

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1582

H. P. 1113

House of Representatives, April 14, 1967

Reported by Mr. Beliveau from the Committee on Legal Affairs. Printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT Authorizing the Leasing of Air Rights by Municipalities.

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

Sec. 1. R. S., T. 9, § 555, sub-§ 5, additional. Section 555 of Title 9 of the Revised Statutes, as repealed and replaced by section 4 of chapter 335 of the public laws of 1965, is amended by adding a new subsection 5, to read as follows :

5. Air right leases. Leases of air rights granted by municipalities pursuant to statutory authorization if otherwise eligible for investment constitute eligible leases under this section.

Sec. 2. R. S., T. 30, c. 240-A, addition. Title 30 of the Revised Statutes is amended by adding a new chapter 240-A, to read as follows :

CHAPTER 240-A

LEASING OF AIR RIGHTS

§ 4991. Utilization of air rights

Any municipality may lease at one time or from time to time for a term or terms not to exceed 99 years, upon such terms and conditions as the municipal officers in their discretion deem advisable, air rights over public streets and ways, parking facilities and other public buildings, land and waters, in which the public has a right of travel or in which the municipality holds less than a fee interest, excluding, however, any dedicated park land, including rights for support, access, utilities, light and air, for such nonmunicipal purposes as, in the opinion of the municipal officers will not impair the construction, full use, safety, maintenance or repair of such streets and ways, facilities, buildings,

land and waters. Any lease granted hereunder may, with the consent of the municipal officers, be assigned, pledged or mortgaged and the lien of such pledge or mortgage may be foreclosed by appropriate action. The proceeds from any such lease shall be paid into the municipal treasury. Any lease granted hereunder may be granted over public streets and ways in which the municipalities own the easement, but not a fee interest, without thereby disturbing the reversionary rights, if any, of the holder of the fee in such public streets or way.

Nothing herein shall derogate from the right of a municipality holding a fee interest in such streets, ways, facilities, buildings, land or water from conveying air rights in fee or by lease.

Any lease promulgated under the authority of this chapter for air rights over state and state aid highways shall have the approval of the State Highway Commission.

§ 4992. Applicability of building and other laws

The construction or occupancy of any building or other thing erected or affixed under any lease hereunder shall be subject to the building, fire, garage, health and zoning ordinances, bylaws, rules and regulations applicable in the municipality. Any building, or other thing, erected over or affixed to any public street or way under this chapter are valid and declared legal and the same shall henceforth be legal structures over and in said streets and ways.

§ 4993. Taxation

Any building, or other thing, erected or affixed under any such lease shall be taxed to the lessee thereof or his assigns in the same manner and to the same extent as if such lessee or his assigns were the owners of the land in fee; provided that no part of the value of the land shall be included in any such assessment. The municipality may exercise all remedies provided generally for the collection of taxes and any such leasehold estate may be sold or taken by the municipality for the nonpayment of any taxes assessed as aforesaid in the manner provided by law for the sale or taking of real estate for nonpayment of local taxes.

The municipality shall include in any lease of such air rights a provision whereby the lessee agrees, in the event that the foregoing tax provision is determined by a court of competent jurisdiction to be inapplicable, to pay annually to the municipality a sum of money in lieu of such taxes which would otherwise be assessed thereon in such year.

§ 4994. Parties in interest

Each lease made hereunder shall require that the lessee file with the municipality a statement under oath containing the names and addresses of the officers and directors, in the case of a corporation, and in the case of a partnership or other voluntary association, the name and address of all persons having a financial interest in said lease. A copy of all leases granted by the municipality shall be kept on file and such leases shall be open to public inspection.

§ 4995. Billboards

No billboards shall be erected under this chapter.