

# MAINE STATE LEGISLATURE

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NEW DRAFT.

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# SEVENTY-SECOND LEGISLATURE

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HOUSE.

No. 524

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## STATE OF MAINE.

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IN THE YEAR OF OUR LORD ONE THOUSAND NINE  
HUNDRED AND FIVE.

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AN ACT relating to the location and assessment of damages for  
property taken for public uses.

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*Be it enacted by the Senate and House of Representatives in  
Legislature assembled, as follows:*

Section 1. All locations made and all damages assessed for  
2 the taking of property by the exercise of the right of eminent  
3 domain; except for property taken by the United States, the  
4 State of Maine, or a county or municipality thereof, and  
5 excepting property which when taken is being or is necessary  
6 to be used by the owner thereof in the performance of a  
7 public duty; shall be made and assessed and the rights of the  
8 parties shall be as follows, notwithstanding anything con-  
9 tained in the act granting such right, whether the same has  
10 been heretofore, or shall be hereafter passed:

Sect. 2. All property so taken shall, before it is entered upon for any purpose except to make surveys, be located by a description, signed by the party taking, which shall describe in detail the property taken, and give the names of the owners thereof and shall be accompanied by a map showing said property as described. Such location and map shall be filed with the county commissioners of the county where the property is located, who shall indorse the time of filing thereon and order the location recorded. A copy of said location shall be recorded in the registry of deeds for the place where the property is located. When, for any reason, the taker fails to acquire the property authorized to be taken and which is described in such location, or the location recorded is defective or uncertain, the taker may, at any time, correct and perfect such location, and file a new description thereof; and in such case the taker is liable in damages, only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the taker shall not be liable for any acts which would have been justified if the original taking had been valid and legal.

Sect. 3. For all property taken by the exercise of the right of eminent domain the owners are entitled to damages to be paid by the taker and estimated by the county commissioners, on written application of either party, made within three years after such taking; or, if proceedings thus commenced fail for causes not affecting the merits, new ones may be commenced within one year thereafter, and when no estimate is made within such time the owner may maintain an action of trespass, or have any remedy herein provided. The guardian of a person incapable of giving a valid conveyance whose property is taken, may settle and give a valid release for damages; and persons having any interest in such property have the rights and remedies of owners to the extent of their interest. When requested by the owner said commis-

15 sioners shall require the taker to give security for the pay-  
16 ment of damages and costs, by depositing at its risk, with  
17 the clerk within thirty days, specie, notes or obligations of  
18 a state or public corporation, or other security satisfactory  
19 to the party requiring it. When entitled to it, so much of  
20 any specie so deposited shall be paid to him as will satisfy  
21 his judgment. Notes or obligations so deposited shall be  
22 delivered to the officer having a warrant of distress, to be by  
23 him sold as personal property is sold on execution, to satisfy  
24 the warrant and fees, and any balance shall be paid to the  
25 taker of such property.

Sect. 4. In all cases of petition to the commissioners of  
2 any county praying for the assessment of damages on account  
3 of any property so taken, the notice to the adverse party  
4 of the time and place of hearing thereon shall be a personal  
5 notice of fourteen days, or by publication of the petition and  
6 order of notice thereon in some newspaper published in said  
7 county, two weeks successively, the last publication being  
8 fourteen days before said hearing.

Sect. 5. Said commissioners, in awarding damages for  
2 property so taken, on the application of the taker, may pre-  
3 scribe such terms and conditions, in all respects for the use  
4 of the property taken, by the owner thereof, and by the taker  
5 respectively, as will secure the best accommodation of the  
6 owners of the property, and the convenient use of the same  
7 by the taker. In case of appeal by either party the only  
8 question in issue shall be the amount or measure of damages  
9 on the terms and conditions imposed by the commissioners.

Sect. 6. Said commissioners shall, at a regular session,  
2 make a report of their general estimate of damages, stating  
3 therein specifically, the terms and conditions imposed by them  
4 and the rights and obligations of each party, and cause it to  
5 be recorded; their clerk shall then make out a notice to each  
6 person, stating the amount of damages awarded to him,

7 which shall be served by an officer on those resident in the  
8 State, and upon others, if any, by a publication three weeks  
9 successively in a newspaper printed in the county, if any, if  
10 not, in the State paper. The expense of notices shall be  
11 added to the costs of the proceedings which shall be paid by  
12 the taker.

Sect. 7. Any person aggrieved by the decision or judgment  
2 of the county commissioners in relation to damages for prop-  
3 erty taken, may appeal to the next term of the supreme court  
4 to be held in the county where the property is situated, more  
5 than thirty days from the date when the report of the com-  
6 missioners is made, excluding the day of the commencement  
7 of the session of the court, which court shall determine the  
8 same by a committee of reference if the parties so agree, or  
9 by the verdict of its jury; and shall render judgment and  
10 issue execution. If the owner appeal and the damage finally  
11 recovered is not more than the award of the county commis-  
12 sioners, the taker shall recover costs from the time of appeal,  
13 otherwise the owner shall recover costs. If the taker appeal  
14 and the damage finally recovered is not less than the award  
15 of the county commissioners, the owner shall recover costs  
16 from the time of appeal, otherwise the taker shall recover  
17 costs. The appellant shall serve written notice of such  
18 appeal upon the opposite party fourteen days at least before  
19 the session of said court, and shall at the first term file a com-  
20 plaint setting forth substantially the facts of the case. On  
21 the trial exceptions may be taken as in other cases.

Sect. 8. When the proceedings are closed the taker may  
2 deposit with the clerk the sum for which execution was issued  
3 with interest thereon to time of deposit, which shall be in  
4 full satisfaction of all claims unless a demand had been previ-  
5 ously made and payment neglected.

Sect. 9. When the damages remain unpaid for more than  
2 thirty days after they are due and demanded or the security  
3 hereinbefore provided for is not deposited, a bill in equity  
4 may be filed in court, in term time or vacation, by the person  
5 whose property is taken praying for an injunction against the  
6 use or occupation of his property taken. If proceedings for  
7 an estimation of damages are not commenced within three  
8 years, and the owner of the property files a bill praying there-  
9 for, the court may estimate the damages, decree their pay-  
10 ment and issue an execution therefor; and the plaintiffs shall  
11 be entitled to a bill for an injunction. In either case, any  
12 justice of the court, after summary notice to the taker and  
13 upon proof of the facts, may, without any bond filed, issue  
14 an injunction prohibiting such use and occupation until all  
15 damages and costs are paid. The bill shall be entered, serv-  
16 ice of it made, and continued at the next term after the  
17 injunction is issued. At the second term, if payment has not  
18 been made, the injunction may be made absolute; and all  
19 rights acquired by taking the property cease, and the owner  
20 may maintain an action for its recovery and protection.

Sect. 10. Service of an injunction issued against any per-  
2 son whether a party to the bill or not, may be made upon him  
3 and he shall be liable to all the penalties and consequences  
4 provided for a breach of it. The court may order persons  
5 violating such injunction, after service, or using the property,  
6 to show cause at a time fixed, why a decree should not be  
7 entered and execution issued against them individually, and  
8 their goods and estate, for the damages, interest, costs, and  
9 for additional damages and costs for breach of the injunc-  
10 tion. Upon service and return of such order, the court may  
11 enter such decree as is just and equitable against such per-  
12 sons, and issue execution accordingly, or may proceed against  
13 them as for breach of injunction in other chancery cases.

Sect. 11. No failure by the owner of the property to make  
2 application for the assessment of damages within said three  
3 years, shall be held to be a waiver by him of compensation  
4 for property so taken.

Sect. 12. This act shall not apply to petitions for assess-  
2 ment of damages already brought ; except as to such petitions  
3 all acts or parts of acts inconsistent herewith, are hereby  
4 repealed. This act shall in no way affect section thirty-three  
5 of chapter fifty-one of the Revised Statutes.

Sect. 13. This act shall take effect when approved.





STATE OF MAINE.

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HOUSE OF REPRESENTATIVES,

Augusta, March 13, 1905.

Reported by Mr. JOHNSON from Committee on Judiciary and  
ordered printed under joint rules.

E. M. THOMPSON, *Clerk.*