

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**SECOND SPECIAL SESSION**  
**September 5, 1996 to September 7, 1996**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 1996 to March 27, 1997**

**FIRST SPECIAL SESSION**  
**March 27, 1997 to June 20, 1997**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 26, 1997**

**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 19, 1997**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1997**

**Sec. 10. 32 MRSA §3270-B, sub-§11**, as amended by PL 1993, c. 600, Pt. A, §206, is further amended to read:

**11. Fees for biennial license renewal.** Fees for the biennial ~~registration~~ license renewal of physician assistants in an amount not to exceed \$100.

**Sec. 11. 32 MRSA §3286, 2nd ¶**, as amended by PL 1993, c. 600, Pt. A, §219, is further amended to read:

For the purpose of this ~~section~~ chapter, by practicing or by making and filing a biennial license to practice medicine in this State, every physician licensed under this chapter who accepts the privilege to practice medicine in this State is deemed to have given consent to a mental or physical examination when directed in writing by the board and to have waived all objections to the admissibility of the examining physicians' testimony or examination reports on the grounds that the testimony or reports constitute a privileged communication.

**Sec. 12. 32 MRSA §3296**, as amended by PL 1993, c. 600, Pt. A, §223, is further amended by adding at the end a new paragraph to read:

Provision of information protected by this section to the board pursuant to Title 24, section 2506 does not waive or otherwise affect the confidentiality of the records or the exemption from discovery provided by this section for any other purpose.

See title page for effective date.

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## CHAPTER 272

H.P. 1049 - L.D. 1466

### An Act to Provide Flexibility and Costs-savings in Department of Transportation Property Acquisition Procedures

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

**Sec. 1. 23 MRSA §153-B, sub-§2**, as enacted by PL 1993, c. 536, §2, is amended to read:

**2. Survey and appraisal.** When property is to be purchased or taken over and held for the State, unless the department determines that an adequate description already exists, the department shall first cause the property or interest in the property to be acquired to be surveyed and described, and a plan of the property made, and to be appraised by one or more appraisers. The owner or the owner's designated representative must 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, appraisals and preliminary engineering, to enter and cross all lands within, adjoining and adjacent to the area ~~to be surveyed~~ proposed for acquisition in carrying out the objectives of this section. The department may prescribe ~~a procedure~~ procedures to waive the appraisal in cases involving the acquisition by sale or donation of property or interest in property. The department may prescribe procedures to waive the appraisal in cases in which the fair market value of the property or interest in the property to be taken is estimated at \$5,000 or less and valuation can be established by another method. In any case in which the department and the owner do not reach an agreement about the value of property or interest in property to be acquired, or if the owner requests, the department shall perform an appraisal.

**Sec. 2. 23 MRSA §154**, as amended by PL 1987, c. 395, Pt. A, §§94 and 95, is further amended to read:

#### §154. Condemnation proceedings

If the department determines that public exigency requires the taking of ~~such~~ property or any interest ~~therein~~ forthwith in property, or is unable to purchase ~~such a property and or any interest therein~~ in a property, or the necessary ways and access ~~thereto~~ to a property at what it ~~deems~~ considers a reasonable valuation, or if the title in a property is defective, it shall file in the registry of deeds for the county or registry district where the land is located a notice of condemnation which ~~shall~~ must contain a description of the project specifying the property and the interest ~~therein~~ taken and the name or names of the owner or owners of record so far as they can be reasonably determined. The department may prescribe procedures for the reasonable determination of the owner or owners of record. The department may join in the ~~same~~ notice one or more separate properties whether in the same or different ownership and whether or not taken for the same use.

~~A-~~ The department shall serve a check in the amount of the determined net damage and offering price and a copy of the notice of condemnation shall be served on the owner or owners of record. In case there is multiple ownership, the check may be served on any one of the owners. With that copy there shall be served the department must serve on each individual owner of record a copy of so much that part of the plan as relates to the particular parcel or parcels of land taken from him that owner and a statement by the department with respect to the particular parcel or parcels of land taken from him that owner which shall must:

**1. Date of proposed possession.** State the proposed date of taking possession;

**2. Compensation involving severance damage.** Where the department appraisals disclose severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:

- A. The highest and best use of the property at the date of taking;
- B. The highest and best use of the property remaining after the taking;
- C. The fair market value of the property before the taking;
- D. The fair market value of the property after the taking;
- E. The gross damage, showing separately:
  - (1) The fair market value of the real property taken; and
  - (2) Severance damages including the impairment or destruction of facilities and structures;
- F. Special benefits, accruing to the remaining property by reason of the public improvement for which part of the property is taken, to be set off against severance damages;
- G. The net damage showing separately:
  - (1) The fair market value of the real property taken;
  - (2) The amount of severance damages in excess of special benefits; and
  - (3) The offering price;
- H. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within said 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and

I. Enclosed Check No.: ..... Amount: \$ .....

Payable to: .....

Sent to: .....

**3. Compensation not involving severance damage.** Where the department appraisals disclose no

severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:

- A. The highest and best use of the property at the date of taking;
- C. The fair market value of the real property taken as of the date of taking;
- E. Offering price;
- F. The check represents the ~~state's~~ State's offer of just compensation. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within the 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and
- G. Enclosed Check No.: ..... Amount: \$ .....

Payable to: .....

Sent to: .....

**4. Compensation in cases involving the facilities of a public utility.** Where the condemnation involves the taking of established rights and facilities owned by a public utility and located outside of an established highway right-of-way, no statement by the department as provided above ~~shall~~ may be sent to the public utility concerned. In any negotiations for an agreement with such public utility with regard to such rights and facilities, the department shall consider, without being limited to, the following elements of damage:

- A. Relocation costs, which ~~shall~~ must include the cost of acquisition of substitute rights and the cost of establishing either existing or substitute facilities in a new location;
- B. The salvage value of facilities removed;
- C. Cost of removal; and
- D. The value of betterments where the function of the substitute facilities exceeds the function of the replaced facilities.

Service of the notice of condemnation with ~~the~~ a copy of the plan, check and the statement by the department ~~shall~~ must be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. ~~The~~ A notice of ~~describing the~~ condemnation ~~only~~ ~~shall~~ must be published once in a newspaper of

general circulation in the county where the property is located and such publication ~~shall constitute~~ constitutes service on any unknown owner or owners or other persons who may have or claim an interest in the property. The notice must consist of an area map depicting the general location of the property interests to be condemned and such other information as the department determines will sufficiently identify the area in which the property interests are to be taken; an informative summary listing the parcel or item numbers to be condemned, the name of the apparent owner or owners of record of the property interests, the estimated areas to be condemned and the nature of the interests to be condemned; and a location at which the complete notice of layout and taking may be examined.

If such owner is a person under the age of 18 years, or an incompetent person, the commission shall cause such notice and check to be served upon the legal guardian of such person or incompetent. If there is no such guardian, then the department shall apply to the judge of probate for the county wherein the property is situated, briefly stating the facts and requesting the appointment of a guardian. The reasonable fee of such guardian as approved by the court ~~shall~~ must be paid by the department.

In case there is a mortgage, tax lien of record or other encumbrance covering any of said land, a copy of the notice of condemnation ~~shall~~ must be sent forthwith by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to ~~his~~ the holder's office or place of abode if known, otherwise to the office, abode or address as set forth in said record.

The recording of the notice of condemnation ~~shall be~~ is the date of taking and ~~shall vest~~ vests title to the property therein described in the State in fee simple or such lesser state as is specified in the notice of condemnation. Within one year after the completion of the project for which the land is taken, the department shall file a plan for recording in the registry of deeds for the county or registry district where the land is located.

If a condemnation proceeding is instituted and then abandoned, the owner of any right, title or interest in any real property included in said proceeding ~~shall~~ must be reimbursed by the department for ~~his~~ reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings.

See title page for effective date.

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## CHAPTER 273

### H.P. 397 - L.D. 542

#### **An Act to Make Appeals to the Law Court From Revocation of Probation Proceedings Conditional and to Clarify the Matter of Bail Pending Final Disposition of a Motion for Revocation of Probation**

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

**Sec. 1. 17-A MRSA §1205, sub-§8** is enacted to read:

**8.** In deciding whether to set bail under this section and in setting the kind and amount of that bail, the court must be guided by the standards of post-conviction bail in Title 15, section 1051, subsections 2 and 3. Appeal is governed by Title 15, section 1051, subsections 5 and 6. Bail set under this section is also governed by the sureties and other forms of bail provisions in Title 15, chapter 105-A, subchapter IV and the enforcement provisions in Title 15, chapter 105-A, subchapter V, articles 1 and 3, including the appeal provisions in Title 15, section 1099-A, subsection 2.

**Sec. 2. 17-A MRSA §1206, sub-§3,** as amended by PL 1993, c. 234, §1, is further amended to read:

**3.** If a hearing is ordered, the person on probation must be notified, and the court may issue a summons or may issue a warrant for the person's arrest and order the person committed, with or without bail, pending the hearing. Section 1205, subsection 8 applies to bail under this section.

**Sec. 3. 17-A MRSA §1207,** as amended by PL 1993, c. 234, §3, is repealed and the following enacted in its place:

#### **§1207. Review**

Review of a revocation of probation pursuant to section 1206 must be by appeal.

**1. District Court proceeding.** In a probation revocation proceeding in the District Court, a person whose probation is revoked may appeal to the Superior Court under Title 15, section 2111 and the applicable Maine Rules of Criminal Procedure. An appeal to the Law Court, from an adverse decision of the Superior Court sitting as an intermediate appellate court, is not an appeal of right. The time, manner and specific conditions for taking that appeal to the Law Court are as the Supreme Judicial Court provides in the Maine Rules of Criminal Procedure.