

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 999

S.P. 375

In Senate, March 30, 1989

Submitted by the Department of Transportation pursuant to Joint Rule 24.

Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator TWITCHELL of Oxford.

Cosponsored by Representative MOHOLLAND of Princeton, Senator GOULD of Waldo and Representative HICHBORN of LaGrange.

STATE OF MAINE

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

An Act to Amend Department of Transportation Statutory Provisions Pursuant to the Surface Transportation and Uniform Relocation Assistance Act of 1987
Enacted by the Congress of the United States.

(EMERGENCY)



1 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
3 as emergencies; and

5 Whereas, Congress, in enacting the federal Surface
Transportation and Uniform Relocation Assistance Act of 1987,
7 Public Law 100-17, 101 Statute 132, requires changes to state law
by April 2, 1989;

9 Whereas, it is necessary to enact these changes without
11 delay in order to avoid any penalties imposed by the Surface
Transportation and Uniform Relocation Assistance Act of 1987; and

13 Whereas, in the judgment of the Legislature, these facts
15 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
17 necessary for the preservation of the public peace, health and
safety; now, therefore,

19 **Be it enacted by the People of the State of Maine as follows:**

21 **Sec. 1. 23 MRSA §153, next to last ¶, as amended by PL 1987, c.**
23 **735, §40 is further amended to read:**

25 Where property is to be purchased or taken over and held for
the State, the department shall first cause the property or
27 interest therein in the property necessary to be acquired to be
surveyed and described and a plan thereof of the property made
29 and to be appraised by one or more appraisers. The owner or the
owner's designated representative shall be given an opportunity
31 to accompany the appraisers during the appraiser's inspection of
the property. All persons employed by the department are
33 authorized, to the extent necessary for surveys and preliminary
engineering, to enter and cross all lands within, adjoining and
35 adjacent to the area to be surveyed in carrying out the
objectives of this section. The department may prescribe a
37 procedure to waive the appraisal in cases involving the
acquisition by sale or donation of property.

39 **Sec. 2. 23 MRSA §154-C, as amended by PL 1971, c. 593, §22,**
41 **is repealed and the following enacted in its place:**

43 **§154-C. Uneconomic remnants**

45 If the acquisition of only a portion of a property would
47 leave the owner of record with an uneconomic remnant the
department may, or at the request of the owner shall, acquire by
49 purchase or condemnation the entire property. An uneconomic
remnant is a parcel of real property in which the owner would be
51 left with an interest which the department has determined has
little or no value or utility to the owner.

1 **Sec. 3. 23 MRSA §154-E**, as enacted by PL 1971, c. 333, §4 is
3 repealed and the following enacted in its place:

5 **§154-E. Improvement**

7 Payment to tenants of record shall be made by the department
9 pursuant to this section for any building, structure or other
11 improvement which is owned by the tenant. The tenant shall be
13 paid the fair market value which the building, structure or
15 improvement contributes to the fair market value of the real
17 property to be acquired, or its salvage value, whichever is
19 greater. No payment may be made unless, prior to condemnation,
21 the owner of the land involved disclaims in writing to the
23 department all interest in the tenant's improvement, and the
25 department determines that the improvement qualifies for
27 payment. In consideration for any such payment, the tenant shall
29 assign, transfer and release to the department all rights, title,
31 and interest in and to the improvements. The department shall
33 not make any payment under this section which it determines would
35 result in duplication of any payment otherwise authorized by this
37 Title.

39 For the purpose of determining the just compensation to be
41 paid for any acquired building, structure or other improvement,
43 that building, structure or other improvement shall be deemed to
45 be part of the real property, notwithstanding the right or
47 obligation of a tenant, as against the owner of any other
49 interest in the real property, to remove that building, structure
51 or improvement at the expiration of the term of the lease.

53 Nothing in this section may be construed to deprive the
55 tenant of any rights to reject payment under this section and to
57 obtain payment for the property interests in accordance with
59 applicable law other than this section.

61 **Sec. 4. 23 MRSA §242, sub-§1**, as amended by PL 1971, c. 593,
63 §22, is repealed.

65 **Sec. 5. 23 MRSA §242, sub-§§2-A and 2-B** are enacted to read:

67 2-A. Comparable replacement dwelling. "Comparable
69 replacement dwelling" means any dwelling that is:

71 A. Decent, safe and sanitary;

73 B. Adequate in size to accommodate the occupants;

75 C. Within the financial means of the displaced person;

77 D. Functionally equivalent to the displacement dwelling;

1 E. In an area not subject to unreasonably adverse
2 environmental conditions; and

3
4 F. In a location generally not less desirable than the
5 location of the displaced person's dwelling with respect to
6 public utilities, facilities, services, and the displaced
7 person's place of employment.

8 2-B. Department. "Department" means the Department of
9 Transportation.

10 Sec. 6. 23 MRSA §242, sub-§3, as amended by PL 1973, c. 625,
11 §129, is repealed and the following enacted in its place:

12 3. Displaced person. "Displaced person" is defined as
13 follows.

14 A. "Displaced person" means:

15 (1) Any person who moves from real property or moves
16 that person's personal property from real property:

17 (a) As a direct result of a written notice of
18 intent to acquire or the acquisition of that real
19 property in whole or in part for a program or
20 project undertaken by the department; or

21 (b) On which the person is a residential tenant
22 or conducts a small business, a farm operation or
23 a business defined in subsection 2, as a direct
24 result of rehabilitation, demolition or such other
25 displacing activity as the department prescribes
26 under a program or project undertaken by the
27 department in any case in which the department
28 determines that the displacement is permanent; and

29 (2) Solely for the purposes of section 243 and section
30 244, subsections 1 and 2, any person who moves from
31 real property or moves that person's personal property
32 from real property:

33 (a) As a direct result of a written notice of
34 intent to acquire or the acquisition of other real
35 property, in whole or in part, on which the person
36 conducts a business or farm operation, for a
37 program or project undertaken by the department; or

38 (b) As a direct result of rehabilitation,
39 demolition or such other displacing activity as
40 the department prescribes of other real property
41 on which the person conducts a business or a farm
42 operation, under a program or project undertaken

1 by the department where the department determines
3 that the displacement is permanent.

5 B. "Displaced person" does not include:

7 (1) A person who has been determined, according to
9 criteria established by the department, either to be
11 unlawfully occupying the displacement dwelling or to
13 have occupied the dwelling for the purpose of obtaining
15 assistance under this subchapter; and

17 (2) In any case in which the department acquires
19 property for a program or project, any person, other
21 than a person who was an occupant of the property at
23 the time it was acquired, who occupies such property on
25 a rental basis for a short term or a period subject to
27 termination when the property is needed for the program
29 or project.

31 Sec. 7. 23 MRSA §242, sub-§4, as enacted by PL 1971, c. 333,
33 §1, is repealed and the following enacted in its place:

35 4. Existing patronage. "Existing patronage" means either
37 the volume of clientele or the annual net earnings for the 2
39 taxable years immediately prior to the taxable year in which the
41 business was displaced.

43 Sec. 8. 23 MRSA §242, sub-§9, as amended by PL 1971, c. 593,
45 §22, is further amended to read:

47 9. Program or project. "Prejeet" "Program or project"
49 shall-mean means any highway construction or related activity
51 undertaken by the State--of--Maine--by--its Department of
 Transportation on a state or state aid state-aid highway and any
 other activity undertaken and authorized by law to be carried out
 by the department.

 Sec. 9. 23 MRSA §242, sub-§9-A, is enacted to read.

9-A. Small business. "Small business" means any business
 having fewer than 50 employees working at the site being acquired
 or permanently displaced by a program or project.

 Sec. 10. 23 MRSA §242, sub-§10, as enacted by PL 1971, c. 333,
 §1, is amended to read:

10. State agency. "State agency" shall-mean means any
 department, agency or instrumentality of this State or any
 political subdivision of this State, any department, agency or
 instrumentality of 2 or more states, or 2 more political
 subdivisions of the State or states and any person who has the
 authority to acquire property by eminent domain under state law.

1
3 **Sec. 11. 23 MRSA §243**, as amended by PL 1973, c. 625, §130,
is further amended to read:

5 **§243. Relocation assistance advisory services**

7 1. **Relocation assistance advisory program.** Whenever the
9 acquisition of real property for a department program or project
will result in the displacement of any person ~~on or after January~~
11 ~~27, 1971~~, the department shall provide a relocation assistance
advisory program for displaced persons which shall offer the
13 services described in subsection 2. If the department determines
that any person occupying property immediately adjacent to the
15 real property acquired is caused substantial economic injury
because of the acquisition, the department may offer such the
person relocation advisory services under such the program.

17 2. **Program to include.** Each relocation assistance advisory
19 program required by subsection 1 shall include such measures,
facilities or services as may be necessary or appropriate in
21 order to:

23 A. Determine the need and make timely recommendations on
25 the needs and preferences, if any, of displaced persons, for
relocation assistance;

27 B. Provide current and continuing information on the
29 availability, sales prices and rentals rental charges of
comparable ~~decent, safe and sanitary sales and rental~~
31 housing replacement dwellings for displaced homeowners and
tenants, and of comparable commercial properties and on
33 suitable locations for displaced businesses and farm
operations;

35 C. Assure that, within a reasonable period of time, prior
37 to displacement there will be available, to the extent that
can reasonably be accomplished, in areas not generally less
39 desirable in regard to public utilities and public and
commercial facilities and at rents or prices within the
41 financial means of the families and individuals displaced,
decent, safe and sanitary dwellings, equal in number to the
43 number of and available to such the displaced persons who
require such these dwellings and reasonably accessible to
their places of employment;

45 D. Assist a ~~displaced~~ person displaced from his that
47 person's business or farm operation in obtaining and
becoming established in a suitable replacement location;

49 E. Supply information concerning federal and, state and
51 local housing programs, ~~disaster loan programs and other~~
~~federal or state programs offering~~ which may be of

1 assistance to displaced persons, and supply technical
2 assistance to persons in applying for assistance under these
3 programs; and

5 F. Provide other advisory services to displaced persons in
6 order to minimize hardships to such persons in adjusting to
7 relocation.

9 3. **Coordination.** The department shall coordinate
10 relocation activities with project work, and other planned or
11 proposed governmental federal, state or local agency actions in
12 the community or nearby areas which may affect the efficient and
13 effective carrying out of relocation assistance programs.

15 4. **Renter eligibility.** Notwithstanding section 242,
16 subsection 3, paragraph B, subparagraph(2), in any case in which
17 the department acquires property for a program or project, any
18 person who occupies that property on a rental basis for a short
19 term or for a period subject to termination when the property is
20 needed for the program or project shall be eligible for advisory
21 services to the extent determined by the department.

23 **Sec. 12. 23 MRSA §244,** as amended by PL 1973, c. 625, §131,
24 is further amended to read:

25 **§244. Moving and related expenses**

27 1. **Payments.** ~~Whenever the acquisition of real property for~~
28 ~~a project~~ a program or project to be undertaken by the department
29 will result in the displacement of any person on or after January
30 27, 1971, the department shall make a payment to any displaced
31 person, upon proper application on forms approved by the
32 department, for:

35 A. Actual reasonable expenses in moving himself that
36 person, his that person's family, business, farm operation
37 or other personal property;

39 B. Actual direct losses of tangible personal property as a
40 result of moving or discontinuing a business or farm
41 operation, but not to exceed an amount equal to the
42 reasonable expenses that would have been required to
43 relocate such property, as determined by the department; and

45 C. Actual reasonable expenses, but not to exceed \$1,000, in
46 searching for a replacement business or farm; and

47 D. Actual reasonable expenses necessary to reestablish a
48 displaced farm, nonprofit organization or small business at
49 its new site, in accordance with criteria to be established
50 by the department, but not to exceed \$10,000.

1 2. Fixed payments for residential displacements. Any
2 displaced person eligible for payments under subsection 1 who is
3 displaced from a dwelling and who elects to accept the payments
4 authorized by this subsection in lieu of the payments authorized
5 by subsection 1 may receive a moving expense and dislocation
6 allowance, which shall be determined according to a schedule
7 established by the department, not to exceed \$300 and a
8 dislocation allowance of \$200.

9
10 3. Fixed payments for business or farm displacements. Any
11 displaced person eligible for payments under subsection 1 who is
12 displaced from his that person's place of business or from his
13 farm operation and who elects is eligible under criteria
14 established by the department may elect to accept the payment
15 authorized by this subsection in lieu of the payment authorized
16 by subsection 1 may receive a fixed payment in an amount equal to
17 the average annual net earnings of the business or farm
18 operation. The payment shall consist of a fixed payment in an
19 amount to be determined according to criteria established by the
20 department, except that any such payment shall be not less than
21 \$2,500-\$1,000 nor more than \$10,000 \$20,000. A person whose sole
22 business at the displacement dwelling is the rental of property
23 to others shall not qualify for a payment under this subsection.
24 In the case of a business no payment shall may be made under this
25 subsection unless the department is satisfied that the business:

26 A. Cannot be relocated without a substantial loss of its
27 existing patronage, and

28 B. Is not part of a commercial enterprise having at least
29 one more than 3 other establishment establishments not being
30 acquired by the State department, which is are engaged in
31 the same or similar business.

32 Sec. 13. 23 MRSA §244-A, sub-§1, as amended by PL 1981, c.
33 470, Pt. A, §134, is further amended to read:

34 1. Owner. In addition to payments otherwise authorized,
35 the department shall make an additional payment not in excess of
36 \$15,000 \$22,500 to any displaced person who is displaced from a
37 dwelling actually owned and occupied by such the displaced person
38 for not less than 180 days prior to the initiation of
39 negotiations for the acquisition of the property. Such The
40 additional payment shall include the following elements:

41 A. The amount, if any, which when added to the acquisition
42 cost of the dwelling acquired by the State department equals
43 the reasonable cost of a comparable replacement dwelling
44 which is a decent, safe and sanitary dwelling adequate to
45 accommodate such displaced person, reasonably accessible to
46 public services and places of employment and available on
47 the private market. All determinations required to carry

1 out this paragraph shall be made in accordance with
standards established by the department;

3
5 B. The amount, if any, which will compensate such the
displaced person for any increased interest costs and other
7 debt service costs which such that person is required to pay
for financing the acquisition of any such comparable
9 replacement dwelling. Such The amount shall be paid only if
the dwelling acquired by the State department was encumbered
11 by a bona fide mortgage which was a valid lien on such the
dwelling for not less than 180 days prior to the initiation
of negotiations for the acquisition of such that dwelling.
13 ~~Such amount shall be equal to the excess in the aggregate~~
~~interest and other debt service costs of that amount of the~~
15 ~~principal of the mortgage on the replacement dwelling which~~
~~is equal to the unpaid balance of the mortgage on the~~
17 ~~acquired dwelling, over the remainder term of the mortgage~~
~~on the acquired dwelling, In calculating the amount to be~~
19 ~~paid under this section, increased interest costs and other~~
~~debt service costs shall be reduced to discounted present~~
21 ~~value. The discount rate shall be the prevailing interest~~
~~rate paid on savings deposits by commercial banks in the~~
23 ~~general area in which the replacement dwelling is located~~
The payment shall be an amount which will reduce the
25 mortgage balance on the replacement dwelling to an amount
which could be amortized with the same monthly payment for
27 principal and interest as that for the mortgage on the
displaced dwelling; and

29
31 C. Reasonable expenses incurred by such the displaced
person for evidence of title, recording fees and other
33 closing costs incident to the purchase of the replacement
dwelling, but not including prepaid expenses.

35 **Sec. 14. 23 MRSA §244-A, sub-§2, as enacted by PL 1971, c.**
37 **333, §1, is amended to read:**

39 2. Replacement dwelling. The additional payment authorized
by subsection 1 shall be made only to such a displaced person who
41 purchases and occupies a replacement dwelling which is decent,
safe and sanitary not later than the end of the one-year period
beginning on the date on which he the displaced person receives
43 from the State department final payment of all costs of the
acquired dwelling, or on the date on which he ~~moves from the~~
45 ~~acquired dwelling, the department meets its obligation under~~
section 244-C, whichever is the later date, except that the
47 department may extend the period for good cause. If the period
is extended, the payment under this section shall be based on the
49 costs of relocating the person to a comparable replacement
dwelling within one year of the date otherwise designated in this
51 subsection.

1 **Sec. 15. 23 MRSA §244-B**, as amended by PL 1971, c. 593, §22,
is further amended to read:

3 **§244-B. Replacement housing for tenants and certain others**

5 In addition to amounts otherwise authorized by this
7 subchapter, the department shall make a payment to or for any
9 displaced person displaced from any dwelling not eligible to
11 receive a payment under section 244-A which dwelling was actually
13 and lawfully occupied by such the displaced person for not less
than 90 days prior to the initiation of negotiations for
acquisition of such the dwelling or in any case in which
displacement is not a direct result of the acquisition of the
dwelling or in such other event as the department prescribes.
15 Such ~~payment~~ Payment shall be either:

17 1. **Lease or rent.** The amount necessary to enable such the
19 displaced person to lease or rent for a period not to exceed 4
years ~~42 months,~~ a decent,--safe--and--sanitary--dwelling--of--
21 standards--adequate--to--accommodate--such--person--in--areas--not
generally--less--desirable--in--regard--to--public--utilities--and--public
23 and--commercial--facilities,--and--reasonably--accessible--to--his--place
of--employment comparable replacement dwelling, but not to exceed
25 \$4,000 \$5,250. At the discretion of the department, a payment
under this subsection may be made in periodic installments.
27 Computation of a payment under this subsection to a low-income
displaced person for a comparable replacement dwelling shall take
into account the person's income,; or

29 2. **Purchase.** ~~The amount necessary to enable such person~~
31 ~~to make a down payment, including incidental expenses described~~
~~in section 244-A, subsection 1, paragraph C, on the purchase of a~~
33 ~~decent, safe and sanitary dwelling of standards adequate to~~
~~accommodate such person in areas not generally less desirable in~~
35 ~~regard to public utilities and public and commercial facilities,~~
~~but not to exceed \$4,000, except that if such amount exceeds~~
37 ~~\$2,000, such person must equally match any such amount in excess~~
~~of \$2,000 in making the down payment.~~ An amount to be used
39 towards the purchase of a dwelling as follows. Any person
eligible for a payment under subsection 1 may elect to apply the
41 payment to a down payment, including incidental expenses
described in section 244-A, subsection 1, paragraph C, on the
43 purchase of a decent, safe and sanitary replacement dwelling.
The person may, at the discretion of the department, be eligible
45 under this subsection for the maximum payment allowed under
subsection 1, except that, in the case of a displaced homeowner
47 who has owned and occupied the displacement dwelling for at least
90 days but not more than 180 days immediately prior to the
49 initiation of negotiations for the acquisition of the dwelling,
the payment shall not exceed the payment the person would
51 otherwise have received under section 244-A, subsection 1,
paragraph A had the person owned and occupied the displacement

1 dwelling 180 days or more immediately prior to the initiation of
2 negotiations.

3 **Sec. 16. 23 MRSA §244-C** is enacted to read:

4
5 **§244-C. Assurance of availability of housing**

6
7 1. Expenditures for replacement dwellings. If a program or
8 project undertaken by the department cannot proceed on a timely
9 basis because comparable replacement dwellings are not available,
10 and the department determines that those dwellings cannot
11 otherwise be made available, the department may take such action
12 as is necessary or appropriate to provide dwellings by use of
13 funds authorized for the project. The department may use this
14 section to exceed the maximum amounts which may be paid under
15 sections 244-A and 244-B on a case-by-case basis for good cause
16 as determined in accordance with guidelines that the department
17 issues.

18
19 2. Availability required. No person may be required to
20 move from a dwelling because of any program or project undertaken
21 by the department unless the department is satisfied that
22 comparable replacement housing is available to that person.

23
24 3. Exceptions. The department shall assure that a person
25 shall not be required to move from a dwelling unless the person
26 has had a reasonable opportunity to relocate to a comparable
27 replacement dwelling, except in the case of:

28
29 A. A major disaster as defined in the United States
30 Disaster Relief Act of 1974, Section 102(2);

31
32 B. A national emergency declared by the President of the
33 United States; or

34
35 C. Any other emergency which requires the person to move
36 immediately from the dwelling because continued occupancy of
37 that dwelling by that person constitutes a substantial
38 danger to the health or safety of that person.

39
40 **Sec. 17. 23 MRSA §245**, as amended by PL 1971, c. 593, §22, is
41 further amended to read:

42
43 **§245. Administration**

44
45 The ~~Department of Transportation~~ department shall carry out
46 the functions of this subchapter either with its personnel or
47 through any federal, state or municipal governmental agency
48 having an established organization for conducting relocation
49 assistance programs; and is authorized and empowered to make all
50 contracts and do all things necessary to fulfill the intent and
51 purposes of this subchapter.

1 **Sec. 18. 23 MRSA §245-B**, as amended by PL 1971, c. 593, §22,
3 is further amended to read:

5 **§245-B. Guidelines and rules**

7 The department may adopt guidelines and procedures, or
9 promulgate rules and regulations, consistent with this subchapter
11 as it deems determines necessary or appropriate to carry out this
subchapter and to include the standards of "decent, safe and
sanitary."

13 **Sec. 19. 23 MRSA §246, sub-§2**, as amended by PL 1987, c. 395,
15 Pt. A, §104, is further amended to read:

17 **2. Commissioner of Transportation.** Any person aggrieved by
19 a determination as to eligibility for any payment, except those
enumerated in subsection 1, authorized by this subchapter may
21 have his that person's application reviewed by the Commissioner
of Transportation commissioner or his the commissioner's delegate
23 whose determination shall be final and nothing herein-shall in
this section may be construed to give any person a cause of
action in the State Claims Commission or the Superior Court.

25 **Sec. 20. 23 MRSA §753**, as amended by PL 1985, c. 554, §4, is
27 further amended by adding a 2nd ¶ to read:

29 The department may adopt its own standard contract
31 specifications. Notwithstanding any other federal or state law,
the department's standard specifications shall be utilized in
lieu of federally mandated contract clauses.

33 **Sec. 21. Application.** Sections 4 to 19 of this Act shall apply
35 only to persons who become displaced persons, within the meaning
of this Act, on or after April 2, 1989.

37 **Emergency clause.** In view of the emergency cited in the
preamble, this Act shall take effect when approved.
39

41 **STATEMENT OF FACT**

43 This bill will amend the Maine Department of
45 Transportation's statutory provisions pursuant to the Surface
Transportation and Uniform Relocation Assistance Act of 1987
47 enacted by Congress. Amendment of the laws is required by April
2, 1988 by federal law, in order to avoid the loss of federal
funding for the department's program.