

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1207

H.P. 832

House of Representatives, March 26, 2009

An Act To Base the Value of Eminent Domain Takings on Going Concern Value

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative GILES of Belfast.

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

2 **Sec. 1. 23 MRSA §152-A** is enacted to read:

3 **§152-A. Business damage ombudsman appointment; term; compensation**

4 The Governor shall appoint a business damage ombudsman to act as an impartial
5 reviewer of cases to provide just compensation to business owners whose business
6 property has been lost or impaired as a result of eminent domain, who is referred to in this
7 chapter as "the ombudsman," subject to review by the joint standing committee of the
8 Legislature having jurisdiction over transportation matters and confirmation by the
9 Senate. The ombudsman must be chosen without reference to party affiliation and solely
10 on the ground of professional competence to perform the duties of that office. The
11 ombudsman holds office for a term of 4 years. An ombudsman may be reappointed. The
12 compensation of the ombudsman is fixed by the Governor.

13 **Sec. 2. 23 MRSA §152-B** is enacted to read:

14 **§152-B. Ombudsman duties**

15 The ombudsman shall ensure that the owner of a business conducted on the property
16 taken, whether owned by the business owner or leased from another entity, or on the
17 remainder of the property if the property is part of a larger parcel must be compensated
18 for loss of going concern value if the owner proves that:

19 1. Cause of loss. The loss is caused by the taking of the property or injury to the
20 remainder of the property;

21 2. Not preventable. The loss cannot reasonably be prevented by relocation of the
22 business or by taking steps and adopting procedures that a reasonably prudent person
23 would take and adopt in preserving the going concern value;

24 3. Compensation by Federal Government. Compensation for the loss is not
25 included in federal compensation; and

26 4. Compensation not duplicated. Compensation for the loss is not duplicated in
27 compensation otherwise awarded to the owner.

28 For the purpose of this section, "going concern value" means the benefits that accrue
29 to a business as a result of its location, reputation for dependability, skill or quality and
30 any other circumstances resulting in probable retention of old or acquisition of new
31 patronage.

32 **Sec. 3. 23 MRSA §154-G** is enacted to read:

33 **§154-G. Compensation for loss or impairment of going concern value**

34 1. Definition. For the purposes of this section, "loss or impairment of the going
35 concern value" means the benefits that accrue to a business as a result of its location.

1 reputation for dependability, skill or quality or any other circumstances resulting in
2 probable retention of old or acquisition of new patronage.

3 **2. Displacement of business.** If the taking of property under this chapter involves
4 the displacement of a business, the owner may request valuation under this section to
5 determine just compensation that includes loss or impairment of the going concern value
6 of the business.

7 **3. Elements.** In addition to the value determined under section 154, compensation to
8 the owner of a business conducted on the property taken includes compensation for loss
9 or impairment of the going concern value of the business if the owner proves that:

10 A. The loss or impairment cannot reasonably be prevented by a relocation of the
11 business or by taking steps and adopting procedures that a reasonably prudent person
12 would take and adopt in preserving the going concern value;

13 B. The loss or impairment will not be included in moving and relocation payments
14 under section 244; and

15 C. The loss or impairment will not be duplicated in the compensation awarded to the
16 owner.

17 **4. Procedure.** The owner and the department shall each select a licensed appraiser
18 to calculate the amount of additional compensation due under this section. If the
19 appraisers agree, the additional amount must be added to the department's offer of just
20 compensation. If the appraisers do not agree but the difference is not more than 10% of
21 the higher appraisal, the average of the 2 appraisals must be added to the department's
22 offer of just compensation. If the appraisers do not agree and the difference is more than
23 10% of the higher appraisal, the owner may have the matter referred to the State Claims
24 Commission for assessment of the damage.

25 **Sec. 4. 30-A MRSA §3101, sub-§5** is enacted to read:

26 **5. Just compensation for established businesses.** Just compensation paid by the
27 municipality must include compensation for damages for the loss or impairment of the
28 going concern value of a business established for more than 3 years that is located on land
29 that is the subject of the proceedings or located on adjoining lands if that business owns
30 the land that is the subject of the proceedings. Title 23, section 154-G governs the
31 awarding of such compensation.

32 **Sec. 5. 30-A MRSA §5204, sub-§12** is enacted to read:

33 **12. Just compensation for certain businesses.** For purposes of eminent domain
34 proceedings, just compensation paid by the municipality for a business established for
35 more than 3 years that is located on land that is the subject of the proceedings or located
36 on adjoining lands if that business owns the land that is the subject of the proceedings
37 must include compensation for the damages for the loss or impairment of the going
38 concern value of the business. Title 23, section 154-G governs the awarding of such
39 compensation.

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SUMMARY

2 This bill establishes an impartial ombudsman and defines the ombudsman's duty,
3 which is to ensure business owners who lose property by eminent domain are properly
4 compensated. The role of the ombudsman does not preclude the role of the State Claims
5 Commission.

6 This bill establishes the criteria for determination of compensation for loss or
7 impairment of the going concern value of a business when the property of a business is to
8 be taken by the Department of Transportation or a municipality exercising its eminent
9 domain power. The burden is on the business to prove the loss. The analysis takes place
10 at the request of the owner of the displaced business. The process requires both the
11 owner and the governmental authority to each select a licensed appraiser to make the
12 determination of the loss or impairment of the going concern value. If they agree, that
13 additional compensation must be added to the compensation offer. If they disagree but
14 are within 10% of each other, the average appraisal is used. If they disagree by more than
15 10%, the owner may ask the State Claims Commission to apply the same analysis when
16 the owner appeals the offer. This process applies to compensation to be paid by
17 municipalities when exercising eminent domain authority under general authorization
18 provisions and for economic development purposes.

19 This bill adds to the duties of the State Claims Commission the duty to include
20 determination of just compensation in 2 categories of municipal condemnations: general
21 eminent domain authority under the Maine Revised Statutes, Title 30-A, chapter 151 and
22 community development under Title 30-A, chapter 205.