

MAINE STATE LEGISLATURE

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(AFTER DEADLINE)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2338

H.P. 1701 House of Representatives, February 23, 1988

Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Transportation suggested
and ordered printed.

EDWIN H. PERT, Clerk

Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by President PRAY of Penobscot,
Representative CARTER of Winslow, and Senator DUTREMBLE of
York.

STATE OF MAINE

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

1 AN ACT to Give the Commissioner of
2 Transportation Power to Condemn
3 Existing Rail Lines for Transfer to
4 Safe, Reliable and Efficient Rail
5 Operators.
6

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

9 23 MRSA c. 608 is enacted to read:

1 1. Public convenience and necessity. Adequate
2 rail service over the rail line or lines which are the
3 subject of an application under section 6054 is
4 required by the public convenience and necessity;

5 2. Failure to provide safe, efficient or reliable
6 service. The railroad which is responsible for
7 providing rail service over the rail line or lines
8 which are the subject of an application under section
9 6054 is not providing safe, efficient or reliable rail
10 service over that line or lines and, as a consequence,
11 has substantially impaired the ability of the shippers
12 which depend upon that line or lines to remain
13 economically viable, has recklessly endangered the
14 lives or property of the citizens of this State,
15 including rail employees;

16 3. Failure to make necessary improvements. The
17 railroad which is responsible for providing rail
18 service over the rail line or lines which are the
19 subject of an application under section 6054 has
20 refused or failed within a reasonable time to make the
21 necessary improvements to provide safe, efficient and
22 reliable rail service; and

23 4. Lease or contract by financially responsible
24 person. A financially responsible person is ready,
25 willing and able to lease or contract for the use of
26 rail properties of the railroad to be condemned and to
27 operate those properties in a safe, efficient and
28 reliable manner.

29 §6054. Procedures

30 1. Application by shipper or financially
31 responsible person. Any shipper or financially
32 responsible person, as defined in the United States
33 Code, Title 49, Section 10910, Subsection a, may begin
34 a proceeding under this chapter by filing with the
35 department an application which identifies the rail
36 line or lines over which the applicant alleges the
37 railroad is not providing safe, reliable and efficient
38 rail service. The application shall set forth

1 sufficient facts to show that:

2 A. The rail service being provided by the
3 railroad which is responsible for operating that
4 line or lines is not adequate for shippers which
5 depend on that line, or is being operated in a
6 manner which is harmful to the environment or to
7 the lives or property of citizens of this State;
8 and

9 B. There is a financially reliable person who is
10 ready, willing and able both to lease or contract
11 for the use of rail properties at issue and to
12 operate those properties in a safe, reliable and
13 efficient manner.

14 2. Application by commissioner. A proceeding
15 under this chapter may be initiated by the
16 commissioner, in which case the application need not
17 show that there is a financially responsible person
18 ready, willing and able to lease or contract for the
19 use of rail properties at issue and to operate the
20 rail properties at issue.

21 3. Service; publication. An application filed
22 under this section shall be served upon the railroad
23 which is responsible for operating the rail line or
24 lines which is or are the subject of the application;
25 any owner of the rail line or lines at issue; all
26 shippers which use the rail line or lines at issue
27 during any of the 12 months prior to the date the
28 application was filed; any municipality located near
29 or on the rail line or lines at issue; and the
30 employee representatives of the rail employees who may
31 be affected by the granting of the application. The
32 applicant shall also cause an accurate and
33 understandable summary of the application to be
34 published in a newspaper of general circulation in
35 each area which will be affected by a decision on the
36 application.

37 4. Intervention. Any person, including any
38 representative or corporation, required to be served
39 with a copy of the application, and any financially

1 responsible person willing to lease or contract for
2 the use of the rail properties at issue may intervene
3 as of right in a proceeding under this section at any
4 time prior to a final decision. Intervention of other
5 parties shall be granted liberally in order that a
6 complete record may be developed.

7 5. Dismissal; public hearing. The commissioner
8 may dismiss an application filed under subsection 1 if
9 the commissioner concludes that it fails to comply
10 with that subsection or the commissioner may require
11 the applicant to supplement its application before
12 proceeding further. If the commissioner concludes
13 that the application under subsection 1 complies with
14 that subsection and has been served in accordance with
15 subsection 3, the commissioner shall hold a public
16 hearing after notice as required by the provisions of
17 the Maine Administrative Procedure Act, Title 5,
18 chapter 375.

19 6. Decision of commissioner. At the conclusion
20 of the hearing, the commissioner shall issue a written
21 decision making findings of fact and explaining the
22 commissioner's conclusion whether to exercise the
23 power of eminent domain granted by this chapter. The
24 commissioner's decision to exercise the power of
25 eminent domain shall set forth the following:

26 A. A description of the property, both real and
27 personal, to be condemned which, in the
28 commissioner's opinion, is reasonably necessary to
29 enable the new operator to provide safe, reliable
30 and efficient rail service;

31 B. The commissioner's valuation of that property;

32 C. The identity of the financially responsible
33 person selected by the commissioner to lease or
34 contract for the use of the property;

35 D. Any conditions other than those set forth in
36 section 6055, subsection 2;

37 E. Any other conditions which the commissioner
38 believes should be imposed to make the transfer

1 just and within the public's interest.

2 Any agreement between the owner of the property to be
3 condemned and another party to transfer the rail
4 properties which are the subject of a decision by the
5 commissioner under this subsection shall be void as
6 contrary to the public policy of this State if that
7 agreement to transfer does not include the conditions
8 set forth in section 6055, subsection 2. If the owner
9 of the property to be condemned and the financially
10 responsible person selected by the commissioner do not
11 enter into an agreement to transfer the rail
12 properties described in the decision within 30 days
13 after that decision is served, the commissioner shall
14 file a complaint in the Superior Court in the county
15 in which the railroad's main office in this State is
16 located to condemn the rail property set forth in the
17 decision. That court shall have jurisdiction over all
18 property of the railroad located in this State.

19 7. Review. Review of the commissioner's decision
20 shall be as follows.

21 A. A decision of the commissioner declining to
22 exercise the powers of eminent domain shall not be
23 reviewable.

24 B. A decision of the commissioner to exercise
25 the power of eminent domain shall be reviewable by
26 the owner of the property to be condemned in
27 accordance with the standards set forth in the
28 Maine Administrative Procedure Act, Title 5,
29 chapter 375, subchapter VII, except that:

30 (1) The review proceeding shall be heard by
31 the Superior Court as part of the
32 condemnation proceeding;

33 (2) Review of a decision on an application
34 filed by the commissioner under subsection 2
35 shall be de novo; and

36 (3) The commissioner's valuation of the
37 property shall be conclusive unless the court
38 concludes that the commissioner's valuation

1 is less than the constitutional minimum value
2 of the property being condemned, in which
3 case the valuation shall be the
4 constitutional minimum value as established
5 by the court.

6 §6055. Conditions

7 1. Interstate Commerce Commission authorization
8 or exemption. No condemnation authorized by this
9 chapter may be made effective unless the financially
10 responsible person who is to acquire or otherwise
11 obtain and to operate the property being condemned has
12 received the necessary authorization from the
13 Interstate Commerce Commission to obtain and to
14 operate the rail line or lines being condemned, or has
15 been exempted by the Interstate Commerce Commission
16 from the applicable prior approval requirements of the
17 Interstate Commerce Act, United States Code, Title 49,
18 Subtitle IV.

19 2. Superior Court order. Any order of the
20 Superior Court condemning rail property pursuant to
21 this chapter shall require the financially responsible
22 person who is to operate the rail line or lines to:

23 A. Hire employees of the railroad whose property
24 is being condemned before it hires new employees
25 or uses its existing employees to perform any work
26 in connection with the rail service to be operated
27 over, or in connection with, the property being
28 condemned;

29 B. Assume the existing employment obligations and
30 practices of the railroad whose property is being
31 condemned, including all agreements governing
32 rates of pay, rules and working conditions, until
33 changes are made in accordance with applicable law
34 or by agreement;

35 C. Assume the financial obligations of the
36 railroad, whose property is being condemned, which
37 are secured by the property being condemned; and

1 D. Agree to provide a fair arrangement to protect
2 the interests of rail employees who will be
3 affected by the condemnation which is at least as
4 protective of the interests of those employees as
5 those levels of protection established by decision
6 by the Interstate Commerce Commission.

7 §6056. Rulemaking

8 1. Commissioner. The commissioner shall
9 promulgate rules in accordance with the Maine
10 Administrative Procedure Act, Title 5, chapter 375,
11 concerning the implementation of this chapter,
12 including procedures to govern all applications under
13 section 6054 of this chapter.

14 2. Superior Court. The Superior Court may
15 promulgate rules for the conduct of the condemnation
16 proceedings pursuant to this chapter.

17 STATEMENT OF FACT

18 This bill grants to the Commissioner of
19 Transportation the power of eminent domain to petition
20 the Superior Court to condemn existing rail lines in
21 this State for use in developing and maintaining safe,
22 efficient and reliable rail service.

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