

MAINE STATE LEGISLATURE

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(New Title)
NEW DRAFT OF: H. P. 302; L. D. 405

ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1535

H. P. 1125

House of Representatives, May 12, 1965

Reported by a Majority of the Committee on State Government. Printed under Joint Rules No. 10.

JEROME G. PLANTE, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FIVE

AN ACT Relating to Condemnation by Soil and Water Conservation Committee.

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

Sec. 1. R. S., T. 12, § 54, sub-§ 8, amended. Subsection 8 of section 54 of Title 12 of the Revised Statutes is amended to read as follows:

'8. Option, purchases. To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property or rights or interests therein; to maintain, administer and improve any properties acquired; to receive income from such properties and to expand such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its real or personal property or interests therein, in furtherance of the purpose and provisions of this chapter, including the conveyance, with or without consideration, of lands or interests therein to soil conservation districts for use in carrying out their authorized purposes; **to exercise the power of eminent domain in the manner and under the conditions as set forth in section 71;**'

Sec. 2. 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 CONDEMNATION

§ 71. Procedure

If the State Soil and Water Conservation Committee determines that the pub-

lic exigency requires the taking of land or material or any interest therein forthwith, or is unable to purchase such land or material or the necessary ways and acquisition thereto at what it deems a reasonable value, or if title is defective, 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 State Soil and Water Conservation Committee may join in the same notice one or more separate parcels of property whether in the same or different ownership and where 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 and Water 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 State Soil and Water Conservation Committee appraisals disclose severance damages, state the amount of compensation itemized in accordance with the State Soil and Water Conservation Committee'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 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 and offering price;
3. Compensation not involving severance damage. Where the State Soil and Water Conservation Committee appraisals disclose no severance damages, state the amount of compensation itemized in accordance with the State Soil and Water Conservation Committee'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 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.

Nothing herein contained shall be construed as authorizing said State Soil and Water Conservation Committee to take by right of eminent domain any of the property or facilities of any public service corporation or district used or acquired for future use by the owner thereof in the performance of a public duty, or any property or facilities, including water storage, of any company or corporation used or acquired for future use by the owner thereof for the purposes of generating electrical power to be used by said company or corporation in the direct operation of said company or corporation.

Service of the notice of condemnation with the copy of the plan and the statement by the State Soil and Water Conservation Committee 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. The notice of condemnation only shall be published once 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 State Soil and Water Conservation Committee shall cause such notice to be served upon the legal guardian of such minor or incompetent. If there is no such guardian, then the State Soil and Water Conservation Committee 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 and Water 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 and Water Conservation Committee shall file a plan for recording in the registry of deeds for the county or registry district where the land is located.

§ 72. Compensation

The State Soil and Water Conservation Committee shall have 60 days from the date of taking within which to negotiate with the owner or owners of record for an agreement as to the amount of just compensation. If, at the expiration

of that time, no such agreement for just compensation has been made, the State Soil and Water Conservation Committee shall immediately file a petition with the Land Damage Board as defined in Title 23, section 152, setting forth the pertinent facts including the names and addresses of the owner or owners of record and the holders of any mortgages, tax liens or other encumbrances, a copy of the notice of condemnation, the statement of the State Soil and Water Conservation Committee and a plan of the property involved as served upon the owner or owners of record in accordance with sections 71 and requesting a hearing and an award of just compensation.

§ 73. Proceedings before Land Damage Board

The Land Damage Board shall immediately enter the petition of the State Soil and Water 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 and Water 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 case of property, the owner of which cannot 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 Damage 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 and Water 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 Damage Board shall be kept and shall be furnished to the State Soil and Water 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 Damage 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 Damage 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 Damage 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 Damage 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 Damage Board's decision as to each of the elements of damage listed in section 71, subsection 2 or 3, and such other elements of damage as are legally compensable.

An attested copy of each award shall be sent forthwith to the State Soil and Water Conservation Committee. The State Soil and Water Conservation Committee shall within 14 days designate to the Land Damage Board the award or awards from which it intends to appeal and forward to the Land Damage 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 Damage 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 and Water Conservation Committee has expressed its intention to appeal the award and that the amount of the award together with a notice that the State Soil and Water 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 74, 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 and Water Conservation Committee shall, within said 14 days, forward to the Land Damage Board a check payable to the party or parties named in the award and the Land Damage 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 and Water Conservation Committee, upon notice from the Land Damage Board, shall forward to the Land Damage 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 Damage 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.

§ 74. Withdrawal of money deposited

If the party named in an award has duly taken an appeal from an award of the Land Damage Board in accordance with section 75 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 and Water 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.

§ 75. Appeal

The State Soil and Water Conservation Committee or any party or parties aggrieved by an award of the Land Damage 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. The appellant shall serve notice of such appeal on the opposing party and on the Land Damage 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 Damage 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 and Water Conservation Committee appeal and the just compensation finally awarded, exclusive of interest, is less than the award of the Land Damage Board, then the court shall give judgment in favor of the State Soil and Water Conservation Committee for the excess of the award of the Land Damage 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 and Water Conservation Committee appeal and the just compensation finally awarded, exclusive of interest, is not less than the award of the Land Damage 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 and Water 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.

§ 76. Interpleader

If difficult questions of law should arise before the Land Damage 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 Damage Board shall certify the facts and legal questions to the State Soil and Water Conservation Committee. The State Soil and Water 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 and Water Conservation Committee shall be acting to prevent double or multiple liability.'

Sec. 3. R. S., T. 23, § 151, amended. Section 151 of Title 23 of the Revised Statutes is amended to read as follows:

‘§ 151. Purposes

The purposes of this subchapter are to establish an independent, impartial board composed of men well learned in the elements that may be properly considered in the determination of fair market value of property taken in condemnation proceedings; to empower such board to make awards of just compensation in highway **and 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 for 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. 4. Appropriation. There is appropriated from the General Fund to the State Soil and Water 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 shall be as follows:

Department	1965-66	1966-67
STATE SOIL AND WATER CONSERVATION COMMITTEE		
Personal Services (Per diem salaries)	\$1,500	\$1,500
All Other	<u>1,500</u>	<u>1,500</u>
	\$3,000	\$3,000