners were qualified voters after the deadline set by the Maine Constitution, Article IV, Part Third, Section 20. (AMD)

¹ An additional 2,829 petitions that were submitted contained only signatures that were certified as invalid by municipal registrars. The Secretary of State did not complete a full review of signatures included on these 2,829 petition forms and these signatures were not included in the final tally of signatures that culminated in this Determination of Validity.

- J. 145 signatures are invalid because the petition was not on the approved form. (FORM)
 - K. 142 signatures are invalid because the registered voter's signature was made by another. (ANO)
 - L. 99 signatures are invalid because the circulator's oath was not complete or not administered properly. (OATH)
 - M. 68 signatures are invalid because the circulator's oath was not completed prior to submitting the petition to the registrar for certification. (PRIOR)
 - N. 11 signatures are invalid because the certification of the registrar was not completed. (CERT)
3. For the reasons set forth above, on the 25,058 petition forms filed with the Secretary of State, I find that 15,116 signatures are invalid and 80,506 signatures are valid. The number of signatures required to determine the petition to be valid is 63,067. Because the number of valid signatures exceeds the required number by 17,439 signatures, I find the petition to be valid.

Dated: February 22, 2021



Shenna Bellows
Secretary of State



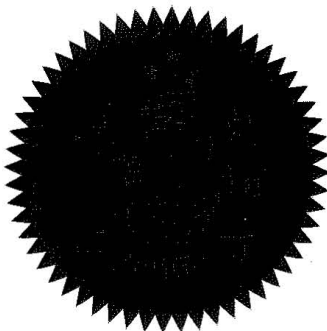
WHEREAS, a written petition bearing the signatures of 80,506 electors of this State, which number is in excess of ten percent of the total votes cast for Governor in the last gubernatorial election preceding the filing of such petition, as required by Article IV, Part Third, Section 18, of the Constitution of Maine, was addressed to the Legislature of the State of Maine and filed in the office of the Secretary of State on or before the fiftieth day after the convening of the One Hundred and Thirtieth Legislature in the First Regular Session, requesting that the Legislature consider a proposed measure entitled "An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region"; and

WHEREAS, the Secretary of State duly certified the petition as valid and submitted the proposed measure to the One Hundred and Thirtieth Legislature in its First Regular Session, in accordance with the provisions of Article IV, Part Third, Section 18, of the Constitution of Maine, which measure became identified as Legislative Document 1295 (or Initiated Bill 1); and

WHEREAS, the One Hundred and Thirtieth Legislature failed to enact the proposed measure without change before adjournment without day of the First Regular Session, on March 30, 2021; and


WHEREAS, Article IV, Part Third, Section 18, of the Maine Constitution provides that the Governor shall, by proclamation issued within 10 days after the recess of the Legislature to which the measure was proposed, order that the measure proposed to the Legislature but not enacted without change be referred to the people for a referendum vote to be held at an election in November of the year in which the petition was filed;

NOW THEREFORE, I, Janet T. Mills, Governor of the State of Maine, acting under the provisions of Article IV, Part Third, Section 18 of the Constitution of Maine, do hereby proclaim that an election shall be called for Tuesday, November 2, 2021, so that "An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region" may be submitted to the people of this State for a referendum vote.



IN TESTIMONY WHEREOF, I have caused the Great Seal of the State to be hereunto affixed. Given under my hand at Augusta this eighth day of April in the year Two Thousand and Twenty-one.


JANET T. MILLS
Governor


SHENNA BELLOWES
Secretary of State

FOR IMMEDIATE RELEASE
Tuesday, April 13, 2021
Contact: Kristen Muszynski
work: 626-8400/cell: 441-7638

Public comment period now open on wording of transmission line ballot question

AUGUSTA – Secretary of State Shenna Bellows is now accepting public comment on the wording of the citizen’s initiative question that will appear on the Nov. 2, 2021 Referendum Election ballot.

The department’s Bureau of Corporations, Elections and Commissions has certified one citizen’s initiative that will go before voters: An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region.

The ballot question for this legislation, as drafted, reads:

“Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to vote on other such projects in Maine retroactive to 2014, with a two-thirds vote required if a project uses public lands?”

State law requires Secretary Bellows to present the proposed legislation “concisely and intelligibly” as a ballot question. She will be accepting public comments regarding the question’s form and content for a 30-day period, beginning today, Tuesday, April 13 until 5 p.m. on Thursday, May 13, 2021. All comments will be reviewed and considered before the ballot question is finalized.

Comments will be accepted via the online submission form, email, mail or in person:

- Use the comment submission form at <http://www.maine.gov/sos/form/certain-transmission-lines>
- Email PublicComment.SOS@Maine.gov, using subject line “Public Comment”
- Mail comments to the Secretary of State, Attn: Public Comment, 148 State House Station, Augusta, ME 04333-0148
- Drop off written comments to the Office of the Secretary of State at the Nash School Building, 103 Sewall St., 2nd floor, Augusta, Maine.

The full text of the proposed legislation is available on the [Citizen’s Initiatives webpage](#), along with proponent information.

###

R 017



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION

AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: MAINE RELAY 711

Christopher James Caiazzo

17 Elmwood Avenue

Scarborough, ME 04074

Phone: (207) 883-6482

Chris.Caiazzo@legislature.maine.gov

May 11, 2021

Via Email to PublicCommentSOS@Maine.gov

Secretary of State

Attn: Public Comment

148 State House Station

Augusta, ME 04333-0148

Re: *Proposed Initiative Ballot Question - An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region*

Dear Secretary Bellows:

I am writing in regards to the request for public comment regarding the language of the above-referenced Proposed Initiative Ballot Question. On April 13, 2021, you proposed that the ballot question initiative be worded as follows:

Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to vote on other such projects in Maine retroactive to 2014, with a two-thirds vote required if a project uses public lands?

I write to express my objection to this wording on the grounds that it does not comply with 21-A M.R.S. §906(6)(A). As discussed below, this statute requires that ballots for a statewide vote on an initiative include separate questions for each issue raised by the initiative.

Section 906(6)(A) provides:

6. Wording of ballots for people's veto and direct initiative referenda. Ballots for statewide vote on a people's veto referendum or a direct initiative must set out the question or questions to be voted on as set forth in this subsection.

District 28: Scarborough (part)



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION

AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: MAINE RELAY 711

Christopher James Caiazzo

17 Elmwood Avenue

Scarborough, ME 04074

Phone: (207) 883-6482

Chris.Caiazzo@legislature.maine.gov

- A. The Secretary of State shall advise petitioners that the proper suggested format for an initiative question is a separate question for each issue. In determining whether there is more than one issue, each requiring a separate question, considerations include whether:
- (1) A voter would reasonably have different opinions on the different issues;
 - (2) Having more than one question would help voters better understand the subject matter; and
 - (3) The questions are severable and can be enacted or rejected separately without negating the intent of the petitioners.

The initiative in question here seeks to have the voters change provisions of Titles 12 and 35-A of Maine law in three different, substantive respects:

- 1) to require Legislative approval of leases of public reserved lands for certain uses listed in the initiative ("transmission lines and facilities, landing strips, pipelines and railroad tracks") by a 2/3 vote (Section 1 – modifying 12 M.R.S. §1852);
- 2) to require Legislative approval of the construction of "high impact transmission lines" (Section 4 – modifying 35-A M M.R.S. §3132); and
- 3) to ban the construction of high impact transmission lines in the "Upper Kennebec Region" as that term is defined in the initiative (Section 5 – modifying 35-A M M.R.S. §3132).

Each of these changes would have its own retroactive effective date per the terms of the initiative (Sections 1 and 6).

These proposed changes raise separate and distinct issues that should be presented to the voters in separate questions in accordance with the considerations articulated in Section 906(6)(A).

First, Maine voters could reasonably have different opinions on the different law changes proposed by the initiative. For example, a voter could support restrictions on the use of public reserved lands, while at the same time opposing restrictions on the construction of new transmission lines, which may provide economic or environmental benefits to Maine or vice versa. Likewise, voters may have different views on the appropriateness of Legislative approval requirements that mandate super-majority votes and/or apply retroactively.

Second, having separate questions addressing each of the proposed law changes would help the voters better understand the subject matter of each change, as reflected in the separate questions proposed below. In contrast, the single ballot question proposed by you attempts to combine all three issues proposed by the initiative, resulting in a compound question, which does not address directly the proposed change in Section 1 of the law regarding the leases of public reserved land.

District 28: Scarborough (part)



2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1400
TTY: MAINE RELAY 711

Christopher James Caiazzo

17 Elmwood Avenue
Scarborough, ME 04074
Phone: (207) 883-6482
Chris.Caiazzo@legislature.maine.gov

Third, the proposed law changes are separate and distinct and could be enacted or rejected separately without negating the intent of the proponents of the initiative. Based on public statements of the proponents, the intent of the initiative is to block the construction of the New England Clean Energy Connect transmission project, also referred to as the Clean Energy Corridor (the "NECEC"). It is my understanding that each of the proposed law changes is intended to impact the NECEC in a separate way because the project (1) requires a lease of public reserved lands for the construction of the transmission line; (2) constitutes a "high impact transmission line" under the definition of this term; and (3) will be constructed in part in the "Upper Kennebec Region" as this term is defined in the initiative. The proposed law changes thus appear severable and, in fact, I understand that the Maine Legislature itself is currently considering separate bills that would enact some of the changes proposed by the initiative on a stand-alone basis. See, e.g., LDs 170, 471 and 1587.

For these reasons, the initiative should be presented on the ballot using multiple questions. For example, the initiative could be presented in the following three questions:

Do you want to require retroactive to 2014 that the Legislature approve by a two-thirds vote any lease or conveyance of public reserved lands to be used for transmission lines and facilities, landing strips, pipelines, or railroad tracks?

Do you want to require retroactive to 2020 the Legislature to approve the construction of any high impact transmission lines in Maine, with a two-thirds vote required if a project crosses public lands?

Do you want to ban retroactive to 2020 the construction of high-impact electric transmission lines in the Upper Kennebec Region?

Formulating the ballot questions in this way accurately tracks the three separate and distinct substantive legal changes proposed by the initiative in accordance with Section 906(6)(A). These questions also present the issues for voter consideration in a clear, concise and direct manner that describes the subject matter of the initiative as simply as is possible as required by Section 906(6)(B). Regardless of the precise formulation, more than one ballot question is necessary.

Thank you in advance for your attention to these comments.

Warmest regards,

Rep. Christopher J. Caiazzo
Maine House District 28

District 28: Scarborough (part)

Flynn, Julie

From: Adam R. Cote <ACote@dwmlaw.com>
Sent: Wednesday, May 12, 2021 2:32 PM
To: SOS, Public Comment; Bellows, Shenna
Cc: 'Tom Saviello'
Subject: Comments from Tom Saviello for Citizen Initiated Referendum
Attachments: Saviello Comments on referendum language 12May21.pdf

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Secretary Bellows,

Tom Saviello asked that I submit the attached comments on his behalf. He apologized, but said he is having computer problems.

As you know, Mr. Saviello is the proponent of the Citizen Initiated Referendum *"An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region."*

His comments are attached and I have cc'd him to this email.

Thank and best regards,
Adam

Adam R. Cote
Attorney

207.772.1941 ext. 531
ACote@dwmlaw.com

84 Marginal Way, Suite 600, Portland, ME 04101
800.727.1941 | 207.772.3627 Fax | dwmlaw.com

DrummondWoodsum
ATTORNEYS AT LAW

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May 13, 2021

Sent via email

Secretary of State Shenna Bellows
148 State House Station
Augusta, Maine 04333-0148

RE: Proponent Comments for Citizen Initiated Referendum: “An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region”

Secretary Bellows:

As the proponent of the above listed citizen initiated referendum, I am pleased to provide for you my thoughts on the proposed language you and your staff have offered, summarizing our citizen initiative petition.

As an initial matter, I think the language you have offered is certainly clear, concise and easy for Maine voters to understand. In short, I think you did an excellent job of summarizing a complex issue for Maine voters.

I do, however, believe that the language could be improved so that it more accurately reflects the statutory changes that this initiative, if approved by voters in November, would implement. I would offer for your consideration the changes provided in redline below:

“Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to approve~~vote on~~ other such projects in Maine ~~retroactive to 2014~~, with a two-thirds vote required if a project crosses~~uses~~ public lands retroactive to September 2020, and further to require that any lease of public lands for similar projects be approved by a vote of two-thirds of the Legislature retroactive to 2014?”

The reasons for these recommended changes is as follows:

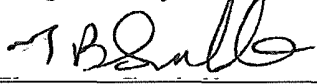
1. Changing “vote on” to “approve”: This is a minor change request that I think makes it more clear that the legislature must approve these types of projects in order for the projects to be constructed.
2. Changes to the retroactivity requirements: This is a more substantive request and is reflected in the additional redlines I offer for your consideration. The petition language essentially does four things: (1) it bans the construction of high-impact transmission lines in the Upper Kennebec Region (retroactive to Sep 2020); (2) it requires a majority vote from the legislature to approve high-impact transmission lines anywhere in Maine (retroactive to Sep 2020); (3) it requires a 2/3 vote from the legislature for such projects

R 040

that cross public lands (retroactive to Sep 2020); and (4) it makes it clear that any lease of public lands for projects like transmission lines requires a 2/3 approval from the legislature (retroactive to 2014). In other words, the first three provisions are retroactive to 2020 whereas only the last provision is retroactive to 2014. The language your office proposed states that all of the provisions are retroactive to 2014, which of course, they are not. I think the language I have proposed makes it more consistent with the actual referendum language. I also do not believe that the changes I have offered make it more difficult for Maine voters to understand than the original language you have proposed.

I thank you for your time and consideration of my proposed changes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T Saviello", written over a horizontal line.

Thomas Saviello


CERTIFICATE OF SERVICE

I, Joshua D. Dunlap, Esquire, hereby certify that a copy of this Appendix was served upon counsel at the address set forth below by email and first class mail, postage-prepaid on July 19, 2021:

Jonathan R. Bolton, Assistant Attorney General
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333-0006
jonathan.bolton@maine.gov

Adam R. Cote, Esq.
Jeana M. McCormick, Esq.
Sara P. Cressey, Esq.
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, Maine 04101-2480
ACote@dwmlaw.com
JMcCormick@dwmlaw.com
SCressey@dwmlaw.com

DATED: July 19, 2021



Joshua D. Dunlap, Bar No. 4477
PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
207-791-1100
jdunlap@pierceatwood.com

Attorney for Appellant
Christopher J. Caiazzo