

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
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J.S. McCarthy Company
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1989

PUBLIC LAWS
OF THE
STATE OF MAINE

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B. The local reviewing authority in which the project is located petitions the board in writing;

C. The local reviewing authority, in a municipality adjoining the municipality in which a project is located, petitions the board in writing; or

D. The proposed project is located in more than one municipality.

State jurisdiction must be exerted within 45 days of final action by the municipal reviewing authority.

10. Appeal of decision by commissioner to review. An aggrieved party may appeal the decision by the commissioner to exert or not exert state jurisdiction over the proposed project to the board. Review and actions taken by the department or the board are subject to appeal procedures governing the department and board.

11. Joint enforcement. Any person who violates any permit issued under this section is subject to the provisions of section 349, in addition to any penalties which the municipality may impose. Any permits issued or conditions imposed by a local authority shall be enforced by the department and the municipality that issued the permit.

Sec. 3. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	1989-90	1990-91
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Maine Environmental Protection Fund		
All Other	\$(30,275)	\$(70,000)
Deallocates funds due to the anticipated reduction in subdivision and structure application fees.		

See title page for effective date.

CHAPTER 208

S.P. 375 - L.D. 999

**An Act to Amend Department of Transportation
Statutory Provisions Pursuant to the Surface
Transportation and Uniform Relocation
Assistance Act of 1987 Enacted by the
Congress of the United States**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Congress, in enacting the federal Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100-17, 101 Statute 132, requires changes to state law by April 2, 1989;

Whereas, it is necessary to enact these changes without delay in order to avoid any penalties imposed by the Surface Transportation and Uniform Relocation Assistance Act of 1987; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 23 MRSA §153, next to last ¶, as amended by PL 1987, c. 735, §40 is further amended to read:

Where property is to be purchased or taken over and held for the State, the department shall first cause the property or interest ~~therein~~ in the property necessary to be acquired to be surveyed and described and a plan ~~thereof~~ of the property made and to be appraised by one or more appraisers. The owner or the owner's designated representative shall be given an opportunity to accompany the appraisers during the appraiser's inspection of the property. All persons employed by the department are authorized, to the extent necessary for surveys and preliminary engineering, to enter and cross all lands within, adjoining and adjacent to the area to be surveyed in carrying out the objectives of this section. The department may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property.

Sec. 2. 23 MRSA §154-C, as amended by PL 1971, c. 593, §22, is repealed and the following enacted in its place:

§154-C. Uneconomic remnants

If the acquisition of only a portion of a property would leave the owner of record with an uneconomic remnant the department may, or at the request of the owner shall, acquire by purchase or condemnation the entire property. An uneconomic remnant is a parcel of real property in which the owner would be left with an interest which the department has determined has little or no value or utility to the owner.

Sec. 3. 23 MRSA §154-E, as enacted by PL 1971, c. 333, §4 is repealed and the following enacted in its place:

§154-E. Improvement

Payment to tenants of record shall be made by the department pursuant to this section for any building, structure or other improvement which is owned by the tenant. The tenant shall be paid the fair market value which the building, structure or improvement contributes to the fair

market value of the real property to be acquired, or its salvage value, whichever is greater. No payment may be made unless, prior to condemnation, the owner of the land involved disclaims in writing to the department all interest in the tenant's improvement, and the department determines that the improvement qualifies for payment. In consideration for any such payment, the tenant shall assign, transfer and release to the department all rights, title, and interest in and to the improvements. The department shall not make any payment under this section which it determines would result in duplication of any payment otherwise authorized by this Title.

For the purpose of determining the just compensation to be paid for any acquired building, structure or other improvement, that building, structure or other improvement shall be deemed to be part of the real property, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove that building, structure or improvement at the expiration of the term of the lease.

Nothing in this section may be construed to deprive the tenant of any rights to reject payment under this section and to obtain payment for the property interests in accordance with applicable law other than this section.

Sec. 4. 23 MRSA §242, sub-§1, as amended by PL 1971, c. 593, §22, is repealed.

Sec. 5. 23 MRSA §242, sub-§§2-A and 2-B are enacted to read:

2-A. Comparable replacement dwelling. "Comparable replacement dwelling" means any dwelling that is:

- A. Decent, safe and sanitary;
- B. Adequate in size to accommodate the occupants;
- C. Within the financial means of the displaced person;
- D. Functionally equivalent to the displacement dwelling;
- E. In an area not subject to unreasonably adverse environmental conditions; and
- F. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

2-B. Department. "Department" means the Department of Transportation.

Sec. 6. 23 MRSA §242, sub-§3, as amended by PL 1973, c. 625, §129, is repealed and the following enacted in its place:

3. Displaced person. "Displaced person" is defined as follows.

A. "Displaced person" means:

(1) Any person who moves from real property or moves that person's personal property from real property:

(a) As a direct result of a written notice of intent to acquire or the acquisition of that real property in whole or in part for a program or project undertaken by the department; or

(b) On which the person is a residential tenant or conducts a small business, a farm operation or a business defined in subsection 2, as a direct result of rehabilitation, demolition or such other displacing activity as the department prescribes under a program or project undertaken by the department in any case in which the department determines that the displacement is permanent; and

(2) Solely for the purposes of section 243 and section 244, subsections 1 and 2, any person who moves from real property or moves that person's personal property from real property:

(a) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by the department; or

(b) As a direct result of rehabilitation, demolition or such other displacing activity as the department prescribes of other real property on which the person conducts a business or a farm operation, under a program or project undertaken by the department where the department determines that the displacement is permanent.

B. "Displaced person" does not include:

(1) A person who has been determined, according to criteria established by the department, either to be unlawfully occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this subchapter; and

(2) In any case in which the department acquires property for a program or project, any person, other than a person who was an occupant of the property at the time it was

acquired, who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

Sec. 7. 23 MRSA §242, sub-§4, as enacted by PL 1971, c. 333, §1, is repealed and the following enacted in its place:

4. Existing patronage. "Existing patronage" means either the volume of clientele or the annual net earnings for the 2 taxable years immediately prior to the taxable year in which the business was displaced.

Sec. 8. 23 MRSA §242, sub-§9, as amended by PL 1971, c. 593, §22, is further amended to read:

9. Program or project. "Project" "Program or project" shall mean means any highway construction or related activity undertaken by the State of Maine by its Department of Transportation on a state or state-aid state-aid highway and any other activity undertaken and authorized by law to be carried out by the department.

Sec. 9. 23 MRSA §242, sub-§9-A, is enacted to read:

9-A. Small business. "Small business" means any business having fewer than 50 employees working at the site being acquired or permanently displaced by a program or project.

Sec. 10. 23 MRSA §242, sub-§10, as enacted by PL 1971, c. 333, §1, is amended to read:

10. State agency. "State agency" shall mean means any department, agency or instrumentality of this State or any political subdivision of this State, any department, agency or instrumentality of 2 or more states, or 2 more political subdivisions of the State or states and any person who has the authority to acquire property by eminent domain under state law.

Sec. 11. 23 MRSA §243, as amended by PL 1973, c. 625, §130, is further amended to read:

§243. Relocation assistance advisory services

1. Relocation assistance advisory program. Whenever the acquisition of real property for a department program or project will result in the displacement of any person on or after January 2, 1971, the department shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection 2. If the department determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, the department may offer such the person relocation advisory services under such the program.

2. Program to include. Each relocation assistance advisory program required by subsection 1 shall include such

measures, facilities or services as may be necessary or appropriate in order to:

A. Determine the need and make timely recommendations on the needs and preferences, if any, of displaced persons, for relocation assistance;

B. Provide current and continuing information on the availability, sales prices and rentals rental charges of comparable decent, safe and sanitary sales and rental housing replacement dwellings for displaced homeowners and tenants, and of comparable commercial properties and on suitable locations for displaced businesses and farm operations;

C. Assure that, within a reasonable period of time, prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe and sanitary dwellings, equal in number to the number of and available to such the displaced persons who require such these dwellings and reasonably accessible to their places of employment;

D. Assist a displaced person displaced from his that person's business or farm operation in obtaining and becoming established in a suitable replacement location;

E. Supply information concerning federal and, state and local housing programs, disaster loan programs and other federal or state programs offering which may be of assistance to displaced persons, and supply technical assistance to persons in applying for assistance under these programs; and

F. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

3. Coordination. The department shall coordinate relocation activities with project work, and other planned or proposed governmental federal, state or local agency actions in the community or nearby areas which may affect the efficient and effective carrying out of relocation assistance programs.

4. Renter eligibility. Notwithstanding section 242, subsection 3, paragraph B, subparagraph(2), in any case in which the department acquires property for a program or project, any person who occupies that property on a rental basis for a short term or for a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the department.

Sec. 12. 23 MRSA §244, as amended by PL 1973, c. 625, §131, is further amended to read:

§244. Moving and related expenses

1. **Payments.** ~~Whenever the acquisition of real property for a project a program or project to be undertaken by the department will result in the displacement of any person on or after January 2, 1974, the department shall make a payment to any displaced person, upon proper application on forms approved by the department, for:~~

A. Actual reasonable expenses in moving ~~himself that person, his~~ that person's family, business, farm operation or other personal property;

B. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the department; ~~and~~

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

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.

2. **Fixed payments for residential displacements.** Any displaced person eligible for payments under subsection 1 who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1 may receive a moving expense and dislocation allowance, which shall be determined according to a schedule established by the department, not to exceed \$300 and a dislocation allowance of \$200.

3. **Fixed payments for business or farm displacements.** Any displaced person eligible for payments under subsection 1 who is displaced from ~~his that person's~~ his that person's place of business or ~~from his~~ his farm operation and who elects is eligible under criteria established by the department may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1 may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation. The payment shall consist of a fixed payment in an amount to be determined according to criteria established by the department, except that any such payment shall be not less than \$2,500 \$1,000 nor more than \$10,000 \$20,000. A person whose sole business at the displacement dwelling is the rental of property to others shall not qualify for a payment under this subsection. In the case of a business no payment ~~shall~~ may be made under this subsection unless the department is satisfied that the business:

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

B. Is not part of a commercial enterprise having at ~~least one more than 3~~ at least one more than 3 other ~~establishment~~ establishments not being acquired by the ~~State department,~~ State department, which ~~is~~ are engaged in the same or similar business.

Sec. 13. 23 MRSA §244-A, sub-§1, as amended by PL 1981, c. 470, Pt. A, §134, is further amended to read:

1. **Owner.** In addition to payments otherwise authorized, the department shall make an additional payment not in excess of ~~\$15,000~~ \$22,500 to any displaced person who is displaced from a dwelling actually owned and occupied by ~~such~~ such the displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. ~~Such~~ The additional payment shall include the following elements:

A. The amount, if any, which when added to the acquisition cost of the dwelling acquired by the ~~State department~~ State department equals the reasonable cost of a comparable replacement dwelling ~~which is a decent, safe and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market.~~ which is a decent, safe and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this paragraph shall be made in accordance with standards established by the department;

B. The amount, if any, which will compensate ~~such~~ the displaced person for any increased interest costs and other debt service costs which ~~such~~ that person is required to pay for financing the acquisition of any such comparable replacement dwelling. ~~Such~~ The amount shall be paid only if the dwelling acquired by the ~~State department~~ State department was encumbered by a bona fide mortgage which was a valid lien on ~~such~~ such the dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of ~~such~~ that dwelling. ~~Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling. In calculating the amount to be paid under this section, increased interest costs and other debt service costs shall be reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located. The payment shall be an amount which will reduce the mortgage balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage on the displaced dwelling; and~~

C. Reasonable expenses incurred by ~~such~~ the displaced person for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

Sec. 14. 23 MRSA §244-A, sub-§2, as enacted by PL 1971, c. 333, §1, is amended to read:

2. Replacement dwelling. The additional payment authorized by subsection 1 shall be made only to ~~such~~ a displaced person who purchases and occupies a replacement dwelling which is decent, safe and sanitary not later than the end of the one-year period beginning on the date on which ~~he~~ the displaced person receives from the ~~State~~ department final payment of all costs of the acquired dwelling, or ~~on~~ the date on which ~~he moves from the acquired dwelling~~; the department meets its obligation under section 244-C, whichever is the later date, except that the department may extend the period for good cause. If the period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of the date otherwise designated in this subsection.

Sec. 15. 23 MRSA §244-B, as amended by PL 1971, c. 593, §22, is further amended to read:

§244-B. Replacement housing for tenants and certain others

In addition to amounts otherwise authorized by this subchapter, the department shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 244-A which dwelling was actually and lawfully occupied by ~~such~~ the displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of ~~such~~ the dwelling or in any case in which displacement is not a direct result of the acquisition of the dwelling or in such other event as the department prescribes. ~~Such payment~~ Payment shall be either:

1. Lease or rent. The amount necessary to enable ~~such~~ the displaced person to lease or rent for a period not to exceed ~~4~~ years 42 months, a decent, safe and sanitary dwelling of standards adequate to accommodate ~~such~~ person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment comparable replacement dwelling, but not to exceed \$4,000 \$5,250. At the discretion of the department, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account the person's income; ; or

2. Purchase. ~~The amount necessary to enable such person to make a down payment, including incidental expenses described in section 244-A, subsection 1, paragraph C, on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed \$4,000, except that if such amount exceeds \$2,000, such person must equally match any such amount in excess of \$2,000 in making the down payment. An amount to be used towards the purchase of a dwelling as follows. Any person eligible for a payment under subsection 1 may elect to apply the payment to a down payment, including incidental expenses described~~

in section 244-A, subsection 1, paragraph C, on the purchase of a decent, safe and sanitary replacement dwelling. The person may, at the discretion of the department, be eligible under this subsection for the maximum payment allowed under subsection 1, except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of the dwelling, the payment shall not exceed the payment the person would otherwise have received under section 244-A, subsection 1, paragraph A had the person owned and occupied the displacement dwelling 180 days or more immediately prior to the initiation of negotiations.

Sec. 16. 23 MRSA §244-C is enacted to read:

§244-C. Assurance of availability of housing

1. Expenditures for replacement dwellings. If a program or project undertaken by the department cannot proceed on a timely basis because comparable replacement dwellings are not available, and the department determines that those dwellings cannot otherwise be made available, the department may take such action as is necessary or appropriate to provide dwellings by use of funds authorized for the project. The department may use this section to exceed the maximum amounts which may be paid under sections 244-A and 244-B on a case-by-case basis for good cause as determined in accordance with guidelines that the department issues.

2. Availability required. No person may be required to move from a dwelling because of any program or project undertaken by the department unless the department is satisfied that comparable replacement housing is available to that person.

3. Exceptions. The department shall assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of:

A. A major disaster as defined in the United States Disaster Relief Act of 1974, Section 102(2);

B. A national emergency declared by the President of the United States; or

C. Any other emergency which requires the person to move immediately from the dwelling because continued occupancy of that dwelling by that person constitutes a substantial danger to the health or safety of that person.

Sec. 17. 23 MRSA §245, as amended by PL 1971, c. 593, §22, is further amended to read:

§245. Administration

The Department of Transportation department shall carry out the functions of this subchapter either with its personnel or through any federal, state or municipal governmental agency having an established organization for con-

ducting relocation assistance programs; and is authorized and empowered to make all contracts and do all things necessary to fulfill the intent and purposes of this subchapter.

Sec. 18. 23 MRSA §245-B, as amended by PL 1971, c. 593, §22, is further amended to read:

§245-B. Guidelines and rules

The department may adopt guidelines and procedures, or promulgate rules and regulations consistent with this subchapter as it ~~deems~~ determines necessary or appropriate to carry out this subchapter and to include the standards of "decent, safe and sanitary."

Sec. 19. 23 MRSA §246, sub-§2, as amended by PL 1987, c. 395, Pt. A, §104, is further amended to read:

2. Commissioner of Transportation. Any person aggrieved by a determination as to eligibility for any payment, except those enumerated in subsection 1, authorized by this subchapter may have ~~his~~ that person's application reviewed by the ~~Commissioner of Transportation commissioner~~ or ~~his~~ the commissioner's delegate whose determination shall be final and nothing ~~herein shall in~~ this section may be construed to give any person a cause of action in the State Claims Commission or the Superior Court.

Sec. 20. 23 MRSA §753, as amended by PL 1985, c. 554, §4, is further amended by adding a 2nd ¶ to read:

The department may adopt its own standard contract specifications. Notwithstanding any other federal or state law, the department's standard specifications shall be utilized in lieu of federally mandated contract clauses.

Sec. 21. Application. Sections 4 to 19 of this Act shall apply only to persons who become displaced persons, within the meaning of this Act, on or after April 2, 1989.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 2, 1989.

CHAPTER 209

S.P. 148 - L.D. 268

An Act to Amend the School Finance Act to Clarify that Certain Educational Costs Provided to Special Populations are Allowable Special Education Costs

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

Sec. 1. 20-A MRSA §15603, sub-§2, ¶¶D and E, as enacted by PL 1983, c. 859, Pt. G, §§2 and 4, are amended to read:

D. Major capital costs; ~~and~~

E. Expenditures from all federal revenue sources, except for amounts received under United States Public Law 81-874; and

Sec. 2. 20-A MRSA §15603, sub-§2, ¶F is enacted to read:

F. Special education costs which are the costs of educational services provided to students who are temporarily unable to participate in regular school programs. Students who may be included are pregnant students, hospitalized students or those confined to their homes for illness or injury, students involved in substance abuse programs within hospital settings or in residential rehabilitation facilities licensed by the Department of Human Services, Office of Alcoholism and Drug Abuse Prevention for less than 6 weeks duration or students suffering from other temporary conditions which prohibit their attendance at school. Students served under this paragraph shall not be counted as exceptional students for federal reporting purposes.

See title page for effective date.

CHAPTER 210

H.P. 176 - L.D. 241

An Act to Prohibit Smoking in Enclosed Areas on Ferries

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

22 MRSA §1580-B is enacted to read:

§1580-B. Smoking in enclosed areas on ferries prohibited

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Ferry" includes a ferry operated under the jurisdiction of the Department of Transportation pursuant to Title 23, chapter 412, subchapter I or the Public Utilities Commission pursuant to Title 35-A, chapter 51 or any ferry used for the purpose of transporting vehicles, freight or passengers not otherwise covered within those chapters.

B. "Smoking" includes carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off smoke or containing any substance giving off smoke.

2. Smoking prohibited. No person may smoke tobacco or any other substance in any enclosed area in which the public is allowed on any ferry.