

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1207

S.P. 418

In Senate, February 11, 1999

An Act to Amend the Local Highway Laws.

Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HARRIMAN of Cumberland.
Cosponsored by Representative: BUCK of Yarmouth.

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

4 **Sec. 1. 23 MRSA c. 307, sub-c. II, Art. 1** is amended by repealing
the headnote and enacting in its place the following:

6 **Article 1**
8 **Municipalities**

10 **Sec. 2. 23 MRSA §3351** is amended to read:

12 **§3351. Notice to owners to connect**

14 ~~Whenever--the--paving--or--repairing--of~~ Prior to paying or
~~substantially repairing~~ any street or public highway shall ~~have~~
~~been ordered by the city government,~~ the road commissioner, the
16 commissioner of public works or such officer as the ~~city~~
~~government~~ municipal officers may appoint in the absence of a
18 commissioner shall duly serve upon owners of property abutting on
such a street or highway and upon all corporations, persons,
20 firms and bridge or water districts occupying such a street or
highway a notice directing such owners, corporations, persons,
22 firms and bridge or water districts to make such sewer, water and
conduit connections or other work as may be designated, within 60
24 days from date of such notice. At the expiration of the time
fixed and after such a street has been paved or repaired, no
26 permit shall may be granted to open such that street for a period
of 5 years, except as otherwise provided.

28 **Sec. 3. 23 MRSA §3352** is amended to read:

30 **§3352. Emergency permits**

32 If the owners, corporations, persons, firms or bridge or
34 water districts comply with the notice given under section 3351,
the road commissioner, the commissioner of public works or such
36 officer as the ~~city-government~~ municipal officers may appoint in
the absence of a commissioner may, in the case of an emergency,
38 grant and renew permits for digging or making excavations in the
driveways of any of the public highways of the ~~city~~ municipality
40 for the ~~laying~~ repairing of gas, water, steam, oil, gasoline,
petroleum or any other liquid, or ammonia pipes or conduits or
42 for any other lawful purpose. Every permit shall must specify
the time prescribed by resolution or ordinance or, when no time
44 is prescribed, the road commissioner, the commissioner of public
works or such officer as the ~~city-government~~ municipal officers
46 may appoint in the absence of a commissioner shall specify a time
during which said the excavation may remain open, the place where
48 such that excavation may be made and the number of square yards
of surface ~~which~~ that may be disturbed.

2 **Sec. 4. 23 MRSA §3354** is amended to read:

4 **§3354. Record of permits kept; fees**

6 The road commissioner, the commissioner of public works or
8 such officer as the city--government municipal officers may
10 appoint in the absence of a commissioner shall keep a record of
12 all permits granted by him that person, work done by the city
14 municipal employees excepted. The Notwithstanding the provisions
16 of Title 35-A, section 2503, subsection 20 or any other provision
18 of law, the applicant shall pay to the city municipal treasurer
20 for every permit for making an excavation within the driveways of
22 any public highway paved with broken stone, concrete, bitulithic,
24 granite block, brick, wood block, sheet asphalt or other
26 pavements sueh fees as--shall--be established by the municipal
28 officers,--sueh fees that may not te exceed the reasonable cost of
30 replacement of the excavated pavement and base material, the
32 depreciated value of the driveway of the public highway and
34 inspections performed by or for the municipality. All such fees
36 paid to the city municipal treasurer shall must be regularly
38 accounted for by-him in his the treasurer's report to the city
40 government municipal officers and shall constitute a special fund
42 for the repaving of said--cuts excavations, repair of roadway
44 adjacent to the excavations and inspections. When such cuts
46 excavations are repaired or inspected by the street--department
48 municipality, the cost thereof shall must be charged to said
50 fund. Municipal ordinances and regulations governing activities
 conducted in accordance with this subchapter may not be arbitrary
 or capricious. Unless otherwise defined in a municipal ordinance
 or regulation, the term "base material" means any material placed
 beneath the surface material on a public highway for the purpose
 of supporting the surface or material.

34 **Sec. 5. 23 MRSA §3355** is amended to read:

36 **§3355. Size of opening; filling; protection**

38 It shall--be is unlawful for any person or persons, firm,
40 corporation or bridge or water district, having the right of
42 opening or making excavations within the driveways of public
44 highways in the city municipality, to leave open at any time any
46 trench or excavation of a greater length than 200 feet, except by
48 permission of the officer granting such permit. Such person or
50 persons, firm, corporation or bridge or water district shall
 fully and completely fill up sueh a trench to the surface of the
 roadway before making any further trench or excavation. Sueh The
 filling shall must be puddled or rammed as the nature of the soil
 may require and shall must be done and completed within the time
 designated in the permit for completing sueh the trench or
 excavation. Any person or persons, firm, corporation or bridge

2 or water district, failing to comply with the requirements or
3 infringing on the prohibitions of this section, may be punished
4 by a fine of \$50 for each offense. These requirements,
5 prohibitions and penalties shall may not apply to excavations in
6 grading, building or repairing any of the public highways under
7 the supervision of the city municipal authorities. Such person
8 or persons, firm, corporation or bridge or water district shall
9 protect the paving on either side of the opening by the use of
10 sheet piling or such other means as will prevent the escape of
11 sand from underneath it. ~~In determining the number of square~~
12 ~~yards of paving disturbed, there shall be included such area of~~
13 ~~paving adjoining the trench actually opened as will, in the~~
14 ~~opinion of the commissioner of public works or such officer as~~
15 ~~the city government may appoint, be required to be taken up and~~
16 ~~relaid by reason of such failure to properly protect the same.~~
17 The road commissioner, the commissioner of public works or such
18 officer as the municipal officers may appoint in the absence of a
19 commissioner may designate the size of the area to be repaved
20 upon closure of the excavation.

21 **Sec. 6. 23 MRSA §3356 is amended to read:**

22 **§3356. Skill required**

23 If the work or any part thereof of the work mentioned in
24 sections 3351 to 3355 of repairing or filling the trenches or
25 excavations shall ~~be~~ is unskillfully or improperly done, the road
26 commissioner, the commissioner of public works or such officer as
27 the ~~city government~~ municipal officers may appoint in the absence
28 of a commissioner may ~~forthwith~~ immediately cause the same work
29 or any part of the work to be skillfully and properly done and
30 shall keep an account of the expense thereof. In such case, such
31 person or persons, firm, corporation or bridge or water district
32 in default shall forfeit and pay a penalty equal to the whole of
33 said ~~the~~ expense incurred by ~~said commissioner of public works or~~
34 ~~such officer as~~ the ~~city government may appoint~~ municipality,
35 with an addition of 50%. Thereafter, upon the completion of the
36 work and the determination of the costs thereof, the said
37 commissioner ~~of public works or such officer as the city~~
38 ~~government may appoint may not~~ or appointee shall issue no a
39 further or new permit to any person or persons, firm, corporation
40 or bridge or water district ~~so~~ in default until ~~he shall receive~~
41 the municipality receives, in addition to the fees provided, the
42 amount of the penalty as by this section provided and determined.
43

44 **Sec. 7. 23 MRSA §3357 is amended to read:**

45 **§3357. Relaying of pavement**

2 When any excavation shall--be is made in any paved public
highway and the trench shall--have has been filled as required by
4 sections 3355 and 3356, the ~~commissioner of public works or such~~
~~officer as the city government may appoint~~ municipality shall
6 relay the pavement or enter into an agreement for relaying of the
pavement by the permittee. The cost thereof of relaying the
8 payment, including materials, labor and inspection, shall must be
paid out of any moneys money in the city municipal treasury
standing to the credit of the regular fund for this purpose.

10 Sec. 8. 23 MRSA §3358 is amended to read:

12 **§3358. Filing map of location**

14 The party applying for a permit for said an excavation under
16 sections 3351 to 3358 must file a map or sketch with the road
commissioner, the commissioner of public works or such officer as
18 the ~~city government~~ municipal officers may appoint in the absence
of a commissioner, showing the location and size of cuts to be
20 made.

22 Sec. 9. 23 MRSA §3359 is amended to read:

24 **§3359. Minimum excavation for pavement on a concrete base**

26 When Unless otherwise required in a municipal ordinance or
regulation, when any excavation shall--be is made in any paved
28 public highway and said pavement is repaired by a contractor or
~~the commissioner of public works or such officer as the city~~
30 ~~government may appoint, the commissioner of public works or such~~
~~officer as the city government may appoint, where said pavements~~
32 are the pavement is laid on a concrete base, shall the excavation
must have the pavement and concrete cut back on each side of the
34 excavation ditch a distance of 8 inches, and in issuing the
permits for cutting the pavements pavement this extra width shall
36 must be charged to the person applying for the same permits.

38 Sec. 10. 23 MRSA c. 307, sub-c. II, Art. 2 is repealed.

40 **SUMMARY**

42 This bill provides towns with the same authority that cities
44 have to regulate excavations of local highways. The term
"municipal officers" is substituted for "city government" to
46 include different forms of local government. Additionally, the
bill includes the reasonable cost of municipal inspections and of
48 the reduced life of the roadway among the costs that may be
assessed. The bill clarifies that municipalities have the right
50 to protect local highways and this right may not be preempted by
other laws governing the regulation of utilities. The bill adds
52 a definition of the term "base material."