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R.O.S.	L.D. 1904				
2	DATE: 4/26/06 (Filing No. H-1046)				
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6	JUDICIARY				
8	MINORITY				
10	Reproduced and distributed under the direction of the Clerk of the House.				
12	STATE OF MAINE				
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16	SECOND REGULAR SESSION				
18	COMMITTEE AMENDMENT "A" to H.P. 1345, L.D. 1904, Bill, "An				
20	COMMITTEE AMENDMENT """ to H.P. 1345, L.D. 1904, Bill, "An Act To Protect Businesses from Unnecessary Eminent Domain Takings"				
22	Amend the bill by striking out all of the emergency preamble.				
24	Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place				
26	the following:				
28	'Sec. 1. 1 MRSA §816 is enacted to read:				
30	<u>§816. Requirements for eminent domain taking of property on</u> which business is located				
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34	<ol> <li>Necessity; minimum amount necessary. Notwithstanding any law to the contrary, the State, a political subdivision of</li> </ol>				
	the State or any other entity with eminent domain authority may				
36	not take private property on which a business is located unless:				
38	A. The taking is necessary to carry out the stated public purpose for which the property is being taken; and				
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42	B. The property taken is limited to the minimum amount necessary to carry out the public purpose and is limited so				
44	as to maximize the ability of the business to continue.				
44	2. Property on which business is located. For the purposes				
46	of this section, "property on which a business is located" does				
10	not include property incidental to the business, including but				
48	not limited to property along a roadway taken by a utility, the taking of which would not interfere with the business activities.				

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COMMITTEE AMENDMENT "A" to H.P. 1345, L.D. 1904

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3. Application exceptions. This section does not apply to takings to eliminate threats to public safety, such as removing public nuisances or removing structures that are beyond repair or that are unfit for human habitation or use, or acquisition of abandoned property.

8 **4. Utilities exception.** This section does not limit the exercise of eminent domain by or for the benefit of public 10 utilities or other entities engaged in the generation, transmission or distribution of telephone, gas, electric, water, 12 sewer or other utility products or services.

5. Expedited de novo review. When the State, a political 14 subdivision of the State or any other entity with eminent domain authority begins eminent domain proceedings against property on 16 which a business is located, the State, the business owner or the 18 owner of the property on which the business is located may seek de novo review in Superior Court to determine whether the 20 proposed taking is necessary to carry out the stated public purpose for which the property is being taken, whether the 22 property taken is the minimum amount necessary and whether the property to be taken is incidental to the business. In determining necessity the court shall balance the need to 24 accomplish the public purpose with the presumption that the 26 preservation of jobs and businesses in this State is a high priority of the State. The Superior Court shall promptly 28 schedule an expedited hearing on the complaint.

 Sec. 2. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies to every
 exercise of eminent domain authority in which the terms of the taking, including the determination of the amount of the
 compensation, have not been finally determined as of the effective date of this Act.

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

- 40 TRANSPORTATION, DEPARTMENT OF
- 42 Highway and Bridge Improvement 0406

44 Initiative: Allocates funds for one additional Attorney position, 1/2 of an Engineer position and operating funds
46 necessary to accommodate certain eminent domain proceedings that have been challenged through the use of an expedited de novo
48 review process.

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COMMITTEE AMENDMENT "H" to H.P. 1345, L.D. 1904

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HIGHWAY FUND		2005-06	2006-07
2	POSITIONS - LEGISLATIVE COUNT	0.000	1.500
	Personal Services	\$0	\$144,978
4	All Other	\$0	\$210,000
6	HIGHWAY FUND TOTAL	\$0	\$354,978'

### **SUMMARY**

This amendment is the minority report of the Joint Standing 12 Committee on Judiciary.

14 This amendment replaces the bill and removes the emergency preamble and emergency clause.

This amendment provides that eminent domain authority may not be exercised to take property on which a business is located unless the taking is necessary to carry out the purposes for which the property is being taken and unless the amount taken is limited to the minimum amount necessary to carry out the public purpose and is limited so as to maximize the ability of the business to continue.

Property that is incidental to the business's activities is not included in property on which the business is located.

This amendment does not apply to takings that eliminate a 28 threat to public health or safety. It also does not apply to takings of abandoned property. This amendment does not limit the 30 exercise of eminent domain by or for the benefit of public 32 utilities or other entities engaged in the generation, transmission or distribution of telephone, gas, electric, water, 34 sewer or other utility products or services.

36 This amendment provides for an expedited de novo review of the necessity of the taking for the stated public purpose, of the 38 determination that the amount of property taken is the minimum amount necessary and of the determination whether the property 40 taken is incidental to the business. The Superior Court must balance the need to accomplish the stated public purpose with the 42 preservation of jobs and businesses in this State.

44 This amendment provides that the changes apply to pending eminent domain takings, notwithstanding the Maine Revised 46 Statutes, Title 1, section 302.

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COMMITTEE AMENDMENT "A" to H.P. 1345, L.D. 1904

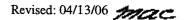
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2 This amendment adds an appropriations and allocations section.
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## FISCAL NOTE REQUIRED (See attached)

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## **122nd MAINE LEGISLATURE**

LD 1904

LR 2642(02)

### An Act To Protect Businesses from Unnecessary Eminent Domain Takings

Fiscal Note for Bill as Amended by Committee Amendment '' Committee: Judiciary Fiscal Note Required: Yes Minority Report

### **Fiscal Note**

	2005-06	2006-07	Projections 2007-08	Projections 2008-09
Net Cost (Savings) Highway Fund	\$0	\$354,978	\$382,760	\$390,707
Appropriations/Allocations Highway Fund	\$0	\$354,978	\$382,760	\$390,707

### **Correctional and Judicial Impact Statements**

This bill may increase the number of civil suits filed in the court system.

The collection of additional filing fees may increase General Fund revenue by minor amounts.

#### **Fiscal Detail and Notes**

Allowing an expedited de novo review of proposed eminent domain proceedings will result in significant additional Highway Fund expenses for the Department of Transportation. Based on the current level of approximately 1,000 eminent domain proceedings that the department is engaged in on an annual basis, the department estimates that 10 of these actions would be challenged through the expedited de novo review process. To deal with the additional time needed to process these cases, the department will need one additional Attorney position and one-half of an Engineer position at a cost of \$154,978 in fiscal year 2006-07. In addition, beginning in fiscal year 2006-07, due to inflationary costs, the delay of 10 associated highway improvement projects will add an estimated \$200,000 in annual Highway Fund costs .