

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1502

H.P. 1029

House of Representatives, April 11, 1991

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

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

EDWIN H. PERT, Clerk

Presented by Representative ANDERSON of Woodland.

Cosponsored by Senator THERIAULT of Aroostook, Representative FARREN of Cherryfield and Representative LARRIVEE of Gorham.

STATE OF MAINE

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

**An Act to Provide for the Acquisition of Property for the Establishment,
Preservation or Enhancement of Open Space and Recreation Corridors in
the State.**



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

2
4 **Sec. 1. 12 MRSA §602, sub-§20**, as enacted by PL 1987, c. 769, Pt. A, §48, is amended to read:

6 **20. Management of ATV's.** To administer the ATV
8 Recreational Management Fund, established under section 7854,
10 subsection 4, for the purposes given in that subsection. The
12 bureau may promulgate rules, in accordance with Title 5, chapter
14 375, subchapter II, for the issuance of grants-in-aid from the
16 fund and to further define alpine tundra areas pursuant to
18 section 7851, subsection 5-; and

20 **Sec. 2. 12 MRSA §602, sub-§21** is enacted to read:

22 **21. Acquisition of railroad rights-of-way for open space or**
24 **recreation corridors.** For the purpose of establishing,
26 preserving or enhancing corridors for use for open space or
28 recreation, the bureau may acquire, with the consent of the
30 Governor, by license, lease, purchase, gift or eminent domain,
32 railroad rights-of-way upon which rail service is no longer
34 operated. When railroad rights-of-way or other interests in
36 railroad rights-of-way are taken by eminent domain, the
38 proceedings must be in accordance with this subsection and are
40 not subject to Title 35-A, chapter 65. For purposes of these
42 acquisitions, the term "owner" as used in this subsection means
44 the person holding the dominant rights in the property
46 immediately prior to the termination of the operation of rail
48 service, and that person's successors and assigns. Acquisitions
50 pursuant to this subsection are not subject to any limitation in
52 acreage.

54 If the bureau decides to acquire property by eminent domain, it
56 must have the property appraised and offer to the owner just
58 compensation for the interests acquired. The bureau must file in
60 the registry of deeds for each county in which the property lies
62 a notice of the taking that contains a description of the
64 property and of the interest taken and the name or names of the
66 owner or owners. The department may join in the same notice one
68 or more properties, whether those properties are in the same or
70 different ownership. A check in the amount of the offer and a
72 copy of the notice of taking must be served upon the owner or
74 owners. If there is more than one owner, the check may be served
76 upon any one of the owners of each separate property. The notice
78 of the taking must be published once in a newspaper of general
80 circulation in each county where the property lies and that
82 publication constitutes service on any unknown owner or owners or
84 other persons who may have a claim or interest in the property.

86 If any owner is aggrieved by the bureau's award, the owner may
88 appeal from it to the Kennebec County Superior Court or the
90 Superior Court in the county in which the land lies within 30

2 days after the date of service or publication of the notice of
3 the taking. The appeal must be taken by filing a complaint
4 setting forth the facts upon which the case will be tried
5 according to the Maine Rules of Civil Procedure. The Superior
6 Court shall determine damages by a jury verdict or, if all
7 parties agree, by the court without a jury or by a referee or
8 referees and shall render judgment for any damages, with interest
9 when it is due.

10 Except in the case of an acquisition by license or lease, unless
11 otherwise specifically excepted by the bureau, all reversionary
12 and servient rights in and any other conflicting claims to
13 property acquired pursuant to this subsection terminate and are
14 extinguished forever as of the date of the acquisition by the
15 bureau. Any person who makes such a claim must mail a written
16 notice to the owner and the bureau. Any person damaged by the
17 extinguishing of those rights may make claim for damages in
18 accordance with the eminent domain appeal procedures of this
19 subsection within 2 years of the date of the acquisition, as long
20 as the burden of proving the validity, compensability and value
21 of any claim is upon the claimant. Notice of the acquisition
22 must be given to the apparent holders of such interests as
23 provided in this subsection. If the bureau determines that the
24 property acquired may be subject to reversionary or servient
25 interests or other conflicting claims, in order to avoid double
26 or multiple liability, the bureau may make a blanket award of
27 compensation for the acquisition and, instead of serving the
28 award check on the owner, request that the Treasurer of State
29 establish an interest-bearing account into which the full amount
30 of that compensation is deposited and held. The funds and any
31 interest accrued must be disposed of as follows.

32
33 A. If the 2-year period for filing a claim for damages for
34 the extinguishment of a reversionary or servient right or
35 other conflicting claim expires and no claim has been made
36 or action filed, then the Treasurer of State, upon request
37 by the bureau, shall pay the funds deposited, including any
38 interest accrued, to the owner as defined in this subsection.

39
40 B. If one or more claims have been made or an action filed
41 prior to the expiration of the 2-year period for filing a
42 claim for damages, then the owner as defined in this
43 subsection must be made a party to those claims and the
44 Treasurer of State shall distribute the deposited funds,
45 including any interest accrued, in accordance with the final
46 order entered in such proceedings, including any appeals.

47
48 As a result of the difficulty of determining the identities and
49 addresses of the possible holders of reversionary or servient
50 rights or other conflicting claims, personal notice to those
51 holders and their mortgagees is deemed given if the bureau mails
52 a notice of the acquisition, including a description of its

2 effect of extinguishing those rights, first class postage
4 prepaid, to each person shown in the real estate tax records of
6 the municipality in which the property lies as the apparent owner
8 of land abutting the property taken. Notice must be posted in
10 the municipal office building, if any, for that municipality and
12 must be published once in a newspaper of general circulation in
14 the county in which the property lies.

10 STATEMENT OF FACT

12 The Bureau of Parks and Recreation has identified railroad
14 rights-of-way that are no longer in service as having a high
16 value for recreational trail use by the people of the State. The
18 acquisition of such properties has been complicated by complex
20 title questions affecting land originally acquired for use as
22 railroad rights-of-way. The purpose of this bill is to ensure
24 that all ownership and potential ownership interests in railroad
land acquired by the Bureau of Parks and Recreation are accounted
for and, therefore, that the State will be able to acquire clear
title and will not risk multiple financial liability for an
acquisition. The eminent domain provisions of the bill are
patterned after those found in the State Railroad Preservation
and Assistance Act, Maine Revised Statutes, Title 23, chapter 615.