

# MAINE STATE LEGISLATURE

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ACTS AND RESOLVES  
OF THE  
SEVENTY-SECOND LEGISLATURE

OF THE  
STATE OF MAINE

1905.

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Published by the Secretary of State, agreeably to Resolves of  
June 28, 1820, February 18, 1840, and March 16, 1842.

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PUBLIC LAWS

OF THE

STATE OF MAINE.

1905.

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**Chapter 163.**

An Act to exempt Soldiers and Sailors of the Civil War from poll tax.

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

Certain honorably discharged soldiers and sailors of war of 1861, exempted from payment of poll tax.

Section 1. Every soldier or sailor who served in the army or navy of the United States in the war of eighteen hundred and sixty-one and who has an honorable discharge from such service, resident within the state of Maine, who is not assessed for taxes in his own town for more than five hundred dollars is hereby forever exempt from the assessment and payment of a poll tax within any city, town or plantation in this state.

Section 2. This act shall take effect when approved by the governor.

Approved March 24, 1905.

**Chapter 164.**

An Act relating to the Location and Assessment of Damages for Property taken for Public Uses.

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

Rights of parties in assessment of damages for property taken for public uses.

Section 1. All locations made and all damages assessed for the taking of property by the exercise of the right of eminent domain; except for property taken by the United States, the state of Maine, or a county or municipality thereof, or a quasi municipal corporation, and excepting property which when taken is being or is necessary to be used by the owner thereof in the performance of a public duty; shall be made and assessed and the rights of the parties shall be as follows, notwithstanding anything contained in the act granting such right, whether the same has been heretofore, or shall be hereafter passed.

Property shall be located by a description before being entered on except to make surveys.

Section 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

--location and map shall be filed with county commissioners.

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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.

—description  
may be  
corrected.

Section 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 commissioners shall require the taker to give security for the payment of damages and costs, by depositing at its risk, with the clerk, within thirty days, specie, notes or obligations of a state or public corporation, or other security satisfactory to the party requiring it. When entitled to it, so much of any specie so deposited shall be paid to him as will satisfy his judgment. Notes or obligations so deposited shall be delivered to the officer having a warrant of distress, to be by him sold as personal property is sold on execution, to satisfy the warrant and fees, and any balance shall be paid to the taker of such property.

Owners  
of property  
taken by  
right of  
eminent  
domain,  
entitled  
to damages.

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

Notice to  
adverse party  
shall be a  
personal  
notice of 14  
days.

Section 5. Said commissioners, in awarding damages for property so taken, on the application of the taker, may prescribe such terms and conditions, in all respects for the use of the prop-

Commis-  
sioners in  
awarding  
damages may  
prescribe

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terms for use  
of property  
taken.

erty taken, by the owner thereof, and by the taker respectively, as will secure the best accommodation of the owners of the property, and the convenient use of the same by the taker. In case of appeal by either party the only question in issue shall be the amount or measure of damages on the terms and conditions imposed by the commissioners.

Commis-  
sioners  
shall make  
report of their  
general  
estimate  
of damages.

Section 6. Said commissioners shall, at a regular session, make a report of their general estimate of damages, stating therein specifically, the terms and conditions imposed by them and the rights and obligations of each party, and cause it to be recorded; their clerk shall then make out a notice to each person, stating the amount of damages awarded to him, which shall be served by an officer on those resident in the state, and upon others, if any, by a publication three weeks successively in a newspaper printed in the county, if any, if not, in the state paper. The expense of notices shall be added to the costs of the proceedings which shall be paid by the taker.

Appeal may  
be taken  
from decision  
of county  
commis-  
sioners.

Section 7. Any person aggrieved by the decision or judgment of the county commissioners in relation to damages for property taken, may appeal to the next term of the supreme court to be held in the county where the property is situated, more than thirty days from the date when the report of the commissioners is made, excluding the day of the commencement of the session of the court, which court shall determine the same by a committee of reference if the parties so agree, or by the verdict of its jury; and shall render judgment and issue execution. If the owner appeal and the damage finally recovered is not more than the award of the county commissioners, the taker shall recover costs from the time of appeal, otherwise the owner shall recover costs. If the taker appeal and the damage finally recovered is not less than the award of the county commissioners, the owner shall recover costs from the time of appeal, otherwise the taker shall recover costs. The appellant shall serve written notice of such appeal upon the opposite party fourteen days at least before the session of said court, and shall at the first term file a complaint setting forth substantially the facts of the case. On the trial exceptions may be taken as in other cases.

Taker may  
deposit sum  
for which  
execution  
was issued,  
with interest  
in full  
satisfaction  
of claims.

Section 8. When the proceedings are closed the taker may deposit with the clerk the sum for which execution was issued with interest thereon to time of deposit, which shall be in full satisfaction of all claims unless a demand has been previously made and payment neglected.

When  
damages  
remain

Section 9. When the damages remain unpaid for more than thirty days after they are due and demanded or the security

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hereinbefore provided for is not deposited, a bill in equity may be filed in court, in term time or vacation, by the person whose property is taken praying for an injunction against the use or occupation of his property taken. If proceedings for an estimation of damages are not commenced within three years, and the owner of the property files a bill praying therefor, the court may estimate the damages, decree their payment and issue an execution therefor; and the plaintiff shall be entitled to a bill for an injunction. In either case, any justice of the court, after summary notice to the taker and upon proof of the facts, may, without any bond filed, issue an injunction prohibiting such use and occupation until all damages and costs are paid. The bill shall be entered, service of it made, and continued at the next term after the injunction is issued. At the second term, if payment has not been made, the injunction may be made absolute; and all rights acquired by taking the property cease, and the owner may maintain an action for its recovery and protection.

unpaid for  
more than  
30 days bill  
in equity may  
be filed.

Section 10. Service of an injunction issued against any person whether a party to the bill or not, may be made upon him and he shall be liable to all the penalties and consequences provided for a breach of it. The court may order persons violating such injunction, after service, or using the property, to show cause at a time fixed, why a decree should not be entered and execution issued against them individually, and their goods and estate, for the damages, interest, costs, and for additional damages and costs for breach of the injunction. Upon service and return of such order, the court may enter such decree as is just and equitable against such persons, and issue execution accordingly, or may proceed against them as for breach of injunction in other chancery cases.

Service of  
injunction.

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

Failure  
of owner to  
apply for  
assessment  
of damages,  
not a waiver.

Section 12. This act shall not apply to petitions for assessment of damages already brought; except as to such petitions, all acts or parts of acts inconsistent herewith, are hereby repealed. This act shall in no way affect section thirty-three of chapter fifty-one of the revised statutes.

In which  
cases this act  
may apply.

Section 13. This act shall take effect when approved.