

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

No. 2370

S.P. 918

In Senate, January 12, 2000

An Act to Amend Certain Transportation Laws.

Submitted by the Department of Transportation pursuant to Joint Rule 204.
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 PARADIS of Aroostook.
Cosponsored by Representative JABAR of Waterville and
Representative: LINDAHL of Northport.

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

2 Sec. 1. 23 MRSA §61, sub-§2-A is enacted to read:

4 2-A. Easements may be conveyed. The Department of
6 Transportation may grant or otherwise transfer easements over
8 property taken or acquired for transportation purposes when the
10 department in its sole discretion determines that the conveyance
12 of such easements is appropriate and necessary.

14 Sec. 2. 23 MRSA §154-D, 2nd ¶, as amended by PL 1987, c. 395,
16 Pt. A, §96, is further amended to read:

18 Any person displaced by a taking or acquisition who remains
20 in occupancy after the date of acquisition shall may be required
22 to pay rent compensation from the date of the acquisition. The
24 consideration compensation paid by the ~~tenant-or~~ displaced person
26 shall may not exceed fair rental value of the property based on
28 short-term occupancy. If the ~~tenants-or~~ displaced person and the
department cannot reach agreement as to equivalent of fair rental
value for the initial 90-day period after acquisition, each may
apply to the State Claims Commission in writing for such a
determination ~~as-to-the-fair-rental-value~~. The State Claims
Commission's jurisdiction to determine the fair rental value
shall ~~be~~ is limited solely to the initial 90-day period. Any
consideration compensation to be paid by the ~~tenant-or~~ displaced
person after the initial 90-day period shall must be determined
solely by the department.

30 Sec. 3. 23 MRSA §156, as affected by PL 1997, c. 508, Pt. A,
32 §3 and amended by Pt. B, §5, is further amended to read:

34 **§156. Hearing before commission**

36 The State Claims Commission shall immediately enter the
38 petition of the department upon its docket and assign a date for
hearing at the earliest possible date. The ~~chairman~~ chair of the
~~board~~ commission shall assign no more than 3 members of the ~~board~~
commission for hearings, one of whom shall must be an appraiser
and one an attorney at law. Notice of the time and place for the
hearing shall must be ~~mailed-by-registered-or-certified~~ forwarded
42 by regular mail to the department and to the owner or owners of
record and to the holders of any mortgage, tax lien or any other
encumbrance on the property involved at least 14 days before the
date of the hearing. In the event the notice required is returned
to the State Claims Commission ~~marked-"refused"-or-"unclaimed"~~ by
the United States post office, ~~the State Claims Commission may,~~
46 ~~at its option, reschedule the hearing by giving the notice~~
48 ~~required in this paragraph, or it may cause the matter to be~~
50 ~~heard on the day originally scheduled by causing service to be~~

2 made-upon-the-party-not-served-by-certified-or-registered-mail-in
a-manner-allowed-for-service-of-a-summons-on-a-complaint-in-the
Superior-Court,-which-notice-shall-be-served-at-least-5-days
4 before--the--originally--scheduled--hearing the chair of the
commission may order service by publication. The hearing shall
6 must be held in quarters suitable for a full presentation of all
evidence and located as conveniently as possible for all
8 interested parties in the county where the land is situated.
Before making an award, the State Claims Commission shall view
10 the property involved with or without the presence of the
interested parties, but it shall first notify the interested
12 parties of the time when it will view the property. The
department shall must be represented at the hearing and may
14 present in open hearing evidence as to title, engineering maps
and data, and its opinion, evidence and appraisal or appraisals
16 as to the fair market value of the property involved before and
after the taking. In all matters where a verbatim record of the
18 proceedings is made by an official board reporter, a transcript
of the same shall must be furnished to the interested parties,
20 upon request, and upon payment of a reasonable charge for
transcribing and preparing such record. In making its award, the
22 State Claims Commission shall is not be limited by the range of
testimony produced before it but may reach its decision on the
24 basis of the view, the testimony and its own judgment. The State
Claims Commission may continue a hearing from time to time for
26 cause shown or by agreement of parties; and where such
continuance is made at the request of the landowner, may require
28 that interest be waived for the period of the continuance.

30 As promptly as possible after the conclusion of the hearing,
the State Claims Commission shall make an award in writing
32 specifying:

34 1. **Owners and encumbrances.** The owner or owners of record
and the holder of any mortgage, tax lien or other encumbrance of
36 record;

38 2. **Nature of interest taken.** The nature of the interest
taken;

40 3. **Commission's decision on elements of damage.** The State
42 Claims Commission's decision as to each of the elements of damage
listed in section 154, subsection 2 or 3, or the elements of
44 damage as set forth in section 154, subsection 4, and such other
elements of damage as are legally compensable;

46 4. **Gross damage.** The gross damage which-shall-be that is
48 the net damage not including interest;

2 **5. Net amount of award.** The net amount of the award which
shall-be that is the net damage less the amount paid the owner or
owners at the date of taking;

4
6 **6. Interest on award.** The interest, if any, due on the net
amount of the award from the date of taking to the date of the
award;

8
10 **7. Award.** The award which-shall-be that is the net damage,
less the amount paid the owner or owners at the date of taking
plus interest on the net amount of the award; and

12
14 **8. Withholding.** The withholding, if any, authorized
pursuant to section 244-A, subsection 4.

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

18
20 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
22 letter the date it forwarded the award and all parties shall
within 30 days designate to the commission the award or awards
24 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
26 commission award, the State Claims Commission shall promptly
notify the Department of Transportation. The Department of
28 Transportation shall, within 60 days from the date of issuance of
the commission award, pay the awarded amount to the party or
30 parties named in the award.

32 Service as required by this ~~section~~ chapter may also be
made in the manner ~~prescribed by Rule 5 of~~ provided by the Maine
34 Rules of Civil Procedure.

36 Upon certification by the Department of Transportation that
after due diligence the address of owners of record can not be
38 determined or when the State Claims Commission notice by mail is
returned to the commission unclaimed or unknown or where personal
40 service can not be made, the chair of the commission may order
service by publication. Notice of the time and place of the
42 review and hearing must be published once in a newspaper of
general circulation in the county in which the subject property
44 is located. The commission shall then proceed with the hearing as
in other cases and the appeal provisions must be available to the
46 Department of Transportation and the record owner or owners, or
any one of them, who appears and makes application for appeal
48 pursuant to section 157.

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

8 After the appeal period from the decree of the State Claims
Commission or a judgment of any court has expired, any sum of
10 money directed by a decree of the commission or by a judgment of
any court to be paid over that remains unclaimed for 60 days must
12 be disposed of consistent with Title 33, chapter 41.

14 Notwithstanding Title 1, section 302, this section applies
to all actions and proceedings pending on September 14, 1979.

16 **Sec. 4. 23 MRSA §1803-B, sub-§1, ¶A**, as enacted by PL 1999, c.
473, Pt. D, §4, is amended to read:

18 A. Rural Road Initiative funds must be distributed as
20 follows.

22 (1) Funds are distributed at a rate of \$600 per year
per lane mile for all rural state aid minor collector
24 roads and all ~~local~~ public roads maintained by a
municipality located outside urban compact areas as
26 defined in section 754, except that funds are
distributed at a rate of \$300 per year per lane mile
28 for all seasonal ~~town-ways~~ public roads.

30 **Sec. 5. 29-A MRSA §2085, first ¶**, as enacted by PL 1999, c.
171, §1, is amended to read:

32 A municipality may request the department to designate a
34 segment of a ~~public-way~~ state or state aid highway in that
municipality as a no-passing zone if the highway is outside the
36 compact area of an urban compact municipality, as defined in
Title 23, section 754. Such a request must be in writing to the
38 commissioner and may be made only with the approval of the
municipality's legislative body. A request is limited to
40 segments of 2-lane ways in primarily residential areas and must
be accompanied by a map showing the location of the proposed
42 no-passing zone or zones and a written explanation of the need
for such a zone in each location. The commissioner shall approve
44 such a request unless the commissioner determines that granting
such a request will unreasonably restrict the efficient flow of
46 traffic or result in a threat to public safety in that location.
The commissioner shall notify the municipality in writing of the
48 commissioner's decision within 30 days of receiving the written
request from the municipality. If a request is denied, the
50 notification must state the specific reasons for the denial. A

2 municipality whose request is denied may request the department
3 to hold a public hearing within that municipality for the purpose
4 of receiving public input on the requested change. The
5 department shall hold the hearing within 30 days after a request
6 is made and must inform the municipality of its final decision
within 30 days after the hearing is held.

8 **Sec. 6. 35-A MRSA §2502, sub-§1, ¶A,** as amended by PL 1999, c.
9 473, Pt. D, §8, is further amended to read:

10 A. The Department of Transportation, when the public way is
11 a state, or state-aid ~~or--federal-aid~~ highway, except for
12 state or state-aid highways in the compact areas of urban
13 compact municipalities as defined in Title 23, section 754;

14 **Sec. 7. 35-A MRSA §2502, sub-§4,** as enacted by PL 1987, c.
15 141, Pt. A, §6, is repealed.

16 **Sec. 8. PL 1999, c. 473, Pt. F, §2** is repealed and the following
17 enacted in its place:

18 **Sec. F-2. Major collector state aid municipal match.** The
19 Department of Transportation shall assume all responsibility for
20 standard municipal financial obligations to the department under
21 the Collector Road Development Award Program due on or after June
22 1, 1999 incurred as a result of planned or executed major
23 collector state aid Collector Road Development Award Program
24 reconstruction projects. The department shall satisfy these
25 municipal financial obligations with balances remaining in the
26 Urban-Rural Initiative Program and Collector Road Development
27 Award Program until such time as all such municipal financial
28 obligations are satisfied.

29 **Sec. 9. Retroactivity.** That section of this Act that repeals
30 and replaces Public Law 1999, chapter 473, Part F, section 2
31 applies retroactively to June 1, 1999.

32 SUMMARY

33 This bill makes the following changes to the laws governing
34 transportation.

35 1. It provides that the Department of Transportation may
36 grant or otherwise transfer easements over property taken or
37 acquired for transportation purposes when the department in its
38 sole discretion determines that the conveyance of such easements
39 is appropriate and necessary.

2 2. It provides that the owners of real property proposed to
3 be acquired for federal, state and federally assisted highway
4 projects are not in all cases required to pay rent in the event
5 that they occupy the property beyond the date of acquisition.

6 3. It changes the requirements for notice of the time and
7 place of a hearing on a petition to condemn land filed with the
8 State Claims Commission by the Department of Transportation. It
9 allows the commission to send notice to the department,
10 landowners and lienholders by first class mail rather than
11 registered mail and allows service by publication if a party can
12 not be reached by mail.

13 4. It codifies current practice by providing that the
14 formula for distribution of Urban-Rural Initiative Program funds
15 includes roads maintained by a municipality that are not town
16 ways.

17 5. It clarifies that the Department of Transportation does
18 not have responsibility for designating no-passing zones on roads
19 that are not the responsibility of the department.

20 6. It provides that municipalities have responsibility for
21 regulation of utility facilities in the public way in urban
22 compact areas, regardless of whether or not the highway is a
23 federal-aid highway.

24 7. It clarifies existing law and provides that the State
25 will relieve certain municipalities of financial obligations for
26 major collector state aid highway reconstruction local match
27 requirements.