

MAINE STATE LEGISLATURE

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3.
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1 L.D. 2401
2 (Filing No. S-438)

3 STATE OF MAINE
4 SENATE
5 113TH LEGISLATURE
6 SECOND REGULAR SESSION

7 SENATE AMENDMENT " B " 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 and to Require Notice of Major Modifications in
15 Rail Service.'

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

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

20 §4211-A. Application for financial assistance

21 1. Annual application and approval required. Any
22 person, corporation, partnership or other business
23 entity which provides railroad transportation for
24 compensation in the State, or seeks to acquire or
25 construct additional rail lines in the State, shall
26 apply to the Department of Transportation for the
27 privilege of receiving financial assistance from the
28 State, for the year in question. Financial assistance

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1 from the State is defined as grants, loans, subsidies,
2 tax exemptions, cost reimbursement for maintenance of
3 railroad crossings or payments from other sources. The
4 applicant may not receive the financial assistance
5 unless the application is approved.

6 2. Criteria. In determining approval for an
7 application under this section, the department shall
8 consider, among other matters:

9 A. The need for this rail service;

10 B. The fitness and ability, including management,
11 financial viability and employee complement, of
12 the entity proposing or providing the rail service
13 to provide safe, efficient and reliable rail
14 service;

15 C. The effect of the rail service upon the
16 health, safety and general welfare of the people
17 of the State; and

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

27 3. Procedure for entities seeking to acquire or
28 construct additional rail lines. An entity seeking to
29 acquire or construct an additional rail line or lines
30 shall proceed in accordance with this subsection.

31 A. The applicant shall provide notice by:

32 (1) Publishing an accurate and
33 understandable summary of the application in
34 a newspaper of general circulation in each
35 area affected by the rail service;

36 (2) Mailing a copy of its application to all
37 shippers which used the rail line during any

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1 of the 12 months prior to the date the
2 application was filed, as well as those
3 shippers who may reasonably be expected to
4 use that line within one year from the date
5 of application;

6 (3) Mailing a copy of its application to the
7 employee representatives of the employees of
8 the railroad or who may be affected by a
9 proposed rail service; and

10 (4) Mailing a copy of its application to any
11 municipality served by the rail line or in
12 which that service may be affected.

13 B. After receipt of a substantially complete
14 application and compliance by the applicant with
15 the notice requirements of this subsection, the
16 department shall hold a public hearing on any
17 application covered by this subsection, in
18 accordance with its rules.

19 C. Any party affected by the application has the
20 right to intervene in a proceeding under this
21 section. Intervention of other parties shall be
22 granted liberally in order that a complete record
23 may be developed.

24 4. Procedure for existing operations. An entity
25 which intends only to continue existing operations
26 shall proceed in accordance with this subsection.

27 A. After receipt of a substantially complete
28 application, the department shall provide notice
29 of the application and opportunity for hearing on
30 any application covered by this subsection by
31 sending an accurate and understandable summary of
32 the application to a newspaper of general
33 circulation in each area affected by the rail
34 service for publication at the applicant's expense.

35 B. The department may hold a public hearing on
36 the application and shall hold a hearing when a
37 request for a hearing shows a substantial
38 likelihood that the application may be denied or
39 granted with qualifications under the criteria of
40 subsection 2 and the hearing is requested by:

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

4 (2) Any municipality having a siding,
5 terminal, station or agency station of the
6 railroad line within its bounds; or

7 (3) A petition of 25 individuals who state
8 that they are affected by the operation of
9 the railroad.

10 The hearing shall be subject to the rules of the
11 department.

12 5. Approval. At the conclusion of the
13 proceedings and within 30 days of the conclusion of
14 the public hearing, if any, the department shall:

15 A. Approve the application as filed;

16 B. Approve the application with such conditions
17 as the department determines necessary to assure
18 that the investment of state funds in providing
19 assistance for the rail service will be consistent
20 with the public interest; or

21 C. Deny the application.

22 Approval shall be valid for a year. In the case of
23 denial, reapplication shall be in accordance with the
24 rules of the department. Approval may be revoked in
25 case of noncompliance with any conditions.

26 6. Temporary approval. When the commissioner
27 determines that the public interest requires immediate
28 financial assistance from the State to a railroad, the
29 department may issue temporary approval for a period
30 not to exceed 90 days without notice or hearing.

31 7. Appeal. Any applicant or intervenor aggrieved
32 by the decision of the department under subsection 5
33 has a right to judicial review in accordance with the
34 Maine Administrative Procedure Act, Title 5, chapter
35 375, subchapter VII.

1 8. Rules. The department shall promulgate rules
2 concerning the implementation and enforcement of this
3 section.

4 9. Existing operations; temporary approval. Any
5 operation ongoing as of the effective date of this
6 section, as long as the ownership or management of
7 that operation is not transferred to another entity,
8 shall be deemed approved until March 1, 1989.

9 10. Consolidation of hearings. The Department may
10 consolidate any hearing under this section with
11 another hearing concerning railroad service by the
12 same entity in the same area.

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

14 CHAPTER 615

15 RAIL SERVICE

16 §7101 Major modifications in rail service

17 1. Findings. The Legislature finds that it is in
18 the public interest that the State be promptly
19 informed of any proposed major modifications to the
20 rail service in this State.

21 2. Notice required. Any railroad which files a
22 petition or proposal with the United States Interstate
23 Commerce Commission concerning the sale, merger,
24 abandonment or embargo of any railroad line in this
25 State shall concurrently file a copy of the petition
26 or proposal with the department. Any person,
27 corporation or other entity which proposes to acquire
28 or construct an additional railroad line in this State
29 or provide rail transportation over or by means of an
30 extended or additional railroad line and which files a
31 petition or proposal with the United States Interstate
32 Commerce Commission to do so shall concurrently file a
33 copy of the petition or proposal with the department.

34 3. Review; report. The department shall review
35 any petition or proposal for major modification to the
36 rail service in the State filed under subsection 2.

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1 Upon conclusion of its review, the department shall
2 report to the Governor and the Legislature if the
3 proposal has a major effect on rail service in the
4 State.

5 **Sec. 3. Appropriation.** The following funds are
6 appropriated from the General Fund to carry out the
7 purposes of this Act.

8 1988-89

9 TRANSPORTATION, DEPARTMENT OF

10 Railroad Assistance Program

11	Personal Services	\$21,000
12	All Other	1,700
13		
14	Total	<u>\$22,700</u>

15 Provides funds for a
16 half-time project
17 attorney position to
18 promulgate rules in
19 accordance with the
20 Maine Administrative
21 Procedure Act, Maine
22 Revised Statutes,
23 Title 5, chapter 375.

24 FISCAL NOTE

25 If enacted, this bill would result in a General
26 Fund appropriation to the Department of
27 Transportation, Railroad Assistance Program, Account
28 #01785.3, in the amount of \$22,700 for fiscal year
29 1989. This appropriation would provide funds for a
30 half-time project attorney position to promulgate
31 rules. In addition, it is anticipated that all costs
32 relating to the implementation of the bill, such as
33 public hearing costs, issuing reports and other
34 related expenses, would be absorbed by the Department
35 of Transportation utilizing existing resources.'

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1 STATEMENT OF FACT

2 The amendment deletes from the bill any
3 requirement for a state permit to operate a railroad,
4 and it does not affect the jurisdiction of the United
5 States Interstate Commerce Commission.

6 Section 1 of the amendment establishes a
7 requirement that any railroad that wishes to receive
8 financial assistance from the State, including tax
9 exemptions, grants, subsidies, loans, cost
10 reimbursement for maintenance of railroad crossings,
11 or payments from other sources must annually submit an
12 application and receive approval from the Department
13 of Transportation.

14 Section 2 of the amendment provides that the
15 Department of Transportation will be informed of
16 proposed major modifications in rail service at the
17 same time the petition or proposal to make this
18 modification is filed with the United States
19 Interstate Commerce Commission. The department will
20 review the proposal and will report on it to the
21 Governor and the Legislature, if it has a major effect
22 on rail service in the State.

23

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24 (Sen. BALDACCI)

25 SPONSORED BY: 

26 COUNTY: Penobscot

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