

# MAINE STATE LEGISLATURE

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DATE: 4/3/2000

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**TRANSPORTATION**

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**STATE OF MAINE  
SENATE  
119TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 992, L.D. 2550, Bill, "An Act to Ensure Cost Effective and Safe Highways in the State"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 23 MRSA §704, as amended by PL 1999, c. 473, Pt. C, § 1, is repealed and the following enacted in its place:

**§704. Entrances to highways regulated**

It is unlawful to construct or maintain any driveway, entrance or approach within the right-of-way of any state highway or state aid highway, as defined in section 53, that lies outside the compact area of an urban compact municipality, as defined in section 754, without a written permit from the Department of Transportation or, if within the compact area, without a written permit from the proper municipal officials. The right-of-way is considered the full width of the right-of-way as laid out by the State, the county or the municipality.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Arterial highway" means a highway providing long-distance connections as approved by the Federal Highway Administration pursuant to 23 Code of Federal Regulations, Section 470.105(b)(1999).

2 B. "Forest management activities" includes timber cruising  
3 and other forest resource evaluation activities, pesticide  
4 or fertilizer application, timber stand improvement,  
5 pruning, timber harvesting and other forest harvesting,  
6 regeneration of forest stands and other similar or  
7 associated activities.

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10 C. "Forest management roads" includes a route or track  
11 consisting of a bed of exposed mineral soil, gravel or other  
12 surfacing material constructed for or created by the  
13 repeated passage of motorized vehicles and used primarily  
14 for forest management activities, including associated log  
15 yard and winter haul roads.

16 2. State highways and state aid highways. The Department  
17 of Transportation is directed and municipalities are authorized  
18 to adopt rules and regulations for the design, location and  
19 construction of driveways, entrances and approaches on state  
20 highways and state aid highways to adequately protect and promote  
21 the safety of the traveling public and maintain highway  
22 right-of-way drainage.

23 3. Arterial highways. For arterial highways that lie  
24 outside the compact area of an urban compact municipality, the  
25 Department of Transportation shall limit the number, spacing,  
26 design, location and construction of driveways, entrances or  
27 approaches to maintain existing posted speeds and ensure safe  
28 travel.

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30 4. Unsafe arterial highways. For those arterial highway  
31 corridors with driveway-related crash-per-mile rates that exceed  
32 the 1999 statewide average for arterial highways of the same  
33 posted speed limit, the permit applicant must avoid, minimize or  
34 mitigate any deterioration of safety or reduction of the posted  
35 speed limit.

36  
37 5. Exemptions. A permit is not required for the following:

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39 A. Any existing driveway, entrance or approach unless its  
40 grade, location or use is changed; or

41  
42 B. A driveway, entrance or approach used solely for forest  
43 management purposes provided that construction and  
44 maintenance follows departmental permit by rule  
45 requirements. A written permit is required if the use of  
46 that driveway, entrance or approach is changed.

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49 6. Access denied. The Department of Transportation and the  
50 municipalities shall deny ingress to and egress from property

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2 abutting the highway when access rights have been acquired by the  
department.

4 7. Reconsideration. In writing, the Commissioner of  
6 Transportation shall either approve an application under this  
section setting forth any conditions or terms required for  
8 approval or disapprove the application setting forth the reasons  
for disapproval. An applicant has 30 days from the receipt of  
10 this decision to request reconsideration. This request must  
outline the findings and conclusions of the commissioner to which  
12 that person objects, the basis of the objections and the nature  
of the relief requested. Nothing in this section may be  
14 construed to limit a person's lawful right to appeal a final  
agency action.

16 8. Violation. A violation of this section or the rules  
18 adopted pursuant to this section is punishable by a fine of not  
more than \$100 per day per violation. The fine begins to accrue  
20 30 days after the Department of Transportation sends notice of  
the violation to the landowner. The department shall establish  
22 procedures for administrative enforcement of this section,  
establishing fines and reconsideration and appeals of enforcement  
24 actions.

26 9. Rules. Rules adopted by the Department of  
Transportation pursuant to subsection 2 are routine technical  
28 rules as defined in Title 5, chapter 375, subchapter II-A. Rules  
adopted pursuant to subsections 3 and 4, subsection 5, paragraph  
30 B and subsection 8 are major substantive rules as defined in  
Title 5, chapter 375, subchapter II-A.

32 **Sec. 2. Major substantive rules.** The Department of  
34 Transportation may not enforce the Maine Revised Statutes, Title  
23, section 704, subsections 3 and 4, subsection 5, paragraph B  
36 and subsection 8 until departmental rules implementing those  
subsections have been finally adopted pursuant to Title 5,  
38 section 8072, subsection 8.

40 **Sec. 3. "Smart growth" assistance to municipalities.** The  
42 Department of Transportation, Bureau of Planning, Research and  
Community Services shall work cooperatively with the State  
44 Planning Office and regional councils to provide training,  
technical assistance and information to municipalities on road  
46 planning, road maintenance, sidewalks and neighborhood  
involvement to assist municipalities in addressing "smart growth"  
48 by preserving traditional downtowns, walkable communities and  
compact neighborhoods. By January 2, 2001, the Department of  
Transportation shall develop model subdivision and road  
ordinances that provide several options to municipalities for

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2 construction standards for new residential streets, including  
options for safe yet low-cost design standards.

4       **Sec. 4. Strategic planning; transit.** The Department of  
6 Transportation shall begin a strategic planning process to  
address challenges such as administrative streamlining of transit  
8 funding, marketing and redesign of transit to appeal to a wider  
range of customers, innovative financing of transit projects,  
10 connectivity to airports and rail and other issues. The  
department shall present a status report to the joint standing  
12 committee of the Legislature having jurisdiction over  
transportation matters during the First Regular Session of the  
14 120th Legislature. The department may pursue federal funds to  
assist with this planning process.

16       **Sec. 5. Funding for transit projects.** The Department of  
18 Transportation shall work with the Department of Human Services  
and the Department of Environmental Protection to identify  
20 funding sources for innovative transit and transportation  
projects that address sprawl and air quality issues. The  
22 departments may pursue federal grants or funds to assist with  
these projects.'

24       Further amend the bill by inserting at the end before the  
summary the following:

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**'FISCAL NOTE**

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The Department of Transportation will incur some minor  
32 additional costs to adopt certain rules, to develop model  
ordinances, to submit a required report to the Legislature and to  
develop additional funding sources for transit projects. These  
34 costs can be absorbed within the department's existing budgeted  
resources.

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38       The Department of Transportation and the State Planning  
Office within the Executive Department will incur some minor  
40 additional costs to provide certain technical assistance to  
municipalities. These costs can be absorbed within the agencies'  
existing budgeted resources.

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44       The Department of Human Services and the Department of  
Environmental Protection will incur some minor additional costs  
46 to work with the Department of Transportation to develop  
additional funding sources for transit projects. These costs can  
be absorbed within the departments' existing budgeted resources.

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The collection of additional fines by the Judicial Department may also increase General Fund revenue by minor amounts.'

## SUMMARY

This amendment replaces the original bill and is the majority report of the committee. The amendment replaces the current driveway permit requirements and establishes a 3-tiered process for permitting new driveways, entrances and approaches on Maine's major highways.

On state highways and state aid highways outside urban areas, the Department of Transportation is authorized under current law to review permits for potential safety problems. This amendment allows for review of drainage as well. For arterial highways outside urban areas, the department will review permits for the number, spacing, design and location of driveways with a goal of maintaining posted speed limits and ensuring safe travel. For arterial highways with high accident rates, applicants may be required to avoid, minimize or mitigate safety issues or reduced speed limits prior to construction of a driveway.

Existing driveways, approaches and entrances, as well as forest management roads, are exempt from these requirements unless their use changes. A grade change or location change of an existing driveway, approach or entrance requires a permit also. The department is empowered to deny access rights to property where access rights have been acquired through eminent domain, purchase or other mechanisms.

If a permit is denied, a permit applicant may ask the Commissioner of Transportation to reconsider the application. By rule, the department will develop procedures for enforcing these requirements, establishing penalties and appeals of enforcement action.

Rules developed by the department to implement these new requirements are major substantive rules and will be reviewed by the joint standing committee of the Legislature having jurisdiction over transportation matters before they become effective.

This amendment also requires the department to work with other agencies and municipalities to assist them in addressing "smart growth" techniques and to develop model ordinances for road construction standards. It also requires the department to do more strategic planning on transit issues and to work with

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2 other departments to identify funding sources to address sprawl  
and air quality issues.

4 It also adds a fiscal note to the bill.

**COMMITTEE AMENDMENT**