

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 702

H.P. 508

House of Representatives, February 20, 1991

Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by Senator THERIAULT of Aroostook, Senator GOULD of Waldo and Representative HUSSEY of Milo.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act Regarding the Relocation of Utility Facilities as a Result of State  
Highway Construction.**

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

23 MRSA §256 is enacted to read:

**§256. Payment for cost of relocating utility facilities  
as a result of state highway construction**

If any public utility is required to move or relocate a utility facility from or in any way because of construction needs in building, relocating, widening or otherwise performing work on or with respect to any state highway, the removal or relocation must be in accordance with this section.

1. Order to relocate. If the department determines that any utility facility that on the effective date of this section is, or may be, located in, over or along any way must be removed or relocated because of construction needs in relocating, widening or otherwise performing work on or with respect to a state highway, the utility owning or operating the facility shall remove or relocate the facility in accordance with an order of the department. The order must provide a reasonable period of time for the utility to remove or relocate the facility and must include a finding by the department that in designing the work to be performed by the department on the highway, the department has taken reasonable steps to minimize the cost to the utility of the removal or relocation of the facility.

2. Notice of intent. The department shall give the utility at least 2 years' notice of intention to order the removal or relocation of a facility and submit to the utility preliminary plans of the proposed construction at least 12 months prior to putting the project out to bid. If the department fails to comply with this subsection, the department shall reimburse the utility for the cost of the removal or relocation of the facility.

3. Estimate of utility's cost. The utility shall submit to the department, within 60 days after receiving the department's notice of intent under subsection 2, the utility's estimate of the cost of removing or relocating the facility.

4. New utility facility. If the notice of intent under subsection 2 is received by the utility within 5 years after the utility received a permit to place in the public way a facility that the department wants removed or relocated or after the utility replaced substantially a facility that the department wants relocated and the utility gave the department 90 days' advance notice of its intention to replace that facility, the department shall reimburse the utility for the cost of removal or relocation of that facility.

5. Liability for failure to relocate. If the failure of the utility to remove or relocate the facility within the time

2 specified in the order delays the work of the contract between  
3 the State and the contractor, the utility is liable to the State  
4 for the damages that the State may be required to allow the  
5 contractor under that contract for delay in the work caused by  
6 the presence of the facility. The utility is not liable for the  
7 damages if failure to move is for reasons beyond the utility's  
8 control. If the department and the utility do not agree on the  
9 liability of the utility for the damages, either party may appeal  
10 to the Superior Court for a determination of liability. The  
11 liability may not exceed reimbursable costs as determined under  
12 this section.

13 6. Reimbursable costs. The department may make rules to  
14 determine the cost of removal or relocation of a facility  
15 consistent with section 255. The department may inspect the  
16 books of account of the utility to determine the reimbursable  
17 costs provided in this section.

20 **STATEMENT OF FACT**

21 Under the Maine Revised Statutes, Title 23, section 255,  
22 public utilities are entitled to reimbursement from the Highway  
23 Fund for up to 90% of the costs of facility relocation when  
24 required in connection with construction of interstate highways.  
25 No similar provision applies when a public utility's facility  
26 must be relocated in connection with state highway construction.  
27 The cost to the ratepayers of Maine utilities from required  
28 relocation due to highway construction is substantial. This bill  
29 provides incentive to the Department of Transportation and the  
30 State's utilities to work together to minimize the costs of  
31 relocation of utility facilities.  
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