

MAINE STATE LEGISLATURE

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m
R.S.

L.D. 1203

DATE: 4-13-06

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JUDICIARY

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**STATE OF MAINE
SENATE
122ND LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "B" to S.P. 417, L.D. 1203, Bill, "An Act To Amend the Laws Concerning Eminent Domain"

Amend the bill by inserting after the title and before the enacting clause the following:

'Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.'

Further 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 §244, sub-§1, ¶C, as amended by PL 1989, c. 208, §§12 and 21, is further amended to read:

C. Actual reasonable expenses, but not to exceed \$1,000 \$2,500, in searching for a replacement business or farm; and

Sec. 2. 23 MRSA §244, sub-§1, ¶D, as enacted by PL 1989, c. 208, §§12 and 21, is amended to read:

D. Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria to be established by the department, but not to exceed ~~\$10,000~~ \$20,000.

Refs.

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2 **Sec. 3. 23 MRSA §244, sub-§3**, as amended by PL 1989, c. 208,
§§12 and 21, is further amended to read:

4 **3. Fixed payments for business or farm displacements.** Any
6 displaced person eligible for payments under subsection 1 who is
8 displaced from that person's place of business or farm operation
and who is eligible under criteria established by the department
10 may elect to accept the payment authorized by this subsection in
12 lieu of the payment authorized by subsection 1. The payment
14 ~~shall consist~~ consists of a fixed payment in an amount to be
determined according to criteria established by the department,
except that any such payment ~~shall be~~ may not be less than \$1,000
nor more than \$20,000 ~~\$100,000~~. A person whose sole business at
the displacement dwelling is the rental of property to others
16 ~~shall~~ does not qualify for a payment under this subsection. In
the case of a business no payment may be made under this
subsection unless the department is satisfied that the business:

18 A. Cannot be relocated without a substantial loss of its
20 existing patronage; and

22 B. Is not part of a commercial enterprise having more than
24 3 other establishments not being acquired by the department,
which that are engaged in the same or similar business.

26 **Sec. 4. 30-A MRSA §3101, sub-§§3 and 4** are enacted to read:

28 **3. Business relocation benefits.** Whenever the acquisition
30 of real property pursuant to this section results in the
displacement of a business or farm, the municipality shall
32 provide payment for moving and related expenses as applicable
under Title 23, section 244.

34 **4. Residence relocation benefits.** Whenever the acquisition
36 of real property pursuant to this section results in the
displacement of a person from a dwelling, the municipality shall
38 provide payment for moving and related expenses, as well as
replacement housing as applicable under Title 23, sections 244 to
244-C.

40 **Sec. 5. 30-A MRSA §5204, sub-§§10 and 11** are enacted to read:

42 **10. Business relocation benefits.** Whenever the acquisition
44 of real property pursuant to this section results in the
displacement of a business or farm, the municipality shall
46 provide payment for moving and related expenses as applicable
under Title 23, section 244.

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2 11. Residence relocation benefits. Whenever the
3 acquisition of real property pursuant to this section results in
4 the displacement of a person from a dwelling, the municipality
5 shall provide payment for moving and related expenses, as well as
6 replacement housing as applicable under Title 23, sections 244 to
7 244-C.

8 **Sec. 6. In lieu of payments criteria review; report.** The Department
9 of Transportation shall review the criteria that are currently
10 used to determine the payments made to businesses and farms in
11 lieu of actual relocation costs under the Maine Revised Statutes,
12 Title 23, section 244, subsection 3. The department shall
13 compile information concerning claims and payments made under
14 Title 23, section 244, subsection 3 since January 1, 2004. The
15 department shall examine the consequences of using net operating
16 income as a basis for in lieu payments, including any necessary
17 consequences under federal law, regulations and programs. For
18 the purposes of this section, "net operating income" means
19 ordinary income less operating expenses from trade or business
20 activities that are directly related to the subject property,
21 excluding depreciation, amortization and interest, although the
22 department may, in addition, use a different formulation of "net
23 operating income." The department shall report by January 15,
24 2007 to the joint standing committee of the Legislature having
25 jurisdiction over judiciary matters the information collected,
26 the analysis completed, the conclusions reached and any
27 recommended changes in law, rules or practice. The joint
28 standing committee of the Legislature having jurisdiction over
29 judiciary matters may report out legislation to the 123rd
30 Legislature based on the review and report.

31 **Sec. 7. Appropriations and allocations.** The following
32 appropriations and allocations are made.

33 **TRANSPORTATION, DEPARTMENT OF**
34
35 **Highway and Bridge Improvement 0406**

36 Initiative: Allocates funds for the additional cost of
37 purchasing certain properties through the eminent domain process.

38	HIGHWAY FUND	2005-06	2006-07
39	All Other	\$0	\$46,667
40			
41	HIGHWAY FUND TOTAL	\$0	\$46,667'

42
43
44
45 **SUMMARY**

46
47 This amendment replaces the bill.

RS

COMMITTEE AMENDMENT "b" to S.P. 417, L.D. 1203

2 This amendment increases the amount of reimbursement from
4 the Department of Transportation to a business for actual
6 reasonable expenses for searching for a replacement. Current law
8 provides for a maximum of \$1,000. The federal regulations, on
10 which this state law is based, now provide for a maximum of
12 \$2,500. This amendment increases the maximum amount under state
14 law to \$2,500 also. This amendment applies the same
16 reimbursement responsibilities to municipalities when exercising
18 eminent domain authority under the general authorization and for
20 economic development purposes.

22 This amendment increases the maximum reimbursement for
24 expenses necessary to reestablish a farm, nonprofit organization
26 or small business from a maximum of \$10,000 to a maximum of
28 \$20,000, consistent with federal changes. This bill applies the
30 same reimbursement responsibilities to municipalities when
32 exercising eminent domain authority under the general
34 authorization and for economic development purposes.

36 This amendment increases the maximum fixed payment for
38 business and farm displacements from \$20,000 to \$100,000. This
40 bill applies the same displacement payment responsibilities to
42 municipalities when exercising eminent domain authority under the
44 general authorization and for economic development purposes.

 This amendment applies to municipalities the same relocation
and reimbursement provisions concerning residential takings that
currently apply to the Department of Transportation when
municipalities exercise eminent domain authority under the
general authorization and for economic development purposes.

 This amendment requires the Department of Transportation to
examine the criteria currently used to determine in lieu payments
rather than actual relocation costs. The department shall
compile information from January 1, 2004 to the present, and
determine consequences that would result from changing the
criteria to a net operating income basis or other formulation.
The department shall report to the joint standing committee of
the Legislature having jurisdiction over judiciary matters by
January 15, 2007. The committee may report out legislation to
the 123rd Legislature.

 This amendment includes a mandate preamble and an
appropriations and allocations section.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



122nd MAINE LEGISLATURE

LD 1203

LR 1401(03)

An Act To Amend the Laws Concerning Eminent Domain

Fiscal Note for Bill as Amended by Committee Amendment "B"

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Exempted State Mandate

	2005-06	2006-07	Projections 2007-08	Projections 2008-09
Net Cost (Savings)				
Highway Fund	\$0	\$46,667	\$46,667	\$46,667
Appropriations/Allocations				
Highway Fund	\$0	\$46,667	\$46,667	\$46,667

State Mandate

New or Expanded Activity

Requiring municipalities to fund certain costs resulting from exercise of their eminent domain authorities will result in an unfunded state mandate. The cost to a municipality will depend on the frequency with which it chooses to exercise its power of eminent domain but could be significant. Pursuant to the Mandate Preamble, a two-thirds vote of each body will exempt the State from the requirement to fund 90% of the cost of this mandate.

Unit Affected

Municipality

Costs

Significant

Fiscal Detail and Notes

Beginning in fiscal year 2006-07, the Department of Transportation will require an additional annual Highway Fund allocation of \$46,667 for the estimated cost of complying with certain eminent domain property acquisition requirements.

Additional costs to the Department of Economic and Community Development associated with participation in the working group can be absorbed utilizing existing budgeted resources.