

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1992

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Legislative Document

No. 2212

H.P. 1570

House of Representatives, January 23, 1992

Submitted by the Department of Finance pursuant to Joint Rule 24.  
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 Representative HEPBURN of Skowhegan.

Cosponsored by Representative MURPHY of Berwick, Representative FARNUM of South Berwick and Representative REED of Dexter.

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STATE OF MAINE

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

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**An Act to Amend the Laws Governing the State Claims Commission.**

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

2  
4       **Sec. 1. 23 MRSA §152, first ¶**, as amended by PL 1989, c. 503, Pt. B, §98, is further amended to read:

6       The State Claims Commission, established by Title 5, section 12004-B, subsection 5, shall ~~consist~~ consists of 5 members. Four of the members shall ~~must~~ be appointed by the Governor, 2 of whom shall ~~must~~ be qualified appraisers certified as general real estate appraisers pursuant to Title 32, chapter 123 and 2 of whom shall ~~must~~ be attorneys-at-law. The Governor shall designate one of the attorneys-at-law to be chair. The members of the commission appointed by the Governor shall serve for terms of 4 years. They shall ~~must~~ be sworn, and for inefficiency, willful neglect of duty or for malfeasance in office may, after notice and hearing, be removed by the Governor on the address of both branches of the Legislature or by impeachment. In case of a vacancy occurring through death, resignation or removal, the Governor shall appoint a successor for the whole term of the member whose place that successor takes, subject to removal as provided in this section.

22       **Sec. 2. 23 MRSA §156, sub-§6**, as enacted by PL 1965, c. 297, §8, is amended to read:

26       **6. Interest on award.** The interest, if any, due on the net amount of the award from the date of taking to the 90th day after the date of issuance of the award;

30       **Sec. 3. 23 MRSA §156, 3rd and 4th ¶¶**, as amended by PL 1987, c. 395, Pt. A, §98, are repealed and the following enacted in their place:

34       No interest may be allowed on so much of the net damage that has been paid to the owner or owners.

36       An attested copy of each award must be sent immediately to the Department of Transportation and to the party or parties named in the award. The State Claims Commission shall state by letter the date it forwarded the award and all parties shall within 30 days designate to the commission the award or awards from which an appeal will be taken to Superior Court. If no appeal is taken within 30 days of the date of issuance of the commission award, the State Claims Commission shall promptly notify the Department of Transportation. The Department of Transportation shall, within 90 days from the date of issuance of the commission award, pay the awarded amount to the party or parties named in the award.

50       **Sec. 4. 23 MRSA §156, 5th ¶** is repealed and the following enacted in its place:

2        Service as required by this section must be made in the  
3        manner prescribed by Rule 5 of the Maine Rules of Civil Procedure.

4  
5        **Sec. 5. 23 MRSA §156, 6th ¶**, as amended by PL 1987, c. 395,  
6        Pt. A, §98, is further amended to read:

7        Upon certification by the Department of Transportation that  
8        after due diligence the address of owners of record cannot can  
9        not be determined or where when the commission's State Claims  
10        Commission notice by registered or certified mail is returned to  
11        the commission unclaimed or unknown or where personal service  
12        cannot can not be made, the chairman chair of the commission may  
13        order service by publication. ~~The chairman of the commission may~~  
14        ~~appoint a guardian ad litem to protect the interests and rights~~  
15        ~~of any minor or incompetent persons notified under this section~~  
16        ~~and determine and set reasonable compensation to be paid to that~~  
17        ~~guardian ad litem. This compensation shall be paid by the~~  
18        ~~Department of Transportation.~~ Notice of the time and place of the  
19        review and hearing shall must be published once a week for 3  
20        successive weeks in a newspaper of general circulation in the  
21        county in which the subject property is located. ~~The last of~~  
22        ~~these notices shall be published no later than 7 days prior to~~  
23        ~~the hearing.~~ The commission shall then proceed with the hearing  
24        as in other cases and the appeal provisions shall must be  
25        available to the Department of Transportation and the record  
26        owner or owners, or any one of them, who appears and makes  
27        application for appeal pursuant to section 157.

28  
29        **Sec. 6. 23 MRSA §156**, as amended by PL 1987, c. 395, Pt. A,  
30        §98, is further amended by adding after the 6th paragraph a new  
31        paragraph to read:

32  
33        The chair of the State Claims Commission may appoint a  
34        guardian ad litem to protect the interest and rights of any minor  
35        or incompetent persons notified under this section and determine  
36        and set reasonable compensation for that guardian ad litem. This  
37        compensation must be paid by the Department of Transportation.

38  
39        **Sec. 7. 23 MRSA 156, next to last ¶**, as amended by PL 1987, c.  
40        395, Pt. A, §98, is further amended to read:

41        After the appeal period from the decree of the State Claims  
42        Commission or a judgment of any court has expired, any sum of  
43        money directed by a decree of the commission or by a judgment of  
44        any court to be paid over, ~~which~~ that remains unclaimed for 60  
45        days, ~~shall~~ must be disposed of consistent with Title 33, chapter  
46        27 37.

47  
48        **Sec. 8. 23 MRSA §156, last ¶**, as enacted by PL 1979, c. 487,  
49        §5, is amended to read:

2         Notwithstanding Title 1, section 302, this section shall  
3         apply applies to all actions and proceedings pending on the  
4         effective-date-of-this-Aet September 14, 1979.

6             Sec. 9. 23 MRSA §157, first ¶, as amended by PL 1987, c. 395,  
7         Pt. A, §99, is repealed and the following enacted in its place:

8  
9             The Department of Transportation or any party or parties  
10         aggrieved by an award by the State Claims Commission may appeal  
11         to the Superior Court in the county where the land is situated  
12         within 30 days from the date the award was forwarded by the  
13         commission. This appeal is de novo and is taken by filing a  
14         complaint setting forth substantially the facts upon which the  
15         case will be tried like other civil cases.

16             Sec. 10. 23 MRSA §157, 4th ¶, as amended by PL 1987, c. 395,  
17         Pt. A, §99, is further amended to read:

18  
19             If either the owner or owners of record or the department  
20         appeal and the just compensation finally awarded, exclusive of  
21         interest, is not less than the gross damage determined by the  
22         State Claims Commission, exclusive of any interest allowed, then  
23         the court shall give judgment to the owner or owners for the  
24         amount in which the final award is in excess of the money  
25         deposited in court, ~~plus the amount paid the owner or owners,~~  
26         ~~exclusive of any interest awarded by the State Claims Commission,~~  
27         and for interest on such excess from the date of taking and for  
28         costs from the time of appeal. ~~No interest may be allowed on so~~  
29         ~~much of any award as has been paid into court or on any amount~~  
30         ~~paid to the owner or owners.~~ The clerk shall certify the final  
31         judgment of the court to the department, which shall enter the  
32         same of record, and order the same to be paid by the Treasurer of  
33         State. The judgment and certificate of judgment shall specify the  
34         withholding, if any, authorized pursuant to section 244-A,  
35         subsection 4.

36  
37             Sec. 11. 23 MRSA §158, as amended by PL 1987, c. 395, Pt. A,  
38         §100, is repealed.

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41  
42                                 **STATEMENT OF FACT**

43             This bill requires the appraisal members of the State Claims  
44         Commission to be certified general appraisers.

45             The bill also simplifies the appeal process as well as the  
46         administrative process for the State Claims Commission.