

MAINE STATE LEGISLATURE

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ONE - HUNDREDDTH LEGISLATURE

Legislative Document

No. 902

S. P. 291

In Senate, January 26, 1961

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Wyman of Washington.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-ONE

AN ACT Relating to Acquisition and Compensation for Land Taken for Highway Purposes.

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

Sec. 1. R. S., c. 23, § 7, amended. Section 7 of chapter 23 of the Revised Statutes is amended by adding at the end a new paragraph, as follows:

'In connection with the laying out and establishment of a controlled access highway the commission may take in fee or lesser estate, by purchase, gift, devise or by eminent domain under this chapter, part or all of any part of land adjoining the highway location which, by reason of such laying out and establishment of a controlled access highway, has been severed from legal access to any public highway.'

Sec. 2. R. S., c. 23, § 20, repealed. Section 20 of chapter 23 of the Revised Statutes is repealed.

Sec. 3. R. S., c. 23, §§ 20-A, - 20-I, additional. Chapter 23 of the Revised Statutes is amended by adding 9 new sections to be numbered 20-A to 20-I to read as follows:

'Acquisition of Land and Materials for Highway Purposes.

Sec. 20-A Purposes. The purposes of sections 20-A to 20-I are to establish an independent, impartial board composed of men well learned in the elements that may be properly considered in the determination of fair market value of property taken in condemnation proceedings; to empower such board to make awards of just compensation in highway condemnations and to establish before

such board a procedure designed to afford to any interested party an opportunity to appear, present his case and have his rights fully protected without the necessity for retaining professional assistance; to thus provide to any interested party a prompt, efficient and inexpensive method of determination of just compensation and prompt payment of all or part of such compensation without prejudice to any right of appeal herein allowed.

Sec. 20-B. Purchasing and taking lands for highways and materials. The commission may purchase or take over and hold for the State, such materials and land as it may deem necessary to lay out and establish, construct, improve or maintain, or to provide a change of location or alignment of, or to provide drainage for, or to provide for the health, safety and welfare of the public using, any state or state aid highway, or to secure material, with necessary ways and access thereto, for the construction, improvement and maintenance of state and state aid highways.

Where land or material is to be purchased or taken over and held for the State, the commission shall first cause the property or interest therein necessary to be acquired to be surveyed and described and a plan thereof made and to be appraised by one or more appraisers who in making each appraisal shall contact the owner or one of the owners or his designated representative if reasonably possible.

Sec. 20-C. Condemnation proceedings. If the commission determines that public exigency requires the taking of such land or material or any interest therein forthwith, or is unable to purchase such land or material or the necessary ways and access thereto at what it deems a reasonable valuation, or if the title is defective, it shall file in the registry of deeds for the county or registry district where the land is located a notice of condemnation which shall contain a description of the project specifying the property and the interest therein taken and the name or names of the owner or owners of record so far as they can be reasonably determined. The commission may join in the same notice one or more separate parcels of property whether in the same or different ownership and whether or not taken for the same use.

A copy of the notice of condemnation shall be served on the owner or owners of record. With said copy there shall be served on each individual owner of record a copy of so much of the plan as relates to the particular parcel or parcels of land taken from him and a statement by the commission with respect to the particular parcel or parcels of land taken from him which shall state:

I. Date of proposed possession. The proposed date of taking possession.

II. Compensation involving severance damage. Where the commission appraisals disclose severance damages, state the amount of compensation itemized in accordance with the commission's determination of the following elements of damage:

- A. The highest and best use of the property at the date of taking;
- B. The highest and best use of the property remaining after the taking;
- C. The fair market value of the property before the taking;

- D. The fair market value of the property after the taking;
- E. The gross damage, showing separately:
 - 1. The fair market value of the real property taken,
 - 2. Severance damages;
- F. Special benefits, accruing to the remaining property by reason of the public improvement for which part of the property is taken, to be set off against the gross damage;
- G. Net damage and offering price.

III. Compensation not involving severance damage. Where the commission appraisals disclose no severance damages, state the amount of compensation itemized in accordance with the commission's determination of the following elements of damage:

- A. The highest and best use of the property at the date of taking;
- B. The highest and best use of the property remaining after the taking;
- C. The fair market value of the real property as of the date of taking; . .
- D. Special benefits, accruing to the remaining property by reason of the public improvement for which part of the property is taken, to be set off against the value of the property taken;
- E. Net damage and offering price.

Service of the notice of condemnation with the copy of the plan and the statement by the commission shall be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. The notice of condemnation only shall be published once in a newspaper of general circulation in the county where the property is located and such publication shall constitute service on any unknown owner or owners or other persons who may have or claim an interest in the property.

If such owner is a minor, or an incompetent person, the commission shall cause such notice to be served upon the legal guardian of such minor or incompetent. If there is no such guardian, then the commission shall apply to the judge of probate for the county wherein the property is situated, briefly stating the facts and requesting the appointment of a guardian. The reasonable fee of such guardian as approved by the court shall be paid by the commission.

In case there is a mortgage, tax lien of record or other encumbrance covering any of said land, a copy of the notice of condemnation shall be sent forthwith by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to his office or place of abode if known, otherwise to the office, abode or address as set forth in said record.

The recording of the notice of condemnation shall be the date of taking and shall vest title to the property therein described in the State in fee simple or such lesser state as is specified in the notice of condemnation. Within one year

the completion of the project for which the land is taken, the commission shall file a plan for recording in the registry of deeds for the county or registry district where the land is located.

Sec. 20-D. Negotiation. The commission shall have 60 days from the date of taking within which to negotiate with the owner or owners of record for an agreement as to the amount of just compensation. If, at the expiration of that time, no such agreement for just compensation has been made, the commission shall immediately file a petition with the Land Damage Board setting forth the pertinent facts including the names and addresses of the owner or owners of record and the holders of any mortgages, tax liens or other encumbrances, a copy of the notice of condemnation, the statement of the commission and a plan of the property involved as served upon the owner or owners of record in accordance with section 20-C and requesting a hearing and an award of just compensation.

Sec. 20-E. Proceedings before Land Damage Board. The Land Damage Board shall immediately enter the petition of the commission upon its docket and assign a date for hearing at the earliest possible date. Notice of the time and place for the hearing shall be mailed by registered or certified mail to the commission and to the owner or owners of record and to the holders of any mortgage, tax lien or any other encumbrance on the property involved at least 14 days before the date of the hearing. The hearing shall be held in quarters suitable for a full presentation of all evidence and located as conveniently as possible for all interested parties in the county where the land is situated. Before making an award the Land Damage Board shall view the property involved with or without the presence of the interested parties, but it shall first notify the interested parties of the time when it will view the property. The commission shall be represented at the hearing and may present in open hearing evidence as to title, engineering maps and data, and its opinion evidence and appraisal or appraisals as to the fair market value of the property involved before and after the taking. An accurate and verbatim record of the proceedings before the Land Damage Board shall be kept and shall be furnished to the commission or other interested parties, upon request, and upon payment of a reasonable charge for transcribing and preparing such record. In making its award the Land Damage Board shall not be limited by the range of testimony produced before it but may reach its decision on the basis of the view, the testimony and its own judgment. The Land Damage Board may continue a hearing from time to time for cause shown or by agreement of parties; and where such continuance is made at the request of the landowner, may require that interest be waived for the period of the continuance.

As promptly as possible after the conclusion of the hearing, the Land Damage Board shall make an award in writing specifying:

- I. Owners and encumbrances. The owner or owners of record and the holder of any mortgage, tax lien or other encumbrance;
- II. Nature of interest taken. The nature of the interest taken;

III. Board's decision on elements of damage. The Land Damage Board's decision as to each of the elements of damage listed in section 20-C, subsection II or III;

IV. Interest on award. The interest, if any, due on the net amount of the award from the date of taking to the date of the award which shall be added to the net amount of the award.

An attested copy of each award shall be sent forthwith to the commission. The commission shall within 14 days designate to the Land Damage Board the award or awards from which it intends to appeal and forward to the Land Damage Board a check payable to the clerk of courts for the county where said land is situated for the use of the party or parties designated in the award. The Land Damage Board shall forthwith serve upon the party or parties named in the award an attested copy of the award together with a notice that the commission has expressed its intention to appeal the award and that the amount of the award will be paid in to the clerk of courts for the county in which the land is situated subject to withdrawal as provided in section 20-F, and shall forward such check together with an attested copy of the award to the clerk of courts aforesaid.

In all other cases the commission shall, within said 14 days, forward to the Land Damage Board a check payable to the party or parties named in the award and the Land Damage Board shall forthwith serve upon the party or parties named therein an attested copy of the award, the check aforesaid and a notice clearly outlining the rights of appeal as herein provided. If the party or parties named in the award refuse to accept it and appeal therefrom to the Superior Court as herein provided, the commission, upon notice from the Land Damage Board, shall forward to the Land Damage Board a check in the amount of the award payable to the clerk of courts for the county where the land is situated for the use of the party or parties named in the award which the Land Damage Board shall forthwith file with said clerk together with an attested copy of its award.

Service as required in this section shall be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court.

Sec. 20-F. Withdrawal of money deposited. If the commission or any party named in an award has duly taken an appeal from an award of the Land Damage Board in accordance with section 20-G and the amount of the award has been paid in to the clerk of courts for the county in which the land is situated, the owner or owners of record named in the award may petition the Superior Court in said county for payment of all or any part of the money thus deposited for and on account of just compensation. The petition shall include:

I. Statement of ownership. A statement that the petitioner was the owner of record of the property at the date of taking, is entitled to just compensation and has not conveyed or transferred any or his rights;

II. Statement of encumbrances. A statement of the mortgages, tax liens or other encumbrances on the property involved;

III. Agreement to repay where others entitled. An agreement by petitioner that he will repay to the commission in whatever manner may be directed by the court all or any part of any sums of money withdrawn by order of the court, if it is determined by the court that another person or persons may be entitled to all or part of said money or that the damages to the property described are less than the amount of money withdrawn.

Upon said petition the court may order all or any part of the money thus deposited to be paid forthwith without prejudice to the petitioners right to have the amount of compensation adjudicated in the appeal pending.

Sec. 20-G. Appeal. The commission or any party or parties aggrieved by an award of the Land Damage Board may appeal therefrom to the Superior Court in the county where the land is situated within 30 days after the date of the receipt by the appellant of the notice of award. Such appeal shall be taken by filing a complaint setting forth substantially the facts upon which the case shall be tried like other cases. The appellant shall serve notice of such appeal on the opposing party and on the Land Damage Board by sending by registered or certified mail within the time above limited a true copy of said complaint and returning therewith to the Land Damage Board whatever check or checks that may have been forwarded to him with the notice of award.

The court shall determine the same by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest where such is due, and for costs in favor of the party entitled thereto.

If either the owner or owners of record or the commission appeal and the just compensation finally awarded, exclusive of interest, is less than the award of the Land Damage Board, exclusive of any interest allowed, then the court shall give judgment in favor of the commission for the excess of the award of the Land Damage Board, inclusive of interest, over the final award and for its costs from the time of appeal. Execution may be issued on such judgment.

If either the owner or owners of record or the commission appeal and the just compensation finally awarded, exclusive of interest, is not less than the award of the Land Damage Board, exclusive of any interest allowed, then the court shall give judgment to the owner or owners for the amount in which the final award is in excess of the money deposited in court, exclusive of any interest awarded by the Land Damage Board, and for interest on such excess from the date of taking and for costs from the time of appeal. No interest shall be allowed on so much of any award as has been paid into court. The clerk shall certify the final judgment of the court to the commission which shall enter the same of record, and order the same to be paid by the Treasurer of State.

In case of the decease of any person entitled to claim damages under sections 20-A to 20-I, the heirs, executors, administrators or assigns of such person shall have the right to prosecute the appeal provided for in this section under the same conditions and limitations as the original owner had, and may be substituted for the appellant in any proceedings commenced by said appellant. In case any landowner assigns, transfers or sells his right to claim damages, his assignee, transferee or vendee shall have the same rights as above set forth.

Sec. 20-H. Interpleader. If difficult questions of law should arise before the Land Damage Board as to entitlement to or apportionment of just compensation, then it is authorized to make a blanket award to all parties interested. If no appeal is taken and no agreement is reached by the parties named in the award within 60 days from the date of such award, the Land Damage Board shall certify the facts and legal questions to the commission. The commission shall then interplead the parties named in the award by a complaint filed in the Superior Court in the county wherein the land is situated and shall pay in the amount of said award to the clerk of courts of said county to be paid in accordance with the court's order. For purposes of this section the commission shall be acting to prevent double or multiple liability.

Sec. 20-I. Land Damage Board, composition, appointment, powers, duties. The Land Damage Board shall consist of 3 members. Two of said members shall be appointed by the Governor, with the advice and consent of the Council, one of whom shall be a qualified appraiser and the other an Attorney at law. The attorney designated as a member of the board shall be its chairman. The first appointments after the effective date of this act shall be made for staggered terms of 2 and 3 years, as fixed by the Governor. Thereafter all appointments shall be made for 3 year terms. They shall be sworn, and for inefficiency, willful neglect of duty, or for malfeasance in office may, after notice and hearing, be removed by the Governor and Council. In case of a vacancy occurring through death, resignation or removal, the Governor, with the advice and consent of the Council, shall appoint a successor for the whole term of the member whose place he takes, subject to removal as aforesaid.

The Governor, with the advice and consent of the Council, shall set the rate of pay on a per diem basis which each member of the Land Damage Board shall receive and they shall also be remunerated for all expenses necessarily incurred in the performance of their official duties.

In carrying out its duties, the board shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. It shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant and unduly repetitious testimony. A majority of the board, being present, may determine all matters; provided, however, the chairman shall resolve all questions of admissibility.

The board shall have authority to make rules and regulations and prescribe forms to secure a speedy, efficient and inexpensive disposition of all proceedings hereunder. Each member of the board, for its official purposes, may administer oaths, certify to official acts and issue all process necessary to the performance of the duties of the board. It shall also have a reporter to record each hearing.

The board shall maintain an office in Augusta, Maine, and shall have a permanent clerk to keep its records and to perform such other duties as said board shall assign. The clerk shall also have authority to certify to all official acts of the board, administer oaths, issue subpoenas, and issue all processes, notices, orders or other documents necessary to the performance of the duties of the board.

The board shall appoint and fix the compensation of a reporter, and shall review and approve all charges made by such reporter for transcripts of the record. They may also appoint, subject to the Personnel Law, a clerk and such clerical assistance as they may deem necessary.

The 3rd member of the board shall be appointed for each hearing or series of hearings within the county where the land taken lies. He shall be a member of the board of county commissioners of the county wherein the land taken is situated and shall be appointed by the chairman of the Land Damage Board upon recommendation which shall be made, upon request, by the board of county commissioners of that particular county. In the event that any board of county commissioners should fail to make the required recommendation, then the chairman of the Land Damage Board may appoint a member of such board to serve. He shall be sworn by the chairman of the Land Damage Board and shall serve as a member of that board only for the particular hearing or hearings for which he is appointed. He shall participate fully in such hearings and the awards made as a result thereof. Each such member shall be paid at the same per diem rate as that fixed for other members of the board. Any member of a board of county commissioners thus designated shall serve only for the particular hearing or hearings set forth in his appointment and such service shall be as a member of the Land Damage Board and not in his capacity as a member of the board of county commissioners.'

Sec. 4. R. S., c. 23, § 21, repealed. Section 21 of chapter 23 of the Revised Statutes is repealed.

Sec. 5. R. S., c. 23, § 22, amended. Section 22 of chapter 23 of the Revised Statutes, as amended by section 1 of chapter 424 of the public laws of 1955, is further amended to read as follows:

'Sec. 22. Proceedings on damage claims. Whenever the commission shall change the grade of any state or state aid highway as provided in this chapter to the injury of an owner of adjoining land, he may within 6 months after completion of the work according to the records of the commission apply to the commission in writing for a determination and assessment of his damages; and if. If the commission is unable to settle such damages at what it deems a reasonable amount, the commission or interested parties may apply to the ~~joint board~~ **Land Damage Board** in writing for a determination and assessment of the damages. The proceedings shall then be the same as in condemnation cases.'

Sec. 6. R. S., c. 23, § 23, repealed. Section 23 of chapter 23 of the Revised Statutes, as amended, is repealed.

Sec. 7. Transfer of pending proceedings. All proceedings pending before the joint board on the effective date of this act shall be transferred to the Land Damage Board but the provisions of this act shall not affect any hearings held by the joint board prior to the effective date of this act or any award made as a result of such hearing or any appeal duly taken from such award within the time prescribed in chapter 23, section 23, herein repealed.

Sec. 8. Appropriation. There is appropriated from the General Highway Fund the sum of \$28,000 for the fiscal year ending June 30, 1962 and the sum of \$28,000 for the fiscal year ending June 30, 1963 to carry out the provisions of this act.