

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)



118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

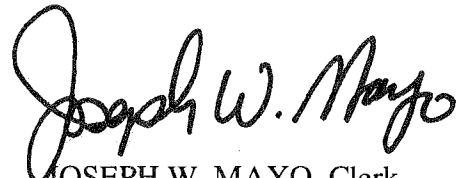
No. 1466

H.P. 1049

House of Representatives, March 11, 1997

**An Act to Provide Flexibility and Costs-savings in Department of
Transportation Property Acquisition Procedures.**

Submitted by the Department of Transportation pursuant to Joint Rule 204.
Reference to the Committee on Transportation suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative DRISCOLL of Calais.
Cosponsored by Representatives: BOUFFARD of Lewiston, CLUKEY of Houlton, FISHER
of Brewer, LINDAHL of Northport, WHEELER of Eliot, WINGLASS of Auburn, Senators:
CASSIDY of Washington, O'GARA of Cumberland.

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

2
4 **Sec. 1. 23 MRSA §153-B, sub-§2**, as enacted by PL 1993, c. 536, §2, is amended to read:

6 **2. Survey and appraisal.** When property is to be purchased
8 or taken over and held for the State, unless the department
10 determines that an adequate description already exists, the
12 department shall first cause the property or interest in the
14 property to be acquired to be surveyed and described, and a plan
16 of the property made, and to be appraised by one or more
18 appraisers. The owner or the owner's designated representative
20 must be given an opportunity to accompany the appraisers during
22 the appraiser's inspection of the property. All persons employed
24 by the department are authorized, to the extent necessary for
26 surveys, appraisals and preliminary engineering, to enter and
28 cross all lands within, adjoining and adjacent to the area ~~to be~~
30 surveyed proposed for acquisition in carrying out the objectives
32 of this section. The department may prescribe a--procedure
34 procedures to waive the appraisal in cases involving the
36 acquisition by sale or donation of property or interest in
38 property. The department may prescribe procedures to waive the
40 appraisal in cases in which the fair market value of the property
42 or interest in the property to be taken is estimated at \$5,000 or
44 less and valuation can be established by another method. In any
46 case in which the department and the owner do not reach an
48 agreement about the value of property or interest in property to
 be acquired, or if the owner requests, the department shall
 perform an appraisal.

Sec. 2. 23 MRSA §154, as amended by PL 1987, c. 395, Pt. A, §§94 and 95, is further amended to read:

34 **§154. Condemnation proceedings**

36 If the department determines that public exigency requires
38 the taking of such property or any interest ~~therein-forthwith~~ in
40 property, or is unable to purchase such a property and or any
42 interest therein in a property, or the necessary ways and access
44 thereto to a property at what it deems considers a reasonable
46 valuation, or if the title in a property is defective, it shall
48 file in the registry of deeds for the county or registry district
 where the land is located a notice of condemnation which shall
 must contain a description of the project specifying the property
 and the interest ~~therein~~ taken and the name or names of the owner
 or owners of record so far as they can be reasonably determined.
 The department may prescribe procedures for the reasonable
 determination of the owner or owners of record. The department
 may join in the same notice one or more separate properties

2 whether in the same or different ownership and whether or not
3 taken for the same use.

4 -A- The department shall serve a check in the amount of the
5 determined net damage and offering price and a copy of the notice
6 of condemnation shall ~~be served~~ on the owner or owners of record.
7 In case there is multiple ownership, the check may be served on
8 any one of the owners. With that copy ~~there shall be served~~ the
9 department must serve on each individual owner of record a copy
10 of ~~so much~~ that part of the plan as relates to the particular
11 parcel or parcels of land taken from ~~him~~ that owner and a
12 statement by the department with respect to the particular parcel
13 or parcels of land taken from ~~him~~ that owner which shall must:

14 **1. Date of proposed possession.** State the proposed date of
15 taking possession;

18 **2. Compensation involving severance damage.** Where the
19 department appraisals disclose severance damages, state the
20 amount of compensation itemized in accordance with the
21 department's determination of the following elements of damage:

22 A. The highest and best use of the property at the date of
23 taking;

26 B. The highest and best use of the property remaining after
27 the taking;

28 C. The fair market value of the property before the taking;

30 D. The fair market value of the property after the taking;

32 E. The gross damage, showing separately:

34 (1) The fair market value of the real property taken;
36 and

38 (2) Severance damages including the impairment or
40 destruction of facilities and structures;

42 F. Special benefits, accruing to the remaining property by
43 reason of the public improvement for which part of the
44 property is taken, to be set off against severance damages;

46 G. The net damage showing separately:

48 (1) The fair market value of the real property taken;

2 (2) The amount of severance damages in excess of
special benefits; and

4 (3) The offering price;

6 H. If the offer is not acceptable and the State cannot
negotiate an agreement on the amount of just compensation
8 within 60 days from the date of taking, the owner may apply
to the department within said 60 days and have the matter
10 referred to the State Claims Commission for assessment of
the damage. Acceptance and cashing this check will not
12 jeopardize negotiation and will not be construed as
acceptance of the offer; and

14 I. Enclosed Check No.: Amount: \$

16 Payable to:

18 Sent to:

20 **3. Compensation not involving severance damage.** Where the
22 department appraisals disclose no severance damages, state the
amount of compensation itemized in accordance with the
24 department's determination of the following elements of damage:

26 A. The highest and best use of the property at the date of
taking;

28 C. The fair market value of the real property taken as of
30 the date of taking;

32 E. Offering price;

34 F. The check represents the state's State's offer of just
compensation. If the offer is not acceptable and the State
36 cannot negotiate an agreement on the amount of just
compensation within 60 days from the date of taking, the
owner may apply to the department within the 60 days and
38 have the matter referred to the State Claims Commission for
assessment of the damage. Acceptance and cashing this check
40 will not jeopardize negotiation and will not be construed as
42 acceptance of the offer; and

44 G. Enclosed Check No.: Amount: \$

46 Payable to:

48 Sent to:

2 **4. Compensation in cases involving the facilities of a**
3 **public utility.** Where the condemnation involves the taking of
4 established rights and facilities owned by a public utility and
5 located outside of an established highway right-of-way, no
6 statement by the department as provided above shall may be sent
7 to the public utility concerned. In any negotiations for an
8 agreement with such public utility with regard to such rights and
9 facilities, the department shall consider, without being limited
10 to, the following elements of damage:

11 A. Relocation costs, which shall must include the cost of
12 acquisition of substitute rights and the cost of
13 establishing either existing or substitute facilities in a
14 new location;

15 B. The salvage value of facilities removed;

16 C. Cost of removal; and

17 D. The value of betterments where the function of the
18 substitute facilities exceeds the function of the replaced
19 facilities.

20 Service of the notice of condemnation with ~~the~~ a copy of the
21 plan, check and the statement by the department shall must be
22 made by registered or certified mail or by personal service as
23 required for service of a summons on a complaint in the Superior
24 Court. ~~The~~ A notice ~~of~~ describing the condemnation ~~only~~ shall
25 must be published once in a newspaper of general circulation in
26 the county where the property is located and such publication
27 shall ~~constitute~~ constitutes service on any unknown owner or
28 owners or other persons who may have or claim an interest in the
29 property. The notice must consist of an area map depicting the
30 general location of the property interests to be condemned and
31 such other information as the department determines will
32 sufficiently identify the area in which the property interests
33 are to be taken; an informative summary listing the parcel or
34 item numbers to be condemned, the name of the apparent owner or
35 owners of record of the property interests, the estimated areas
36 to be condemned and the nature of the interests to be condemned;
37 and a location at which the complete notice of layout and taking
38 may be examined.

39 If such owner is a person under the age of 18 years, or an
40 incompetent person, the commission shall cause such notice and
41 check to be served upon the legal guardian of such person or
42 incompetent. If there is no such guardian, then the department
43 shall apply to the judge of probate for the county wherein the
44 property is situated, briefly stating the facts and requesting
45 the appointment of a guardian. The reasonable fee of such
46 guardian as approved by the court shall must be paid by the
47 department.

2 In case there is a mortgage, tax lien of record or other
3 encumbrance covering any of said land, a copy of the notice of
4 condemnation ~~shall~~ must be sent forthwith by registered or
5 certified mail to the holder of record of said mortgage, tax lien
6 or other encumbrance addressed to ~~his~~ the holder's office or
7 place of abode if known, otherwise to the office, abode or
8 address as set forth in said record.

10 The recording of the notice of condemnation ~~shall-be~~ is the
11 date of taking and ~~shall-vest~~ vests title to the property therein
12 described in the State in fee simple or such lesser state as is
13 specified in the notice of condemnation. Within one year after
14 the completion of the project for which the land is taken, the
15 department shall file a plan for recording in the registry of
16 deeds for the county or registry district where the land is
17 located.

18 If a condemnation proceeding is instituted and then
19 abandoned, the owner of any right, title or interest in any real
20 property included in said proceeding ~~shall~~ must be reimbursed by
21 the department for ~~his~~ reasonable attorney, appraisal and
22 engineering fees, actually incurred because of the condemnation
23 proceedings.

26 SUMMARY

28 The purpose of this bill is to ensure that the procedures
29 and resources applied to an acquisition, while fully protecting
30 the property owner, are reasonable in light of the nature, extent
31 and value of the property interests to be acquired.

32 This bill enables the Department of Transportation to use
33 alternative valuation procedures, rather than appraisals, in
34 cases in which the estimated value of the acquisition is less
35 than \$5,000. In unsettled cases or when owners request, such
36 low-value acquisitions still would be appraised.

38 This bill eliminates the requirement that the Department of
39 Transportation publish the entire notice of layout and taking for
40 each condemnation. This permits the department to eliminate
41 publication of the lengthy metes and bounds description of each
42 property interest. The department would continue to publish a
43 list of affected owners and the type and extent of the interests
44 acquired, along with a map of the location of the taking.

46