

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

---

Legislative Document

No. 960

H.P. 720

House of Representatives, March 1, 2007

### **An Act To Base Value in Eminent Domain Takings of Businesses on Going Concern Value**

---

Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative GILES of Belfast.  
Cosponsored by Representatives: FLOOD of Winthrop, ROSEN of Bucksport, STRANG  
BURGESS of Cumberland, THIBODEAU of Winterport, Senator: SAVAGE of Knox.

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

2 **Sec. 1. 23 MRSA §151**, as amended by PL 1975, c. 771, §235, is further amended  
3 to read:

4 **§151. Purposes**

5 The purposes of this subchapter are to establish an independent, impartial board  
6 composed of persons well learned in the elements that may be properly considered in the  
7 determination of fair market value of property taken in condemnation proceedings; to  
8 empower such board to make awards of just compensation in highway condemnations  
9 and to establish before such board a procedure designed to afford to any interested party  
10 an opportunity to appear, present ~~his~~ that party's case and have ~~his~~ that party's rights fully  
11 protected without the necessity for retaining professional assistance; to determine awards  
12 of just compensation in municipal condemnations under Title 30-A, sections 3101 and  
13 5204; to thus provide to any interested party a prompt, efficient and inexpensive method  
14 of determination of just compensation and prompt payment of all or part of such  
15 compensation without prejudice to any right of appeal allowed.

16 **Sec. 2. 23 MRSA §154-G** is enacted to read:

17 **§154-G. Compensation for loss or impairment of going concern value**

18 **1. Displacement of business.** If the taking of property under this chapter involves  
19 the displacement of a business, the owner may request valuation under this section to  
20 determine just compensation that includes loss or impairment of the going concern value  
21 of the business.

22 **2. Elements.** In addition to the value determined under section 154, compensation to  
23 the owner of a business conducted on the property taken includes compensation for loss  
24 or impairment of the going concern value of the business if the owner proves that:

25 A. The loss or impairment cannot reasonably be prevented by a relocation of the  
26 business or by taking steps and adopting procedures that a reasonably prudent person  
27 would take and adopt in preserving the going concern value;

28 B. The loss or impairment will not be included in moving and relocation payments  
29 under section 244; and

30 C. The loss or impairment will not be duplicated in the compensation awarded to the  
31 owner.

32 **3. Loss or impairment of going concern value; definition.** For the purposes of this  
33 section, "loss or impairment of the going concern value" means the benefits that accrue to  
34 a business as a result of its location, reputation for dependability, skill or quality or any  
35 other circumstances resulting in probable retention of old or acquisition of new  
36 patronage.

37 **4. Procedure.** The owner and the department shall each select a licensed appraiser  
38 to calculate the amount of additional compensation due under this section. If the

1 appraisers agree, the additional amount must be added to the department's offer of just  
2 compensation. If the appraisers do not agree but the difference is not more than 10% of  
3 the higher appraisal, the average of the 2 appraisals must be added to the department's  
4 offer of just compensation. If the appraisers do not agree and the difference is more than  
5 10% of the higher appraisal, the owner may have the matter referred to the State Claims  
6 Commission for assessment of the damage.

7 **Sec. 3. 30-A MRSA §3101, sub-§5** is enacted to read:

8 **5. Just compensation for established businesses.** Just compensation paid by the  
9 municipality must include compensation for damages for the loss or impairment of the  
10 going concern value of a business established for more than 3 years that is located on land  
11 that is the subject of the proceedings or located on adjoining lands if that business owns  
12 the land that is the subject of the proceedings. Title 23, section 154-G governs the  
13 awarding of such compensation.

14 **Sec. 4. 30-A MRSA §5204, sub-§12** is enacted to read:

15 **12. Just compensation for certain businesses.** For purposes of eminent domain  
16 proceedings, just compensation for a business established for more than 3 years that is  
17 located on land that is the subject of the proceedings or located on adjoining lands if that  
18 business owns the land that is the subject of the proceedings must include compensation  
19 for the damages for the loss or impairment of the going concern value of the business.  
20 Title 23, section 154-G governs the awarding of such compensation.

21 **SUMMARY**

22 This bill establishes the criteria for determination of compensation for loss or  
23 impairment of the going concern value of a business when the property of a business is  
24 taken by the Department of Transportation or a municipality exercising its eminent  
25 domain power. The burden is on the business to prove the loss. The analysis takes place  
26 at the request of the owner of the displaced business. The process requires both the  
27 owner and the governmental authority to each select a licensed appraiser to make the  
28 determination of the loss or impairment of the going concern value. If they agree, that  
29 additional compensation must be added to the compensation offer. If they disagree but  
30 are within 10% of each other, the average appraisal is used. If they disagree by more than  
31 10%, the owner may ask the State Claims Commission to apply the same analysis when  
32 the owner appeals the offer. This process applies to compensation to be paid by  
33 municipalities when exercising eminent domain authority under general authorization  
34 provisions and for economic development purposes.

35 This bill amends the duties of the State Claims Commission to include determination  
36 of just compensation in 2 categories of municipal condemnations: general eminent  
37 domain authority under the Maine Revised Statutes, Title 30-A, chapter 151 and  
38 community development under Title 30-A, chapter 205.