

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

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ONE HUNDRED AND THIRTEENTH LEGISLATURE

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Legislative Document

NO. 2401

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H.P. 1752                      House of Representatives, March 2, 1988  
Reported by Representative CARTER for the Legislative  
Task Force on Railroads pursuant to Public Law 1987, Chapter 5.  
Reference to the Committee on Transportation suggested  
and printing ordered under Joint Rule 18.

EDWIN H. PERT, Clerk

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STATE OF MAINE

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

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1                      AN ACT to Establish a Permit to Operate a  
2    Railroad.  
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4                      Be it enacted by the People of the State of Maine as  
5 follows:

6                      23 MRSA §4211-A is enacted to read:

7                      §4211-A. Permit required

1       1. Permit required. No person, corporation or  
2 other entity may provide railroad transportation for  
3 compensation in the State, acquire or construct an  
4 additional line of railroad in this State or provide  
5 rail transportation over or by means of an extended or  
6 additional railroad line in this State, without first  
7 obtaining from the Commissioner of Transportation a  
8 permit for the privilege of operating a railroad in  
9 this State.

10 This section does not apply to any operations ongoing  
11 as of the effective date of this section as long as  
12 the ownership or management of that operation is not  
13 transferred to another entity.

14       2. Criteria. In determining whether to issue a  
15 permit, the commissioner shall consider, among other  
16 matters:

17       A. The need for this rail service;

18       B. The impact of this rail service on other rail  
19 carriers within this State;

20       C. The financial viability of the rail carrier  
21 proposing this rail service;

22       D. Whether the person, corporation or other  
23 entity proposing the rail service has the fitness  
24 and ability, including management, financial  
25 stability and employee complement, to provide  
26 safe, efficient and reliable rail service; and

27       E. The effect of the rail service upon the  
28 health, safety and general welfare of the people  
29 of the State.

30       3. Application. A proceeding to obtain a permit  
31 from the commissioner under subsection 1 begins when  
32 an application is filed with the department. On  
33 receiving the application, the department shall:

34       A. Send an accurate and understandable summary of  
35 the application to a newspaper of general

1 circulation in each area that would be affected by  
2 the proposed rail service for publication at the  
3 applicant's expense;

4 B. Cause the applicant to send a copy of its  
5 application to all shippers which used the rail  
6 line during any of the 12 months prior to the date  
7 the application was filed, as well as to those  
8 shippers who may be expected to use that line;

9 C. Cause the applicant to send a copy of its  
10 application to the employee representatives of the  
11 employees who may be affected by the proposed rail  
12 service;

13 D. Cause the applicant to send a copy of its  
14 application to any municipality in which service  
15 may be affected; and

16 E. Take other reasonable and effective steps to  
17 publicize the application at the applicant's  
18 expense.

19 Any individual or representative required to be served  
20 with a copy of the application may intervene as of  
21 right in a proceeding under this section.  
22 Intervention of other parties shall be granted  
23 liberally in order that a complete record may be  
24 developed.

25 4. Proceeding. The commissioner shall hold a  
26 public hearing after notice as required by the  
27 provisions of the Maine Administrative Procedure Act,  
28 Title 5, chapter 375.

29 5. Approval. Approval or denial shall be as  
30 follows:

31 A. At the conclusion of the proceedings the  
32 commissioner may:

33 (1) Approve the application as filed;

34 (2) Approve the application with such  
35 modifications as the commissioner determines

1 necessary to assure that the proposed rail  
2 service will be and will remain consistent  
3 with the public interest; or

4 (3) Deny the application; or

5 B. If the commissioner approves the application  
6 with or without conditions, the commissioner shall  
7 issue to the applicant a permit describing the  
8 rail service being approved and the specific  
9 conditions, if any, imposed upon the applicant.

10 6. Temporary permits. When the commissioner  
11 determines that an emergency exists and that the  
12 public interest requires immediate institution of  
13 services, the commissioner may issue a temporary  
14 permit for a period not to exceed 90 days without  
15 following the procedure outlined in subsections 3 and  
16 4.

17 7. Appeal. Any applicant or intervenor aggrieved  
18 by the decision of the commissioner under subsection 5  
19 has a right to judicial review in accordance with the  
20 Maine Administrative Procedure Act, Title 5, chapter  
21 375, subchapter VII.

22 8. Rules. The commissioner shall promulgate  
23 rules, in accordance with the Maine Administrative  
24 Procedure Act, Title 5, chapter 375, concerning the  
25 implementation and enforcement of this section,  
26 including procedures to ensure continuing compliance  
27 by persons, corporations or other entities, subject to  
28 this section, and to govern revocation of certificates  
29 in cases of noncompliance.

30 STATEMENT OF FACT

31 Under this bill, any person, corporation or other  
32 entity wishing to establish a new railroad operation  
33 or to acquire a railroad operation through transfer of  
34 ownership or management in this State must receive a  
35 permit from the Commissioner of Transportation.

1           The bill establishes criteria to be used by the  
2 commissioner in his determination of whether to issue  
3 the permit, including the need for and impact of the  
4 rail service, the financial viability and stability of  
5 the railroad, the reliability and safety of the rail  
6 service to be provided and whether the railroad will  
7 comply with existing laws, rules and regulations and  
8 other obligations. The bill provides for review of  
9 the commissioner's decision under the Maine Revised  
10 Statutes, the Maine Administrative Procedure Act,  
11 Title 5, chapter 375, and directs the commissioner to  
12 promulgate rules covering implementation and  
13 enforcement of the permitting procedure and to ensure  
14 continuing compliance by railroads.

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