

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 the Value of Eminent Domain Takings on Going Concern Value

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

Sec. 1. 23 MRSA §152-A is enacted to read:

§ 152-A. Business damage ombudsman appointment; term; compensation

The Governor shall appoint a business damage ombudsman to act as an impartial reviewer of cases to provide just compensation to business owners whose business property has been lost or impaired as a result of eminent domain, who is referred to in this chapter as "the ombudsman," subject to review by the joint standing committee of the Legislature having jurisdiction over transportation matters and confirmation by the Senate. The ombudsman must be chosen without reference to party affiliation and solely on the ground of professional competence to perform the duties of that office. The ombudsman holds office for a term of 4 years. An ombudsman may be reappointed. The compensation of the ombudsman is fixed by the Governor.

Sec. 2. 23 MRSA §152-B is enacted to read:

§ 152-B. Ombudsman duties

The ombudsman shall ensure that the owner of a business conducted on the property taken, whether owned by the business owner or leased from another entity, or on the remainder of the property if the property is part of a larger parcel must be compensated for loss of going concern value if the owner proves that:

1. Cause of loss. The loss is caused by the taking of the property or injury to the remainder of the property;

2. Not preventable. The loss cannot reasonably be prevented by 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;

3. Compensation by Federal Government. Compensation for the loss is not included in federal compensation; and

4. Compensation not duplicated. Compensation for the loss is not duplicated in compensation otherwise awarded to the owner.

For the purpose of this section, "going concern value" means the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality and any other circumstances resulting in probable retention of old or acquisition of new patronage.

Sec. 3. 23 MRSA §154-G is enacted to read:

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

1. 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.

2. 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.

3. 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.

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. 4. 30-A MRS §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. 5. 30-A MRS §5204, sub-§12 is enacted to read:

12. Just compensation for certain businesses. For purposes of eminent domain proceedings, just compensation paid by the municipality 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 an impartial ombudsman and defines the ombudsman's duty, which is to ensure business owners who lose property by eminent domain are properly compensated. The role of the ombudsman does not preclude the role of the State Claims Commission.

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 to be 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 adds to the duties of the State Claims Commission the duty 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.