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STATE GOVERNMENT EVALUATION
ACT REPORT

STATE CLAIMS COMMISSION

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

Program Evaluation Report
Submitted to the Joint Standing Committee for
State and Local Government

126th Legislature

December 2013





STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
STATE CLAIMS COMMISSION
49 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0049

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COMMISSIONER

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January 29, 2014

Committee on State and Local Government
Burton M. Cross Office Building, Room 214
100 State House Station
Augusta, ME 04333

Dear Senator Lachowicz, Representative Graham and Members of the State and Local Government Committee:

On behalf of the State Claims Commission and pursuant to the Government Evaluation Act, Title 3 of the Maine Revised Statutes, chapter 35, enclosed with this letter is the 2013 State Claims Commission report for your review.

I look forward to the opportunity to speak with the Committee on Monday, February 3, 2014, in an effort to aid the review process.

In the interim, if there is any further information that we may provide to you, please contact the Commission Secretary at your convenience.

Sincerely,

David W. Austin, Esq.
Chairman
State Claims Commission

Enclosure

cc: File

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A. ENABLING LEGISLATION

B. §1510-A. Certain claims against the State

1. Claims against state agency. A state agency may hear and decide any claim of \$2,000 or less against it, or any of its agents, except a claim that may be submitted under the Maine Tort Claims Act, Title 14, chapter 741, or under another specific statutory provision. Any agency paying all or part of a claim heard under this subsection shall make payment as soon as practicable from currently available agency funds and, if no funds are then available, from agency funds from the following fiscal year. An agency deciding a claim under this subsection shall make its final decision, and reasons for the decision, in writing and shall, as soon as practicable, send a copy of that decision to the claimant by certified mail.

These claims include, but are not limited to, claims for damage or injury caused by patients, inmates, prisoners in the care or custody of the Department of Health and Human Services or of any institution administered by a department or by children in the custody of the Department of Health and Human Services.

[1993, c. 468, §1 (AMD); 1995, c. 560, Pt. K, §82 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

2. Claims against the State decided by the State Claims Commission. A claim under this section may be submitted to the State Claims Commission and heard and decided by it, if:

A. The claim was submitted under subsection 1 to a state agency which refused to hear it; [1977, c. 624, §2 (NEW).]

B. The claim was submitted under subsection 1 to a state agency and no final decision was made within 90 days of submission; or [1977, c. 624, §2 (NEW).]

C. The claim cannot be submitted under a specific statutory provision other than subsection 1 because the claimant, as a result of an action or omission of a state agency or state agent, has not complied with time limits contained in that specific statutory provision. [1987, c. 395, Pt. A, §19 (AMD).]

Any payment resulting from a decision of the State Claims Commission on a claim submitted to it under this subsection shall be paid as soon as practicable by the state agency or agencies found responsible by the State Claims Commission or, if there is no clearly identifiable responsible state agency, the payment shall be paid from the state contingent fund.

[1987, c. 395, Pt. A, §19 (AMD) .]

3. Appeal from departmental decisions. Any claim disapproved in whole or part by a state agency hearing that claim under subsection 1 may be appealed to the State Claims Commission within 30 days from the disapproval or partial disapproval. The State Claims Commission shall hear de novo any claim so appealed.

Any payment resulting from a decision of the State Claims Commission on a claim submitted to it under this subsection shall be paid by the state agency or agencies found responsible by the State Claims Commission or, if there is no clearly identifiable responsible state agency, the payment shall be paid from the state contingent fund.

[1987, c. 395, Pt. A, §19 (AMD) .]

4. Appeal from State Claims Commission decision. Any party aggrieved by an award of the State Claims Commission may appeal therefrom to the Superior Court within 30 days after the date of the receipt of the notice of the award. The appeal shall be taken by filing a complaint setting forth, as in other civil matters, substantially the facts upon which the case shall be tried. Service shall be made on the opposing party and the State Claims Commission by sending a true copy of the complaint by registered or certified mail within the time limit set out in this subsection. The complaint shall be filed in the Superior Court for the county where one or more of the parties reside or have their principal place of business or where the activity or property which is the subject of the proceeding is located. The court's determination shall be de novo and without a jury or, if all parties agree, by a referee or referees.

[1987, c. 395, Pt. A, §19 (AMD) .]

5. Jurisdiction over claims prior to January 4, 1977. The jurisdiction of the State Claims Commission over claims subject to this section includes those claims which have arisen prior to January 4, 1977, unless they have been ruled upon by the Governor and Executive Council or by the Legislature prior to January 4, 1977.

[1987, c. 395, Pt. A, §19 (AMD) .]

6. Hearings. Hearings on claims submitted under subsection 2 or appeals made under subsection 3 shall be held at a time and place which the State Claims Commission shall determine. The chairman shall assign either one or 3 members to hear and determine each claim. Hearings on claims under this section which are properly submitted to the State Claims Commission shall be held in accordance with the Maine Administrative Procedure Act, chapter 375. The decision of the commission shall include the reasons for the findings.

[1987, c. 395, Pt. A, §19 (AMD) .]

7. Different procedures. A claim submitted under this section shall not be disapproved solely because a claim based on the same facts was submitted under a different statutory procedure and was disallowed.

[1977, c. 624, §2 (NEW) .]

8. Rules; report. The commission may adopt rules to implement this section. The commission shall, on or before January 30th of each year, report to the Legislature on all claims filed pursuant to this section.

[1987, c. 395, Pt. A, §19 (AMD) .]

SECTION HISTORY

1977, c. 624, §2 (NEW). 1979, c. 672, §2 (AMD). 1983, c. 553, §2 (AMD). 1987, c. 395, §A19 (AMD). 1993, c. 468, §1 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV).

C. §1510-B. No liability for wild animal damage

The State is not liable for damage done by wild animals to beehives or livestock. Neither state agencies nor the State Claims Commission may accept claims for such wild animal damage. [1987, c. 395, Pt. A, §20 (AMD).]

SECTION HISTORY

1979, c. 672, §3 (NEW). 1981, c. 368, §1 (AMD). 1987, c. 395, §A20 (AMD).

Subchapter 3: STATE CLAIMS COMMISSION HEADING: PL 1987, C. 395, PT. A, §91 (RPR)

D. §151. Purposes

The purposes of this subchapter are to establish an independent, impartial Commission composed of persons well learned in the elements that may be properly considered in the determination of fair market value of property taken in condemnation proceedings; to empower such Commission to make awards of just compensation in highway condemnations and to establish before such Commission a procedure designed to afford to any interested party an opportunity to appear, present his case and have his rights fully protected without the necessity for retaining professional assistance; to thus provide to any interested party a prompt, efficient and inexpensive method of determination of just compensation and prompt payment of all or part of such compensation without prejudice to any right of appeal allowed. [1975, c. 771, §235 (AMD).]

SECTION HISTORY

1975, c. 771, §235 (AMD).

E. §152. Composition; appointment; powers

The State Claims Commission, established by Title 5, section 12004-B, subsection 5, consists of 5 members. Four of the members must be appointed by the Governor, 2 of whom must be qualified appraisers certified as general real estate appraisers pursuant to Title 32, chapter 124 and 2 of whom must be attorneys-at-law. The Governor shall designate one of the attorneys-at-law to be chair. The members of the commission appointed by the Governor shall serve for terms of 4 years. They must be sworn, and for inefficiency, willful neglect of duty or for malfeasance in office may, after notice and hearing, be removed by the Governor on the address of both branches of the Legislature or by impeachment. In case of a vacancy occurring through death, resignation or removal, the Governor shall appoint a successor for the whole term of the member whose place that successor takes, subject to removal as provided in this section. [1999, c. 185, §2 (AMD).]

Members of the State Claims Commission must be compensated according to the provisions of Title 5, chapter 379. The daily rate for commission members is \$150. [1995, c. 438, §2 (AMD).]

In carrying out its duties, the commission shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. It shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant and unduly repetitious testimony. A majority of the commission, being present, may determine all matters, but the chairman shall resolve all questions of admissibility. [1987, c. 395, Pt. A, §92 (RPR).]

The commission shall have authority to make rules and prescribe forms to secure a speedy, efficient and inexpensive disposition of all proceedings. Each member of the commission, for its official purposes, may administer oaths, certify to official acts and issue all process necessary to the performance of the duties of the commission. A reporter shall record hearings when required by the commission. [1987, c. 395, Pt. A, §92 (RPR).]

The commission must maintain an office in Kennebec County. The Commissioner of Administrative and Financial Services shall appoint, subject to the Civil Service Law, a clerk of the commission to keep its records and to perform such other duties as the commission prescribes. The clerk has authority to certify to all official acts of the commission, administer oaths, issue subpoenas, and issue all processes, notices, orders or other documents necessary to the performance of the duties of the commission. [1991, c. 780, Pt. Y, §119 (AMD).]

The Commissioner of Administrative and Financial Services shall appoint and fix the compensation of a reporter to the commission, and shall review and approve all charges made by such reporter for transcripts of the record of hearings before the

commission. The commissioner may appoint, subject to the Civil Service Law, such clerical assistants for the commissioner as the commissioner considers necessary. [1991, c. 780, Pt. Y, §120 (AMD).]

The 5th member of the commission shall be appointed for each hearing or series of hearings within the county where the land taken lies. He shall be a member of the Commission of county commissioners of the county wherein the land taken is situated and shall be appointed by the chairman of the State Claims Commission upon recommendation which shall be made, upon request, by the Commission of county commissioners of that particular county. In the event that any Commission of county commissioners should fail to make the required recommendation, then the chairman of the State Claims Commission may appoint a member of such Commission to serve. He shall be sworn by the chairman of the State Claims Commission and shall serve as a member of that commission only for the particular hearing or hearings for which he is appointed. He shall participate fully in such hearings and the awards made as a result thereof. Each such member shall be paid at the same per diem rate as that fixed for other members of the commission. Any member of the Commission of county commissioners thus designated shall serve only for the particular hearing or hearings set forth in his appointment and such service shall be as a member of the State Claims Commission and not in his capacity as a member of the Commission of county commissioners. [1987, c. 395, Pt. A, §92 (RPR).]

SECTION HISTORY

1965, c. 473, §1 (AMD). 1967, c. 494, §18 (AMD). 1971, c. 189, §1 (AMD). 1973, c. 585, §5 (AMD). 1973, c. 686, §1 (AMD). 1975, c. 771, §§236,236-A (AMD). 1979, c. 487, §1 (AMD). 1983, c. 94, §§A-24 (AMD). 1983, c. 553, §§23,24 (AMD). 1983, c. 812, §§138,139 (AMD). 1985, c. 785, §§A96,A97, B101, (AMD). 1987, c. 395, §A92 (RPR). 1987, c. 402, §§A145,146 (AMD). 1987, c. 769, §§A81,A82 (AMD). 1989, c. 503, §B98 (AMD). 1991, c. 684, §1 (AMD). 1991, c. 780, §§Y119,120 (AMD). 1995, c. 438, §2 (AMD). 1999, c. 185, §2 (AMD).

F. §153. Property for highways

(REPEALED)

SECTION HISTORY

1965, c. 295, §1 (AMD). 1965, c. 492, §1 (RPR). 1971, c. 593, §§20,22 (AMD). 1981, c. 470, §§A122,A123 (AMD). 1987, c. 267, §§1-4 (AMD). 1987, c. 395, §A93 (AMD). 1987, c. 735, §40 (AMD). 1987, c. 737, §§C67,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 208, §1 (AMD). 1991, c. 462, (AMD). 1993, c. 536, §1 (RP).

G. §154. Condemnation proceedings

If the department determines that public exigency requires the taking of property or any interest in property, or is unable to purchase a property or any interest in a property, or the necessary ways and access to a property at what it 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 must contain a description of the project specifying the property and the interest taken and the name or names of the owner or owners of record so far as they can be reasonably determined. The department may prescribe procedures for the reasonable determination of the owner or owners of record. The department may join in the notice one or more separate properties whether in the same or different ownership and whether or not taken for the same use. [1997, c. 272, §2 (AMD).]

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 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 the department must serve on each individual owner of record a copy of that part of the plan as relates to the particular parcel or parcels of land taken from that owner and a statement by the department with respect to the particular parcel or parcels of land taken from that owner which must: [1997, c. 272, §2 (AMD).]

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

[[PL 1981, c. 470, Pt. A, § 125 (AMD).].]

[1981, c. 470, Pt. A, §125 (AMD) .]

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; [.]

[PL 1981, c. 470, Pt. A, § 126 (AMD).]

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; [.]

[PL 1975, c. 431, § 4 (AMD).]

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; [.]

[PL 1997, c. 272, § 2 (AMD).]

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 [.]

[PL 1987, c. 395, Pt. A, § 94 (AMD).]

I. Enclosed Check No.: Amount: \$

Payable to:

Sent to:

[[PL 1997, c. 272, § 2 (AMD).].]

[1997, c. 272, §2 (AMD) .]

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;

[PL 1975, c. 431, § 6 (RP).]

B. [1975, c. 431, §6 (RP).]

C. The fair market value of the real property taken as of the date of taking; [.]

[PL 1975, c. 431, § 7 (AMD).]

[PL 1975, c. 431, § 8 (RP).]

D. [1975, c. 431, §8 (RP).]

E. Offering price; [.]

[PL 1975, c. 431, § 9 (RPR).]

F. The check represents the 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 [.]

[PL 1997, c. 272, § 2 (AMD).]

G. Enclosed Check No.: Amount: \$

Payable to:

Sent to:

[[PL 1997, c. 272, § 2 (AMD).].]

[1997, c. 272, §2 (AMD) .]

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 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 must include the cost of acquisition of substitute rights and the cost of establishing either existing or substitute facilities in a new location; [.]

[PL 1997, c. 272, § 2 (AMD).]

B. The salvage value of facilities removed;

C. Cost of removal; and [.]

[PL 1981, c. 470, Pt. A, § 129 (AMD).]

D. The value of betterments where the function of the substitute facilities exceeds the function of the replaced facilities. [.]

[PL 1981, c. 470, Pt. A, § 129 (AMD).]

[[PL 1997, c. 272, § 2 (AMD).].]

[1997, c. 272, §2 (AMD) .]

Service of the notice of condemnation with a copy of the plan, check and the statement by the department 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. A notice describing the condemnation must be published once in a newspaper of general circulation in the county where the property is located and such publication 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. [1997, c. 272, §2 (AMD).]

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 must be paid by the department. [1997, c. 272, §2 (AMD).]

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 must be sent forthwith by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to the holder's office or place of abode if known, otherwise to the office, abode or address as set forth in said record. [1997, c. 272, §2 (AMD).]

The recording of the notice of condemnation is the date of taking and 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. [1997, c. 272, §2 (AMD).]

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 must be reimbursed by the department for reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings. [1997, c. 272, §2 (AMD).]

SECTION HISTORY

1965, c. 297, §§1-4 (AMD). 1965, c. 492, §2 (AMD). 1969, c. 433, §58 (AMD). 1971, c. 333, §3 (AMD). 1971, c. 593, §22 (AMD). 1971, c. 598, §46 (AMD). 1975, c. 431, §§4-9 (AMD). 1975, c. 771, §§237,238 (AMD). 1981, c. 470, §§A124-A129 (AMD). 1987, c. 395, §§A94,A95 (AMD). 1997, c. 272, §2 (AMD). 1997, c. 272, §2 (AMD).

H. §154-A. Fair market value adjustment

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining just compensation for the property. [1971, c. 333, §4 (NEW).]

SECTION HISTORY 1971, c. 333, §4 (NEW).

I. §154-B. Coercive action

In no event shall the department either advance the time of condemnation, or defer negotiations or condemnation or take any other action coercive in nature, in order to compel an agreement on the price to be paid for property or property rights. [1971, c. 593, §22 (AMD).]

SECTION HISTORY

1971, c. 333, §4 (NEW). 1971, c. 593, §22 (AMD).

J. §154-C. Uneconomic remnants

If the acquisition of only a portion of a property would leave the owner of record with an uneconomic remnant the department may, or at the request of the owner shall, acquire by purchase or condemnation the entire property. An uneconomic remnant is a

parcel of real property in which the owner would be left with an interest which the department has determined has little or no value or utility to the owner. [1989, c. 208, §2 (RPR).]

SECTION HISTORY

1971, c. 333, §4 (NEW). 1971, c. 593, §22 (AMD). 1989, c. 208, §2 (RPR).

K. §154-D. Notice to vacate

No person lawfully occupying real property shall be required to move from a dwelling or move his business or farm operation without at least 90 days written notice from the department of the date by which such move is required. [1971, c. 593, §22 (AMD).]

Any person displaced by a taking or acquisition who remains in occupancy after the date of acquisition may be required to pay compensation from the date of the acquisition. The compensation paid by the displaced person may not exceed fair rental value of the property based on short-term occupancy. If the displaced person and the department cannot reach agreement as to equivalent of fair rental value for the initial 90-day period after acquisition, each may apply to the State Claims Commission in writing for such a determination. The State Claims Commission's jurisdiction to determine the fair rental value is limited solely to the initial 90-day period. Any compensation to be paid by the displaced person after the initial 90-day period must be determined solely by the department. [1999, c. 753, §2 (AMD).]

SECTION HISTORY

1971, c. 333, §4 (NEW). 1971, c. 593, §22 (AMD). 1983, c. 272, (AMD). 1987, c. 395, §A96 (AMD). 1999, c. 753, §2 (AMD).

L. §154-E. Improvement

Payment to tenants of record shall be made by the department pursuant to this section for any building, structure or other improvement which is owned by the tenant. The tenant shall be paid the fair market value which the building, structure or improvement contributes to the fair market value of the real property to be acquired, or its salvage value, whichever is greater. No payment may be made unless, prior to condemnation, the owner of the land involved disclaims in writing to the department all interest in the tenant's improvement, and the department determines that the improvement qualifies for payment. In consideration for any such payment, the tenant shall assign, transfer and release to the department all rights, title, and interest in and to the improvements. The department shall not make any payment under this section which it determines would result in duplication of any payment otherwise authorized by this Title. [1989, c. 208, §3 (RPR).]

For the purpose of determining the just compensation to be paid for any acquired building, structure or other improvement, that building, structure or other improvement shall be deemed to be part of the real property, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove that building, structure or improvement at the expiration of the term of the lease. [1989, c. 208, §3 (RPR).]

Nothing in this section may be construed to deprive the tenant of any rights to reject payment under this section and to obtain payment for the property interests in accordance with applicable law other than this section. [1989, c. 208, §3 (NEW).]

SECTION HISTORY

1971, c. 333, §4 (NEW). 1989, c. 208, §3 (RPR).

M. §154-F. Special benefits

In determining just compensation where special benefits are found, the owner or owners of record shall be compensated at least for the fair market value of the property and any rights or interest therein taken. [1975, c. 431, §9-A (NEW).]

SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 431, §§9-A (NEW).

N. §155. Negotiation

The department shall have 60 days from the date of taking within which to negotiate with the owner or owners of record for an agreement as to the amount of just compensation. If within that time the owner rejects the State's offer of just compensation, such owner may apply to the department and have the matter referred to the State Claims Commission for assessment of the damage. If, at the expiration of that time, no such agreement for just compensation has been made, the department shall immediately file a petition with the State Claims Commission setting forth the pertinent facts including the names and addresses of the owner or owners of record and the holders of any mortgages, tax liens or other encumbrances, a copy of the notice of condemnation, the statement of the department and a plan of the property involved as served upon the owner or owners of record in accordance with section 154 and requesting a hearing and an award of just compensation. [1987, c. 395, Pt. A, §97 (AMD).]

SECTION HISTORY

1965, c. 297, §5 (AMD). 1975, c. 771, §239 (AMD). 1987, c. 395, §A97 (AMD).

O. §156. Hearing before Commission

The State Claims Commission shall immediately enter the petition of the department upon its docket and assign a date for hearing at the earliest possible date. The chairman of the Commission shall assign no more than 3 members of the Commission for hearings, one of whom shall be an appraiser and one an attorney at law. Notice of the time and place for the hearing shall be mailed by registered or certified mail to the department and to the owner or owners of record and to the holders of any mortgage, tax lien or any other encumbrance on the property involved at least 14 days before the date of the hearing. In the event the notice required is returned to the State Claims Commission marked "refused" or "unclaimed" by the United States post office, the State Claims Commission may, at its option, reschedule the hearing by giving the notice required in this paragraph, or it may cause the matter to be heard on the day originally scheduled by causing service to be made upon the party not served by certified or registered mail in a manner allowed for service of a summons on a complaint in the Superior Court, which notice shall be served at least 5 days before the originally scheduled hearing. The hearing shall be held in quarters suitable for a full presentation of all evidence and located as conveniently as possible for all interested parties in the county where the land is situated. Before making an award, the State Claims Commission shall view the property involved with or without the presence of the interested parties, but it shall first notify the interested parties of the time when it will view the property. The department shall be represented at the hearing and may present in open hearing evidence as to title, engineering maps and data, and its opinion, evidence and appraisal or appraisals as to the fair market value of the property involved before and after the taking. In all matters where a verbatim record of the proceedings is made by an official Commission reporter, a transcript of the same shall be furnished to the interested parties, upon request, and upon payment of a reasonable charge for transcribing and preparing such record. In making its award, the State Claims Commission shall not be limited by the range of testimony produced before it but may reach its decision on the basis of the view, the testimony and its own judgment. The State Claims Commission may continue a hearing from time to time for cause shown or by agreement of parties; and where such continuance is made at the request of the landowner, may require that interest be waived for the period of the continuance. [1987, c. 395, Pt. A, §98 (AMD).]

As promptly as possible after the conclusion of the hearing, the State Claims Commission shall make an award in writing specifying: [1987, c. 395, Pt. A, §98 (AMD).]

1. Owners and encumbrances. The owner or owners of record and the holder of any mortgage, tax lien or other encumbrance of record;
[1965, c. 297, §6 (AMD) .]
2. Nature of interest taken. The nature of the interest taken;
3. Commission's decision on elements of damage. The State Claims Commission's decision as to each of the elements of damage listed in section 154, subsection 2 or 3, or the elements of damage as set forth in section 154, subsection 4, and such other elements of damage as are legally compensable;
[1987, c. 395, Pt. A, §98 (AMD) .]
4. Gross damage. The gross damage which shall be the net damage not including interest;
[1965, c. 297, §7 (RPR) .]
5. Net amount of award. The net amount of the award which shall be the net damage less the amount paid the owner or owners at the date of taking;
[1965, c. 297, §8 (NEW) .]
6. Interest on award. The interest, if any, due on the net amount of the award from the date of taking to the date of the award;
[1965, c. 297, §8 (NEW) .]
7. Award. The award which shall be the net damage, less the amount paid the owner or owners at the date of taking plus interest on the net amount of the award; and
[1981, c. 470, Pt. A, §130 (AMD) .]

8. Withholding. The withholding, if any, authorized pursuant to section 244-A, subsection 4. [1973, c. 22, §1 (NEW).]

No interest may be allowed on so much of the net damage that has been paid to the owner or owners. [1991, c. 684, §2 (RPR).]

An attested copy of each award must be sent immediately to the Department of Transportation and to the party or parties named in the award. The State Claims Commission shall state by letter sent to all parties the date it issues its decision of the award. If no appeal is taken within 30 days of the date of issuance of the commission award pursuant to section 157, the Department of Transportation shall, within 60 days from the date of issuance of the commission award, pay the awarded amount to the party or parties named in the award. [2009, c. 265, §3 (AFF); 2009, c. 265, §1 (RPR).]

Service as required by this section must be made in the manner prescribed by Rule 5 of the Maine Rules of Civil Procedure. [1991, c. 684, §3 (RPR).]

Upon certification by the Department of Transportation that after due diligence the address of owners of record can not be determined or when the State Claims Commission notice by mail is returned to the commission unclaimed or unknown or where personal service can not be made, the chair of the commission may order service by publication. Notice of the time and place of the review and hearing must be published once in a newspaper of general circulation in the county in which the subject property is located. The commission shall then proceed with the hearing as in other cases and the appeal provisions must be available to the Department of Transportation and the record owner or owners, or any one of them, who appears and makes application for appeal pursuant to section 157. [1991, c. 684, §4 (AMD).]

The chair of the State Claims Commission may appoint a guardian ad litem to protect the interest and rights of any minor or incompetent persons notified under this section and determine and set reasonable compensation for that guardian ad litem. This compensation must be paid by the Department of Transportation. [1991, c. 684, §5 (NEW).]

After the appeal period from the decree of the State Claims Commission or a judgment of any court has expired, any sum of money directed by a decree of the commission or by a judgment of any court to be paid over that remains unclaimed for 60 days must be disposed of consistent with Title 33, chapter 41. [1997, c. 508, Pt. A, §3 (AFF); 1997, c. 508, Pt. B, §5 (AMD).]

Notwithstanding Title 1, section 302, this section applies to all actions and proceedings pending on September 14, 1979. [1991, c. 684, §7 (AMD).]

SECTION HISTORY

1965, c. 297, §§6-9 (AMD). 1965, c. 473, §§2,3 (AMD). 1971, c. 593, §22 (AMD). 1973, c. 22, §1 (AMD). 1973, c. 686, §2 (AMD). 1975, c. 771, §§240-245 (AMD). 1977, c. 78, §157 (AMD). 1979, c. 487, §§2-5 (AMD). 1981, c. 470, §A130 (AMD). 1987, c. 395, §A98 (AMD). 1991, c. 684, §§2-7 (AMD). 1997, c. 508, §B5 (AMD). 1997, c. 508, §A3 (AFF). 2009, c. 265, §1 (AMD). 2009, c. 265, §3 (AFF).

P. §157. Appeals

The Department of Transportation or any party or parties aggrieved by an award by the State Claims Commission may appeal to the Superior Court in the county where the land is situated within 30 days from the date of issuance of the commission award. This appeal is de novo and is taken by filing a complaint setting forth substantially the facts upon which the case will be tried like other civil cases. The party appealing must provide a copy of the complaint to be filed in the Superior Court to the other party or parties within the same 30 days. [2009, c. 265, §2 (AMD); 2009, c. 265, §3 (AFF).]

The court shall determine the same by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest where such is due, and for costs in favor of the party entitled thereto; except that if the department appeals and if the department does not prevail, interest where such is due and costs shall be paid by the department and the owner or owners shall be reimbursed by the department for a reasonable attorney's fee. [1971, c. 593, §22 (AMD).]

If either the owner or owners of record or the department appeal and the just compensation finally awarded, exclusive of interest, is less than the gross damage determined by the State Claims Commission, exclusive of any interest allowed, then the court shall give judgment in favor of the department for the excess of the gross damage determined by the State Claims Commission, inclusive of interest, over the final award and for its costs from the time of appeal. Execution may be issued on such judgment. [1987, c. 395, Pt. A, §99 (AMD).]

If either the owner or owners of record or the department appeal and the just compensation finally awarded, exclusive of interest, is not less than the gross damage determined by the State Claims Commission, exclusive of any interest allowed, then the court shall give judgment to the owner or owners for the amount in which the final award is in excess of the amount paid the owner or owners and for interest on such excess from the date of taking and for costs from the time of appeal. The clerk shall certify the final judgment of the court to the department, which shall enter the same of record and order the same to be paid by the Treasurer of State. The judgment and certificate of judgment shall specify the withholding, if any, authorized pursuant to section 244-A, subsection 4. [1991, c. 684, §9 (AMD).]

In case of the decease of any person entitled to claim damages under this subchapter, the heirs, executors, administrators or assigns of such person shall have the right to prosecute the appeal provided for in this section under the same conditions and limitations as the original owner had, and may be substituted for the appellant in any proceedings commenced by said appellant. In case any landowner assigns, transfers or sells his right to claim damages, his assignee, transferee or vendee shall have the same rights as above set forth.

SECTION HISTORY

1965, c. 297, §10 (AMD). 1967, c. 436, (AMD). 1971, c. 593, §22 (AMD). 1973, c. 22, §2 (AMD). 1975, c. 771, §246 (AMD). 1987, c. 395, §A99 (AMD). 1991, c. 684, §§8,9 (AMD). 2009, c. 265, §2 (AMD). 2009, c. 265, §3 (AFF).

Q. §157. Appeals

The Department of Transportation or any party or parties aggrieved by an award by the State Claims Commission may appeal to the Superior Court in the county where the land is situated within 30 days from the date of issuance of the commission award. This appeal is de novo and is taken by filing a complaint setting forth substantially the facts upon which the case will be tried like other civil cases. The party appealing must provide a copy of the complaint to be filed in the Superior Court to the other party or parties within the same 30 days. [2009, c. 265, §2 (AMD); 2009, c. 265, §3 (AFF).]

The court shall determine the same by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest where such is due, and for costs in favor of the party entitled thereto; except that if the department appeals and if the department does not prevail, interest where such is due and costs shall be paid by the department and the owner or owners shall be reimbursed by the department for a reasonable attorney's fee. [1971, c. 593, §22 (AMD).]

If either the owner or owners of record or the department appeal and the just compensation finally awarded, exclusive of interest, is less than the gross damage determined by the State Claims Commission, exclusive of any interest allowed, then the court shall give judgment in favor of the department for the excess of the gross damage determined by the State Claims Commission, inclusive of interest, over the final award and for its costs from the time of appeal. Execution may be issued on such judgment. [1987, c. 395, Pt. A, §99 (AMD).]

If either the owner or owners of record or the department appeal and the just compensation finally awarded, exclusive of interest, is not less than the gross damage determined by the State Claims Commission, exclusive of any interest allowed, then the court shall give judgment to the owner or owners for the amount in which the final award is in excess of the amount paid the owner or owners and for interest on such excess from the date of taking and for costs from the time of appeal. The clerk shall certify the final judgment of the court to the department, which shall enter the same of record and order the same to be paid by the Treasurer of State. The judgment and certificate of judgment shall specify the withholding, if any, authorized pursuant to section 244-A, subsection 4. [1991, c. 684, §9 (AMD).]

In case of the decease of any person entitled to claim damages under this subchapter, the heirs, executors, administrators or assigns of such person shall have the right to prosecute the appeal provided for in this section under the same conditions and limitations as the original owner had, and may be substituted for the appellant in any proceedings commenced by said appellant. In case any landowner assigns, transfers or sells his right to claim damages, his assignee, transferee or vendee shall have the same rights as above set forth.

SECTION HISTORY

1965, c. 297, §10 (AMD). 1967, c. 436, (AMD). 1971, c. 593, §22 (AMD). 1973, c. 22, §2 (AMD). 1975, c. 771, §246 (AMD). 1987, c. 395, §A99 (AMD). 1991, c. 684, §§8,9 (AMD). 2009, c. 265, §2 (AMD). 2009, c. 265, §3 (AFF).

R. §158. Withdrawal of money deposited

(REPEALED)

SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 771, §247 (AMD). 1981, c. 470, §A131 (AMD). 1983, c. 266, (RPR). 1987, c. 395, §A100 (AMD). 1991, c. 684, §10 (RP).

S. §159. Interpleader

If difficult questions of law should arise before the State Claims Commission as to entitlement to or apportionment of just compensation, then it is authorized to make a blanket award to all parties interested. If no appeal is taken and no agreement is reached by the parties named in the award within 60 days from the date of such award, the State Claims Commission shall certify the facts and legal questions to the department. The department shall then interplead the parties named in the award by a complaint filed in the Superior Court in the county wherein the land is situated and shall pay in the amount of the award to the clerk of courts of the county to be paid in accordance with the court's order. For purposes of this section, the department shall be acting to prevent double or multiple liability. [1989, c. 502, Pt. A, §88 (AMD).]

SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 771, §248 (AMD). 1987, c. 395, §A101 (AMD). 1989, c. 502, §A88 (AMD).

T. §161. Incidental expense payments

1. Reimbursement. The department, as soon as practicable after the date of payment of just compensation, shall reimburse the owner from whom land or rights in land were acquired for highway purposes, to the extent the department deems fair and reasonable, for expenses such owner necessarily incurred for:

A. Recording fees, transfer taxes and similar expenses, if any, incidental to conveying such property to the State; [1971, c. 333, §5 (NEW).]

B. Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and [1971, c. 333, §5 (NEW).]

C. The pro rata portion of real property taxes paid which are allowable to a period subsequent to the date of vesting title in the State, or the effective date of possession of such real property by the State, whichever is earlier. [1971, c. 333, §5 (NEW).] [1971, c. 593, §22 (AMD) .]

2. Determination. Any determination by the department in the administration of this section shall be final and nothing herein shall be construed to give any person a cause of action in the State Claims Commission or the Superior Court.

[1987, c. 395, Pt. A, §102 (AMD) .]

SECTION HISTORY

1971, c. 333, §5 (NEW). 1971, c. 593, §22 (AMD). 1981, c. 470, §A132 (AMD). 1987, c. 395, §A102 (AMD).

B. PROGRAM DESCRIPTION

The State Claims Commission, which is under the jurisdiction of the Department of Administrative and Financial Services, was established to assure that the rights of property owners and/or interested parties are protected and just compensation is awarded in highway condemnations in the State of Maine.

The primary responsibilities of the Commission are:

- to conduct hearings relative to real property taken by the State by Eminent Domain (eg. Maine Department of Transportation);
- to afford property owners and/or interested parties the opportunity to appear, present their case and have their rights fully protected without the necessity of retaining professional assistance;
- to determine and award just compensation for:
 - highway takings;
 - relocation assistance;
 - grading damage claims;
 - well damage claims;
 - outdoor advertising signs;
 - the relocation, removal or disposal of automobile graveyards and junkyards;
- assessment of damages for takings by the Portland Water District and takings by the Maine Turnpike Authority;
- to make rules and regulations and prescribe forms to secure speedy, efficient and inexpensive disposition of all condemnation proceedings; and,
- to approve, partially approve, or disapprove of certain claims against the State or any of its agents, which are not submitted under specific statutory provisions, and which do not exceed the sum of \$2,000 for each claim.

When appeals are made to the State Claims Commission on eminent domain cases, the cases are docketed immediately and materials are sent to all interested parties. The Chief Counsel confers with the Defendant Agency to determine if all negotiations have been pursued and whether additional time is needed to develop discussions for settlement. When a reasonable time has elapsed, the matters are set for hearings. Continuances are granted only for good cause and the time of the State Claims Commission is used effectively by scheduling as many cases as reasonable on the same hearing date.

The State Claims Commission receives approximately 185 – 225 new cases per year. Of these, 50 – 60% are administratively settled before or on the date of the scheduled hearing by the Commission. Approximately 30% of the cases are defaulted on the average and approximately 10 – 15% of these cases are actually heard. There have been only 2 – 3 cases that have been appealed to the Superior Court recently and it is expected that they will be successfully negotiated for settlement without a court hearing.

The State Claims Commission believes that it is critical that the land owners have a hearing as soon as possible after requesting one, and especially that owners leave such hearing believing they had a thorough one, which has been heard by the learned Attorneys and Appraisers, and intelligent and concerned County Commissioners. The records of the commission continue to show that land owners are satisfied with the decisions made by the commission. The present procedures utilized by the State Claims Commission in viewing properties and hearing the cases presented confirms that we operate in a very efficient manner as there is very minimal post-hearing continuances or appeals to a higher authority. Our goal as a commission is always to render decisions which are both fair and equitable to all parties.

In summary, the State Claims Commission plays an important role in resolving disputes, which may arise between the Maine Department of Transportation and landowners. The State Claims Commission believes that it has achieved the goal as outlined in Title 23 MRSA SECTION 151.

C. ORGANIZATIONAL STRUCTURE

The State Claims Commission consists of five (5) members. Four of the members must be appointed by the Governor, two (2) of whom must be qualified appraisers certified as general real estate appraisers pursuant to Title 32, Chapter 123 and two (2) of whom must be attorneys-at-law. The Governor shall designate one of the attorneys-at-law to be chair. The members of the commission appointed by the Governor shall serve for terms of four (4) years. They must be sworn, and for inefficiency, willful neglect or duty or for malfeasance in office may, after notice and hearing, be removed by the Governor on the address of both branches of the Legislature or by impeachment. In case of a vacancy occurring through death, resignation or removal, the Governor shall appoint a successor for the whole term of the member whose place that successor takes, subject to removal as provided in this section.

The fifth (5th) member of the commission shall be appointed for each hearing or series of hearings within the county where the land taken lies. He shall be a member of the Commission of the county commissioners of the county wherein the land taken is situated and shall be appointed by the chairman of the State Claims Commission upon recommendation which shall be made, upon request, by the Commission of county commissioners of that particular county. In the event that any Commission of county commissioners should fail to make the required recommendation, then the chairman of the State Claims Commission may appoint a member of such Commission to serve. He shall be sworn by the chairman of the State Claims Commission and shall serve as a member of that commission only for the particular hearing or hearings for which he is appointed.

D. COMPLAINTS WITH FEDERAL AND STATE HEALTH AND SAFETY LAWS:

The State Claims Commission strives to be in full compliance with all applicable Federal and State Health and Safety Laws, including, but not limited to:

- Equal Employment Opportunity
- Harassment
- Americans with Disabilities Act
- Federal Occupational Safety and Health Act
- Affirmative Action
- Worker's Compensation Act

The State Claims Commission holds hearings in Public Buildings of each County throughout the course of the year. These buildings are accessible to individuals with physical disabilities.

E. FINANCIAL SUMMARY

State Claims Commission Expenses for seven (7) Fiscal Years...2007-2013

Fiscal Year	2007	2008	2009	2010	2011	2012	2013
Legislative Count	1	1	1	1	1	1	1
Personal Services	\$52,524.02	\$54,470.06	\$60,200.02	\$58,491.50	\$54,107.21	\$57,175.71	\$66,787.16
All other	\$16,396.92	\$15,180.79	\$13,548.98	\$12,293.89	\$17,220.18	\$10,899.22	\$13,182.27
	<u>\$68,920.94</u>	<u>\$69,650.85</u>	<u>\$73,749.00</u>	<u>\$70,785.39</u>	<u>\$71,327.39</u>	<u>\$68,074.93</u>	<u>\$79,969.43</u>

F. RULEMAKING AND REGULATORY AGENDA

18 - 185 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

185 STATE CLAIMS COMMISSION

Chapter 110 RULES OF PRACTICE GOVERNING THE CONDUCT OF ADJUDICATORY PROCEEDINGS FOR LAND DAMAGE CASES.

SUMMARY: These rules of practice prescribe the manner in which formal proceedings are to be held in and before the State Claims Commission as relates to land damage cases, and here so provided informal proceedings, including conferences.

1. Scope and Applicability of Rules

These Rules shall govern formal proceedings in and before the State Claims Commission as relates to land damage cases, and, where so provided, informal proceedings, including conferences. In cases not covered, timely application for procedural instructions may be directed to the Clerk of the Commission.

2. Practice Before the State Claims Commission

Any person may appear before the Commission in his own behalf, or by an attorney authorized to practice law in this State. In unusual or extraordinary circumstances, and at the discretion of the Commission, a person may designate by written authorization a disinterested representative to act on his behalf. Non-attorney representation may be permitted at the discretion of the Commission, providing that the rules and regulations and legal procedures are otherwise complied with. An attorney from another jurisdiction, in good standing there, may at the discretion of the Commission, be permitted to participate in proceedings before the Commission. Nothing in this Rule shall be interpreted in such a way as to permit the unauthorized practice of law; nor shall this Rule in any way be construed to restrict or limit the right of any person to conduct his own business with or before the Commission.

3. Place of Sessions

Hearings shall be conducted in the respective county courthouses to the extent possible; otherwise, the hearing shall be held in quarters suitable for a full presentation of all evidence and located as conveniently as possible for all interested parties in the county where the land is situated.

4. Hearings

All hearings shall be open to the public and a record of all hearings in a form susceptible to transcription shall be made. Whenever, in the opinion of the Commission, it shall be desirable, accurate stenographic notes of hearings shall be taken and copies of such notes shall be furnished to the parties interested when desired upon payment of a reasonable charge for transcribing and preparing such record.

5. Order of Procedure for Hearing

The Department of Transportation and other parties who initiate condemnation proceedings involving the acquisition of land or any interest therein and which are statutorily referred to the Commission for the determination of just compensation, shall ordinarily be required to present their evidence and witnesses first and they will testify, under oath, as to the actions of the parties which form the basis for the case being heard. At the conclusion thereof, the claimants shall present their case in like manner.

6. Conferences

A person desiring a conference with the Commission with respect to any matter which is, or which may come, before the Commission shall direct his request therefore in writing to the Clerk, stating the subject desired to be considered, and shall give notice of such request to all parties of record in such matter, or known or reasonably believed to have a direct interest therein.

7. Copies of Communications

Whenever any proceeding shall have been commenced before the Commission, a party writing to, or forwarding written material to, the Commission with respect to such proceedings, shall at the same time forward a copy of such letter or material to every other party of record, and shall show compliance with this rule by statement or certificate attached to such letter or material.

8. Views and Inspections

The State Claims Commission shall view the property involved with or without the presence of the interested parties, but it shall first notify the interested parties of the time when it will view the property. Such view may be taken either before or after any hearing which may be held.

9. Additional Parties

The Commission may, in any proceeding pending before it, order that any person whose interest will be affected by any orders made therein be made a party thereto. A person thus made a party shall be governed by these Rules.

10. Appearances

At any hearing, any party of record shall be entitled to enter his appearance, introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the conduct of the proceeding. Appearances shall be entered either in writing or, at the discretion of the Commission, upon the record of the hearing. If appearance in writing is filed, a copy thereof shall be delivered, or mailed postage prepaid, to all other parties to the proceeding by the filing party.

11. Pre-Hearing Conferences

Prior to the hearing in any proceeding, the Chairperson or his/her designee may, upon the request of a party or upon their own motion, hold a pre-hearing conference for the purposes of the simplification of issues, the establishment of such facts as the parties may agree upon, the resolution of questions or procedure, the fixing of the schedule of hearings, and, in general the consideration of such other subjects as may aid in the disposition of the matter.

12. Consolidation

The Commission may, after notice to all parties, upon its own motion or motion of any party, make such order for the consolidation of any cases pending before it as justice and convenience requires. Such proceedings may be consolidated in whole or in part as the Commission may determine.

13. Notice of Hearing

- A. The Commission shall give written notice of the time and place for the hearing and which shall be mailed registered or certified mail to all interested parties involved at least fourteen (14) days before the date of the hearing or by personal service as required for service of a summons on a complaint in the Superior Court. The parties may agree, with the approval of the Commission, to notice of less than fourteen (14) days. In the event the notice required is returned to the Commission marked "refused" or "unclaimed" by the United States Post Office, the Commission may, at its option, reschedule the hearing by giving the notice required in this paragraph, or it may cause the matter to be heard on the day originally scheduled by causing service to be made upon the party not served by certified or registered mail in a manner allowed for service of a summons on a complaint in the Superior Court, which notice shall be served at least 5 days before the originally scheduled hearing. Cases shall be heard as assigned unless otherwise ordered by the Commission.
- B. Service as required in this section shall 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.
- C. Upon certification by the Department of Transportation that after due diligence the address of owners-of record cannot be determined or where the Commission's notice by registered or certified mail is returned to the Commission unclaimed or unknown or where personal service cannot be made, the Chairperson of the Commission may order service by publication. The Chairperson of the Commission may appoint a guardian ad

item to protect the interests and rights of any minor or incompetent persons notified under this section. Notice of the time and place of the review and hearing shall be in accordance with Title 23 M.R.S.A., Section 156.

14. Continuances

- A. Requests for continuances must be submitted to the Commission, in writing, at least seven (7) days prior to the date of hearing. Changes in the time and place of the hearing in any proceeding will be granted only for good cause shown. Continuances will not be granted if requested within seven (7) days prior to the date of the hearing except for unusual causes or compelling circumstances, and such requests shall contain a full statement of the reason for the need for the continuance. Continuances will not be granted automatically, and the parties will be notified of the decision of the Commission in this respect.
- B. The Commission may continue a hearing from time to time for cause shown or by agreement of parties and where such continuances are made at the request of the claimants, the Commission may require interest be waived for the period of the continuance.

15. Default

When all interested parties have been notified of a hearing and the claimants do not attend such hearing either in person or by an authorized representative and fail to obtain a continuance from the Commission prior to the scheduled time of the hearing, in that event the Commission shall grant a judgment by default against the claimants, and no further action shall be taken by the Commission- However, on written request and upon a showing of excusable neglect the Commission may relieve the claimants from the default judgment, provided such request is made within sixty (60) days of the date of judgment.

16. Form.

Documents constituting pleadings, motions and briefs shall be typewritten or printed, (or otherwise mechanically produced or reproduced) on white paper 8-1/2 x 11 inches in size. The initial sheet shall have across the top thereof the heading of the "State Claims Commission" and underneath thereof the words "Department of Administrative and Financial Services", and it shall set forth that the matter is before the State Claims Commission, it shall show the names of the parties, so far as known, the nature of the document and the Docket Number. Such documents shall be signed by the party, or by their attorney, or by their agent duly thereunto authorized in writing. There shall be filed with the Commission an original and three (3) copies of all such documents. Where the Commission has prescribed forms for the types of such documents, such forms shall be used as provided therein. All such documents filed subsequent to the initial petition of the Department of Transportation or other parties shall bear a statement indicating that a copy thereof, has been delivered or mailed to every other party of record.

17. Amendments

The Commission may, in its discretion and upon such notice to other interested parties as it shall direct, permit the amendment of any document filed with the Commission.

18. Briefs.

Briefs as to facts and law will be received and may be required to be submitted in any proceeding. The day for filing briefs will be designated by special order of the Commission during or upon the conclusion of the hearing. An original and four (4) copies of each brief shall be filed with the Commission and a copy thereof, shall be delivered to or mailed to each party or record prior to or simultaneously with delivery or mailing to the Commission. Certification of such mailing or delivery shall be filed with the Commission.

19. Evidence

Any oral or documentary evidence, which is relevant material, and not unduly repetitious or cumulative, may be admissible at any hearing before the Commission. While the Commission is not bound by the rules of procedure, it may apply such rules, or any of them, when, in its judgment, such application is necessary or appropriate to afford the parties a full and fair hearing and to bring about the production if needed and proper evidence speedily and definitely. The Chairperson shall resolve all questions of admissibility.

20. Official Notice

A party desiring the Commission to take official notice of its own records shall specify the portions of such records, by page number of other convenient reference, or which, it is desired that official notice be taken.

21. Incorporation by Reference

Documents and records, including the documents and records of the Commission, may, in the discretion of the Commission, be incorporated by reference into the record of a proceeding. Only such portions of the documents and records of the Commission shall be designated by page number or other convenient reference shall be so incorporated. The Commission will not ordinarily permit incorporation by reference of the entire record, or transcript of hearing, of a prior proceeding.

22. Exhibits

- A. Where evidence to be given consists of numerous figures, tabulations or technical data, it may be presented in written form as a visual aid or any exhibit provided the author is available for cross-examination.
- B. Space shall be provided in the upper right corner of each sheet of an exhibit for the insertion of the Docket Number, the name of the witness through whom it is presented, and the number of the exhibit.
- C. The party offering an exhibit shall provide four (4) copies to the Commission, unless the Commission otherwise directs.

23. Stipulation of Facts

The parties to any proceeding before the Commission may, by stipulation in writing, filed with the Commission or entered in the record at the hearing, agree upon the facts or any portion thereof, involved in the hearing, which stipulation shall be regarded and used as evidence in the decision of the matter.

24. Discontinuance of Proceeding

Except for agreements for settlement, a proceeding began before the Commission shall not be discontinued or abandoned without the approval of the Commission nor, except with like approval, will any pleading or document filed with the Commission be withdrawn.

25. Certification of Official Acts

- A. Each member of the Commission, for its official purposes, may administer oaths, certify to official acts and issue all process necessary to the performance of the duties of the Commission.
- B. The Clerk of the Commission shall have authority to, also, certify to all official acts of the Commission, administer oaths, issue subpoenas, and issue all processes, notices, orders or other documents necessary to the performance of the duties of the Commission.

26. Award

As promptly as possible after the conclusion of the hearing, the Commission shall make an award in writing specifying the items as contained in Title 23 M.R.S.A., Section 156, as amended, or to make an award in accordance with Title 23 M.R.S.A., Section 246, Subsection I or Section 652, Subsection 1 or 3, Paragraph E.

27. Recess and Adjournment

The Commission may from time to time, recess, adjourn and continue any hearings as may be necessary in its discretion.

28. Waiver of Rules

The Commission may waive the application of any Rule, as justice may require.

29. Motions

With respect to all motions, including motions for continuances, unless the opposing party requests a hearing upon any motion within ten (10) days after the filing thereof, he shall be deemed to have waived hearing and the Commission may act thereon.

30. Witnesses

Witnesses shall be sworn and every such witness shall be subject to oral cross-examination. No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.

31. Subpoenas and Discovery

- A. Any party shall be entitled to require the attendance and testimony of witnesses through the issuance of subpoenas in the name of the Commission; further, any party shall be entitled upon request to the other party to the production of any evidence relating to any issue of fact in the proceeding to the extent not privileged or protected by statute, rule or the constitution.
- B. The Commission may prescribe the form of subpoena, but it shall adhere, insofar as practical, to the form used in civil cases before the Courts. Witnesses shall be subpoenaed only within the territorial limits, and in the same manner as witnesses in civil cases before the Courts, unless another territory or manner is provided by law. Witnesses subpoenaed shall be paid the same fees for attendance and travel as in civil cases before the Courts. Such fees shall be paid by the party requesting the subpoena.
- C. Any subpoena issued shall show on its face the name and address of the party at whose request it was issued.
- D. Any witness subpoenaed may petition the Commission to vacate or modify a subpoena issued in its name. The Commission shall give prompt notice to the party who requested issuance of the subpoena. After such investigation as the Commission considers appropriate, it may grant the petition in whole or in part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when the evidence is requested.
- E. Failure to comply with a subpoena lawfully issued in the name of the Commission and not revoked or modified by the Commission as provided in this section shall be punishable as for contempt of Court.

32. Presiding Officer; Duties;

The presiding officer shall be the Chairperson or Chairperson Pro tem and may:

- A. Administer oaths and affirmations;
- B. Rule on the admissibility of evidence;
- C. Regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing of evidence, briefs, and other written submissions;
- D. Take other action authorized by statute or Commission rules.

AUTHORITY: Title 23 M.R.S.A., Section 152

EFFECTIVE DATE: June 30, 1978

AMENDED: May 9, 1982
November 1, 1990

18 DEPARTMENT OF FINANCE AND ADMINISTRATION

185 STATE CLAIMS COMMISSION

Chapter 120 RULES OF PRACTICE GOVERNING THE CONDUCT OF ADJUDICATORY PROCEEDINGS FOR STATE CLAIMS

Summary: These rules of practice prescribe the manner in which claims are to be submitted before the State Claims Commission.

1. Scope and Applicability of Rules

These Rules shall govern the submission of claims before the State Claims Commission and which claims shall include, but shall not be limited to, claims for damage or injury caused by patients, inmates, prisoners in the care or custody of the Department of Mental Health and Corrections or of an institution administered by a department, by children in the custody of the Department of Human Services and for damage to sheep done by dogs or wild animals.

2. Jurisdiction of Claims

A claim may be submitted to the State Claims Commission and heard and decided by it if:

- A. The claim was submitted under the pursuant to Title 5 M.R.S.A., Section 1510-A, subsection 1 to a state agency which refused to hear it;
- B. The claim cannot be submitted under a specific statutory provision other than Title 5 M.R.S.A., Section 1510-A, subsection 1 because the claimant, as a result of an action or omission of a state agency or state agent, has not complied with time limits contained in that specific statutory provisions.

3. Appeal from Departmental Decisions

- A. Any claim disapproved in whole or part by a state agency hearing that claim under Title 5 M.R.S.A., Section 1510-A, subsection 1 may be appealed to the State Claims Commission within Thirty (30) days from disapproval or partial disapproval. The State Claims Commission shall here de novo any claim so appealed.
- B. Any payment resulting from a decision of the State Claims Commission on claim submitted to it under Title 5 M.R.S.A., Section 1510-A, subsection 3 shall be paid by the state agency or agencies found responsible by the State Claims Commission or, if there is no clearly identifiable responsible state agency, the payment shall be paid from the state contingent fund.

4. Appeal form State Claims Commission Decision

Any party aggrieved by an award of the State Claims Commission may appeal therefrom to the Superior Court within 30 days after the date of the receipt of the notice of the award. The appeal shall be taken by filing a complaint setting forth, as in other civil matter, substantially the facts upon which the case shall be tried. Service shall be made on the opposing party and the State Claims Commission by sending a true copy of the complaint by registered or certified mail within the time limit set out in this subsection. The complaint shall be filed in the Superior Court for the county where on or more of the parties resides or have their principal place of business or where the activity or property which is the subject of the proceeding is located. The court's determination shall be de novo and without a jury or, if all parties agree, by a referee or referees. (See Chap. 553, Sec. 2, P.L., 1983).

5. Jurisdiction Over Claims Prior to January 4, 1977

The jurisdiction of the State Claims Commission over claims subject to Title 5 M.R.S.A., Section 1510-A includes those claims which have arisen prior to Jan. 4, 1977, unless they have been ruled upon by the Governor and Executive Council or by the Legislature prior to Jan. 4, 1977.

6. Different Procedures

A claim submitted pursuant to Title 5 M.R.S.A., Section 1510-A shall not be disapproved solely because a claim based on the same facts was submitted under a different statutory procedure and was disallowed.

7. Hearings

Hearings on claims submitted pursuant to Title 5 M.R.S.A., Section 1510-A, subsection 2 or appeals made pursuant to subsection 3 shall be held at a time and place which the Commission shall determine. the Chairman shall assign one or 3 members to hear and determine each claim.

8. Practice Before the State Claims Commission

- A. Any person may appear before the Commission in his own behalf, or by attorney authorized to practice in this State. Non-attorney representation may be permitted at the discretion of the Commission, providing that the rules and regulations and legal procedures are otherwise complied with. In unusual or extraordinary circumstances, and at the discretion of the Commission, a person may appear by a representative thereunto authorized in writing. Nothing in this Rule shall be interpreted in such a way as to permit the unauthorized practice of law; nor shall this Rule in any way be construed to restrict or limit the right of any person to conduct his own business with or before the Commission.
- B. Every party, in a sequence designated by the presiding officer, shall have the right to present evidence and argument on all issues and to call and examine witnesses and make oral cross-examination of any person present and testifying. However, the presiding officer may limit testimony to avoid repetition.

9. Procedures for Submission of Claims

- A. Name, address and telephone number of claimant.
- B. Name, address and telephone number of any representative of claimant.
- C. State department or agency against which claim is asserted.
- D. Date, time and place of incident giving rise to the claim.
- E. The name and address of each State employee who was involved in or who witnessed the incident which gave rise to the claim.
- F. The name and address of any other State Employee who the claimant or claimant's representative has contacted or who the claimant is aware has been contacted regarding the claim.
- G. The name and address of any other person who witnessed the incident or whom the claimant intends to present in support of his claim.
- H. The name and agency of any law enforcement personnel who investigated the claim.
- I. A concise statement of the basis of the claim.
- J. Estimated dollar value of the claim with receipts or estimates by parties having no relation to the claimant which objectively indicate the cost of repairing or replacing any property and who are qualified to make such estimates with their address and telephone number.

10. Notice of Hearing

Notice of hearing shall be provided to the claimant and to other parties deemed by the Commission to have an interest by regular or certified mail.

11. Opportunity to be Heard

The opportunity for any hearing on any claim shall be afforded without undue delay and every party shall have the right to present evidence and arguments on any claim, and at any hearing to call and examine witnesses and to make oral cross-examination of any person present and testifying.

12. Evidence

The State Claims Commission need not observe the rules of evidence observed by Courts, but shall observe rules or privilege recognized by law. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Commission may exclude irrelevant or unduly repetitious evidence

13. Witnesses

Witnesses shall be sworn and every such witness shall be subject to oral cross-examination. No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except or good cause shown.

14. Official Notice

The Commission may take official notice of any facts of which judicial notice could be taken, and in addition, may take official notice of general, technical or scientific matters within their specialized knowledge and of statutes, regulations and non-confidential agency records. Parties shall be notified of the material so noticed, and shall be afforded an opportunity to contest the substance or materiality of the facts noticed.

15. Evaluation of Evidence

The Commission may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.

16. Record

The Commission shall record all hearings in a form susceptible to transcription. The Commission shall make a copy of the record or any portion thereof shall be available to any person at actual cost.

17. Documentary Evidence

Documentary evidence may be incorporated in the record by reference when the materials so incorporated are made available for examination by the party before being received in evidence.

18. Subpoenas and Discovery

A. Any party shall be entitled to the issuance of process in the name of the Commission (to the extent permitted by law) to require the attendance and testimony of witnesses and the production of any evidence relation to any issue of fact in the proceeding to the extent not privileged or protected by stature, rule or constitution.

B. The Commission may prescribe the form of subpoena, but it shall adhere insofar as practical to the form used in civil cases before the Courts. Witnesses shall be subpoenaed only within the territorial limits and in the same manner as witnesses in civil cases before the Courts, unless another territory or manner is provided by law.

Witnesses subpoenaed shall be paid the same fee for attendance and travel as in civil cases before the Courts. Such fees shall be paid by the party requesting the subpoena.

- C. Any subpoena issued shall show on its face the name and address of the party at whose request it was issued.
- D. Any witness subpoenaed may petition the Commission to vacate or modify a subpoena issued in its name. The Commission shall give prompt notice to the party who requested issuance of the subpoena. After such investigation as the Commission considers appropriate, it may grant the petition in whole or in part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question; or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when the evidence is requested.
- E. Failure to comply with a subpoena lawfully issued in the name of the Commission and not revoked or modified by the Commission as provided in this section shall be punishable as for contempt for Court.

19. Decisions

The Decision of the Commission shall be made in writing and shall include reasons for the basis for the decision. A copy of the Decision shall be delivered or promptly mailed to each party or his/her representative or record by regular or certified mail. Written notice of the party's rights to appeal the Decision, if applicable, will be given to each party with the Decision.

20. Presiding Officer; Duties

The Chairperson of the Commission shall assign either one or 3 members to hear and determine each claim and if the composition of the Commission is 3, than the presiding officer shall be either the Chairperson or other attorney member and if one member, than in that event, the presiding officer can be either the Chairperson, the other attorney member or other member of the Commission.

The presiding officer may:

- A. Administer oaths and affirmations;
- B. Rule on the admissibility of evidence;
- C. Regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing of evidence, briefs and other written submissions; and
- D. Take action authorized by statute or Commission rules.

AUTHORITY: Title 5 M.R.S.A., Section 1510-A (8)

Effective Date: June 30, 1978 (Filed with Sec. of State 7-20-78)

Amended: May 9, 1982; Section 4 changed as a result of PL 553, 1983.

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 1, 1996

G. AGENCY COORDINATION:

The State Claims Commission is comprised of two Attorneys and two Certified General Appraisers who demonstrate specialized skills and knowledge in the field of Eminent Domain. This is a result of attending meaningful courses and seminars specifically toward the eminent domain process and by assisting each other in informal discussions regarding case law, new findings, and appraisal techniques relative to the eminent domain process. To this end, the State Claims Commission meets as a full group several times a year at informal conferences and seminars to review problematic issues which may have arisen from past cases, and to share knowledge and experiences which may help with future cases.

During the course of the year, pre-trial conferences are also held with the various parties of interest on a case-by-case basis as may be requested, in preparation for a difficult and/or contentious hearing.

The State Claims Commission meets annually with the Maine Department of Transportation. The purpose of these meetings is to discuss common issues and explore potential ways and means of making improvements to the various procedures.

It is the understanding of the State Claims Commission that the Maine Department of Transportation is revisiting cases which are ultimately defaulted upon hearings by the State Claims Commission and the Right of Way Division of Maine Department of Transportation has instituted a mailing, which is sent to each land owner at the end of construction. It is believed that this new process will make the settlement procedures by Maine Department of Transportation more efficient for both land owners and the State Claims Commission.

There have been many cases that are defaulted by the property owner, as they do not attend the hearing. The State Claims Commission has recommended that the Maine Department of Transportation would aid in developing and adopting more efficient procedures for handling potential default cases in advance of hearings to reduce the need for and expense of some of the hearings.

The Commission has also suggested that the M.D.O.T. increase its efforts in having its Negotiators work more closely with land owners to hopefully settle their concerns relating to damages to the land caused by eminent domain takings. The economic costs and time commitments of scheduling a hearing should be considered and weighed during the negotiation process with landowner and in arriving at the final offer for damages. This could include a conference between the land owner and the M.D.O.T. attorneys within two weeks prior to hearing dates. This priority will be met by the M.D.O.T. attorneys keeping in touch with the M.D.O.T. negotiators supervisor continually.

The Commission has conducted many inquiries from land owners and attorneys who have appeared before the Commission and they have all agreed without exception that the procedure used by the Commission in assessing damages for land takings, etc. are reasonable and the land owners feel that they have had their "day in court." Approximately 90-95% of the land owners who appear before the State Claims Commission appear without counsel and in accordance with the Rules of the Commission, the rigid rules of evidence are not usually adhered to, as they are when land owners appear with attorneys.

H. CONSTITUENCIES SERVED

The primary constituency served by the State Claims Commission is the citizens of the entire State of Maine. Hearings are held throughout the year in each of the sixteen counties of Maine, affording each citizen the right to be heard and to present their case for claims involving land damages without the necessity for retaining professional assistance and the need or expense of going to Superior Court.

During the course of any given year, the State Claims Commission attends hearings for The Maine Department of Transportation; The Maine Turnpike Authority; The Portland Water District; and small claims made against the State of Maine.

The work of the State Claims Commission is also important in that it reduces the caseload on the Court System by providing the public and state agencies a more timely and economic alternative means of settling disputes involving land damages and small claims.

I. ALTERNATIVE DELIVERY SYSTEMS

Given the sensitive and confidential nature of the work of the State Claims Commission, the public notice requirements, and the relative small group of the related agency contacts, there are no reasonable alternative delivery systems which could be employed which would measurably improve the present system of communications.

J. EMERGING ISSUES:

Litigation in the United States has become almost a way of life in the past few decades. The field of condemnation has not escaped the present day litigious society. Because of the growth of government, or private property being put to public use, especially in urban areas, Landowners have been caught up in the spirit of litigation. Because of the increase in litigation, the trial of eminent domain lawsuits has become more complicated.

One result of this phenomenon has been the increase in the use of experts, not only in eminent domain cases, but in all litigation. The prominence of pre-trial discovery has been also a factor in complicating the trial of an eminent domain case. The State Claims Commission presently has incorporated in its Rules and Regulations provisions for pre-hearing or pre-trial conferences and prior to complicated cases, a pre-hearing or pre-trial conference is scheduled for the purpose of the simplification of issues, the establishment of such facts as the parties may agree upon, the resolution of questions or procedure, the fixing of the schedule of hearings, and, in general the consideration of such other subjects as may aid in the disposition of the matter. This has been proven very effective with cases that have been recently presented to the State Claims Commission such as takings by the Maine Department of Transportation and the Maine Turnpike Authority, etc.

K. OTHER

In the past, some older cases have been on hold because the parties have requested that they have not finished discovery or they are in the negotiating mode. We can eliminate adverse publicity by the delays by setting the matters for hearing and requesting motions for continuances. A hearing could be held on the continuance unless all parties are in agreement.

*Is this a
statement?
Or a proposal?*