

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)



L.D. 103

DATE: 5-18-01

(Filing No. H-528)

MAJORITY
STATE AND LOCAL GOVERNMENT

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 99, L.D. 103, Bill, "An Act to Amend Eminent Domain Powers"

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

'Sec. 1. 1 MRSA c. 21 is amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 21

EMINENT DOMAIN

Sec. 2. 1 MRSA §815 is enacted to read:

§815. Abandonment of purpose; rights of condemnee

Notwithstanding any other provision of law, if an entity that has taken property by eminent domain fails to use the property for the project or purpose for which that property was taken, the condemnee or the condemnee's heirs have a right of first refusal to purchase the property as provided in this section. The right may be exercised at a price equal to the total compensation paid to the condemnee for the taking plus an adjustment for any improvements made to the property and for changes in inflation based upon the Consumer Price Index as defined in Title 36, section 5402, subsection 1. The right of first refusal automatically terminates once the property is used for the project or purpose for which that property was taken. The purpose of a taking may be passive in nature, including conservation or preservation.

COMMITTEE AMENDMENT

2 1. Reaffirmation of public purpose. If a property has not
4 been used for the purpose for which it was taken after 8 years
6 from the date of condemnation, the entity must reaffirm the need
8 to retain the property for that purpose by giving notice to the
10 public of its continuing intent to use the property for that
12 purpose. Notice to the public is by publication twice
14 consecutively in a daily or weekly newspaper having general
16 circulation in the municipality or political subdivision in which
18 the property is located. If the purpose of the taking was to
20 construct improvements, the property is deemed as being used for
22 that purpose upon the commencement of substantial on-site
 construction activity. After the initial reaffirmation, for so
 long as the property has not been used for the purpose for which
 it was taken, the entity must reaffirm the need to retain the
 property every 3 years. Reaffirmation under this subsection does
 not constitute a retaking of the property, and this section does
 not require the entity to make additional payments to the
 condemnee or the condemnee's heirs. If the entity fails to
 reaffirm the need to retain the property, the entity must notify
 the condemnee or the condemnee's heirs as described in subsection
 2.

24 2. Notification of right of first refusal. If the need to
26 retain the property is not reaffirmed as required by subsection
28 1, the entity using eminent domain must give written notice of
30 the right of first refusal provided by this subsection to the
32 condemnee or the condemnee's heirs by certified mail, return
 receipt requested, or by any other method that produces written
 evidence of receipt. Notice is sufficient under this subsection
 if the signed receipt is returned or the certified mail is
 returned as refused by the recipient.

34 A. If after reasonable diligence the address of the
36 condemnee or the condemnee's heirs can not be determined,
38 the notice is sufficient if it is published twice
40 consecutively in a daily or weekly newspaper having general
 circulation in the municipality or political subdivision in
 which the property obtained by eminent domain is located.

42 B. If, within 90 days of the issuance of the written notice
44 or the second publishing date as required by this
46 subsection, the condemnee or the condemnee's heirs have
48 either refused the right of first refusal on the property or
 failed to respond to the notice, then the entity may dispose
 of the property in any manner allowed by law free and clear
 from any rights provided by this section.

50 3. Waiver of rights under this section. Notwithstanding
 any other provision of this section, the condemnee or the

R. S.

condemnee's heirs may waive or release any rights provided under this section at any time.

4. Exemptions. This section does not apply to property taken by eminent domain if that property:

A. Was taken in whole or in part using federal funds or the eminent domain authority to take the property was derived from federal law;

B. Does not meet state or municipal lot size or frontage requirements;

C. Was taken to expand existing corridors used for transportation or utility purposes including highways, bridges, railroad lines or utility lines; or

D. Was taken before October 1, 2001.'

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

FISCAL NOTE

This bill may increase the number of civil suits filed in the court system. The additional workload and administrative costs associated with the minimal number of new cases filed can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees may also increase General Fund revenue by minor amounts.'

SUMMARY

This amendment replaces the bill and applies to all eminent domain proceedings under Maine law. If the land taken under eminent domain is not used for the purpose of the taking within 8 years, the entity that took the property must reaffirm the need to retain the property. Property taken for development purposes is considered to be used for its intended purpose if substantial on-site construction has been commenced. The amendment also recognizes that the purpose of a taking may be to prevent development of a piece of land. Following the initial reaffirmation, additional reaffirmations must take place every 3 years as long as the purpose of the taking remains unaccomplished. Subsequently, if the project for which the taking was accomplished is abandoned or if reaffirmation fails to occur, the taking entity must provide a right of first refusal to the condemnee or condemnee's heir to reacquire the property.

COMMITTEE AMENDMENT "A" to H.P. 99, L.D. 103

2 The reacquisition price is the original condemnation price plus
adjustments for improvements to the property and for changes in
4 the Consumer Price Index since the taking. Written notice is
required to the condemnee or the condemnee's heirs by certified
6 mail, return receipt requested. If the address of the condemnee
or the condemnee's heir can not be determined after reasonable
8 diligence, notice may be by 2 newspaper publications. The
condemnee or the condemnee's heir has 90 days to respond or the
10 taking entity may sell the property for fair market value. The
condemnee or the condemnee's heir may relinquish his or her
12 rights at any time and full ownership rights transfer to the
taking entity. The amendment also adds a fiscal note to the bill.