

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

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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

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ONE HUNDRED AND FOURTEENTH LEGISLATURE

1989

parent, guardian or a person or agency having legal custody of a minor client. A counseling relation and the information resulting from it shall be kept confidential consistent with the professional obligations of the counselor or social worker.

See title page for effective date.

CHAPTER 397

S.P. 552 - L.D. 1555

An Act to Save Medicaid Funds by Expanding the Ability of the Department of Human Services to Recover Funds from Other Payors

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

Sec. 1. 18-A MRSA §3-805, sub-§(a), ¶(4), as enacted by PL 1979, c. 540, §1, is amended to read:

(4) Reasonable Medicaid benefits recoverable under Title 22, section 14, subsection 2-G and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him the decedent;

Sec. 2. 22 MRSA §14, sub-§2-G is enacted to read:

2-G. Claims against estates of certain Medicaid recipients. The Department of Human Services shall have a claim against the estate of a Medicaid recipient where, subsequent to the death of the recipient:

A. Property or other assets are discovered which existed and were owned by the recipient during the period when Medicaid benefits were paid to the recipient; and

B. Disclosure of that property or assets at the time benefits were being paid would have rendered the recipient ineligible to receive the benefits.

The amount of Medicaid benefits paid and recoverable under this section shall be a claim against the estate of the deceased recipient pursuant to the Probate Code, Title 18-A, Article III, Part 8.

See title page for effective date.

CHAPTER 398

H.P. 1073 - L.D. 1495

An Act to Continue Recodification of the Railroad Laws

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

Sec. 1. 23 MRSA c. 301, sub-c. V, as amended, is repealed.

Sec. 2. 23 MRSA c. 307, sub-c. III, as amended, is repealed.

Sec. 3. 23 MRSA §3454, as amended by PL 1971, c. 593, §22, is repealed.

Sec. 4. 23 MRSA §4207, as amended by PL 1987, c. 534, Pt. B, §§13 and 23, is repealed.

Sec. 5. 23 MRSA §4207-A, as enacted by PL 1979, c. 650, is repealed.

Sec. 6. 23 MRSA c. 410, sub-cc. II and III, as amended, are repealed.

Sec. 7. 23 MRSA c. 615, as enacted by PL 1987, c. 748; c. 792, §2; and c. 794, §1, is repealed and the following enacted in its place:

CHAPTER 615

STATE RAILROAD PRESERVATION ACT

SUBCHAPTER I

RAILROAD PRESERVATION, ASSISTANCE AND ACQUISITION

§7101. Short title

This subchapter shall be known and may be cited as the "State Railroad Preservation and Assistance Act."

§7102. Findings of fact

The Legislature makes a finding of fact that a viable and efficient rail transportation system is necessary to the economic well-being of the State.

The Legislature makes a further finding of fact that the State must take active steps to protect and promote rail transportation in order to further the general welfare.

§7103. Railroad Preservation and Assistance Fund

1. Fund created. There is created the "Railroad Preservation and Assistance Fund" which shall receive revenue derived from the tax levied pursuant to Title 36, chapter 361, except that no more than \$150,000 from this revenue shall be deposited in the fund in any fiscal year. The fund shall also be eligible to receive grants from other sources. The Treasurer of State shall receive and deposit all revenue to the fund in a separate account to be known as the Railroad Preservation and Assistance Fund.

2. Legislative approval of budget. Expenditures from the Railroad Preservation and Assistance Fund are subject to legislative approval in the same manner as appropriations from the General Fund.

3. Use of funds. Subject to the Civil Service Law, money in the fund may be expended to hire employees and to defray other costs authorized by law for the Department

of Transportation, Bureau of Transportation Services as follows:

A. To conduct studies relating to the economic impact of rail transportation on the State including cost-benefit analyses associated with the possible retention or loss of individual rail lines;

B. To conduct periodic condition surveys of rail track and other related facilities; and

C. To acquire, lease and maintain rail lines when these actions are determined to be in the best interest of the State.

4. Balance carried forward. Any balance in the fund in excess of that required for the purposes of this section shall not lapse, but shall be carried forward. Any allocation of this balance shall be identified as to source.

5. Other fund sources. The fund may accept funds from the Federal Rail Administration in carrying out the provisions of this chapter.

\$7104. Major modifications in rail service

1. Notice required. Any railroad which files a petition or proposal with the United States Interstate Commerce Commission concerning the sale, merger, abandonment or embargo of any railroad line in this State shall concurrently file a copy of the petition or proposal with the department. Any person, corporation or other entity which proposes to acquire or construct an additional railroad line in this State or provide rail transportation over or by means of an extended or additional railroad line and which files a petition or proposal with the United States Interstate Commerce Commission to do so shall concurrently file a copy of the petition or proposal with the department, and shall include information on the fitness and ability, including management, financial condition and employee complement, of the entity proposing to provide the rail service to provide safe, efficient and reliable rail service.

2. Review; report. The department shall review any petition or proposal for major modification to the rail service in the State filed under subsection 1. On the conclusion of its review, the department shall report to the Governor and the Legislature if the proposal has a major effect on rail service in the State.

3. Failure to notify. Any entity which fails to file notice with the department required by this section, shall not be approved to receive financial assistance from the State, as defined in section 7320, subsection 1, for one year next following the date the notice is required to be filed.

\$7105. Railroads; lease or purchase of certain railroad lines by the Department of Transportation

1. Definition of term "railroad line." Unless otherwise defined in this section, the term "railroad line" or "lines" shall be construed to mean the right-of-way, track,

track appurtenances, ties, bridges, station houses and other appurtenant structures.

2. Temporary lease and contracts for continuation of service on certain railroad lines. The Department of Transportation may enter into a contract with a railroad and its duly constituted officers, trustees or owners for the temporary lease of railroad lines or any part of a railroad line, located in the State, owned or otherwise lawfully controlled by the railroad for which abandonment has been authorized by a duly constituted authority, state or federal, when in the judgment of the Department of Transportation the preservation of the railroad line or lines is necessary to protect the public interest. When in the judgment of the Department of Transportation the economic well-being of this State, or a significant portion of the State, will be impaired by the discontinuance of rail service over the railroad line or lines that have been authorized for abandonment, the department may contract for the continued operation of rail service over any line or lines on a temporary basis under rules to be prescribed by the department after notice and hearing at which interested parties have an opportunity to express their views, and on terms and conditions as the department and the owner of the railroad may agree. The leases authorized may be made to cover the right-of-way only or may cover the line intact, including the track, track appurtenances, ties, bridges, station houses and other necessary structures. Contracts for continuation of rail service may be made to include the lease of the line and may provide for service on less than a daily basis. The department shall report to the next session of the Legislature with a recommendation for disposition of the leased or subsidized lines.

3. Purchase or lease of certain railroad lines. The Department of Transportation may purchase or lease, under such terms and conditions as the department and the owners of the railroad may agree and hold for the State, railroad lines or any part of a railroad line located in the State, owned or otherwise lawfully controlled by the railroad when, in the judgment of the department, the purchase or lease of those railroad lines is necessary to protect the public interest. The department may purchase or lease the right-of-way only of any line or lines which it shall hold and manage for future transportation use or it may purchase or lease the railroad line intact, including track, track appurtenances, ties, bridges, station houses and other necessary structures.

A. On the abandonment of service along all or a portion of a railroad line, the department shall be given the first option to lease or purchase, on just and reasonable terms, the railroad's rights-of-way along the abandoned portion of the line. In the event that a lease is negotiated for the rights-of-way, the department shall consult with municipal officials and officers in the municipalities affected by the abandonment of service along the line to determine the need for preserving the rights-of-way along the abandoned portion of the line for rail transportation. If the department finds that the welfare of the State would be significantly and adversely affected by the loss of the line for railroad transportation purposes, the department shall seek to negotiate the purchase of the

abandoned portion of the line. In making this determination, the department shall consider, among other criteria deemed significant by the department, future economic development activities and opportunities in the area served by the abandoned railroad service. In addition, the department shall consult with the Department of Economic and Community Development and the State Planning Office in making the determination required in this section.

The department shall, in good faith, seek to lease the railroad rights-of-way until it finds that the preservation of the rights-of-way is not necessary for the welfare of the State or until the voters of the State approve or disapprove, at a statewide election, the issue of bonds to purchase the rights-of-way along the abandoned portion of the line.

Nothing in this paragraph may require the department to lease or purchase the railroad rights-of-way to an entire railroad line or any portion of the line for which railroad service has been abandoned if the railroad corporation owner does not intend to sell, lease or in any other way dispose of the rights-of-way by which railroad service could be easily restored along the abandoned service portion of the line.

B. The abandonment of service shall not mean or infer that the rights-of-way on a railroad line have been abandoned. In the event that the railroad, any person, firm or corporation, or any agency shows interest in the eventual restoration of service, the rights-of-way shall not be deemed abandoned.

Since it is in the best interest of the State to retain the rights-of-way intact, this paragraph shall apply to all existing and future rights-of-way created prior to or following the effective date of this section, as amended.

C. Whenever the department acquires railroad lines, to hold and to manage for future railroad uses, those lines shall not be considered abandoned for railroad purposes. The commissioner shall periodically review the need to hold those lines for future railroad uses.

4. Cooperation, acceptance and use of federal, state, local or private funds. The Department of Transportation may accept, for the State, federal funds that may be apportioned under the United States Regional Rail Reorganization Act of 1973, Public Law 93-236 as amended and supplemented, other federal funds, state funds and such municipal funds and private funds as may be available; to act for the State, in conjunction with the representatives of the Federal Government, municipal governments and private groups having a direct interest, in all matters relating to the acquisition, rehabilitation, construction or lease of railroad line or lines in the State and contracts for rail service continuation over railroad lines as provided in this section.

§7106. Railroads; acquisition of railroad operating equipment by the Department of Transportation

1. Definition of term "railroad operating equipment." Unless otherwise defined in this section, the term "railroad operating equipment" shall be construed to mean freight cars.

2. Acquisition of railroad operating equipment. The Department of Transportation is authorized to lease, purchase and dispose of railroad operating equipment when in the judgment of the department the purchase or disposal of the equipment is necessary to protect the public interest.

3. Cooperation, acceptance and use of federal, local or private funds. The Department of Transportation is authorized and empowered to accept, for the State any federal, municipal or private funds as may be available and to act for the State, in conjunction with the Federal Government, municipal governments and private groups having a direct interest in the acquisition of railroad operating equipment.

4. Use of state funds prohibited. No state funds may be used for any purpose defined in this section, including the administration of this section.

5. State liability. The State shall not be held liable in any contract pursuant to this section for the leasing or purchasing of equipment, facilities or services; for the delivery of products; for the storage of products; or for any other service or financial commitment that may result from the implementation of this section.

SUBCHAPTER II

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), 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 President of the Senate and the Speaker of the House of Representatives. The department may also forward this report to the Interstate Commerce Commission, 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 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 as 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. If 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.

Sec. 8. 23 MRSA c. 617 is enacted to read:

CHAPTER 617

RAILROAD CROSSINGS

§7201. Land taken from railroad; notice and hearing

No town way, city street, public easement or highway taking land of any railroad corporation shall be located, unless a notice of the time and place of the hearing on the location has been served on the president, any vice-president, any director, the treasurer or any assistant treasurer, the general manager or the clerk of the corporation at least 7 days before the time for the hearing. In case a corporation has no officer within the State, service shall be made on its duly authorized agent or attorney within the State. Service in like manner shall be made on any corporation which operates a railroad of another corporation under lease or other agreement.

§7202. Location of railroad crossings; expense; appeals

Town ways and highways may be laid out across, over or under any railroad track or through or across any land or right-of-way of any railroad corporation, if the Department of Transportation, after notice and hearing, so determines.

The Department of Transportation may refuse its permission or grant permission on terms and conditions as it may prescribe, and the need, if any, for installation, maintenance and operation of signals, gates or other protective measures and may determine whether the expense of building and maintaining so much of the way as is within the limits of the railroad corporation shall be borne by the corporation or by the municipality in which the way is located or by the State, or the Department of Transportation may apportion the expense between the railroad corporation and the municipality or State. The expense of operating and maintaining any protective device shall be borne by the corporation operating the railroad. The expense of installing protective devices at crossings on state and state aid highways shall be apportioned between the railroad corporation and the State as the Department of Transportation shall determine. The expense of installing protective devices at crossings on town ways shall be apportioned between the railroad corporation and the municipality as the department shall determine. The Department of Transportation shall report its determinations and decisions, file the same in its principal office at Augusta and send copies by mail or otherwise to each of the parties subject to the determination, order or decision. Determinations, orders or decisions shall be final and binding on all parties unless an appeal from any determination, order or decision shall be taken to the Superior Court in the county where the crossing is located. The Department of Transportation shall be made a party in the appeal. The appellant shall, within 14 days from the date of the filing of the determination, order or decision, file in the office of the department its reasons for appeal and shall cause to be served on any other interested parties a copy of the reasons for appeal certified by the department. The presiding Justice shall make an order or decree on the appeal as law and justice may require. An appeal may be taken to the law court as in other actions. The final adjudication shall be recorded as provided in section 7204 and a copy of the final decision sent to the Department of Transportation. Costs may be taxed and allowed to either party at the discretion of the court.

§7203. Maintenance of railroad crossings already laid out

Notwithstanding any section of Part 7, in case of ways already laid out which cross over or under any railroad track or tracks and not at grade, the allocation of the expense of maintaining so much of the way as is within the limits of the railroad shall be determined, de novo, as provided by section 7202, by the Department of Transportation on application to it by any corporation whose track is or tracks are so crossed, or on application by the municipal officers of any town in which the crossing is located, or on application by the Department of Transportation.

§7204. Recording adjudications of Department of Transportation

Adjudications of the Department of Transportation relating to ways shall be recorded in the office in which the location of the way must be recorded.

§7205. Crossing of public ways

Railroads may cross any public highways in the line of the railroad, but may not pass along public highways without the written consent of the officials charged by statute with the duty of maintenance of these ways; but when a railroad is hereafter laid out across a public way, it shall be constructed so as to pass either over or under the way unless the Department of Transportation, after notice and hearing, authorizes a crossing at grade. Before entering on the construction of any railroad along or across public ways, the manner and conditions of crossings shall be determined as provided by section 7202.

§7206. Ways raised or lowered; course altered

Highways and other ways may be raised or lowered, or the course of the highways may be altered, to facilitate a crossing or to permit a railroad to pass over or under the highway or at the side of it, on application to the Department of Transportation, and proceedings as provided by section 7202, and for these purposes land may be taken and damages awarded as provided for laying out highways and other ways. The department may prescribe the manner in which the work shall be done by the corporation. While the use of any way is thereby obstructed, a temporary way shall be provided by the corporation.

§7207. Discontinuance of railroad crossings

Any railroad corporation or the municipal officers of a city or town in which a public way crosses or is crossed by a railroad, whether at grade or otherwise, may file a petition in writing with the Department of Transportation alleging that the crossing is no longer required by the public and praying that it may be closed or discontinued. The department shall, on receipt of a petition, appoint a time for hearing on the petition, after notice of not less than 10 days to the petitioners, the railroad corporation owning or operating the railroad and the city or town in which the crossing is located. After the notice and hearing, if the department finds that the crossing is no longer required by the public, it may order that the crossing be closed or discontinued. The department may close or discontinue railroad crossings, after notice of not less than 10 days to the railroad and municipality, or after hearing if requested within the 10 days either by the railroad or the municipality.

§7208. Damages for neglect

When the corporation unnecessarily neglects to perform the acts so required, those injured may recover damages in a civil action, commenced within one year after performance is required.

§7209. Bridges over canals or railroads; repairs; proceedings where unsafe conditions

A railroad may be carried over or under a canal or railroad in a manner as not unnecessarily to impede the travel or transportation on them. The corporation making the crossing is liable for damages, occasioned by making the

crossing, in a civil action. Bridges and their abutments, constructed for a crossing of any way, shall be kept in repair by the corporation, or by persons or parties running trains on any railroad crossing a highway or town way. The municipal officers of any city or town may give notice in writing to persons, parties or corporations that a bridge required at the crossing has not been erected, or is out of repair and not safe and convenient, within the requirements of section 3651, or that the crossing of any highway or town way passing the railroad at grade, within their respective cities or towns, is not made or maintained safe and convenient as required by this section. Those persons, parties or corporations shall erect or repair the bridge or make the crossing safe and convenient within 10 days from the service of the notice. If they neglect to do so, any one of the municipal officers may apply to the Superior Court to compel the delinquents to erect or repair the bridge or make the crossing. After hearing, the court may make any order on the hearing, which the public convenience and safety require, and may by injunctions compel the respondents to comply with the order. The officers may, after 10 days from the service of the notice, cause necessary repairs to be made and the expense of the repairs shall be paid by the persons, parties or corporations whose duty it is to keep the crossing safe and convenient.

§7210. Temporary crossings

A railroad company may, for the purpose of accommodating lumbering operations and for the transportation in ordinary vehicles of wood, coal, ice, hay or other commodities, establish and maintain temporary crossings of any railroad operated by it, by agreement with any person who may request the crossing for its purposes. On petition, the Department of Transportation, after notice and hearing, may direct any railroad company to establish and maintain the temporary crossings at places on its line of road as the department deems expedient, and after that the railroad company shall establish the crossings and maintain them in accordance with this section and sections 7211 to 7213.

Whenever, in the opinion of the department, any temporary railroad crossing established under this section is no longer necessary, the department may, on its own motion or on petition of any interested party, after notice and hearing, order the crossing discontinued.

§7211. Crossing signs on each side of track; whistle and bell

At every temporary crossing, established in accordance with section 7210, boards with the words "Temporary railroad crossing, stop, look, listen" distinctly painted on each side, in letters plainly legible, shall be placed on each side line of the railroad right-of-way at the crossing, on a post or other structure, in a position as to be easily seen by persons about to cross the railroad at those places. For any crossing so established, engine bells shall be rung and engine whistles sounded, as provided in section 7214.

§7212. Precautions at crossings

No team or vehicle may be driven over any temporary crossing unless the team or vehicle is first stopped within

a reasonable distance from the nearest rail of the crossing, and the operator, by looking and listening, determines that nothing is approaching on the tracks of the railroad. Nothing in this section may prevent the Department of Transportation from making further rules for safety at any crossing established under its direction as it deems expedient or necessary.

§7213. Crossings kept open part of year; expense apportioned

Each temporary crossing shall be kept open only during the time each year as the parties interested in the crossing may agree on, or as the Department of Transportation may specify in cases where the department directs the crossings to be established. When the department directs any temporary crossing to be established, it shall determine who shall bear the expense of establishing and maintaining the crossing and it may, if it sees fit, apportion the expense between the railroad company and the person or persons who have petitioned for the crossing. The expense of the crossing signs and the planking between the rails shall in any event be borne by the railroad company.

§7214. Signboards at grade crossings; ringing of engine bells

Every railroad corporation shall cause signboards with the words "Railroad Crossing" distinctly painted on each side of the signboards, or as a minimum on one side if signboards are placed facing on-coming traffic in each direction, in letters plainly legible, to be placed and constantly maintained at the side of highways and town ways where they are crossed at grade by those railroads, on posts or other structures, in a position as to be easily seen by persons passing on those ways. Every corporation shall cause a whistle and a bell of at least 35 pounds in weight to be placed on each locomotive used on its railroad, and the whistles shall be sounded as a warning beginning at a distance of 990 feet, on standard or narrow gauge railroads, from all crossings of those ways on the same level, unless the Department of Transportation, on petition of the corporation or of the municipal officers or of 10 or more residents of any city or town in which the crossing is located, after notice and hearing, shall order the sounding of the whistle to be discontinued in any city or village until further order of the department. The bell shall be rung at a distance of 990 feet, on standard or narrow gauge railroads, from grade crossings and be kept ringing until the engine has passed the crossings. On petition of 10 or more residents of the State, after notice to the railroad corporation and a public hearing, the department may in writing order the corporation to give additional warning to travelers on those ways by requiring the sounding of the whistles or the ringing of the bells at other places where the railroads cross the public ways other than at grade or run contiguous to the ways, and the orders shall have the same force and place the same obligations on railroad corporations as when required under this section.

The Commissioner of Transportation may temporarily erect experimental signs at certain grade crossings instead of the signboards with the words "Railroad Crossing," as required in this section, for the purpose of conduct-

ing research for the development of improved signs. The erection of experimental signs by the department at a particular crossing shall relieve the railroad company using that crossing from any liability in damages, which might otherwise arise against that company by the temporary removal or temporary obliteration of the railroad company signboard required by this section. The erection and removal of the temporary signs shall be at the expense of the department and the removal and reinstallation of signboards with the words "Railroad Crossing" shall also be at the expense of the department.

Nothing in this section prevents the department from making further rules for safety at any crossing, including a private, temporary, farm or industrial crossing, as it deems expedient or necessary.

§7215. Failure to comply; damages

For unnecessarily neglecting to comply with any provision of section 7214, the corporation forfeits not more than \$500. The corporation is liable for damages for its neglect to comply with these provisions, or for the neglect of any agent or for the mismanagement of an engine, to be recovered in a civil action by the person damaged by the neglect.

§7216. Right of entry

The officers, agents and employees of the Department of Transportation may enter in and on property of any railroad corporation for the purpose of inspecting railroad-highway crossings and attendant facilities, including grade separation facilities.

§7217. Plant railroad defined

Sections 1251, 1254, 7202, 7205, 7206, 7214 and section 7307, subsections 2 and 3, so far as applicable, apply to plant railroads. The term "plant railroad" shall be construed to mean a railroad of the owners of any mills, mines, quarries, gravel pits, log landings or yards, warehouses, storehouses, stock yards, bulk storage yards, airports, piers, docks, shipyards, educational institutions, power plants, gas works, petroleum tank farms or bulk stations, or other manufacturing, processing or mercantile establishments, and including state and federal institutions and developments, erected or in process of erection, which the railroad is located on land provided or acquired for the purpose by the owners, and whether operated by the owners, or by state or federal government or an agency thereof, or through connection with a public railroad under operating contract with it and by operation of its equipment over the plant railroad.

§7218. Bridges erected by municipalities maintained

Bridges erected by any municipality, over which any railroad passes, shall be constructed and maintained in a manner and condition as to safety as the Department of Transportation may determine. The department may require the officers of the railroad company and of the municipality to attend a hearing in the matter, after notice of the

hearing to all parties in interest as the department deems proper. The department shall determine at the hearing the repairs, renewals or strengthening of parts, or if necessary the manner of rebuilding the bridge required to make the bridge safe for the uses to which it is put. The department shall determine who shall bear the expenses of the repairs, renewals, strengthening or rebuilding, or it may apportion the expense between the railroad company and the city or town, as the case may be, in a manner as deemed by the department to be just and fair and shall make its report.

§7219. Report of decisions and copies to parties interested

The department shall make a report in writing of its decision in all matters named in section 7218, file the report in the department's office, and cause a copy of the decision to be sent by mail to each of the railroad corporations and to the municipal officers of the cities or towns, as the case may be, interested in the report.

§7220. Speed limit at highway grade crossings

The department is authorized to fix a maximum speed limit at which trains may be run over any grade crossing of a highway or other way and, when the limit has been fixed by the department, no engine or train may be run over the crossings at a greater speed than that fixed by the department and no way may be unreasonably and negligently obstructed by engines, tenders or cars. Any railroad corporation forfeits not more than \$100 for every violation of this section.

§7221. Automatic signals; expense; definition

The department may require each steam railroad company operating within this State to install, operate and maintain an automatic signal, gates or other protective device or to require a flagman to be stationed at any highway crossing within this State where, after reasonable notice and hearing, the department decides that public safety requires signal, gates or other protective device or flagman as a proper measure of protection. The expense of installing, operating and maintaining any signal, gates or other protective device or of providing the flagman shall be borne by the corporation operating the railroad passing over the crossing to be protected, except that at crossings located on state and state aid highways the expense of installing the signal, gates or other protective device shall be apportioned between the corporation and the State in proportions as the department determines. Wherever the term "signal" or "automatic signal" is used in this chapter, it shall be construed to be an appliance which gives warning of the approach of a train and which is either audible and visible by day and by night, or audible or visible as may be determined by the department. This section shall not apply to railroads of less than standard gauge, nor to the Knox Railroad Company, formerly called Georges Valley Railroad Company.

§7222. Crossings designated

The Department of Transportation shall designate by general orders, which may be issued without formal notice or hearing, the grade crossings in this State at which, from

all points on the highway or other way within 300 feet of these crossings, and on either side of the crossings, measured along the highway or way, a traveler on the way carrying the crossing can have a fair view of an approaching train, engine or car continuously from the time the train, engine or car is 300 feet from the crossing, until it has passed over the crossing, either under existing conditions or by bushes, trees, fences, signboards or encroachments being trimmed, cut down or removed.

§7223. Obstructions ordered removed; notice

At every crossing of a highway or other way, except state and state aid highways and a railroad at grade, the municipal officers of the town or unorganized place in which the crossing is located are authorized and required on order of the Department of Transportation to remove embankments and other obstructions within highway limits and to enter on private property and properly trim, cut down, remove or apply chemical treatment to bushes, and from time to time as may be necessary to cut down and remove trees, fences, signboards and encroachments which obstruct the view of an engine, train or car by a traveler at or near any crossing. The department shall cause the same to be done on state and state aid highways. The authority of the department in any order to the municipal officers shall not extend beyond the land bounded on a line from a point 300 feet on either side of any crossing, measured along the highway or other way, and a point 300 feet on either side of any crossing measured along the railroad right-of-way, for the purpose of enabling a traveler on any way, when the traveler is 300 feet or less distant from any crossing, to have a fair view of an approaching train, engine or car from one or more angles continuously from the time the train, engine or car is 300 feet from the crossing until it has passed over the crossing. Entry on private property for the purposes stated shall be only after a 10 days' notice, mailed to the last known address of the property owner, and posting of the notice in a conspicuous place in the municipality.

§7224. Expense of removal paid by municipality; partial state reimbursement

Within a time as the Department of Transportation by order directs, the municipal officers or county commissioners shall cause the bushes to be cut down and removed, or chemically treated, and shall cause the trees, fences, signboards or other encroachments to be trimmed, cut down or removed and from time to time, as may be ordered by the department, to keep them trimmed, cut down or removed, and the expense shall in the first instance be paid by the municipality where the labor is performed, but, on the filing with the department of proper proof of the payment, 1/2 of any amount shall be repaid by the State to the municipality. The payment shall be paid from the appropriation for the operation of the department. Any expense incurred by the department in applying chemical treatment, or to properly trim, cut down or remove and from time to time, as may be necessary, to keep trimmed, cut down and removed, bushes, trees and signboards, shall be borne by the department.

§7225. Damages; municipality and State to share

If any person claims damages on account of any such act done under sections 7223 and 7224, the person may, within 2 years after the doing of any act, petition the Department of Transportation to assess damages and the department, after reasonable notice to the petitioner and to the interested municipality and, after hearing, shall award a sum as seems proper as damages to be paid by the municipality where the property is located. On proper proof of any payment, the Governor shall cause 1/2 of the payment to be paid by the State to the municipality.

§7226. Buildings not removed without owner's consent

Nothing contained in sections 7222 to 7225 authorizes the removal of any building without the consent of the owner.

§7227. Applicability to all railroads

Except where otherwise expressly specified, sections 7221 to 7226 and section 7228 apply to all railroads operated by steam, electric, diesel-electric, diesel-motor, gasoline-electric or gasoline-motor power and engaged in the transportation of freight or passengers in standard railroad freight or passenger cars.

§7228. Railroad company may enter private property

For the purpose of creating and maintaining the fair view mentioned in sections 7221 to 7227 or for the purpose of improving the view at one or more angles, any steam railroad company subject to this chapter may enter on private property and remove any embankment or other obstruction except a dwelling house. The owner of the property is entitled to damages, and may have the damages estimated and paid in a manner provided in chapter 607, and there is the same right of appeal as given in that chapter.

§7229. Maintenance charges for private crossings

In a municipality in which a private way is crossed by a railroad crossing, the municipal officers may act as agents for a railroad corporation in collecting maintenance and insurance charges from those persons using that crossing. Nothing in this section may authorize a municipality to assess or levy these charges nor to use its taxing power to collect these charges.

§7230. Partial reimbursement of cost

The State, by or through the Department of Transportation, may reimburse railroad corporations for up to 50% of their annual cost of maintaining public at-grade railroad crossings and crossing protection devices. These crossing protection devices shall include signals, gates, crossbucks and grade separation bridges carrying highways over railroad lines. The actual reimbursement shall be calculated for each railroad based on the following formula. "Cost" shall include all reimbursable costs incurred by the

railroad, as determined by the commissioner, less any payments made to the railroad by any other entities.

For the purpose of this section, public at-grade crossings shall be those crossings determined by the Commissioner of Transportation to be public crossings. Public crossings shall not include crossings on rail lines abandoned, embargoed or listed by the railroad corporation in Category I, Category II or Category III, as defined by the United States Interstate Commerce Commission, on the railroad corporation's most recent system diagram map filed with the United States Interstate Commerce Commission.

The State may provide annually each railroad corporation with a reimbursement payment. For at-grade crossings, the payment shall be determined based on each railroad corporation's verified average cost for crossing maintenance multiplied by the number of eligible crossings, with a maximum payment of \$1,500 per crossing. For grade separation bridges, the payment shall be determined based on each railroad corporation's verified average maintenance cost for grade separation bridges multiplied by the number of eligible structures, with a maximum payment of \$2,500 per structure.

Payment to any railroad corporation may be made contingent on the railroad corporation performing specified maintenance on specific crossings or grade separation bridges when, in the judgment of the commissioner, the public welfare or safety requires that the maintenance be performed. If the railroad corporation fails to perform the required maintenance, the department may contract with others for the work or perform the work itself. In either case, reimbursement of the actual costs shall be made to the entity performing the maintenance or causing the maintenance to be performed. The reimbursement payment to each railroad corporation shall be adjusted to reflect the costs of any maintenance performed by others on lines for which the railroad corporation is responsible under this provision. The adjustment shall also reflect an amount to cover the department's administrative costs for arranging the maintenance to be performed.

Each railroad corporation which seeks reimbursement under this section must report annually its actual maintenance costs for the previous calendar year which shall be used to calculate the reimbursement. The department shall establish guidelines to determine allowable maintenance costs.

This annual report shall describe its maintenance program for public grade crossings and highway over railroad grade separation bridges. The report shall include the total actual costs incurred, total quantities of materials used and work hours expended for the previous year. The department may audit records and supporting documentation relating to costs incurred by railroad corporations.

The commissioner shall develop guidelines to require that any railroad corporation, prior to receiving a reimbursement for the maintenance of the line on which an eligible crossing is located shall file an annual plan by December 1st of each calendar year. The plan shall describe the

condition of the line, the maintenance to be performed in the year for which reimbursement is sought, the speed at which trains will be allowed to operate over that line, the posted vehicle load limit on grade separation bridges and any other information required by the commissioner. The commissioner may also require as a condition of reimbursement that certain noncrossing maintenance or repairs be performed on the line or that the line be maintained to allow trains to operate at a certain speed, that vehicle load limits on grade separation bridges be maintained or that other measures affecting the safety and maintenance of the track be taken by the railroad corporation.

§7231. Petition; damages; expenses; temporary ways

The municipal officers in instances of town ways crossing or crossed by a railroad, whether the crossing be at grade or otherwise, or any railroad corporation may petition the Department of Transportation alleging that public safety or public convenience either to the traveling public or in the operation of the railroad services requires abolishment of or reconstruction of or alteration of crossings or its approaches; or change in the method of crossing a public way; or the closing of a crossing and the substitution of another; or the removal of obstructions to the sight at the crossing and requesting the situation be remedied. The Department of Transportation shall appoint a time and place for a hearing after notice of not less than 10 days to the petitioners, the railroad corporation, the municipality in which the crossing is situated, the owners or occupants of the land adjoining the crossing or adjoining that part of the way to be changed in grade. After notice and hearing, the Department of Transportation shall make its determination to insure safety or public convenience and by whom the abolishment, reconstruction, alteration, change or removal shall be made. The jurisdiction of the Department of Transportation shall exist whether the change or alterations in the crossing is within or without the limits of a public way. To facilitate the abolishment, reconstruction, alterations, changes or removals, highways and other ways may be raised or lowered or the courses of the same way may be altered to permit a railroad to pass at the side thereof. For the purposes aforesaid land may be taken and damages awarded as provided for laying out highways. The Department of Transportation shall determine how much land may be taken and shall fix the damages sustained by any person whose land is taken and the special damages which the owner of land adjoining the public way may sustain by reason of any change in the grade of the way.

Appeal from any decision, order or award of the commission may be had as provided in section 7233. The Department of Transportation shall apportion the expenses pertaining thereto and damages as follows: If the way involved is a state highway, 50% to the department and 50% to the railroad corporation; if the way involved is a state aid highway, 50% to the department and the municipality or municipalities in which the way is located, the pro rata share being determined by the percentage of state aid granted on the way involved and 50% to the railroad corporation; if the way involved is a town way, 35% to the State, to be paid out of the General Fund, 15% to the town, or in cases under the last paragraph of this section 15% to the county commission-

ers of the county in which the way is located and over which the county commissioners have jurisdiction, and 50% to the railroad corporation, provided that the department may vary the aforesaid percentages of expense and damages as it may deem proper after due consideration of the relative benefits to be derived from the abolishment, alteration or reconstruction, and provided that the amount ordered to be paid by the railroad corporation shall not in any event exceed 50% of the expenses and damages. The Department of Transportation may approve agreements made by the railroad corporation and other parties in interest in respect to the work or varying the percentages, provided the amount to be paid by the town shall not exceed the 15% specified unless the town shall vote otherwise, as to any elimination or alteration made under this section, the department may determine what work fairly and properly should be regarded as highway construction.

Notwithstanding the preceding paragraph, the cost of reconstruction of railroad grade separation structures carrying the highway over the railroad, including the alterations to the approaches to said structure, on nonfederal aid state aid highways shall be apportioned as follows: 70% to the Department of Transportation, 10% to the railroad corporation and 20% to the municipality or the county having jurisdiction of the roads in any unorganized township in which said structure is located, provided that the department may vary the aforesaid percentages of cost as it may deem proper after due consideration of the relative benefits to be derived from the reconstruction.

The Department of Transportation may make an order relative to the maintenance of crossings at grade or otherwise as it may deem necessary, and may determine whether expense shall be borne by the railroad corporation, by the municipality in which any crossing is located or by the State by or through the department; or the department may apportion the expense equitably between the railroad corporation, the municipality and the State by or through the Department of Transportation.

While the use of any way is obstructed in carrying out the foregoing provisions of this section, such temporary way shall be provided as the department may order. The Department of Transportation shall not make any order on any petition filed under this section until they are satisfied, by investigation or otherwise, that the financial condition of the corporation operating the railroad in question will enable the corporation to comply with the order, and that the probable benefit to the public will warrant the order and the probable expense resulting from the order, and that the order can be complied with without exceeding the state appropriation available.

The county commissioners shall have the same right of petition under this section, with respect to roads in unorganized places laid out by them under section 4001, as have municipal officers of a municipality under the provisions of this section. In case a petition is filed by them, all parties interested in the subject matter of the petition shall be notified by the Department of Transportation of the filing of the petition and given opportunity to appear and be heard.

§7232. Tracks of more than one railroad

Whenever the Department of Transportation, on an application or petition brought under section 7231, finds that a public way crosses or is crossed by tracks of more than one railroad and the tracks of the railroads are so near together that public safety or convenience requires the work of abolishment, reconstruction, alteration, change or removal to be done under and in compliance with one order, the department shall give notice to all the corporations operating the railroads to appear before it and be heard on the application. After notice and hearing the department shall determine what abolishment, reconstruction, alteration, change or removal, if any, of the crossing shall be made and shall determine by whom the work shall be done and shall apportion the percentage of expense to be borne by the railroad corporations between the corporations in such manner as the department shall deem just and proper.

§7233. Order of Department of Transportation; appeals

The order of the Department of Transportation relating to any matter on which the department may act under the authority of sections 7231 and 7232 shall be communicated in writing to the petitioners and to all persons to whom notice of the hearing on the petition was given. Any person aggrieved by the order, who was a party to the proceedings, may appeal from the order to the Superior Court within and for the county in which the way or crossing is located in the manner now provided in section 7202. Any person aggrieved by the decision or judgment of the Department of Transportation in relation to damages for land taken for the purposes of section 7231 may appeal from the decision to the Superior Court to be held in the county where the land is situated, within 30 days after the report of the department is made, which court shall determine the same by a committee of reference if the parties so agree or by a verdict of its jury, and shall render judgment for the damages recovered with costs to the party prevailing in the appeal, but the committee or jury shall not alter the requirements in the report of the department. The appellants shall, when an appeal is taken, include in the complaint a statement setting forth substantially the facts of the case and shall give written notice of the appeal with a copy of the complaint to the opposite party. An appeal may be taken to the law court as in other actions.

§7234. Trees near railroad crossings

Whenever the Department of Transportation deems that trees, bushes or other encroachments within the limits of a public way obstruct the view at railroad crossings or where one public way enters another and thereby renders the way dangerous to travelers, it shall cause the removal of the obstructions.

Sec. 9. 23 MRSA c. 619 is enacted to read:

CHAPTER 619

INSPECTION AND INVESTIGATION OF RAILROADS

SUBCHAPTER I**REVIEW AND MAINTENANCE****§7301. Railroads examined; annual report**

The commissioner, or some competent person duly appointed by the commissioner, on application or whenever the commissioner thinks necessary, shall carefully examine the tracks, rolling stock, bridges, viaducts and culverts of any railroad; and shall annually make a report to the Governor with facts as the public interest may require. All persons managing railroads shall give the commissioner the information that the commissioner at any time requires.

§7302. Certificate of safety for passenger trains

No passenger train may be run over any new railroad, or over any railroad in process of construction, until the commissioner has made an inspection of such railroad and granted a certificate of its safety for public travel. A copy of this certificate, attested by the commissioner, shall be furnished to the corporation operating the railroad. Any person or corporation violating this section forfeits to the State \$100 for each offense, to be recovered in a civil action or by complaint and indictment, and the Attorney General shall institute proceedings to recover the same.

§7303. Experienced engineer to examine bridges

Every railroad corporation shall, when requested by the commissioner, have an examination made of any iron bridge or other structure by a competent and experienced mechanical engineer, who shall report to the commissioner the results of the engineer's examinations, conclusions and recommendations, and transmit a copy of the same to the corporation. The report shall furnish information in detail and with such drawings and prints as may be in writing requested by the commissioner.

§7304. Managers notified when road unsafe

If the commissioner at any examination finds the track, culverts, bridges or rolling stock in use so out of repair as to be unsafe for travelers, the commissioner shall immediately notify the managers of the road of its condition and the time in which the repairs shall be made; and may require them to reduce the speed of all trains until the repairs are made.

§7305. Court proceedings for noncompliance

If the managers do not comply with these requirements, the commissioner shall file a complaint to the Superior Court in any county where the railroad extends, setting forth their examination, the condition of the road, the notice and requirement and refusal to comply; and shall notify the Attorney General or the district attorney of the county of the filing of the complaint, one of whom shall appear and take charge of the proceedings in court. The court shall order a notice and appoint a hearing; and after a hearing, may order such things to be done by the managers of the road as they deem necessary to secure the safety of travelers. Unless the

managers execute a bond to the State, with sufficient sureties, for a sum as the court deems necessary to make the repairs, conditioned that they will, within the time fixed by the court, make the repairs or otherwise satisfy the court that they will be so made, the court shall issue an injunction against the corporation and its managers, prohibiting the running of any passenger trains over the portion of the road found to be unsafe until the order has been complied with or revoked.

§7306. Passenger trains prohibited from running over unsafe roads

When, in the opinion of the commissioner, the passage of passenger trains over any portion of a railroad would be attended with imminent danger, the commissioner may notify the president or superintendent of the road and order the immediate stopping of all passenger trains about to run over that portion of the road. If the commissioner's order is not obeyed, the commissioner shall at once apply to the Superior Court which may, upon satisfactory proof of the necessity for the order and without notice to the company, issue an injunction prohibiting the running of passenger trains over the road until further order of the court.

§7307. Crossings and bridges

1. Company to erect and maintain bridge guards.
Every railroad corporation shall erect and maintain suitable bridge guards at every bridge or other structure, any portion of which crosses the railroad less than 20 feet above the tracks. The guards shall be approved by the commissioner and be erected and adjusted to the commissioner's satisfaction. Any corporation refusing or neglecting to comply with this section, for each month of continuance in neglect or refusal, forfeits \$50. Whoever willfully destroys or breaks any bridge guard forfeits not more than \$100 and may be imprisoned for not more than 30 days.

2. Railroads crossing each other; application, notice and hearing.
The commissioner shall determine the manner and conditions of one railroad of any kind crossing another. Any corporation or party operating a railroad may apply to the commissioner for a change in the then existing condition, construction or manner of any crossing. The application shall be in writing, giving the location of the crossing, and the commissioner shall give a hearing on the application after the commissioner has ordered notice to be given by the applicants as to the time, place and purposes of the hearing as the commissioner shall deem proper. The commissioner shall determine at the hearing what changes, if any, are necessary, and how the crossings shall be constructed and maintained, the expense to be borne as the commissioner may order.

3. Crossing over railroad already built; application, notice and hearing.
In the case of a railroad company of any kind whose tracks are to be constructed across the tracks of any railroad already built, the crossings shall be made, constructed and maintained in a manner and under conditions as shall be ordered by the commissioner, the expense to be borne as the commissioner may order. The parties contemplating making a crossing shall apply to the

commissioner in writing, giving the location of the crossing desired, and the commissioner shall give a hearing after the commissioner shall have ordered notice to be given by the applicants of the time, place and purposes of the hearing as the commissioner shall deem proper. At the hearing, the commissioner shall determine the manner and conditions of construction and maintenance of the crossing and make a report as provided.

4. Report of decisions and copies to parties interested. The commissioner shall make a report in writing of the commissioner's decision in all matters named in subsections 2 and 3 and the commissioner shall send a copy of the decision to each of the railroad corporations and to the municipal officers of the cities or towns interested in the decision.

5. Clearances set by Commissioner of Transportation. The Commissioner of Transportation shall have the right to prescribe a minimum distance for clearance of any structure, pole or other object over or beside any railroad track. This section shall not apply to any structure, pole or other object in existence over or beside any railroad track on or before September 1, 1955.

§7308. Safety provisions

1. Size and construction of caboose cars; penalty. Except as otherwise provided in subsection 2, no common carrier by railroad may use on its lines any caboose car, or other car used for like purposes, unless the caboose or other car shall be at least 29 feet in length, exclusive of platforms, and equipped with 2 4-wheel trucks and shall be of constructive strength equal, at least, to that of the 20-ton capacity freight cars constructed according to master car-builder standards and shall be provided with a door in each end and an outside platform across each end of the car. Each platform shall be not less than 24 inches in width and shall be equipped with proper guardrails, and with grab irons and steps for the safety of persons getting on and off the car. The steps shall be equipped with a suitable rod, board or other guard at each end and at the back, properly designed to prevent slipping from the step. Caboose cars shall be of standard height with a cupola or with an observation compartment extending from each side of the car, and with necessary closets and windows. Any common carrier who violates any of the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 nor more than \$500 for each offense, to be enforced on complaint or by indictment.

2. Application of provisions. Subsection 1 shall apply to any corporation, or to any person or persons, while engaged as common carriers in the transportation by standard gauge railroad of passengers or property within this State to which the regulative power of this State extends. Subsection 1 shall not apply to any railroad company operating less than 20 miles of single track, nor to caboose cars used between the following points, namely: Between Waterville and Skowhegan; between Pittsfield and Hartland; between Burnham and Belfast; between Leeds Junction and Farmington; between Calais and Princeton; between Bangor

and Bucksport; between Livermore Falls and Canton; and between Lewiston lower station and Bath, via Brunswick.

3. Walks and handrails on railroad bridges. The Commissioner of Transportation shall have the right, upon complaint and after hearing, to require any common carrier by railroad to equip their bridges and trestles with suitable walks and handrails, if after hearing the commissioner finds that the walks and handrails are necessary for the safety of the public or railroad employees.

4. Frogs and guardrails. Every railroad corporation operating a railroad or part of a railroad in the State shall adjust, fill or block the frogs and guardrails on its track, with the exception of guardrails on bridges, in a manner satisfactory to the Commissioner of Transportation, so as to prevent the feet of employees from being caught in the tracks. Any railroad corporation failing to do so shall be punished by a fine of not less than \$100 nor more than \$500.

5. Method of heating cars approved. No passenger, mail or baggage car on any railroad in the State may be heated by any method of heating or by any furnace or heater, unless the method or the use of a furnace or heater shall first have been approved in writing by the Commissioner of Transportation. In no event may a common stove be allowed in any car. Any railroad corporation may, with the permission of the commissioner, make any experiment in heating its passenger cars as the commissioner may deem proper. Any railroad corporation violating any provision of this subsection forfeits not more than \$500.

6. Head and rear lights on cars. Every person, firm or corporation operating or controlling any railroad running through or within the State shall equip each of its track motor cars used during the period from 30 minutes before sunset to 30 minutes after sunrise with a headlight of construction and with sufficient candle power to render plainly visible at a distance of not less than 300 feet in advance of the track motor car, any track obstruction, landmark, warning sign or grade crossing, and shall equip the track motor car with a red rear light of construction and with sufficient candle power as to be plainly visible at a distance of at least 300 feet. It shall be unlawful for any person, firm or corporation operating or controlling any railroad running through or within this State to operate or use any track motor car from 30 minutes before sunset to 30 minutes after sunrise, which is not equipped with lights of the candle power, construction and utility described in this subsection.

Any person, firm or corporation operating or controlling any railroad running through or within this State using or permitting to be used on its line in this State a track motor car in violation of this subsection shall be liable to a penalty of \$100 for each violation, to be recovered in a suit or suits to be brought by the district attorney in the Superior Court of the county having jurisdiction in the locality where the violation occurred. On duly verified information being given of the violation, the district attorney shall bring the suits.

7. Safety switches and switch lights at every siding. Every railroad company running trains in this State shall place safety switches of an approved sort at every siding

connecting with the main track. Switch lights shall be maintained in addition to switch targets with a reflective type surface or with an adequate reflector throughout that portion of every railroad where trains are run after dark. The commissioner shall have authority to relieve any railroad from the requirements of this subsection as to maintaining switch lights and reflectorized targets, on proper petition, after notice and hearing, and for good cause shown, to the extent that the commissioner deems consistent with public safety.

This subsection shall not apply to areas of the railroad controlled by block signals.

8. Speed at crossings; signals to warn approaching trains. When one railroad crosses another on the same grade, every engineman on both, when approaching the point of intersection with an engine with or without a train, shall stop the engine within 500 feet of the point and before reaching it and shall pass it at a rate not exceeding 8 miles an hour, except when, from the condition of the track or train, it shall be necessary to run at greater speed. In that case, the conductor or person in charge of the train shall station some person at the crossing, with a flag by day and a lantern by night, to warn trains approaching on the other road. When 2 or more crossings on the same road are within 400 feet of each other, one stop is sufficient. Any engineman, conductor or person in charge of the train violating this provision forfeits, for each offense, \$100, and the corporation on whose road the offense is committed forfeits \$200.

9. Signals at crossings; signals for approaching trains; preference to passenger trains. When railroads cross each other at grade, the parties operating the railroad last located there shall build and maintain a suitable signal station at the crossing, at which a competent signal officer shall be kept at the joint expense of the parties operating the railroads. The signal shall not be set for a train to cross until the engine of the train shall have arrived within 500 feet of the intersection and stopped. No train or engine may cross the track of the other road until the proper signal for it to cross shall have been set in position by the signal officer. Only one train or engine shall be allowed to cross under one setting of the signal unless coming from opposite directions on the same railroad. When the signal has been set for the trains on one of the railroads, it shall not be changed until those trains shall have passed entirely over the crossing. When trains on both railroads approach the crossing at about the same time, preference shall be given to passenger trains and the signal shall be set for the trains on each road in alternate order.

10. Automatic signals; exemptions. The Commissioner of Transportation may, on the application of any railroad whose road crosses another railroad at the same level, after due notice and hearing of the parties, authorize the applicant to establish and maintain a system of interlocking or automatic signals at any crossing of the roads, at its own expense, and erect and maintain the necessary wires, rods, signal posts and signals in a manner as the commissioner shall prescribe. When the system is established and has been approved in writing by the commissioner, the

corporation establishing the system and its railroad shall be excepted, as to that crossing, from subsections 8 and 9.

11. Sharing of signal cost by nonparticipating railroad; exemption. Whenever, after establishment and approval of the system of signals, the nonparticipating railroad under subsection 10 shall have paid the applicant railroad a part of the cost of establishing the system of signals as shall be awarded by the Commissioner of Transportation after hearing on petition of the nonparticipating railroad, both railroads shall be excepted as to that crossing from subsections 8 and 9, as provided in subsection 10. Until payment is made, the nonparticipating railroad shall contribute toward the expense of operating the signals, in semi-annual payments, a sum equal to the cost to it of operating the signals used by it at the crossing before the establishment of the signals provided for in subsection 10. After payment of the award, the expense of maintaining and operating the system of signals shall be borne by the 2 railroad corporations according to the proportions fixed by the award for paying the original cost of the signals, and the award, so far as it relates to the cost of maintaining and operating the signals, may, at the request of either party, be revised after an interval of 5 years from the original award or from the award next preceding the request.

12. Diesels or diesel-electric may not operate in reverse or backup position. No railroad corporation operating diesel or diesel-electric locomotives in the State may be permitted to operate such locomotives in reverse or backup position on any passenger or freight train on any main line or branch line, except any locomotives may be operated in reverse in emergencies, while doing switching operations, while operating turn-around service, and except where no facilities are available for turning the locomotives at the point of departure. Any railroad corporation violating this subsection shall be punished by a fine of \$100 for each violation.

13. Illuminated switching leads. In order to provide maximum safety to train and yard service employees, who are required to work on or about moving railroad freight equipment, all railroad companies operating in the State shall have all switching leads in yards, where frequent switching service is normally performed, reasonably and adequately illuminated during the hours of darkness. This subsection shall be subject to rules promulgated by the Commissioner of Transportation.

§7309. Orders of the commissioner

The Superior Court is given full jurisdiction to enforce compliance with any order issued by the Commissioner of Transportation under this chapter. It shall be the duty of the commissioner to see that the rights of the public under this subchapter are fully protected.

§7310. Prior orders and rules effective

All rules, orders and decrees in effect prior to October 24, 1977, which were issued by the Public Utilities Commission pursuant to the provisions in former Title 35,

which provisions are embraced in this subchapter, shall remain in full force and effect until the Commissioner of Transportation has acted pursuant to applicable provisions of this subchapter.

§7311. Investigation and reports of accidents

1. Investigation. The Commissioner of Transportation shall investigate all accidents resulting in loss of human life, or personal injury requiring 3 full days of hospitalization, occurring upon the premises of any railroad company or directly or indirectly arising from or connected with its maintenance or operation. Any accident so occurring and which results in property damage or personal injury that requires less than 3 full days of hospitalization also may be investigated if, in the judgment of the commissioner, the public interest requires it. The commissioner may hold hearings in connection with any investigation and shall reasonably notify the railroad company of the time and place of the hearing, and the railroad company may then be heard and the commissioner shall have the power to make such order or recommendation with respect thereto as deemed just and reasonable.

2. Reports of accidents. Every railroad company is required to file with the Commissioner of Transportation, under such rules as the commissioner may prescribe, reports of accidents so occurring, in the manner and form designated by the commissioner. In case of accidents resulting in loss of human life, such reports shall be made immediately by telephone or telegraph, followed by a detailed written report.

3. Disposition of reports. The orders and recommendations of the Department of Transportation, and accident reports and all other materials in the department's file pertaining to such railroad company accidents, shall be made available, upon request, to the railroad company, the injured person or their representatives.

4. Reports inadmissible as evidence. The orders and recommendations of the Department of Transportation, accident reports and any other material in the department's file pertaining to such accidents obtained or prepared pursuant to an investigation under this section shall not be admitted as evidence in any suit or action for damages growing out of any matter mentioned in any such investigation.

§7312. Participation in the Federal Railroad Administration Track and Equipment Safety and Inspection Program

The commissioner shall have the authority to participate in carrying out investigative and surveillance activities in connection with any rule, regulation, order or standard prescribed by the Secretary of Transportation of the United States under the authority of the Federal Railroad Safety Act of 1970, Public Law 91-458, provided that the commissioner shall comply with all the requirements imposed by the United States Code, Title 45, section 435. The commissioner may employ such expert, professional or other assistance as

is necessary to carry out the activities authorized by this section.

SUBCHAPTER II

FINANCIAL ASSISTANCE

§7320. Application for financial assistance

1. Annual application and approval required. Any person, corporation, partnership or other business entity which provides railroad transportation for compensation in the State, or seeks to acquire or construct additional rail lines in the State, shall apply to the Department of Transportation for the privilege of receiving financial assistance from the State, for the year in question. Financial assistance from the State is defined as grants, loans, subsidies, tax exemptions, cost reimbursement for maintenance of railroad crossings or payments from other sources. The applicant may not receive the financial assistance unless the application is approved.

2. Criteria. In determining approval for an application under this section, the department shall consider, among other matters:

A. The need for this rail service;

B. The effect of the rail service on the health, safety and general welfare of the people of the State; and

C. For any entity which already provides railroad transportation for compensation within the State, the record of that railroad in investing within the State, maintaining track and rights-of-way within the State, use of funds from previous financial assistance from the State and the safety, reliability and efficiency of the service actually provided by that railroad within the State.

3. Procedure for entities seeking to acquire or construct additional rail lines. An entity seeking to acquire or construct an additional rail line or lines shall proceed in accordance with this subsection.

A. The applicant shall provide notice by:

(1) Publishing an accurate and understandable summary of the application in a newspaper of general circulation in each area affected by the rail service;

(2) Mailing a copy of its application to all shippers which used the rail line during any of the 12 months prior to the date the application was filed, as well as those shippers who may reasonably be expected to use that line within one year from the date of application;

(3) Mailing a copy of its application to the employee representatives of the employees of the railroad or who may be affected by a proposed rail service; and

(4) Mailing a copy of its application to any municipality served by the rail line or in which that service may be affected.

B. After receipt of a substantially complete application and compliance by the applicant with the notice requirements of this subsection, the department shall hold a public hearing on any application covered by this subsection, in accordance with its rules.

C. Any party affected by the application has the right to intervene in a proceeding under this section. Intervention of other parties shall be granted liberally in order that a complete record may be developed.

4. Procedure for existing operations. An entity which intends only to continue existing operations shall proceed in accordance with this subsection.

A. After receipt of a substantially complete application, the department shall provide notice of the application and opportunity for hearing on any application covered by this subsection by sending an accurate and understandable summary of the application to a newspaper of general circulation in each area affected by the rail service for publication at the applicant's expense.

B. The department may hold a public hearing on the application and shall hold a hearing when a request for a hearing shows a substantial likelihood that the application may be denied or granted with qualifications under the criteria of subsection 2 and the hearing is requested by:

(1) A shipper or shippers whose traffic on the railroad line totaled 500 tons in the year preceding the application;

(2) Any municipality having a siding, terminal, station or agency station of the railroad line within its bounds; or

(3) A petition of 25 individuals who state that they are affected by the operation of the railroad.

The hearing shall be subject to the rules of the department.

5. Approval. At the conclusion of the proceedings and within 30 days of the conclusion of the public hearing, if any, the department shall:

A. Approve the application as filed;

B. Approve the application with conditions as the department determines necessary to assure that the investment of state funds in providing assistance for

the rail service will be consistent with the public interest; or

C. Deny the application.

Approval shall be valid for a year. In the case of denial, reapplication shall be in accordance with the rules of the department. Approval may be revoked in case of noncompliance with any conditions.

6. Temporary approval. When the commissioner determines that the public interest requires immediate financial assistance from the State to a railroad, the department may issue temporary approval for a period not to exceed 90 days without notice or hearing.

7. Appeal. Any applicant or intervenor aggrieved by the decision of the department under subsection 5 has a right to judicial review in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

8. Rules. The department shall promulgate rules concerning the implementation and enforcement of this section.

9. Existing operations; temporary approval. Any ongoing as of the effective date of this section, as long as the ownership or management of that operation is not transferred to another entity, shall be deemed approved until March 1, 1990.

10. Consolidation of hearings. The Department may consolidate any hearing under this section with another hearing concerning railroad service by the same entity in the same area.

See title page for effective date.

CHAPTER 399

H.P. 1062 - L.D. 1484

An Act to Fund the Maine State Retirement System for Certain Employees Previously Covered by the County Retirement System

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

Sec. 1. 5 MRSA §17056, sub-§1, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

1. Transfer to state employee account. Notwithstanding ~~section sections 18202 and 18408, if, before September 19, 1987, the county commissioners of a county elect to adopt this section,~~ funds held by the retirement system to the credit of employees of any Superior Court ~~within that county~~ who became employees of the State pursuant to Public Law 1975, chapters 383 and 408, shall be transferred on the records of the retirement system to the state employee account.