

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND SECOND LEGISLATURE

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**Legislative Document**

**No. 95**

H. P. 86

House of Representatives, January 13, 1965

Referred to Committee on Public Utilities. Sent up for concurrence and ordered printed.

JEROME G. PLANTE, Clerk

Presented by Mr. Lowery of Brunswick.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-FIVE

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### **AN ACT to Clarify the Liability for Damages and the Eminent Domain in the Procedure of the Brunswick Sewer District.**

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

**Sec. 1. P. & S. L., 1947, c. 77, § 3, repealed and replaced.** Section 3 of chapter 77 of the private and special laws of 1947 is repealed and the following enacted in place thereof:

**'Sec. 3. Liability for damages.** The district shall be liable for all damages that shall be sustained by any person in his property by the taking of any land, rights, easements or interest therein whatsoever, or by entering on or excavating through any land.'

**Sec. 2. P. & S. L., 1947, c. 77, §§ 3-A, 3-B, additional.** Chapter 77 of the private and special laws of 1947 is amended by adding sections 3-A and 3-B, to read as follows:

**'Sec. 3-A. May exercise eminent domain.** The said district for the purposes of its incorporation is hereby authorized to take and hold as for project uses real estate and personal estate and any interest therein necessary for such purposes by purchase, lease, or otherwise, and is hereby authorized to exercise the right of eminent domain as hereinafter provided to acquire for such purposes any land or interest therein necessary for erecting and maintaining plants and works, for flowage, for pumping, for carrying sewage through its mains, for reservoirs, for laying and maintaining mains and other structures for distributing, discharging and disposing of sewage, for forming basins, for erection of buildings, for pumping works for use therein, for laying pipes and maintaining same, for laying and maintaining conduits for carrying, collecting and discharg-

ing sewage, for erecting treatment plants, works and facilities, for such other objects necessary, convenient and proper for the purposes of its incorporation and for rights-of-way of roadways to its works, facilities and land.

The said district is hereby authorized to lay in and through the streets, roadways and highways within the town and across private land therein and to install, maintain, repair and replace all pipes, mains, conduits and fixtures as may be necessary and convenient for any of its corporate purposes and authorities, and whenever said district shall lay or install any pipe, aqueducts, or fixtures in any streets, roadways or highways shall cause the same to be done with as little upkeep as practicable to the public travel and shall at its own expense, without unnecessary delay, cause the earth and pavement removed by it to be so replaced as to leave the surface in proper condition.

The trustees hereinafter provided for said district may exercise the right of eminent domain fixed in said district for the purposes of this Act after hearing, notice of the time and place of said hearing having been given by publication in a newspaper published in the County of Cumberland once a week for 2 successive weeks, the last publication to be at least 2 weeks previous to the time appointed for said hearing, and the clerk of said district shall keep a record of their proceedings, and their determination and decision, which shall set forth a description of the land or easement taken, the owners, if known, and the amount of damage awarded thereof. In lieu of the notice of publication hereinbefore defined, said notice may be served in hand by an officer duly qualified to serve civil procedure in this State on the record owner or owners and the premises involved, the same to be served at least 14 days prior to the time appointed for said hearing. Upon the signing of said record by said trustees and the filing of the same in the registry of deeds for the County of Cumberland, said trustees may enter upon such land and take possession of the same or an easement therein, as the case may be for the purposes of this Act.

**Sec. 3-B. Damages; appeal.** If any person who sustains property damages by reason of a taking as provided in section 3-A does not agree with the sum awarded by the trustees therefor, he may appeal as provided in this section.

1. **Appeal to county commissioners.** Within 90 days from the time the record of the taking is recorded in the registry of deeds, the person wishing to appeal must file a written complaint with the Cumberland County commissioners setting forth the particular damages sustained by him, the amount claimed by him in damages, the amount awarded by the trustees and the date the record of taking was recorded in the registry of deeds. A true copy of said complaint must be given in hand to the clerk of the district prior to the time the complaint is filed with the county commissioners.

2. **Hearing procedure before county commissioners.** The county commissioners shall set a time and place for hearing the appeal at their next regular meeting after the complaint has been filed with them, and shall notify the clerk of the district and the appellant by certified or registered mail of the time and place. They shall mail the notices at least 14 days prior to the time assigned for hearing. The county commissioners may continue the hearing for cause from

time to time, but not beyond the time limit hereinafter provided for filing their decision.

A. At the hearing the county commissioners shall swear all witnesses who testify and shall hear all relevant evidence presented or offered by either party. On request of either party the county commissioners may also view the premises involved. The appellant has the burden of proof as in civil cases. The appellant shall present his case first. The district will have the opportunity to cross-examine each one of the appellant's witnesses after each has completed his direct testimony. After the appellant has completed his case, the district may present its case or rest. If the district presents its case, the appellant will have the opportunity to cross-examine each district witness.

B. The county commissioners shall make a list of the names and addresses of all witnesses who testify.

3. County commissioners' decision; procedure. After hearing and within 90 days from the time the appeal complaint was originally filed with them, the county commissioners shall make their decision in writing. If the county commissioners find the damages to be the same or less than the sum awarded by the trustees, their decision shall be judgment for the district and they shall order the district to pay the original damages or the lesser sum so found by them and order the appellant to pay costs, witness fees to be computed as witness fees in civil cases before the Superior Court. If the county commissioners find the damages to be greater than the sum awarded by the trustees, they shall specify the amount, and order the same, together with costs, to be paid by the district to the appellant. They shall file the original decision with their records and mail a copy by certified or registered mail to each party within the 90-day period above set forth.

A. In the event the county commissioners fail to make their decision and mail the same to the parties within 90 days from the time the complaint is filed with them as above set forth, then the appeal is automatically dismissed. In such event, the appellant may appeal to the Superior Court as provided below.

4. Appeal to Superior Court. Either the district or party claiming damages may appeal from the decision of the county commissioners to the Cumberland Superior Court within 30 days after the commissioners' decision is mailed. A party claiming damages whose appeal to the county commissioners was automatically dismissed as above provided may also appeal to Cumberland Superior Court within 30 days from the date the automatic dismissal became effective.

A. The appellant to Superior Court shall mail notice of his appeal by registered or certified mail to the adverse party within the time limit above specified, and shall enter a complaint in Superior Court within the time limit above specified. The complaint is to include a statement setting forth the facts substantially. The complaint will be tried as in other cases.

B. The Superior Court shall determine the damages by a committee of reference if the parties so agree, by trial before a Superior Court Justice if the parties so agree, or by jury trial.

C. The clerk of Superior Court shall certify the final judgment of the court to the county commissioners, who shall enter the same on record and order the damages and costs therein recovered to be paid as provided in subsection 3.

D. If the party who appeals to the Superior Court obtains a more favorable judgment than that awarded by the county commissioners, he is to recover costs. If the judgment is less favorable or the same as the county commissioners, the adverse party recovers costs.

E. The committee of reference will be allowed reasonable compensation for their services to be fixed by the court upon presentation of their report and paid from the county treasury upon certificate of the clerk of courts.

5. Damages in event taking void. In event any taking by the district is held void because of failure by the district to comply with the law, or because of any technicality, then the district may recommence the proceedings. In such event damages will be awarded at the trustees' hearing and in all subsequent proceedings as of the date the district originally entered and took possession of the premises involved.

6. Cases pending when amendment becomes law. This amendment applies to any case as to all subsequent procedure which may be pending before the county commissioners or the Superior Court on the date the amendment becomes law.

A. The 90-day limit for final decision of the county commissioners for any such pending case will be computed from the date the pending appeal was filed with them. If the time between that date and the effective date of this amendment is more than 90 days, then the appeal is automatically dismissed as provided in subsection 3, paragraph A, as of the effective date of this amendment. In such event, the party claiming damages has 30 days from the effective date of this amendment to appeal to Superior Court.'