

MAINE STATE LEGISLATURE

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L.D. 1495

(Filing No. H-478)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1073, L.D. 1495, Bill, "An Act to Continue Recodification of the Railroad Laws"

Amend the bill in section 7 by striking out the 4th and 5th lines (page 1, lines 23 and 25 in L.D.) and inserting in their place the following:

'CHAPTER 615

STATE RAILROAD PRESERVATION ACT

SUBCHAPTER I

RAILROAD PRESERVATION, ASSISTANCE AND ACQUISITION'

Further amend the bill in section 7 in that part designated "~~§7101.~~" in the 2nd line (page 1, line 29 in L.D.) by striking out the following: "~~chapter~~" and inserting in its place the following: 'subchapter'

Further amend the bill in section 7 in that part designated "~~§7106.~~" by inserting after subsection 5 (page 6, line 16 in L.D.) the following:

'SUBCHAPTER II

ACQUISITION OF RAILROAD LINES

§7151. Legislative findings; declaration of policy

1. Legislative findings. The Legislature finds that safe, efficient and reliable rail service is essential to the economy of the State, the economic livelihood of industries located in the State, conservation and protection of the environment and the quality of life of the citizens of the State. The Legislature further finds that safe and efficient railroad service is essential to the State's public safety and the continued health

1 and well-being of its citizens, particularly because of railroad
3 transportation of bulk cargoes and hazardous and toxic
5 substances, and the significant dangers that result from
7 mishandling those and other cargoes.

9 2. Declaration of policy. It is declared to be the policy
11 of the State that the State and its agencies shall cooperate with
13 the Congress of the United States and the appropriate federal
15 agencies to assure the development and maintenance of safe,
17 efficient and reliable rail service for the State. For any
19 railroad line acquired under this chapter, it is the intent of
21 the Legislature that the State may acquire the railroad line, but
23 the State may not be an operator of the railroad or a rail
25 carrier under federal law.

17 §7152. Definitions

19 As used in this chapter, unless the context otherwise
21 indicates, the following terms have the following meanings.

23 1. Financially responsible person. "Financially
25 responsible person" means a financially responsible person, as
27 defined in the United States Code, Title 49, Section 10910(a),
29 who intends to acquire, lease or contract to operate all or part
31 of the railroad line in question.

33 2. Person. "Person" means a natural person, corporation,
35 partnership or state agency.

37 3. Railroad line. "Railroad line" means the right-of-way,
39 track, track appurtenances, ties, bridges, station houses,
41 sidings, terminals and other appurtenant structures of a railroad.

43 §7153. Hearings and report

45 1. Request for hearing. The department shall hold a
47 hearing with regard to a railroad line if requested by any of the
49 following:

51 A. A shipper or shippers whose traffic on the railroad line
53 totaled 500 tons in the year immediately preceding the
55 application;

57 B. Any municipality having a siding, terminal, station or
59 agency station of the railroad line within its bounds; or

61 C. A financially responsible person.

63 2. Notice; testimony at hearing. Not less than 14 days
65 prior to holding a hearing, the department shall send written
67 notice of the date and location to the parties requesting a
69 hearing as well as the affected railroad company. In addition,

1 the department shall publish 2 notices of the hearing in a
2 newspaper of general circulation in the area of the State
3 affected. Testimony received at the hearing may include the
4 following:

5 A. Whether the railroad has adequate rail service to
6 fulfill public convenience and necessity;

7 B. Whether the operator of the railroad is providing safe,
8 efficient and reliable rail service;

9 C. Whether the rail service over the railroad has
10 substantially impaired the ability of the shippers or
11 municipalities that depend upon it;

12 D. Whether the operation of the railroad has endangered the
13 lives or property of the citizens of this State, including
14 railroad employees;

15 E. Whether the operator of the railroad has refused or
16 failed within a reasonable time to make necessary
17 improvement to provide safe, efficient and reliable rail
18 service; and

19 F. Other relevant issues.

20 3. Report. Upon conclusion of the hearing, the department
21 shall issue a report concerning the operation of the railroad
22 which shall be forwarded to the petitioning parties as well as
23 the railroad company. In addition, this report shall be
24 presented to the Governor as well as the President of the Senate
25 and the Speaker of the House of Representatives. The department
26 may also forward this report to the Interstate Commerce
27 Commission, the Federal Railroad Administration or any other
28 federal agency which is involved in the regulation of railroads.

29 **§7154. Acquisition of railroads**

30 1. Authorization to acquire. Upon forwarding the report
31 set forth in section 7153 and if the report recommends
32 acquisition of the railroad line by the department, the
33 department may acquire, as provided in this section, the railroad
34 line and associated real property located in the State and
35 personal property, including rail facilities such as equipment
36 and rolling stock, when, in the judgment of the department,
37 acquisition of the railroad line is necessary to protect the
38 public interest.

39 2. Federal regulation. If the railroad line is under the
40 exclusive jurisdiction of a federal regulatory agency, the
41 department shall petition that agency and take all steps
42 to acquire the railroad line.

1 necessary to obtain all regulatory approvals required under
2 federal law to acquire the railroad line.

3
4 3. Acquisition. Upon obtaining all necessary federal
5 regulatory approvals or if approval of a federal regulatory
6 agency is not required, the department may acquire the railroad
7 line and associated property by purchase or the taking by eminent
8 domain.

9
10 4. Limitation. Any acquisition under this section is
11 subject to sufficient funds being made available by legislative
12 act to acquire the railroad line.

13
14 5. Eminent domain. In the event that the department
15 decides to acquire the railroad line by condemnation, the
16 department shall have the railroad line and associated property
17 appraised and offer to the owner as just compensation the
18 constitutional minimum value, which shall be not less than the
19 net liquidation value or the value as a going concern, whichever
20 is greater, but shall not include the cost of providing a
21 protective arrangement concerning the interest of the railroad's
22 employees.

23
24 The department shall file in the registry of deeds for the county
25 or counties, or registry district or districts, where the
26 railroad line is located a notice of condemnation which shall
27 contain a description of the property and the interest taken and
28 the name or names of the owner or owners of record as far as they
29 can be reasonably determined. The department may join in the
30 same notice one or more separate properties whether in the same
31 or different ownership. A check in the amount of the offer and a
32 copy of the notice of condemnation shall be served on the owner
33 or owners of record. If there is multiple ownership, the check
34 may be served on any one of the owners of each separate property.
35 The notice of condemnation shall be published once in a newspaper
36 of general circulation in the county where the property is
37 located and that publication shall constitute service on any
38 unknown owner or owners or other persons who may have or claim an
39 interest in the property.

40
41 6. Appeals. In the event that any owner or owners of
42 record are aggrieved by the department's offer, they may appeal
43 from it to the Kennebec County Superior Court within 30 days
44 after the date of service or publication of the notice of
45 condemnation. The appeal shall be taken by filing a complaint
46 setting forth the facts upon which the case shall be tried
47 according to the Maine Rules of Civil Procedure. The Superior
48 Court shall determine compensation by a jury verdict or, if all
49 parties agree, by the court without a jury or by a referee or
50 referees and shall render judgment for any compensation, with
51 interest when it is due, and for costs in favor of the party

1 entitled to them, pursuant to just compensation standards set
2 forth in subsection 5.

3
4 7. Use of railroad line. The department may lease the
5 railroad line, or otherwise contract for operation of the
6 railroad line, to a railroad operator who is a financially
7 responsible person, or it may hold and manage the railroad line
8 for future transportation use.

9
10 **§7155. Conditions of sale, lease and operation**

11
12 1. Financial conditions on sale, lease or operating
13 contract. Any railroad line acquired pursuant to this chapter
14 may be sold, leased or contracted to an operator, but only upon
15 terms at least as favorable to the State as follows:

16
17 A. All of the costs of acquiring the railroad line and
18 associated property shall be recovered by the State; and

19
20 B. The credit of the State shall not be pledged unless
21 separately authorized as required by the Constitution of
22 Maine, Article IX, Section 14.

23
24 2. State operation of railroad prohibited. In no event may
25 the department or any other unit of State Government directly
26 operate a railroad over a railroad line acquired under this
27 chapter. The department may own the railroad line and lease or
28 otherwise contract for its use by a private operator.

29
30 **§7156. Employee protection**

31
32 Any person acquiring or operating a railroad line under this
33 chapter shall:

34
35 1. Hiring priority. Give a first right of hire to fill any
36 subordinate official or nonmanagement position in the staffing of
37 the new rail operation in the following order of priority:

38
39 A. First, all employees who are required to be accorded
40 priority under federal law, employee protection obligations
41 imposed by law, regulations or contracts which require the
42 new operator to select employees of the prior operator and
43 existing or future collective bargaining agreements;

44
45 B. Second, all employees, in seniority order for each craft
46 or class, who hold or held seniority rights in, or in
47 connection with, the railroad line when it was last operated
48 by its prior operator;

49
50 C. Third, employees drawing benefits under the United
51 States Railroad Unemployment Insurance Act, United States
Code, Title 45, chapter 11, first in the geographical area

1 in which the railroad line is located and then elsewhere
3 within the State; and

5 D. Fourth, any other individual;

7 2. Existing employment obligations and practices. Assume
9 the existing employment obligations and practices of the railroad
11 whose property is condemned, including all agreements governing
13 rates of pay, rules and working conditions, until changes are
15 made by agreement or otherwise, in accordance with applicable
17 law; and

19 3. Employee protection. Agree to provide a fair
21 arrangement to protect the interests of railroad employees who
23 are affected by the condemnation which is at least as protective
25 of the interests of those employees as the levels of protection
27 established by regulation or decision of the Interstate Commerce
29 Commission.

31 Any person who is entitled to priority of employment under
33 this section shall be presumed to be physically and mentally
35 qualified to perform the same or comparable work with the new
37 employer.'

39 Further amend the bill in section 9 by inserting after that
41 part designated "§7310." (page 27, line 42 in L.D.) the following:

43 '§7311. Investigation and reports of accidents

45 1. Investigation. The Commissioner of Transportation shall
47 investigate all accidents resulting in loss of human life, or
49 personal injury requiring 3 full days of hospitalization,
51 occurring upon the premises of any railroad company or directly
or indirectly arising from or connected with its maintenance or
operation. Any accident so occurring and which results in
property damage or personal injury that requires less than 3 full
days of hospitalization also may be investigated if, in the
judgment of the commissioner, the public interest requires it.
The commissioner may hold hearings in connection with any
investigation and shall reasonably notify the railroad company of
the time and place of the hearing, and the railroad company may
then be heard and the commissioner shall have the power to make
such order or recommendation with respect thereto as deemed just
and reasonable.

2. Reports of accidents. Every railroad company is
required to file with the Commissioner of Transportation, under
such rules and regulations as the commissioner may prescribe,
reports of accidents so occurring, in the manner and form
designated by the commissioner. In case of accidents resulting
in loss of human life, such reports shall be made immediately by
telephone or telegraph, followed by a detailed written report.

1
3 3. Disposition of reports. The orders and recommendations
5 of the Department of Transportation, and accident reports and all
7 other materials in the department's file pertaining to such
railroad company accidents, shall be made available, upon
request, to the railroad company, the injured person or their
representatives.

9 4. Reports inadmissible as evidence. The orders and
11 recommendations of the Department of Transportation, accident
13 reports and any other material in the department's file
15 pertaining to such accidents obtained or prepared pursuant to an
investigation under this section shall not be admitted as
evidence in any suit or action for damages growing out of any
matter mentioned in any such investigation.'

17 Further amend the bill in section 9 in that part designated
19 "§7311." in the first line (page 27, line 42 in L.D.) by striking
21 out the following: "§7311." and inserting in its place the
23 following: '§7312.'

STATEMENT OF FACT

25 This amendment restores 2 portions of existing law that were
27 inadvertently repealed but not reallocated in the original bill.

Reported by the Committee on Transportation
Reproduced and distributed under the direction of the Clerk of the
House
6/12/89

(Filing No. H-478)