

MAINE STATE LEGISLATURE

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W
R.O.S.

L.D. 1904

DATE:

4/26/06

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JUDICIARY

MINORITY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1345, L.D. 1904, Bill, "An Act To Protect Businesses from Unnecessary Eminent Domain Takings"

Amend the bill by striking out all of the emergency preamble.

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 1 MRSA §816 is enacted to read:

§816. Requirements for eminent domain taking of property on which business is located

1. Necessity; minimum amount necessary. Notwithstanding any law to the contrary, the State, a political subdivision of the State or any other entity with eminent domain authority may not take private property on which a business is located unless:

A. The taking is necessary to carry out the stated public purpose for which the property is being taken; and

B. The property 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.

2. Property on which business is located. For the purposes of this section, "property on which a business is located" does not include property incidental to the business, including but not limited to property along a roadway taken by a utility, the taking of which would not interfere with the business activities.

R.O/S

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

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

14 5. Expedited de novo review. When the State, a political
15 subdivision of the State or any other entity with eminent domain
16 authority begins eminent domain proceedings against property on
17 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
19 de novo review in Superior Court to determine whether the
20 proposed taking is necessary to carry out the stated public
21 purpose for which the property is being taken, whether the
22 property taken is the minimum amount necessary and whether the
23 property to be taken is incidental to the business. In
24 determining necessity the court shall balance the need to
25 accomplish the public purpose with the presumption that the
26 preservation of jobs and businesses in this State is a high
27 priority of the State. The Superior Court shall promptly
28 schedule an expedited hearing on the complaint.

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

36 **Sec. 3. Appropriations and allocations.** The following
37 appropriations and allocations are made.

40 **TRANSPORTATION, DEPARTMENT OF**

42 **Highway and Bridge Improvement 0406**

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

R.018

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

	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'

8

SUMMARY

10

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

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

16

18 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
20 which the property is being taken and unless the amount taken is
limited to the minimum amount necessary to carry out the public
22 purpose and is limited so as to maximize the ability of the
business to continue.

24

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

28

30 This amendment does not apply to takings that eliminate a
threat to public health or safety. It also does not apply to
takings of abandoned property. This amendment does not limit the
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

38 This amendment provides for an expedited de novo review of
the necessity of the taking for the stated public purpose, of the
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

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

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2 This amendment adds an appropriations and allocations
4 section.

6 **FISCAL NOTE REQUIRED**
 (See attached)

COMMITTEE AMENDMENT

**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 "A"****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.