

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE

**FIRST SPECIAL SESSION**

October 9, 1987 to October 10, 1987

**SECOND SPECIAL SESSION**

October 21, 1987 to November 20, 1987

and the

**SECOND REGULAR SESSION**

January 6, 1988 to May 5, 1988

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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Twin City Printery  
Lewiston, Maine  
1988

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
FIRST AND SECOND SPECIAL SESSIONS  
and  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
1987

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2. Butyl nitrite and isobutyl nitrite. Possession of a usable amount of butyl nitrite or isobutyl nitrite is a civil violation for which a forfeiture of not more than \$200 may be adjudged.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect 30 days after approval.

Effective May 20, 1988.

## CHAPTER 748

H.P. 1701 — L.D. 2338

### AN ACT to Give the Commissioner of Transportation Power to Condemn Existing Rail Lines for Transfer to Safe, Reliable and Efficient Rail Operators.

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

23 MRSA c. 615 is enacted to read:

#### CHAPTER 615

#### ACQUISITION OF RAILROAD LINES

##### §7151. Legislative findings; declaration of policy

1. Legislative findings. The Legislature finds that safe, efficient and reliable rail service is essential to the economy of the State, the economic livelihood of industries located in the State, conservation and protection of the environment and the quality of life of the citizens of the State. The Legislature further finds that safe and efficient railroad service is essential to the State's public safety and the continued health and well-being of its citizens, particularly because of railroad transportation of bulk cargoes and hazardous and toxic substances, and the significant dangers that result from mishandling those and other cargoes.

2. Declaration of policy. It is declared to be the policy of the State that the State and its agencies shall cooperate with the Congress of the United States and the appropriate federal agencies to assure the development and maintenance of safe, efficient and reliable rail service for the State. For any railroad line acquired under this chapter, it is the intent of the Legislature that the State may acquire the railroad line, but the State may not be an operator of the railroad or a rail carrier under federal law.

##### §7152. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Financially responsible person. "Financially responsible person" means a financially responsible person as defined in the United States Code, Title 49, Section 10910(a) and who intends to acquire, lease or contract to operate all or part of the railroad line in question.

2. Person. "Person" means a natural person, corporation, partnership or state agency.

3. Railroad line. "Railroad line" means the right-of-way, track, track appurtenances, ties, bridges, station houses, sidings, terminals, and other appurtenant structures of a railroad.

##### §7153. Hearings and report

1. Request for hearing. The department shall hold a hearing with regard to a railroad line if requested by any of the following:

A. A shipper or shippers whose traffic on the railroad line totaled 500 tons in the year immediately preceding the application;

B. Any municipality having a siding, terminal, station or agency station of the railroad line within its bounds; or

C. A financially responsible person.

2. Notice, testimony at hearing. Not less than 14 days prior to holding a hearing the department shall send written notice of the date and location to the parties requesting a hearing as well as the affected railroad company. In addition, the department shall publish 2 notices of the hearing in a newspaper of general circulation in the area of the state affected. Testimony received at the hearing may include the following:

A. Whether the railroad has adequate rail service to fulfill public convenience and necessity;

B. Whether the operator of the railroad is providing safe, efficient and reliable rail service;

C. Whether the rail service over the railroad has substantially impaired the ability of the shippers or municipalities that depend upon it;

D. Whether the operation of the railroad has endangered the lives or property of the citizens of this State, including railroad employees;

E. Whether the operator of the railroad has refused or failed within a reasonable time to make necessary improvement to provide safe, efficient and reliable rail service; and

F. Other relevant issues.

3. Report. Upon conclusion of the hearing, the department shall issue a report concerning the operation

of the railroad which shall be forwarded to the petitioning parties as well as the railroad company. In addition, this report shall be presented to the Governor as well as the Speaker of the House and the President of the Senate. The department may also forward this report to the Interstate Commerce Commission or the Federal Railroad Administration or any other federal agency which is involved in the regulation of railroads.

#### §7154. Acquisition of railroads

1. Authorization to acquire. Upon forwarding the report set forth in section 7153, and if the report recommends acquisition of the railroad line by the department, the department may acquire, as provided in this section, the railroad line and associated real property located in the State and personal property, including rail facilities such as equipment and rolling stock when, in the judgment of the department, acquisition of the railroad line is necessary to protect the public interest.

2. Federal regulation. If the railroad line is under the exclusive jurisdiction of a federal regulatory agency, the department shall petition that agency and take all steps necessary to obtain all regulatory approvals required under federal law to acquire the railroad line.

3. Acquisition. Upon obtaining all necessary federal regulatory approvals or, if approval of a federal regulatory agency is not required, the department may acquire the railroad line and associated property by purchase or the taking by eminent domain.

4. Limitation. Any acquisition under this section is subject to sufficient funds being made available by legislative act to acquire the railroad line.

5. Eminent domain. In the event that the department decides to acquire the railroad line by condemnation, the department shall have the railroad line and associated property appraised and shall offer to the owner as just compensation the constitutional minimum value, which shall be not less than the net liquidation value or the value as a going concern, whichever is greater, but shall not include the cost of providing a protective arrangement concerning the interest of the railroad's employees.

The department shall file in the registry of deeds for the county or counties, or registry district or districts, where the railroad line is located a notice of condemnation which shall contain a description of the property and the interest taken and the name or names of the owner or owners of record so far as they can be reasonably determined. The department may join in the same notice one or more separate properties whether in the same or different ownership. A check in the amount of the offer and a copy of the notice of condemnation shall be served on the owner or owners of record. In case there is multiple ownership, the check may be served on any one of the owners of each separate property. The notice of condemnation shall be published once in a newspaper

of general circulation in the county where the property is located and that publication shall constitute service on any unknown owner or owners or other persons who may have or claim an interest in the property.

6. Appeals. In the event that any owner or owners of record are aggrieved by the department's offer, they may appeal from it to the Kennebec County Superior Court within 30 days after the date of service or publication of the notice of condemnation. The appeal shall be taken by filing a complaint setting forth the facts upon which the case shall be tried according to the Maine Rules of Civil Procedure. The Superior Court shall determine compensation by a jury verdict or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for any compensation, with interest when it is due, and for costs in favor of the party entitled to them, pursuant to just compensation standards set forth in subsection 5.

7. Use of railroad line. The department may lease the railroad line, or otherwise contract for operation of the railroad line, to a railroad operator who is a financially responsible person, or it may hold and manage the railroad line for future transportation use.

#### §7155. Conditions of sale, lease and operation

1. Financial conditions on sale, lease or operating contract. Any railroad line acquired pursuant to this chapter may be sold, leased or contracted to an operator, but only upon terms at least as favorable to the State as follows:

A. All of the costs of acquiring the railroad line and associated property shall be recovered by the State; and

B. The credit of the State shall not be pledged unless separately authorized as required by the Constitution of Maine, Article IX, Section 14.

2. State operation of railroad prohibited. In no event may the department or any other unit of State Government directly operate a railroad over a railroad line acquired under this chapter. The department may own the railroad line and lease or otherwise contract for its use by a private operator.

#### §7156. Employee protection

Any person acquiring or operating a railroad line under this chapter shall:

1. Hiring priority. Give a first right of hire to fill any subordinate official or nonmanagement position in the staffing of the new rail operation in the following order of priority:

A. First, all employees who are required to be accorded priority under federal law, employee protection obligations imposed by law, regulations or contracts

which require the new operator to select employees of the prior operator, and existing or future collective bargaining agreements;

B. Second, all employees, in seniority order for each craft or class, who hold or held seniority rights in, or in connection with, the railroad line when it was last operated by its prior operator;

C. Third, employees drawing benefits under the United States Railroad Unemployment Insurance Act, United States Code, Title 45, chapter 11, first in the geographical area in which the railroad line is located, and then elsewhere within the State; and

D. Fourth, any other individual;

2. Existing employment obligations and practices. Assume the existing employment obligations and practices of the railroad whose property is condemned, including all agreements governing rates of pay, rules and working conditions, until changes are made by agreement or otherwise, in accordance with applicable law; and

3. Employee protection. Agree to provide a fair arrangement to protect the interests of railroad employees who are affected by the condemnation which is at least as protective of the interests of those employees as the levels of protection established by regulation or decision of the Interstate Commerce Commission.

Any person who is entitled to priority of employment under this section shall be presumed to be physically and mentally qualified to perform the same or comparable work with the new employer.

Effective August 4, 1988.

## CHAPTER 749

H.P. 1707 — L.D. 2344

### AN ACT to Continue Professional Forestry Supervision of Biomass Fuel Wood Harvesting Operations.

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

Sec. 1. 12 MRSA §5012, as amended by PL 1987, c. 308, §§6 to 8, is further amended by adding at the end a new paragraph to read:

The department shall publish a compendium of laws affecting forestry including, without limitation, laws regarding boundary lines, trespass, timber harvest, wood measurement, forest fire prevention, forest land taxation, shoreland zoning and the site location of development law. The department shall publish the first compendium by January 1, 1989, and subsequent editions by 90 days after the adjournment of the 2nd regular ses-

sion of the Legislature. The department shall make the compendium available to the public at cost. The department may use the revolving fund established under this section for printing and distribution.

Sec. 2. 12 MRSA §8864, as enacted by PL 1987, c. 286, is amended to read:

§8864. Repeal

This article is repealed 90 days after the end of the Second Regular Session of the 113th Legislature on August 15, 1990.

Effective August 4, 1988.

## CHAPTER 750

S.P. 955 — L.D. 2533

### AN ACT to Provide Regulatory Oversight of Over-the-Road and Over-the-Rail Transportation of Hazardous Materials and to Increase Revenue to the Maine Hazardous Waste Fund and the Maine Coastal and Inland Surface Oil Clean-Up Fund.

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

Sec. 1. 29 MRSA §§246-B and 246-C are enacted to read:

§246-B. License for transportation of hazardous materials

1. License required. As of January 1, 1989, any person, including a private carrier or a common or contract carrier, who transports certain hazardous materials as specified in this section by highway, such that the motor vehicle used in that transportation, transports more than 2,000 pounds of any of those hazardous materials at any one time shall first obtain from the Secretary of State an annual license or single-trip license for each motor vehicle used in that transportation. This license shall be available for examination and displayed in accordance with rules adopted by the Commissioner of Public Safety. Annual licenses shall expire one year following the date of issuance. The license shall be in such form as the Secretary of State by rule prescribes. No license may be transferable to another motor vehicle.

2. Hazardous materials covered. Hazardous materials subject to the requirements of this section shall mean those substances identified pursuant to the United States Superfund Amendments and Reauthorization Act of 1986, Title III, Sections 302 and 313.

3. Exceptions. This section shall not apply to: