

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 769

H. P. 622

House of Representatives, February 25, 1975

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. McKernan of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Relating to Compensation in Eminent Domain Proceedings.

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

Sec. 1. 1 MRSA § 20 is amended to read:

§ 20. Compensation to owners for use of land

If satisfactory compensation is not made to the owner by the officers or agents of the United States under whose direction such lands are taken, he may make complaint to the county commissioners who, after not less than 14 days' notice to the parties of the time and place of hearing, shall view the premises, hear the parties and assess the damages sustained by the taking of the land for said purposes, including the time during which it will be required for such use, as if the land were taken for highway purposes under Title 23, chapter 3, order them to be paid at such time as they direct and award costs to the prevailing party.

Sec. 2. 12 MRSA § 2151, 2nd ¶, first sentence, is amended to read:

The owners of property, either real or personal, taken by the commissioner under this section shall be entitled to damages equal to the reasonable value thereof, as is provided when land is taken for highway purposes under Title 23, chapter 3. ~~and in~~ In the event of a disagreement over the value, the reasonable value shall be determined by the county commissioners of the county in which the land is situated, upon the written application of any interested party.

Sec. 3. 13 MRSA § 1183, first sentence, is amended to read:

If the municipal officers at the hearing held under section 1181 grant the

prayer of the petitioners, they shall then determine what land shall be taken and assess the damages suffered by each person thereby, **as if the land were taken for town ways**, make a written return of their proceedings, specifying the land taken and the damages awarded each person and file the same with the town clerk.

Sec. 4. 23 MRSA § 154, sub-§ 2, ¶ F is amended to read:

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~~ **severance damages**;

Sec. 5. 23 MRSA § 154, sub-§ 2, ¶ G is repealed and the following enacted in place thereof:

G. The net damage showing separately:

- (1) The fair market value of the real property taken;
- (2) The amount of severance damages in excess of special benefits; and
- (3) The offering price.

Sec. 6. 23 MRSA § 154, sub-§ 3, ¶ B is repealed.

Sec. 7. 23 MRSA § 154, sub-§ 3, ¶ C is amended to read:

C. The fair market value of the real property **taken** as of the date of taking;

Sec. 8. 23 MRSA § 154, sub-§ 3, ¶ D is repealed.

Sec. 9. 23 MRSA § 154, sub-§ 3, ¶ E is repealed and the following enacted in place thereof:

E. Offering price;

Sec. 10. 23 MRSA § 2057 is amended to read:

§ 2057. —estimation and award

If any person's property is damaged by laying out, altering or discontinuing a highway or town way, the county commissioners or the municipal officers of towns shall estimate the amount, and in their return state the share of each separately. **Damages shall be determined as if the land were taken for highway purposes under chapter 3.** Damages shall be allowed to the owners of reversions and remainders and to tenants for life and for years in proportion to their interests in the estate taken. Said commissioners or officers shall not order such damages to be paid, nor shall any right thereto accrue to the claimant, until the land over which the highway or alteration is located has been entered upon and possession taken for the purpose of construction or use.

Sec. 11. 23 MRSA § 3005 is amended by inserting a new sentence before the first sentence to read:

Damages shall be determined as if the land were taken by the State for highway purposes under chapter 3.

Sec. 12. 23 MRSA § 3502, 2nd sentence, is amended to read:

If the municipal officers of any municipality are unable to purchase such materials or land with the necessary ways and access thereto, at what they deem a reasonable valuation, the county commissioners of the county wherein such material or land is located shall, on petition of the municipal officers or interested parties, ascertain and determine the damages in the same manner as provided by statute for land taken for highway purposes **under chapter 3**, and all parties aggrieved by the estimate of damages shall have like remedy as provided by statute for appraisal of damages for land taken by towns for highway purposes.

Sec. 13. 30 MRSA § 4002, 2nd sentence, is amended to read:

The municipal officers shall meet at the time and place specified in the notice, view the land to be taken, hear all parties interested and if they decide that the land is suitable for the purpose, they shall take the same and estimate the damages to be paid to each owner, so far as known, **in the same manner as provided by statute for land taken for highway purposes under Title 23, chapter 3**, and make return of their doings in writing, signed by a majority of them, which return shall describe by metes and bounds the land so taken and state the purpose for which it is taken, the names of the owners so far as known, and the amount of damages awarded to each.

Sec. 14. 30 MRSA § 4807, 2nd ¶, last sentence is repealed and the following enacted in place thereof:

Thereupon, the authority shall determine the damages for the real property taken in the same manner as provided by statute for land taken for highway purposes under Title 23, chapter 3, and shall file a statement of such determination in the Superior Court of the county.

Sec. 15. 35 MRSA § 685 is amended to read:

§ 685. Commissioners' report of damages and rights of parties; notice

Said commissioners shall at a regular session make a report of their general estimate of damages, stating specifically the terms and conditions imposed by them, ~~and~~ the rights and obligations of each party, **and the elements of damage as provided for land taken for highway purposes under Title 23, section 154, subsections 2, 3 and 4**, and cause it to be recorded. Their clerk shall then make out a notice to each person, stating the amount of damages awarded to him **and the elements of damage**, which shall be served by an officer on those resident in the State and upon others, if any, by a publication 3 weeks successively in a newspaper printed in the county, if any; if not, in the state paper. The expense of notices shall be added to the costs of the proceedings and paid accordingly.

Sec. 16. 35 MRSA § 2484, 3rd sentence, is amended to read:

They shall on view make a just appraisalment in writing of the loss or damage, **including the elements of damage as provided for land taken for highway purposes under Title 23, section 154, subsections 2, 3 and 4**, if any, to the applicant, sign duplicates thereof, and on demand deliver one copy to the applicant and the other to the company or its agent.

Sec. 17. 35 MRSA § 3243, first sentence, is amended to read:

For all property taken by the exercise of the right of eminent domain the owners are entitled to damages **as if the land were taken for highway purposes under Title 23, chapter 3.** The damages are to be paid by the taker and estimated by the county commissioners, on written application of either party, made within 3 years after such taking; or, if proceedings thus commenced fail for causes not affecting the merits, new ones may be commenced within one year thereafter, and when no estimate is made within such time, the owner may maintain a civil action or have any remedy provided.

FISCAL NOTE

The cost caused by passage of this bill is not capable of determination at this time.

STATEMENT OF FACT

It is the intent of this Act to alter the basis of compensation to landowners in eminent domain proceedings by limiting the setting off of benefits that derive from the condemnation to an amount not to exceed the damage to the remaining property caused by the condemnation. The statutes delegating the state's eminent domain power are also amended to conform to this valuation procedure.