

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

**Legislative Document**

**No. 229**

H. P. 140

House of Representatives, January 12, 1981

Speaker laid before the House and on Motion of Mr. Cox of Brewer, referred to the Committee on Legal Affairs. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Beaulieu of Portland.

Cosponsor: Mr. Brenerman of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

**AN ACT to Provide a Speedy Procedure to Authorize the Demolition of Unsafe and Irreparable Buildings and Structures.**

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

17 MRSA § 2859 is enacted to read:

**§ 2859. Summary process**

In cases involving an immediate and serious threat to the public health, safety or welfare, in addition to any other remedies, a municipality may obtain an order of demolition by summary process in Superior Court, in accordance with this section.

1. Commencement of action. A municipality, acting through its building inspector, code enforcement officer, fire chief or municipal officers, shall file a verified complaint setting forth such facts as would justify a conclusion that a building or structure is "dangerous", as that term is defined in section 2851; and shall state therein that the public health, safety or welfare requires the immediate removal of that building or structure.

2. Order of notice. Whenever a complaint is filed under this section, the justice before whom it is brought, acting ex parte, shall promptly issue an order:

A. Requiring the owner and all parties-in-interest, as that term is defined in

the statutes governing foreclosure by civil action, to appear and show cause why the building or structure should not be ordered demolished;

B. Specifying the method of service of the order and the complaint;

C. Setting a time and place for hearing the complaint, which shall be the earliest possible time but not be later than 10 days from the date of filing; and

D. Fixing the time for filing an answer to the complaint if the court determines that an answer is required.

3. Enlargement of time; default. The court may for good cause shown enlarge the time for the hearing. If the owner or parties-in-interest, or any of them, fail to answer, if an answer is required, or fail to appear as directed, or to attend the hearing at the time appointed or as enlarged, the court shall order a default judgment to be entered with respect to the owner or parties-in-interest.

4. Hearing. After hearing, the court shall enter judgment. If the judgment requires removal of the building or structure, the court shall award costs to the municipality as authorized by this subchapter. The award of costs may be contested and damages sought in a separate action to the extent permitted by subsection 7.

5. Appeal. No judgment requiring demolition issued pursuant to this section may be appealed. The owner of a building or structure which is the subject of an order issued under this section, or a party-in-interest, may appeal the award of costs, if any, or seek damages for wrongful removal pursuant to subsection 7.

6. Stay. No judgment authorizing demolition may be stayed pending appeal, unless the court first determines that granting a stay would not pose a significant risk to the public health, safety or welfare.

7. Damages. Any complaint which either seeks damages for the wrongful removal of a building or structure or challenges the award of costs must be filed no later than 30 days from the date of the judgment or order which is the subject of the appeal. The damages which may be awarded for wrongful demolition are limited to the actual value of the structure at the time of its removal. The provisions of Title 14 section 7552 and section 7555 do not apply. If the municipality should prevail, the court may award it its costs in defending any appeal which may include, but are not limited to, reasonable attorney's fees.

#### STATEMENT OF FACT

This bill provides a speedy judicial proceeding to enable a municipality to demolish a dangerous building or structure posing an immediate and serious threat to the public health, safety or welfare. The current statutory provisions concerning dangerous buildings can result in significant time delays before a building is actually demolished. The bill would allow a Superior Court to order demolition within 10 days of a complaint being filed by the municipality.