

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2389

H.P. 1743 House of Representatives, March 1, 1988
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Transportation suggested
and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative SIMPSON of Casco.

Cosponsored by Senator DOW of Kennebec, Representatives
McPHERSON of Eliot and HOLLOWAY of Edgecomb.

STATE OF MAINE

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

1 AN ACT to Regulate Development Along
2 Highways.
3

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

6 Sec. 1. 23 MRSA §704, as amended by PL 1971, c.
7 593, §22, is repealed.

8 Sec. 2. 23 MRSA §704-A is enacted to read:

1 §704-A. Entrances to highways regulated

2 1. As used in this section, unless the context
3 otherwise indicates, the following terms have the
4 following meanings.

5 A. "Access control plan" means a roadway design
6 plan which designates preferred access locations
7 and their designs to bring those portions of
8 roadway included in the access control plan into
9 conformance with their functional classification
10 to the extent feasible.

11 B. "Appropriate local authority" means the county
12 commissioners if the driveway is to be located in
13 the unincorporated area of a county and the
14 governing body of the municipality if the driveway
15 is to be located within an incorporated
16 municipality.

17 C. "Functional classification" means a
18 classification system that defines a public
19 roadway according to its purposes in the local or
20 statewide highway plans. The department shall
21 determine the functional classification of all
22 state highways. The functional classification of
23 county roads and city streets shall be determined
24 by the appropriate local authority.

25 D. "General street system" means the
26 interconnecting network of city streets, county
27 roads and state highways in an area.

28 E. "Issuing authority" means the entity which
29 issues access permits and includes the county
30 commissioners, the governing body of a
31 municipality and the department.

32 F. "Local road" means a road maintained under the
33 provision in Part 2, and "local street" means a
34 municipal street as maintained under Part 3.

35 2. Constructing driveways. It is unlawful to
36 construct or maintain any driveway, entrance or

1 approach within the right-of-way of any state or state
2 aid highway:

3 A. If it lies outside of the compact or built-up
4 section, so called, without a written permit from
5 the department; or

6 B. If it lies within the compact or built-up
7 section, so called, without a written permit from
8 the proper town officials.

9 The right-of-way shall be deemed the full width of the
10 right-of-way as laid out by the State, county or the
11 town. Access to state highways shall be governed by
12 subsection 3.

13 3. Access to state highways. This subsection
14 governs access to state highways.

15 A. Access to state highways shall be regulated by
16 the following provisions.

17 (1) The Department of Transportation and
18 local governments are authorized to regulate
19 vehicular access to or from any public
20 highway under their respective jurisdiction
21 from or to property adjoining a public
22 highway to protect the public health, safety
23 and welfare, to maintain smooth traffic flow,
24 to maintain highway right-of-way drainage and
25 to protect the functional level of public
26 highways. In furtherance of these purposes,
27 all state highways are deemed to be
28 controlled-access highways, as defined in
29 section 301.

30 (2) Vehicular access to or from property
31 adjoining a state highway shall be provided
32 to the general street system, unless access
33 has been acquired by a public authority.
34 Police, fire, ambulance and other emergency
35 stations shall have a right of direct access
36 to state highways. After June 30, 1989, no
37 person may submit an application for
38 subdivision approval to a local authority.

1 unless the subdivision plan or plat provides
2 that all lots and parcels created by the
3 subdivision have access to the state highway
4 system in conformance with the state highway
5 access code.

6 (3) The provisions of this section shall not
7 be deemed to deny reasonable access to the
8 general street system.

9 B. After consultation with units of local
10 government, the department, by June 30, 1989,
11 shall submit a state highway access code to the
12 Legislative Council.

13 C. The department shall adopt a state highway
14 access code by rule, for the implementation of
15 this section, on or after June 30, 1989. The
16 access code shall address the design and location
17 of driveways and other points of access to public
18 highways. The access code shall be consistent
19 with the authority granted in this section and
20 shall be based upon consideration of existing and
21 projected traffic volumes, the functional
22 classification of public highways, adopted local
23 transportation plans and needs, drainage
24 requirements, the character of lands adjoining the
25 highway, adopted local land use plans and zoning,
26 the type and volume of traffic to use the
27 driveway, other operational aspects of the
28 driveway, the availability of vehicular access
29 from local streets and roads rather than a state
30 highway and reasonable access by city streets and
31 county roads.

32 D. Construction of driveways shall require access
33 permits under the following provisions.

34 (1) After the effective date of the access
35 code, no person may construct any driveway
36 providing vehicular access to or from any
37 state highway from or to property adjoining a
38 state highway without an access permit issued
39 by the appropriate local authority with the
40 written approval of the department. If the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

24
25
26
27
28

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

local authority fails to act within 45 days after an access permit has been requested, the permit shall be deemed issued subject to written approval of the department. If the department does not act upon an access permit within 20 days after notice by the local authority, or within 20 days after local authorities should have acted, whichever is the lesser, the permit shall be deemed approved. Upon written request by a local authority, the department shall administer or assist in the administration of access permits in that jurisdiction. If the department undertakes to administer access permits in a jurisdiction, it shall act upon requested access permits within 45 days of request. If the department fails to act within 45 days upon a requested access permit, the permit shall be deemed approved. Access permits shall be issued only in compliance with the access code and may include terms and conditions authorized by the access code.

(2) The issuing authority shall establish a reasonable schedule of fees for access permits issued pursuant to the access code and this section, which fees shall not exceed the costs of administration of access permits.

(3) When a permitted driveway is constructed or utilized in violation of the access code, the terms and conditions of the permit or this section, either the issuing authority or the department, or both, may obtain a court order enjoining the violation. Access permits may be revoked by the issuing authority if, at any time, the permitted driveway and its use fail to meet the requirements of this section, the access code or the terms and conditions of the permit. The department may install barriers across or remove any driveway providing direct access to a state highway which is constructed without an access permit. Any such

1 violation may be subject to a civil
2 forfeiture or penalty as set by rule by the
3 department if not less than \$100 nor more
4 than \$10,000.

5 E. Existing driveways shall be governed under the
6 following provisions.

7 (1) The provisions of this section do not
8 apply to driveways in existence on June 30,
9 1989, unless specifically stated otherwise.

10 (2) Any driveway, whether constructed
11 before, on or after June 30, 1989, may be
12 required by the department with written
13 concurrence of the appropriate local
14 authority to be reconstructed or relocated to
15 conform to the access code, whether at the
16 property owner's expense if the
17 reconstruction or relocation is necessitated
18 by a change in the use of the property which
19 results in a change in the type of driveway
20 operation or at the expense of the department
21 if the reconstruction or relocation is
22 necessitated by changes in road or traffic
23 conditions. The necessity for the relocation
24 or reconstruction shall be determined by
25 reference to the standards set forth in the
26 access code.

27 (3) Any party who has received an adverse
28 decision by the department may request and
29 shall receive a hearing before an independent
30 hearing officer. The hearing shall be
31 conducted in accordance with the provisions
32 of the Maine Administrative Procedure Act,
33 Title 5, chapter 375. Decision by the
34 department or by a hearing officer shall be
35 considered final agency action.

36 F. The issuing authority shall grant a variance
37 from the state highway access code if the variance
38 would not be inconsistent with paragraph A,
39 subparagraph (1) and if the variance is reasonably
40 necessary for the convenience, safety and welfare
41 of the public.

1

STATEMENT OF FACT

2

3

4

5

6

This bill increases the authority of the State Government and local governments to regulate the ingress and egress from land along state highways. The purpose would be to enhance public safety and the regular flow of traffic.

7

4013012788 .