

MAINE STATE LEGISLATURE

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L.D. 2338

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(Filing No. H- 616)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
SECOND REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 1701, L.D. 2338,
Bill, "AN ACT to Give the Commissioner of
Transportation Power to Condemn Existing Rail Lines
for Transfer to Safe, Reliable and Efficient Rail
Operators."

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Amend the bill by striking out everything after
the enacting clause and inserting in its place the
following:

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'23 MRSA c. 615 is enacted to read:

16

CHAPTER 615

17

ACQUISITION OF RAILROAD LINES

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§7151. Legislative findings; declaration of policy

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1. Legislative findings. The Legislature finds
that safe, efficient and reliable rail service is
essential to the economy of the State, the economic
livelihood of industries located in the State,
conservation and protection of the environment and the
quality of life of the citizens of the State. The
Legislature further finds that safe and efficient
railroad service is essential to the State's public
safety and the continued health and well-being of its

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1 citizens, particularly because of railroad
2 transportation of bulk cargoes and hazardous and toxic
3 substances, and the significant dangers that result
4 from mishandling those and other cargoes.

5 2. Declaration of policy. It is declared to be
6 the policy of the State that the State and its
7 agencies shall cooperate with the Congress of the
8 United States and the appropriate federal agencies to
9 assure the development and maintenance of safe,
10 efficient and reliable rail service for the State.
11 For any railroad line acquired under this chapter, it
12 is the intent of the Legislature that the State may
13 acquire the railroad line, but the State may not be an
14 operator of the railroad or a rail carrier under
15 federal law.

16 §7152. Definitions

17 As used in this chapter, unless the context
18 otherwise indicates, the following terms have the
19 following meanings.

20 1. Financially responsible person. "Financially
21 responsible person" means a financially responsible
22 person as defined in the United States Code, Title 49,
23 Section 10910(a) and who intends to acquire, lease or
24 contract to operate all or part of the railroad line
25 in question.

26 2. Person. "Person" means a natural person,
27 corporation, partnership or state agency.

28 3. Railroad line. "Railroad line" means the
29 right-of-way, track, track appurtenances, ties,
30 bridges, station houses, sidings, terminals, and other
31 appurtenant structures of a railroad.

32 §7153. Hearings and report

33 1. Request for hearing. The department shall
34 hold a hearing with regard to a railroad line if
35 requested by any of the following:

36 A. A shipper or shippers whose traffic on the
37 railroad line totaled 500 tons in the year
38 immediately preceding the application;

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1 B. Any municipality having a siding, terminal,
2 station or agency station of the railroad line
3 within its bounds; or

4 C. A financially responsible person.

5 2. Notice, testimony at hearing. Not less than
6 14 days prior to holding a hearing the department
7 shall send written notice of the date and location to
8 the parties requesting a hearing as well as the
9 affected railroad company. In addition, the
10 department shall publish 2 notices of the hearing in a
11 newspaper of general circulation in the area of the
12 state affected. Testimony received at the hearing may
13 include the following:

14 A. Whether the railroad has adequate rail service
15 to fulfill public convenience and necessity;

16 B. Whether the operator of the railroad is
17 providing safe, efficient and reliable rail
18 service;

19 C. Whether the rail service over the railroad has
20 substantially impaired the ability of the shippers
21 or municipalities that depend upon it;

22 D. Whether the operation of the railroad has
23 endangered the lives or property of the citizens
24 of this State, including railroad employees;

25 E. Whether the operator of the railroad has
26 refused or failed within a reasonable time to make
27 necessary improvement to provide safe, efficient
28 and reliable rail service; and

29 F. Other relevant issues.

30 3. Report. Upon conclusion of the hearing, the
31 department shall issue a report concerning the
32 operation of the railroad which shall be forwarded to
33 the petitioning parties as well as the railroad
34 company. In addition, this report shall be presented
35 to the Governor as well as the Speaker of the House
36 and the President of the Senate. The department may

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1 also forward this report to the Interstate Commerce
2 Commission or the Federal Railroad Administration or
3 any other federal agency which is involved in the
4 regulation of railroads.

5 §7154. Acquisition of railroads

6 1. Authorization to acquire. Upon forwarding the
7 report set forth in section 7153, and if the report
8 recommends acquisition of the railroad line by the
9 department, the department may acquire, as provided in
10 this section, the railroad line and associated real
11 property located in the State and personal property,
12 including rail facilities such as equipment and
13 rolling stock when, in the judgment of the department,
14 acquisition of the railroad line is necessary to
15 protect the public interest.

16 2. Federal regulation. If the railroad line is
17 under the exclusive jurisdiction of a federal
18 regulatory agency, the department shall petition that
19 agency and take all steps necessary to obtain all
20 regulatory approvals required under federal law to
21 acquire the railroad line.

22 3. Acquisition. Upon obtaining all necessary
23 federal regulatory approvals or, if approval of a
24 federal regulatory agency is not required, the
25 department may acquire the railroad line and
26 associated property by purchase or the taking by
27 eminent domain.

28 4. Limitation. Any acquisition under this
29 section is subject to sufficient funds being made
30 available by legislative act to acquire the railroad
31 line.

32 5. Eminent domain. In the event that the
33 department decides to acquire the railroad line by
34 condemnation, the department shall have the railroad
35 line and associated property appraised and shall offer
36 to the owner as just compensation the constitutional
37 minimum value, which shall be not less than the net
38 liquidation value or the value as a going concern,
39 whichever is greater, but shall not include the cost
40 of providing a protective arrangement concerning the

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1 interest of the railroad's employees.

2 The department shall file in the registry of deeds for
3 the county or counties, or registry district or
4 districts, where the railroad line is located a notice
5 of condemnation which shall contain a description of
6 the property and the interest taken and the name or
7 names of the owner or owners of record so far as they
8 can be reasonably determined. The department may join
9 in the same notice one or more separate properties
10 whether in the same or different ownership. A check
11 in the amount of the offer and a copy of the notice of
12 condemnation shall be served on the owner or owners of
13 record. In case there is multiple ownership, the
14 check may be served on any one of the owners of each
15 separate property. The notice of condemnation shall be
16 published once in a newspaper of general circulation
17 in the county where the property is located and that
18 publication shall constitute service on any unknown
19 owner or owners or other persons who may have or claim
20 an interest in the property.

21 6. Appeals. In the event that any owner or
22 owners of record are aggrieved by the department's
23 offer, they may appeal from it to the Kennebec County
24 Superior Court within 30 days after the date of
25 service or publication of the notice of condemnation.
26 The appeal shall be taken by filing a complaint
27 setting forth the facts upon which the case shall be
28 tried according to the Maine Rules of Civil
29 Procedure. The Superior Court shall determine
30 compensation by a jury verdict or, if all parties
31 agree, by the court without a jury or by a referee or
32 referees and shall render judgment for any
33 compensation, with interest when it is due, and for
34 costs in favor of the party entitled to them, pursuant
35 to just compensation standards set forth in subsection
36 5.

37 7. Use of railroad line. The department may
38 lease the railroad line, or otherwise contract for
39 operation of the railroad line, to a railroad operator
40 who is a financially responsible person, or it may
41 hold and manage the railroad line for future
42 transportation use.

43 \$7155. Conditions of sale, lease and operation

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1 1. Financial conditions on sale, lease or
2 operating contract. Any railroad line acquired
3 pursuant to this chapter may be sold, leased or
4 contracted to an operator, but only upon terms at
5 least as favorable to the State as follows:

6 A. All of the costs of acquiring the railroad
7 line and associated property shall be recovered by
8 the State; and

9 B. The credit of the State shall not be pledged
10 unless separately authorized as required by the
11 Constitution of Maine, Article IX, Section 14.

12 2. State operation of railroad prohibited. In no
13 event may the department or any other unit of State
14 Government directly operate a railroad over a railroad
15 line acquired under this chapter. The department may
16 own the railroad line and lease or otherwise contract
17 for its use by a private operator.

18 §7156. Employee protection

19 Any person acquiring or operating a railroad line
20 under this chapter shall:

21 1. Hiring priority. Give a first right of hire
22 to fill any subordinate official or nonmanagement
23 position in the staffing of the new rail operation in
24 the following order of priority:

25 A. First, all employees who are required to be
26 accorded priority under federal law, employee
27 protection obligations imposed by law, regulations
28 or contracts which require the new operator to
29 select employees of the prior operator, and
30 existing or future collective bargaining
31 agreements;

32 B. Second, all employees, in seniority order for
33 each craft or class, who hold or held seniority
34 rights in, or in connection with, the railroad
35 line when it was last operated by its prior
36 operator;

37 C. Third, employees drawing benefits under the

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1 United States Railroad Unemployment Insurance Act,
2 United States Code, Title 45, chapter 11, first in
3 the geographical area in which the railroad line
4 is located, and then elsewhere within the State;
5 and

6 D. Fourth, any other individual;

7 2. Existing employment obligations and practices.
8 Assume the existing employment obligations and
9 practices of the railroad whose property is condemned,
10 including all agreements governing rates of pay, rules
11 and working conditions, until changes are made by
12 agreement or otherwise, in accordance with applicable
13 law; and

14 3. Employee protection. Agree to provide a fair
15 arrangement to protect the interests of railroad
16 employees who are affected by the condemnation which
17 is at least as protective of the interests of those
18 employees as the levels of protection established by
19 regulation or decision of the Interstate Commerce
20 Commission.

21 Any person who is entitled to priority of employment
22 under this section shall be presumed to be physically
23 and mentally qualified to perform the same or
24 comparable work with the new employer.

25 FISCAL NOTE

26 It is anticipated that enactment of this
27 legislation would result in no net fiscal impact to
28 the Department of Transportation. Although this
29 legislation allows the acquisition of a railroad,
30 that acquisition is subject to sufficient funds being
31 made available by further legislative act. This bill
32 includes a provision which requires that all costs of
33 acquiring the railroad line and property shall be
34 recovered by the State. It is anticipated that any
35 costs relating to the holding of hearings, issuing of
36 reports and other related expenses would be absorbed
37 by the Department of Transportation, using existing
38 resources.'

1 STATEMENT OF FACT

2 This committee amendment replaces the original
3 bill, and has the following provisions.

4 The amendment sets forth the Legislature's
5 findings and policy with respect to railroad operation
6 in this State.

7 The amendment sets forth definitions. Definitions
8 of "railroad" and "railroad company" from the Maine
9 Revised Statutes, Title 23, section 5001 apply as
10 follows.

11 "Railroad" includes every commercial, interurban
12 and other railway and each and every branch and
13 extension thereof by whatsoever power operated,
14 together with all tracks, bridges, trestles,
15 rights-of-way, subways, tunnels, stations, depots,
16 union depots, ferries, yards, grounds, terminals,
17 terminal facilities, structures and equipment and all
18 other real estate, fixtures and personal property of
19 every kind used in connection therewith, owned,
20 controlled, operated or managed for public use in the
21 transportation of persons or property.

22 "Railroad company" includes every corporation or
23 person, their lessees, trustees, receivers or trustees
24 appointed by any court owning, controlling, operating
25 or managing any railroad for compensation within this
26 State.

27 The amendment establishes a process by which the
28 Department of Transportation may hold a hearing
29 concerning the operation of any railroad in the
30 State. Shippers of 500 tons or more a year,
31 municipalities having railroad terminals or sidings or
32 agencies or a financially responsible person, as
33 defined in the United States Code, Title 49, Section
34 10910(a) who intends to acquire or operate the
35 railroad may require the department to hold a
36 hearing. Upon the conclusion of any hearing, the
37 department shall issue a report which shall be
38 forwarded to all parties as well as to the Governor,
39 Speaker of the House and the President of the Senate.

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1 The department may pursue 3 courses of action.
2 The first would be to issue a report with its findings
3 and recommendations. The 2nd would be to forward its
4 report to an appropriate federal agency, such as the
5 Interstate Commerce Commission or the Federal Railroad
6 Administration. The 3rd would be to petition the
7 appropriate federal agency for some form of relief.
8 This may include acquiring the railroad line.

9 The department, by virtue of the Maine Revised
10 Statutes, Title 23, section 4206, subsection 5 is
11 already empowered to promulgate any necessary rules
12 and has the authority to compel attendance and
13 testimony of witnesses at any hearings.

14 The amendment sets forth the procedure by which
15 the department may acquire a railroad line and its
16 equipment and rolling stock. If the railroad line is
17 under the exclusive jurisdiction of a federal
18 regulatory agency, the department is authorized to
19 petition that agency to acquire the railroad line.
20 After receiving federal approval or, if federal
21 regulatory approval is not required, the department
22 may acquire the line by purchase or the taking by
23 eminent domain. An appeal procedure is provided in
24 case the owners of the railroad are aggrieved by the
25 department's offer of compensation.

26 The amendment imposes stringent conditions upon
27 how any railroad line acquired may be sold or leased:
28 All costs of acquisition shall be recovered by the
29 State; the credit of the State shall not be pledged
30 without separate authorization; and the State itself
31 shall not operate the railroad.

32 The amendment provides for employee protection in
33 a manner similar to the Railroad Employee Equity Act,
34 Title 26, chapter 27, in any sale or lease of a line
35 acquired or operated under this Title 23, chapter 615.

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