

**STATE CLAIMS COMMISSION
Department of Administrative
and Financial Services**

2021 GOVERNMENT EVALUATION ACT REPORT



**Submitted to the Joint Standing Committee on
State and Local Government**

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ENABLING LEGISLATION

5 MRS, Chapter 141, GENERAL PROVISIONS:

§1510-A. Certain claims against the State

§1510-B. No liability for wild animal damage

23 MRS, Chapter 3, OFFICIALS AND THEIR DUTIES:

Subchapter 3: STATE CLAIMS COMMISSION

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 (e.g. 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 and materials are sent to all interested parties. When a reasonable time has elapsed, the matters are set for hearings. Continuances are granted only for good cause. The time of the State Claims Commission is used effectively by scheduling as many cases as reasonably can be heard on the same hearing date.

The State Claims Commission receives approximately 250 – 300 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 – 35% of the cases are defaulted 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.

The State Claims Commission strives to give landowners a hearing as soon as possible after requesting one, ensuring that owners leave such hearing believing they had a thorough one, which has been heard by learned Attorneys and Appraisers and intelligent and concerned County Commissioners. The records of the commission continue to show that landowners 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 are 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 that may arise between the Department of Transportation or other governmental entities that have the power of eminent domain that are within the jurisdiction of the State Claims Commission, and property owners. The State Claims Commission believes that it has achieved the purposes and goals stated in 23 MRS, § 151.

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 32 MRS, 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. Each of the appraiser and attorney commissioners must be sworn. After notice and a hearing, a commissioner may be removed by the Governor on the address of both branches of the Legislature or by impeachment for inefficiency, willful neglect of duty or malfeasance in office. 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. They 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. They 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 they are appointed.

FINANCIAL SUMMARY

State Claims Commission Expenses for Eight (8) Fiscal Years....2014-2021

Fiscal Year	2014	2015	2016	2017	2018	2019	2020	2021
Legislative Count	1	1	1.5	1.5	0.5	0.5	0.5	0.5
Personal Services	\$65,241.55	\$71,905.56	\$100,137.73	\$44,965.30	\$43,410.75	\$44,372.39	\$51,695.61	\$57,320.32
All Other	\$16,360.56	\$17,212.77	\$ 23,518.27	\$20,639.98	\$14,837.07	\$14,328.32	\$15,028.31	\$17,885.41
	\$81,602.11	\$89,118.33	\$123,656.00	\$65,605.28	\$58,247.82	\$58,700.71	\$66,723.92	\$75,205.73

AGENCY COORDINATION

The State Claims Commission consists of four permanent members, two Attorneys and two Certified General Appraisers. Each of the permanent members demonstrate specialized skills and knowledge in the field of governmental takings and the valuation of property. All of the permanent members have long experience in their respective fields of expertise (law or property appraisal). The members assist each other in informal discussions regarding case law, best practices, and appraisal techniques relative to the eminent domain process. The State Claims Commission meets as a full group once a year, along with representatives of the Department of Transportation, Office of Legal Services, to review issues which may have arisen from past cases and to share knowledge and experiences which may help with future cases. The County Commissioner member of the State Claims Commission often brings valuable knowledge pertaining to local market conditions to the deliberations of the Commission. All of the State Claims Commissioners are acutely aware that the Maine and the United States Constitutions guarantee just compensation for a property owner whose property has been taken by eminent domain.

Pre-hearing conferences are available by request on a case-by-case basis. Any party may request a pre-hearing conference. These conferences address issues such as discovery, identification of documents that will be introduced into evidence, the identification of witnesses, the resolution of any questions pertaining to procedure, the possibility of settlement, and in general the consideration of any other topic that will enhance the efficiency of the hearing or aid in the disposition of the case.

In 2017 the State Claims Commission revised and modernized the regulations that govern eminent domain takings. One of the improvements was to make the default process more efficient. Previously all three Commissioners had to attend a default hearing. The new regulation makes it possible for only one Commissioner to attend a default hearing. (A default occurs when the property owner does not appear at the stated date, time, and place of a hearing.) Usually this is the county commissioner member of the Commission. The 2017 revision also made clear that the place of the hearing could be any location (not just the county courthouse) in the county in which the property was taken, as long as the location is accessible. Now many hearings take place locally, for instance where selectpersons or town councils meet, or in a suitable conference room in the municipal public library. This change has made the overall hearing process more efficient, with less travel for property owners, and less travel time between the viewing of the property and the hearing. The 2017 rule revision also clarified the process for calculating interest on any award granted by the State Claims Commission. The revision allows interest for each year to fluctuate with market rates as established by the Federal Reserve, plus three percent.

The rules of evidence and procedure that are normally applied in courtroom trials do not apply in State Claims Commission hearings, although those rules are often looked to for guidance as determinations are made during the course of a hearing. It is common for property owners to appear before the State Claims Commission without attorneys. The Commissioners and the Clerk endeavor to explain the procedures and the hearing process to the parties who appear without counsel, to enable pro se participants to be as comfortable as possible, under the circumstances. All of the Commissioners understand how important it is to listen carefully to the concerns expressed by property owners, and to treat each property owner with dignity and respect.

CONSTITUENCIES SERVED

Any person who has had the power of eminent domain exercised against them by the Maine Department of Transportation, the Maine Turnpike Authority, or several other government entities, is a member of the constituency of the State Claims Commission. The State Claims Commission significantly reduces the caseload of Maine's court system by providing the public and state agencies (particularly the Maine Department of Transportation) with a timely, efficient, and fair way of determining just compensation in the highly sensitive area of governmental exercise of its eminent domain power.

ALTERNATIVE DELIVERY SYSTEMS

No alternative delivery system exists that could perform the work of the State Claims Commission as reliably, quickly, or fairly as the State Claims Commission. Maine has a relatively short highway construction season. Avoiding drawn out litigation over eminent domain issues is crucial. By providing due process guarantees and a forum for the determination of just compensation, the State Claims Commission performs a valuable function that serves all of the people of Maine.

EMERGING ISSUES

23 MRS §152 (2), establishes the daily rate of compensation for State Claims Commission commissioners at \$150.00. The last time the rate was changed was in 1995. It is recommended that the rate of compensation for commissioners be increased. If inflation is assumed to be three percent per year, in order to equal the value of 150 1995 dollars, the daily rate would have to be \$314. A rate of \$300 per day is suggested.

Often the commissioners who serve on the State Claims Commission have businesses such as a law practice, or an appraisal practice, or some other small business. When there are hearings, the commissioners usually must devote a full day to State Claims Commission business instead of their own. If the rate of compensation is not raised to keep pace with inflation, attracting qualified commissioners to serve on the State Claims Commission could become problematic.

REPORTS REQUIRED

5 MRS §1510-A (8) requires that the State Claims Commission report to the Legislature on or before January 30th of each year, pertaining to all claims filed pursuant to 5 MRS, Chapter 141. Claims filed under this section are personal property claims made by employees of the state who assert that an item of personal property belonging to them was damaged in the course of their duties as employees of the State. The jurisdictional limit of these cases is \$2,000. Claims filed under this section are a very small portion of the workload of the State Claims Commission. On average, about one such claim is filed each year. The Clerk of the State Claims Commission files the report by writing to the Legislative Council at the beginning of each calendar year, letting the Legislature know of the number of claims filed in the previous year, the type of claim, whether the claim was settled or went to hearing, and if the case went to hearing, the amount of the award.