

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)

5'
R. of S.

1

L.D. 2401

2

(Filing No. S-431)

3

STATE OF MAINE

4

SENATE

5

113TH LEGISLATURE

6

SECOND REGULAR SESSION

7

SENATE AMENDMENT " A " to H.P. 1752, L.D. 2401,
8 Bill, "AN ACT to Establish a Permit to Operate a
9 Railroad."

10

Amend the Bill by striking out all of the title
11 and inserting in its place the following:

12

'AN ACT to Require Application and Approval for
13 Railroads to Receive Financial Assistance from the
14 State.'

15

Further amend the Bill by striking out everything
16 after the enacting clause and inserting in its place
17 the following:

18

'Sec. 1. 23 MRSA §4211-A is enacted to read:

19

§4211-A. Application for financial assistance

20

1. Annual application and approval required. Any
21 person, corporation, partnership or other business
22 entity which provides railroad transportation for
23 compensation in the State, or seeks to acquire or
24 construct additional rail lines in the State, shall
25 not receive financial assistance from the State,
26 including, but not limited to, grants, loans,
27 subsidies, tax exemptions, cost reimbursement for
28 maintenance of railroad crossings or payments from
29 other sources unless that person, corporation,

SENATE AMENDMENT "A " to H.P. 1752, L.D. 2401

1 partnership or other business entity has applied to
2 the Commissioner of Transportation for the privilege
3 of receiving financial assistance from the State, for
4 the State's fiscal year in question and the
5 commissioner has approved, in accordance with this
6 section.

7 2. Criteria. In determining whether to approve
8 an application under this section, the commissioner
9 shall consider, among other matters:

10 A. The need for this rail service;

11 B. The impact of this rail service on other rail
12 carriers within this State;

13 C. The financial viability of the entity
14 proposing or providing this rail service;

15 D. The fitness and ability, including management,
16 proposing or providing the rail service to provide
17 safe, efficient and reliable rail service; and

18 E. The effect of the rail service upon the
19 health, safety and general welfare of the people
20 of the State.

21 For any entity which already provides railroad
22 transportation for compensation within the State, the
23 commissioner shall also consider the record of that
24 railroad in investing within the State, maintaining
25 track and rights-of-way within the State, use of funds
26 from previous financial assistance from the State and
27 the safety, reliability and efficiency of the service
28 actually provided by that railroad within the State.

29 3. Procedure for entities seeking to acquire or
30 construct additional rail lines. When the commissioner
31 receives an application filed under subsection 1 from
32 an entity seeking to acquire or construct an
33 additional rail line or lines, the commissioner shall
34 commence a proceeding in accordance with this
35 subsection.

36 A. The commissioner shall provide notice of the
37 application by:

R. of S

SENATE AMENDMENT "A " to H.P. 1752, L.D. 2401

1 (1) Sending an accurate and understandable
2 summary of the application to a newspaper of
3 general circulation in each area affected by
4 the rail service for publication at the
5 applicant's expense;

6 (2) Causing the applicant to send a copy of
7 its application to all shippers which used
8 the rail line during any of the 12 months
9 prior to the date the application was filed,
10 as well as to those shippers who may
11 reasonably be expected to use that line
12 within one year from the date of application;

13 (3) Causing the applicant to send a copy of
14 its application to the employee
15 representatives of the employees of the
16 railroad or who may be affected by a proposed
17 rail service; and

18 (4) Causing the applicant to send a copy of
19 its application to any municipality served by
20 the rail line or in which that service may be
21 affected.

22 B. The commissioner shall hold a public hearing
23 on any application covered by this subsection, in
24 accordance with the Maine Administrative Procedure
25 Act, Title 5, chapter 375.

26 C. Any individual or representative required to
27 be served with a copy of the application has the
28 right to intervene in a proceeding under this
29 section. Intervention of other parties shall be
30 granted liberally in order that a complete record
31 may be developed.

32 4. Procedure for existing operations. When the
33 commissioner receives an application filed under
34 subsection 1 from an entity which intends only to
35 continue existing operations, the commissioner shall
36 commence a proceeding in accordance with this
37 subsection.

38 A. The commissioner shall provide notice of

R. of S.
SENATE AMENDMENT "A" to H.P. 1752, L.D. 2401

1 the application and opportunity for hearing
2 on any application covered by this subsection
3 by sending an accurate and understandable
4 summary of the application to a newspaper of
5 general circulation in each area affected by
6 the rail service for publication at the
7 applicant's expense.

8 B. The commissioner may hold a public
9 hearing on the application and shall hold a
10 hearing if requested by:

11 (1) A shipper or shippers whose traffic
12 on the railroad line totaled 500 tons in
13 the year preceding the application; or

14 (2) Any municipality having a siding,
15 terminal, station or agency station of
16 the railroad line within its bounds.

17 The hearing shall be subject to the Maine
18 Administrative Procedure Act, Title 5,
19 chapter 375.

20 5. Approval. At the conclusion of the
21 proceedings, and within 90 days of receiving the
22 application, the commissioner shall:

23 A. Approve the application as filed;

24 B. Approve the application with such conditions
25 as the commissioner determines necessary to assure
26 that the investment of state funds in providing
27 assistance for the rail service will be consistent
28 with the public interest; or

29 C. Deny the application.

30 Approval shall be valid for a year. Denial of an
31 application shall not prevent future submission of an
32 application by the same entity.

33 6. Temporary approval. When the commissioner
34 determines that the public interest requires immediate
35 financial assistance from the State to a railroad, the

R. of S.

SENATE AMENDMENT " A " to H.P. 1752, L.D. 2401

1 commissioner may issue temporary approval for a period
2 not to exceed 90 days without following the procedure
3 outlined in subsections 3 and 4.

4 7. Appeal. Any applicant or intervenor aggrieved
5 by the decision of the commissioner under subsection 5
6 has a right to judicial review in accordance with the
7 Maine Administrative Procedure Act, Title 5, chapter
8 375, subchapter VII.

9 8. Rules. The commissioner shall promulgate
10 rules, in accordance with the Maine Administrative
11 Procedure Act, Title 5, chapter 375, concerning the
12 implementation and enforcement of this section,
13 including procedures to ensure continuing compliance
14 with any conditions of approval by persons,
15 corporations or other entities, subject to this
16 section, and to govern revocation of approval in cases
17 of noncompliance.

18 9. Existing operations; temporary approval. For
19 any operation ongoing as of the effective date of this
20 section, as long as the ownership or management of
21 that operation is not transferred to another entity,
22 the commissioner shall issue temporary approval, valid
23 until March 1, 1989, to the railroad for financial
24 assistance to those ongoing operations, pending
25 receipt of and decision on an application from that
26 railroad under subsection 1.

27 Sec. 2. 23 MRSA c. 615 is enacted to read:

28 CHAPTER 615

29 RAIL SERVICE

30 §7101 Major modifications in rail service

31 1. Findings. The Legislature finds that it is in
32 the public interest that the State be promptly
33 informed of any proposed major modifications to the
34 rail service in this State.

35 2. Notice required. Any railroad which files a
36 petition or proposal with the United States Interstate
37 Commerce Commission concerning the sale, merger,

SENATE AMENDMENT "A " to H.P. 1752, L.D. 2401

1 abandonment or embargo of any railroad line in this
2 State shall concurrently file a copy of the petition
3 or proposal with the department. Any person,
4 corporation or other entity which proposes to acquire
5 or construct an additional railroad line in this State
6 or provide rail transportation over or by means of an
7 extended or additional railroad line and which files a
8 petition or proposal with the United States Interstate
9 Commerce Commission to do so shall concurrently file a
10 copy of the petition or proposal with the department.

11 3. Review; report. The department shall review
12 any petition or proposal for major modification to the
13 rail service in the State filed under subsection 2.
14 Upon conclusion of its review, the department shall
15 report to the Governor and the Legislature if the
16 proposal has a major effect on rail service in the
17 State.

18 Sec. 3. Appropriation. The following funds are
19 appropriated from the General Fund to carry out the
20 purposes of this Act.

21 1988-89

22 TRANSPORTATION, DEPARTMENT OF

23 Railroad Assistance Program

24	Personal Services	\$21,000
25	All Other	1,700
26		
27	Total	<u>\$22,700</u>

28 Provides funds for a
29 half-time project
30 attorney position to
31 promulgate rules in
32 accordance with the
33 Maine Administrative
34 Procedure Act, Maine
35 Revised Statutes,
36 Title 5, chapter 375.

37 FISCAL NOTE

38 If enacted, this bill would result in a General
39 Fund appropriation to the Department of

R. of S.

SENATE AMENDMENT " A" to H.P. 1752, L.D. 2401

1 Transportation, Railroad Assistance Program, Account
2 #01785.3, in the amount of \$22,700 for fiscal year
3 1989. This appropriation would provide funds for a
4 half-time project attorney position to promulgate
5 rules. In addition, it is anticipated that all costs
6 relating to the implementation of the bill, such as
7 public hearing costs, issuing reports and other
8 related expenses, would be absorbed by the Department
9 of Transportation utilizing existing resources.'

10

STATEMENT OF FACT

11 This amendment deletes from the bill any
12 requirement for a state permit to operate a railroad
13 and it does not affect the jurisdiction of the United
14 States Interstate Commerce Commission.

15 Section 1 of the amendment establishes a
16 requirement that any railroad that wishes to receive
17 financial assistance from the State, such as tax
18 benefits, grants, subsidies, loans or revenue from
19 other state sources, must annually submit an
20 application and receive approval from the Commissioner
21 of Transportation.

22 Section 2 of the amendment provides that the
23 Department of Transportation will be informed of
24 proposed major modifications in rail service at the
25 same time the petition or proposal to make this
26 modification is filed with the United States
27 Interstate Commerce Commission. The department will
28 review the proposal and will report on it to the
29 Governor and the Legislature, if it has a major effect
30 on rail service in the State.

31

5471040888

32 (Sen. MATTHEWS)

33 SPONSORED BY:

34

COUNTY: Kennebec

Page 7-LR5471