

# 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)

STATE OF MAINE  
LEGISLATIVE RESEARCH COMMITTEE

**Reports  
to the  
*ONE HUNDRED AND FOURTH LEGISLATURE*  
Volume Two**

*January, 1969*

Legislative Research Committee

Publication 104-20 (Vol. II)

## LEGISLATIVE RESEARCH COMMITTEE

Senator Horace A. Hildreth, Jr., Falmouth, Chairman  
 Resigned August 14, 1968  
 Senator Kenneth P. MacLeod, Brewer, Chairman  
 Elected September 19, 1968  
 Representative Samuel A. Hinds, Vice Chairman

## From the Senate:

Sam A. R. Albair, Caribou  
 Armand Duquette, Biddeford  
 Harvey Johnson, Smithfield  
 Carlton D. Reed, Jr., Woolwich  
 Appointed October 20, 1967  
 Joseph Sewall, Old Town  
 Appointed August 16, 1968  
 Roger V. Snow, Jr., Falmouth  
 Resigned October 18, 1967  
 J. Hollis Wyman, Milbridge

## From the House:

Ethel B. Baker, Orrington  
 David B. Benson, Southwest Harbor  
 Albert E. Cote, Lewiston  
 William E. Dennett, Kittery  
 Louis Jalbert, Lewiston  
 Emilien A. Levesque, Madawaska  
 Harrison L. Richardson, Cumberland Center  
 Raymond M. Rideout, Jr., Manchester  
 Rodney E. Ross, Jr., Bath

## Ex Officio:

Joseph B. Campbell, Augusta  
 President of the Senate  
 David J. Kennedy, Milbridge  
 Speaker of the House

## Office of Legislative Research:

Samuel H. Slosberg, Gardiner, Director  
 David S. Silsby, Augusta, Assistant Director

## Office of Legislative Finance:

Frederick W. Kneeland, Augusta, Finance Officer  
 Resigned July 12, 1968  
 William H. Garside, Augusta, Finance Officer  
 Appointed July 17, 1968  
 Samuel A. Hinds, Assistant Finance Officer  
 Appointed November 20, 1968; Effective, January 1, 1969

## LETTER OF TRANSMITTAL

January 15, 1969

To the Members of the 104th Legislature:

As Chairman of the Legislative Research Committee of the 103rd Maine Legislature it is with great pride and pleasure that I present a cumulation of findings and recommendations that we as a Committee have developed on our assigned subjects during the past biennium.

This, the second of three volumes, designated as Legislative Research Committee publication 104-20 (Vol. II), combines in a single publication the findings and recommendations developed in nine specific areas of study which are individually reported in committee publications numbered 104-11 through 104-19.

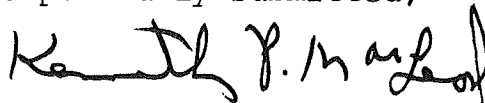
On behalf of the Committee and myself, I would like to take this opportunity to extend our grateful appreciation to Horace A. Hildreth, Jr., formerly our Committee Chairman, to Roger V. Snow, Jr., a former member of the Committee and to Frederick W. Kneeland, the former Legislative Finance Officer, each of whom resigned during the interim after having so faithfully served this Committee.

I also extend, on behalf of the entire Committee, our sincere gratitude and appreciation to the Committee, staff, to the news media and to the many private citizens, organizations and employees of the State, without whose endless cooperation and dedicated

service the Committee could not have reached its conclusions.

The members of the Committee further wish to express their appreciation for being chosen to participate in these assignments and sincerely hope the reports contained herein will prove of benefit to the Members of the Legislature and the people of the State of Maine.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth P. MacLeod". The signature is written in a cursive, slightly slanted style.

KENNETH P. MACLEOD, Chairman  
Legislative Research Committee

PROPOSED BILLS TO BE SUBMITTED TO THE 104TH LEGISLATURE

Page

AN ACT to Revise the Liquor Laws----- 32

AN ACT Relating to Setting Salaries of All County  
 Officials Except County Commissioners and  
 County Attorneys----- 48

AN ACT Relating to Annual Reports of Counties----- 54

AN ACT Relating to Damage to Private Water Supplies  
 Resulting from Alteration of Highways----- 71

AN ACT to Provide for a Statistician in the  
 Department of Agriculture----- 135

## C O N T E N T S

	Page
Legislative Research Committee Membership-----	ii
Letter of Transmittal-----	iii
Proposed Legislation-----	v
Table of Contents-----	vi
 Research Reports:	
Operation of State Liquor Commission-----	1
County Government-----	42
Highway Well Damage-----	56
Land Acquisition-----	74
Marine Growth-----	81
Governmental Operations-----	99
State Printing-----	111
Agricultural Prices-----	126
Foreign Competition-----	136
 Authority-----	 184
Rules-----	191
Directory of Committee Membership, 1941 - 1968-----	194
Index of Committee Reports, 1940 - 1968-----	198

STATE OF MAINE  
LEGISLATIVE RESEARCH COMMITTEE

REPORT ON  
HIGHWAY WELL DAMAGE  
to  
ONE HUNDRED AND FOURTH LEGISLATURE

JANUARY, 1969  
Legislative Research Committee  
Publication 104-13



SUBCOMMITTEE ON HIGHWAY WELL DAMAGE

CHAIRMAN - Armand Duquette

VICE CHAIRMAN - Joseph B. Campbell

Ethel B. Baker

Harrison L. Richardson

Horace A. Hildreth, Jr., Ex Officio

Kenneth P. MacLeod, Ex Officio

ORDERED, the Senate concurring, that the Legislative Research Committee is authorized and directed to study in depth the problems relating to privately owned water supplies which have been destroyed or rendered unfit for use as water supplies because of construction or maintenance operation on the state highway system. Said study shall include, but not be limited to, an examination of the law of this and neighboring states with a view toward a more effective and equitable means of administering standards of responsibility, financial settlements and appeal of such claims; and be it further

ORDERED, that a report of such study, together with any recommendations and implementing legislation, be made at the next special or regular session of the Legislature.

The Legislative Research Committee, as authorized and directed under the terms of the preceding joint order, has studied the problems relating to privately owned water supplies which have been destroyed or rendered unfit for use as water supplies because of construction or maintenance operations of the State Highway System.

During the course of this study the Committee held several hearings to explore all possibilities of providing a more effective and equitable means of administering standards of responsibility, financial settlements and appeal of well damage claims. It has been the practice in this State for an owner to present a well claim before the Legislature and the Legislature after hearing the claimant's cause, at its discretion, has customarily awarded a cash payment in full settlement of the claim.

In order to accomplish the objectives set forth in the legislative order, the Committee, assisted by the State Highway Commission and its legal staff, reviewed the entire problem beginning with the primary cause factors, namely, construction and maintenance operations:

## CONSTRUCTION

The damage to private water supplies during construction usually arises from:

1. Severance or impairment of the underground source or vein by:
  - A. Excavations
  - B. Blasting
  - C. Vibration from heavy equipment,
2. Contamination by calcium chloride used in dust control.

It was generally felt that there is little or no problem here. Any damage caused by excavation on any part of the land taken for highway purposes would be compensated for under our present rules of just compensation. This would hold true for blasting except in those instances which could conceivably be attributed to a contractor's negligence which would transfer any liability to the contractor. There remains for consideration the work performed within the old right-of-way which historically has been noncompensable and the contamination from the calcium chloride. The instances of contamination from calcium chloride are so infrequent that they are virtually nonexistent. However, the instance of alleged damage to a well during the period of construction on a nearby highway has been more frequent, the

determination of cause in such cases is most difficult and there is, of course, no specific legislation which would permit payment or obligate the State. This instance then would apply to the general comments to follow which are relative to the maintenance operation.

#### MAINTENANCE OPERATION

The problem of keeping the highways clear despite the accumulation of snow and ice during the winter months is a maintenance operation. There are two methods employed to solve this problem - the use of abrasives, such as sand, and the application of chemicals. The first of these was the accepted method by nearly all the states, cities and towns in this country in the years before World War II. In the years following the second became the accepted method.

Abrasives need to be replaced frequently as they are brushed away by traffic and wind. Thawing and freezing cycles caused the sand to be embedded or covered and their continued use in a prolonged storm usually results in a thick mat of ice, creating mounds which are additional traffic hazards and which are removed with difficulty. Public safety soon demanded that the highway receive attention before such hazards are created. It was also discovered that with an increased use of sand there followed an expensive clean-up after a thaw. Thus the theory of "skid

prevention" was replaced with the theory of "removal" by melting the snow and ice with salt. The salt gave immediate traction and then commenced to work its way through the snow and ice to the pavement creating a brine which spread out breaking up the mass which was easily removed by traffic and plows.

Thus was born the so-called "bare pavement" policy which has proven to be the most efficient and most economical method to provide maximum safety. Data from the several states in the snow belt strongly supports the conclusion that the bare pavement policy achieved by use of salt is here to stay - at least until modern technology can provide a more practical substitute.

#### DAMAGE

The disadvantage attendant to the use of salt has been the complaints of its effect on plants, animals, water supplies, vehicles and highway structures. The first two can be discounted because there has been little or no evidence to establish that salt has damaged plant and animal life in Maine or any other state for that matter. The auto industry has done much to minimize salt damage to our vehicles by better design, new paint additives, undercoating and other means, none of which

have substantially increased consumer cost. The highway engineer is rapidly overcoming the problems of damage to structures by improving drainage, adopting new protective procedures, new paints, epoxies and pavements - again without substantially increasing costs to the user. There remains that which the Committee now has under consideration - water supplies.

The number of well damage claims filed with the 103rd Legislature as a result of construction or maintenance operations, totaled sixteen in number, seven of which received passage.

If damage in Maine is caused by (1) the State Highway Commission, (2) every city and town engaged in winter maintenance, and (3) the Maine Turnpike, how can legislation be considered which is limited to the sole benefit of only those who are damaged by the maintenance practice on the "State Highway System?"

A review of this problem in the State of New Hampshire reveals a growing concern to provide equal rights under the law as between owners adjacent to town ways and toll ways and those adjacent to state highways.

This review also revealed that New Hampshire in 1959 enacted its first salt damage legislation which was strictly permissive

legislation. The Commissioner, "may authorize the use of highway funds." This prompts two comments:

1. The Commissioner is granted a discretionary power - the sole finder of facts and his decision cannot be appealed.

2. The Commissioner was authorized to use highway funds for a non-highway purpose.

Although this 1959 Act was amended by chapter 338, N. H. Laws 1965, these two conditions remain essentially the same. The second of these would in this State be in violation of our anti-diversion statute and constitutional provision.

Frequently the cost to replace a water supply would exceed the value of the property and in such case should the owner be compensated more than the value of his property? New Hampshire incorporated this, but, it is implied, it is not specific. The State can "purchase" or "pay damage." This does not limit the purchase price or the damage and again - it cannot be determined by the courts. Any legislation proposals must incorporate the guide lines because our present tools are inadequate to supplement any such legislation. If the water supply alleged to have been destroyed is a shallow well and cannot be replaced with another shallow or dug well after several attempts



at replacement and it is determined that potable water cannot be located in the near proximity of the old supply, what then should the measure of damages be?

If the water supply alleged to have been destroyed was in part contaminated by a source other than the highway maintenance practices and the use of salt, and this contamination was from faulty drainage, malfunctioning sewage disposal or a faulty water softener and the highway activity merely contributed to the contamination, what then should be the measure of damage and should it be the same if the damage is wholly attributed to the use of highway salt?

Frequently, the property owner in New Hampshire demands that the plumbing and fixtures be replaced in addition to the new water supply. Should the measure of damage include these items? There is considerable debate on the standards for potability. It would appear that there are state as well as national standards and any proposed legislation should establish the standards and criteria for the determination of what is fit and unfit for human consumption.

If a new water supply were to contain elements such as iron which can be removed by either mechanical or chemical processes, should the measure of damages include these facilities in addition

to replacing the water supply? In other words should the State be in the perpetual business of water purification by the maintenance of individual systems installed by the State in compensation for the destruction of the owners' water supply.

In some instances the best way to replace a damaged water supply, would be to extend a water utility. This gives rise to the question whether or not acceptance of such a system can be forced on the owner who will thereafter, be obligated to pay water assessment rates and who will, undoubtedly, demand in addition to the extension of the public system a money settlement to defray in part, his future expenditures?

It would appear that in some states consideration was given to community wells constructed to serve the owners of such wells damaged by maintenance operations. These give rise to several problems such as the ownership and continued maintenance and a serious question arises whether or not the owner of a damaged system can be forced to accept a partial interest in a community well as compensation for the destruction of his private water supply.

Frequently, a new well will not produce either the volume or the quality of the old supply. In these instances, should there

be money damage to supplement the replacement of the old well and again, what would the measure of damages be?

An infrequent claim, yet not too remote is the instance where a private water supply was destroyed the owner of which was on a salt-free diet. The substituted facility constructed for him did not achieve the salt-free percentage acceptable for his use, although it did meet the national standards of potability. In such an instance, can this owner be given special consideration and what then is the measure of damage?

There is some precedent in Maine for proposed legislation in Title 23, section 652. This section permits a property owner to apply for a determination and assessment of damage if in his opinion he has been damaged by a change of grade in any highway. This is the only example in the statutes where an otherwise non-compensable damage is by legislation made compensable. Prior to the enactment of this statute damages caused by change of grade were not compensable and were considered consequential or *damnum absque injuria*. If the Legislature were to consider legislation on this subject of wells the approach in section 652 might well be superior to the approach made by the Legislature in New Hampshire, which left this entirely discretionary with the

Commissioner - a burdensome role. In Maine the property owner has the right of appeal if the Commission should determine no damage or assess the damage in an amount unacceptable to the owner which is perhaps a better approach. If such legislation were to be enacted it is preferable that it be motivated by the property owner as it is in section 652. Further, that if the Commission cannot dispose of the matters satisfactorily the parties should have the right to appeal in the same manner as provided for in section 652.

In view of the fact that the State of Maine already has in part the statutory procedure for the determination and assessment of damages and does recognize that these are acceptable for handling the matter of impaired water supplies, the Committee had only to consider the specific details of such legislation as would relate to the special measure of damage and the standards and criteria for the administration of the legislative intent. In making its final recommendations the Committee gave considerable attention to each of the following proposals:

1. The State should be entitled to condemn the entire parcel, if the cost to cure exceeded the value of the property.
2. The State should be entitled to pay money damages in lieu

of replacement or repair, if it would appear that it could not replace the water supply with a comparable supply, meaning if the test of the surrounding area indicated that the potability would not produce an acceptable water supply, it would be futile to drill numerous wells in an attempt to get one good well and gamble that good water can be found.

3. The State should be entitled to replace a water supply with a connection to a water utility and not necessarily be obligated to contribute to the future water rate assessment.

4. The State should be entitled to replace a water system with any other kind of system which would produce an acceptable supply when compared to the national standards and these national standards should be incorporated in any proposed legislation.

5. The proposed legislation should create a restriction upon future construction of wells or water supplies within given distances of the highway. This would mitigate and minimize future damage that we might anticipate or contemplate arising from the continued use of salt on the highways. There is certainly precedent in this in any zoning legislation to which we may look to for such precedent.

6. Any proposed legislation should preclude the cost of plumbing fixtures in the consideration of just compensation for

the damage to a water supply.

7. Any proposed legislation should include standards and criteria that are clear and understandable such that they could be administered by a state agency.

8. The legislation should endeavor to insure a minimum number of frivolous claims and claims arising from deliberate damage by the property owner with the intent to obtain a new facility at the State's expense. In this area it would be necessary to establish criteria and testing methods that would be acceptable in our courts in the establishment of fact.

The Committee concludes, after extended discussions and evaluation of these many other considerations, that the following committee sponsored legislation entitled "AN ACT Relating to Damage to Private Water Supplies Resulting from Alteration of Highways," offers a more effective and equitable means of administering well damage claims against the State, as opposed to preceding before the Legislature, and therefore recommends its adoption.

AN ACT Relating to Damage to Private Water Supplies Resulting from Alteration of Highways.

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

R. S., T. 23, §652, amended. Section 652 of Title 23 of the Revised Statutes is amended to read as follows:

§652. Proceedings on damage claims

1. Change of grade. Whenever the commission shall change the grade of any state or state aid highway as provided in chapters 1 to 19 to the injury of an owner of adjoining land, he such owner 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. 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 Land Damage Board in writing for a determination and assessment of the damages. The proceedings shall then be the same as in condemnation cases.

2. Private water supplies. In the event an owner of land adjacent to a state or state aid highway conceives that a private water supply on that land has been destroyed or rendered unfit for human consumption by the commission constructing, reconstructing or maintaining the highway, such owner may apply

in writing to the commission for a determination of the alleged cause and assessment of the damage and if such claim is founded on construction, the owner shall present such application within 6 months after completion date of the work as that date appears in the records of the commission.

The application shall set forth the name and address of the owner, the owner's source of title, the location of the property, a description of the damage, the cause to which the damage is attributed and the name and address of any lien holder.

A. If the commission determines that it did not cause the alleged damage to such water supply, a copy of the determination shall be served by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court.

B. If the commission determines that any damage to the privately owned water supply was caused by construction of or maintenance on a portion of the state highway system a copy of the determination shall be served by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court and shall set forth an offer of settlement which shall be either:



- (1) To replace the water supply; or
- (2) To repair the damage to the water supply; or
- (3) To pay a designated sum of money; or
- (4) To purchase the realty served by the water supply in the event the cost of repair or replacement of the water supply exceeds the appraisal value of the realty.

C. The commission may issue rules and regulations in accordance with standards of the Department of Health and Welfare and the Public Health Service regarding water potability for the determination of the degree of contamination, pollution or fitness for domestic use.

D. The commission shall in its determination consider the necessity for installation or replacement of piping, tanks, pumps, heating systems or other related fixtures.

E. If the commission is unable to settle at what it deems a reasonable settlement the commission or owner may apply to the Land Damage Board in writing for a determination of the alleged cause and assessment of the damage. The proceedings shall then be the same as in condemnation cases.