

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1717

S. P. 573

In Senate, May 7, 1971

Reported by Senator Johnson of Somerset from Committee on Transportation and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

**AN ACT Relating to Relocation Assistance and Land Acquisition in State
Highway Projects.**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a substantial number of families would be displaced or relocated, or both, prior to the normally effective date of this legislation; and

Whereas, denial of increased benefits to those displaced persons would create an inequity; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. R. S., T. 23, c. 3, sub-c. VII, additional. Chapter 3 of Title 23 of the Revised Statutes, as amended, is further amended by adding a new subchapter VII, to read as follows:

**SUBCHAPTER VII
RELOCATION ASSISTANCE**

§ 241. Purpose

The prompt and equitable relocation and reestablishment of persons, businesses, farm operations and nonprofit organizations displaced as a result of

state or state aid highway projects is necessary to insure that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Relocation payments and advisory assistance are to be made available to all persons so displaced in accordance with this subchapter.

§ 242. Definitions

As used in this subchapter, the following words and phrases shall have the following meanings:

1. Average annual net earnings. "Average annual net earnings" shall mean $\frac{1}{2}$ of any net earnings of the business or farm operation before federal or state income taxes during the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project or during such other period as the commission determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during such period.

2. Business. "Business" shall mean any lawful activity excepting a farm operation conducted primarily:

A. For the purchase, sale, lease and rental of personal and real property and for the manufacture, processing or marketing of products, commodities or any other personal property;

B. For the sale of services to the public; or

C. By a nonprofit organization; or

D. Solely for the purposes of section 244, for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

3. Displaced person. "Displaced person" shall mean any person who, on or after the effective date of this Act, moves from real property, or moves his personal property from real property as a result of the acquisition of such real property in whole or in part, or as the result of the written order of the commission to vacate real property acquired in whole or in part, for a state or state aid highway; and solely for the purposes of section 244, as a result of the acquisition of or the written order of the commission to vacate other real property on which such person conducts a business or farm operation, for such program or project.

4. Existing patronage. "Existing patronage" shall mean the average dollar volume of business transacted during the 2 taxable years immediately preceding the year in which the business is relocated.

5. Farm operation. "Farm operation" shall mean any activity conducted solely or primarily for the production of one or more agricultural products

or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

6. Federal agency. "Federal agency" shall mean any department, agency or instrumentality in the executive branch of the Federal Government, except the National Capitol Housing Authority, any wholly-owned government corporation, except the District of Columbia Redevelopment Land Agency, and the Architect of the Capitol, the Federal Reserve Banks and branches thereof.

7. Mortgage. "Mortgage" shall mean such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of this State, together with the credit instruments, if any, secured thereby.

8. Person. "Person" shall mean any individual, partnership, corporation or association.

9. Project. "Project" shall mean any highway construction undertaken by the State of Maine by its State Highway Commission on a state or state aid highway.

10. State agency. "State agency" shall mean any department, agency or instrumentality of this State or any political subdivision of this State.

§ 243. Relocation assistance advisory services

1. Relocation assistance advisory program. Whenever the acquisition of real property for a project will result in the displacement of any person on or after the effective date of this Act, the commission shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection 2. If the commission determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, the commission may offer such person relocation advisory services under such program.

2. Program to include. Each relocation assistance advisory program required by subsection 1 shall include such measures, facilities or services as may be necessary or appropriate in order to:

A. Determine the need, if any, of displaced persons, for relocation assistance;

B. Provide current and continuing information on the availability, prices and rentals of comparable decent, safe and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

C. Assure that, within a reasonable period of time, prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe and sanitary dwellings, equal in number to the number of and available to such displaced

persons who require such dwellings and reasonably accessible to their places of employment;

D. Assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

E. Supply information concerning federal and state housing programs, disaster loan programs and other federal or state programs offering assistance to displaced persons; and

F. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

3. **Coordination.** The commission shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

§ 244. Moving and related expenses

1. **Payments.** Whenever the acquisition of real property for a project will result in the displacement of any person on or after the effective date of this Act, the commission shall make a payment to any displaced person, upon proper application on forms approved by the commission, for

A. Actual reasonable expenses in moving himself, his family, business, farm operation or other personal property;

B. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the commission; and

C. Actual reasonable expenses in searching for a replacement business or farm.

2. **Moving expense allowance.** Any displaced person eligible for payments under subsection 1 who is displaced from a dwelling and who elects to accept the payments authorized by subsection 1 may receive a moving expense allowance, determined according to a schedule established by the commission, not to exceed \$300 and a dislocation allowance of \$200.

3. **Fixed payment.** Any displaced person eligible for payments under subsection 1 who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1 may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than \$2,500 nor more than \$10,000. In the case of a business no payment shall be made under this subsection unless the commission is satisfied that the business:

A. Cannot be relocated without a substantial loss of its existing patronage, and

B. Is not part of a commercial enterprise having at least one other establishment not being acquired by the State, which is engaged in the same or similar business.

§ 244-A. Replacement housing for home owner

1. Owner. In addition to payments otherwise authorized, the commission shall make an additional payment not in excess of \$15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

A. The amount, if any, which when added to the acquisition cost of the dwelling acquired by the State, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this paragraph shall be made in accordance with standards established by the commission.

B. The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the State was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

C. Reasonable expenses incurred by such displaced person for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

2. Replacement dwelling. The additional payment authorized by subsection 1 shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe and sanitary not later than the end of the one-year period beginning on the date on which he receives from the State final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

3. Mortgage insurance. The commission is authorized to negotiate with any federal agency for any mortgage insurance protection available to a displaced person to insure any mortgage on a comparable replacement dwelling executed by a displaced person assisted under this section.

§ 244-B. Replacement housing for tenants and certain others

In addition to amounts otherwise authorized by this subchapter, the commission shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 244-A which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either:

1. Lease or rent. The amount necessary to enable such displaced person to lease or rent for a period not to exceed 4 years, a decent, safe and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed \$4,000, or

2. Purchase. The amount necessary to enable such person to make a down payment, including incidental expenses described in section 244-A, subsection 1, paragraph C, on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed \$4,000, except that if such amount exceeds \$2,000, such person must equally match any such amount in excess of \$2,000 in making the down payment.

§ 245. Administration

The State Highway Commission shall carry out the functions of this subchapter either with its personnel or through any federal, state or municipal governmental agency having an established organization for conducting relocation assistance programs; and is authorized and empowered to make all contracts and do all things necessary to fulfill the intent and purposes of this subchapter.

§ 245-A. Hardship

If the commission deems a hardship case exists, it may make any payment authorized by this subchapter, in whole or in part to the displaced person affected in advance of moving, conveying or other acquisition of title or possession by the State.

§ 245-B. Rules and regulations

The commission may adopt rules and regulations consistent with this subchapter as it deems necessary or appropriate to carry out this subchapter and to include the standards of "decent, safe and sanitary."

§ 246. Appeal

1. Land Damage Board. If the commission is unable to negotiate any payment authorized under section 244, subsection 1, paragraph A, or section 244-A, subsection 1, at what it deems to be a reasonable amount, either the commission or the displaced person, or both, may apply to the Land Damage

Board in writing for a determination and assessment. The proceedings shall then be the same as in condemnation proceedings under subchapter III.

2. Chairman of Highway Commission. Any person aggrieved by a determination as to eligibility for any payment, except those enumerated in subsection 1, authorized by this subchapter may have his application reviewed by the Chairman of the Maine State Highway Commission or his delegate whose determination shall be final and nothing herein shall be construed to give any person a cause of action in the Land Damage Board or the Superior Court.

§ 247. Limitation

Nothing contained in this subchapter shall be construed as creating in any eminent domain proceeding an element of damages not in existence on the date of enactment hereof.

Any payments authorized under this subchapter and received by a displaced person shall not be considered income for purposes under the Internal Revenue Code, or resources of any recipient of public assistance.

Sec. 2. R. S., T. 23, § 153-A, additional. Title 23 of the Revised Statutes is amended by adding a new section 153-A, to read as follows:

§ 153-A. Housing for displaced persons

1. Purchase. Where a proposed highway project cannot proceed to actual construction because replacement housing is not available to displaced persons and cannot otherwise be made available, the commission on behalf of the State of Maine may acquire by purchase such real property as may be necessary to construct new housing thereon, rehabilitate existing housing thereon or move existing housing thereon.

2. Acquisition interpreted. Acquisition of necessary replacement housing sites, rehabilitation, relocation or construction of replacement housing shall be an expense incidental to construction or reconstruction of a highway and shall not be deemed to be highway right-of-way and need not be within the limits of a construction project.

3. Construction. The commission may construct, relocate or rehabilitate on any housing sites acquired under subsection 1 such housing as may be necessary for any person displaced by any highway construction or reconstruction undertaken by the commission.

4. Sale. The commission on behalf of the State of Maine may sell and convey the interest of the State acquired as replacement sites with the improvements thereon and may lease such interests in such property pending sale. Proceeds shall be credited to the project funds from which the purchase, rehabilitation or construction expenditures were made.

Sec. 3. R. S., T. 23, § 154, amended. Section 154 of Title 23 of the Revised Statutes, as amended, is further amended by adding at the end a new paragraph, to read as follows:

If a condemnation proceeding is instituted and then abandoned, the owner of any right, title or interest in any real property included in said proceeding shall be reimbursed by the commission for his reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings.

Sec. 4. R. S., T. 23, §§ 154-A - 154-E, additional. Title 23 of the Revised Statutes is amended by adding 5 new sections, 154-A, 154-B, 154-C, 154-D and 154-E, to read as follows:

§ 154-A. Fair market value adjustment

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining just compensation for the property.

§ 154-B. Coercive action

In no event shall the commission either advance the time of condemnation, or defer negotiations or condemnation or take any other action coercive in nature, in order to compel an agreement on the price to be paid for property or property rights.

§ 154-C. Uneconomic remnants

If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the commission shall offer to acquire the entire property and such remnant may be acquired by purchase or condemnation.

§ 154-D. Notice to vacate

No person lawfully occupying real property shall be required to move from a dwelling, or move his business or farm operation without at least 90 days' written notice from the commission of the date by which such move is required.

§ 154-E. Improvements

For the purpose of determining the just compensation to be paid for any building, structure or other improvement acquired, such building, structure or other improvement shall be deemed to be part of the real property acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure or improvement at the expiration of his term, and the fair market value which such building, structure or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor in accordance with the terms and provisions otherwise provided in this section.

Payments under this section shall not result in duplication of any payments otherwise authorized by this subchapter. No such payment shall be made unless the owner of the land involved disclaims all interest in the improve-

ment of the tenant. In consideration for any such payment, the tenant shall assign, transfer and release to the State all his right, title and interest in and to such improvements. Nothing in this section shall be construed to deprive the tenant of any rights to reject payment under this section and to obtain payment for such property interests in accordance with applicable law, other than this section.

Sec. 5. R. S., T. 23, §§ 160, 161, additional. Title 23 of the Revised Statutes is amended by adding 2 new sections, 160 and 161, to read as follows:

§ 160. Property management

Any property taken or acquired for highway purposes may be leased, let or rented by the commission to a displaced person pending advantageous use for highway purposes. The commission may renovate and maintain property pending such advantageous use. The proceeds from leasing, letting or renting such property shall be credited to the fund from which payment was made for the acquisition. The consideration paid by the tenant for occupancy shall not exceed the fair rental value of the property based on short-term occupation.

§ 161. Incidental expense payments

1. Reimbursement. The commission, as soon as practicable after the date of payment of just compensation, shall reimburse the owner from whom land or rights in land were acquired for highway purposes, to the extent the commission deems fair and reasonable, for expenses such owner necessarily incurred for:

- A. Recording fees, transfer taxes and similar expenses, if any, incidental to conveying such property to the State;
- B. Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and
- C. The pro rata portion of real property taxes paid which are allowable to a period subsequent to the date of vesting title in the State, or the effective date of possession of such real property by the State, whichever is earlier.

2. Determination. Any determination by the commission in the administration of this section shall be final and nothing herein shall be construed to give any person a cause of action in the Land Damage Board or the Superior Court.

Sec. 6. R. S., T. 23, §§ 211 - 222, repealed. Sections 211 to 222 of Title 23 of the Revised Statutes, as enacted by section 1 of chapter 207 of the public laws of 1969, are repealed.

Sec. 7. Application. This Act shall be retroactive to January 2, 1971, for the purpose of providing the increased benefits to displaced persons caused by projects initiated after that date.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.