

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Base Value in Eminent Domain Takings of Businesses on Going Concern Value**

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

**Sec. 1. 23 MRSA §151**, as amended by PL 1975, c. 771, §235, is further amended to read:

### **§ 151. Purposes**

The purposes of this subchapter are to establish an independent, impartial board 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 board to make awards of just compensation in highway condemnations and to establish before such board a procedure designed to afford to any interested party an opportunity to appear, present ~~his~~that party's case and have ~~his~~that party's rights fully protected without the necessity for retaining professional assistance; to determine awards of just compensation in municipal condemnations under Title 30-A, sections 3101 and 5204; 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.

**Sec. 2. 23 MRSA §154-G** is enacted to read:

### **§ 154-G. Compensation for loss or impairment of going concern value**

**1. Displacement of business.** If the taking of property under this chapter involves the displacement of a business, the owner may request valuation under this section to determine just compensation that includes loss or impairment of the going concern value of the business.

**2. Elements.** In addition to the value determined under section 154, compensation to the owner of a business conducted on the property taken includes compensation for loss or impairment of the going concern value of the business if the owner proves that:

**A.** The loss or impairment cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the going concern value;

**B.** The loss or impairment will not be included in moving and relocation payments under section 244; and

**C.** The loss or impairment will not be duplicated in the compensation awarded to the owner.

**3. Loss or impairment of going concern value; definition.** For the purposes of this section, "loss or impairment of the going concern value" means the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality or any other circumstances resulting in probable retention of old or acquisition of new patronage.

**4. Procedure.** The owner and the department shall each select a licensed appraiser to calculate the amount of additional compensation due under this section. If the appraisers agree, the additional amount must be added to the department's offer of just compensation. If the appraisers do not agree but the difference is not more than 10% of the higher appraisal, the average of the 2 appraisals must be added to the department's offer of just compensation. If the appraisers do not agree and the difference is more than 10% of the higher appraisal, the owner may have the matter referred to the State Claims Commission for assessment of the damage.

**Sec. 3. 30-A MRSA §3101, sub-§5** is enacted to read:

**5. Just compensation for established businesses.** Just compensation paid by the municipality must include compensation for damages for the loss or impairment of the going concern value of a business established for more than 3 years that is located on land that is the subject of the proceedings or located on adjoining lands if that business owns the land that is the subject of the proceedings. Title 23, section 154-G governs the awarding of such compensation.

**Sec. 4. 30-A MRSA §5204, sub-§12** is enacted to read:

**12. Just compensation for certain businesses.** For purposes of eminent domain proceedings, just compensation for a business established for more than 3 years that is located on land that is the subject of the proceedings or located on adjoining lands if that business owns the land that is the subject of the proceedings must include compensation for the damages for the loss or impairment of the going concern value of the business. Title 23, section 154-G governs the awarding of such compensation.

## SUMMARY

This bill establishes the criteria for determination of compensation for loss or impairment of the going concern value of a business when the property of a business is taken by the Department of Transportation or a municipality exercising its eminent domain power. The burden is on the business to prove the loss. The analysis takes place at the request of the owner of the displaced business. The process requires both the owner and the governmental authority to each select a licensed appraiser to make the determination of the loss or impairment of the going concern value. If they agree, that additional compensation must be added to the compensation offer. If they disagree but are within 10% of each other, the average appraisal is used. If they disagree by more than 10%, the owner may ask the State Claims Commission to apply the same analysis when the owner appeals the offer. This process applies to compensation to be paid by municipalities when exercising eminent domain authority under general authorization provisions and for economic development purposes.

This bill amends the duties of the State Claims Commission to include determination of just compensation in 2 categories of municipal condemnations: general eminent domain authority under the Maine Revised Statutes, Title 30-A, chapter 151 and community development under Title 30-A, chapter 205.