

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

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**Legislative Document**

**No. 405**

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H. P. 302

House of Representatives, January 21, 1965

Referred to Committee on Appropriations and Financial Affairs. Sent up for concurrence and ordered printed.

JEROME G. PLANTE, Clerk

Presented by Mr. Knight of Westbrook.

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**STATE OF MAINE**

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-FIVE

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**AN ACT Creating the Land Compensation Board Relating to Soil Conservation.**

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

**Sec. 1. R. S., T. 12, c. 1, sub-c. II-A, additional.** Chapter 1 of title 12 of the Revised Statutes is amended by adding a new subchapter II-A to read as follows:

**'SUBCHAPTER II-A**

**LAND COMPENSATION BOARD**

**Sec. 71. Purposes.** The purposes of this subchapter are to establish an independent, impartial board representing, as equitably as possible, the diverse land and water interests within the State; to empower such board to take land and interests therein through condemnation proceedings in furtherance of the policies of soil and water conservation, as promulgated by the State Soil Conservation Committee; to empower such board to make awards of just compensation in soil and water conservation condemnations and to establish before such board a procedure designed to afford to any interested party an opportunity to appear, present his case and have his rights fully protected without the necessity of retaining professional assistance; to thus provide to any interested party a prompt, efficient and inexpensive method of determination of just compensation and prompt payment of all or part of such compensation without prejudice to any right of appeal allowed.

**Sec. 72. Condemnation proceedings.** If the State Soil Conservation Committee determines that the public exigency requires the taking of land or any interest therein for the purposes of this subchapter, and is unable to purchase such land or the necessary ways and access thereto at what it deems a reasonable valuation, or if the title is defective, it shall petition the Land Compensa-

tion Board to call a meeting of said board in the manner as set forth in sections 73 and 74 for the purpose of determining whether said land or the necessary ways and access thereto shall be taken by the board through its power of condemnation. If the board, after hearing, decides in the affirmative it shall file in the registry of deeds for the county or registry district where the land is located a notice of condemnation which shall contain a description of the project specifying the property and the interest therein taken and the name or names of the owner or owners of record so far as they can be reasonably determined. The board may join in the same notice one or more separate parcels of property whether in the same or different ownership and whether or not taken for the same use.

A copy of the notice of condemnation shall be served on the owner or owners of record. With said copy there shall be served on each individual owner of record a copy of so much of the plan as relates to the particular parcel or parcels of land taken from him and a statement by the State Soil Conservation Committee with respect to the particular parcel or parcels of land taken from him which shall state:

1. Date of proposed possession. The proposed date of taking possession.
2. Compensation involving severance damage. Where the board appraisals disclose severance damages, state the amount of compensation itemized in accordance with the board's determination of the following elements of damage:
  - A. The highest and best use of the property at the date of taking;
  - B. The highest and best use of the property remaining after the taking;
  - C. The fair market value of the property before the taking;
  - D. The fair market value of the property after the taking;
  - E. The gross damage, showing separately:
    - (1) The fair market value of the real property taken,
    - (2) Severance damages including the impairment or destruction of facilities and structures;
  - F. Special benefits, accruing to the remaining property by reason of the public improvement for which part of the property is taken, to be set off against the gross damage;
  - G. Net damage.
3. Compensation not involving severance damage. Where the board appraisals disclose no severance damages, state the amount of compensation itemized in accordance with the board's determination of the following elements of damage:
  - A. The highest and best use of the property at the date of taking;
  - B. The highest and best use of the property after the taking;
  - C. The fair market value of the real property as of the date of taking;

D. Special benefits, accruing to the remaining property by reason of the public improvement for which part of the property is taken, to be set off against the value of the property taken;

E. Net damage and offering price.

4. Compensation in cases involving the facilities of a public utility. Where the condemnation involves the taking of established rights and facilities owned by a public utility, no statement by the State Soil Conservation Committee as provided shall be sent to the public utility concerned. In any negotiations for an agreement with such public utility with regard to such rights and facilities the board shall consider, without being limited to, the following elements of damage:

A. Relocation costs, which shall include the cost of acquisition of substitute rights and the cost of establishing either existing or substitute facilities in new location;

B. The salvage value of facilities removed;

C. Cost of removal;

D. The value of betterments where the function of the substitute facilities exceeds the function of the replaced facilities.

Service of the notice of condemnation with the copy of the plan and the statement by the board shall be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. In accordance with section 3, subsection 3, the notice of condemnation shall be published twice in a newspaper of general circulation in the county where the property is located and such publication shall constitute service on any unknown owner or owners or other persons who may have or claim an interest in the property.

If such owner is a minor, or an incompetent person, the board shall cause such notice to be served upon the legal guardian of such minor or incompetent. If there is no such guardian, then the board shall apply to the judge of probate for the county wherein the property is situated, briefly stating the facts and requesting the appointment of a guardian. The reasonable fee of such guardian as approved by the court shall be paid by the State Soil Conservation Committee.

In case there is a mortgage, tax lien of record, or other encumbrance covering any of said land, a copy of the notice of condemnation shall be sent forthwith by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to his office or place of abode if known, otherwise to the office, abode or address as set forth in said record.

The recording of the notice of condemnation shall be the date of taking and shall vest title to the property therein described in the State in fee simple or such lesser state as is specified in the notice of condemnation. Within one year after the completion of the project for which the land is taken, the State Soil Conservation Committee shall file a plan for recording in the registry of deeds for the county or registry district where the land is located.

Sec. 73. **Negotiation.** The State Soil Conservation Committee, in conjunction with the sponsoring organization, shall use all reasonable means of negotiation in attempting to effect the purchase, at a reasonable price, of any land or rights involved. Upon the failure of such negotiations the State Soil Conservation Committee shall file a petition with the Land Compensation Board setting forth the pertinent facts including the certification of the names and addresses of the owner or owners of record and the holders of any mortgages, tax liens or other encumbrances, a prayer for condemnation, and a plan of the property involved as served upon the owner or owners of record in accordance with section 72 and requesting a hearing for the purposes of the taking of said land by the board, and the award of just compensation.

Sec. 74. **Proceedings before Land Compensation Board.** The Land Compensation Board shall immediately enter the petition of the State Soil Conservation Committee upon its docket and assign a date for hearing at the earliest possible date. Notice of the time and place for the hearing shall be mailed by registered or certified mail to the State Soil Conservation Committee and to the owner or owners of record and to the holders of any mortgage, tax lien or any other encumbrance on the property involved at least 14 days before the date of the hearing. In the case of property, the owner of which can not be ascertained after diligent search, publication twice, with an interval of 6 days, in a newspaper of general circulation in the county where the property is located shall constitute notice of the time and place of hearing for the purposes of this section. The hearing shall be held in quarters suitable for a full presentation of all evidence and located as conveniently as possible for all interested parties in the county where the land is situated. Before making an award, the Land Compensation Board shall view the property involved with or without the presence of the interested parties, but it shall first notify the interested parties of the time when it will view the property. The State Soil Conservation Committee shall be represented at the hearing and may present in open hearing evidence as to title, engineering maps and data, and its opinion, evidence and appraisal or appraisals as to the fair market value of the property involved. An accurate and verbatim record of the proceedings before the Land Compensation Board shall be kept and shall be furnished to the State Soil Conservation Committee or other interested parties, upon request, and upon payment of a reasonable charge for transcribing and preparing such record. In making its award, the Land Compensation Board shall not be limited by the range of testimony produced before it but may reach its decision on the basis of the view, the testimony and its own judgment. The Land Compensation Board may continue a hearing from time to time for cause shown or by agreement of parties; and where such continuance is made at the request of the landowner, may require that interest be waived for the period of the continuance.

In the case of an award involving property, the owner of which could not be ascertained after diligent search as aforesaid, the Land Compensation Board shall order that a check payable to the State of Maine be deposited with the Treasurer of State, the proceeds of which shall be held in perpetual trust to be paid upon proof of the rightful owner or owners of the aforementioned land. Such trust fund may be used by the State in the same manner as any other funds held, and shall not bear interest.

As promptly as possible after the conclusion of the hearing, the Land Compensation Board shall make an award in writing specifying:

1. Owners and encumbrances. The owner or owners of record and the holder of any mortgage, tax lien or other encumbrance;
2. Land taken; interest. The nature and extent of the lands taken and the interest therein;
3. Board's decision on elements of damage. The Land Compensation Board's decision as to each of the elements of damage listed in section 72, subsection 2 or 3, or the elements of damage as set forth in section 72, subsection 4, and such other elements of damage as are legally compensable.

An attested copy of each award shall be sent forthwith to the State Soil Conservation Committee. The State Soil Conservation Committee shall within 14 days designate to the Land Compensation Board the award or awards from which it intends to appeal and forward to the Land Compensation Board a check payable to the clerk of courts for the county where said land is situated for the use of the party or parties designated in the award. The Land Compensation Board shall forthwith serve upon the party or parties named in the award, an attested copy of the award together with a notice that the State Soil Conservation Committee has expressed its intention to appeal the award and that the amount of the award will be paid in to the clerk of courts for the county in which the land is situated, subject to withdrawal as provided in section 75, and shall forward such check together with an attested copy of the award to the clerk of courts aforesaid.

In all other cases the State Soil Conservation Committee shall, within said 14 days, forward to the Land Compensation Board a check payable to the party or parties named in the award and the Land Compensation Board shall forthwith serve upon the party or parties named therein an attested copy of the award, the check aforesaid and a notice clearly outlining the rights of appeal as herein provided. If the party or parties named in the award refuse to accept it and appeal therefrom to the Superior Court as herein provided, the State Soil Conservation Committee, upon notice from the Land Compensation Board, shall forward to the Land Compensation Board a check in the amount of the award, payable to the clerk of courts for the county where the land is situated, for the use of the party or parties named in the award which the Land Compensation Board shall forthwith file with said clerk together with an attested copy of its award.

Service as required in this section shall be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court.

Sec. 75. Withdrawal of money deposited. If the party named in an award has duly taken an appeal from an award of the Land Compensation Board in accordance with section 76 and the amount of the award has been paid in to the clerk of courts for the county in which the land is situated, the owner or owners of record named in the award may petition the Superior Court in said county for payment of all or any part of the money thus deposited for and on account of just compensation. The petition shall include:

1. **Statement of ownership.** A statement that the petitioner was the owner of record of the property at the date of taking, is entitled to just compensation and has not conveyed or transferred any of his rights;

2. **Statement of encumbrances.** A statement of the mortgages, tax liens or other encumbrances on the property involved;

3. **Agreement to repay where others entitled.** An agreement by petitioner that he will repay to the State Soil Conservation Committee, in whatever manner may be directed by the court, all or any part of any sums of money withdrawn by order of the court, if it is determined by the court that another person or persons may be entitled to all or part of said money or that the damages to the property described are less than the amount of money withdrawn.

Upon acceptance of the moneys, the petitioner specifically waives any appeal then pending on the question of the public exigencies required in the original order of condemnation, but may withdraw said moneys without prejudice to the petitioner's right to have the amount of compensation adjudicated in the appeal pending.

**Sec. 76. Appeal.** The State Soil Conservation Committee or any party or parties aggrieved by an award of the Land Compensation Board may appeal therefrom to the Superior Court in the county where the land is situated within 30 days after the date of the receipt by the appellant of the notice of award. Such appeal shall be taken by filing a complaint setting forth substantially the facts upon which the case shall be tried like other cases, provided, however, that nothing within this subchapter shall be construed to grant the State Soil Conservation Committee the right of appeal on the refusal of the Land Compensation Board to exercise its power of condemnation, in whole or in part. The appellant shall serve notice of such appeal on the opposing party and on the Land Compensation Board by sending by registered or certified mail within the time above limited a true copy of said complaint and returning therewith to the Land Compensation Board whatever check or checks that may have been forwarded to him with the notice of award.

The court shall determine the same by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest where such is due, and for costs in favor of the party entitled thereto.

If either the owner or owners of record or the State Soil Conservation Committee appeal and the just compensation finally awarded, exclusive of interest, is less than the award of the Land Compensation Board, then the court shall give judgment in favor of the State Soil Conservation Committee for the excess of the award of the Land Compensation Board, inclusive of interest, over the final award and for its costs from the time of appeal. Execution may be issued on such judgment.

If either the owner or owners of record or the State Soil Conservation Committee appeal and the just compensation finally awarded, exclusive of interest, is not less than the award of the Land Compensation Board, exclusive of any interest allowed, then the court shall give judgment to the owner or owners for

the amount in which the final award is in excess of the money deposited in court, and for interest on such excess from the date of taking and for costs from the time of appeal. No interest shall be allowed on so much of any award as has been paid into court. The clerk shall certify the final judgment of the court to the State Soil Conservation Committee which shall enter the same of record, and order the same to be paid.

In case of the decease of any person entitled to claim damages under this subchapter, the heirs, executors, administrators or assigns of such person shall have the right to prosecute the appeal provided for in this section under the same conditions and limitations as the original owner had, and may be substituted for the appellant in any proceedings commenced by said appellant. In case any landowner assigns, transfers or sells his right to claim damages, his assignees, transferee or vendee shall have the same rights as above set forth.

Sec. 77. Interpleader. If difficult questions of law should arise before the Land Compensation Board as to entitlement to or apportionment of just compensation, then it is authorized to make a blanket award to all parties interested. If no appeal is taken and no agreement is reached by the parties named in the award within 60 days from the date of such award, the Land Compensation Board shall certify the facts and legal questions to the State Soil Conservation Committee. The State Soil Conservation Committee shall then interplead the parties named in the award by a complaint filed in the Superior Court in the county wherein the land is situated and shall pay in the amount of said award to the clerk of courts of said county to be paid in accordance with the court's order. For purposes of this section the State Soil Conservation Committee shall be acting to prevent double or multiple liability.

Sec. 78. Land Compensation Board, composition, appointment, powers, duties.

The Land Compensation Board shall consist of 7 members, except in those instances where the land in question lies within 2 counties or 2 councillor districts, and in those instances the membership shall be as indicated. All members shall be appointed by the Governor, with the advice and consent of the Council.

Two members shall be recommended to the Governor by the Chairman of the Public Utilities Commission, one of whom shall be an attorney-at-law, and the attorney designated as a member of the board shall serve as its chairman; 2 members shall be recommended to the Governor by the Forest Commissioner; one member shall be recommended to the Governor by the Executive Secretary of the Maine Municipal Association and shall be a qualified appraiser, and shall serve as clerk of the board; the chairman or chairmen, or his delegate or delegates, of the board of county commissioners of the county or counties in which the land is located; the councillor or councillors of the particular councillor district or districts in which the land is located.

The first 5 members of the board shall be considered a standing committee appointed for a term of 3 years, and may be reappointed from term to term at the discretion of the Governor, with the advice and consent of the Council. They shall be sworn, and for inefficiency, willful neglect of duty, or for mal-



feasance in office may, after notice and hearing, be removed by the Governor and Council. In case of a vacancy occurring through death, resignation or removal, the Governor, with the advice and consent of the Council, shall appoint a successor for the unexpired term of the member whose place he takes.

The Governor, with the advice and consent of the Council, shall set the rate of pay on a per diem basis which each member of the Land Compensation Board shall receive and they shall be remunerated for all expenses necessarily incurred in the performance of their official duties. Such moneys shall be paid by the State Soil Conservation Committee.

In carrying out its duties, the board shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. It shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant and unduly repetitious testimony. A majority of the board, being present, may determine all matters; provided, however, the chairman shall resolve all questions of admissibility.

The board shall have authority to make rules and regulations and prescribe forms to secure a speedy, efficient and inexpensive disposition of all proceedings hereunder. Each member of the board, for its official purposes, may administer oaths, certify to official acts and issue all process necessary to the performance of the duties of the board. It shall also have a reporter to record each hearing, said reporter to be paid on a per diem basis by the State Soil Conservation Committee at the rate established by the board.

The clerk shall have authority to certify to all official acts of the board, administer oaths, issue subpoenas, and issue all processes, notices, orders or other documents necessary to the performance of the duties of the board.

**Sec. 2. Appropriation.** There is appropriated from the General Fund to the State Soil Conservation Committee the sum of \$3,000 for the fiscal year ending June 30, 1966 and the sum of \$3,000 for the fiscal year ending June 30, 1967 the breakdown of which shall be as follows:

STATE SOIL CONSERVATION COMMITTEE	1965-66	1966-67
Personal Services	\$1,500	\$1,500
(Per diem salaries)		
All Other	1,500	1,500
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	\$3,000	\$3,000