

**Maine Revised Statutes**  
**Title 23: TRANSPORTATION**

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**Title 23: TRANSPORTATION**  
**Part 1: STATE HIGHWAY LAW**  
**Chapter 1: GENERAL PROVISIONS**

**§1. OBJECTIVES**

The objectives of chapters 1 to 19 are to establish a Department of Transportation; to provide for an interlocking system of state and state aid highways; to furnish state aid for county and town highways and bridges; to provide for the continuous maintenance of all highways and bridges to the improvement of which the State has contributed or shall hereafter contribute unless otherwise provided by law; to provide for the equitable distribution of the proceeds of state bonds issued for the construction of highways and bridges; and to cooperate with the Federal Government in the construction of highways and bridges. [1981, c. 492, Pt. C, §1 (AMD).]

SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C1 (AMD).

**§2. RULES OF CONSTRUCTION**

The rules of construction in Title 1, chapter 3, shall apply to chapters 1 to 19. As used in chapters 1 to 19, unless the context otherwise indicates, the following terms have the following meanings. [1981, c. 470, Pt. A, §120 (RPR).]

**1. Compact or built-up section.** "Compact" or "built-up section" means a section of the highway where structures are nearer than 200 feet apart for a distance of 1/4 of a mile, unless otherwise defined.

[ 1981, c. 470, Pt. A, §120 (NEW) .]

**2. Highway.** "Highway" means all of the right-of-way that may have been laid out by the State, county or town.

[ 1981, c. 470, Pt. A, §120 (NEW) .]

**3. Maintenance.** "Maintenance" includes the restoring of reconstructed and improved highways to their condition when improved and shall be applicable only to highways to the improvement of which the State has contributed or shall hereafter contribute, except as otherwise provided.

[ 1981, c. 470, Pt. A, §120 (NEW) .]

**4. Municipal officers.** "Municipal officers" includes county commissioners having jurisdiction over highways in unincorporated townships.

[ 1981, c. 470, Pt. A, §120 (NEW) .]

**5. Town.** "Town" includes cities, towns, organized plantations and unincorporated townships, except as otherwise indicated.

[ 1981, c. 470, Pt. A, §120 (NEW) .]

**6. Valuation.** "Valuation" means the valuation last made by the State Tax Assessor.

[ 1981, c. 470, Pt. A, §120 (NEW) . ]

#### SECTION HISTORY

1973, c. 537, §24 (AMD). 1981, c. 470, §A120 (RPR).

## Chapter 3: OFFICIALS AND THEIR DUTIES

### Subchapter 1: DEPARTMENT OF TRANSPORTATION

#### §51. APPOINTMENT; TENURE; REPORTS

*(REPEALED)*

#### SECTION HISTORY

1967, c. 490, §8 (AMD). 1969, c. 504, §§37,38 (AMD). 1971, c. 593, §4 (RP).

#### §52. GENERAL POWERS AND DUTIES

The Department of Transportation, referred to in this chapter as "the department," may from time to time make and shall enforce rules and regulations relating to the planning, design, engineering, construction, improvement, maintenance and use of transportation infrastructure. The department may from time to time make and shall enforce rules relating to the manner of conducting all investigations and hearings and the administration of its office, powers and duties. The department shall direct the expenditure of all money for the planning, design, engineering, construction, improvement, demolition, maintenance and use of all transportation infrastructure for which state funds are provided by law. The department may conduct traffic survey interviews and other statistical studies on the state highway system as considered necessary for the use in planning and development of the statewide highway system. The department may obtain leases for such land and office space as the department considers necessary for the performance of its duties. As used in this section, "transportation infrastructure" means infrastructure related to all modes of transportation, including highways, bridges, railroads, ferries, mass transit, airports and bicycle and pedestrian facilities, as well as all buildings, utilities, facilities and other appurtenances related to such modes. [ 2007, c. 306, §1 (AMD) . ]

The department has full power to purchase all supplies, materials and equipment that are incidental to, or necessary for, project-specific construction, improvement or maintenance of transportation infrastructure. The purchase of supplies, materials and equipment for nonproject-specific purposes must be made through the State Purchasing Agent as provided by law. For the purposes of this section, unless the context otherwise indicates, "project-specific" means relating to a specific location for a limited duration, as opposed to perennial, nonlocation-specific activities. The department may be consulted by and shall, without charge, advise municipal officers and road commissioners on the subject of construction, improvement and maintenance of public highways, bridges and other structures. The department shall whenever practicable give preference in employment to the inhabitants of the town in which such highways are located. [ 2005, c. 313, §2 (RPR) . ]

The department may adopt its own guidelines for determining the reasonableness and permissibility of various cost factors, including, but not limited to, salary limits, benefits and expense reimbursement. Notwithstanding any other federal or state law to the contrary, the department's guidelines must be used in lieu of federally mandated provisions. [ 2005, c. 313, §2 (RPR) . ]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1973, c. 625, §128 (AMD). 1997, c. 52, §1 (AMD). 2005, c. 313, §2 (RPR). 2007, c. 306, §1 (AMD).

## §52-A. RETENTION OF PART OF CONTRACT PRICE AND SETTLEMENT OF CLAIMS BY SUBCONTRACTORS

*(REPEALED)*

### SECTION HISTORY

1979, c. 580, (NEW). 1989, c. 165, §3 (AMD). 2013, c. 36, §3 (RP).

## §53. CLASSIFICATION OF HIGHWAYS

**1. Classification.** The department shall cause charts and maps to be made showing the location and mileage of all highways in the State, and shall classify the highways of the State, and may, from time to time, amend that classification, namely: First, state highways, which mean a system of connected main highways throughout the State which primarily serve arterial or through traffic; 2nd, state aid highways, which mean those highways not included in the system of state highways which primarily serve as collector and feeder routes connecting local service roads to the arterial state highway system; and 3rd, town ways, which mean all other highways not included in the first 2 classes, which are maintained by the towns and primarily serve as local service roads providing access to adjacent land. The criteria to be used in the classification of highways shall be considered rulemaking and subject to Title 5, chapter 375, subchapter II.

[ 1981, c. 702, Pt. Z, §1 (NEW) .]

**2. Maintenance, repair and upkeep.** The maintenance, repair and upkeep of any and all state and state aid highways that are reclassified as towns ways pursuant to subsection 1 shall be the responsibility of the respective towns in which those ways lie and any and all rights of the State in those highways are transferred to the respective towns for those purposes.

[ 1981, c. 702, Pt. Z, §1 (NEW) .]

### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C2 (AMD). 1981, c. 702, §Z1 (RPR).

## §53-A. SEASONAL PARKWAYS

**1. Classification.** The department may lay out, establish, acquire, open, construct, improve, maintain, discontinue and regulate as a state highway seasonal access road roads to public recreational areas which shall be classified "seasonal parkways."

[ 1971, c. 593, §22 (AMD) .]

**2. Limitations.** Such public highway shall be subject to the following conditions or limitations.

- A. It shall be designed, constructed and maintained for seasonal use only, except as otherwise provided in this section. [1971, c. 556, (NEW).]
- B. It shall be primarily for noncommercial vehicle and light-load commercial vehicle use. [1971, c. 556, (NEW).]
- C. Access may be allowed only at public highway intersections designated by the department or at private road intersections approved by the department. [1971, c. 593, §22 (AMD).]
- D. Construction standards shall be commensurate with public seasonal use and need as shall be determined by the department. [1971, c. 593, §22 (AMD).]

E. The department shall have full power and authority to regulate the use of seasonal parkways which shall include, but not be limited to, utility installations, speed and load weight, and snowmobiling. [1971, c. 593, §22 (AMD).]

F. The department may develop the natural scenic beauty along and adjacent to seasonal parkways. [1971, c. 593, §22 (AMD).]

G. The department shall close seasonal parkways to motor vehicular use for such seasonal periods deemed consistent with the public use and deemed expedient for the reduction of maintenance costs and undue abuse or deterioration to the highway caused by use during periods when adverse climatic conditions prevail. The road, or portions thereof, shall be officially closed when the department erects appropriate barricades across the way with a conspicuous notice posted thereon which shall set forth the time period the road shall remain closed. [1971, c. 593, §22 (AMD).]

H. The construction, reconstruction, improvement and maintenance of seasonal parkways and bridges thereon shall be borne wholly by the State under allocations for state highways and the department may contract for construction, reconstruction, improvement or maintenance as with state highways. [1971, c. 593, §22 (AMD).]

I. The department may make and enforce rules and regulations relating to construction and maintenance of seasonal parkways. [1971, c. 593, §22 (AMD).]

J. The department shall not designate, lay out or construct and maintain any seasonal parkway until and unless an adequate right-of-way be conveyed to the State without cost and a waiver filed for any and all damages which may result to the remaining land from the construction and further, such conveyance shall include such rights of access as the department requires. [1971, c. 593, §22 (AMD).]

[ 1971, c. 593, §22 (AMD) .]

#### SECTION HISTORY

1971, c. 556, (NEW). 1971, c. 593, §22 (AMD).

### §54. HIGHWAY OPENINGS

Wherever highways maintained by the State are affected, whether the highways are situated in cities, towns or plantations, the department has all and the same rights, powers and duties in connection therewith as are granted to cities in city streets by sections 3351 to 3359, and to cities and towns by Title 35-A, sections 2306 and 2310. Whenever the opening fee provided by section 3354 or by Title 35-A, section 2510, has been paid to the department and a permit for digging up and opening a highway maintained by the State has been issued by the department, the holder of the permit is entitled to make the opening described therein without the payment of fees to the city or town or village corporation in which the street, road or highway to be opened is situated. [1997, c. 393, Pt. A, §24 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1987, c. 141, §B16 (AMD). 1997, c. 393, §A24 (AMD).

### §55. ASSISTANCE IN COLLECTION OF GAS TAX

*(REPEALED)*

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 456, §A71 (RP).

## **§56. OFFICERS TO ENFORCE ORDERS REGARDING RESTRICTED TRAVEL; SHERIFFS**

The department may appoint any person in its employ whose special duty it shall be to enforce the statutes and orders promulgated thereunder which prohibit or restrict the passage of vehicles and trailers over ways and bridges, or designated sections thereof, under such conditions or in such manner as may cause undue damage to any such way or bridge. Every such person shall be appointed in writing by the department to serve during its pleasure and shall have the same power as sheriffs and their deputies to arrest and prosecute all persons caught violating said statutes and orders within the territorial limits designated in his appointment. He shall be entitled to the same fees as sheriffs and their deputies for like services. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD).

## **§57. COOPERATION AND ACCEPTANCE OF FEDERAL FUNDS**

"Title 23, United States Code," and all other Acts amendatory thereof and supplementary thereto, are assented to. The Department of Transportation is authorized and empowered to accept, for the State, federal funds apportioned under said code as amended and supplemented, to act for the State, in conjunction with the representatives of the Federal Government, in all matters relating to the location and construction of highways to be built with federal aid pursuant to said code, and to make all contracts and do all things necessary to cooperate with the United States Government in the construction and maintenance of public highways in accordance with said code, as amended and supplemented. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD).

### **§57-A. ACCEPTANCE OF FUNDS**

The Department of Transportation is authorized and empowered to accept for the State funds from one or more private parties for transportation improvement needs generated by development. Such funds must be segregated and held in an account to be used as agreed by the parties. The State and its employees are not liable to any person, corporation or entity for damages arising out of any activities or contracts or for any other service or financial commitment resulting from the implementation of this section. [1991, c. 409, §1 (NEW).]

### SECTION HISTORY

1991, c. 409, §1 (NEW).

## **§58. SUPPLIES FROM FEDERAL GOVERNMENT**

The department is authorized and empowered to obtain from the Federal Government or any agency thereof, through purchase or gift, supplies, materials and equipment which is adaptable to highway maintenance and construction. Such supplies, materials and equipment may be sold, leased or given by the department to the several towns in the State which make a written request therefor, on such terms and conditions as the department, in its discretion, deems necessary. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD).

## §59. -- UNIFORM NUMBERING SYSTEM

The department is authorized to cooperate with the Federal Government in formulating and adopting a uniform system of numbering or designating roads of interstate character within this State, and in the selection and erection of uniform danger signals and safety devices for the protection and direction of traffic on said highways. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD).

## §60. TOWN COOPERATION

Towns are authorized to enter into agreements with the Department of Transportation for the expenditure of town funds for maintenance and repair of town roads. The department is authorized, when requested by towns, to accept town funds for expenditure under its direction. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD).

## §61. VACATION, SALE OR LEASE OF ACQUIRED LAND

**1. Land acquired may be vacated.** The Department of Transportation may vacate any land or part of land or rights in land which have been taken or acquired for transportation purposes by executing and recording a deed, and that action shall vest the title to the lands or rights so vacated in the person in whom it was vested at the time of the taking, their heirs and assigns. The value at the time of vacation may be pleaded in mitigation of damages in any proceeding on account of that taking.

[ 1985, c. 13, (NEW) .]

**2. Land acquired may be sold.** The Governor, on recommendation of the department, may sell and convey on behalf of the State the interests of the State in property taken or acquired by purchase for transportation purposes and deemed no longer necessary for those purposes.

[ 1985, c. 13, (NEW) .]

**2-A. Easements may be conveyed.** The Department of Transportation may grant or otherwise transfer easements over property taken or acquired for transportation purposes when the department in its sole discretion determines that the conveyance of such easements is appropriate and necessary.

[ 1999, c. 753, §1 (NEW) .]

**3. Lease and use of property.** The department may make advantageous use of property acquired or taken pending that use for transportation purposes, including, but not limited to, the leasing of those interests. All such property and interests shall be deemed to be for transportation purposes and shall be exempt from taxation.

[ 1985, c. 13, (NEW) .]

**4. Proceeds from sale, lease or vacating.** The State's share of all gross proceeds from a sale, lease or vacating of property shall be deposited into the Highway Fund and shall only be expended upon allocation by the Legislature. The Federal Government's share shall be deposited in the account from which it originated.

[ 1987, c. 735, §39 (RPR) .]

### SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 194, (AMD). 1975, c. 771, §234A (AMD). 1985, c. 13, (RPR). 1987, c. 735, §39 (AMD). 1999, c. 753, §1 (AMD).

## §62. RECORD OF LOCATIONS AND CHANGES

Whenever the department shall establish and locate or change the location of a state highway or state aid highway, or any town shall establish and locate or change the location of a highway that was designated as a 3rd class highway at the time that the 3rd class highway designations were rescinded, in any county of this State where the establishing and locating change the present location of any road, the said department or the town shall cause to be filed with the county commissioners of the county in which any such road is located an accurate description or plan of its metes and bounds and courses and distances. [1975, c. 21, (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 21, (AMD).

## §63. CONFIDENTIALITY OF RECORDS HELD BY THE DEPARTMENT AND THE MAINE TURNPIKE AUTHORITY

**1. Confidential records.** The following records in the possession of the department and the Maine Turnpike Authority are confidential and may not be disclosed, except as provided in this section:

A. Records and correspondence relating to negotiations for and appraisals of property; and [2011, c. 524, §5 (NEW).]

B. Records and data relating to engineering estimates of costs on projects to be put out to bid. [2011, c. 524, §5 (NEW).]

[2011, c. 524, §5 (NEW).]

**2. Engineering estimates.** Engineering estimates of total project costs are public records after the execution of project contracts.

[2011, c. 524, §5 (NEW).]

**3. Records relating to negotiations and appraisals.** The records and correspondence relating to negotiations for and appraisals of property are public records beginning 9 months after the completion date of the project according to the record of the department or Maine Turnpike Authority, except that records of claims that have been appealed to the Superior Court are public records following the award of the court.

[2011, c. 524, §5 (NEW).]

### SECTION HISTORY

1971, c. 593, §22 (AMD). 2001, c. 158, §1 (RPR). 2011, c. 524, §5 (RPR).

## §64. ENFORCEMENT OF PROVISIONS

The department shall cause complaint to be entered against any offender of section 3252, when the way obstructed or affected by the obstruction is maintained by the State. The forfeitures recovered in such cases shall be paid to the Treasurer of State for the use of the State Highway Maintenance Fund. [1981, c. 470, Pt. A, §121 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 470, §A121 (AMD).

## **§65. DISPLACED PERSONS RELOCATION ASSISTANCE** *(REPEALED)*

### SECTION HISTORY

1965, c. 433, §1 (NEW). 1969, c. 207, §2 (RP).

## **§66. ASSISTANCE PROVIDED** *(REPEALED)*

### SECTION HISTORY

1965, c. 433, §1 (NEW). 1969, c. 207, §2 (RP).

## **§67. MOVING EXPENSES** *(REPEALED)*

### SECTION HISTORY

1965, c. 433, §1 (NEW). 1969, c. 207, §2 (RP).

## **§68. LIMITS** *(REPEALED)*

### SECTION HISTORY

1965, c. 433, §1 (NEW). 1969, c. 207, §2 (RP).

## **§69. DETERMINATION BY LAND DAMAGE BOARD** *(REPEALED)*

### SECTION HISTORY

1965, c. 433, §1 (NEW). 1969, c. 207, §2 (RP).

## **§70. RULES AND REGULATIONS** *(REPEALED)*

### SECTION HISTORY

1965, c. 433, §1 (NEW). 1969, c. 207, §2 (RP).

## **§71. FEDERAL AID SAFER ROADS DEMONSTRATION PROGRAM** *(REPEALED)*

### SECTION HISTORY

1973, c. 671, (NEW). 1981, c. 492, §C3 (RP).

## §72. ACCEPTANCE OF METROPOLITAN PLANNING FUNDS

The Policy Committees as established to carry out comprehensive transportation planning activities in urbanized areas are authorized to receive and administer Federal and State Transportation Planning Funds for such planning activities. Said Policy Committees may contract with various state, local and regional agencies to carry out the provisions of Section 134, Title 23, United States Code. [1973, c. 671, (NEW).]

### SECTION HISTORY

1973, c. 671, (NEW).

## §73. TRANSPORTATION POLICY

**1. Short title.** This section may be known and cited as the "Sensible Transportation Policy Act."

[ 1991, c. 1, §1 (NEW) .]

**2. Purposes and findings.** The people of the State find that decisions regarding the State's transportation network are vital to the well-being of Maine citizens, to the economic health of the State and to the quality of life that the citizens treasure and seek to protect.

The people also find that these decisions have profound, long-lasting and sometimes detrimental impacts on the natural resources of the State, including its air quality, land and water.

The people further find that substantial portions of the state highway system are in disrepair and improvements to the State's roads and bridges are necessary to provide a safe, efficient, and adequate transportation network throughout the State.

The people further find that the State's transportation network is heavily dependent on foreign oil, that such reliance is detrimental to the health of the State's economy and that the health and long-term stability of the State's economy require increased reliance on more efficient forms of transportation.

The people further find that improvements to the transportation network are necessary to meet the diverse transportation needs of the people of the State including rural and urban populations and the unique mobility requirements of the elderly and disabled.

The people further find that the decisions of state agencies regarding transportation needs and facilities are often made in isolation, without sufficient comprehensive planning and opportunity for meaningful public input and guidance.

[ 1991, c. 1, §1 (NEW) .]

**3. Transportation policy.** It is the policy of the State that transportation planning decisions, capital investment decisions and project decisions must:

A. Minimize the harmful effects of transportation on public health and on air and water quality, land use and other natural resources; [1991, c. 2, §88 (COR).]

B. Require that the full range of reasonable transportation alternatives be evaluated for all significant highway construction or reconstruction projects and give preference to transportation system management options, demand management strategies, improvements to the existing system, and other transportation modes before increasing highway capacity through road building activities; [1991, c. 2, §88 (COR).]

C. Ensure the repair and necessary improvement of roads and bridges throughout the State to provide a safe, efficient and adequate transportation network; [1991, c. 2, §88 (COR).]

D. Reduce the State's reliance on foreign oil and promote reliance on energy-efficient forms of transportation; [1991, c. 2, §88 (COR).]

E. Meet the diverse transportation needs of the people of the State, including rural and urban populations and the unique mobility needs of the elderly and disabled; [1991, c. 2, §88 (COR).]

F. Be consistent with the purposes, goals and policies of the Comprehensive Planning and Land Use Regulation Act; and [1991, c. 2, §88 (COR).]

G. Incorporate a public participation process in which local governmental bodies and the public have timely notice and opportunity to identify and comment on concerns related to transportation planning decisions, capital investment decisions and project decisions. The department and the Maine Turnpike Authority shall take the comments and concerns of local citizens into account and must be responsive to them. [1991, c. 2, §88 (COR).]

[ 1991, c. 2, §88 (COR) .]

**4. Rulemaking.** The Department of Transportation shall adopt a rule within one year of the effective date of this Act, in coordination with the Maine Turnpike Authority and state agencies including the Department of Economic and Community Development, the Department of Agriculture, Conservation and Forestry and the Department of Environmental Protection, to implement the statewide comprehensive transportation policy. The rule must incorporate a public participation process that provides municipalities and other political subdivisions of the State and members of the public notice and opportunity to comment on transportation planning decisions, capital investment decisions, project decisions and compliance with the statewide transportation policy.

The Department of Transportation shall adopt a rule, in coordination with the Department of Agriculture, Conservation and Forestry, that establishes linkage between the planning processes outlined in this section and those promoted by Title 30-A, chapter 187, subchapter 2 and that promotes investment incentives for communities that adopt and implement land use plans that minimize over-reliance on the state highway network. This rule is a major substantive rule as defined in Title 5, chapter 375, subchapter 2-A.

[ 2011, c. 655, Pt. JJ, §9 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

**5. Applicability to Department of Transportation.** Transportation planning decisions, capital investment decisions and project decisions of the Department of Transportation are governed by and must comply with the transportation policy set forth in this section and rules implementing that policy.

[ 1991, c. 1, §1 (NEW) .]

#### **6. Capital goals and reporting.**

[ 2011, c. 610, Pt. B, §1 (RP) .]

**7. Priorities, service levels, capital goals and reporting.** The Department of Transportation shall classify the State's public highways as Priority 1 to Priority 6 corridors using factors such as the federal functional classification system, regional economic significance, heavy haul truck use and relative regional traffic volumes. The department shall also establish customer service levels related to safety, condition and serviceability appropriate to the priority of the highway, resulting in a system that grades each highway as Excellent, Good, Fair, Poor or Unacceptable.

To provide a capital transportation program that is geographically balanced and that addresses urban and rural needs, the department shall include the following goals as part of its capital improvement plans and program delivery. The goals are to:

A. By 2022, improve all Priority 1 and Priority 2 corridors so that their safety, condition and serviceability customer service level equals Fair or better; [2011, c. 610, Pt. B, §2 (NEW) .]

B. By 2027, improve all Priority 3 corridors so that their safety, condition and serviceability customer service level equals Fair or better; [2011, c. 610, Pt. B, §2 (NEW).]

C. By 2017, implement a pavement program for all Priority 4 corridors that maintains their ride quality customer service level at Fair or better; [2011, c. 610, Pt. B, §2 (NEW).]

D. Continue the light capital paving program on a 7-year cycle for Priority 5 corridors outside compact areas as defined in section 754; and [2011, c. 610, Pt. B, §2 (NEW).]

E. By 2015, develop and implement a similar asset priority and customer service level system of measurement for all major freight and passenger transportation assets owned or supported by the department, including capital goals. [2011, c. 610, Pt. B, §2 (NEW).]

The department shall report to the joint standing committee of the Legislature having jurisdiction over transportation matters by March 1st of each odd-numbered year quantifying progress realized and time that has elapsed since the goals were established. The department shall recommend any remedial actions, including additional funding or revisions to the goals, that the department determines to be necessary or appropriate.

[2011, c. 610, Pt. B, §2 (NEW) .]

#### SECTION HISTORY

IB 1991, c. 1, §1 (NEW). RR 1991, c. 2, §88 (COR). 2003, c. 22, §1 (AMD). 2007, c. 470, Pt. B, §1 (AMD). 2011, c. 610, Pt. B, §§1, 2 (AMD). 2011, c. 655, Pt. JJ, §9 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV).

### **§73-A. TRANSPORTATION PLANNING INCENTIVE FUNDING**

*(REPEALED)*

#### SECTION HISTORY

2007, c. 208, §1 (NEW). 2013, c. 36, §4 (RP).

### **§74. FREIGHT TRANSPORTATION ADVISORY COUNCIL**

**1. Purpose; membership.** The Commissioner of Transportation shall establish a freight transportation advisory council to facilitate discussion and provide insight into issues pertaining to freight transportation in the State. The commissioner shall invite no fewer than 9 people from the private sector to participate as members of the council. Membership must include representatives of various geographic areas of the State. Membership must include at least one person with experience in each of the following:

A. Commercial trucking; [2003, c. 498, §2 (NEW).]

B. Rail freight; [2003, c. 498, §2 (NEW).]

C. Waterborne freight; [2003, c. 498, §2 (NEW).]

D. Forest products; [2013, c. 36, §5 (AMD).]

E. [2013, c. 36, §5 (RP).]

F. Agricultural products; [2013, c. 36, §5 (AMD).]

G. Petroleum products; and [2013, c. 36, §5 (AMD).]

H. General manufacturing. [2013, c. 36, §5 (NEW).]

[2013, c. 36, §5 (AMD) .]

**2. Meetings; chair.** The Commissioner of Transportation or the commissioner's designee shall serve as chair of the council established in subsection 1. The Department of Transportation shall provide staff support to the council. The council shall meet at the call of the chair but not less than 4 times during a calendar year. Members of the council serve without compensation.

[ 2003, c. 498, §2 (NEW) .]

SECTION HISTORY

2003, c. 498, §2 (NEW). 2013, c. 36, §5 (AMD).

## Subchapter 2: HIGHWAY SAFETY COMMITTEE

### **§101. ESTABLISHMENT; DESIGNATION**

*(REPEALED)*

SECTION HISTORY

1971, c. 593, §5 (RP).

### **§102. OFFICERS AND EXECUTIVE BOARD**

*(REPEALED)*

SECTION HISTORY

1971, c. 593, §5 (RP).

### **§103. POWERS AND DUTIES OF EXECUTIVE BOARD**

*(REPEALED)*

SECTION HISTORY

1971, c. 593, §5 (RP).

### **§104. ADVISORY COMMITTEE; MEETINGS**

*(REPEALED)*

SECTION HISTORY

1967, c. 2, §1 (AMD). 1971, c. 593, §5 (RP).

### **§105. EXECUTIVE DIRECTOR**

*(REPEALED)*

SECTION HISTORY

1967, c. 2, §2 (AMD). 1971, c. 593, §5 (RP).

## Subchapter 3: STATE CLAIMS COMMISSION

### **§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 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).

### **§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 board 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 board of county commissioners of that particular county. In the event that any board of county commissioners should fail to make the required recommendation, then the chairman of the State Claims Commission may appoint a member of such board 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 board 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 board 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).

## §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).

## §153-A. HOUSING FOR DISPLACED PERSONS

**1. Purchase.** Where a proposed highway project cannot proceed to actual construction because replacement housing is not available to displaced persons and cannot otherwise be made available, the department on behalf of the State of Maine may acquire by purchase such real property as may be necessary to construct new housing thereon, rehabilitate existing housing thereon or move existing housing thereon.

[ 1971, c. 593, §22 (AMD) .]

**2. Acquisition interpreted.** Acquisition of necessary replacement housing sites, rehabilitation, relocation or construction of replacement housing shall be an expense incidental to construction or reconstruction of a highway and shall not be deemed to be highway right-of-way and need not be within the limits of a construction project.

[ 1971, c. 333, §2 (NEW) .]

**3. Construction.** The department may construct, relocate or rehabilitate on any housing sites acquired under subsection 1 such housing as may be necessary for any person displaced by any highway construction or reconstruction undertaken by the department.

[ 1971, c. 593, §22 (AMD) .]

**4. Sale.** The department on behalf of the State of Maine may sell and convey the interest of the State acquired as replacement sites with the improvements thereon and may lease such interests in such property pending sale. Proceeds shall be credited to the project funds from which the purchase, rehabilitation or construction expenditures were made.

[ 1971, c. 593, §22 (AMD) .]

#### SECTION HISTORY

1971, c. 333, §2 (NEW). 1971, c. 593, §22 (AMD).

## §153-B. PROPERTY FOR HIGHWAYS; ACQUISITION

**1. Acquisition of property.** The Department of Transportation, on behalf of the State, may take over and hold for the State such property as it determines necessary to:

A. Lay out and establish, construct, improve or maintain, provide a change of location or alignment of or provide drainage for state and state aid highways; [1993, c. 536, §2 (NEW) .]

B. Provide rest areas, parking strips, roadside and landscape development for the preservation and development of natural scenic beauty; [1993, c. 536, §2 (NEW) .]

C. Provide for the health, safety and welfare of the public using a state or state aid highway; [1993, c. 536, §2 (NEW) .]

D. Secure materials, with necessary ways and access, for the construction, improvement and maintenance of state and state aid highways; [1993, c. 536, §2 (NEW) .]

E. Secure the relocation, removal or disposal of automobile graveyards and junkyards not in conformity with Title 30-A, chapter 183, subchapter I; [1993, c. 536, §2 (NEW) .]

F. Erect administrative, storage and operational buildings used in effecting the objectives in conformity with section 1; or [1993, c. 536, §2 (NEW) .]

G. Construct, improve and maintain transportation projects as directed by law and provide mitigation for existing or potential environmental effects of transportation projects. [1993, c. 536, §2 (NEW) .]

[ 1993, c. 536, §2 (NEW) .]

**2. Survey and appraisal.** When property is to be purchased or taken over and held for the State, unless the department determines that an adequate description already exists, the department shall first cause the property or interest in the property to be acquired to be surveyed and described, and a plan of the property made, and to be appraised by one or more appraisers. The owner or the owner's designated representative must be given an opportunity to accompany the appraisers during the appraiser's inspection of the property. All persons employed by the department are authorized, to the extent necessary for surveys, appraisals and preliminary engineering, to enter and cross all lands within, adjoining and adjacent to the area proposed for acquisition in carrying out the objectives of this section. The department may prescribe procedures to waive the appraisal in cases involving the acquisition by sale or donation of property or interest in property. The department may prescribe procedures to waive the appraisal in cases in which the fair market value of the property or interest in the property to be taken is estimated at \$15,000 or less and valuation can be established by another method. In any case in which the department and the owner do not reach an agreement about the value of property or interest in property to be acquired, or if the owner requests, the department shall perform an appraisal.

[ 2001, c. 485, §1 (AMD) .]

**3. Entry; soundings, drillings and examinations.** Persons employed by the department may enter upon the property or building with the consent of the owner, for the purpose of making soundings, drillings and examinations as the department determines necessary for the purpose of this subchapter. If the department is unable to obtain consent of the owner, the department is authorized to seek an administrative inspection warrant from the Superior Court for the county in which the property is located for the purpose of making soundings, drillings and examinations. The department shall file an application in Superior Court in the form of a sworn affidavit that must include:

- A. The statutory authority under which the department is authorized to acquire lands by eminent domain; [1993, c. 536, §2 (NEW).]
- B. A description of the property to be examined; [1993, c. 536, §2 (NEW).]
- C. A statement that the department has requested permission from the owner of the property to conduct an examination and that permission has been denied; and [1993, c. 536, §2 (NEW).]
- D. A statement of the purpose for the entry and examination and the nature and scope of the activities reasonably necessary to accomplish this purpose. [1993, c. 536, §2 (NEW).]

[ 1993, c. 536, §2 (NEW) .]

**4. Notification to potential buyer.** If an owner decides to sell the property after the owner has been notified by the department that it plans to purchase or take the property, it is the responsibility of the owner to inform the potential buyer that the department intends to purchase or take the property. The department, as early in its property owner notification process as possible, shall remind the property owner of this responsibility.

[ 1993, c. 536, §2 (NEW) .]

#### SECTION HISTORY

1993, c. 536, §2 (NEW). 1997, c. 272, §1 (AMD). 2001, c. 485, §1 (AMD).

### **§153-C. ACQUISITION OF PROPERTY IDENTIFIED IN TRANSPORTATION PLANNING; NEW BYPASS HIGHWAY PROJECT**

**1. Acquisition of property.** If the Department of Transportation prepares an environmental impact statement as required by the federal National Environmental Protection Act of 1969 for permitting for the location of a new bypass highway project and property will be affected by the limits of the final bypass right-of-way and the property owner submits a request in writing to the department that the department acquire that portion of the owner's property determined necessary for the new bypass highway project, the department shall acquire the property determined necessary if:

- A. The department has received a least environmentally damaging practicable alternative determination from the United States Army Corps of Engineers that will be incorporated into the environmental impact statement for corridor alignment indicating that certain property will be necessary for the purposes set forth in section 153-B, subsection 1; and [2009, c. 454, §1 (NEW).]
- B. The fair market value is determined in accordance with this subchapter. [2009, c. 454, §1 (NEW) .]

The request submitted by the property owner under this subsection must be submitted to the department within 9 months of the date that the department receives the least environmentally damaging practicable alternative determination from the United States Army Corps of Engineers under paragraph A.

[ 2009, c. 454, §1 (NEW) .]

**2. Deadline for acquisition; extension.** The following provisions govern the deadline for acquisition of property by the Department of Transportation pursuant to subsection 1.

A. The department shall acquire affected properties pursuant to this subchapter within 2 years from the date of issuance of the least environmentally damaging practicable alternative determination from the United States Army Corps of Engineers under subsection 1, paragraph A. [2009, c. 454, §1 (NEW).]

B. Notwithstanding paragraph A, if funding for the new bypass highway project is not available or if state or federal regulations preclude the department from acquiring real property, the department may extend the time period for acquisition of affected properties up to 2 years. Any extension under this paragraph must be submitted no later than 90 days before the expiration of the 2 years under paragraph A to the joint standing committee of the Legislature having jurisdiction over transportation matters for its review and comment. [2009, c. 454, §1 (NEW).]

[ 2009, c. 454, §1 (NEW) . ]

**3. Reservation of eminent domain powers.** Nothing in this section affects or alters the rights of the Department of Transportation to exercise its rights of eminent domain under this Title.

[ 2009, c. 454, §1 (NEW) . ]

#### SECTION HISTORY

2009, c. 454, §1 (NEW).

## §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;

[ 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; [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; [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; [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 [1987, c. 395, Pt. A, §94 (AMD).]

I. Enclosed Check No.: ..... Amount: \$ .....  
Payable to: .....  
Sent to: .....

[ 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;
- C. The fair market value of the real property taken as of the date of taking; [1975, c. 431, §7 (AMD).]
- E. Offering price; [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 [1997, c. 272, §2 (AMD).]

G. Enclosed Check No.: ..... Amount: \$ .....  
Payable to: .....  
Sent to: .....

[ 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; [1997, c. 272, §2 (AMD).]

B. The salvage value of facilities removed;

C. Cost of removal; and [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. [1981, c. 470, Pt. A, §129 (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).

### §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).

### §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).

### §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).

### §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).

### §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).

### §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).

### §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).

### §156. HEARING BEFORE BOARD

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 board shall assign no more than 3 members of the board 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 board 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).

## §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).

### **§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).

### **§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).

## §160. PROPERTY MANAGEMENT

Any property taken or acquired for highway purposes may be leased, let or rented by the department to a displaced person pending advantageous use for highway purposes. The department may renovate and maintain property pending such advantageous use. The proceeds from leasing, letting or renting such property shall be credited to the fund from which payment was made for the acquisition. The consideration paid by the tenant for occupancy shall not exceed the fair rental value of the property based on short-term occupation. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 333, §5 (NEW). 1971, c. 593, §22 (AMD).

## §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).

## Subchapter 4: CHIEF ENGINEER

### §201. APPOINTMENT

The commissioner shall, subject to the Civil Service Law, appoint a civil engineer as chief engineer. [1985, c. 785, Pt. B, §103 (AMD).]

### SECTION HISTORY

1971, c. 593, §6 (RPR). 1981, c. 45, §1 (AMD). 1985, c. 785, §B103 (AMD).

## Subchapter 5: RELOCATION ASSISTANCE

### §211. PURPOSE

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§212. DEFINITIONS**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§213. RELOCATION ADVISORY ASSISTANCE**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§214. RELOCATION PAYMENTS**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§215. REPLACEMENT HOUSING ALLOWANCE**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§216. TRANSFER EXPENSE ALLOWANCE**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§217. ADMINISTRATION**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§218. HARDSHIP**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

**§219. RULES AND REGULATIONS**

*(REPEALED)*

## SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

## **§220. APPEAL**

*(REPEALED)*

SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

## **§221. LIMITATION**

*(REPEALED)*

SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

## **§222. PROPERTY MANAGEMENT**

*(REPEALED)*

SECTION HISTORY

1969, c. 207, §1 (NEW). 1971, c. 333, §6 (RP).

### Subchapter 6: SCENIC HIGHWAY BOARD

## **§231. INTENT**

*(REPEALED)*

SECTION HISTORY

1969, c. 453, §1 (NEW). 1971, c. 593, §7 (RP).

## **§232. PURPOSE**

*(REPEALED)*

SECTION HISTORY

1969, c. 453, §1 (NEW). 1971, c. 593, §7 (RP).

## **§233. SCENIC HIGHWAY BOARD**

*(REPEALED)*

SECTION HISTORY

1969, c. 453, §1 (NEW). 1971, c. 593, §7 (RP).

## **§234. DUTIES**

*(REPEALED)*

SECTION HISTORY

1969, c. 453, §1 (NEW). 1971, c. 593, §7 (RP).

## **§235. RESPONSIBILITIES OF STATE HIGHWAY COMMISSION**

*(REPEALED)*

SECTION HISTORY

1969, c. 453, §1 (NEW). 1971, c. 593, §7 (RP).

## Subchapter 7: RELOCATION ASSISTANCE

### §241. PURPOSE

The prompt and equitable relocation and reestablishment of persons, businesses, farm operations and nonprofit organizations displaced as a result of state or state aid highway projects are necessary to insure that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Relocation payments and advisory assistance are to be made available to all persons so displaced in accordance with this subchapter. [1981, c. 470, Pt. A, §133 (AMD).]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1981, c. 470, §A133 (AMD).

### §242. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 541, Pt. A, §158 (AMD).]

#### 1. Average annual net earnings.

[ 1989, c. 208, §§4, 21 (RP) .]

#### 2. Business. "Business" shall mean any lawful activity, excepting a farm operation conducted primarily:

A. For the purchase, sale, lease and rental of personal and real property and for the manufacture, processing or marketing of products, commodities or any other personal property; [1971, c. 333, §1 (NEW).]

B. For the sale of services to the public; or [1971, c. 333, §1 (NEW).]

C. By a nonprofit organization; or [1971, c. 333, §1 (NEW).]

D. Solely for the purposes of section 244, for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. [1971, c. 333, §1 (NEW).]

[ 1971, c. 333, §1 (NEW) .]

**2-A. Comparable replacement dwelling.** "Comparable replacement dwelling" means any dwelling that is:

A. Decent, safe and sanitary; [1989, c. 208, §§5, 21 (NEW).]

B. Adequate in size to accommodate the occupants; [1989, c. 208, §§5, 21 (NEW).]

C. Within the financial means of the displaced person; [1989, c. 208, §§5, 21 (NEW).]

D. Functionally equivalent to the displacement dwelling; [1989, c. 208, §§5, 21 (NEW).]

E. In an area not subject to unreasonably adverse environmental conditions; and [1989, c. 208, §§5, 21 (NEW).]

F. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment. [1989, c. 208, §§5, 21 (NEW).]

[ 1989, c. 208, §§5, 21 (NEW) .]

**2-B. Department.** "Department" means the Department of Transportation.

[ 1989, c. 208, §§5, 21 (NEW) .]

**3. Displaced person.** "Displaced person" is defined as follows.

A. "Displaced person" means:

(1) Any person who moves from real property or moves that person's personal property from real property:

(a) As a direct result of a written notice of intent to acquire or the acquisition of that real property in whole or in part for a program or project undertaken by the department; or

(b) On which the person is a residential tenant or conducts a small business, a farm operation or a business defined in subsection 2, as a direct result of rehabilitation, demolition or such other displacing activity as the department prescribes under a program or project undertaken by the department in any case in which the department determines that the displacement is permanent; and

(2) Solely for the purposes of section 243 and section 244, subsections 1 and 2, any person who moves from real property or moves that person's personal property from real property:

(a) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by the department; or

(b) As a direct result of rehabilitation, demolition or such other displacing activity as the department prescribes of other real property on which the person conducts a business or a farm operation, under a program or project undertaken by the department where the department determines that the displacement is permanent. [1989, c. 208, §§6, 21 (NEW) .]

B. "Displaced person" does not include:

(1) A person who has been determined, according to criteria established by the department, either to be unlawfully occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this subchapter; and

(2) In any case in which the department acquires property for a program or project, any person, other than a person who was an occupant of the property at the time it was acquired, who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project. [1989, c. 208, §§6, 21 (NEW) .]

[ 1989, c. 208, §§6, 21 (RPR) .]

**4. Existing patronage.** "Existing patronage" means either the volume of clientele or the annual net earnings for the 2 taxable years immediately prior to the taxable year in which the business was displaced.

[ 1989, c. 208, §§7, 21 (RPR) .]

**5. Farm operation.** "Farm operation" shall mean any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

[ 1971, c. 333, §1 (NEW) .]

**6. Federal agency.** "Federal agency" shall mean any department, agency or instrumentality in the executive branch of the Federal Government, except the National Capitol Housing Authority, any wholly-owned government corporation, except the District of Columbia Redevelopment Land Agency, and the Architect of the Capitol, the Federal Reserve Banks and branches thereof.

[ 1971, c. 333, §1 (NEW) .]

**7. Mortgage.** "Mortgage" shall mean such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of this State, together with the credit instruments, if any, secured thereby.

[ 1971, c. 333, §1 (NEW) .]

**8. Person.** "Person" shall mean any individual, partnership, corporation or association.

[ 1971, c. 333, §1 (NEW) .]

**9. Program or project.** "Program or project" means any highway construction or related activity undertaken by the Department of Transportation on a state or state-aid highway and any other activity undertaken and authorized by law to be carried out by the department.

[ 1989, c. 208, §§8, 21 (AMD) .]

**9-A. Small business.** "Small business" means any business having fewer than 500 employees working at the site being acquired or permanently displaced by a program or project.

[ 1989, c. 208, §§9, 21 (NEW); 1989, c. 866, Pt. B, §1 (AMD); 1989, c. 866, Pt. B, §26 (AFF) .]

**10. State agency.** "State agency" means any department, agency or instrumentality of this State or any political subdivision of this State, any department, agency or instrumentality of 2 or more states, or 2 more political subdivisions of the State or states and any person who has the authority to acquire property by eminent domain under state law.

[ 1989, c. 208, §§10, 21 (AMD) .]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1973, c. 625, §129 (AMD). 1979, c. 541, §A158 (AMD). 1989, c. 208, §§4-10, 21 (AMD). 1989, c. 866, §§B1, 26 (AMD).

## §243. RELOCATION ASSISTANCE ADVISORY SERVICES

**1. Relocation assistance advisory program.** Whenever the acquisition of real property for a department program or project will result in the displacement of any person, the department shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection 2. If the department determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, the department may offer the person relocation advisory services under the program.

[ 1989, c. 208, §§11, 21 (AMD) .]

**2. Program to include.** Each relocation assistance advisory program required by subsection 1 shall include such measures, facilities or services as may be necessary or appropriate in order to:

- A. Determine and make timely recommendations on the needs and preferences, if any, of displaced persons, for relocation assistance; [1989, c. 208, §§11, 21 (AMD).]
- B. Provide current and continuing information on the availability, sales prices and rental charges of comparable replacement dwellings for displaced homeowners and tenants, and of comparable commercial properties and on suitable locations for displaced businesses and farm operations; [1989, c. 208, §§11, 21 (AMD).]
- C. Assure that, within a reasonable period of time, prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe and sanitary dwellings, equal in number to the number of and available to the displaced persons who require these dwellings and reasonably accessible to their places of employment; [1989, c. 208, §§11, 21 (AMD).]
- D. Assist a person displaced from that person's business or farm operation in obtaining and becoming established in a suitable replacement location; [1989, c. 208, §§11, 21 (AMD).]
- E. Supply information concerning federal, state and local programs, which may be of assistance to displaced persons, and supply technical assistance to persons in applying for assistance under these programs; and [1989, c. 208, §§11, 21 (AMD).]
- F. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation. [1971, c. 333, §1 (NEW).]

[ 1989, c. 208, §§11, 21 (AMD) .]

**3. Coordination.** The department shall coordinate relocation activities with project work, and other planned or proposed federal, state or local agency actions in the community or nearby areas which may affect the efficient and effective carrying out of relocation assistance programs.

[ 1989, c. 208, §§11, 21 (AMD) .]

**4. Renter eligibility.** Notwithstanding section 242, subsection 3, paragraph B, subparagraph(2), in any case in which the department acquires property for a program or project, any person who occupies that property on a rental basis for a short term or for a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the department.

[ 1989, c. 208, §§11, 21 (NEW) .]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1973, c. 625, §130 (AMD). 1989, c. 208, §§11,21 (AMD).

## §244. MOVING AND RELATED EXPENSES

**1. Payments.** Whenever a program or project to be undertaken by the department will result in the displacement of any person, the department shall make a payment to any displaced person, upon proper application on forms approved by the department, for:

- A. Actual reasonable expenses in moving that person, that person's family, business, farm operation or other personal property; [1989, c. 208, §§12, 21 (AMD).]
- B. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the department; [1989, c. 208, §§12, 21 (AMD) .]

C. Actual reasonable expenses, but not to exceed \$2,500, in searching for a replacement business or farm; and [2005, c. 642, §1 (AMD).]

D. Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria to be established by the department, but not to exceed \$20,000. [2005, c. 642, §2 (AMD).]

[ 2005, c. 642, §§1, 2 (AMD) .]

**2. Fixed payments for residential displacements.** Any displaced person eligible for payments under subsection 1 who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1 may receive a moving expense and dislocation allowance, which shall be determined according to a schedule established by the department.

[ 1989, c. 208, §§12, 21 (AMD) .]

**3. Fixed payments for business or farm displacements.** Any displaced person eligible for payments under subsection 1 who is displaced from that person's place of business or farm operation and who is eligible under criteria established by the department may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1. The payment consists of a fixed payment in an amount to be determined according to criteria established by the department, except that any such payment may not be less than \$1,000 nor more than \$100,000. A person whose sole business at the displacement dwelling is the rental of property to others does not qualify for a payment under this subsection. In the case of a business no payment may be made under this subsection unless the department is satisfied that the business:

A. Cannot be relocated without a substantial loss of its existing patronage; and [1989, c. 208, §§12, 21 (AMD).]

B. Is not part of a commercial enterprise having more than 3 other establishments not being acquired by the department that are engaged in the same or similar business. [2005, c. 642, §3 (AMD).]

[ 2005, c. 642, §3 (AMD) .]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1973, c. 625, §131 (AMD). 1989, c. 208, §§12,21 (AMD). 2005, c. 642, §§1-3 (AMD).

## §244-A. REPLACEMENT HOUSING FOR HOME OWNER

**1. Owner.** In addition to payments otherwise authorized, the department shall make an additional payment not in excess of \$22,500 to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

A. The amount, if any, which when added to the acquisition cost of the dwelling acquired by the department equals the reasonable cost of a comparable replacement dwelling. All determinations required to carry out this paragraph shall be made in accordance with standards established by the department; [1989, c. 208, §§13, 21 (AMD).]

B. The amount, if any, which will compensate the displaced person for any increased interest costs and other debt service costs which that person is required to pay for financing the acquisition of any such comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the department was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of that dwelling. In calculating the amount to be paid under this section, increased interest costs and other debt service costs shall be reduced to discounted present value. The payment shall be an amount which will reduce the mortgage

balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage on the displaced dwelling; and [1989, c. 208, §§13, 21 (AMD).]

C. Reasonable expenses incurred by the displaced person for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses. [1989, c. 208, §§13, 21 (AMD).]

[1989, c. 208, §§13, 21 (AMD) .]

**2. Replacement dwelling.** The additional payment authorized by subsection 1 shall be made only to a displaced person who purchases and occupies a replacement dwelling which is decent, safe and sanitary not later than the end of the one-year period beginning on the date on which the displaced person receives from the department final payment of all costs of the acquired dwelling, or the date on which the department meets its obligation under section 244-C, whichever is later, except that the department may extend the period for good cause. If the period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of the date otherwise designated in this subsection.

[1989, c. 208, §§14, 21 (AMD) .]

**3. Mortgage insurance.** The department is authorized to negotiate with any federal agency for any mortgage insurance protection available to a displaced person to insure any mortgage on a comparable replacement dwelling executed by a displaced person assisted under this section.

[1971, c. 593, §22 (AMD) .]

**4. Advance payments.** The additional payment authorized by subsection 1 may be made to the displaced person while determination of the acquisition cost of the dwelling is either unsettled or is pending before the State Claims Commission or the Superior Court. Such a payment is not authorized until and unless an agreement between the Department of Transportation and the displaced person is signed which shall authorize withholding from any subsequent award by the State Claims Commission or judgment of the court any amount determined from the agreement to be refunded by the displacee to the department by reason of the award or judgment being in excess of the determined net damage and offering price paid pursuant to section 154. A copy of the agreement shall be filed with the State Claims Commission with the petition or within 10 days after it is signed if the petition is already filed and a copy shall be filed in any subsequent case appealed to the Superior Court with the complaint or answer, or both. The State Claims Commission and court shall take judicial notice of the facts set forth in such agreement.

[1987, c. 395, Pt. A, §103 (AMD) .]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1973, c. 22, §3 (AMD). 1981, c. 470, §§A134,A135 (AMD). 1987, c. 395, §A103 (AMD). 1989, c. 208, §§13,14,21 (AMD).

## §244-B. REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

In addition to amounts otherwise authorized by this subchapter, the department shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 244-A which dwelling was actually and lawfully occupied by the displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of the dwelling or in any case in which displacement is not a direct result of the acquisition of the dwelling or in such other event as the department prescribes. Payment shall be either: [1989, c. 208, §§15, 21 (AMD).]

**1. Lease or rent.** The amount necessary to enable the displaced person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed \$5,250. At the discretion of the department, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account the person's income; or

[ 1989, c. 208, §§15, 21 (AMD) .]

**2. Purchase.** An amount to be used towards the purchase of a dwelling as follows. Any person eligible for a payment under subsection 1 may elect to apply the payment to a down payment, including incidental expenses described in section 244-A, subsection 1, paragraph C, on the purchase of a decent, safe and sanitary replacement dwelling. The person may, at the discretion of the department, be eligible under this subsection for the maximum payment allowed under subsection 1, except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of the dwelling, the payment shall not exceed the payment the person would otherwise have received under section 244-A, subsection 1, paragraph A had the person owned and occupied the displacement dwelling 180 days or more immediately prior to the initiation of negotiations.

[ 1989, c. 208, §§15, 21 (AMD) .]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1989, c. 208, §§15, 21 (AMD) .

## §244-C. ASSURANCE OF AVAILABILITY OF HOUSING

**1. Expenditures for replacement dwellings.** If a program or project undertaken by the department cannot proceed on a timely basis because comparable replacement dwellings are not available, and the department determines that those dwellings cannot otherwise be made available, the department may take such action as is necessary or appropriate to provide dwellings by use of funds authorized for the project. The department may use this section to exceed the maximum amounts which may be paid under sections 244-A and 244-B on a case-by-case basis for good cause as determined in accordance with guidelines that the department issues.

[ 1989, c. 208, §§16, 21 (NEW) .]

**2. Availability required.** No person may be required to move from a dwelling because of any program or project undertaken by the department unless the department is satisfied that comparable replacement housing is available to that person.

[ 1989, c. 208, §§16, 21 (NEW) .]

**3. Exceptions.** The department shall assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of:

A. A major disaster as defined in the United States Disaster Relief Act of 1974, Section 102(2);  
[1989, c. 208, §§16, 21 (NEW) .]

B. A national emergency declared by the President of the United States; or [1989, c. 208, §§16, 21 (NEW) .]

C. Any other emergency which requires the person to move immediately from the dwelling because continued occupancy of that dwelling by that person constitutes a substantial danger to the health or safety of that person. [1989, c. 208, §§16, 21 (NEW).]

[ 1989, c. 208, §§16, 21 (NEW) .]

#### SECTION HISTORY

1989, c. 208, §§16,21 (NEW).

### §245. ADMINISTRATION

The department shall carry out the functions of this subchapter either with its personnel or through any federal, state or municipal agency having an established organization for conducting relocation assistance programs; and is authorized and empowered to make all contracts and do all things necessary to fulfill the intent and purposes of this subchapter. [1989, c. 208, §§17, 21 (AMD).]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1989, c. 208, §§17,21 (AMD).

#### §245-A. HARDSHIP

If the department deems a hardship case exists, it may make any payment authorized by this subchapter in whole or in part to the displaced person affected in advance of moving, conveying or other acquisition of title or possession by the State. [1971, c. 593, §22 (AMD).]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD).

#### §245-B. GUIDELINES AND RULES

The department may adopt guidelines and procedures, or promulgate rules consistent with this subchapter as it determines necessary or appropriate to carry out this subchapter and to include the standards of "decent, safe and sanitary." [1989, c. 208, §§18, 21 (AMD).]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §22 (AMD). 1989, c. 208, §§18,21 (AMD).

### §246. APPEAL

**1. State Claims Commission.** If the department is unable to negotiate any payment authorized under section 244, subsection 1, paragraph A, or section 244-A, subsection 1, at what it deems to be a reasonable amount, either the department or the displaced person, or both, may apply to the State Claims Commission in writing for a determination and assessment. The proceedings shall then be the same as in condemnation proceedings under subchapter III.

[ 1987, c. 395, Pt. A, §104 (AMD) .]

**2. Commissioner of Transportation.** Any person aggrieved by a determination as to eligibility for any payment, except those enumerated in subsection 1, authorized by this subchapter may have that person's application reviewed by the commissioner or the commissioner's delegate whose determination shall be final and nothing in this section may be construed to give any person a cause of action in the State Claims Commission or the Superior Court.

[ 1989, c. 208, §§19, 21 (AMD) .]

#### SECTION HISTORY

1971, c. 333, §1 (NEW). 1971, c. 593, §§22,24 (AMD). 1981, c. 470, §A136 (AMD). 1987, c. 395, §A104 (AMD). 1989, c. 208, §§19,21 (AMD).

### §247. LIMITATION

Nothing contained in this subchapter shall be construed as creating in any eminent domain proceeding an element of damages not in existence on the date of enactment hereof. [1971, c. 333, §1 (NEW).]

Any payments authorized under this subchapter and received by a displaced person shall not be considered income for purposes under the Internal Revenue Code, or resources of any recipient of public assistance. [1971, c. 333, §1 (NEW).]

#### SECTION HISTORY

1971, c. 333, §1 (NEW).

## Chapter 5: PARKWAYS AND FREEWAYS

### §251. DEFINITIONS

*(REPEALED)*

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 456, §A72 (RP).

### §252. CONSTRUCTION

*(REPEALED)*

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 771, §249 (AMD). 1981, c. 456, §A73 (RP).

### §253. SERVICE ROADS

*(REPEALED)*

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 456, §A74 (RP).

### §254. ACQUISITION OF LAND OR RIGHTS IN LAND

*(REPEALED)*

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 456, §A75 (RP).

## **§255. PAYMENT FOR COST OF RELOCATING UTILITY FACILITIES IN INTERSTATE SYSTEM**

Any utility which is required to move or relocate its facilities under this section from or in any way because of construction needs in building the interstate system under the Federal-Aid Highway Act of 1956 on projects for which the contracts are signed after August 28, 1957 shall be reimbursed for the cost of relocation of such facilities as said cost is defined in said Federal-Aid Highway Act. The department may make rules and regulations for the determination of such cost in conformity with applicable federal rules and regulations under said Act. The department shall have such rights to inspect the books of account of the utility as may be required in determining the reimbursable costs provided in this section. [1971, c. 593, §22 (AMD).]

Whenever the department shall determine that any utility facility which now is, or hereafter may be, located in, over, along or under any way should be moved or relocated because of construction needs in building said interstate system, the utility owning or operating such facility shall relocate or move the same in accordance with an order of the department. If the failure of the utility to move such facility within the time specified in such order should delay the work of the contractor on the project involved, the utility shall be liable to the State for the damages that the State may be required to allow to the contractor under the contract between the State and the contractor for delay in the work caused by the presence of the facility. The utility shall not be liable for such damages if its failure to move shall be for reasons beyond its control. If the department and the utility shall not agree as to the liability of the utility for such damages, either party may appeal to the Superior Court for a determination thereof. Such liability shall not exceed such reimbursable costs as may be determined by the preceding paragraph. [1971, c. 593, §22 (AMD).]

"Utility," as used in this section, means and includes any public utility under the jurisdiction of the Public Utilities Commission and any corporation which owns and operates a telephone or telegraph system or an oil pipe line system and which is subject to the jurisdiction of the Federal Communications Commission or Interstate Commerce Commission and any municipality or any quasi-municipal body operating a utility service such as a fire or police alarm line, street lighting, sewerage or water pipes and any rural electrification cooperative which is subject to Title 35-A, chapter 37, subchapters I, II and III. [1987, c. 141, Pt. B, §17 (AMD).]

The reimbursable costs provided in this section shall be paid from the General Highway Fund operating capital under the direction of the department, and said General Highway Fund operating capital shall be repaid in full for any costs so paid from reimbursements received by the department from the Federal Government on account thereof. At no time shall the amount paid from the general fund operating capital for the purposes of this section exceed the amount of the 90% federal funds to be available for projects in said interstate system under Title 23, United States Code, § 123 to match the state appropriation made for the pertinent biennium. Any appropriation so made, which shall be expended under the direction of the department, shall apply to projects in said interstate system for which contracts are signed prior to June 30th of the 2nd year of said biennium and to the extent of such contracts shall be carried forward and not lapse. [1977, c. 380, Pt. B, §5 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD). 1977, c. 380, §B5 (AMD). 1987, c. 141, §B17 (AMD).

## **§256. FINANCIAL ASSISTANCE PROGRAM FOR UTILITIES**

*(REPEALED)*

### SECTION HISTORY

1991, c. 860, §1 (NEW). 1993, c. 656, §1 (RPR). 2013, c. 36, §6 (RP).

## **Chapter 7: CONTROLLED ACCESS HIGHWAYS**

## §301. DEFINITION

A controlled access highway is a highway on which, in the interest of safety and efficiency of operation, abutting property owners have no right of direct access and on which the type and location of all access connections are determined and controlled by the department. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD).

## §302. USE

The department shall have full power and authority to lay out, establish, acquire, open, construct, improve, maintain, discontinue and regulate the use of controlled access highways within this State in the same manner or manners in which said department may now lay out, establish, acquire, open, construct, improve, maintain, discontinue and regulate the use of highways within the State. The department shall have any and all other additional authority and power relative to such controlled access highways as they now respectively possess relative to highways, including the authority and power to acquire or accept title to the lands or rights of way needed for the same. [1971, c. 593, §22 (AMD).]

In connection with the laying out and establishment of a controlled access highway the department may take in fee or lesser estate, by purchase, gift, devise or by eminent domain under chapters 1 to 19, part or all of any part of land adjoining the highway location which, by reason of such laying out and establishment of a controlled access highway, has been severed from legal access to any public highway. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD).

## §303. EASEMENTS OF ACCESS

Where an existing highway has been designated as, or included within, a controlled access highway by said department, existing easements of access may be so extinguished by purchase or by taking under eminent domain, in accordance with any existing method now exercised by said department in purchasing or taking land for highway purposes. Access to such controlled access highway from any existing highway, road or street may be regulated and restricted by the department. Access to any such controlled access highway from any new highway, road or street shall be subject to the consent and approval of the department. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD).

## §304. COMMERCIAL ENTERPRISES PROHIBITED

No commercial enterprise or activity shall be authorized or conducted by the department or any agency or officer of the State within or on the property or right-of-way acquired for any controlled access highway under this chapter, except that the department may permit the erection or installation of electric power, telegraph, telephone or pipe line facilities within the controlled area. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD).

### **§305. SIGNS SHOWING SERVICE FACILITIES**

The location of service, fuel and recreational facilities may be indicated to the users of any controlled access highway by appropriate signs erected within the right-of-way, at or near the junction of such access roads as may be provided. The size, style, specifications and location of such signs shall be determined by the department. [1971, c. 593, §22 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD).

### **§306. APPLICATION OF PROVISIONS**

This chapter does not apply to highways other than those in the state highway system as designated by the department nor to those in the compact or built-up areas of any city or town as defined in Title 29-A, section 2074, subsection 2, except with the approval of the municipal officers of the city or town wherein such compact or built-up area is situated. [1995, c. 65, Pt. A, §61 (AMD); 1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. C, §15 (AFF).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1995, c. 65, §A61 (AMD). 1995, c. 65, §§A153,C15 (AFF).

### **§307. POWERS AS SUPPLEMENTARY AND ADDITIONAL**

This chapter shall be considered supplementary and in addition to any and all other powers now exercised by the department. [1971, c. 593, §22 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD).

## **Chapter 7-A: MAINE TURNPIKE**

### **§311. MAINE TURNPIKE AUTHORITY**

*(REPEALED)*

#### SECTION HISTORY

1981, c. 492, §D1 (NEW). 1981, c. 595, §2 (RP).

### **§312. LEGISLATIVE INTENT**

*(REPEALED)*

#### SECTION HISTORY

1981, c. 492, §D1 (NEW). 1981, c. 595, §2 (RP).

### **§313. DEFINITIONS**

*(REPEALED)*

#### SECTION HISTORY

1981, c. 492, §D1 (NEW). 1981, c. 595, §2 (RP).

### **§314. POWERS OF THE MAINE TURNPIKE AUTHORITY**

*(REPEALED)*

## SECTION HISTORY

1981, c. 492, §D1 (NEW). 1981, c. 595, §2 (RP).

**§315. EMINENT DOMAIN**

*(REPEALED)*

## SECTION HISTORY

1981, c. 492, §D1 (NEW). 1981, c. 595, §2 (RP).

**§316. MAINTENANCE OF TURNPIKE**

*(REPEALED)*

## SECTION HISTORY

1981, c. 492, §D1 (NEW). 1981, c. 595, §2 (RP).

**§317. RATES**

*(REPEALED)*

## SECTION HISTORY

1981, c. 492, §D1 (NEW). 1981, c. 595, §2 (RP).

**§318. TURNPIKE REVENUES**

*(REPEALED)*

## SECTION HISTORY

1981, c. 492, §D1 (NEW). 1981, c. 595, §2 (RP).

**Chapter 8: MAINE TURNPIKE****§331. DEFINITIONS**

*(REPEALED)*

## SECTION HISTORY

1977, c. 658, §2 (NEW). 1981, c. 492, §D2 (RP).

**§332. LEGISLATIVE INTENT**

*(REPEALED)*

## SECTION HISTORY

1977, c. 658, §2 (NEW). 1981, c. 492, §D2 (RP).

**§333. ADMINISTRATION OF THE MAINE TURNPIKE**

*(REPEALED)*

## SECTION HISTORY

1977, c. 658, §2 (NEW). 1981, c. 492, §D2 (RP).

**§334. CONSTRUCTION AND MAINTENANCE***(REPEALED)*

## SECTION HISTORY

1977, c. 658, §2 (NEW). 1981, c. 492, §D2 (RP).

**§335. TOLL FACILITIES***(REPEALED)*

## SECTION HISTORY

1977, c. 658, §2 (NEW). 1981, c. 492, §D2 (RP).

**§336. RATES***(REPEALED)*

## SECTION HISTORY

1977, c. 658, §2 (NEW). 1981, c. 492, §D2 (RP).

**§337. MAINE TURNPIKE ACCOUNT***(REPEALED)*

## SECTION HISTORY

1977, c. 658, §2 (NEW). 1981, c. 456, §A76 (AMD). 1981, c. 492, §D2 (RP). 1981, c. 698, §98 (AMD).

**§338. MOTORIST SERVICES***(REPEALED)*

## SECTION HISTORY

1977, c. 658, §2 (NEW). 1981, c. 492, §D2 (RP).

**§339. EXEMPTION FROM TAXES***(REPEALED)*

## SECTION HISTORY

1977, c. 658, §2 (NEW). 1981, c. 492, §D2 (RP).

**§340. STATUS OF THE MAINE TURNPIKE AUTHORITY EMPLOYEES***(REPEALED)*

## SECTION HISTORY

1977, c. 658, §2 (NEW). 1981, c. 492, §D2 (RP).

**§341. BARGAINING RIGHTS OF MAINE TURNPIKE AUTHORITY EMPLOYEES***(REPEALED)*

## SECTION HISTORY

1977, c. 658, §2 (NEW). 1981, c. 492, §D2 (RP).

**Chapter 9: BRIDGES**

## Subchapter 1: GENERAL PROVISIONS

### §351. DEFINITION OF STATE HIGHWAY

For the purposes of this section and section 401, state highways are defined to be those highways that have been and may in the future be so designated by the department, in accordance with section 53. [1971, c. 593, §22 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD).

### §352. EXCEPTIONS

*(REPEALED)*

#### SECTION HISTORY

1979, c. 581, §1 (RP).

### §353. EXISTING CONTRACTS, JUDGMENTS AND DECISIONS NOT AFFECTED

Nothing contained in this subchapter and subchapters II and III shall invalidate any existing contract, judgment or decision of any tribunal whereby any bridge is wholly or partly kept in repair or any money is contributed or to be contributed for the purpose of construction or maintenance of any bridge by any individual, firm or corporation.

### §354. RECONSTRUCTION OF BRIDGES GENERALLY

The department shall have authority to reconstruct any bridge wholly or partly under the control of the State when, in its opinion, such reconstruction is necessary, and the cost of the work shall be paid from any funds available for the construction of bridges. [1979, c. 581, §2 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1979, c. 581, §2 (AMD).

### §355. PROCEEDINGS UNDER GENERAL STATUTE

All legal proceedings necessary to carry out any provisions of this subchapter and subchapters II and III shall be had under the general statute.

## Subchapter 2: STATE HIGHWAY BRIDGES

### §401. CONSTRUCTION, RECONSTRUCTION AND IMPROVEMENT

The construction, reconstruction and improvement of all bridges on state highways and all approaches to those bridges are borne wholly by the State except as otherwise provided in this Title. [1991, c. 409, §2 (AMD).]

#### SECTION HISTORY

1991, c. 409, §2 (AMD).

### §402. MAINTENANCE

The cost of maintenance of all bridges on state highways, and all approaches thereto, shall be borne wholly by the State.

## Subchapter 3: STATE AID AND 3RD CLASS ROAD BRIDGES

**§451. CONSTRUCTION AND REBUILDING IN TOWNS***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§1,10 (RP).

**§452. APPORTIONMENT OF COST; DEFINITIONS***(REPEALED)*

## SECTION HISTORY

1969, c. 482, (AMD). 1973, c. 595, §1 (AMD). 1975, c. 620, §1 (AMD).  
1985, c. 480, §§1,10 (RP).

**§453. PLANS AND SPECIFICATIONS; CONTRACTS; REQUISITIONS; BIDS; FINANCING***(REPEALED)*

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 771, §250 (AMD). 1985, c. 86, §1 (AMD).  
1985, c. 480, §§1,10 (RP). 1985, c. 554, §3 (AMD). 1987, c. 402, §A147 (RP).

**§454. SUPERVISION; STATEMENT OF COST; SALVAGE; FAILURE TO PAY SHARE OF COST***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§1,10 (RP).

**§455. BRIDGES CROSSING BOUNDARY LINES; JOINT BOARD; APPORTIONMENT OF COSTS***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§1,10 (RP).

**§456. LIMIT ON BUILDING; EMERGENCIES***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§1,10 (RP).

**§457. STATE NOT LIABLE FOR DAMAGES; CAUTION SIGNS***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§1,10 (RP).

**§458. COST OF MAINTENANCE***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§1,10 (RP).

**§459. PERSONNEL PAID FROM BRIDGE FUNDS**

*(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§1,10 (RP).

## Subchapter 4: INTERNATIONAL AND INTERSTATE BRIDGES

## Article 1: MAINTENANCE

**§501. STATE BEARS PROPORTIONATE COST**

*(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§2,10 (RP).

## Article 2: WIRES AND PIPELINES

**§551. AFFIXING WIRES AND PIPELINES**

*(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§2,10 (RP).

**§552. APPLICATION; REPORT**

*(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§2,10 (RP).

**§553. HEARING; PROCEDURE**

*(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§2,10 (RP).

**§554. GRANTING OF APPLICATION; LIMITS ON USE OF RIGHT OR PERMIT**

*(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§2,10 (RP).

## Subchapter 4-A: LOCAL BRIDGES

## §561. APPLICABILITY

This subchapter applies to all minor spans and bridges, as those terms are defined in this subchapter, that are located on public ways classified as town ways or state aid highways pursuant to section 53, excluding railroad bridges, bridges over the Maine Turnpike, bridges over interstate highways and bridges over state highways and state aid highways. [2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF).]

### SECTION HISTORY

2001, c. 314, §2 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 667, §§20,22 (AFF).

## §562. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF).]

**1. Average annual daily traffic.** "Average annual daily traffic" or "AADT" means the average annual daily traffic as determined by the department using accepted engineering practices.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**2. Bridge.** "Bridge" means a structure, including supports, designed principally to carry motor vehicles that is erected over a depression or an obstruction, such as water, a highway or a railway, and has an opening measured along the center of the roadway of more than 20 feet between the undercropping of abutments or spring lines of arches or the extreme ends of openings for multiple boxes. It also includes multiple pipes when the clear distance between openings is less than 1/2 of the smaller contiguous opening. Issues arising regarding the definition of "bridge" must be resolved in accordance with the method specified in a publication entitled "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges" published by FHWA, or any subsequent replacement publication by FHWA. "Bridge" is defined in accordance with the FHWA definition.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**3. Capital improvement.** "Capital improvement" means the creation of, addition to or restoration of structural or functional capacity of a structure. "Capital improvement" includes construction of new structures, replacement of existing structures, removal of closed structures and rehabilitation of existing structures. Rehabilitation differs from maintenance in that it makes comprehensive structural or functional improvements that impact serviceability for at least 20 years, whereas similar maintenance is restricted to repairs to individual members of a structure or isolated areas of a structure. "Capital improvement" includes the cost of property acquisition, permitting, design, construction, traffic control, supervision and administration and all related costs.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**4. Capital responsibility.** "Capital responsibility" means the responsibility to provide all resources needed to make capital improvement to a structure.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**5. Culvert.** "Culvert" means any pipe or other structure that has a span of less than 10 feet or multiple pipes or other structures with a combined opening of less than 80 square feet in area.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**6. Detour length.** "Detour length" means the shortest distance measured along a public way from one abutment of a bridge to the other abutment that would result if the bridge were closed.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**7. Federal Highway Administration.** "Federal Highway Administration" or "FHWA" means an agency of the United States Department of Transportation.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**8. Low use bridge.** "Low use bridge" means a bridge with an AADT of under 100 motor vehicles.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**9. Maintenance.** "Maintenance" means the work necessary to preserve a structure's existing structural or functional capacity and integrity and to abate deterioration of its components. Maintenance is not intended to increase or fully restore structural or functional capacity. Maintenance is performed to ensure safety of a user of the structure or the structure in response to vehicular accident damage, flood damage or ice damage or unanticipated component failure. Maintenance normally is scheduled for routine operations or to address limited deficiencies found in periodic inspections.

[ 2001, c. 1, §28 (COR) .]

**10. Maintenance responsibility.** "Maintenance responsibility" means the responsibility to provide all resources needed to perform maintenance on a structure. "Maintenance responsibility" does not include snow and ice control.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**11. Minor span.** "Minor span" means a structure designed principally to carry motor vehicles that is larger than a culvert but has a span less than that required to be defined as a bridge.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**12. Municipality.** "Municipality" means any unit of municipal government, including towns, cities, plantations and unorganized townships. "Municipality" includes departments or bureaus of State Government and quasi-independent agencies or boards of State Government that are responsible for structures on public highways, excepting the Maine Turnpike Authority. In cases of unorganized townships, "municipality" means county.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**13. Property valuation.** "Property valuation" means the value of all taxable property in a municipality based upon 100% of the current market value as determined by the State Tax Assessor.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**14. Redundant bridge.** "Redundant bridge" means a bridge in which the AADT multiplied by the detour length in miles is less than 200.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**15. Structure.** "Structure" means a bridge or minor span.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) . ]

#### SECTION HISTORY

RR 2001, c. 1, §28 (COR). 2001, c. 314, §2 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 667, §§C20,22 (AFF).

## §563. INSPECTION, POSTING AND CLOSURE

The department shall inspect all structures. [2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) . ]

**1. Municipal-maintained structures.** For a structure for which a municipality has maintenance responsibility, the department shall advise the municipality of its inspection findings, noted deficiencies and recommendations regarding posting or closure. The municipality has sole responsibility and authority to determine whether a structure must be posted or closed, except that the department may close the structure in cases of emergency or when the department reasonably determines closure is necessary to protect the traveling public from imminent hazard. If the department becomes aware of deficiencies in a structure that could impact posting or closure decisions, the department shall promptly notify the municipality. The municipality is responsible for all costs and expenses related to the posting and closure, including any needed notifications, procedures, signing and barricades.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) . ]

**2. Department-maintained structures.** For a structure for which the department has maintenance responsibility, the department has sole responsibility and authority to determine whether the structure must be posted or closed, except that a municipality may close the structure in cases of emergency. If the municipality becomes aware of deficiencies in a structure that could impact posting or closure decisions, the municipality shall promptly notify the department. The department is responsible for all costs and expenses related to the posting and closure, including any needed notifications, procedures, signing and barricades.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) . ]

#### SECTION HISTORY

2001, c. 314, §2 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 667, §§C20,22 (AFF).

## §564. MINOR SPANS

The department has maintenance responsibility and capital responsibility for all minor spans on state aid highways, unless provided otherwise pursuant to section 566, subsection 5. [2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) . ]

A municipality has maintenance responsibility and capital responsibility for all minor spans on town ways except as provided otherwise pursuant to section 566, subsection 5. For a minor span located on a town line, the municipalities shall equally share capital responsibility unless the municipalities agree otherwise. [2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) . ]

Upon request by a municipality, the department shall provide limited technical advice regarding repair and capital improvement options without assuming any cost of or liability to the municipality. [2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) . ]

#### SECTION HISTORY

2001, c. 314, §2 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 667, §§C20,22 (AFF).

## §565. BRIDGES

**1. Generally.** The department has maintenance responsibility and capital responsibility for all bridges on state aid highways and town ways except as provided in subsection 2 or unless provided otherwise pursuant to section 566, subsection 5.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**2. Low use or redundant bridges on town ways.** A municipality has maintenance responsibility for all low use bridges on town ways and all redundant bridges on town ways.

For the capital improvement of a low use bridge on a town way or a redundant bridge on a town way located wholly within one municipality, the municipality shall pay 50% of the cost or 1% of its property valuation, whichever is less. For a bridge located on a town line, each municipality shall pay 25% of the cost of the capital improvement or 1% of its property valuation, whichever is less, unless the municipalities and the department agree otherwise. The department shall pay the remaining portion of the cost of the capital improvement.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

### SECTION HISTORY

2001, c. 314, §2 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 667, §§C20,22 (AFF).

## §566. CHANGES AFFECTING RESPONSIBILITIES

**1. Changes to structures.** If a structure is improved in a manner that affects whether it is defined as a minor span or a bridge, the responsibilities set forth in this subchapter regarding the structure do not change unless the department determines that there exists a reasonable engineering basis for the improvement.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**2. New structures.** If a municipality constructs a new bridge on a town way, the department shall assume the responsibilities set forth in the subchapter only if the department determines that there is a reasonable engineering basis for the bridge, as opposed to a minor span, and if the department approves the design and construction of the bridge.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**3. Changes to classification of road.** If the department changes the classification of the road carried by the structure, the responsibilities regarding the structure change in accordance with this subchapter.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**4. Changes to federal definition of bridge.** If FHWA changes its definition of "bridge," the responsibilities change in accordance with this subchapter regarding structures affected by that change.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

**5. Special finding by commissioner.** Upon application by a municipality or upon the department's initiative, the commissioner, after notice and opportunity to be heard, may alter responsibilities set forth in this subchapter upon a finding that special and unusual factual circumstances related to the structure or its location justify the alteration.

[ 2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

SECTION HISTORY

2001, c. 314, §2 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 667, §§C20,22 (AFF).

### **§567. BRIDGE CAPITAL IMPROVEMENT PRIORITIES**

The department shall biennially prepare a list of bridges that are eligible for capital improvement under this subchapter, arranged in priority order using accepted bridge management principles and as constrained by available funding. The department is the final arbiter as to whether any bridge is placed on the list. The department shall consult with municipalities regarding the manner of improving low use bridges on town ways and redundant bridges on town ways. [2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

SECTION HISTORY

2001, c. 314, §2 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 667, §§C20,22 (AFF).

### **§568. EMERGENCY IMPROVEMENTS**

In case of an emergency as determined by the department, the department may perform any maintenance or capital improvement to a structure. [2001, c. 314, §2 (NEW); 2001, c. 314, §4 (AFF) .]

SECTION HISTORY

2001, c. 314, §2 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 667, §§C20,22 (AFF).

## Subchapter 5: BRIDGES OF HISTORIC SIGNIFICANCE

### **§601. MAINTENANCE AND REHABILITATION**

*(REPEALED)*

SECTION HISTORY

1985, c. 480, §§4,10 (RP).

### **§602. FINDING OF FACT**

The Legislature finds that it is in the best interest of the State that bridges with historic significance be maintained or improved as necessary by the State. These bridges are of historic importance due to their unique construction combined with their antiquity. Should it become necessary to bypass any of these structures or to replace them with modern structures, the Legislature further finds that the provisions of subchapter I and subchapter IV-A shall apply. [2001, c. 1, §29 (COR) .]

SECTION HISTORY

1985, c. 480, §§5,10 (NEW). RR 2001, c. 1, §29 (COR).

**§603. MANAGEMENT**

The State is responsible for the management of and all costs for maintenance and rehabilitation for the following historic bridges: Lovejoy Bridge, Andover; Robyville Bridge, Corinth; Hemlock Bridge, Fryeburg; Bennett Bridge, Lincoln Plantation; Watson's Bridge, Littleton; Artist's Bridge, Newry; Lowe's Bridge, Sangerville-Guilford; Babb's Bridge, Windham-Gorham; Wire Bridge, New Portland; Porter Bridge, Porter-Parsonsfield; Bailey Island Bridge, Harpswell; Sewall's Bridge, York; and Ryefield Bridge, Harrison-Otisfield. [2013, c. 36, §7 (AMD).]

The commissioner shall, from time to time, make recommendations to the Legislature relating to additions to or deletions from the list in this section. The commissioner may establish such guidelines as may be necessary and may make recommendations either on his own initiative or upon petition by any party. [1985, c. 480, §§5, 10 (NEW).]

## SECTION HISTORY

1985, c. 480, §§5,10 (NEW). 1987, c. 107, (AMD). 2001, c. 455, §1 (AMD). 2013, c. 36, §7 (AMD).

## Subchapter 6: TOWN WAY BRIDGES

**§605. RECONSTRUCTION IN TOWNS***(REPEALED)*

## SECTION HISTORY

1977, c. 688, §1 (NEW). 1985, c. 480, §§6,10 (RP).

**§606. APPORTIONMENT OF COSTS; DEFINITIONS***(REPEALED)*

## SECTION HISTORY

1977, c. 688, §1 (NEW). 1979, c. 551, §1 (AMD). 1985, c. 480, §§6,10 (RP).

**§607. MAINTENANCE***(REPEALED)*

## SECTION HISTORY

1977, c. 688, §1 (NEW). 1985, c. 480, §§6,10 (RP).

## Subchapter 7: LOCAL BRIDGES

**§608. FINDINGS OF FACT***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§608-A. DEFINITIONS***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 1987, c. 325, §1 (AMD). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

## **§608-B. TRANSFER**

*(REPEALED)*

### SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 1987, c. 325, §2 (AMD). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

## **§608-C. CAPITAL IMPROVEMENT CANDIDATES**

*(REPEALED)*

### SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 1997, c. 13, §1 (AMD). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

## **§608-D. PRELIMINARY ENGINEERING**

*(REPEALED)*

### SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

## **§609. APPROVAL TO PROCEED**

*(REPEALED)*

### SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 1987, c. 325, §3 (AMD). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

## **§609-A. COUNTY COMMISSIONERS AUTHORIZED TO BORROW**

*(REPEALED)*

### SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

## **§609-B. COST SHARING**

*(REPEALED)*

### SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

## **§609-C. PAYMENT OF TOWN AND COUNTY COSTS**

*(REPEALED)*

### SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 1999, c. 473, §D10 (AMD). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§609-D. BRIDGES CROSSING BOUNDARY LINE; APPORTIONMENT OF COSTS***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§610. STATE NOT LIABLE FOR DAMAGE***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§610-A. CAPITAL ALLOCATION***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§610-B. PRIORITY OF IMPROVEMENTS***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§610-C. EMERGENCY IMPROVEMENTS***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§610-D. SALVAGE***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§610-E. SUPERVISION***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§610-F. MAINTENANCE OF STRUCTURES***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§610-G. LOCAL BRIDGES ON FEDERAL SYSTEMS***(REPEALED)*

## SECTION HISTORY

1985, c. 480, §§7,10 (NEW). 1987, c. 325, §4 (RPR). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§610-H. LEGISLATIVE FINDINGS***(REPEALED)*

## SECTION HISTORY

1987, c. 793, §A2 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§610-I. EXTRAORDINARY BRIDGES***(REPEALED)*

## SECTION HISTORY

1987, c. 793, §A2 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**§610-J. EXTRAORDINARY BRIDGE CONSTRUCTION RESERVE***(REPEALED)*

## SECTION HISTORY

1987, c. 793, §A2 (NEW). 2001, c. 314, §4 (AFF). 2001, c. 314, §1 (RP). 2001, c. 667, §§C20,22 (AFF).

**Chapter 10: BIKEWAYS****§611. DEFINITION**

For the purposes of this chapter, a bikeway is defined as a vehicle way, paved or unpaved, upon which bicycles, unicycles or other man-powered vehicles may be pedaled. Electric personal assistive mobility devices, as defined in Title 29-A, section 101, subsection 22-A, may also be operated on bikeways, unless prohibited by local ordinance or state or federal law. A bikeway may be part of a road or highway, or it may be adjacent to a road or highway. [2001, c. 687, §2 (AMD).]

## SECTION HISTORY

1975, c. 615, (NEW). 2001, c. 687, §2 (AMD).

## §612. AUTHORITY OF DEPARTMENT OF TRANSPORTATION

The Department of Transportation is authorized to construct bikeways within the existing rights-of-way of any state or state-aid highway. The department may also acquire additional rights-of-way adjacent to existing highway rights-of-way for the construction of bikeways. Such construction and acquisition of rights-of-way shall be accomplished in the same manner provided in this Title for highways. [1975, c. 615, (NEW).]

The Department of Transportation shall consider development of bikeways when developing capital improvement programs. [1975, c. 615, (NEW).]

### SECTION HISTORY

1975, c. 615, (NEW).

## Chapter 11: LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS

### §651. STATE AND STATE AID HIGHWAYS

The department may alter, widen or change the grade of any state or state aid highway whenever in its judgment the public exigency may require, and may lay out, establish and open a new highway as a state highway, and upon appropriate petition from municipal officers may lay out, establish and open a new highway as a state aid highway. It may discontinue a highway, or a portion thereof, as a state or state aid highway and the same shall be thereafter maintained by the town or county originally liable therefor except as otherwise provided. [1971, c. 593, §22 (AMD).]

The department, in consultation with a municipality, may preserve and develop the natural scenic beauty along and adjacent to any state or state aid highway to integrate the public improvement with the aesthetics of the area traversed by the highway, particularly along those areas of the highway that constitute the entrance to that municipality. The department shall consult with each municipality traversed by a state or state aid highway on the placement of utility poles and signs within the boundaries of that municipality. The department may establish and maintain rest areas, turn-outs and parking strips for the suitable accommodation of the public whenever in its judgment the public exigency may require. [2003, c. 119, §1 (AMD).]

The department may construct ditches and drains to carry water away from any highway that is under its supervision or that it is constructing, and over or through any lands of persons or corporations when it deems it necessary for public convenience or for the proper care of such highway. No such ditch or drain shall pass under or within 20 feet of any dwelling house without the consent of the owner thereof. [1971, c. 593, §22 (AMD).]

Wherever, on or along public highways, ditches or drains have existed for a period of 20 years or longer, which cause water to be flowed away from the highway, there shall be a conclusive presumption that easements for such flowage from such ditches or drains exist, but only to the extent of the original flowage. This paragraph does not apply in the cases protected by section 6025. [1987, c. 141, Pt. B, §18 (AMD).]

The department shall take into consideration the interests of a municipality as to the location of any state or state aid highway construction or alteration within the boundaries of that municipality. [2003, c. 119, §2 (AMD).]

The department, at its discretion, may authorize a person, corporation or entity who has had conditions imposed pursuant to Title 23, section 704-A or by other governmental review to perform construction work on the state or state aid highway system and on town ways. The performance of the work must be in compliance with the department's standards for highway and bridge construction, traffic control and bonding and any other standards or conditions the department may impose. All of the department's expenses and administrative costs relating to the work must be paid by the person authorized to perform the work.

Notwithstanding the Maine Tort Claims Act, Title 14, chapter 741, the State or its employees are immune from suit for damages arising from any activities performed in connection with this work. [1999, c. 468, §1 (AMD).]

#### SECTION HISTORY

1965, c. 295, §2 (AMD). 1969, c. 212, (AMD). 1971, c. 593, §22 (AMD). 1987, c. 141, §B18 (AMD). 1991, c. 409, §3 (AMD). 1999, c. 468, §1 (AMD). 2003, c. 119, §§1,2 (AMD).

## §652. PROCEEDINGS ON DAMAGE CLAIMS

**1. Change of grade.** Whenever the department changes the grade of any state or state aid highway, as provided in chapters 1 to 19, to the injury of an owner of adjoining land, that owner may apply, within 24 months after completion of the work according to the records of the department, to the department in writing for a determination and assessment of damages. If the department is unable to settle that damages at what it deems a reasonable amount, the department or interested parties may apply to the State Claims Commission in writing for a determination and assessment of the damages. The proceedings shall then be the same as in condemnation cases.

[1987, c. 769, Pt. A, §83 (RPR) .]

**2. Private water supplies.** In the event an owner of land adjacent to a state or state aid highway conceives that a private water supply on that land has been destroyed or rendered unfit for human consumption by the department constructing, reconstructing or maintaining the highway, such owner may apply in writing to the department for a determination of the alleged cause and assessment of the damage and if such claim is founded on construction, the owner shall present such application within 24 months after completion date of the work as that date appears in the records of the department.

The application shall set forth the name and address of the owner, the owner's source of title, the location of the property, a description of the damage, the cause to which the damage is attributed and the name and address of any lien holder.

A. If the department determines that it did not cause the alleged damage to such water supply, a copy of the determination shall be served by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. [1971, c. 593, §22 (AMD).]

B. If the department determines that any damage to the privately owned water supply was caused by the department constructing, reconstructing or maintaining the highway, a copy of the determination shall be served by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court and shall set forth an offer of settlement which shall be either:

- (1) To replace the water supply; or
- (2) To repair the damage to the water supply; or
- (3) To pay a designated sum of money; or
- (4) To purchase the realty served by the water supply in the event the cost of repair or replacement of the water supply exceeds the appraisal value of the realty. [1971, c. 593, §22 (AMD) .]

C. The department may issue rules and regulations in accordance with standards of the Department of Health and Human Services and the Public Health Service regarding water potability for the determination of the degree of contamination, pollution or fitness for domestic use. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

D. The department shall in its determination consider the necessity for installation or replacement of piping, tanks, pumps, heating systems or other related fixtures. The Department of Transportation shall not condition installation or replacement on the owner giving possession or title of any privately owned piping, tanks, pumps, heating systems or other related fixtures on his land to any agency of this State, unless agreed to by the property owner. [1975, c. 2, (NEW).]

E. If the department is unable to settle at what it deems a reasonable settlement, the department or owner may apply to the State Claims Commission in writing for a determination of the alleged cause and assessment of the damage. The proceedings shall then be the same as in condemnation cases. [1987, c. 769, Pt. A, §84 (RPR).]

F. This subsection shall not apply to private water supplies after June 26, 1969 where the location does not allow for or provide for adequate surface drainage. [1973, c. 625, §132 (AMD).]

G. This subsection shall not apply to private water supplies now located or hereafter located within the right-of-way limits. [1969, c. 435, (NEW).]

H. This subsection shall not apply to any private water supply damaged by construction, reconstruction or maintenance which the department determines to have already been contaminated or polluted by another source to the degree said contamination or pollution would have rendered it unfit for human consumption. [1971, c. 593, §22 (AMD).]

[ 1987, c. 769, Pt. A, §84 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

**3. Private water supplies within the right-of-way.** In order to prevent undue hardship to properties served by water systems existing within the right-of-way of state and state aid highways prior to June 26, 1969, and which are the sole source of water supply to the property, and which are destroyed or altered, subsequent to the effective date of this Act, due to highway construction or reconstruction, the Department of Transportation is authorized to compensate the owners for such loss as may be determined equitable by the department.

[ 1979, c. 140, (NEW) .]

#### SECTION HISTORY

1969, c. 435, (AMD). 1971, c. 593, §22 (AMD). 1973, c. 625, §132 (AMD). 1975, c. 2, (AMD). 1975, c. 293, §4 (AMD). 1979, c. 140, (AMD). 1987, c. 395, §§A105,A106 (AMD). 1987, c. 402, §§B18,B19 (AMD). 1987, c. 769, §§A83,A84 (AMD). 2003, c. 689, §B6 (REV).

## §653. HIGHWAY BOUNDARIES

**1. Authority.** The department may establish the boundary lines, limits or locations of any or all state highways and state aid highways and cause durable monuments to be erected at the angles thereof.

[ 1999, c. 188, §1 (NEW) .]

**2. Reestablishment of lost or doubtful boundaries.** Whenever in the opinion of the department the boundary lines, limits or location of any state highway or state aid highway or any part thereof are lost, uncertain or doubtful, the department may reestablish those lines, limits or location; land lying within those lines is a part of the highway right-of-way. The department shall file with the town clerk of the town in which the highway is located and with the registry of deeds in the county in which the highway is located maps showing the boundary lines, limits or location of such a reestablished highway, and those lines, boundaries, limits and location are those of the reestablished highway. The department shall post descriptions of those parts of such highways that lie within towns in one conspicuous place in those towns and at 2 points along the highway, and it shall publish a description of those parts of highways that lie within any county in a newspaper, if any, in that county.

In the absence of record, plan or layout sufficient to reestablish the boundary lines, limits or location of a state highway or state aid highway, the width of a state highway or state aid highway is deemed to extend to and include the area lying outside the shoulders and ditch lines and within any landmarks or historic features such as fences, fence posts, tree rows, stone walls, corner stones or other monuments indicating the boundary line.

In the absence of record, plan or layout or any landmarks or historic features that evidence the location of the boundaries of the right-of-way, the width of a state highway or state aid highway is deemed to extend to and include the sidewalks, shoulders and ditch lines adjacent to that highway and to the top of cuts or toe of fills where they exist.

Any person aggrieved by the reestablishment of boundary lines, limits and location of a reestablished highway may file a complaint for the assessment of damages to the Superior Court in the county where the reestablished highway is located within 60 days from the filing of maps with the registry of deeds, and not thereafter, and the court shall assess the damages, if any, by jury, as long as the reestablished boundary lines, limits or location are not the same as originally established. The department shall pay from its funds all expenses incurred and the amount of final judgment and costs if damages are awarded, except that the amount of the final judgment and costs must be paid by the plaintiff if the plaintiff fails to recover any damages.

[ 1999, c. 188, §1 (NEW) . ]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1999, c. 188, §1 (RPR).

### **§654. DETOUR ROADS AND SIGNS**

Before a state or state-aid highway is closed due to construction, the department shall establish a practical detour route and properly sign the route at all intersections. The detour route shall be maintained in a condition adequate to serve traffic until the state or state-aid highway under construction is opened to traffic. Upon completion of the construction project all detour signs shall be removed. [1989, c. 108, §1 (RPR) . ]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 771, §251 (AMD). 1989, c. 108, §1 (RPR) .

## **Chapter 13: CONSTRUCTION, MAINTENANCE AND REPAIRS**

### **Subchapter 1: GENERAL PROVISIONS**

#### **§701. ESTABLISHMENT OF SYSTEMS; SURVEYS**

The department shall lay out, construct and maintain a system of state and state aid highways substantially as described in chapters 1 to 19. All persons employed by the department under chapters 1 to 19 are authorized to the extent necessary for surveys and preliminary engineering to enter and cross all lands within, adjoining and adjacent to the area to be surveyed. [1971, c. 593, §22 (AMD) . ]

#### SECTION HISTORY

1971, c. 593, §22 (AMD) .

#### **§702. SPECIFICATIONS**

*(REPEALED)*

#### SECTION HISTORY

1981, c. 492, §C4 (RP) .

## §703. ACCESS ROADS TO PUBLIC SKI AREAS, PUBLIC INDUSTRIAL DEVELOPMENT AREAS AND CERTAIN RESOURCES

If the municipal officers of one or more municipalities or the county commissioners, if they are acting in the capacity of municipal officers, and the owner or owners of a ski area open to the general public, the owner or owners of a public industrial development area or the owners of a resource of general, regional or state economic significance to the public jointly deem it necessary that a public or private road be constructed or reconstructed in the municipality or unorganized township represented by the municipal officers or county commissioners, they may jointly petition the department for the construction or reconstruction of such a road. Following a review of the petition, if the department deems it advisable to do so it shall arrange for a public hearing to be held for the purpose of allowing the petitioners and others interested in the proposed road or reconstructed road to be heard. Following the hearing, if the department decides construction or reconstruction of such a road is warranted and falls within the provisions of this section it may arrange for construction or reconstruction under the following conditions. [1985, c. 682, (RPR).]

**1. Consent of owner.** Such a road shall be constructed or reconstructed only with the consent of the owner or owners of the land over which the section of road will be constructed or reconstructed. In the case of existing private roads or construction of a new road, the owner or owners shall donate the required land, in accordance with the requirements of the department, to the municipality, municipalities, county or counties involved. Following donation of this land, these government entities shall lay out the road as a town or county way.

[ 1985, c. 682, (RPR) . ]

**2. Cost.** The cost of construction or reconstruction shall be paid 50% from the Highway Fund, subject to available funds; 25% from the municipality and county if the road is located in whole or in part in unorganized township or townships; and 25% from the owner or owners of the ski area involved, the owner or owners of the industrial development area involved or the owners of a resource of general, regional or state economic significance to the public involved. Construction or reconstruction shall not be authorized by the department until the owner of the ski area, industrial development area or the owner or owners of an area containing a resource of general, regional or state economic significance to the public involved gives a bond to the State, approved by the department, to guarantee the payment of the ski owner's, industrial development owner's or the owner's or owners' of a resource of general, regional or state economic significance to the public, proportionate share and the municipality or county involved advises the department that its share of funds is available for construction or reconstruction of the access road.

[ 1985, c. 682, (RPR) . ]

**3. Supervision.** The department has the responsibility for the supervision and construction or reconstruction of the road.

[ 1985, c. 682, (RPR) . ]

**4. Limitation.** No more than 4 miles of access road in each township or municipality may be constructed or reconstructed under this section to serve any one ski area, industrial development area or area containing a resource of general, regional or state economic significance to the public.

[ 1985, c. 682, (RPR) . ]

**5. Prerequisite.** Before the department authorizes the construction or reconstruction of the road, the department must determine that there has been expended in developing the facility of the ski area, industrial development area or area containing a resource of general, regional or state economic significance to the

public, a minimum of \$100,000 or that there are funds in the amount of at least \$100,000 available to be expended in developing the facilities of the ski area, industrial development area or resource of general, regional or state economic significance to the public within a time to be established by the department.

No such road may be constructed or reconstructed until the municipalities and counties that are involved have appropriated or raised, by taxation or otherwise, a sum sufficient to pay to the State their proportionate share of the cost of the access road constructed or reconstructed under this section.

[ 1985, c. 682, (RPR) .]

**6. Maintenance.** Upon completion of the sections of access road constructed or reconstructed under this section, the municipality or municipalities and county or counties in which the section of highway is located shall assume the responsibility for properly maintaining the road as a public highway.

[ 1985, c. 682, (RPR) .]

#### SECTION HISTORY

1965, c. 388, §§1,2 (AMD). 1965, c. 513, §§43-A (AMD). 1971, c. 593, §22 (AMD). 1977, c. 688, §2 (AMD). 1981, c. 456, §A77 (AMD). 1985, c. 682, (RPR).

### §703-A. ACCESS ROADS TO BRIDGES OF HISTORIC SIGNIFICANCE

**1. Petition.** The town officers of one or more towns or the county commissioners, if they are acting in the capacity of town officers, may petition the department for the reconstruction or rehabilitation of a town way that serves as an access road to a bridge designated pursuant to section 603 as a bridge of historic significance. The department shall hold a public hearing on the proposal. If the department decides reconstruction or rehabilitation of the road is warranted, it may arrange for reconstruction or rehabilitation under the following conditions.

A. The cost of reconstruction or rehabilitation must be paid 75% from the Highway Fund, subject to available funds, and 25% from the town, towns, county or counties involved. [1997, c. 547, §1 (NEW) .]

B. The department has the responsibility for the supervision of the reconstruction or rehabilitation of the road. [1997, c. 547, §1 (NEW) .]

C. No such road may be reconstructed or rehabilitated until the town, towns, county or counties involved have appropriated or raised, by taxation or otherwise, a sum sufficient to pay to the State its proportionate share of the cost of the reconstruction or rehabilitation under this section. [1997, c. 547, §1 (NEW) .]

D. Upon completion of the reconstruction or rehabilitation, the town, towns, county or counties in which the section of the town way is located shall assume the responsibility for maintaining the road. [1997, c. 547, §1 (NEW) .]

For the purposes of this section, "town" means any unit of local government, including municipalities, towns, cities, plantations and unorganized townships.

[ 1997, c. 547, §1 (NEW) .]

#### SECTION HISTORY

1997, c. 547, §1 (NEW) .

## §703-B. FINANCING NEW ROAD CONSTRUCTION

If the municipal officers of one or more municipalities determine it necessary that a public road be constructed to spur economic development, downtown revitalization or neighborhood preservation; to create new housing stock; to promote mixed-use or densely settled village centers; or to enhance public safety, then the municipal officers may petition the Department of Transportation to finance from the Highway Fund up to 50% of the cost of the proposed road construction, subject to available funds. The municipality shall have a department-approved transportation plan for state and state aid highways and comply with the policies and procedures adopted by the department. The municipality is responsible for securing the balance of funds and for undertaking project design, permitting and construction following department guidelines. The public road must meet state design standards and function as a major collector or arterial highway as defined in department rules. Prior to the commitment of funds by the department, the department shall notify the participating municipalities of the likely classification of the proposed road and what, if any, changes in classification might result for existing public ways in the project area. [2005, c. 643, §1 (NEW).]

### SECTION HISTORY

2005, c. 643, §1 (NEW).

## §704. ENTRANCES TO HIGHWAYS REGULATED

It is unlawful to construct or maintain any driveway, entrance or approach within the right-of-way of any state highway or state aid highway, as defined in section 53, that lies outside the compact area of an urban compact municipality, as defined in section 754, without a written permit from the Department of Transportation or, if within the compact area, without a written permit from the proper municipal officials. The right-of-way is considered the full width of the right-of-way as laid out by the State, the county or the municipality. [1999, c. 676, §1 (RPR).]

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Arterial highway" means a highway providing long-distance connections as approved by the Federal Highway Administration pursuant to 23 Code of Federal Regulations, Section 470.105(b)(1999). [1999, c. 676, §1 (NEW).]

B. "Forest management activities" includes timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, timber stand improvement, pruning, timber harvesting and other forest harvesting, regeneration of forest stands and other similar or associated activities. [1999, c. 676, §1 (NEW).]

C. "Forest management roads" includes a route or track consisting of a bed of exposed mineral soil, gravel or other surfacing material constructed for or created by the repeated passage of motorized vehicles and used primarily for forest management activities, including associated log yard and winter haul roads. [1999, c. 676, §1 (NEW).]

[ 1999, c. 676, §1 (NEW) .]

**2. State highways and state aid highways.** The Department of Transportation is directed and municipalities are authorized to adopt rules and regulations for the design, location and construction of driveways, entrances and approaches on state highways and state aid highways to adequately protect and promote the safety of the traveling public and maintain highway right-of-way drainage.

[ 1999, c. 676, §1 (NEW) .]

**3. Arterial highways.** For arterial highways that lie outside the compact area of an urban compact municipality, the Department of Transportation shall limit the number, spacing, design, location and construction of driveways, entrances or approaches to promote the maintenance of existing posted speeds and ensure safe travel.

[ 2003, c. 571, §1 (AMD) .]

**4. Unsafe arterial highways.** For those arterial highway corridors with driveway-related crash-per-mile rates that exceed the 1999 statewide average for arterial highways of the same posted speed limit, the permit applicant must avoid, minimize or mitigate any deterioration of safety or reduction of the posted speed limit.

[ 1999, c. 676, §1 (NEW); 1999, c. 676, §2 (AFF) .]

**5. Exemptions.** A permit is not required for the following:

A. Any existing driveway, entrance or approach unless its grade, location or use is changed; or [ 1999, c. 676, §1 (NEW) .]

B. A driveway, entrance or approach used solely for forest management purposes provided that construction and maintenance follows departmental permit by rule requirements. A written permit is required if the use of that driveway, entrance or approach is changed. [ 1999, c. 676, §1 (NEW); 1999, c. 676, §2 (AFF) .]

[ 1999, c. 676, §1 (NEW); 1999, c. 676, §2 (AFF) .]

**6. Access denied.** Notwithstanding any other provision of this Title, the Department of Transportation and the municipalities shall deny ingress to and egress from property abutting a controlled access highway established by the department pursuant to chapter 7, except that the Commissioner of Transportation may allow access for the development of state and state aid highways and may allow access upon a determination by the commissioner that such access will not adversely affect public safety and will not have a significant negative impact on the mobility of through-travelers. The commissioner may approve or deny a relocation of an existing break in a control of access consistent with the rules adopted pursuant to subsection 2.

[ 2013, c. 220, §1 (AMD) .]

**7. Reconsideration.** In writing, the Commissioner of Transportation shall either approve an application under this section setting forth any conditions or terms required for approval or disapprove the application setting forth the reasons for disapproval. An applicant has 30 days from the receipt of this decision to request reconsideration. This request must outline the findings and conclusions of the commissioner to which that person objects, the basis of the objections and the nature of the relief requested. Nothing in this section may be construed to limit a person's lawful right to appeal a final agency action.

[ 1999, c. 676, §1 (NEW) .]

**8. Violation.** A violation of this section or the rules adopted pursuant to this section is punishable by a fine of not more than \$100 per day per violation. The fine begins to accrue 30 days after the Department of Transportation sends notice of the violation to the landowner. The department shall establish procedures for administrative enforcement of this section, establishing fines and reconsideration and appeals of enforcement actions.

[ 1999, c. 676, §1 (NEW); 1999, c. 676, §2 (AFF) .]

**9. Rules.** Rules adopted by the Department of Transportation pursuant to subsection 2 are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. Rules adopted pursuant to subsections 3 and 4, subsection 5, paragraph B and subsection 8 are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

[ 1999, c. 676, §1 (NEW) .]

**10. Requirements waived.** The department may waive the requirements of rules adopted pursuant to this section and may issue a permit for a driveway when the property abuts no other road affording vehicular access to a person's property and the property is outside the compact area of an urban compact municipality. The department may not deny a person the right to build on or to have vehicular access to property owned by that person unless the access is determined inconsistent with access management safety standards.

[ 2005, c. 188, §1 (NEW) .]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1999, c. 473, §C1 (AMD). 1999, c. 676, §2 (AFF). 1999, c. 676, §1 (RPR). 2001, c. 301, §1 (AMD). 2003, c. 571, §§1,2 (AMD). 2005, c. 188, §1 (AMD). 2013, c. 220, §1 (AMD).

## §704-A. TRAFFIC MOVEMENT PERMIT

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Department" means the Department of Transportation. [1999, c. 468, §2 (NEW).]

A-1. "High-speed rural arterial highway" means an arterial highway as defined in section 704 that is not located in the urban compact area of an urban compact municipality as described in section 754 and where the posted speed limit at the time of the application for a traffic movement permit is 40 miles per hour or greater. [2003, c. 363, §1 (NEW).]

B. "Passenger car equivalents at peak hour" means the number of passenger cars or, in the case of nonpassenger vehicles, the number of passenger cars that would be displaced by nonpassenger vehicles at that hour of the day during which the traffic volume generated by the development is higher than the volume during any other hour of the day. For purposes of this paragraph, one tractor-trailer combination is the equivalent of 2 passenger cars. [1999, c. 468, §2 (NEW).]

C. "Project" includes any construction, alteration or conversion of a building, or any development of state or regional significance that may substantially affect the environment as defined in Title 38, section 482, subsection 2. [1999, c. 468, §2 (NEW).]

D. "Traffic demand management techniques" means measures taken to reduce or spread peak hour traffic over a longer period of time. Such measures include, but are not limited to, on-site facilities or on-site design considerations to support local, regional or state bicycle, pedestrian, passenger rail, transit and ride-sharing efforts or plans. The department may not require operational support of passenger transportation systems or require parking management strategies of the permit applicant. [2003, c. 363, §2 (NEW).]

[ 2003, c. 363, §§1, 2 (AMD) .]

**2. Permit.** A traffic movement permit must be obtained from the department for any project that generates 100 or more passenger car equivalents at peak hour. A person receiving a permit under this section is not required to obtain a permit pursuant to section 704.

A. For any project that generates 100 or more passenger car equivalents at peak hour, the person responsible for the project is required to make adequate provision for traffic movement of all types into and out of the project area. Before issuing a permit, the department shall determine that any traffic increase attributable to the proposed project will not result in unreasonable congestion or unsafe conditions on a road in the vicinity of the proposed project. [1999, c. 468, §2 (NEW).]

B. The department, together with the appropriate representative of the municipality or municipalities where the project is located, shall discuss with the applicant at a meeting, referred to in this paragraph as a "scoping meeting," the scope of impact evaluation required for the proposed project and the type of proceedings warranted. The applicant shall provide notice to abutting municipalities. If the department determines as a result of these communications that the applicant has demonstrated that the proposed project satisfies standards adopted for projects that generate 100 to 200 passenger car equivalents at peak hour and the department determines that there are no other significant traffic-related issues presented, the department may issue a permit to the applicant without further proceedings. The department shall adopt rules establishing the submission requirement for a scoping meeting. Those rules must, at a minimum, establish 2 submission standards: one for an expedited review without further proceedings and one for a preliminary review with further proceedings anticipated. The rules must also establish the level of professional certification required by any submission and may not impose undue professional liability on the applicant. [1999, c. 468, §2 (NEW).]

C. [2003, c. 363, §3 (RP).]

D. If a project is located in an area designated as a growth area in a local growth management plan that has been found by the State to be consistent with the growth management program in Title 30-A, chapter 187 and the project does not have an entrance or exit located on a high-speed rural arterial highway and the applicant for a traffic movement permit implements traffic demand management techniques recommended by the department, then the required improvements are limited:

- (1) To those necessary to mitigate the impact of the project provided all safety standards are met, even if part or all of the traffic impact occurs outside the boundaries of the growth area; and
- (2) To the entrances and exits of the project, if the project reuses previously developed land area and buildings with no more than a 10% increase in building footprint regardless of the extent of vertical development. [2003, c. 363, §4 (RPR).]

E. Adequate provision for traffic movement may be provided through payment of funds pursuant to section 57-A. [1999, c. 468, §2 (NEW).]

F. Prior to issuing a traffic movement permit, the department must find that the applicant has right, title or interest to the property necessary to execute the traffic-related conditions of the permit, and that no inconsistent control of access provision exists with respect to access to the property. The department shall also advise the applicant that following issuance of the permit yet prior to construction of any improvements affecting the right-of-way of the department, the applicant must demonstrate through a developer agreement the financial, legal and technical ability to develop such improvements. [1999, c. 468, §2 (NEW).]

[ 2003, c. 363, §§3, 4 (AMD) .]

**3. Exemptions.** A permit is not required for any project reviewed under Title 38, section 1310-N, 1319-R or 1319-X. A permit is not required for any project exempt from review under Title 38, chapter 3, subchapter I, article 6 pursuant to Title 38, section 488, subsection 7 or subsection 18.

[ 1999, c. 468, §2 (NEW) .]

**4. Registered municipalities.** The department may register municipalities for issuing traffic movement permits under this section for projects generating 100 or 200 passenger car equivalents at peak hours upon finding that:

A. The municipality has in effect an ordinance or regulation for reviewing traffic movement permits that is consistent with the policy and purpose of this section; and [1999, c. 468, §2 (NEW).]

B. The ordinance or regulation is administrable and enforceable and will be properly administered and enforced. [1999, c. 468, §2 (NEW).]

Whenever any of the conditions set forth in this subsection are no longer being met, the department shall resume promptly the administration of reviewing traffic movement permits upon written notice to the municipality.

Upon a determination by the department that there will be no adverse traffic impact in a municipality other than the municipality in which the project is located, the department may register any municipality for issuing traffic movement permits under this section for any project generating more than 200 passenger car equivalents at peak hour.

The department may provide technical assistance to municipalities upon request for projects reviewed under this section.

The department may review projects for registered municipalities if the local reviewing authority for the municipality in which the project is located petitions the department in writing. Any neighboring municipality affected by the project may petition the department in writing to review the project no later than 30 days after it has been approved by the local reviewing authority.

[ 1999, c. 468, §2 (NEW) .]

**5. Reconsideration.** Requests for reconsideration by the commissioner under this subsection must be made in accordance with this subsection. Nothing in this subsection may be construed to limit a person's lawful right to appeal a final agency action.

If the department issues an order without a hearing, a person may request reconsideration by the department within 30 days after notice of the department's decision. This request must set forth, in detail, the findings and conclusions of the department to which that person objects, the basis of the objections and the nature of the relief requested. Upon receipt of the request, the department may schedule and hold a hearing limited to the matters set forth in the request.

[ 1999, c. 468, §2 (NEW) .]

**6. Fees.** The department shall assess fees for the issuance and processing of a permit under this section. Fees may not exceed \$500 for issuance of a permit following a scoping meeting as described in section 704-A, subsection 2, paragraph B, with no further review. Fees may not exceed \$2,000 for issuance of a permit requiring review beyond a scoping meeting.

[ 1999, c. 468, §2 (NEW) .]

**7. Consolidation.** If an applicant is required to obtain both a permit from the department pursuant to this section and a permit under the site location of development laws from the Department of Environmental Protection pursuant to Title 38, chapter 3, subchapter I, article 6, the applicant may either apply individually to each agency for the appropriate permit or request that the department and the Department of Environmental Protection provide a consolidated application process.

A. On the request of an applicant prior to the submission of applications for permits pursuant to this section and Title 38, chapter 3, subchapter I, article 6, the department and the Department of Environmental Protection shall provide a consolidated application process. As long as an application is not withdrawn, the process must result in a consolidated order issued by both the department and the Department of Environmental Protection, either approving or denying the applicable permits. Any necessary findings or conditions relevant to the individual permits must be separately identified in the

order. All applicable fees and the longer of the applicable processing times apply. The processing period may be extended pursuant to Title 38, section 344-B, subsection 3 or if a hearing is required pursuant to subsection 5. [1999, c. 468, §2 (NEW).]

B. If an aggrieved party seeks an administrative appeal of a consolidated order, and there are issues relevant to both permits, the department and the Department of Environmental Protection shall provide a consolidated administrative appeal process. If there are issues relevant to only one permit, the relevant portion of the order may be appealed to the appropriate agency. [1999, c. 468, §2 (NEW).]

C. The department and the Department of Environmental Protection shall enter into a memorandum of agreement establishing procedures for coordination of the consolidated application process and the consolidated administrative appeal process by June 30, 1999. [1999, c. 468, §2 (NEW).]

This subsection does not apply to a project reviewed by a municipality under subsection 4 or Title 38, section 489-A.

[ 1999, c. 468, §2 (NEW) . ]

**8. Modification of existing permits.** A permit issued under Title 38, chapter 3, subchapter I, article 6 prior to the effective date of this section may be modified by the department to address issues relating to traffic movement and adequate provision of roads. At the department's request, a person holding such a permit shall send a copy of the permit application to the department and to the Department of Environmental Protection. The department shall notify the Department of Environmental Protection of any substantive changes in the permit and shall provide that department with a copy of the final revised permit.

[ 1999, c. 468, §2 (NEW) . ]

**9. Rules.** Rules adopted under this section are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

[ 1999, c. 468, §2 (NEW) . ]

**10. Violation.** A violation of this section or the rules adopted pursuant to this section is punishable by a fine of not more than \$100 per day per violation. The fine begins to accrue 30 days after the Department of Transportation sends notice of the violation to the landowner. The department shall establish procedures for administrative enforcement of this section, establishing fines and reconsideration and appeals of enforcement actions.

[ 2003, c. 363, §5 (NEW) . ]

#### SECTION HISTORY

1999, c. 468, §2 (NEW). 2003, c. 363, §§1-5 (AMD).

## §705. CULVERTS

The Department of Transportation shall oversee the installation or replacement of culverts within the right-of-way on state and state aid highways lying outside the compact area of an urban compact municipality as defined in section 754. An abutter desiring to establish a new driveway, entrance or approach on these highways must first comply with section 704 and any rules adopted under section 704. If the department determines that a culvert is required, the abutter shall, at the abutter's expense, provide a culvert meeting department standards and install the culvert in a manner satisfactory to the department. The abutter has continuing responsibility for the condition and stability of the access, including replacement of any culverts or other structures pertaining to the access, subject to the department's ongoing jurisdiction over the right-of-way. [2009, c. 315, §1 (AMD).]

When the department determines that, in order to reestablish access to an abutting property, a culvert replacement is required for an existing driveway, entrance or approach located within the highway limits as part of a capital highway or ditching project or emergency response effort, the department is responsible for the cost of the replacement. [2009, c. 315, §1 (NEW).]

When the department determines a culvert replacement is not required for an existing driveway, entrance or approach located within the highway limits, the abutter is responsible for the cost of any replacement. [2009, c. 315, §1 (NEW).]

For locations on town ways and on state and state aid highways within the compact area of an urban compact municipality pursuant to section 754, the municipality must be petitioned by the abutter pursuant to section 704. Should a permit be issued, the abutter shall provide, at the abutter's expense, a culvert satisfactory to the municipality, which the municipality shall install and maintain. [1999, c. 473, Pt. C, §2 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C5 (AMD). 1989, c. 46, §1 (RPR). 1999, c. 473, §C2 (AMD). 2007, c. 306, §2 (AMD). 2009, c. 315, §1 (AMD).

## §706. CURBS

**1. Location or construction.** The Department of Transportation shall develop or approve standards for the location or construction of curbs on each side of a way in the business district or area as defined by the department, of any municipality for which curbs have been prescribed. Prior to October 1, 1988, these standards shall be adopted in a form to fully implement the specifications in the American National Standards Institute publication "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People" (ANSI A 117.1, 1986).

[ 1987, c. 604, §1 (AMD) .]

**2. Application.** Standards set for curb ramping under subsection 1 shall not apply to any existing curb on October 3, 1973; but shall apply, to the extent reasonable, to all new curb construction and to all replacement curbs constructed in order to allow reasonable access to crosswalks after that date and prior to October 1, 1988, and shall apply to any new construction or reconstruction commenced after October 1, 1988.

[ 1987, c. 604, §1 (AMD) .]

**3. Physically handicapped; adequate ramping.** Adequate and reasonable access shall be provided for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks throughout the State.

[ 1975, c. 94, (NEW) .]

#### SECTION HISTORY

1973, c. 311, (NEW). 1973, c. 788, §102 (AMD). 1975, c. 94, (AMD). 1987, c. 604, §§1,2 (AMD).

## §707. CONSTRUCTION FLAGGERS; MINIMUM TRAINING STANDARDS

All privately employed flaggers at highway construction sites on public ways must have training in controlling traffic at construction sites in a manner consistent with the standards set forth in the American National Standards Institute, Manual on Uniform Traffic Control Devices for Streets and Highways. That training may consist of video instruction, instruction in a classroom setting, distribution of informational

handbooks or other educational materials or other training activities determined appropriate by the employer. Municipalities are encouraged to provide the same training as is required for privately employed flaggers to flaggers whom they employ. [1991, c. 401, (NEW).]

#### SECTION HISTORY

RR 1991, c. 1, §31 (COR). 1991, c. 401, (NEW). 1991, c. 481, §2 (NEW).

## §708. HIGHWAY LIGHTING

**1. Definitions.** All definitions in Title 5, section 1769, subsection 1 apply in this section. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commissioner" means the Commissioner of Transportation. [1991, c. 481, §2 (NEW).]

B. "Roadway lighting" means lighting that is specifically intended to illuminate roadways for automobiles but does not mean lighting intended to illuminate roadways only for pedestrian purposes. [1991, c. 481, §2 (NEW).]

[ 1995, c. 1, §12 (COR) .]

**2. Permanent outdoor luminaires.** A person may not use any state funds to install or replace any permanent outdoor luminaire unless:

A. The luminaire is a full cutoff luminaire when the rated output of the luminaire is greater than 1,800 lumens; [1991, c. 481, §2 (NEW).]

B. The illuminance from a luminaire or a system of luminaires does not exceed the minimum illuminance recommended by the federal Department of Transportation for that purpose; [1991, c. 481, §2 (NEW).]

C. For roadway lighting, the commissioner determines that the purpose of the lighting installation or replacement can not be achieved by any of the following means:

(1) Reduction of the speed limit in the area to be lighted; or

(2) Installation of reflectorized roadway markers, lines, warnings or informational signs; and [1991, c. 481, §2 (NEW).]

D. The commissioner ensures that consideration is given to minimizing glare and light trespass. [1991, c. 481, §2 (NEW).]

[ 1991, c. 481, §2 (NEW) .]

**3. Exceptions.** Exceptions from the provisions of this section are permitted only when:

A. Federal laws, rules and regulations take precedence over these provisions; [2005, c. 482, §1 (AMD).]

B. The commissioner determines that there is a compelling safety interest that can not be addressed by any other method; or [2005, c. 482, §1 (AMD).]

C. The commissioner determines that a lighting installation is related to a department bridge project of state and regional significance and is supported by municipalities directly affected by the installation. [2005, c. 482, §1 (NEW).]

[ 2005, c. 482, §1 (AMD) .]

#### SECTION HISTORY

RR 1991, c. 1, §31 (RNU). 1991, c. 481, §2 (NEW). RR 1995, c. 1, §12 (COR). 2005, c. 482, §1 (AMD).

## Subchapter 2: STATE HIGHWAYS

### §751. ESTABLISHMENT OF SYSTEM

The department shall provide a system of maintenance for all state highways to which section 1001 may apply and for all state aid highways to which section 802 may apply so that all sections of such highways may be effectually and economically preserved and maintained, in accordance with the best maintenance practice insofar as funds will permit. This section does not include snow removal work on state aid highways or town ways. [1981, c. 698, §99 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 698, §99 (AMD).

### §752. EXPENSE OF CONSTRUCTION

The department shall be sole arbiter of the designation of state highways, but shall, after reasonable notice by publication, give all parties interested an opportunity to be heard thereon before such designation is made. [1971, c. 593, §22 (AMD).]

The expense of constructing such state highways shall be borne wholly by the State, except as otherwise provided in chapters 1 to 19. [1971, c. 593, §22 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD).

### §753. CONTRACTS FOR CONSTRUCTION

*(REPEALED)*

#### SECTION HISTORY

1969, c. 322, §2 (AMD). 1971, c. 593, §22 (AMD). 1975, c. 771, §252 (AMD). 1985, c. 86, §2 (AMD). 1985, c. 554, §4 (AMD). 1989, c. 208, §20 (AMD). 2001, c. 689, §1 (AMD). 2005, c. 313, §3 (RP).

### §753-A. DESIGN-BUILD CONTRACTS

*(REPEALED)*

#### SECTION HISTORY

2001, c. 140, §1 (NEW). 2005, c. 313, §4 (AMD). 2007, c. 306, §3 (AMD). 2009, c. 648, Pt. B, §1 (RP).

### §754. TOWN MAINTENANCE IN COMPACT AREAS

**1. Jurisdiction.** Except as otherwise provided, all state and state aid highways within compact areas of urban compact municipalities, as defined in subsection 2, as determined by the department must be maintained in good repair by the town in which the highways are located at the expense of the town. Municipalities must be notified one year in advance of changes in compact or built-up sections that place additional maintenance responsibilities on the municipalities. Municipalities may waive the requirement of the one-year notice. When any town neglects to maintain the highways within 14 days after notice given its municipal officers by the department, the department may proceed to make necessary repairs to that way, which must be paid for by the State and the cost for the repairs must be withheld from funds due the town under the Local Road Assistance Program, established in chapter 19, subchapter 6. The amounts collected from these towns must be added to the fund for maintenance of state and state aid highways.

[ 2011, c. 652, §2 (AMD); 2011, c. 652, §14 (AFF) .]

**2. Urban compact municipalities and compact areas; opt-out provision.** Urban compact municipalities and compact areas are defined as follows and may opt out in accordance with this subsection.

A. Compact areas are compact or built-up sections as defined in section 2 and include intermittent compact sections separated by short intervals that are not compact. The department may exclude from the compact area controlled access highways within compact sections. Compact areas may be designated only in urban compact municipalities. Compact areas on local roads, for the purposes of calculation of distributions pursuant to chapter 19, subchapter VI, are those road segments in urban compact municipalities lying within compact areas as documented by the department as of January 1, 1999. [1999, c. 473, Pt. C, §3 (NEW).]

B. Urban compact municipalities are those in which the population according to the last United States census exceeds 7,500 inhabitants. Urban compact municipalities are also those in which the population according to the last United States census is less than 7,500 inhabitants but more than 2,499 inhabitants, and in which the ratio of people whose place of employment is in a given municipality to employed people residing in that same municipality according to the last United States census is 1.0 or greater, and when the municipality has not exercised the opt-out provision of this section. [1999, c. 473, Pt. C, §3 (NEW).]

C. Municipalities may opt out as provided in this paragraph.

(1) Any municipality with a population less than 7,500 according to the most recent United States census and otherwise eligible to be an urban compact municipality, and with no compact area summer maintenance responsibilities as of January 1, 1999, may opt not to be an urban compact municipality and not to have a compact area, within one year of the effective date of this subparagraph, or within 6 months of notification under this section. A municipality that has made a decision to opt out may at a later date opt to become an urban compact municipality. A municipality that does not opt out may not at a later date do so, until or unless an intervening United States census makes the municipality ineligible under paragraph B. A municipality may not opt out of maintenance jurisdiction over roads upon an expansion of an established compact area. A municipality that is an urban compact municipality during one census period but does not meet the criteria of this section according to the subsequent United States census may continue to be an urban compact municipality.

(2) Any municipality eligible to be an urban compact municipality, that has compact area state highway winter maintenance responsibilities on January 1, 1999, and that has opted out of summer maintenance responsibilities shall continue winter maintenance responsibilities on compact areas of state highways. Any municipality eligible to be an urban compact municipality and that has no compact area state highway winter maintenance responsibilities on January 1, 1999, and that has opted out of summer maintenance responsibilities, may choose to undertake winter maintenance responsibilities on compact areas of state highways. In any case, the department and the municipality may negotiate winter maintenance responsibilities based on the most cost-effective routes and schedules for winter maintenance activities. These municipalities may not be urban compact municipalities, but must be reimbursed for winter maintenance on state highways pursuant to section 1803-B, subsection 1, paragraph B, subparagraph (1). Municipalities reimbursed for winter maintenance under this paragraph are not also eligible for reimbursement for those same highway segments based on any other provision of law. [1999, c. 473, Pt. C, §3 (NEW).]

[ 1999, c. 473, Pt. C, §3 (NEW) .]

**3. Good condition upon transfer.** When the responsibility for maintenance of a section of state or state aid highway is to be transferred to a municipality as a result of population growth, as determined using the decennial United States census, or the municipality meets the definition of a compact or built-up section under section 2, and when the municipality is not eligible to opt out of summer maintenance pursuant to subsection 2, paragraph C, the department shall prepare a capital and maintenance plan to ensure that the section of state or state aid highway is in good repair at the time of transfer. The plan must be developed in consultation

with the affected municipality. For the purpose of this subsection, "good repair" means actions intended to reasonably avoid nonroutine maintenance activities for a minimum of 10 years and includes consideration of ditching, culverts, major structural defects and pavement condition ratings of 3.3 or higher as determined by the department.

[ 2007, c. 417, §1 (AMD) .]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 133, (AMD). 1981, c. 492, §C6 (AMD). 1981, c. 588, §1 (AMD). 1989, c. 46, §2 (AMD). 1997, c. 539, §1 (AMD). 1997, c. 539, §2 (AFF). 1999, c. 473, §C3 (RPR). 2007, c. 417, §1 (AMD). 2011, c. 652, §2 (AMD). 2011, c. 652, §14 (AFF).

### Subchapter 3: STATE AID HIGHWAYS

#### §801. DESIGNATION

Municipal officers may petition the department to designate as state aid highways such public ways within their jurisdiction as will best serve outlying communities, connect adjoining towns and villages and facilitate travel in reaching markets, railroad connections and state roads, due consideration being given to cost as well as distance and volume of travel. Such petition presented to the department for the designation of a state aid highway shall include an adequate description of the way which it is desired to have so designated, and upon the same being approved and accepted by the department said way shall be established and known as a state aid highway. Twenty or more voters of the town in which said way is located, by written petition, presented within 30 days after the petition to designate such way as a state aid road has been filed with the department, shall have the right to be heard on the acceptance thereof. The department shall be the sole arbiter of the designation of state aid roads and may accept or reject any part or all of such way and impose terms in respect thereto. [1971, c. 593, §22 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD).

#### §802. MAINTENANCE BY STATE

State aid highways must be continually maintained under the direction and control of the department at the expense of the State except as provided in sections 705, 754 and 1003. [2009, c. 315, §2 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C7 (AMD). 1999, c. 473, §C4 (AMD). 2009, c. 315, §2 (AMD).

#### §803. CONTRACTS FOR CONSTRUCTION

*(REPEALED)*

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 2005, c. 313, §5 (RP).

### Subchapter 4: SECONDARY FEDERAL AID ROADS

#### §851. MAINTENANCE; PROJECTS

*(REPEALED)*

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C8 (RP).

## **§852. -- ROADS**

*(REPEALED)*

SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C8 (RP).

## **§853. COOPERATION OF MUNICIPAL OFFICERS**

Municipal officers are authorized to cooperate with the State Department of Transportation and with the Bureau of Public Roads, Department of Commerce, in the designation and construction of such parts of any federal aid secondary highway roads that are or will be within their respective towns. [1971, c. 593, §22 (AMD).]

SECTION HISTORY

1971, c. 593, §22 (AMD).

### Subchapter 5: SURFACE TREATMENT

## **§901. STATE AID HIGHWAYS**

*(REPEALED)*

SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C9 (RP).

## **§902. -- IMPROVED SECTIONS**

*(REPEALED)*

SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C9 (RP).

### Subchapter 6: ROADSIDE IMPROVEMENT

## **§951. PLANTING**

The department may cause or allow grasses, shrubs, vines and trees to be planted and maintained along state and state aid highways, to be paid for as part of the cost of construction and maintenance of highways. The department shall consult with the recognized tree board or tree warden of a municipality concerning the planting along a state or state aid highway within that municipality. For purposes of this section, a "recognized tree board" or "tree warden" means a person or persons designated as such by municipal officials and listed with the Department of Agriculture, Conservation and Forestry. In making this designation, municipal officials shall give preference to persons experienced in the area of landscaping and planting. If such persons are not available, the municipality may designate another municipal officer. [2001, c. 39, §1 (AMD); 2011, c. 657, Pt. W, §5 (REV).]

SECTION HISTORY

1971, c. 593, §22 (AMD). 1979, c. 316, §1 (AMD). 2001, c. 39, §1 (AMD). 2011, c. 657, Pt. W, §5 (REV).

**§952. CONTRACTS**

The department may enter into agreements with individuals or organizations who wish to plant grasses, vines, trees or flowers, or to make gifts or appropriations to carry out this subchapter. [1971, c. 593, §22 (AMD).]

## SECTION HISTORY

1971, c. 593, §22 (AMD).

**§953. VIEW OF ADVERTISING PANELS NOT TO BE OBSTRUCTED**

*(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A78 (RP).

**§954. PICNIC AREAS**

The department is authorized to construct along state and state aid highways roadside picnic areas, roadside springs, scenic turnouts or other landscaping where in the opinion of the department it may seem advisable and place distinguishing signs upon the same. The department is authorized to use for the maintenance of the same such funds as are now available for maintenance of state and state aid highways. In any roadside area along any state or state aid highway where modern flush toilet facilities are provided for public use, there must be provided toilet rooms that are accessible to and usable by the physically disabled, as set out in Title 5, chapter 337, subchapter 5. The department shall erect and maintain signs along the approach to any roadside area where toilet facilities accessible to the disabled are available that are designed to inform disabled persons that the facilities are available. [2011, c. 613, §25 (AMD); 2011, c. 613, §29 (AFF).]

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1979, c. 248, §1 (AMD). 2011, c. 613, §25 (AMD). 2011, c. 613, §29 (AFF).

**Subchapter 7: SNOW REMOVAL****§1001. MAINTENANCE AND SNOW REMOVAL ON STATE HIGHWAYS**

Improved state highways shall be continually maintained, and the snow removed from such sections of designated state highways as the department may determine, under the direction and control of the department at the expense of the State. [1971, c. 593, §22 (AMD).]

The snow removal work shall include the plowing of these highways, the erection, maintenance, dismantling and rental of snow fences, and the sanding of icy road surfaces. It shall not include loading and hauling snow from any compact section. The State shall not be liable for accidents while the road surface is covered with snow and ice.

To carry out the preceding paragraph the department is authorized to hire equipment, preferably town owned, arrange contracts and erect or hire buildings for storage purposes. Purchases of necessary equipment or materials shall be made as provided in section 52. [1971, c. 593, §22 (AMD).]

The maintenance provisions of this section and sections 705, 751, 1003 and 1005-A do not apply to compact areas of urban compact municipalities as defined in section 754. [1999, c. 473, Pt. C, §5 (RPR).]

## SECTION HISTORY

1967, c. 468, (AMD). 1971, c. 509, (AMD). 1971, c. 593, §22 (AMD). 1981, c. 492, §C10 (AMD). 1981, c. 588, §2 (AMD). 1999, c. 473, §C5 (AMD).

**§1002. WINTER ROUTES CLEARED OF SNOW***(REPEALED)*

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1977, c. 363, §1 (AMD). 1981, c. 492, §C11 (RP).

**§1003. TOWNS TO KEEP ROUTES CLEAR OF SNOW; SANDING**

Towns shall keep state aid highways cleared of snow during the winter season or such part of the year as the department may direct, so that they may be reasonably usable by motor vehicles. Snow on such state aid highways shall be removed to the outside edges of the shoulders of the road, and in a manner satisfactory to the department whose judgment shall be final. The towns shall sand the state aid highways to the satisfaction of the department, and in case the towns fail to sand the highways to the satisfaction of the department, the department shall be authorized to make arrangements for the proper sanding and the cost of such sanding done by the department shall be paid by the towns. [1981, c. 492, Pt. C, §12 (AMD).]

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1977, c. 363, §2 (AMD). 1981, c. 492, §C12 (AMD).

**§1004. TOWNS AUTHORIZED TO RAISE MONEY**

To carry into effect section 1003, towns are authorized to raise and appropriate money therefor. [1981, c. 492, Pt. C, §13 (AMD).]

## SECTION HISTORY

1981, c. 492, §C13 (AMD).

**§1005. REIMBURSEMENT OF TOWNS; SNOW FENCES; APPEALS***(REPEALED)*

## SECTION HISTORY

1967, c. 438, §1 (AMD). 1969, c. 54, (AMD). 1969, c. 490, §1 (AMD). 1969, c. 590, §35 (AMD). 1971, c. 515, (AMD). 1971, c. 593, §22 (AMD). 1973, c. 583, (AMD). P&SL 1975, c. 78, §21 (AMD). 1975, c. 620, §§2,2-A (AMD). 1977, c. 174, §§1,2 (AMD). 1977, c. 405, §§1,2 (AMD). 1979, c. 510, §1 (AMD). 1979, c. 541, §§A159,A160 (AMD). 1981, c. 492, §C14 (RP).

**§1005-A. ACCIDENTS; SNOW FENCES; APPEALS**

**1. Accidents.** The State or the town shall not be liable for accidents while the road surface is covered with snow or ice.

[ 1981, c. 492, Pt. C, §15 (NEW) .]

**2. Snow fences.** The Department of Transportation, the county commissioners or the municipal officers of any city or town may provide snow guards or snow fences along any state highways, state aid highways or town ways for the prevention of snow from encumbering the highways or town ways.

The officials may erect snow guards or fences upon private property adjacent to highways or town ways. If they do not agree with the owner of the property with relation to the location of the guards or fences, the compensation to be paid to the owner or the time the guards or fences shall be maintained, the officials,

before erecting the snow guards or snow fences upon the private property, shall give written notice of their intentions, to be posted for 7 days in 2 public places in the city or town in the vicinity of the location proposed for the erection of the guards or fences, describing the location and the time intended for the maintenance of the snow guards or fences, with such definiteness that the location may be understood readily.

Within 5 days after a hearing thereon, the officials shall make a written return of their proceedings and findings to the registry of deeds in the county in which the location is situated, provided that they have therein decreed that any such snow guards or snow fences shall be maintained thereon permanently, or to the clerk of the city or town in which the location is situated, provided that they have therein decreed that the snow guards or snow fences shall be maintained during the winter season only for which they propose to erect them. In return, they shall state the amount of damages awarded the owner and the amount shall be paid within 30 days after return, by the State, city or town whose officials have authorized the construction or erection of the guards or fences.

In case the owner of the property is aggrieved with the award of damages so made, or with any part of the decrees, within 30 days after the filing of the return, he may take an appeal therefrom by filing, in the Superior Court in the county where the guard or fence is located, a complaint requesting a new award or assessment of damages, and the court, after ordering such notice as it sees fit, shall thereupon determine the amount of damages sustained by the owners. The court may make any other change in the decree deemed proper. An appeal to the Superior Court vacates the original award.

If the officials determine that the fences are to remain for the winter season only, and not permanently, then the fences shall be erected not before the 15th day of November nor remain occupying private property later than the next April 1st. Particular regard shall be exercised in the location of the fences so that the owners of private property shall be incommoded, as to view and otherwise, to as small a degree as possible.

[ 1981, c. 492, Pt. C, §15 (NEW) .]

#### SECTION HISTORY

1981, c. 492, §C15 (NEW).

### **§1006. DISCONTINUANCE ON CERTAIN HIGHWAYS (REPEALED)**

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C16 (RP).

### **§1007. ROADS KEPT OPEN BY STATE; EXPENSE DEDUCTED FROM MONEYS DUE TOWN**

When any town, in the judgment of the Department of Transportation, unreasonably fails to either raise, appropriate or pay the cost of snow removal, or without cause fails to keep open any state or state aid highway as required in section 1001 or 1003, the department shall cause the highway to be kept open at the expense of the State. The Treasurer of State may withhold a sufficient amount from any funds due or to become due the town, to cover the payment in whole of the expense of the snow removal, and the amount collected shall be added to the State Highway Maintenance Account. [1981, c. 492, Pt. C, §17 (RPR) .]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C17 (RPR).

### **§1008. FAILURE OF TOWN TO PAY SHARE OF SNOW REMOVAL (REPEALED)**

#### SECTION HISTORY

1981, c. 492, §C18 (RP).

**§1009. TOWNS NOT REIMBURSED IN COMPACT OR BUILT-UP SECTIONS**  
*(REPEALED)*

## SECTION HISTORY

1981, c. 492, §C18 (RP).

**§1010. RENTAL PRICE FOR SNOW REMOVAL EQUIPMENT;  
 REIMBURSEMENT**

The department each season shall make a rental price per hour for all snow removal motor equipment which shall be approved by it as being adequate and economical for this work. All contracts with the towns, either by the mile or otherwise, shall be subject to the approval of the department. Reimbursement on this work shall be made for use of motor driven equipment only. [1971, c. 593, §22 (AMD).]

## SECTION HISTORY

1971, c. 593, §22 (AMD).

**§1011. WAYS ACCEPTABLE FOR SNOW REMOVAL**  
*(REPEALED)*

## SECTION HISTORY

1981, c. 492, §C18 (RP).

**§1012. TOWNS NOT RELIEVED FROM OBLIGATIONS RELATING TO SNOW  
 BLOCKADE**

No town in which a state or state aid highway lies shall be relieved from any obligations of statute relating to ways blocked or encumbered with snow, anything to the contrary in chapters 1 to 19 notwithstanding.

Subchapter 8: INDIAN ISLAND AND TOWNSHIP

**§1051. PART OF STATE HIGHWAY SYSTEM**  
*(REPEALED)*

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1973, c. 277, §1 (AMD). 1975, c. 613, §1 (AMD). 1979, c. 732, §§19,31 (RP).

**§1052. MAINTENANCE OF ROADS AND BRIDGES**  
*(REPEALED)*

## SECTION HISTORY

1979, c. 732, §§19,31 (RP).

**§1053. FUND AVAILABLE**  
*(REPEALED)*

## SECTION HISTORY

1979, c. 732, §§19,31 (RP).

Subchapter 9: STATE AID

**§1101. APPROPRIATIONS BY TOWNS***(REPEALED)*

## SECTION HISTORY

1967, c. 438, §2 (AMD). 1967, c. 544, §114 (AMD). P&SL 1975, c. 78, §21 (AMD). 1975, c. 620, §3 (AMD). 1981, c. 492, §C20 (RP).

**§1102. APPORTIONMENT TO EACH TOWN***(REPEALED)*

## SECTION HISTORY

1967, c. 438, §3 (AMD). 1971, c. 593, §22 (AMD). P&SL 1975, c. 78, §21 (AMD). 1975, c. 620, §§4,4-A (AMD). 1981, c. 492, §C20 (RP).

**§1103. INCREASE IN AID***(REPEALED)*

## SECTION HISTORY

1969, c. 492, (AMD). 1971, c. 593, §22 (AMD). 1973, c. 581, §§1,3 (AMD). 1973, c. 595, §2 (AMD). 1977, c. 112, §1 (AMD). 1977, c. 405, §3 (RPR). 1977, c. 688, §3 (AMD). 1977, c. 696, §193 (RPR). 1979, c. 127, §§151,152 (AMD). 1979, c. 738, §1 (AMD). 1981, c. 492, §C20 (RP).

**§1104. MATCHING FUNDS***(REPEALED)*

## SECTION HISTORY

1967, c. 439, §§1,2 (AMD). 1969, c. 495, (AMD). 1971, c. 593, §22 (AMD). 1973, c. 526, (AMD). 1973, c. 595, §3 (AMD). 1973, c. 788, §103 (AMD). 1977, c. 405, §4 (RP).

**§1105. PRO RATA REDUCTION OF FUND***(REPEALED)*

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C20 (RP).

**§1106. TOWNS PAY SHARE OF JOINT FUND TO STATE TREASURER;  
EXCEPTION***(REPEALED)*

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C20 (RP).

**§1107. APPLICATION OF JOINT FUND TO STATE HIGHWAYS***(REPEALED)*

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C20 (RP).

**§1108. USE OF JOINT FUND WITH TOWN ROAD IMPROVEMENT FUND**  
(REPEALED)

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 745, §2 (AMD). 1977, c. 405, §5 (RPR). 1981, c. 492, §C20 (RP).

**§1109. LOCATION OF IMPROVEMENTS FROM YEAR TO YEAR; EFFECT ON STATE AID**  
(REPEALED)

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1977, c. 405, §6 (AMD). 1981, c. 492, §C20 (RP).

Subchapter 10: PERAMBULATION OF BOUNDARY LINE

**§1111. PERAMBULATION**

The boundary line between the State of New Hampshire and the State of Maine, as established and marked in 1927, 1928 and 1929, under the public laws of 1927, chapter 21, shall be perambulated once in 7 years forever and the line marked and bounds renewed whenever necessary. The Governor shall appoint a surveyor from the Department of Transportation who shall, in conjunction with a duly authorized representative of the State of New Hampshire, perambulate the boundary line from Bryant's Rock at East Pond to the Canadian Line. [1977, c. 696, §194 (REEN).]

## SECTION HISTORY

1969, c. 504, §39 (NEW). 1971, c. 593, §22 (AMD). 1975, c. 771, §253 (AMD). 1977, c. 604, §5 (RP). 1977, c. 696, §194 (REEN).

**§1112. NOTICE**

The Governor shall authorize the Department of Transportation to notify and make such arrangements with the proper authorities of the State of New Hampshire as may be necessary to carry out this subchapter. [1975, c. 771, §254 (AMD).]

## SECTION HISTORY

1969, c. 504, §39 (NEW). 1971, c. 593, §22 (AMD). 1975, c. 771, §254 (AMD).

**§1113. RETURN**

A return of the perambulation shall be made, describing the marks and monuments of such line and particularly describing any change of location or resetting of any monument as authorized in this subchapter, and such return shall be signed by the duly authorized representatives of both states and a copy filed with the Secretary of State. [1969, c. 504, §39 (NEW).]

## SECTION HISTORY

1969, c. 504, §39 (NEW).

## §1114. PRESERVATION OF EXISTING MONUMENTS

No person shall willfully or maliciously disturb or injure, or, except as otherwise provided in this subchapter, remove, obliterate, deface or cover up any monument or mark designating this boundary line of the State. Any persons desirous of removing and replacing any such monument or mark may apply in writing to the Department of Transportation, who may grant permission therefor under its supervision, first making provision for preserving the exact location of the original boundary or mark, and giving notice to the State of New Hampshire of the time and place at which proposed action is to be taken. The monument shall be reset in the identical location from which it was removed or at a convenient distance therefrom upon the boundary line. A full description of any change in such monument or mark, signed by the representatives of both states, shall be recorded with the Secretary of State. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1969, c. 504, §39 (NEW). 1971, c. 593, §22 (AMD).

## §1115. PENALTY

Any person violating section 1114 shall be punished by a fine of not more than \$50, or by imprisonment for not more than 6 months, or by both. [1969, c. 504, §39 (NEW).]

### SECTION HISTORY

1969, c. 504, §39 (NEW).

## §1116. NO EXPENSES TO BE INCURRED UNTIL ENACTMENT OF SIMILAR LEGISLATION BY STATE OF NEW HAMPSHIRE

No work shall be done or money expended under this subchapter until similar legislation has been enacted by the State of New Hampshire. [1969, c. 504, §39 (NEW).]

### SECTION HISTORY

1969, c. 504, §39 (NEW).

## §1117. ADOPT-A-HIGHWAY PROGRAM

The Commissioner of Transportation shall adopt rules to establish the Adopt-A-Highway Program that permit business organizations and nonprofit community organizations to participate in litter control and beautification activities on all state highways and town ways. Notwithstanding any other provision of law, the rules adopted by the commissioner may permit the erection of signs to identify participating organizations, as long as the rules establish permissible dimensions for the sign. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The State, municipalities, the Maine Turnpike Authority and their employees are not liable to any person for damages arising out of any activities resulting from an Adopt-A-Highway Program. [1999, c. 152, Pt. G, §1 (AMD).]

### SECTION HISTORY

1997, c. 776, §1 (NEW). 1999, c. 152, §G1 (AMD).

## Chapter 15: PROTECTION OF HIGHWAYS

### Subchapter 1: SIGNS AND MARKERS

#### Article 1: GENERAL PROVISIONS

## §1151. UNAUTHORIZED SIGNS OR MARKS FORBIDDEN

No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or so interferes with the effectiveness of any official traffic-control device or any railroad sign or signal as to endanger the public, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information or promoting highway safety and of a type that cannot be mistaken for official signs. Any person, firm, corporation or political subdivision of the State, while working on, under, over or immediately adjacent to any highway may erect temporary warning or directional signs or signals for the purpose of safeguarding or protecting its workmen and facilitating and protecting travel along the highway by the traveling public.

Every such prohibited sign, signal or marking is declared to be a public nuisance and the authority having jurisdiction over the highway may order the same removed and, if not removed within 48 hours after receipt of the notice, is empowered to remove the same or cause it to be removed.

## §1152. ADVERTISING RESTRICTED; TURNPIKES (REPEALED)

### SECTION HISTORY

1989, c. 108, §2 (RP).

## §1153. -- HIGHWAYS; JURISDICTION; REMOVAL

**1. Erecting advertisement on highway.** A person may not post, erect, display or maintain or cause to be posted, erected, displayed or maintained a sign, billboard, panel, placard, poster, notice or other advertising device in, upon or above any highway or so situated with respect to any highway as to obstruct clear vision of an intersecting highway or highways or otherwise so situated as to prevent the safe use or obstruct the maintenance of the highway. The highway is deemed the full width of the road as laid out by the State, county or the town and in any case is deemed to extend 33 feet from each side of the center line of the traveled or built-up portion of the way.

[ 2003, c. 452, Pt. L, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2. Application.** This section does not apply to the State or to a political subdivision of the State or to signs erected or maintained with the approval of the department solely for the purpose of safeguarding, facilitating or protecting travel along the highway.

A. The department may authorize the placing of directional signs of such design as it determines, not exceeding 48 inches in length and 9 inches in width to designate places of interest, to be posted without expense to the State at the junction of roads. [2003, c. 452, Pt. L, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

B. A person, firm or corporation, while working on, under, over or immediately adjacent to a highway, may erect temporary warning or directional signs or signals for the purpose of safeguarding or protecting its workers and facilitating and protecting travel along the highway by the traveling public. [2003, c. 452, Pt. L, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

[ 2003, c. 452, Pt. L, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**3. Penalties.** The following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$5 and not more than \$500 may be adjudged. [2003, c. 452, Pt. L, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

B. After having been adjudicated as having violated paragraph A, a person who unlawfully maintains any sign, billboard, panel, placard, poster, notice or other advertising device for 10 days after the adjudication is subject to an additional fine of not more than \$50 for each day upon which such sign, billboard, panel, placard, poster, notice or other advertising device is maintained. [2003, c. 452, Pt. L, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. L, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**4. Removal.** The State Police shall remove all signs, billboards, panels, placards, posters, notices or other advertising devices existing within the limits of the highway in violation of this section.

[ 2003, c. 452, Pt. L, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §L1 (RPR).

## Article 2: GUIDEPOSTS

### §1201. RECREATIONAL AREAS ON TURNPIKE SYSTEM

*(REPEALED)*

#### SECTION HISTORY

1965, c. 62, (AMD). 1965, c. 90, (AMD). 1967, c. 152, (AMD). 1967, c. 440, (AMD). 1969, c. 330, §§1,2 (AMD). 1971, c. 593, §22 (AMD). 1973, c. 356, (AMD). 1973, c. 644, (AMD). 1973, c. 788, §104 (AMD). 1975, c. 6, (AMD). 1975, c. 30, (AMD). 1975, c. 472, (AMD). 1975, c. 770, §§96,97 (AMD). 1975, c. 770, §§96, 97 (AMD). 1977, c. 154, (AMD). 1977, c. 288, (AMD). 1977, c. 305, (AMD). 1977, c. 696, §195 (AMD). 1979, c. 76, (AMD). 1981, c. 26, (AMD). 1981, c. 105, §§1,2 (AMD). 1981, c. 566, (AMD). 1981, c. 613, (AMD). 1983, c. 26, (AMD). 1983, c. 71, (AMD). 1983, c. 323, (AMD). 1983, c. 332, (AMD). 1983, c. 506, (AMD). 1985, c. 506, §§A46,47 (AMD). 1989, c. 443, §58 (AMD). 1993, c. 612, §§1,2 (AMD). 2001, c. 244, §2 (AMD). 2003, c. 20, §002 (AMD). 2003, c. 20, §004 (AFF). 2011, c. 610, Pt. C, §1 (AMD). 2013, c. 549, §1 (RP).

### §1202. RIVERS, STREAMS, LAKES AND MOUNTAINS

The department is authorized and directed to place suitable markers, similar to those used in other states, along the state highways commencing with United States Route Number 1, designating the names of contiguous rivers, lakes, streams and other bodies of water and adjacent mountains. [1971, c. 593, §22 (AMD).]

The department is authorized to use any funds available for the construction of state highways and bridges and for the maintenance of the same for carrying out this section. [1971, c. 593, §22 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD).

**§1203. CITIES AND TOWNS**

Suitable markers shall be placed by the department on all trunk line roads and all state aid roads, designating the point of entry and exit to and from the several cities and towns along the lines of said highways. [1971, c. 593, §22 (AMD).]

The cost to the State for carrying out this section shall be paid from funds available for the maintenance of state and state aid highways.

## SECTION HISTORY

1971, c. 593, §22 (AMD).

**§1204. FORM, HEIGHT AND DESIGN**

On all state and state aid highways, all guideposts shall be of such reasonable form, height and design as the department shall designate and shall be erected only upon approval of the department. [1971, c. 593, §22 (AMD).]

## SECTION HISTORY

1971, c. 593, §22 (AMD).

**Article 3: GRADE CROSSINGS****§1251. ERECTION OF WARNING SIGNS**

There shall be placed and thereafter maintained warning signs on every highway or other way within the State approaching a crossing at grade of such highway or other way and the tracks of a railroad. Such signs shall be placed on each side of such crossing at such distances as shall be determined upon by the Department of Transportation which is required, and vested with authority, to cause to be located and maintained such warning signs. In the compact parts of cities and towns where the conditions mentioned in section 2920 exist and are observed and at all other places where in the judgment of the 2 commissions such signs are unnecessary, no such warning signs need be erected. [1981, c. 698, §100 (AMD).]

## SECTION HISTORY

1971, c. 593, §8 (AMD). 1981, c. 698, §100 (AMD).

**§1252. SIGNS TO BE CLEARLY VISIBLE; REMOVAL OF OBSTRUCTIONS**

The signs referred to in section 1251 shall be of such size, design and color as shall be established by order of the Department of Transportation. Such signs shall be placed in conspicuous locations at a distance not less than 300 feet from the nearest rail of such crossing unless conditions make it reasonable to cause such signs to be located at a lesser distance from said rail. Such locations shall always be kept clear that such signs shall be plainly visible and the municipal officers of the several towns in which such signs are located are authorized and required either on their own motion or when requested by the department to cut down, trim or remove all bushes, trees or other obstructions which may impair the view of any such signs. [1971, c. 593, §9 (RPR).]

## SECTION HISTORY

1971, c. 593, §9 (RPR).

**§1253. STATE PAYS EXPENSE**

The expense of the erection and maintenance of each warning sign mentioned in sections 1251 and 1252 shall be borne by the State and paid out of any highway funds not otherwise appropriated.

## §1253-A. STOP SIGNS AT HIGHWAY-RAILROAD GRADE CROSSINGS

The Department of Transportation is authorized to designate any highway-railroad grade crossing as a stop intersection and to install and maintain stop signs thereat. The department is authorized to so designate such highway-railroad grade crossings on town ways, and local municipalities shall, when ordered by the department, erect and maintain stop signs on such town ways. When such stop signs are erected, the driver of any vehicle shall stop within 50 feet but not less than 10 feet from the nearest rail of such railroad and shall proceed only upon exercising due care. [1971, c. 593, §10 (AMD).]

Any person who shall operate a vehicle in violation of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$50 or by imprisonment for not more than 60 days, or by both. [1969, c. 387, §1 (NEW).]

The expense of the erection and maintenance of each stop sign installed by virtue of this section shall be borne by the railroad. [1969, c. 387, §1 (NEW).]

### SECTION HISTORY

1969, c. 387, §1 (NEW). 1971, c. 593, §10 (AMD).

## §1254. PENALTIES; JURISDICTION

Whoever unlawfully removes, injures or tampers with any warning, caution or directional sign, described in sections 59, 1251, 1252 and 1253-A, shall be punished by a fine of not less than \$10 nor more than \$50. [1969, c. 387, §2 (AMD).]

### SECTION HISTORY

1969, c. 387, §2 (AMD).

## Article 4: OVERPASSES

### §1301. CLEARANCE MARKINGS

The department shall mark all overpasses on all state and state aid highways, and on all other highways for which state funds are provided by law, with the height of the clearance of such overpass and such markings shall be maintained so as to be clearly visible for a distance of 200 feet on the highway. The same requirements shall apply to highway bridges when the vertical underclearance is limited by the portal, bracing or other structural members. This section shall apply only when the vertical clearance is less than 14 feet 6 inches. The clearance indicated is to be the normal summer clearance. Such overpasses not indicated herein shall be marked by the municipalities in which the same shall be found and in accordance with the standards for marking set forth. [1971, c. 593, §22 (AMD).]

### SECTION HISTORY

1971, c. 593, §22 (AMD).

## Article 5: TRAFFIC CONTROL

### §1351. INSTALLATION OF SIGNALS, DEVICES AND SIGNS

The department may make and shall enforce rules and regulations relating to traffic control and the installation and maintenance of traffic control signals, devices, signs and markings on all state, state aid and federal aid highways. The department may be consulted by and shall without charge advise municipal officers and road commissioners on the subject of traffic control. [1971, c. 593, §22 (AMD).]

The department shall have authority to install and maintain traffic control signals, warning, regulatory, directional and informational signs and markings, on all state and state aid highways and highways constructed under its direction with federal funds, when, in its opinion, such signs, signals and markings are necessary for public safety and convenience. [1971, c. 593, §22 (AMD).]

On all designated state and state aid highways, the location, form and character of informational, directional, regulatory and warning signs and traffic control signals and devices, erected by towns, shall be subject to approval of the department. [1971, c. 593, §22 (AMD).]

On any highway or street constructed with federal aid in any town, the location, form and character of informational, directional, regulatory and warning signs, curb and pavement or other markings, and traffic signals, installed or placed by any public authority or other agency, shall be subject to the approval of the department with the concurrence of the Federal Highway Administration. [1985, c. 506, Pt. B, §19 (AMD).]

Any rule or regulation relating to traffic control or the installation or maintenance of traffic control signals, devices or signs adopted pursuant to this section shall be exempt from the rule-making provisions of the Maine Administrative Procedure Act, Title 5, chapter 375. [1979, c. 397, §1 (NEW).]

The department is authorized and directed to establish a system of numbering all classes of highways which, in its opinion, is necessary for public convenience, and to publish maps from time to time showing the highways so numbered. [1971, c. 593, §22 (AMD).]

On all designated state and state aid highways, the department may prohibit other than one-way traffic when in its opinion such prohibition is necessary for public safety. [1971, c. 593, §22 (AMD).]

Nothing contained in this section shall be construed to apply to the installation or maintenance of signals, devices, signs, lights or warnings at approaches to railroad crossings.

The issuance of any order or rule and regulation may be proved by submitting a copy thereof signed by the commissioner and duly notarized. [1973, c. 537, §25.]

Whoever violates any order or rule and regulation of the department issued under authority of this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or by both. [1971, c. 593, §22 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1973, c. 537, §25 (AMD). 1979, c. 397, §1 (AMD). 1985, c. 506, §B19 (AMD).

### **§1352. INSTALLATION OF RUMBLE STRIP SIGNS**

The department shall install signs on any state highway where centerline rumble strips are located to inform a driver that the driver is approaching a rumble strip. The signs must be placed in advance of the centerline rumble strip for both directions of travel where passing is permitted at a location to be determined by the department. The lettering, style, colors, size and format of the sign must comply with the latest edition of the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration under 23 Code of Federal Regulations, Part 655, Subpart F as adopted by the department. [2009, c. 441, §1 (NEW).]

#### SECTION HISTORY

2009, c. 441, §1 (NEW).

## Subchapter 2: INSTALLATIONS AND OBSTRUCTIONS

### **§1401. INSTALLATIONS RESTRICTED**

*(REPEALED)*

#### SECTION HISTORY

1983, c. 393, (AMD). 1985, c. 20, (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §L2 (RP).

## §1401-A. INSTALLATIONS RESTRICTED

**1. Installing of buildings or fixtures.** Except as provided in subsection 1-A, a person may not install, erect or construct, or cause to be installed, erected or constructed, installations such as buildings, gasoline pumps or other fixtures in, upon or near any state or state aid highway, located as follows:

A. Within the full width of the right-of-way of any state or state aid highway as laid out by the State, the county or the town; [2003, c. 452, Pt. L, §3 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Within 33 feet of the center line of any state or state aid highway. This paragraph does not apply to installations or other property in existence on August 6, 1949. The commissioner has discretion to waive the application of this paragraph to the reconstruction of a building in the general location of the previously existing building if the commissioner determines that highway safety and the public welfare will not be adversely affected; or [2003, c. 452, Pt. L, §3 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Within 20 feet from the outside edge of any of the paved portion of any state or state aid highway having more than 2 travel lanes and having a total paved portion in excess of 24 feet in width. This paragraph does not apply to installations or other property in existence on September 1, 1955. [2003, c. 452, Pt. L, §3 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2007, c. 191, §1 (AMD) .]

**1-A. Limited waiver.** The commissioner may grant a person a written waiver of any of the provisions of subsection 1 and permit the construction of a fixture in, upon or near a state or state aid highway located in a municipality if:

A. The commissioner receives a written statement from the municipal officers requesting or supporting the waiver; [2007, c. 191, §1 (NEW).]

B. The posted speed limit where the construction will occur is no more than 35 miles per hour; and [2007, c. 191, §1 (NEW).]

C. The commissioner determines that highway safety and public welfare will not be adversely affected. [2007, c. 191, §1 (NEW).]

The commissioner may include in the waiver any conditions the commissioner determines necessary to ensure public safety and welfare. Violation of the terms of a waiver constitutes a violation of this section.

[ 2007, c. 191, §1 (NEW) .]

**2. Penalties.** The following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$5 and not more than \$500 may be adjudged. [2003, c. 452, Pt. L, §3 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. After having been adjudicated as having violated paragraph A, a person who unlawfully maintains any installations such as buildings, gasoline pumps or other fixtures for 30 days after the adjudication is subject to an additional fine of not more than \$50 for each day such installations are maintained. [2003, c. 452, Pt. L, §3 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. L, §3 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**3. Application.** This section does not apply to the installations or other property devoted to the public use of any public utility or district and underground pipelines.

[ 2003, c. 452, Pt. L, §3 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

2003, c. 452, §L3 (NEW). 2003, c. 452, §X2 (AFF). 2007, c. 191, §1 (AMD).

### **§1402. REMOVAL OF OBSTRUCTIONS**

When logs, lumber or other obstructions, without necessity, are left within the limits of any highway right-of-way under the supervision and maintenance of or construction by the department, it may cause them to be removed, and shall not be liable for loss or damage thereof, unless occasioned by design or gross negligence. When no one appears to pay for the expense and trouble of removal, the department may sell at public auction so much thereof as is sufficient for that purpose, including charges of sale. The person through whose neglect or willful default they were left may be prosecuted as for a nuisance. [1971, c. 593, §22 (AMD) .]

SECTION HISTORY

1971, c. 593, §22 (AMD).

## **Chapter 17: LIABILITY FOR DEFECTS**

### **§1451. JUDGMENTS AGAINST TOWNS AND COUNTIES**

*(REPEALED)*

SECTION HISTORY

1971, c. 593, §22 (AMD). 1973, c. 537, §26 (AMD). 1977, c. 578, §6 (AMD). 1979, c. 603, (AMD). 1985, c. 257, (RP).

## **Chapter 19: FISCAL MATTERS**

### **Subchapter 1: GENERAL PROVISIONS**

### **§1501. MATCHING FEDERAL FUNDS**

Upon application of the municipal officers of any municipality, the Department of Transportation may permit, subject to the statutes governing the allocation of highway funds to municipalities and the expenditure of same, such municipality to expend highway funds made available by the State to such municipality to match federal funds in the sponsoring of work projects for the improvement and construction of ways and bridges in such municipality. Nothing in this section shall be construed as authorizing the department or the municipal officers of any municipality to ignore or disregard an express authorization from the Legislature in regard to the use of any funds for any expressly designated purpose. [1971, c. 593, §22 (AMD) .]

SECTION HISTORY

1971, c. 593, §22 (AMD).

### **§1502. ANTICIPATION OF EXPENDITURE BY TOWNS**

*(REPEALED)*

SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C22 (RP).

**§1503. -- APPROVAL OF BILLS BY CONTROLLER**  
*(REPEALED)*

SECTION HISTORY

1981, c. 492, §C23 (RP).

Subchapter 2: ECONOMIC ADVISORY BOARD

**§1551. ESTABLISHMENT; MEMBERSHIP; COMPENSATION**  
*(REPEALED)*

SECTION HISTORY

1971, c. 593, §11 (RP).

**§1552. ISSUANCE OF BONDS; DUTY OF BOARD**  
*(REPEALED)*

SECTION HISTORY

1971, c. 593, §11 (RP).

Subchapter 2-A: BOND ISSUANCE

**§1553. ISSUANCE OF BONDS**  
*(REPEALED)*

SECTION HISTORY

1971, c. 593, §§11-A (NEW). 1973, c. 537, §27 (RP). 1973, c. 625, §133 (RP).

Subchapter 3: BONDS

**§1601. EXPENDITURE OF PROCEEDS; APPROPRIATION**

The Treasurer of State by direction of the Governor shall negotiate the sale of all state highway bonds and state highway and bridge bonds. None of such bonds shall be sold for less than par value, nor shall any such bond be loaned, pledged or hypothecated in behalf of the State. The proceeds of the sales of such bonds shall be held by the Treasurer of State and paid by him upon proper warrants drawn for the purposes of chapters 1 to 19. The department shall apportion the money raised from the sale of state highway and state highway and bridge bonds in such manner as will carry into effect the several Acts authorizing such bond issues and conform to the Constitution and chapters 1 to 19. [1975, c. 771, §255 (AMD).]

SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 771, §255 (AMD).

**§1602. APPEAL TO GOVERNOR AND COUNCIL ON DISAGREEMENT OF COMMISSION**  
*(REPEALED)*

SECTION HISTORY

1973, c. 537, §28 (RP).

### §1603. BOND PROCEEDS NOT FOR COMPACT PARTS OF TOWN; EXCEPTION

No funds for construction derived from any bond issue shall be expended on any highway within compact portions of any town, except in towns of less than 5,000 inhabitants, such compact portions to be determined by the department. This section shall not apply when funds derived from any bond issue are used to match federal funds for highway and bridge projects constructed within such compact sections. [1971, c. 593, §22 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD).

### §1604. TRANSPORTATION DEBT POLICY FOR CAPITAL PLANNING PURPOSES

Due to the capital intensive nature of transportation investment and the dedicated nature of transportation revenue streams, the Department of Transportation shall plan its capital transportation program based upon the following assumed debt policies. Neither this section nor planning undertaken pursuant to this section authorizes the issuance of any debt. Debt may be issued only in accordance with applicable authorizing law. [2007, c. 470, Pt. C, §1 (NEW).]

**1. Highway Fund general obligation bonding.** The rolling, 3-year average ratio of Highway Fund general obligation debt service payments to Highway Fund revenue must be assumed to be not more than 10%. Highway Fund general obligation bond terms must be assumed to be 10 years.

[ 2007, c. 470, Pt. C, §1 (NEW) .]

**2. GARVEE bonding.** The rolling, 3-year average ratio of GARVEE bond debt service payments to funds received from the Federal Highway Administration must be assumed to be not more than 15%, except that sufficient debt service capacity must be assumed to be reserved under the 15% level for a \$25,000,000 GARVEE bond issuance for extraordinary, unprogrammed needs. GARVEE bonds must be assumed to have terms of not more than 15 years and to be available only for capital projects that have an anticipated useful life of at least 20 years. GARVEE bonds must be authorized by the Legislature as provided in section 1612. For purposes of this section, "GARVEE bond" has the same meaning as in section 1611.

[ 2007, c. 470, Pt. C, §1 (NEW) .]

**3. TransCap revenue bonding.** The level of TransCap revenue bonding as authorized by Title 30-A, section 6006-G is limited by the level of revenue authorized and exclusively dedicated to the Maine Municipal Bond Bank for debt service for such bonds and by bond issuer requirements. TransCap bonds must be assumed to have terms of not more than 15 years and to be available only for capital projects that have an anticipated useful life of at least as long as the bond term. TransCap bonds must be authorized by the Legislature as provided in Title 30-A, section 6006-G.

[ 2009, c. 413, Pt. Q, §1 (AMD) .]

#### SECTION HISTORY

2007, c. 470, Pt. C, §1 (NEW). 2009, c. 413, Pt. Q, §1 (AMD).

## Subchapter 3-A: GARVEE BONDING

### §1611. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 329, Pt. P, §1 (NEW).]

**1. Bank.** "Bank" means the Maine Municipal Bond Bank, established under Title 30-A, chapter 225.

[ 2007, c. 329, Pt. P, §1 (NEW) . ]

**2. GARVEE bond.** "GARVEE bond" means a grant anticipation revenue vehicle debt financing instrument repaid with federal highway funds as authorized by 23 United States Code, Section 122.

[ 2007, c. 329, Pt. P, §1 (NEW) . ]

**3. Qualified transportation project.** "Qualified transportation project" means a project to reconstruct, rehabilitate or replace existing bridges and existing arterial highways that:

A. Will forward applicable transportation capital improvement planning and delivery goals established by the Legislature for the Department of Transportation; [2007, c. 329, Pt. P, §1 (NEW) . ]

B. Has a useful life of 20 years or more; and [2007, c. 329, Pt. P, §1 (NEW) . ]

C. Meets eligibility requirements of the United States Department of Transportation, Federal Highway Administration. [2007, c. 329, Pt. P, §1 (NEW) . ]

"Qualified transportation project" does not include a project that predominantly consists of a new highway on a new location or a new bridge on a new location, other than a replacement bridge located in close proximity to the bridge it is replacing, unless specifically approved by the Legislature.

[ 2007, c. 329, Pt. P, §1 (NEW) . ]

**4. Qualified transportation project costs.** "Qualified transportation project costs" includes, without limitation:

A. The purchase price or acquisition of any properties or interest in those properties or other rights necessary or convenient for the project; [2007, c. 329, Pt. P, §1 (NEW) . ]

B. The costs of the study, permitting and engineering of the project, including the preparation of plans and specifications, surveys and estimates of cost; [2007, c. 329, Pt. P, §1 (NEW) . ]

C. The costs of construction, reconstruction, paving, repaving, building, alteration, repair, restoration, environmental review or remediation, enlargement or other improvement, including all labor, materials, machinery, fixtures and equipment, including rolling stock or vehicles; [2007, c. 329, Pt. P, §1 (NEW) . ]

D. The costs of engineering, architectural, legal and other professional services; [2007, c. 329, Pt. P, §1 (NEW) . ]

E. The costs of reserves, insurance, letters of credit or other financial guarantees for payment of future debt service on bonds or notes; and [2007, c. 329, Pt. P, §1 (NEW) . ]

F. All other costs or expenses necessary or convenient to the project, including financing or refinancing costs. [2007, c. 329, Pt. P, §1 (NEW) . ]

[ 2007, c. 329, Pt. P, §1 (NEW) . ]

**5. Revenue.** "Revenue" means, in the case of bonds or notes issued by the bank to finance the qualified transportation projects, payment of funds derived from the United States Department of Transportation, Federal Highway Administration and any other investment, gift, grant, contribution, appropriation and income and any other amount pledged to secure payment of such bonds or notes.

[ 2007, c. 329, Pt. P, §1 (NEW) . ]

#### SECTION HISTORY

2007, c. 329, Pt. P, §1 (NEW).

## §1612. GARVEE BONDING AUTHORIZED

Notwithstanding any other provision of law, upon certification, the bank may issue from time to time GARVEE bonds for qualified transportation projects and qualified transportation project costs in such amounts as are authorized by the Legislature by a 2/3 vote in each House of the Legislature, as long as the rolling, 3-year average ratio of GARVEE bond debt service payments to federal funds received from the United States Department of Transportation, Federal Highway Administration does not exceed 15%, less the amount of capacity necessary to issue a \$25,000,000 GARVEE bond for extraordinary, unprogrammed needs. Authorization by the Legislature is not required for GARVEE bonds issued to refund previously issued GARVEE bonds that have been issued with the authorization of the Legislature, if the issuance of those refunding bonds results in net present value savings and those refunding bonds have a final maturity date that is not later than the date that is 15 years after the date of issuance of the GARVEE bonds being refunded. [2015, c. 268, Pt. K, §1 (AMD).]

Beginning with the budget presented for the fiscal year beginning July 1, 2009, the Department of Transportation shall present for review and approval by the Legislature as part of the Highway Fund budget the level of programmed biennial GARVEE bond financing. [2007, c. 329, Pt. P, §1 (NEW).]

### SECTION HISTORY

2007, c. 329, Pt. P, §1 (NEW). 2011, c. 391, §1 (AMD). 2015, c. 268, Pt. K, §1 (AMD).

## §1613. BANK RESOLUTION; PLEDGE; BOND TERMS

**1. Issuance.** The bank shall issue GARVEE bonds from time to time pursuant to a resolution adopted by the bank. The GARVEE bonds issued must be secured pursuant to a pledge and certificate issued by the Department of Transportation and approved by the State Budget Officer. The pledge and certificate must contain provisions that dedicate and pledge receipt of future federal transportation funds to secure the payment of the GARVEE bonds, including principal, interest and issuance costs. The terms of the GARVEE bonds, their repayment schedule and other provisions to facilitate their creditworthiness are determined by the bank in consultation with the Department of Transportation and the State Budget Officer. The pledge and certificate are a part of the contract with the holders of the GARVEE bonds to be authorized.

[ 2007, c. 329, Pt. P, §1 (NEW) .]

**2. Form and term.** The GARVEE bonds must be in the form, bear the date or dates, mature at the time or times and have such other terms as determined by the bank and approved by the Department of Transportation and the State Budget Officer, except that a GARVEE bond may not mature more than 15 years from the date of its issue.

[ 2007, c. 329, Pt. P, §1 (NEW) .]

**3. Not a state liability.** GARVEE bonds issued under this section do not constitute a debt or liability of the State or of any political subdivision of the State, or a pledge of the full faith and credit of the State or of any political subdivision of the State, but are payable solely from the funds and revenues pledged for that purpose.

[ 2007, c. 329, Pt. P, §1 (NEW) .]

**4. Proceeds.** The proceeds from the sale of the GARVEE bonds must be deposited into the appropriate highway fund capital account or other appropriate dedicated revenue account.

[ 2007, c. 329, Pt. P, §1 (NEW) . ]

#### SECTION HISTORY

2007, c. 329, Pt. P, §1 (NEW).

## §1614. POWER AND DUTY OF THE BANK

The powers and duties of the bank provided under Title 30-A, chapter 225 are modified and supplemented as set out in this section. [2007, c. 329, Pt. P, §1 (NEW) . ]

**1. Qualified transportation projects.** The bank may assist the State by borrowing money to finance or refinance from time to time all or a portion of the costs of qualified transportation projects and make the proceeds of such borrowing available to the Department of Transportation at terms agreed upon by the bank, the State Budget Officer and the Department of Transportation. The principal of and interest on any bonds or notes issued by the bank to finance or refinance the qualified transportation projects must be secured by a pledge of funds paid by the United States Department of Transportation, Federal Highway Administration and may further be secured by a pledge of any rights, grants, reserves, contracts, agreements or other revenues or property as may be determined by resolution of the bank. Bonds, notes, leases, agreements or other forms of debt or liability entered into or issued by the bank under this section are not in any way a debt or liability of the State and do not constitute a loan of the credit of the State or create any debt or liability on behalf of the State or constitute a pledge of the faith and credit of the State. Each bond, note, lease, agreement or other evidence of debt or liability entered into by the bank must contain a statement to the effect that the bank is obligated to pay the principal, interest, redemption premium, if any, and other amounts payable solely from the sources pledged for that purpose by the bank and that neither the faith and credit nor the taxing power of the State is pledged to the payment of the principal, interest, premium, charge, fee or other amount on the bond, note, lease, agreement or other form of indebtedness.

[ 2007, c. 329, Pt. P, §1 (NEW) . ]

**2. Additional powers.** In addition to all other powers elsewhere granted to the bank, the bank may, with respect to qualified transportation projects:

A. Acquire title to or an interest in the qualified transportation projects; [2007, c. 329, Pt. P, §1 (NEW) . ]

B. Make, enter into and enforce contracts and all other instruments, including any amendments or modifications to the extent permitted under its contract with holders of its bonds or notes, with the State, the United States Department of Transportation, Federal Highway Administration or any other legal entity in furtherance of the purposes of this section; [2007, c. 329, Pt. P, §1 (NEW) . ]

C. Invest any funds or money of the bank not then required for funding costs of the qualified transportation projects in the same manner as permitted for the investment of funds belonging to the State or held by the Treasurer of State, except as otherwise permitted or provided by this section; [2007, c. 329, Pt. P, §1 (NEW) . ]

D. Fix and prescribe any form of application or procedure to be required of the State or of any agency or department of the State with respect to the qualified transportation projects and fix the terms and conditions of the qualified transportation projects and enter into agreements with the State or any agency or department of the State in connection with the qualified transportation projects; and [2007, c. 329, Pt. P, §1 (NEW) . ]

E. Lease the qualified transportation projects to the State or any agency or department of the State to further the purposes of this section, as long as the obligation of the State or of any such agency or department to make any rental or other payments is considered executory only to the extent of funds paid by the United States Department of Transportation. [2007, c. 329, Pt. P, §1 (NEW).]

[ 2007, c. 329, Pt. P, §1 (NEW) .]

#### SECTION HISTORY

2007, c. 329, Pt. P, §1 (NEW).

### §1615. PLEDGE OF FEDERAL HIGHWAY FUNDS

The Department of Transportation may transfer, assign or pledge any or all of the funds paid to it, directly or indirectly, by the United States Department of Transportation, Federal Highway Administration with respect to the qualified transportation projects. Any such pledge does not constitute a debt or liability on behalf of, a loan of the credit of or a pledge of the faith and credit of the State or of any political subdivision of the State. A decision by the Department of Transportation not to allocate such federal transportation funds for the payment of such bonds or notes or related costs and expenses may not be construed to constitute an action impairing any contract entered into by the bank under this section. [2007, c. 329, Pt. P, §1 (NEW).]

#### SECTION HISTORY

2007, c. 329, Pt. P, §1 (NEW).

### §1616. CONTRACTS ARE SUBJECT TO CONTINUING FEDERAL APPROPRIATIONS OF FEDERAL TRANSPORTATION FUNDS

Every contract relating to the issuance of bonds or notes to finance all or a part of the costs of qualified transportation projects must provide that all financial obligations of the State or of any agency or department of the State in regard to the portion of the principal of and interest on the bonds or notes and the related costs and expenses that may be paid from federal transportation funds pursuant to federal law and any agreement between the United States Department of Transportation, Federal Highway Administration or any agency of the Federal Highway Administration and the Department of Transportation that is or will be the initial recipient of such federal transportation funds are subject to continuing federal appropriations of federal transportation funds at a level equal to or greater than the amount needed to pay the federal share of principal, interest and costs and expenses on any such bonds or notes. [2007, c. 329, Pt. P, §1 (NEW).]

#### SECTION HISTORY

2007, c. 329, Pt. P, §1 (NEW).

### §1617. STATE AGENCY POWERS

**1. Transportation projects.** The Department of Transportation, and all other agencies or departments of the State working in conjunction with the Department of Transportation, for the purpose of aiding and cooperating in the financing, construction, operation or maintenance of qualified transportation projects, may:

A. Sell, lease, loan, donate, grant, convey, pledge, assign or otherwise transfer to the bank any real or personal property or interests in any real or personal property; and [2007, c. 329, Pt. P, §1 (NEW).]

B. Enter into agreements, including loan and pledge agreements, with any person for the joint financing, construction, operation or maintenance of the qualified transportation projects and agree to make payments, without limitation as to amount except as set forth in the agreements, from revenues received

in one or more fiscal years by the Department of Transportation or with any person to defray the costs of the financing, construction, operation or maintenance of the qualified transportation projects. [ 2007 , c. 329 , Pt. P, §1 (NEW). ]

[ 2007 , c. 329 , Pt. P, §1 (NEW) . ]

**2. Federal transportation funds.** To assist in the financing, construction, operation or maintenance of the qualified transportation project, a state agency or department may by contract or pledge assign or otherwise transfer to the Department of Transportation or otherwise or directed by the bank all or a portion of federal transportation funds paid to the state agency or department or the revenues from any other legally available source.

[ 2007 , c. 329 , Pt. P, §1 (NEW) . ]

#### SECTION HISTORY

2007 , c. 329 , Pt. P, §1 (NEW) .

### §1618. EXCEPTION TO PROHIBITED ACTS AND LIMITATION OF POWERS

Notwithstanding Title 30-A, section 5958, the bank may make loans to the State or any agency or department of the State in connection with the financing of qualified transportation projects. Notwithstanding Title 30-A, section 6003, the bank may issue its bonds from time to time in any principal amounts that it considers necessary to provide funds for any of the purposes authorized by this section, including the financing or refinancing of all or a portion of the costs of qualified transportation projects. Notwithstanding Title 30-A, section 6019, the bank may enter into any agreements or contracts with any commercial banks, trust companies or banking or other financial institutions within or outside the State that are necessary, desirable or convenient in the opinion of the bank to provide any other services to the bank to assist the bank in effectuating the purposes of this section. [2007 , c. 329 , Pt. P, §1 (NEW). ]

#### SECTION HISTORY

2007 , c. 329 , Pt. P, §1 (NEW) .

### §1619. RECEIPT OF FEDERAL APPROPRIATION MONEY

The Treasurer of State may receive from the Federal Government any amount of money as appropriated, allocated, granted, turned over or in any way provided for the purposes of this subchapter. In connection with the financing of qualified transportation projects, these amounts must be credited to and deposited in the Federal Expenditures Fund and are available to the bank. [2007 , c. 329 , Pt. P, §1 (NEW). ]

#### SECTION HISTORY

2007 , c. 329 , Pt. P, §1 (NEW) .

### §1620. REMEDIES OF HOLDERS OF BONDS AND NOTES

In addition to all other rights or remedies set forth in Title 30-A, section 6023, subsection 2, the trustee appointed pursuant to Title 30-A, section 6023 may, and upon written request of the holders of 25% in principal amount of all bonds then outstanding that have been issued to finance or refinance all or a portion of the costs of qualified transportation projects shall, in the trustee's or the bank's own name, by mandamus or other suit, action or proceeding at law or in equity, enforce all rights of the bondholders, including the right to require the bank to collect payments and other amounts and to collect interest and amortization payments under agreements payable to the bank and pledged to payment of the bonds adequate to carry out

any agreement as to, or pledge of, those payments and other amounts and of such interest and amortization payments and to require the bank to carry out any other agreements with the bondholders and to perform its duties under this section. [2007, c. 329, Pt. P, §1 (NEW).]

SECTION HISTORY

2007, c. 329, Pt. P, §1 (NEW).

## Subchapter 4: GENERAL HIGHWAY FUND

### §1651. DEFINITION

To provide funds for the construction of state, state aid and town ways, for the maintenance of state and state aid highways, and interstate, intrastate and international bridges, and for other items of expenditure specified, there is established a fund to be known as the General Highway Fund. This fund shall include all fees received from the registration of motor vehicles and licensing of operators thereof, all fees accruing to the Treasurer of State under Title 25, section 1502, the receipts from the tax on internal combustion engine fuels, and all sums received on account of the department for permits to open highways, or from other sources, the disposition of which is not otherwise designated by law. After payment from said General Highway Fund of such sums for interest and retirement as are necessary to meet the provisions of bond issues for state highway and bridge construction, the remainder of said fund shall be segregated, apportioned and expended as provided by the Legislature. [1971, c. 593, §22 (AMD).]

SECTION HISTORY

1971, c. 593, §22 (AMD).

### §1652. UNEXPENDED BALANCES NONLAPSING, NONTRANSFERABLE

Such unexpended balances of the Highway Fund as have been set up for general construction and maintenance of highways and bridges are deemed nonlapsing carrying accounts. All other unexpended balances lapse into the Highway Fund at the end of each fiscal period, but may not lapse or be transferred to the General Fund in the Treasury. [2011, c. 392, Pt. L, §2 (AMD).]

Any balance of any allocation or subdivision of an allocation from the Highway Fund made by the Legislature for any department or agency, which at any time may not be required for the purposes named in that allocation or subdivision, may be transferred at any time prior to the closing of the books, to any other allocation or subdivision of an allocation from the Highway Fund made by the Legislature for the same fiscal year subject to review by the joint standing committee of the Legislature having jurisdiction over transportation matters. In addition to transfers of Highway Fund allocations and subdivisions of allocations from the Highway Fund, the joint standing committee of the Legislature having jurisdiction over transportation matters shall review all other allocations or subdivisions of allocations to the Department of Transportation. Financial orders describing these transfers must be submitted by the Bureau of the Budget to the Office of Fiscal and Program Review 30 days before the transfer is to be implemented. [2011, c. 392, Pt. L, §2 (AMD).]

SECTION HISTORY

1975, c. 771, §256 (AMD). 1983, c. 457, §2 (AMD). 1985, c. 737, §B20 (AMD). 2011, c. 392, Pt. L, §2 (AMD).

### §1653. LIMITATION ON USE OF FUND

All revenue received by the State from the registration of motor vehicles and the licensing of operators thereof, from the tax imposed on internal combustion engine fuel, from fines, forfeitures and costs accruing to the State under Title 29-A, section 2602, and from permits granted by the department to open highways must be segregated, allocated to and become part of the General Highway Fund created and existing by statute, and after payment and deduction from such fund of such sums as are necessary to meet all provisions

of bond issues for state highway and bridge construction, the remainder of such fund must be apportioned and expended solely: [1995, c. 65, Pt. A, §62 (AMD); 1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. C, §15 (AFF).]

**1. Registration and licensing.** For the cost of registering motor vehicles and licensing the operators thereof;

**2. State police.** For maintenance of the State Police;

**3. Administration of office.** For administration of the office and duties of the department;

[ 1971, c. 593, §22 (AMD) .]

**4. Administration of fuel tax.** For administration of the tax on internal combustion engine fuel;

**5. Rebates.** For payment of rebates on said tax;

**6. Highways and bridges.** For the improvement, construction and maintenance of highways and bridges;

**7. Snow guards.** For snow guards or removal as provided by statute.

Neither the General Highway Fund, nor any fund derived from direct taxation imposed for highway construction, bridge construction or the improvement and maintenance thereof, shall be diverted or expended, permanently, for any other purpose than set forth in this section, except that funds so segregated may be used for other appropriations but only those for which anticipated income has not been received and for which financial provision has been made by the Legislature and is forthcoming. The Treasurer of State is directed and authorized to reimburse the General Highway Fund by a deposit of the funds received from such aforesaid appropriations, the receipt of which has been anticipated, to the extent of the amounts temporarily diverted therefrom. Such deposits shall be made as soon as such revenues are collected. [1971, c. 593, §22 (AMD) .]

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1995, c. 65, §A62 (AMD). 1995, c. 65, §§A153,C15 (AFF).

## **§1654. TRANSFERS FROM UNALLOCATED HIGHWAY FUND SURPLUS (REPEALED)**

#### SECTION HISTORY

1983, c. 457, §3 (NEW). 1985, c. 737, §B21 (AMD). 2011, c. 652, §14 (AFF). 2011, c. 652, §3 (RP).

## **§1654-A. TRANSFERS FROM HIGHWAY FUND UNALLOCATED SURPLUS**

At the close of each fiscal year, the State Controller shall transfer to the Department of Transportation, Secondary Road Program Fund, established in section 1803-C and referred to in this section as "the fund," the uncommitted balance in the Highway Fund unallocated surplus account. The amount transferred to the fund, when added to previous transfers to the fund for the fiscal year in which the uncommitted balance is transferred, may not exceed the program funding cap provided in section 1803-C, subsection 4. Any remaining uncommitted balance in the Highway Fund after the transfer to the fund must be transferred to the Department of Transportation, Highway and Bridge Capital program. The Commissioner of Transportation may allot these funds by financial order upon the recommendation of the State Budget Officer and the approval of the Governor. The transferred amounts are considered adjustments to allocations. Within 30 days after approval of the financial order, the Commissioner of Transportation shall provide to the joint standing

committee of the Legislature having jurisdiction over transportation matters a report detailing the financial status of the Department of Transportation, Highway and Bridge Capital program. [2011, c. 652, §4 (NEW); 2011, c. 652, §14 (AFF).]

For the purposes of this section, "uncommitted balance in the Highway Fund unallocated surplus account" or "uncommitted balance" means the amount remaining in the account at the close of the fiscal year after the deduction of all allocations, budgeted financial commitments and adjustments considered necessary by the State Controller. [2011, c. 652, §4 (NEW); 2011, c. 652, §14 (AFF).]

The State Controller shall include in the State Controller's official annual financial report at the close of each fiscal year a statement showing all transfers made from the Highway Fund unallocated surplus account for the fiscal period. [2011, c. 652, §4 (NEW); 2011, c. 652, §14 (AFF).]

SECTION HISTORY

2011, c. 652, §4 (NEW). 2011, c. 652, §14 (AFF).

## **§1655. BUILDING RENOVATIONS ACCOUNT**

*(REPEALED)*

SECTION HISTORY

2001, c. 83, §D1 (NEW). 2013, c. 36, §8 (RP).

### Subchapter 5: TOWN ROAD IMPROVEMENT FUND

## **§1701. PURPOSE**

*(REPEALED)*

SECTION HISTORY

1981, c. 492, §C24 (RP).

## **§1702. DEFINITIONS**

*(REPEALED)*

SECTION HISTORY

1981, c. 492, §C24 (RP).

## **§1703. ESTABLISHMENT OF FUND**

*(REPEALED)*

SECTION HISTORY

1981, c. 492, §C24 (RP).

## **§1704. RECEIPT OF FUNDS BY TOWNS**

*(REPEALED)*

SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 492, §C24 (RP).

## **§1705. EXPENDITURES**

*(REPEALED)*

SECTION HISTORY

1965, c. 35, (AMD). 1973, c. 168, (AMD). 1975, c. 149, (AMD). 1977, c. 242, (AMD). 1981, c. 492, §C24 (RP).

## **§1706. LIMITATION ON USE**

*(REPEALED)*

### SECTION HISTORY

1981, c. 492, §C24 (RP).

## **§1707. COMBINED USE OF STATE AID AND TOWN ROAD IMPROVEMENT FUNDS**

*(REPEALED)*

### SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 745, §§3,4 (AMD). 1981, c. 492, §C24 (RP).

### Subchapter 5-A: COLLECTOR ROAD IMPROVEMENT FUND

## **§1710. ESTABLISHMENT AND ADMINISTRATION**

*(REPEALED)*

### SECTION HISTORY

1995, c. 498, §B1 (NEW). 1995, c. 498, §B3 (AFF). 2005, c. 405, §C1 (RP).

### Subchapter 6: LOCAL ROAD ASSISTANCE PROGRAM

## **§1801. FINDINGS AND PURPOSE**

Municipal transportation assistance funds must be targeted to the capital needs of rural roads and highways and must also reflect urban maintenance responsibilities on state and state aid roadways. [1999, c. 473, Pt. D, §1 (RPR).]

Municipal transportation assistance funds must be adjusted according to increases or decreases in Highway Fund resources available for transportation. [1999, c. 473, Pt. D, §1 (RPR).]

Responsibility for decisions regarding maintenance and improvement of roads must follow the principle that roads that primarily serve regional or statewide needs must be the State's responsibility, roads that primarily serve local needs must be a local responsibility and roads that primarily serve as minor collector routes and major collector routes may be improved through a partnership between municipalities and the State. [2011, c. 652, §5 (AMD); 2011, c. 652, §14 (AFF).]

The Legislature recognizes that without municipal participation the State has few resources to make necessary capital improvements to state aid minor collector highways and state aid major collector highways. [2011, c. 652, §5 (AMD); 2011, c. 652, §14 (AFF).]

The purpose of the Local Road Assistance Program established in this subchapter is to provide equitable financial assistance to communities for their use in improving local roads and maintaining state roads in urban compact areas. The purpose of the Secondary Road Program Fund established in this subchapter is to establish a partnership between communities and the State in making capital improvements to state aid minor collector highways and state aid major collector highways. [2011, c. 652, §5 (AMD); 2011, c. 652, §14 (AFF).]

In order to meet the purposes set out in this section, the Local Road Assistance Program has rural road assistance and urban compact assistance funding as components. [2011, c. 652, §5 (AMD); 2011, c. 652, §14 (AFF).]

SECTION HISTORY

1981, c. 492, §C26 (NEW). 1999, c. 473, §D1 (RPR). 2011, c. 652, §5 (AMD). 2011, c. 652, §14 (AFF).

## §1802. DEFINITIONS

*(REPEALED)*

SECTION HISTORY

1981, c. 492, §C26 (NEW). 1987, c. 737, §§C68,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 516, §1 (RP).

### §1802-A. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 516, §2 (NEW).]

**1. Average lane miles maintained.**

[ 1999, c. 473, Pt. D, §2 (RP) .]

**1-A. Capital improvement.** "Capital improvement" means any work on a road or bridge that has a life expectancy of at least 10 years or restores the load-carrying capacity.

[ 1999, c. 473, Pt. D, §3 (NEW) .]

**2. Lane miles.** "Lane miles" means a length of road measured in miles multiplied by the number of travel lanes for that length of road.

[ 1995, c. 678, §2 (NEW); 1995, c. 678, §7 (AFF) .]

SECTION HISTORY

1989, c. 516, §2 (NEW). 1995, c. 678, §§1,2 (AMD). 1995, c. 678, §7 (AFF). 1999, c. 473, §§D2,3 (AMD).

## §1803. DISTRIBUTION

*(REPEALED)*

SECTION HISTORY

1981, c. 492, §C26 (NEW). 1983, c. 800, §1 (AMD). 1985, c. 403, §C1 (AMD). 1989, c. 516, §3 (RP). MRSA T. 23, §1803, sub-§3 (RP).

### §1803-A. ONE-TIME STIPEND

*(REPEALED)*

SECTION HISTORY

1987, c. 793, §A3 (NEW). MRSA T. 23, §1803-A, sub-§3 (RP).

## §1803-B. LOCAL ROAD ASSISTANCE PROGRAM

**1. Distribution and use of funds.** Funds from the Local Road Assistance Program must be distributed to each eligible municipality, county or Indian reservation through rural road assistance and urban compact assistance funding as follows.

A. Rural road assistance funds must be distributed as follows.

(1) Funds are distributed at a rate of \$600 per year per lane mile for all rural state aid minor collector roads and all public roads maintained by a municipality located outside urban compact areas as defined in section 754, except that funds are distributed at a rate of \$300 per year per lane mile for all seasonal public roads.

(2) Funds must be used for capital improvements as defined by this chapter, or for capital improvements to state aid minor collector highways and state aid major collector highways as described in section 1803-C. In municipalities, counties and Indian reservations in which there are no rural state aid minor collector or major collector roads, funds may also be used for winter highway maintenance, acquisition of highway maintenance equipment or the construction of highway maintenance buildings if the governing legislative body affirmatively votes that its town ways and local bridges are in sufficiently good condition so as to not require significant repair or improvement for at least 10 years. [2011, c. 652, §6 (AMD); 2011, c. 652, §14 (AFF).]

B. Urban compact assistance funds must be distributed as follows.

(1) Funds are distributed at a rate of \$2,500 per year per lane mile for summer maintenance performed by municipalities on state and state aid highways in compact areas as defined in section 754. For each lane mile beyond the 2nd lane on a highway with more than 2 lanes, funds are reimbursed at a rate of \$1,250 per lane mile for summer maintenance in compact areas. Funds are distributed at a rate of \$1,700 per year per lane mile for winter maintenance performed by municipalities on state highways in compact areas as defined in sections 754 and 1001 regardless of the number of lanes.

(2) Funds must be used only for the maintenance or improvement of public roads. [2011, c. 652, §6 (AMD); 2011, c. 652, §14 (AFF).]

C. [2013, c. 354, Pt. I, §4 (AFF); 2013, c. 354, Pt. I, §1 (RP).]

D. Beginning July 1, 2014, the annual funding dedicated for the Local Road Assistance Program must be 9% of the Highway Fund allocation to the Department of Transportation. On July 1, 2014 and every July 1st thereafter, the Commissioner of Transportation shall administratively adjust the base funding and the reimbursement rates per lane mile proportionately according to revenue available. [2013, c. 354, Pt. I, §2 (AMD); 2013, c. 354, Pt. I, §4 (AFF).]

[2013, c. 354, Pt. I, §§1, 2 (AMD); 2013, c. 354, Pt. I, §4 (AFF).]

**2. Retention of allocation for Local Road Assistance Program.** Prior to apportioning funds to each municipality, the Department of Transportation shall retain sufficient funds from the allocation for the Local Road Assistance Program to ensure equitable funds are provided for roads in unorganized areas and for administration.

[2011, c. 652, §6 (AMD); 2011, c. 652, §14 (AFF).]

**3. Payment of funds.** The funds apportioned to each municipality must be paid by the State to the municipality before December 1st each year.

[2013, c. 354, Pt. I, §3 (AMD); 2013, c. 354, Pt. I, §4 (AFF).]

**4. Limitations.**

[ 1999, c. 473, Pt. D, §4 (RP) .]

**5. State aid minor collector capital projects.**

[ 2011, c. 652, §14 (AFF); 2011, c. 652, §6 (RP) .]

**6. Municipal, county or Indian reservation administration.**

[ 2011, c. 652, §14 (AFF); 2011, c. 652, §6 (RP) .]

## SECTION HISTORY

1989, c. 516, §4 (NEW). 1995, c. 678, §3 (AMD). 1995, c. 678, §7 (AFF). 1999, c. 473, §D4 (RPR). 1999, c. 753, §3 (AMD). 2001, c. 471, §D22 (AMD). 2001, c. 471, §D23 (AFF). 2001, c. 565, §K1 (AMD). 2011, c. 652, §6 (AMD). 2011, c. 652, §14 (AFF). 2013, c. 354, Pt. I, §§1-3 (AMD). 2013, c. 354, Pt. I, §4 (AFF).

**§1803-C. SECONDARY ROAD PROGRAM FUND**

**1. Establishment.** The Secondary Road Program Fund, referred to in this section as "the fund," is established as a dedicated account within the Department of Transportation, referred to in this section as "the department." The fund must be used for capital improvements to state aid minor collector highways and state aid major collector highways. The department shall administer the fund.

[ 2011, c. 652, §7 (NEW); 2011, c. 652, §14 (AFF) .]

**2. Revenue.** The fund receives the following revenue:

A. Amounts that are transferred to the fund from time to time by the Treasurer of State pursuant to:

(1) Title 5, section 282, subsection 9; and

(2) Title 35-A, section 122, subsection 6-B; [2011, c. 652, §7 (NEW); 2011, c. 652, §14 (AFF) .]

B. Amounts from unallocated balances in the Highway Fund as provided in section 1654-A; and [2011, c. 652, §7 (NEW); 2011, c. 652, §14 (AFF) .]

C. Other funds from any public or private source received for use for any of the purposes for which the fund has been established. [2011, c. 652, §7 (NEW); 2011, c. 652, §14 (AFF) .]

[ 2011, c. 652, §7 (NEW); 2011, c. 652, §14 (AFF) .]

**3. Distribution and use of funds.** Up to 50% of project costs for a capital project on a state aid minor collector highway or state aid major collector highway as determined by the department may be financed from the fund with the remainder provided by the municipality, county or Indian reservation, except that the Commissioner of Transportation may authorize up to 80% of project costs for a capital project on a state aid minor collector highway or state aid major collector highway to be financed from the fund with the remainder provided by the municipality, county or Indian reservation if the municipality, county or Indian reservation demonstrates to the commissioner's satisfaction that the proposed project:

A. Addresses locations where there is a high incidence of vehicular accidents as defined by the department; [2011, c. 652, §7 (NEW); 2011, c. 652, §14 (AFF) .]

B. Creates a substantial number of new jobs for the region; or [2011, c. 652, §7 (NEW); 2011, c. 652, §14 (AFF) .]

C. Offers greater regional or statewide benefits relative to other similarly classified roads. [ 2011, c. 652, §7 (NEW); 2011, c. 652, §14 (AFF). ]

In determining local share of project costs for a capital project on a state aid minor collector highway or state aid major collector highway, the commissioner may consider the use of municipal, county or Indian reservation equipment, materials or in-kind services, an agreement to assume year-round capital and maintenance responsibilities for the project under consideration or a reduction in future Local Road Assistance Program payments.

A capital project on a state aid minor collector highway or state aid major collector highway may not be allotted funding from the Secondary Road Program Fund until the project and local financing is approved by a vote of the legislative body of the municipality, county or Indian reservation.

[ 2011, c. 652, §7 (NEW); 2011, c. 652, §14 (AFF) . ]

**4. Program funding cap.** The annual amount available for distribution under this section may not exceed \$4,000,000, and any remaining funds after all financial commitments have been made lapse to the department's Highway and Bridge Capital program within the Highway Fund at the end of each fiscal year.

[ 2011, c. 652, §7 (NEW); 2011, c. 652, §14 (AFF) . ]

#### SECTION HISTORY

2011, c. 652, §7 (NEW). 2011, c. 652, §14 (AFF).

### §1804. MUNICIPAL, COUNTY OR INDIAN RESERVATION REQUIREMENTS

To be eligible to receive funds from the Local Road Assistance Program, each municipality, county or Indian reservation shall, prior to August 1st each year, certify in a manner acceptable to the department that the funds are used in a manner consistent with this chapter. [2011, c. 652, §8 (AMD); 2011, c. 652, §14 (AFF).]

#### SECTION HISTORY

1981, c. 492, §C26 (NEW). 1999, c. 473, §D5 (AMD). 2011, c. 652, §8 (AMD). 2011, c. 652, §14 (AFF).

### §1805. PERMITTED USE OF FUNDS

*(REPEALED)*

#### SECTION HISTORY

1981, c. 492, §C26 (NEW). 1999, c. 473, §D6 (RP).

### §1806. STATE SERVICE CONTRACTS

The department may enter into service contracts with municipalities to perform at cost maintenance, reconstruction or construction functions on local service roads. To the extent state manpower and equipment permits, the department shall encourage municipalities to coordinate their work on local service roads with the department. [1981, c. 492, Pt. C, §26 (NEW).]

#### SECTION HISTORY

1981, c. 492, §C26 (NEW).

### §1807. TRANSIT BONUS PAYMENT PROGRAM

*(REPEALED)*

#### SECTION HISTORY

2001, c. 681, §1 (NEW). 2011, c. 652, §9 (AMD). 2011, c. 652, §14 (AFF). 2013, c. 354, Pt. C, §2 (AFF). 2013, c. 354, Pt. C, §1 (RP).

## Subchapter 6-A: TRANSPORTATION INVESTMENT PARTNERSHIPS

### **§1821. STATE AID FOR ARTERIAL AND MAJOR COLLECTOR HIGHWAY CAPITAL PROJECTS**

*(REPEALED)*

#### SECTION HISTORY

2005, c. 643, §2 (NEW). 2013, c. 36, §9 (RP).

## Subchapter 7: SALT AND SAND STORAGE FACILITIES

### **§1851. STATE COST-SHARE PROGRAM FOR SALT AND SAND STORAGE FACILITIES**

The Department of Transportation may administer funds for the construction of municipal or county salt and sand storage facilities in order to reduce salt pollution of ground and surface waters. In administering these funds, the department shall provide reimbursement to municipal and county governmental entities for approved: [2013, c. 523, §1 (AMD).]

#### **1. Priority 1 projects.**

[ 2013, c. 523, §1 (RP) . ]

#### **2. Priority 2 projects.**

[ 2013, c. 523, §1 (RP) . ]

#### **3. Priority 3 projects.** Priority 3 projects that were designated before April 1, 2000; and

[ 2013, c. 523, §1 (AMD) . ]

#### **4. Priority 4 projects.**

[ 2013, c. 523, §1 (RP) . ]

#### **5. Priority changes.**

[ 2013, c. 523, §1 (RP) . ]

**6. Priority 5 projects.** Priority 5 projects that were constructed before November 1, 1999, with plans and financial information submitted to the Department of Transportation by November 1, 1999.

[ 2013, c. 523, §1 (AMD) . ]

#### **7. Other projects.**

[ 2013, c. 523, §1 (RP) . ]

Allocation of funds must be based upon the sum of 25% of the expenses permitted plus 1.25 times the ratio of miles of state and state aid roads maintained for winter maintenance, as described in sections 1001 and 1003, to all miles maintained for winter maintenance by the municipality, quasi-municipal agency or county. The Department of Transportation shall establish guidelines to reimburse eligible local government entities in a consistent and timely manner. [1999, c. 387, §1 (RPR).]

The Department of Transportation shall review and approve municipal and county plans and specifications pursuant to established departmental guidelines for design, construction and size before a municipality or county constructs a facility. Municipal actions inconsistent with such guidelines are reimbursed at the sole discretion of the department. [1999, c. 387, §1 (RPR).]

Reimbursable expenses under this section do not include land acquisition or debt service. [1999, c. 387, §1 (RPR).]

#### SECTION HISTORY

1987, c. 473, (NEW). 1987, c. 769, §A85 (AMD). 1987, c. 793, §A4 (AMD). 1989, c. 502, §A89 (AMD). 1999, c. 387, §7 (AFF). 1999, c. 387, §1 (RPR). 2013, c. 523, §1 (AMD).

### **§1852. SALT AND SAND STORAGE FACILITIES**

*(REPEALED)*

#### SECTION HISTORY

1987, c. 793, §A5 (NEW). 1993, c. 63, §1 (AMD). 1997, c. 551, §1 (AMD). 1999, c. 387, §2 (AMD). 2013, c. 523, §2 (RP).

## Subchapter 8: STATE INFRASTRUCTURE BANK

### **§1853. STATE INFRASTRUCTURE BANK; FINDING**

The legislature finds that new financing mechanisms are necessary to provide greater flexibility and additional funds for needed transportation infrastructure projects in the State. The creation of a financing mechanism, in conformance with the National Highway System Designation Act of 1995, Public Law 104-59, Section 350, relating to a state infrastructure bank program will enable the State, counties and municipalities to use federal and state highway funds to construct transportation projects eligible for assistance under Section 350. These funds must be deposited into specific accounts in the department. From these accounts, loans may be made to counties and municipalities for eligible transportation projects. [1997, c. 395, Pt. I, §1 (NEW).]

For purposes of this subchapter, a project is an "eligible transportation project" and is "eligible for assistance" when it complies with the eligibility criteria established in the National Highway System Designation Act of 1995, Public Law 104-59, Section 350. [1997, c. 395, Pt. I, §1 (NEW).]

#### SECTION HISTORY

1997, c. 395, §11 (NEW).

### **§1854. STATE INFRASTRUCTURE BANK CREATED**

The state infrastructure bank is created as a revolving fund in the department, to be administered by the department and used for the purposes described in this subchapter. The fund consists of certain federal highway funds and state highway funds and other funds eligible for deposit under applicable federal law; payments received by the department in connection with the state infrastructure bank; investment earnings on money in state infrastructure bank accounts; and other funds as may be provided by law. Separate accounts may be established within the state infrastructure bank if required for its proper administration. [1997, c. 395, Pt. I, §1 (NEW).]

The fund is a nonlapsing fund. All monies accruing to the credit of the fund must be allocated by the Legislature and expended by the department to effectuate the purposes of this subchapter. Money available in the fund may not be used to hire staff for the department. [1997, c. 395, Pt. I, §1 (NEW).]

#### SECTION HISTORY

1997, c. 395, §11 (NEW).

### §1855. LOANS

The Commissioner of Transportation shall use the state infrastructure bank to make loans to counties and municipalities, state agencies and quasi-state government agencies upon such terms as the commissioner shall determine, including secured and unsecured loans, and in connection with the secured and unsecured loans, to enter into loan agreements, subordination agreements and other agreements; accept notes and other forms of obligation to evidence the indebtedness, and mortgages, liens, pledges, assignments or other security interest to secure the indebtedness, which may be prior or subordinate to or on a parity with other indebtedness, obligations, mortgages, pledges, assignments, other security interests or liens or encumbrances, and take such actions as are appropriate to protect the security and safeguard against losses, including foreclosure and the bidding upon and purchase of property upon foreclosure or other sale. Repayments of a federal share loan may be obligated by the commissioner for any transportation purpose, including the reloaning of such repaid funds for other projects. Reloaned funds are considered state loans, not federal share loans. [2013, c. 36, §10 (AMD).]

The commissioner may adopt policies and procedures for the implementation and exercise of the authority granted by this section, including policies and procedures for receiving, reviewing, evaluating and selecting projects for which financial assistance will be approved. [1997, c. 395, Pt. I, §1 (NEW).]

#### SECTION HISTORY

1997, c. 395, §11 (NEW). 2005, c. 405, §G1 (AMD). 2013, c. 36, §10 (AMD).

## Chapter 21: MAINE TRAVELER INFORMATION SERVICES

### §1901. LEGISLATIVE FINDINGS

The Legislature of this State makes the following findings of fact. [1981, c. 318, §1 (RPR).]

**1. Tourist industry.** A large and increasing number of tourists has been coming to Maine and, as a result, the tourist industry is one of the important sources of income for Maine citizens, with an increasing number of persons directly or indirectly dependent upon the tourist industry for their livelihood.

[ 1981, c. 318, §1 (RPR) .]

**2. Information discrimination.** Very few convenient means exist in the State to provide information on available public accommodations, commercial services for the traveling public and other lawful businesses and points of scenic, historic, cultural, educational and religious interest. Provision of those facilities can be a major factor in encouraging the development of the tourist industry in Maine.

[ 1981, c. 318, §1 (RPR) .]

**3. Scenic resources.** Scenic resources of great value are distributed throughout the State, and have contributed greatly to its economic development by attracting tourists, permanent and part-time residents and new industries and cultural facilities.

[ 1981, c. 318, §1 (RPR) .]

**4. Preservation of scenic resources.** The scattering of outdoor advertising throughout the State is detrimental to the preservation of those scenic resources, and so to the economic base of the State, and is also not an effective method of providing information to tourists about available facilities.

[ 1981, c. 318, §1 (RPR) .]

**5. Proliferation of outdoor advertising.** The proliferation in number, size and manner of outdoor advertising is hazardous to highway users.

[ 1981, c. 318, §1 (RPR) .]

#### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §1 (RPR).

## §1902. POLICY AND PURPOSES

To promote the public health, safety, economic development and other aspects of the general welfare, it is in the public interest to provide tourists and travelers with information and guidance concerning public accommodations, facilities, commercial services and other businesses and points of scenic, cultural, historic, educational, recreational and religious interest. To provide this information and guidance, it is the policy of the State and the purpose of this chapter to: [1981, c. 318, §1 (RPR) .]

**1. Official information centers; signs.** Establish and maintain official information centers and a system of official business directional signs;

[ 1981, c. 318, §1 (RPR) .]

**2. Information publications.** Provide official directories, guidebooks, maps and other tourist and traveler information publications;

[ 1981, c. 318, §1 (RPR) .]

**3. Control outdoor advertising.** Prohibit and control the indiscriminate use of outdoor advertising;

[ 2013, c. 529, §1 (AMD) .]

**4. Protection of scenic beauty.** Enhance and protect the natural scenic beauty of the State; and

[ 2013, c. 529, §1 (AMD) .]

**5. Preserve public safety.** Ensure that signs are erected in substantial compliance with national standards.

[ 2013, c. 529, §2 (NEW) .]

#### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §1 (RPR). 2013, c. 529, §§1, 2 (AMD).

## §1903. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following words have the following meanings. [1981, c. 318, §1 (RPR).]

**1. Commissioner.** "Commissioner" means the Commissioner of Transportation.

[ 1981, c. 318, §1 (RPR) . ]

**1-A. Controlled access highway.** "Controlled access highway" means a highway to which, in the interest of safety and efficiency of operation, abutting property owners have no right of direct access and on which the type and location of all access connections are determined and controlled by the department.

[ 1993, c. 516, §1 (NEW) . ]

**1-B. Controlled access bypass.** "Controlled access bypass" means a highway designed to bypass an existing business district and meeting the definition of a controlled access highway.

[ 1993, c. 516, §1 (NEW) . ]

**1-C. Agricultural product.**

[ 2013, c. 529, §3 (RP) . ]

**2. Erect.** "Erect" means to construct, build, raise, assemble, place, display, affix, attach, create, paint, draw or in any other way bring into being or establish.

[ 2015, c. 403, §1 (AMD) . ]

**3. Interstate system or interstate highway.** "Interstate system" or "interstate highway" means any state highway which is or does become part of the national system of interstate or defense highways, as described in the United States Code, Title 23, section 103(d) and amendments thereto or replacements thereof.

[ 1981, c. 318, §1 (RPR) . ]

**4. Logo.** "Logo" means a single or multicolored symbol or design used by a business as a means of identifying its products or services.

[ 1981, c. 318, §1 (RPR) . ]

**5. Maintain.** "Maintain" means to allow to exist.

[ 1981, c. 318, §1 (RPR) . ]

**6. Motor vehicle.** "Motor vehicle" means a self-propelled vehicle capable of legal operation on the traveled portion of the state highways.

[ 1981, c. 318, §1 (RPR) . ]

**7. Official business directional sign.** "Official business directional sign" means a sign erected and maintained in accordance with this chapter, to indicate to the traveling public the route and distance to public accommodations, facilities, commercial services for the traveling public and points of scenic, historical, cultural, recreational, educational and religious interest. Other information may be displayed by means of logos authorized pursuant to section 1910.

[ 1981, c. 318, §1 (RPR) . ]

**8. On-premises sign.** "On-premises sign" means a sign that is erected and maintained according to the standards set forth in section 1914 upon the real property upon which the business, facility or point of interest advertised by the sign is located, a sign licensed pursuant to section 1914, subsection 4 that is within the portion of the public right-of-way that abuts that real property or an approach sign as permitted by section 1914, subsection 10. The sign may advertise only the business, facility or point of interest at, or the sale, rent or lease of, the property upon which it is located.

[ 2013, c. 529, §4 (AMD) .]

**9. Person.** "Person" means an individual, corporation, joint venture, partnership or any other legal entity.

[ 1981, c. 318, §1 (RPR) .]

**10. Primary system or primary highway.** "Primary system" or "primary highway" means any state highway which is or does become part of the federal aid primary system, as described in the United States Code, Title 23, section 103(b) and amendments thereto and replacement thereof.

[ 1981, c. 318, §1 (RPR) .]

**10-A. Private way.** "Private way" means a private road, driveway or public easement as defined in section 3021.

[ 1981, c. 318, §1 (RPR) .]

**10-B. Producer.** "Producer" means a person who produces, cultivates, grows or harvests farm and food products, as defined in Title 7, section 415, subsection 1, paragraph B.

[ 2013, c. 529, §5 (AMD) .]

**10-C. Principal building or structure.** "Principal building or structure" means a building where an advertised business or activity is regularly carried on or practiced or a parking lot or storage or processing area or other structure that is essential and customary to the conduct of the advertised business or activity.

[ 2013, c. 529, §6 (NEW) .]

**11. Public way.** "Public way" means any road capable of carrying motor vehicles, including, but not limited to, any state highway, municipal road, county road, unincorporated territory road or other road dedicated to the public.

[ 1981, c. 318, §1 (RPR) .]

**12. Residential directional sign.**

[ 1981, c. 576, §1 (RP) .]

**13. Secondary system or secondary highway.** "Secondary system" or "secondary highway" means any state highway, but which is not part of the interstate or primary systems.

[ 1981, c. 318, §1 (RPR) .]

**14. Sign.** "Sign" means any structure, display, logo, device or representation which is designed or used to advertise or call attention to any thing, person, business, activity or place and is visible from any public way. It does not include the flag, pennant or insignia of any nation, state or town. Whenever dimensions of a sign are specified they shall include frames.

[ 1981, c. 318, §1 (RPR) .]

**15. State highway or highway.** "State highway" or "highway" means any public way which is so designated by this Title, including interstate, primary and secondary highways.

[ 1981, c. 318, §1 (RPR) .]

**15-A. Temporary sign.** "Temporary sign" means a sign bearing a noncommercial message that has been placed within the public right-of-way for a limited period of time.

[ 2015, c. 403, §2 (NEW) .]

**16. Traffic control sign or device.** "Traffic control sign or device" means an official route marker, warning sign, sign directing traffic to or from a community, bridge, ferry or airport, or sign regulating traffic, which has been erected by officers having jurisdiction over the public way and these signs shall be exempt from the requirements of this chapter.

[ 1981, c. 318, §1 (RPR) .]

**17. Visible.** "Visible" means capable of being seen without visual aid by a person of normal visual acuity.

[ 1981, c. 318, §1 (RPR) .]

#### SECTION HISTORY

1977, c. 494, §1 (NEW). 1979, c. 477, §§2-4 (AMD). 1981, c. 318, §1 (RPR). 1981, c. 576, §1 (AMD). 1993, c. 516, §1 (AMD). 1997, c. 635, §1 (AMD). 2011, c. 115, §1 (AMD). 2013, c. 529, §§3-6 (AMD). 2015, c. 403, §§1, 2 (AMD).

## **§1904. TRAVEL INFORMATION ADVISORY COUNCIL**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §1 (RPR). 1981, c. 576, §2 (AMD). 1983, c. 812, §§140,141 (AMD). 1989, c. 503, §B99 (AMD). 1989, c. 735, §§1,2 (AMD). 1991, c. 548, §B2 (AMD). 1999, c. 152, §F1 (AMD). 2011, c. 344, §26 (RP).

## **§1905. OFFICIAL TOURIST INFORMATION CENTERS**

To the extent funds are available or contracts can be entered into, the commissioner shall establish official tourist information centers near the principal entrance points into the State, as determined by the commissioner, with the advice and recommendation of the Director of the State Development Office, and at such other locations as the commissioner deems appropriate in order to provide information about public

accommodations, facilities, commercial services and other businesses for the traveling public, and points of scenic, historic, cultural, recreational, educational and religious interest. [1983, c. 477, Pt. E, Subpt. 26, §6 (AMD).]

## SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §1 (RPR). 1983, c. 477, Pt. E, Subpt. 26, §6 (AMD).

## §1906. OFFICIAL BUSINESS DIRECTIONAL SIGNS

**1. Erection and maintenance.** The commissioner shall designate locations for and erect official business directional signs licensed under this chapter. The official business directional signs must be furnished and preserved by the applicant after the erection of the official business directional signs and must conform to rules issued by the commissioner. Such rules must be consistent with section 1910.

[ 2011, c. 344, §27 (AMD) .]

**2. Agreements with municipalities.** The commissioner may:

A. Enter into contractual or other arrangements with any municipality of this State providing for the erection of official business directional signs distinctive to that municipality upon finding that:

- (1) The municipality has in effect an ordinance or regulation establishing a mandatory program of distinctive official business directional signs;
- (2) The ordinance or regulation is administrable and enforceable and will be properly administered and enforced; and
- (3) The ordinance or regulation is consistent with the policy and purposes of this chapter; and [1981, c. 576, §3 (NEW).]

B. Contract or arrange with any municipality for administration by that municipality within its boundaries of any appropriate matter under this chapter. Any contract or arrangement made under this paragraph and any action taken pursuant to it shall comply with the policy and purposes of this chapter. [1981, c. 576, §3 (NEW).]

Whenever any of the conditions set forth in this subsection are no longer being met, the commissioner shall promptly resume the administration of the official business directional sign program under this chapter. The commissioner shall provide written notice of his action to the municipality and may require nonconforming signs to be removed immediately.

[ 1981, c. 576, §3 (RPR) .]

## SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §1 (RPR). 1981, c. 576, §3 (AMD). 2011, c. 344, §27 (AMD).

## §1907. PUBLISHED INFORMATION

*(REPEALED)*

## SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §1 (RPR). 1983, c. 477, Pt. E, Subpt. 26, §7 (RP).

## §1908. REGULATION OF OUTDOOR ADVERTISING

No person may erect or maintain signs visible to the traveling public from a public way except as provided in this chapter. [1981, c. 318, §1 (RPR).]

### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §1 (RPR).

### §1908-A. OUTDOOR ADVERTISING; PUBLICLY OWNED BUS STOPS

A municipality may erect and maintain at a publicly owned bus stop outdoor advertising signs visible to the traveling public from a public way. For purposes of this section, "bus stop" means a place where a public transport bus stops for the purpose of allowing passengers to board or leave the bus. The municipality is responsible for the administration of outdoor advertising signs under this section. Any revenue collected under this section by a municipality must be used for transportation purposes, including, but not limited to, maintenance of a publicly owned bus stop. [2011, c. 114, §1 (NEW).]

### SECTION HISTORY

2011, c. 114, §1 (NEW).

## §1909. ELIGIBILITY FOR OFFICIAL BUSINESS DIRECTIONAL SIGNS

Lawful businesses and points of interest and cultural, historic, recreational, educational and religious facilities are eligible for official business directional signs, subject to this chapter and to rules adopted by the commissioner and to any federal law, rule or regulation affecting the allocation of federal highway funds or other funds to or for the benefit of the State or any agency or subdivision of the State or any agency. [2011, c. 344, §28 (AMD).]

### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §1 (RPR). 2011, c. 344, §28 (AMD).

## §1910. TYPES AND ARRANGEMENTS OF SIGNS

Subject to this chapter, the commissioner shall regulate the size, shape, color, lighting, manner of display and lettering of official business directional signs. A symbol may be specified for each type of eligible service or facility for inclusion upon official business directional signs. [2015, c. 403, §3 (AMD).]

### SECTION HISTORY

1977, c. 494, §1 (NEW). 1979, c. 477, §5 (AMD). 1981, c. 318, §1 (RPR). 1981, c. 576, §4 (AMD). 2011, c. 344, §29 (AMD). 2015, c. 403, §3 (AMD).

## §1911. NUMBER AND LOCATION OF SIGNS

**1. Location limited.** Official business directional signs shall only be located in those vicinities where the traveler must change direction from one public way to another to reach the business, facility or point of interest.

[ 1981, c. 318, §1 (RPR) .]

**2. Number limited.** Notwithstanding section 1918, the commissioner shall not issue more than 6 licenses for official business directional signs for any one place of business, facility or point of interest eligible therefor under section 1909, not more than one such official business sign shall be visible to traffic

moving in any one public way leading toward the place of business, facility or point of interest nor shall any license be issued for a sign located more than 10 miles radius from the place of business, facility or point of interest.

[ 1981, c. 576, §5 (AMD) .]

**3. Waiver of requirements.** The commissioner may waive the specific requirements of this section if an applicant for a license can show unusual hardship due to conditions of topography, access or other physical characteristics.

[ 1981, c. 318, §1 (RPR) .]

#### SECTION HISTORY

1977, c. 494, §1 (NEW). 1979, c. 477, §6 (AMD). 1981, c. 318, §1 (RPR).  
1981, c. 576, §5 (AMD).

## §1912. PERMITTED LOCATIONS

In adopting regulations relating to locations for official business directional signs, the commissioner shall take into consideration such factors as the effect upon highway safety, the convenience of the traveling public and the preservation of scenic beauty. [1981, c. 318, §1 (RPR).]

When appropriate, because of the number of signs at one location, the signs shall be displayed in tiers or on panels. Subject to the traffic safety regulations adopted by the commissioner for the purposes of this chapter, the commissioner shall also specify by regulation the general types of locations where such posts, signs or panels may be erected and maintained, and the size, shape, lighting and other characteristics of the panels and posts, including the locations of signs thereon. [1981, c. 318, §1 (RPR).]

#### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §1 (RPR).

## §1912-A. OFFICIAL BUSINESS DIRECTIONAL SIGNS ON CONTROLLED ACCESS HIGHWAYS

**1. Interstate highway.** Official business directional signs are not permitted within the right-of-way of the interstate highway.

[ 1993, c. 516, §2 (NEW) .]

**2. Permitted on certain controlled access bypasses.** Official business directional signs are not permitted within the right-of-way of controlled access highways except as provided in this subsection. Official business directional signs are permitted within the right-of-way of a controlled access bypass when the controlled access bypass is part of a route, as designated by its route number, that is not a controlled access highway throughout its length.

[ 1993, c. 516, §2 (NEW) .]

#### SECTION HISTORY

1993, c. 516, §2 (NEW).

## §1912-B. LOGO SIGNS ON THE INTERSTATE SYSTEM

The commissioner may authorize the placement of logo signs within the right-of-way of the interstate system except for that portion owned by the Maine Turnpike Authority. To implement this section, the commissioner shall adopt rules that include provisions that regulate the size, shape and location of logo signs,

the application procedure for permission to erect a logo sign, the criteria for selection among applicants, allocation of available logo sign space and fees to produce, place and maintain a logo sign. Notwithstanding Title 5, section 8071, subsection 3, rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Logo signs for exits on the Maine Turnpike are governed by rules adopted pursuant to section 1965, subsection 1, paragraph U. A logo sign may not be larger than existing service information signs permitted on the interstate highway and may include only logos for gas, food, lodging, camping and attractions. [2013, c. 549, §2 (AMD).]

#### SECTION HISTORY

1995, c. 416, §1 (NEW). 1995, c. 663, §1 (AMD). 2005, c. 482, §2 (AMD). 2011, c. 344, §30 (AMD). 2013, c. 529, §7 (AMD). 2013, c. 549, §2 (AMD).

### §1912-C. GUIDE SIGNS ON THE INTERSTATE SYSTEM

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Advance guide sign" means a sign described in the national standards that identifies the principal destinations and routes served by an exit and the distance to that exit. [2013, c. 549, §3 (NEW).]
- B. "Authority" means the Maine Turnpike Authority. [2013, c. 549, §3 (NEW).]
- C. "College or university" means an accredited institution providing postsecondary education that has authorization to confer a degree in accordance with Title 20-A, chapter 409. [2013, c. 549, §3 (NEW).]
- D. "Department" means the Department of Transportation. [2013, c. 549, §3 (NEW).]
- E. "Exit directional sign" means an exit sign that repeats the route and destination information that is displayed on an advance guide sign for that exit. [2013, c. 549, §3 (NEW).]
- F. "Interchange guide sign" means an advance guide sign or exit directional sign. [2013, c. 549, §3 (NEW).]
- G. "Military installation" means a facility that is owned by the Federal Government and is operated by a branch of the United States Armed Forces. [2013, c. 549, §3 (NEW).]
- H. "National standard" means the latest version of the Manual on Uniform Traffic Control Devices approved by the United States Department of Transportation, Federal Highway Administration in accordance with 23 United States Code and the latest version of the Guidelines for the Selection of Supplemental Guide Signs for Traffic Generators Adjacent to Freeways published by the American Association of State Highway and Transportation Officials. [2013, c. 549, §3 (NEW).]
- I. "Signing agency" means, with respect to signs proposed to be placed along the state-constructed and state-maintained interstate system, the department and, with respect to signs proposed to be placed along the Maine Turnpike, the authority. [2013, c. 549, §3 (NEW).]
- J. "State park" means any area of land or an interest in land, with or without improvements, that is designated as a state park, that is acquired by or under the control of the State and that is managed primarily for public recreation or conservation purposes. [2013, c. 549, §3 (NEW).]
- K. "Supplemental guide sign" means a sign used to provide information regarding destinations accessible from an exit other than places displayed on an interchange guide sign. [2013, c. 549, §3 (NEW).]
- L. "Transportation facility" means a bus, train, air, ship or ferry terminal, a park and ride lot or an intermodal transportation facility. [2013, c. 549, §3 (NEW).]

M. "Veterans, police or firefighters memorial" means a veterans cemetery or a memorial honoring veterans, firefighters or police officers if the cemetery or memorial is maintained and funded by a state or federal agency. [2013, c. 549, §3 (NEW).]

[ 2013, c. 549, §3 (NEW) . ]

**2. Authority to place interchange guide signs on the interstate system.** To guide travelers to destinations of local, regional and statewide interest, interchange guide signs and supplemental guide signs may be placed by a signing agency at strategic points on the interstate system beside the traffic lanes approaching an exit if the placement complies with this section and with national standards. All determinations regarding whether the placement of interchange guide signs or supplemental guide signs on the interstate system meets the standards contained in this section must be made by the signing agency.

[ 2013, c. 549, §3 (NEW) . ]

**3. Interchange guide signs.** The following provisions apply to interchange guide signs.

A. The primary destination displayed on an interchange guide sign must be the municipality in which the exit is located or the street name or route adjacent to the exit, or both. [2013, c. 549, §3 (NEW).]

B. Unless otherwise allowed by the signing agency, advance guide signs must be placed from 1/2 mile to 2 miles in advance of the exit. [2013, c. 549, §3 (NEW).]

C. In addition to the primary destination, a secondary destination may be displayed on an interchange guide sign. The secondary destination must be selected by the signing agency in accordance with its judgment of how best to serve travelers and must be one of the following:

- (1) The municipality with the largest population within 5 miles of the exit that has a highway that is classified as an arterial or major collector providing a direct connection from the exit to the municipality's population center or business district;
- (2) A municipality with a population of at least 2,000 that is located within 5 miles of the exit, that has a highway that is classified as an arterial or a major collector providing a connection from the exit to the municipality's population center or business district if a portion of the interstate system passes through that municipality;
- (3) A municipality that is located within 10 miles of the exit, that has a highway that is classified as an arterial or major collector providing a direct connection from the exit to the municipality's population center or business district and that has a population of at least 10,000;
- (4) Another municipality that is considered a major destination if its inclusion would benefit travelers; or
- (5) A major destination, other than a municipality, that is directly connected to the exit if its inclusion would benefit travelers. [2013, c. 549, §3 (NEW).]

D. An interchange guide sign may bear the name of a specific destination if the primary purpose of the exit is to provide access to that destination. [2013, c. 549, §3 (NEW).]

[ 2013, c. 549, §3 (NEW) . ]

**4. Supplemental guide signs.** The purpose of a supplemental guide sign is to provide directional guidance to travelers and not to promote commercial or economic interests. Supplemental guide signs must be limited in number and restricted in location to avoid driver distraction and impairment to traffic.

The following provisions apply to supplemental guide signs.

A. A supplemental guide sign may be used only if it does not conflict or interfere with required signs or with other permitted signs already in place. Whether sufficient space exists for a supplemental guide sign must be determined by the signing agency with reference to national standards. Supplemental guide signs for municipalities and transportation facilities take precedence over supplemental guide signs for other destinations. [ 2013 , c . 549 , §3 (NEW) . ]

B. A supplemental guide sign must be located in advance of the exit that provides the most direct or convenient route to the destination, except that the signing agency may allow a different location if there is more than one exit in the municipality or if another location is warranted to facilitate traffic. [ 2013 , c . 549 , §3 (NEW) . ]

C. A supplemental guide sign for a destination is permitted only if there are sufficient signs off the interstate highway to direct travelers from the interstate highway to the destination with minimal confusion. [ 2013 , c . 549 , §3 (NEW) . ]

D. A sign for a destination that meets the criteria for logo signs under section 1912-B or in rules adopted pursuant to section 1965, subsection 1, paragraph U is not eligible to be placed as a supplemental guide sign under this section unless that destination's name is readily recognized as the principal attraction in a major recreational area as described in subsection 5, paragraph C and it is necessary to include it on a supplemental guide sign to avoid traveler confusion. [ 2013 , c . 549 , §3 (NEW) . ]

[ 2013 , c . 549 , §3 (NEW) . ]

**5. Destinations qualifying for supplemental guide signs.** The following destinations may appear on a supplemental guide sign:

A. A college or university that:

- (1) Is located within 15 miles of an exit and has an enrollment of 300 or more students attending classes on site; or
- (2) Has an enrollment of 1,000 or more students attending classes on site; [ 2013 , c . 549 , §3 (NEW) . ]

B. A national park or state park that:

- (1) Is located within 10 miles of an exit and has a minimum annual attendance of 25,000 recorded visitors; or
- (2) Is between 10 and 120 miles from an exit and has a minimum annual attendance of 75,000 recorded visitors; [ 2013 , c . 549 , §3 (NEW) . ]

C. A major recreational area that is a geographic region that is served by a highway that is classified as an arterial or a major collector. The geographic region must:

- (1) Contain a beach or lake access that is open to the public, allows swimming for all ages, provides parking for more than 100 vehicles, has rest rooms on or adjacent to the beach or lake access and, with respect to a beach, maintains lifeguards on duty during July and August;
- (2) Contain a ski area open to the public that:
  - (a) Has a minimum vertical drop of 1,000 feet with 40 or more maintained trails; or
  - (b) Is within 10 miles of the exit, has a minimum vertical drop of 200 feet with 10 or more maintained trails and has an aerial lift servicing groomed trails; or
- (3) Have generated at least 1% of the State's total sales subject to the taxes under Title 36, section 1811 on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, prepared food and rental of living quarters in any hotel, rooming house or tourist or trailer camp over the previous 3 years and must offer recreational opportunities of sufficient traffic significance to warrant signs in accordance with criteria developed by the signing agency; [ 2013 , c . 549 , §3 (NEW) . ]

D. A military installation to which at least 2,000 employees and military personnel are permanently assigned, as long as the distance from the applicable exit to the installation does not exceed one mile for every 200 employees and military personnel permanently assigned to the installation; [ 2013, c. 549, §3 (NEW). ]

E. A municipality that qualifies for but has not been included on an interchange guide sign; [ 2013, c. 549, §3 (NEW). ]

F. A transportation facility if signs for the facility significantly benefit the transportation system; and [ 2013, c. 549, §3 (NEW). ]

G. A veterans, police or firefighters memorial that is located within 20 miles of an exit. [ 2013, c. 549, §3 (NEW). ]

[ 2013, c. 549, §3 (NEW) . ]

#### SECTION HISTORY

2013, c. 549, §3 (NEW).

### §1913. CATEGORICAL SIGNS

*(REPEALED)*

#### SECTION HISTORY

1977, c. 494, §1 (NEW). 1977, c. 696, §196 (AMD). 1979, c. 477, §7 (RPR). 1981, c. 311, §§1,2 (AMD). 1981, c. 318, §2 (RP). 1981, c. 576, §6 (RP).

### §1913-A. CATEGORICAL SIGNS

**1. Signs within the public right-of-way.** The following signs may be erected and maintained within the public right-of-way without license or permit as long as they conform to applicable provisions of this Title and rules adopted pursuant to this Title:

A. Signs bearing noncommercial messages erected by a duly constituted governmental body, a soil and water conservation district or a regional planning district; [ 2015, c. 403, §4 (AMD). ]

B. Signs located on or in the rolling stock of common carriers, except those that are determined by the commissioner to be circumventing the intent of this chapter. Circumvention includes, but is not limited to, signs that are continuously in the same location or signs that extend beyond the height, width or length of the vehicle; [ 2013, c. 529, §8 (AMD). ]

C. Signs on registered and inspected motor vehicles, except those that are determined by the commissioner to be circumventing the intent of this chapter. Circumvention includes, but is not limited to, signs that are continuously in the same location or signs that extend beyond the height, width or length of the vehicle; [ 2013, c. 529, §8 (AMD). ]

D. Signs with an area of not more than 260 square inches identifying stops or fare zone limits of motor buses; [ 2013, c. 529, §8 (AMD). ]

E. [ 2015, c. 403, §4 (RP). ]

F. [ 2015, c. 403, §4 (RP). ]

G. Hand-held signs not affixed to the ground or buildings; [ 2015, c. 403, §4 (AMD). ]

H. [ 2015, c. 403, §4 (RP). ]

I. Adopt-A-Highway Program signs allowed under section 1117; and [ 2015, c. 403, §4 (AMD). ]

J. [ 2015, c. 403, §4 (RP). ]

K. [2015, c. 403, §4 (RP).]

L. Temporary signs placed within the public right-of-way for a maximum of 6 weeks per calendar year. A temporary sign may not be placed within 30 feet of another temporary sign bearing the same or substantially the same message. A temporary sign may not exceed 4 feet by 8 feet in size. A sign under this paragraph must be labeled with the name and address of the individual, entity or organization that placed the sign within the public right-of-way and the designated time period the sign will be maintained within the public right-of-way. [2015, c. 403, §4 (NEW).]

[ 2015, c. 403, §4 (AMD) .]

## **2. Types of signs outside the right-of-way.**

[ 2015, c. 403, §4 (RP) .]

**2-A. Signs outside the public right-of-way.** Except as provided in section 1914, a sign may be erected and maintained outside the public right-of-way as long as it does not exceed 50 square feet in size.

[ 2015, c. 403, §4 (NEW) .]

## **3. Regulations.**

[ 2013, c. 529, §8 (RP) .]

## **4. Zones.**

[ 2015, c. 403, §4 (RP) .]

**5. Prohibited practices.** None of the signs referred to in this section may be erected or maintained on any traffic control signs or devices, public utility poles or fixtures or upon any trees. None of these signs may be painted or drawn upon rocks or other natural features.

[ 1981, c. 318, §3 (NEW) .]

**6. Interstate system.** None of the signs referred to in this section, other than signs conforming with subsection 1, paragraphs B and C and logo signs erected pursuant to section 1912-B, may be located within the right-of-way limits of the interstate system or within 660 feet of the nearest edge of the interstate system and erected in such a fashion that the message may be read from the interstate highway.

[ 1995, c. 416, §2 (AMD) .]

### SECTION HISTORY

1981, c. 318, §3 (NEW). RR 1991, c. 2, §89 (COR). 1991, c. 387, §§1,2 (AMD). 1995, c. 416, §2 (AMD). 1997, c. 635, §§2,3 (AMD). 1999, c. 152, §§G2,3 (AMD). 2013, c. 529, §8 (AMD). 2015, c. 403, §4 (AMD).

## **§1914. ON-PREMISES SIGNS**

**1. License and permit.** Except as provided in subsection 4, a license or permit may not be required for an on-premises sign.

[ 2013, c. 529, §9 (AMD) .]

**2. Number.** On-premises signs on any one property may not exceed 10 in number, except in the case of more than one business, facility or point of interest being conducted on one property, signs for each business, facility or point of interest may not exceed 10 in number.

[ 2013, c. 529, §9 (AMD) . ]

**3. Location.** On-premises signs must be located within 1,000 feet of the principal building or structure where the business or facility is carried on or practiced or within 1,000 feet of the point of interest.

[ 2013, c. 529, §9 (AMD) . ]

**4. Location; relation to public way; license.** Unless a license is obtained from the commissioner pursuant to this subsection, on-premises signs are prohibited:

A. Within 33 feet of the center line of any public way; [ 2013, c. 529, §9 (AMD) . ]

B. Within 20 feet from the outside edge of the paved portion of any public way with more than 2 travel lanes and a total paved portion in excess of 24 feet in width; and [ 2013, c. 529, §9 (AMD) . ]

C. Within the full width of the right-of-way of any public way. [ 1981, c. 318, §4 (RPR) . ]

Paragraphs A and B do not apply to signs erected before September 1, 1957.

Neither the granting of a license nor the installation of a sign on the public way conveys permanent property rights relating to the public way. The Department of Transportation is not responsible for loss or damage to an on-premises sign under this subsection from the use of the right-of-way of the public way for highway purposes. An on-premises sign under this subsection may be removed by the department to accommodate highway uses at any time without compensation to the owner of the on-premises sign and at the owner's expense.

[ 2013, c. 529, §9 (AMD) . ]

**4-A. Waiver.**

[ 2013, c. 529, §9 (RP) . ]

**5. Interstate highways.** Not more than one on-premises sign advertising the sale or lease of the property may be permitted on land adjacent to any portion of the interstate system, including ramps and interchange areas, when that land is visible from any portion of the interstate system.

Not more than one on-premises sign visible from any portion of the interstate system, including ramps and interchange areas, may be permitted more than 50 feet from the principal building or structure where the business, facility or point of interest is carried on.

No on-premises advertisement, located more than 50 feet from the principal building or structure where the business, facility or point of interest advertised is carried on, may exceed 20 feet in length, width or height or 150 square feet in area, including border and trim, but excluding supports.

Any on-premises sign located more than 50 feet from the principal building or structure where the business, facility or point of interest is carried on that displays any trade name that refers to or identifies any service rendered or product sold must display the name of the advertised business, facility or point of interest as conspicuously as such trade name.

[ 2013, c. 529, §9 (AMD) . ]

**6. On-premises signs prohibited.** An on-premises sign is prohibited if it:

A. Attempts or appears to attempt to direct the movement of traffic or interferes with, imitates or resembles any official traffic sign, signal or device; [ 1995, c. 390, §1 (AMD) . ]

B. Prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic; [1981, c. 318, §4 (RPR).]

C. Contains, includes or is illuminated by a flashing, intermittent or moving light or lights, except as provided in subsection 11-A; [2001, c. 268, §1 (AMD).]

D. Uses lighting in any way unless the light is in the opinion of the commissioner effectively shielded to prevent beams or rays of light from being directed at any portion of the public way or is of such intensity or brilliance as to cause glare or impair the vision of the operator of any motor vehicle or to otherwise interfere with any driver's operation of a motor vehicle; or [1995, c. 390, §1 (AMD).]

E. Moves, has any animated or moving parts or has the appearance of movement, except as provided in subsection 11-A. [2001, c. 268, §1 (AMD).]

[ 2001, c. 268, §1 (AMD); 2011, c. 115, §4 (REV) .]

#### **7. Signs erected on natural features.**

[ 2013, c. 529, §9 (RP) .]

**8. Height.** The maximum height of on-premises signs is 25 feet above the ground level of land upon which it is located or if the sign is affixed to or is part of a building, the maximum is 10 feet above the roof of the building.

[ 2013, c. 529, §9 (AMD) .]

**9. Jurisdiction by local authority in compact areas.** Except as otherwise provided in this chapter, administration of this chapter for on-premises advertisements located in compact areas of an urban compact municipality, as defined in section 754, is the responsibility of local authority. In compact areas of an urban compact municipality adjacent to the interstate, the Department of Transportation is responsible for the administration of this section.

[ 2013, c. 529, §9 (AMD) .]

**10. Approach signs.** Any business or facility whose principal building or structure, or a point of interest, which is located on a private way more than 1,000 feet from the nearest public way, or is not visible to traffic from the nearest public way, may erect no more than 2 approach signs with a total surface area not to exceed 100 square feet per sign. These signs are to be located outside the public right-of-way limits within 300 feet of the junction of the public and private ways.

[ 2013, c. 529, §9 (AMD) .]

#### **11. Changeable signs.**

[ 2001, c. 268, §2 (RP) .]

**11-A. Changeable signs.** Notwithstanding subsection 6, paragraphs C and E, changeable signs are not prohibited as long as the sign complies with the applicable provisions of this subsection and rules adopted pursuant to this chapter. The Department of Transportation shall administer the provisions of this subsection, except as provided in paragraph B.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Changeable sign" means an on-premises sign created, designed, manufactured or modified in such a way that its message may be electronically, digitally or mechanically altered by the complete substitution or replacement of one display by another on each side.

(2) "Display" means that portion of the surface area of a changeable sign that is or is designed to be or is capable of being periodically altered for the purpose of conveying a message.

(4) "Message" means a communication conveyed by means of a visual display of text, a graphic element or pictorial or photographic image.

(5) "Sign assembly" means the display, border, trim and all supporting apparatus, including posts, columns, pedestals and foundation.

(6) "Time and temperature sign" means a changeable sign that electronically or mechanically displays the time and temperature by the complete substitution or replacement of a display showing the time with a display showing the temperature. [2013, c. 529, §9 (AMD).]

B. The display on each side of a changeable sign:

(1) May be changed no more than once every 20 minutes, unless the municipality in which the sign is located adopts an ordinance to the contrary and notifies the Department of Transportation in writing of that ordinance. If a municipal ordinance is adopted, the municipality is responsible for the administration of that ordinance;

(2) Must change as rapidly as technologically practicable, with no phasing, rolling, scrolling, flashing or blending, unless the municipality in which the sign is located adopts an ordinance to the contrary and notifies the Department of Transportation in writing of that ordinance. If a municipal ordinance is adopted, the municipality is responsible for the administration of that ordinance. Notwithstanding this subparagraph, a municipality may not adopt an ordinance that allows the sign to flash or display continuous streaming of information or video animation; and

(3) May consist of alphabetic or numeric text on a plain or colored background and may include graphic, pictorial or photographic images unless the municipality in which the sign is located adopts an ordinance to the contrary and notifies the Department of Transportation in writing of that ordinance. If a municipal ordinance is adopted, the municipality is responsible for the administration of that ordinance. [2007, c. 124, §2 (AMD).]

C. [2013, c. 529, §9 (RP).]

D. Only one changeable sign with 2 sides is allowed for each public way that provides direct vehicular access to the business, facility or point of interest. [2013, c. 529, §9 (AMD).]

E. Changeable signs may not be located so that the message is readable from a controlled-access highway or ramp. [2001, c. 268, §3 (NEW).]

F. The highest point of the display of a changeable sign may not exceed a height of 25 feet above either the centerline of the nearest public way or actual ground level adjacent to the sign, whichever is lower. [2001, c. 268, §3 (NEW).]

G. Changeable message board signs existing in accordance with the requirements of former subsection 11 continue to exist if the signs:

(1) Are reasonably incapable of being modified or reprogrammed to comply with this section as amended; and

(2) Are not replaced, substantially rebuilt, reconstructed or repaired beyond routine maintenance. [2001, c. 268, §3 (NEW).]

H. The size, intensity of illumination and acceptable rate of change between the time display and the temperature display of a time and temperature sign must comply with rules adopted by the Department of Transportation, except that time and temperature signs erected prior to September 29, 1995 need not comply with those rules. [2013, c. 529, §9 (AMD).]

[2013, c. 529, §9 (AMD).]

SECTION HISTORY

1977, c. 494, §1 (NEW). 1977, c. 696, §197 (AMD). 1979, c. 477, §§8-11 (AMD). 1981, c. 318, §4 (RPR). 1995, c. 390, §§1-3 (AMD). 1999, c. 123, §1 (AMD). 1999, c. 473, §D7 (AMD). 2001, c. 268, §§1-3 (AMD). 2005, c. 195, §1 (AMD). 2005, c. 482, §3 (AMD). 2007, c. 124, §§1,2 (AMD). RR 2011, c. 1, §36 (COR). 2011, c. 115, §§2, 3 (AMD). 2011, c. 115, §4 (REV). 2013, c. 529, §9 (AMD).

## §1915. COMPENSATION

**1. Payment of compensation.** Compensation shall be paid for the removal of any sign lawfully erected as of January 1, 1978, and which is visible from the interstate or primary systems, except no compensation may be paid if such sign is exempt as provided in section 1913-A and no compensation may be paid for the removal of signs subject to immediate removal pursuant to section 1924, subsection 3.

[ 1981, c. 318, §4 (RPR) .]

**2. Procedures.** The purchase, condemnation, negotiation, assessment of damage and appeal procedures must be in accordance with this section and sections 153-A to 159.

[ 1993, c. 536, §3 (AMD) .]

**3. Acceptance of federal funds.** The commissioner may accept any allotment of funds by the United States, or any agency thereof, appropriated to carry out the United States Code, Title 23, section 131 and amendments thereto or replacements thereof. Any such funds will be applied to effectuate this chapter.

[ 1981, c. 318, §4 (RPR) .]

**4. Availability of federal funds.** No sign may be required to be compensated if the federal share of the compensation to be paid under this section is not available.

[ 1981, c. 318, §4 (RPR) .]

**5. Removal pursuant to other law.** Nothing in this section may provide compensation for the removal of signs which are lawfully removed pursuant to any other statute, regulation, ordinance or resolution of any governmental entity having jurisdiction.

[ 1981, c. 318, §4 (RPR) .]

**6. Maintenance of lawfully erected signs.** Any sign lawfully erected as of January 1, 1978, in accordance with section 1924, subsections 1 and 2 may be maintained until removed by the commissioner under subsection 7 or by section 1916.

[ 1981, c. 698, §101 (RPR) .]

**7. Removal of signs for which compensation is paid.** The commissioner shall remove a sign for which compensation is to be paid under this section when title to such sign is acquired by the State pursuant to section 154.

[ 1981, c. 318, §4 (RPR) .]

### SECTION HISTORY

1977, c. 494, §1 (NEW). 1979, c. 477, §12 (AMD). 1981, c. 318, §4 (RPR). 1981, c. 470, §A137 (AMD). 1981, c. 698, §101 (AMD). 1993, c. 536, §3 (AMD).

## §1916. REMOVAL OF SIGNS BY AMORTIZATION

**1. Exclusions.** This section shall not apply to:

- A. Signs for which compensation is paid under section 1915; [1981, c. 318, §4 (RPR).]
- B. On-premises signs as provided in section 1914; [1981, c. 318, §4 (RPR); 2011, c. 115, §4 (REV).]
- C. Exempt signs under section 1913-A; [1981, c. 318, §4 (RPR).]
- D. Signs licensed under this chapter; [1981, c. 318, §4 (RPR).]
- E. Signs to be removed under section 1917; and [1981, c. 318, §4 (RPR).]
- F. Signs subject to immediate removal pursuant to section 1924, subsection 3. [1981, c. 318, §4 (RPR).]

[ 1981, c. 318, §4 (RPR); 2011, c. 115, §4 (REV) .]

**2. Six years amortization.** Any sign lawfully erected as of January 1, 1978, may be maintained in accordance with section 1924 for 6 years after that date in order to amortize the value thereof. The owner of the sign shall remove the sign within 30 days of a receipt of a final order specified in subsection 3.

[ 1981, c. 318, §4 (RPR) .]

**3. Procedure for notice, hearing, appeal.** The procedure for notice, hearing and appeal is as follows.

A. The commissioner shall send to the sign owner notice by certified mail, return receipt requested, that a sign is to be removed pursuant to subsection 2.

Such notice shall be a final order if not appealed under paragraph B.

If the identity of such owner is not known or reasonably ascertainable by the commissioner, such notice may instead be sent to the owner of the land on which the sign is placed. [1981, c. 318, §4 (RPR).]

B. The person owning or controlling the sign may, within 30 days of his receipt of the notice to remove, appeal the order of removal to the commissioner and receive a hearing thereon, with a record made of the hearing. The commissioner shall render a decision within 60 days of the hearing. If no appeal is taken from the commissioner's decision, it shall be a final order. Any person aggrieved by the decision of the commissioner made subsequent to the hearing may, within 30 days of the receipt of notice of such decision, appeal to the Superior Court in the county where the sign is located. The appeal shall not be de novo and shall be subject to the Maine Rules of Civil Procedure, Rule 80b. For the purposes of this section, "person aggrieved" shall include the person owning or controlling the sign and any other person who is a resident of the county where the sign is located. A final judgment of a court shall be a final order for purposes of subsection 2. [1981, c. 318, §4 (RPR).]

[ 1981, c. 318, §4 (RPR) .]

### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §4 (RPR). 2011, c. 115, §4 (REV).

## §1917. REMOVAL OF UNLAWFUL SIGNS

**1. Notice to remove.** The owner of a sign which was or is unlawfully erected or maintained either prior to or after the effective date of this chapter shall be in violation of this chapter until the sign is removed. The owner of the sign shall remove the sign within 30 days of receipt of a notice to remove, sent by certified

mail, return receipt requested, by the commissioner. If the identity of such owner is not known or reasonably ascertainable by the commissioner, such notice may instead be sent to the owner of the land on which the sign is placed.

[ 1981, c. 318, §4 (RPR) .]

**2. Commissioner to remove sign.** If the owner fails to remove the sign as required, the commissioner shall remove the sign at the expense of the owner without any further notice or proceeding and may recover the expense of this removal from the owner.

[ 1981, c. 318, §4 (RPR) .]

**3. Interpretation of chapter.** Nothing in this chapter may be interpreted to alter, abridge or in any way interfere with any duty or obligation of a sign owner to remove signs which were nonconforming and illegal prior to January 1, 1975, under the United States Code, Title 23, section 131, as enacted by Public Law 89-285, 89 Congress S. 2084, the "Agreement for carrying out National Policy relative to Control of Outdoor Advertising in Areas adjacent to the National System of Interstate and Defense Highways and the Federal-Aid Primary System" dated December 27, 1967, and as amended on January 3, 1968, executed by and between the United States of America and the State of Maine, under the Maine Revised Statutes, Title 32, sections 2711 to 2723.

The intent of this subsection is to preclude any presumption that this chapter is intended to extend the period of use of any sign which became nonconforming and illegal before January 1, 1975, under the state agreement of December 27, 1967, as amended January 3, 1968, and Title 32, sections 2711 to 2723.

[ 1981, c. 318, §4 (RPR) .]

**4. Compensation subject to litigation.** Whenever the compensation to be paid for removal of any sign is the subject of litigation, pending the litigation such sign shall be removed as provided in subsections 1 and 2.

[ 1981, c. 318, §4 (RPR) .]

**5. Summary removal of illegal signs within the public right-of-way.** Signs which are erected in nonconformance with this chapter and which are within the limits of any public right-of-way shall be subject to immediate removal by the commissioner.

[ 1981, c. 318, §4 (RPR) .]

#### SECTION HISTORY

1977, c. 494, §1 (NEW). 1979, c. 477, §§13-15 (AMD). 1981, c. 318, §4 (RPR).

### **§1917-A. UNLAWFUL REMOVAL OF POLITICAL SIGNS (REPEALED)**

#### SECTION HISTORY

1989, c. 315, (NEW). 2015, c. 403, §5 (RP).

## §1917-B. UNLAWFUL REMOVAL OF TEMPORARY SIGNS

A person who takes, defaces or disturbs a sign placed within the public right-of-way in accordance with section 1913-A, subsection 1, paragraph L commits a civil violation for which a fine of up to \$250 may be adjudged. This section does not apply to a person authorized to remove signs placed within the public right-of-way in accordance with section 1913-A, subsection 1, paragraph L. [2015, c. 403, §6 (NEW).]

### SECTION HISTORY

2015, c. 403, §6 (NEW).

## §1918. APPLICATIONS LICENSING OF OFFICIAL BUSINESS DIRECTIONAL SIGNS

**1. Submitting applications.** Any person who is eligible under section 1909 for an official business directional sign may submit to the commissioner a written application therefor, on a form prescribed by the commissioner. The application shall set forth the name and address of the applicant, the name, nature and location of the business, the location where an official business directional sign is desired and such other information as the department may require. The applicant shall tender with the application the standard license fee stated in section 1919 for each sign requested.

[ 1981, c. 318, §4 (RPR) .]

**2. Granting licenses.** Following receipt of an application for an official business directional sign, the commissioner shall approve or disapprove the application. The commissioner shall not approve an application unless the requested location conforms to the regulations of the commissioner adopted pursuant to this chapter. The granting of licenses for official business directional signs on the interstate systems by the commissioner is contingent upon any requirement precedent to such approval, such as the concurrence of federal officials.

If the application is approved, the commissioner shall issue the license. If it is not approved, the commissioner shall return the application and fee, stating the reasons for refusal and giving the applicant an opportunity to correct any defects or to be heard, within 30 days, by the commissioner. Upon written request by the applicant, the commissioner shall hear the matter and notify the applicant of his findings and decision. Any person aggrieved by the decision of the commissioner may, within 30 days of receipt of the notice thereof, appeal to the Superior Court in the county where the sign is proposed to be located. The appeal shall not be de novo and shall be pursuant to the Maine Rules of Civil Procedure, Rule 80b.

[ 1981, c. 318, §4 (RPR) .]

### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §4 (RPR).

## §1919. FEES

An applicant for an official business directional sign shall pay to the commissioner an initial license fee not to exceed \$30 for each sign, and an annual renewal fee not to exceed \$30. The amount of each fee shall be determined for each year by the commissioner in advance of such year and shall approximate to the extent practicable the amount computed by dividing the cost of the administration of the official business directional sign program by the number of signs in existence in the prior licensing year. [1981, c. 318, §4 (RPR) .]

The fees so collected by the commissioner shall be deposited with the Treasurer of State and appropriated to carry out this chapter. Such funds shall not lapse but shall remain a continuing carrying account. [1981, c. 318, §4 (RPR) .]

### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §4 (RPR).

### **§1920. PENALTY**

Any person, firm, corporation or other legal entity who shall erect, maintain or display a sign contrary to and in violation of this chapter, or the rules and regulations promulgated by the commissioner, shall be punished by a fine of not more than \$100 together with the cost of removal of the signs. The unlawful maintenance or display of each sign or advertising structure for any one day shall constitute a separate offense. [1981, c. 318, §4 (RPR).]

In addition to other penalties, the commissioner may, in the name of the state, institute any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate any violation of this chapter, or any orders or the rules and regulations issued or promulgated hereunder. [1981, c. 318, §4 (RPR).]

#### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §4 (RPR).

### **§1921. START OF ENFORCEMENT**

To provide for the orderly implementation of this chapter, the State shall be divided by the commissioner into traveler information service areas which shall correspond to the Maine highway districts. The commissioner may implement the removal of signs for which compensation is paid on an area by area basis, provided all signs from which compensation is paid shall be removed by January 1, 1982 if federal funds are sufficient under section 1915. [1981, c. 576, §7 (AMD).]

#### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §4 (RPR). 1981, c. 576, §7 (AMD).

### **§1922. LOCAL ORDINANCE**

This chapter shall not supersede the provisions of any other statute, regulation, ordinance or resolution, the requirements of which are more strict than those of this chapter and not inconsistent therewith, whether such ordinance, bylaw, regulation, resolution or statute was enacted before or after the effective date of this chapter. It shall not be inconsistent with this chapter if such statute, regulation, ordinance or resolution prohibits official business directional signs. [1981, c. 318, §4 (RPR).]

#### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §4 (RPR).

### **§1923. AGREEMENTS WITH UNITED STATES**

The commissioner is authorized, empowered and directed to enter into agreements with the United States or its agencies and subdivisions to control signs in accordance with national standards, this chapter and the best interests of the State. Nothing in this chapter may abridge any agreements with the United States in force on the effective date of this chapter. [1981, c. 318, §4 (RPR).]

#### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §4 (RPR).

## §1924. LICENSE OR PERMITS UNDER REPEALED TITLE 32, CHAPTER 38

**1. License.** Any license issued pursuant to repealed Title 32, section 2713, shall remain in effect for 6 years from January 1, 1978, provided a licensee shall apply annually and pay the annual fee to the commissioner provided in repealed Title 32, section 2713. This subsection shall not allow the erection of any sign, pursuant to that license, after January 1, 1978, nor shall this subsection allow the maintenance of any sign removed pursuant to sections 1915 and 1916.

[ 1981, c. 318, §4 (RPR) .]

**2. Fee permit.** Any permit for which a fee is paid and which is issued pursuant to repealed Title 32, section 2714, shall remain in effect until the sign for which it is issued is removed pursuant to this chapter, provided a permittee shall apply annually and pay the annual fee to the commissioner provided in repealed Title 32, section 2714.

[ 1981, c. 318, §4 (RPR) .]

**3. Existing directional signs.** Upon implementation of this chapter, the commissioner may remove, or require to be removed, any existing directional sign erected and maintained pursuant to section 1153, Title 32, section 2722 prior to its repeal, and any sign erected and maintained pursuant to Title 32, section 2715 prior to its repeal, which does not qualify as an on-premises sign as defined by section 1914, or as an official business directional sign as defined by this chapter, no later than 6 years after January 1, 1978.

[ 1981, c. 576, §8 (AMD); 2011, c. 115, §4 (REV) .]

### SECTION HISTORY

1977, c. 494, §1 (NEW). 1977, c. 696, §§198-200 (AMD). 1979, c. 477, §16 (AMD). 1981, c. 318, §4 (RPR). 1981, c. 576, §8 (AMD). 2011, c. 115, §4 (REV).

## §1925. ADMINISTRATION OF CHAPTER

Except as otherwise provided in this chapter, the commissioner shall administer this chapter. The commissioner may employ, subject to the Civil Service Law, clerical and other assistants required for the administration of this chapter. The commissioner may delegate to personnel of the Department of Transportation the authority to administer this chapter. The commissioner shall adopt rules for the implementation of this chapter that are substantially compliant with the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration and other national engineering standards. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The commissioner may execute contracts and other agreements to carry out the purposes of this chapter. [2013, c. 529, §10 (AMD).]

The Maine Turnpike Authority shall implement and administer the provisions of this chapter relating to signs on the Maine Turnpike in accordance with section 1965. [2013, c. 529, §10 (NEW).]

### 1. Administration of chapter.

[ 1981, c. 318, §4 (RP) .]

### 2. Effective date.

[ 1981, c. 318, §4 (RP) .]

### SECTION HISTORY

1977, c. 494, §1 (NEW). 1981, c. 318, §4 (RPR). 1985, c. 785, §B104 (AMD). 2011, c. 344, §31 (AMD). 2013, c. 529, §10 (AMD).

## Chapter 23: HIGHWAY DESIGNATIONS

### §1951. TRANS-MAINE TRAIL

**1. Designation.** The Trans-Maine Trail is designated as follows:

A. Beginning at the Canadian border in Vanceboro, then westerly via Route 6, through Lincoln, Milo, Dover-Foxcroft and Guilford to Abbot, then westerly via Route 16 to Stratton and via Route 27 to the Canadian border at Coburn Gore. [1979, c. 103, (NEW).]

[ 1979, c. 103, (NEW) .]

**2. Alternate route.** In addition, an alternate route shall be as follows:

A. Beginning at Abbot then northerly via Route 15 through Greenville and Rockwood to Jackman and the Canadian border. [1979, c. 103, (NEW).]

[ 1979, c. 103, (NEW) .]

**3. Signs.** Signs designating this as the Trans-Maine Trail shall be erected by the Department of Transportation at proper intervals along the highway trail.

[ 1979, c. 103, (NEW) .]

#### SECTION HISTORY

1979, c. 103, (NEW).

## Chapter 24: MAINE TURNPIKE

### §1961. LEGISLATIVE FINDINGS; COOPERATION WITH THE DEPARTMENT OF TRANSPORTATION; BONDS; GOVERNMENTAL FUNCTION

**1. Legislative findings.** The Legislature makes the following findings of fact. The economic and social well-being of the citizens of the State requires that the transportation system be developed in a comprehensive manner and depends upon the safety, efficiency and modern functional state of the turnpike. The turnpike should be maintained as a toll facility whether or not there are turnpike bonds outstanding. Toll revenues should be utilized to pay for retirement of any outstanding debt, including interest thereon; to pay for operation and maintenance of the turnpike; to pay for reconstruction of the turnpike; and to repay the Federal Government for grants or loans, the proceeds of which were used for the construction or reconstruction of the turnpike or portions of the turnpike, interchanges and certain interconnecting access roads, but only to the extent that the repayment is required as a result of maintaining tolls on the turnpike.

[ 1993, c. 116, §1 (AMD) .]

**2. Cooperation with the Department of Transportation.** The authority may issue bonds or other obligations to pay for department projects. These amounts are considered necessary for use by the department for construction, reconstruction, operation and maintenance of all roads on the state highway system, which serve and benefit users of the turnpike by providing direct and indirect access to and from the turnpike as part of the integrated highway system. Due to the utilization of the state highway system by users of the turnpike,

the turnpike and its users have received and will continue to receive a benefit from, or have caused and will continue to cause, or both, the State acting by and through the department to incur costs for the construction, operation and maintenance of the state highway system, which provides direct and indirect access to and from the turnpike to areas in the State for which the State may properly be and should be compensated from the tolls to be collected. The authority must be maintained to carry out the purposes of this chapter in cooperation with the department.

[ 2011, c. 302, §2 (AMD) .]

### 3. Bonds.

[ 2015, c. 5, §2 (RP) .]

**4. Governmental function.** It is declared that the purposes of this chapter are public and that the authority shall be regarded as performing a governmental function in carrying out this chapter.

[ 1987, c. 793, Pt. A, §6 (NEW) .]

**5. Transportation policy.** Transportation planning decisions, capital investment decisions and project decisions of the Maine Turnpike Authority are governed by and must comply with the transportation policy set forth in section 73 and rules implementing that policy.

[ 1991, c. 1, §3 (NEW) .]

**6. Appropriation.** On or before January 31st of each year, the authority shall present to each regular session of the Legislature for its approval the authority's revenue fund budget for the calendar year that begins after the adjournment of that regular session and shall present to each regular session of the Legislature for informational purposes a statement of the revenues necessary during the next calendar year to fund capital expenditures and reserves and to meet the requirements of any resolution authorizing bonds of the authority, including debt service and the maintenance of reserves for debt service and reserve maintenance. The authority shall present a detailed budget of expenditures from the authority's reserve maintenance fund for the next calendar year and shall include cross-references to show the total of similar expense categories that are paid from both the revenue and reserve maintenance funds. The authority may only pay revenue fund operating expenses in accordance with allocations approved by the Legislature or as necessary to satisfy the requirements of any resolution authorizing bonds of the authority. If alterations to the authority's revenue fund budget are needed, they must be reported by financial order to the joint standing committee of the Legislature having jurisdiction over transportation matters.

[ 2011, c. 302, §3 (AMD) .]

**7. Funds for department projects.** As part of the budget presented in subsection 6, the authority shall allocate funds for department projects in an amount such that the 3-year rolling average of the allocation equals at least 5% of annual operating revenues. The requirement under this subsection is subordinate to the authority's obligation to pay operating expenses and to meet the requirements of any resolution authorizing bonds of the authority. All department projects are subject to mutual agreement of the authority and the department.

For purposes of this subsection, annual operating revenues do not include any interest earned from the authority's capital and debt service reserve funds or the amount of tolls or other income that is discounted, rebated or refunded by the authority.

[ 2011, c. 476, §1 (AMD) .]

#### SECTION HISTORY

1981, c. 595, §3 (NEW). 1987, c. 457, §1 (AMD). 1987, c. 793, §A6 (RPR). IB 1991, c. 1, §§2,3 (AMD). 1991, c. 9, §E14 (AMD). 1993, c. 116, §1 (AMD). 1993, c. 563, §1 (AMD). 1993, c. 680, §A24 (AMD). 1995, c. 504, §C1 (AMD). 1995, c. 613, §1 (AMD). 1995, c. 613, §7 (AFF). 2011, c. 302, §§2-4 (AMD). 2011, c. 476, §1 (AMD). 2015, c. 5, §2 (AMD).

## §1962. PRESERVATION OF RIGHTS

No provision of this chapter may impair the rights of existing bondholders or of any other persons to whom the authority owes contractual obligations. [1981, c. 595, §3 (NEW).]

### SECTION HISTORY

1981, c. 595, §3 (NEW).

## §1963. MAINE TURNPIKE AUTHORITY

In order to carry out the purposes of this chapter, the Maine Turnpike Authority, created by Private and Special Law 1941, chapter 69, continues in existence with the powers and duties prescribed by this chapter until the Legislature provides for its termination and all outstanding indebtedness of the authority is repaid, or an amount sufficient to repay that indebtedness is set aside in trust. The authority shall continue to operate and maintain the turnpike from a point at or near Kittery in York County to a point at or near Augusta in Kennebec County. The authority may operate and maintain other property and assets as are necessary or convenient for the construction, operation or maintenance of the turnpike, including, but not limited to, connecting tunnels, bridges, overpasses, underpasses, interchanges, toll facilities and parking lots. [2011, c. 476, §2 (AMD).]

### SECTION HISTORY

1981, c. 595, §3 (NEW). 1993, c. 410, §MM1 (AMD). 2011, c. 476, §2 (AMD).

## §1964. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1981, c. 595, §3 (NEW).]

**1. Access roads.** "Access roads" means any and all roads or highways in the state highway system, including bridges, overpasses and underpasses, which directly or indirectly connect with the turnpike and which shall have been designated as such by the Department of Transportation.

[ 1981, c. 595, §3 (NEW) .]

**2. Authority.** "Authority" means the Maine Turnpike Authority, created by Private and Special Law 1941, chapter 69, and continued in existence by this chapter.

[ 1981, c. 595, §3 (NEW) .]

**2-A. Away agency.** "Away agency" means a tolling authority in a jurisdiction other than the State that imposes an administrative fee or a civil liability on the registered owner of a vehicle whose operator fails to pay a required toll for the use of a highway, bridge or tunnel.

[ 2011, c. 302, §5 (NEW) .]

**2-B. Board.** "Board" means the board of directors of the authority established pursuant to section 1964-A.

[ 2011, c. 302, §5 (NEW) . ]

**3. Bond.** "Bond" or "bonds" means and includes a bond or note or other evidence of indebtedness authorized under this chapter whether issued under or pursuant to a bond resolution, trust indenture or loan or other security agreement.

[ 1981, c. 595, §3 (NEW) . ]

**4. Department.** "Department" or "Department of Transportation" means the State Department of Transportation or its successor.

[ 1981, c. 595, §3 (NEW) . ]

**4-A. Department project.** "Department project" means the rehabilitation, reconstruction or construction of any highway or bridge on the state highway system determined by the department and the authority to have a sufficient relationship to the public's use of the turnpike in accordance with section 1974, subsection 6 and is a project or allocation to:

A. Build or improve an interchange; [2011, c. 302, §6 (NEW) . ]

B. Maintain, build or improve an access road; [2011, c. 302, §6 (NEW) . ]

C. Study or plan a future highway corridor and study related issues; [2011, c. 302, §6 (NEW) . ]

D. Maintain, build or improve a park and ride lot or other transportation infrastructure for all modes of transportation relating to turnpike use; [2011, c. 302, §6 (NEW) . ]

E. Purchase, lease or improve highway-related infrastructure; or [2011, c. 302, §6 (NEW) . ]

F. Pay debt incurred by the authority for any capital project purpose in paragraphs A to E. [2011, c. 302, §6 (NEW) . ]

[ 2011, c. 302, §6 (AMD) . ]

**5. Interchange.** "Interchange" means a system of interconnecting roadways in conjunction with one or more points of separation, providing for the interchange of traffic between 2 or more roadways or highways, one of which is the turnpike and includes sufficient lengths of intersecting roadways required for conformance with then current road design standards or standards acceptable to the Department of Transportation.

[ 1981, c. 595, §3 (NEW) . ]

**5-A. Intermodal transportation facility.** "Intermodal transportation facility" means any facility, including but not limited to any rail or bus depot or station, taxi stand, loading platform, parking lot and any related building or appurtenance, located on or adjacent to the turnpike or in the immediate vicinity of any turnpike interchange, that is designed to serve the needs of users of 2 or more modes of transportation including the turnpike and that the authority determines necessary or convenient to meet the needs of users of the turnpike.

[ 1993, c. 410, Pt. MM, §2 (NEW) . ]

**5-B. Law enforcement officer.** "Law enforcement officer" means a person who by virtue of public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

[ 1995, c. 339, §1 (NEW) . ]

**6. Operating revenues.** "Operating revenues" means income of the Maine Turnpike Authority from fees, fares, tolls, rental of concessions and miscellaneous revenue and interest.

[ 2011, c. 476, §3 (AMD) . ]

**6-A. Operating surplus.**

[ 2011, c. 302, §7 (RP) . ]

**7. Reconstruct or reconstruction.** "Reconstruct" or "reconstruction" means any and all activities undertaken to maintain the Maine Turnpike, or any part thereof, as a modern, safe and efficient facility and includes, but is not limited to, any rebuilding, redesign, improvement or enlargement of the turnpike or any part thereof which the authority deems necessary to continuously, adequately, safely and swiftly facilitate vehicular traffic upon, to or from the Maine Turnpike.

[ 1981, c. 595, §3 (NEW) . ]

**7-A. Reserve maintenance fund.** "Reserve maintenance fund" means a fund established by a resolution authorizing bonds of the authority as a source to pay for turnpike maintenance, turnpike rehabilitation, insurance, emergency repairs of the turnpike, remediation of turnpike deficiencies and other perennial costs and selected capital projects as recommended by a consulting engineer.

[ 2011, c. 302, §8 (NEW) . ]

**7-B. Revenue fund.** "Revenue fund" means a fund established by a resolution authorizing bonds of the authority as the initial depository for all operating income of the authority; certain operating expenses, defined by bond resolutions, are paid from the revenue fund before further transfers are made to funds for debt service, reserve maintenance and general reserves.

[ 2011, c. 302, §8 (NEW) . ]

**8. State highway system.** "State highway system" or "state highways" shall include all classes of roads set forth in section 53.

[ 1981, c. 595, §3 (NEW) . ]

**9. Turnpike.** "Turnpike" means the roadway constructed between Kittery in York County and Augusta in Kennebec County pursuant to Private and Special Law 1941, chapter 69, sections 1 to 20, as amended, together with any expansion or extension of that roadway that is authorized by law, and includes not only the roadway and all rights-of-way, bridges, tunnels, overpasses, underpasses and interchanges either on the roadway or connected to or connecting with the roadway as expanded or extended, but also all buildings, toll facilities and other equipment, median barriers, shoulders, embankments, property rights, easements, leases and franchises relating to the roadway and such rights-of-way bridges, tunnels, overpasses, underpasses and interchanges and determined necessary or convenient for the construction, reconstruction, operation or maintenance of the turnpike.

[ 1993, c. 410, Pt. MM, §3 (AMD) . ]

SECTION HISTORY

1981, c. 595, §3 (NEW). IB 1991, c. 1, §4 (AMD). 1993, c. 410, §§MM2,3 (AMD). 1995, c. 339, §1 (AMD). 1995, c. 504, §§C2,3 (AMD). 1995, c. 613, §2 (AMD). 1995, c. 613, §7 (AFF). 2011, c. 302, §§5-8 (AMD). 2011, c. 476, §3 (AMD).

## §1964-A. BOARD OF DIRECTORS

The authority is managed by a board of 7 members. Except for the member from the department who serves ex officio, all members are appointed by the Governor subject to review by the joint standing committee of the Legislature having jurisdiction over transportation matters and to confirmation by the Senate. [2011, c. 302, §9 (NEW).]

**1. Qualifications.** The 7 members of the board are as follows:

A. The Commissioner of Transportation or the commissioner's designee from within the department, who serves ex officio; [2011, c. 302, §9 (NEW).]

B. Four members, one each from York, Cumberland, Androscoggin and Kennebec counties who serves as the representative from the county in which the member resides; and [2011, c. 302, §9 (NEW).]

C. Two at-large members who are residents of the State. [2011, c. 302, §9 (NEW).]

[ 2011, c. 302, §9 (NEW) .]

**2. Term.** Each appointed member holds office for 6 years or until a qualified successor has been confirmed. Each term expires on March 31st of the last year of the term. The terms of the appointed members must be staggered so that no more than one term expires in any given year.

[ 2011, c. 302, §9 (NEW) .]

**3. Vacancy.** A member's term is vacated if the member dies, resigns, becomes incapacitated, is removed for cause or no longer meets a requirement under which the member was appointed. By majority vote of the remaining members, the board may declare and bring to the Governor's attention any circumstances creating a vacancy. When a vacancy occurs, the Governor may appoint a member to serve only for the unexpired portion of the term vacated.

[ 2011, c. 302, §9 (NEW) .]

**4. Removal.** The Governor may remove a member from the board only for gross misconduct. For purposes of this subsection, "gross misconduct" means financial malfeasance, a deliberate or reckless failure to attend to duties required for governance of the authority or unexcused absences from 4 or more meetings of the board in a 12-month period.

[ 2011, c. 302, §9 (NEW) .]

**5. Chair.** The Governor may appoint the chair from among members appointed to the board. In the absence of such appointment or if the position of chair is vacated, the board may elect a chair from among the members of the board. The chair must be appointed or elected for a one-year term at the board's annual meeting.

[ 2011, c. 302, §9 (NEW) .]

**6. Annual meetings; quorum; action.** The board shall convene annually at a meeting held in September and more often as determined by the chair. Four members of the board constitute a quorum. Four votes are required to act on any matter, although a lesser number may adjourn a meeting.

[ 2011, c. 302, §9 (NEW) .]

**7. Compensation.** Appointed members of the board are compensated in accordance with Title 5, section 12004-F, subsection 4.

[ 2011, c. 302, §9 (NEW) .]

**8. Executive director.** At its annual meeting each September, the board shall appoint or reappoint an executive director who is not a member of the board. An executive director's first appointment is subject to review by the joint standing committee of the Legislature having jurisdiction over transportation matters and to confirmation by the Senate.

[ 2011, c. 302, §9 (NEW) .]

**9. Secretary and treasurer.** At its annual meeting each year, the board shall elect a secretary and a treasurer, who may be the same person and need not be a member of the board. The secretary and treasurer are responsible in their respective capacities directly to the board and may be relieved of their duties only by the board. Before the issuance of any bonds under this chapter, the secretary and the treasurer shall each execute a security bond in the penalty of \$50,000. Each security bond must be approved by the Attorney General and conditioned upon the faithful performance of the duties of the secretary and treasurer. The bond must be filed in the office of the State Auditor.

[ 2011, c. 302, §9 (NEW) .]

**10. Compliance audits.** In addition to retaining an annual auditor, the board shall retain a separate compliance auditor who shall:

A. Periodically monitor the authority's financial operations and management controls; [ 2011, c. 302, §9 (NEW) .]

B. Test selected transactions for policy compliance; [ 2011, c. 302, §9 (NEW) .]

C. Make quarterly findings directly to the board and to the joint standing committee of the Legislature having jurisdiction over transportation matters; [ 2011, c. 302, §9 (NEW) .]

D. Recommend to the board any necessary or advisable improvements to management systems, policies or controls; and [ 2011, c. 302, §9 (NEW) .]

E. Render an annual compliance and management report in conjunction with the report of the authority's annual auditor. [ 2011, c. 302, §9 (NEW) .]

[ 2011, c. 302, §9 (NEW) .]

#### SECTION HISTORY

2011, c. 302, §9 (NEW).

## §1965. MAINE TURNPIKE AUTHORITY; POWERS

**1. Powers.** The Maine Turnpike Authority, as created by Private and Special Law 1941, chapter 69 and as authorized by Title 5, section 12004-F, subsection 4, is and continues to be a body both corporate and politic in the State and may:

A. Sue and be sued; [ 1981, c. 595, §3 (NEW) .]

B. Have a seal and alter the seal at pleasure; [1981, c. 595, §3 (NEW).]

C. Adopt from time to time and amend bylaws covering its procedure and rules governing use of the turnpike and any of the other services made available in connection with the turnpike; develop and adopt, in accordance with Title 5, chapter 375, rules governing the use of the turnpike and other services; publish those bylaws, rules as publication is necessary or advisable; and cause records of its proceedings to be kept; [2011, c. 302, §10 (AMD).]

D. Construct, maintain, reconstruct and operate a toll turnpike from a point at or near Kittery in York County to a point at or near Augusta in Kennebec County, except that the traveled way may not be widened or expanded beyond 3 lanes for each direction of travel from the southern terminus of the turnpike to mile marker 53 and beyond 2 lanes for each direction of travel elsewhere on the turnpike without the express approval of the Legislature.

A license, permit or approval necessary for the widening or expansion of the turnpike may not be issued by any state agency unless that agency makes an affirmative finding that the widening or expansion is consistent with state transportation policy, as established in section 73, as well as rules implementing that policy; [2015, c. 5, §3 (AMD).]

D-1. Construct, acquire, install, maintain and reconstruct communications facilities and equipment within the boundaries of the turnpike for the use of the authority, the use of others or both on such terms and conditions as the authority may determine; [2003, c. 572, §1 (AMD).]

E. Acquire, hold and dispose of personal property for its purposes; [1981, c. 595, §3 (NEW).]

F. Acquire in the name of the authority by purchase, eminent domain, lease or otherwise, real property and rights or easements therein determined by it necessary or desirable for its purposes, and use that property; [2011, c. 302, §10 (AMD).]

G. Acquire any such real property by the exercise of the power of eminent domain in the manner provided by section 1967; [1981, c. 595, §3 (NEW).]

H. Charge and collect fees, fares and tolls for the use of the turnpike and other services made available in connection with the turnpike and use the proceeds of such fees, fares and tolls for the purposes provided in this chapter, both as subject to and in accordance with such agreement with bondholders as may be made as provided in this chapter; [1981, c. 595, §3 (NEW).]

I. Make contracts with the United States or any instrumentality or agency of the United States, another state or any instrumentality, municipality or agency of another state, including multi-state entities composed of other state agencies, this State or any of its agencies or instrumentalities, municipalities, public corporations, or bodies existing therein, private corporations, partnerships, associations and individuals; [2001, c. 440, Pt. I, §1 (AMD).]

J. Accept grants and the cooperation of the United States or any agency thereof in the construction, maintenance, reconstruction, operation and financing of the turnpike and do any and all things necessary in order to avail itself of that aid and cooperation and repay any such grant or portion thereof; [1981, c. 595, §3 (NEW).]

J-1. Contract with other public agencies and political subdivisions of the State to provide maintenance services in accordance with reimbursement arrangements that are satisfactory to the authority; [2011, c. 302, §10 (AMD).]

K. Employ such assistants, agents and servants, engineering, traffic, architectural and construction experts and inspectors and attorneys and such other employees as it considers necessary or desirable for its purposes; [2011, c. 302, §10 (AMD).]

L. Exercise any of its powers in the public domain of the United States, unless the exercise of those powers is not permitted by the laws of the United States; [1981, c. 595, §3 (NEW).]

M. Borrow money, make, issue and sell at public or private sale negotiable notes, bonds and other evidences of indebtedness or obligations of the authority for the purposes set forth in this chapter and secure the payment of that obligation or any part thereof by pledge of all or any part of the operating revenues of the turnpike; [1981, c. 595, §3 (NEW).]

N. Enter into loan or security agreements with one or more lending institutions, including, but not limited to, banks, insurance companies and pension funds, or trustees for those institutions for purposes for which bonds may be issued and to exercise with respect to such loan or security agreements all of the powers delineated in this chapter for the issuances of bonds; [1981, c. 595, §3 (NEW).]

O. [1993, c. 680, Pt. A, §25 (RP).]

O-1. Provide for an annual amount not to exceed a maximum of \$4,700,000 to secure obligations issued pursuant to section 1968, subsection 2-A or to pay principal, interest or premium, if any, with respect to these obligations, after money has been set aside or adequate provision has been made to pay operating expenses and to meet the requirements of any resolution authorizing revenue bonds of the authority; [1995, c. 504, Pt. C, §4 (NEW).]

O-2. Make a contract or enter into an agreement with or provide certifications and assurances to the Department of Transportation, or any other 3rd party, necessary in connection with the determination of department projects, the issuance of bonds or other obligations pursuant to section 1968, subsection 2-A, the pledge of revenues to the payment of these bonds or obligations or the payment of the costs or a portion of the costs of department projects; [2011, c. 302, §10 (AMD).]

P. Provide from revenues to or for the use of the department funds for the maintenance, construction or reconstruction of interchanges for which the authority has not otherwise provided; [2015, c. 5, §4 (AMD).]

Q. Use toll revenues to provide payment of obligations, if any, as may be due to the United States in order to continue the use of the turnpike as a toll type facility; [1981, c. 595, §3 (NEW).]

R. [1993, c. 410, Pt. MM, §5 (RP).]

S. Prior to the issuance of any bonds, issue interim certificates in such manner and with such conditions as the authority may determine to be exchanged for those bonds when issued; [1991, c. 622, Pt. EE, §1 (AMD).]

S-1. Utilize the Department of Transportation, Office of Legal Services or the Department of the Attorney General for general counsel, bond counsel, labor defense, workers' compensation, legislative issues and other required legal services on a fee-for-service basis at rates determined by those agencies; [1993, c. 612, §3 (AMD).]

T. Take all other lawful action necessary and incidental to these powers; [2003, c. 311, §1 (AMD).]

U. Adopt rules, in accordance with the Maine Administrative Procedure Act, to establish a logo signing program on the turnpike. The authority may charge fees for signs that contain names, symbols, logos or other identifiers of specific commercial enterprises. This paragraph may not be interpreted as limiting the authority's general power to collect fees under paragraph H; [2011, c. 302, §10 (AMD).]

V. Develop programs whereby a patron of the turnpike who uses the authority's electronic toll collection system, as defined in section 1980, subsection 2-A, paragraph B, may elect to use the patron's electronic toll collection system device to pay for services other than tolls for the use of the turnpike, whether those services are provided by the authority itself or 3rd parties, and allow the patron to participate in similar programs developed by other tolling authorities; and [2011, c. 302, §10 (AMD).]

W. Provide, receive or exchange services with other political agencies, political subdivisions of a state or tolling authorities upon terms beneficial to the authority. [2011, c. 302, §10 (NEW).]

[ 2015, c. 5, §§3, 4 (AMD) . ]

## 2. Membership of the authority.

[ 2011, c. 302, §10 (RP) .]

### SECTION HISTORY

1981, c. 595, §3 (NEW). 1981, c. 698, §102 (AMD). 1983, c. 337, §1 (AMD). 1983, c. 812, §§142,143 (AMD). 1987, c. 433, §1 (AMD). 1987, c. 457, §§2,3 (AMD). 1987, c. 793, §A7 (AMD). 1989, c. 503, §B100 (AMD). IB 1991, c. 1, §§5,6 (AMD). RR 1991, c. 2, §90 (COR). 1991, c. 9, §E15 (AMD). 1991, c. 622, §§EE1,2 (AMD). 1993, c. 410, §§MM4,5 (AMD). 1993, c. 563, §2 (AMD). 1993, c. 612, §§3-5 (AMD). 1993, c. 680, §A25 (AMD). 1995, c. 108, §1 (AMD). 1995, c. 341, §1 (AMD). 1995, c. 504, §C4 (AMD). 1997, c. 493, §A1 (AMD). 1997, c. 493, §A3 (AFF). 1999, c. 177, §§1-3 (AMD). 2001, c. 41, §1 (AMD). 2001, c. 440, §I1 (AMD). 2003, c. 311, §§1-3 (AMD). 2003, c. 572, §1 (AMD). 2003, c. 591, §1 (AMD). 2005, c. 54, §§1,2 (AMD). 2007, c. 270, §1 (AMD). 2011, c. 302, §10 (AMD). 2015, c. 5, §§3, 4 (AMD).

## §1965-A. WIDENING OF THE TURNPIKE BETWEEN EXIT 1 AND EXIT 6-A (REPEALED)

### SECTION HISTORY

1995, c. 341, §2 (NEW). 1995, c. 613, §3 (AMD). 1997, c. 493, §A2 (AMD). 1997, c. 493, §A3 (AFF). 2015, c. 5, §5 (RP).

## §1965-B. WIDENING OF THE TURNPIKE BETWEEN MILE MARKER 44 AND MILE MARKER 53

**1. Evaluation of reasonable alternatives.** The authority shall complete an evaluation of reasonable alternatives to widening the turnpike to 3 lanes for each direction of travel in the corridor from mile marker 44 to mile marker 53. To evaluate reasonable alternatives, the authority shall complete an alternative mode feasibility study that examines regional travel patterns and demographics and provides an inventory of existing transportation infrastructure and employer-based commuter programs in the turnpike corridor from mile 44 to mile 53.

In conducting the evaluation required by this subsection, the authority shall provide for public participation consistent with section 73 and the rules adopted pursuant to that section. Completion of the evaluation required by this subsection satisfies the alternative evaluation requirements of section 73 and of the rules adopted pursuant to that section.

[ 2007, c. 270, §2 (NEW) .]

**2. Review of alternatives.** Upon completing the evaluation required under subsection 1, the authority shall review the alternatives to determine whether the alternatives can meet identified transportation deficiencies or needs in a safe manner at a reasonable cost with available technology. If, based on the evaluation, the authority finds that the alternatives do not meet the identified deficiencies or needs:

A. A final license, permit or approval necessary for the widening or expansion of the turnpike may be issued by the appropriate state agency; and [2007, c. 270, §2 (NEW) .]

B. The alternative evaluation and preference requirements of section 73 and rules adopted pursuant to that section are considered satisfied. [2007, c. 270, §2 (NEW).]

[ 2007, c. 270, §2 (NEW) .]

#### SECTION HISTORY

2007, c. 270, §2 (NEW).

## §1966. OBLIGATIONS OF THE AUTHORITY

The authority shall operate as follows. [1981, c. 595, §3 (NEW).]

**1. General.** All expenses incurred in carrying out this chapter shall be paid solely from funds provided under the authority of this chapter, and no liability or obligation may be incurred under this chapter beyond the extent to which money shall have been provided under the authority of this chapter.

[ 1981, c. 595, §3 (NEW) .]

### **2. Coordination between authority and department on construction or reconstruction.**

Construction or reconstruction of the turnpike and its connecting tunnels and bridges, overpasses, underpasses, interchanges and toll facilities must be coordinated with the department and performed in a fashion generally consistent with applicable department standards under oversight of professional engineers registered in the State. The department shall coordinate with the authority on all department projects that are likely to affect turnpike projects and operations.

Contractors and subcontractors on all authority construction and reconstruction projects must be equal opportunity employers and, in connection with contracts in excess of \$250,000, also pursue in good faith affirmative action programs designed to remedy underrepresentation of minorities, women and persons with disabilities. The authority may by rule provide for the enforcement of this requirement. To the extent practical, the authority may use program and technical information developed by and available through the Department of Transportation to carry out this subsection.

All authority construction and reconstruction projects are governed by the prevailing wage provisions in Title 26, chapter 15.

[ 2011, c. 302, §11 (AMD) .]

**2-A. Contracts for goods and services.** Except as otherwise permitted by law, contracts for goods and services must be awarded by the authority through a competitive procurement process. The requirement for competitive procurement may be waived:

A. By the executive director when the purchase is for \$25,000 or less and the executive director determines that procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need; [2011, c. 302, §12 (NEW).]

B. By the chair of the board when the chair determines that procurement is required by a state of emergency; or [2011, c. 302, §12 (NEW).]

C. By the board pursuant to a written finding that:

(1) Procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need;

(2) The service or product is uniquely available from only one source; or

(3) Only one known source can meet the authority's needs within the required time. [2011, c. 302, §12 (NEW).]

[ 2011, c. 302, §12 (NEW) .]

**2-B. Contracts for engineering services.** When bond indentures require the authority to appoint an engineering consultant who may thereby gain a disproportionate advantage when competing for other design and inspection contracts, the authority shall adopt policies to mitigate this advantage and promote a fair distribution of the available work among qualified competing applicants.

[ 2011, c. 302, §13 (NEW) .]

**3. Bonds not to be pledges of State.** Turnpike revenue bonds issued under this chapter, including any notes or other evidences of indebtedness or obligations defined to be bonds under this chapter, shall not be deemed to be a debt of the State or a pledge of the faith and credit of the State, but these bonds shall be payable exclusively from the fund provided in this chapter for that purpose from tolls or other operating revenues. All these bonds shall contain a statement on their face that the State shall not be obligated to pay the same or the interest thereon and that the faith and credit of the State shall not be pledged to the payment of the principal of or interest or premium on such bonds. The issuance of bonds or refunding bonds under this chapter shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for the payment thereof or the interest or premium thereon.

[ 1981, c. 595, §3 (NEW) .]

#### **4. Semiannual report.**

[ 2015, c. 5, §6 (RP) .]

**5. Fair practices; affirmative action.** The authority is subject to and shall comply with Title 5, chapter 65.

[ 1991, c. 435, §2 (NEW) .]

#### SECTION HISTORY

1981, c. 595, §3 (NEW). 1987, c. 457, §4 (AMD). 1991, c. 435, §§1,2 (AMD). 1997, c. 743, §1 (AMD). 2011, c. 302, §§11-13 (AMD). 2015, c. 5, §6 (AMD).

## **§1967. PROPERTY OF THE AUTHORITY; EMINENT DOMAIN**

The authority shall hold and acquire property as follows. [1981, c. 595, §3 (NEW) .]

**1. Property of the authority.** All property of the authority and all property held in the name of the State pursuant to the provisions of this chapter are exempt from levy and sale by virtue of any execution, and an execution or other judicial process is not a valid lien upon property of the authority held pursuant to the provisions of this chapter.

A. The authority may not lease, sell or otherwise convey, or allow to be used, any of its real or personal property or easements in that property, franchises, buildings or structures, with access to any part of the turnpike or its approaches, for commercial purposes, except for the following:

- (1) Intermodal transportation facilities, kiosks at rest areas, gasoline filling stations, service and repair stations, safety patrol vehicles sponsored or operated by 3rd parties, tourist-oriented retail facilities, state and tri-state lottery ticket agencies, automatic teller machines and restaurants that the authority determines are necessary to service the needs of the traveling public while using the turnpike. The leasehold interests in such intermodal transportation facilities, kiosks, gasoline filling stations, service and repair stations, tourist-oriented retail facilities, state and tri-state lottery ticket agencies, automatic teller machines and restaurants are subject to taxation as provided in section 1971;

- (2) Electrical power, telegraph, telephone, communications, water, sewer or pipeline facilities installed or erected by the authority, or permitted to be installed or erected by the authority; and
- (3) Signs erected and maintained by the authority, or allowed by the authority to be erected and maintained, in accordance with rules adopted pursuant to section 1965, subsection 1, paragraph U, that contain names, symbols, trademarks, logos or other identifiers of specific commercial enterprises. [2013, c. 549, §4 (NEW).]

As used in this subsection, "tourist-oriented retail facilities" means facilities that promote tourism in this State by selling products that are made or primarily made in this State or to which value is added in this State.

[ 2013, c. 549, §4 (RPR) .]

**2. Use of eminent domain.** Whenever a reasonable price cannot be agreed upon for the purchase or lease of real property found necessary for the purposes of the authority or whenever the owner is legally incapacitated or is absent or is unable to convey valid title or is unknown, the authority may acquire by eminent domain any such real property whether wholly or partly constructed or interest or interests therein and any land, rights, easements, franchises and other property deemed necessary or convenient for the construction or reconstruction or the efficient operation of the turnpike, its connecting tunnels, or bridges, overpasses, underpasses or interchanges, or both, in the manner provided by chapter 3, subchapter III. Title to any property taken by eminent domain shall be in the name of the authority.

[ 1981, c. 595, §3 (NEW) .]

**3. Entry upon lands.** The authority and its authorized agents and employees may enter upon any lands, waters and premises in the State for the purpose of making surveys, soundings, drillings and examinations as it deems necessary or convenient for the purpose of this chapter and the entry shall not be deemed a trespass.

[ 1981, c. 595, §3 (NEW) .]

**4. Authority for transfers of interest in land to the authority.** All counties, cities, towns and other political subdivisions or municipalities and all public agencies and commissions of the State, and all public service corporations and districts, notwithstanding any contrary provisions of law, may lease, lend, grant or convey to the authority, upon its request, upon such terms and conditions as the proper authorities of the counties, cities, towns, political subdivisions, other municipalities, agencies, commissions, public service corporations and districts deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality other than the regular and formal action of the authorities concerned, any real or personal property or rights therein that may be necessary or convenient to the effectuation of the authorized purposes of the authority, including real and personal property or rights therein already devoted to public use. As used in this subsection, the term "public service corporation" includes every public utility as defined in Title 35-A, section 102, subsection 13, and every corporation referred to in Title 13-C.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §39 (COR) .]

**5. Access.** Notwithstanding subsection 1, the authority may permit the City of Saco, or its successors or assigns, to use the interchange in Saco formerly known as exit 5 of the turnpike and land located adjacent to this former interchange for access, utility lines and appurtenances, parking and related accessory rights for the benefit of any or any combination of the following facilities:

- A. A liquor store or retail facility; [1993, c. 612, §7 (NEW).]
- B. A regional information center; [1993, c. 612, §7 (NEW).]
- C. A restaurant; [1993, c. 612, §7 (NEW).]
- D. A hotel; or [1993, c. 612, §7 (NEW).]
- E. A banquet and conference center. [1993, c. 612, §7 (NEW).]

The facilities must be located on property adjacent to the access way that connected the former exit 5 interchange with North Street in Saco. The terms of locating a facility must be mutually agreed upon by the authority and the City of Saco, its successors or its assigns. Access to and from the turnpike by means of the interchange at former exit 5 is restricted to facilities permitted under this subsection.

[ 1993, c. 612, §7 (NEW) .]

#### SECTION HISTORY

1981, c. 595, §3 (NEW). 1983, c. 707, §1 (AMD). 1987, c. 141, §B19 (AMD). 1989, c. 145, (AMD). 1993, c. 410, §MM6 (AMD). 1993, c. 612, §§6,7 (AMD). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B39 (COR). 2001, c. 41, §2 (AMD). 2007, c. 480, §1 (AMD). 2013, c. 549, §4 (AMD).

## §1968. ISSUANCE OF BONDS

The authority may issue bonds as follows. [1995, c. 138, §1 (RPR) .]

**1. Turnpike revenue bonds.** In addition to bonds outstanding pursuant to any other provision of this chapter, the authority may provide by resolution from time to time for the issuance of turnpike revenue bonds, including notes or other evidences of indebtedness or obligations defined to be bonds under this chapter, but not exceeding \$486,000,000 in the principal amount at any one time outstanding exclusive of refundings, for any purpose described in section 1969, subsection 1.

[ 2007, c. 270, §3 (AMD) .]

### **2. Bonds for construction and reconstruction of interchanges.**

[ 2003, c. 32, §2 (RP) .]

**2-A. Bonds for Department of Transportation projects.** In addition to bonds outstanding pursuant to any other provision of this chapter, the authority may provide by resolution from time to time but no later than June 30, 1997 for the issuance of special obligation bonds, including notes or other evidences of indebtedness or obligations defined to be bonds under this chapter, not exceeding \$40,000,000 in aggregate principal amount exclusive of refundings, to pay to the Department of Transportation the costs, or a portion of the costs, of Department of Transportation projects. Department of Transportation projects paid for with bonds in accordance with this subsection must be determined by the Department of Transportation and the authority to have sufficient relationship to the public's use of the turnpike in accordance with section 1974, subsection 6.

[ 1997, c. 646, §2 (AMD) .]

### **2-B. Bonds for turnpike widening.**

[ 2003, c. 32, §3 (RP) .]

**2-C. Bonds for purchase of interstate in Kittery.** In addition to bonds outstanding pursuant to any other provision of this chapter, the authority may provide by resolution for the issuance of special obligation or subordinate bonds, including notes or other evidences of indebtedness or obligations defined to be bonds under this chapter, not exceeding \$35,000,000 in aggregate principal amount exclusive of refundings, to purchase a section of Interstate 95 in Kittery from the Department of Transportation.

[ 2013, c. 586, Pt. F, §1 (NEW) .]

**3. Bonds; negotiable; not debt of State.** The bonds of the authority do not constitute a debt of the State or of any agency or political subdivision of the State and are payable solely from the operating revenues of the turnpike. Notwithstanding any provision of law, any bonds issued pursuant to this chapter are fully

negotiable. If any of the members or officers of the authority whose signatures appear on the bonds or coupons cease to be members or officers before the delivery of the bonds, the signature is, nevertheless, valid and sufficient for all purposes as if the members or officers had remained in office until that delivery.

Whether or not the bonds are of such form and character as to be negotiable instruments under Title 11, Article 8, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of Title 11, Article 8, subject only to the provisions of the bonds for registration.

It is the intention of this chapter that any pledge made by the authority in respect to the bonds or notes is valid and binding from the time when the pledge is made; that the funds or property so pledged and thereafter received by the authority is immediately subject to the lien of that pledge without any physical delivery of those funds or property or further act; and that the lien of such a pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether those parties have notice of that lien. Neither the resolution, trust indenture nor any other instrument by which a pledge is created need be recorded.

The authority may, in the resolution authorizing prospective issues, provide as to those bonds:

- A. The manner of executing the bonds and coupons; [1995, c. 138, §1 (NEW).]
- B. The form and denomination of the bonds; [1995, c. 138, §1 (NEW).]
- C. Maturity dates; [1999, c. 132, §1 (AMD).]
- D. The interest rate or rates on the bonds, which may be fixed or variable or a combination of both; [1995, c. 138, §1 (NEW).]
- E. For the redemption prior to maturity and the premium payable for the bonds; [1995, c. 138, §1 (NEW).]
- F. The place or places for the payment of interest and principal; [1995, c. 138, §1 (NEW).]
- G. For registration if the authority determines it to be desirable; [1995, c. 138, §1 (NEW).]
- H. For the pledge of all or any of the operating revenues of the turnpike for securing payment; [1995, c. 138, §1 (NEW).]
- I. For the replacement of lost, destroyed or mutilated bonds; [1995, c. 138, §1 (NEW).]
- J. The setting aside of revenue and sinking funds and the regulation and disposition of these revenues and funds and for limitations on reserves, if any, established for capital outlay from operating revenues; [1995, c. 138, §1 (NEW).]
- K. For limitations on the issuance of additional bonds; [1995, c. 138, §1 (NEW).]
- L. For the procedure, if any, by which the contract with the bondholders may be abrogated or amended; [1995, c. 138, §1 (NEW).]
- M. For the manner of sale, which may be public or private, and purchase of the bonds; [1995, c. 138, §1 (NEW).]
- N. For covenants against pledging any or certain of the operating revenues of the turnpike; [1995, c. 138, §1 (NEW).]
- O. For covenants fixing and establishing the prices, rates and charges for the use of the turnpike and other services made available in connection with the turnpike so as to provide at all times funds that will be sufficient:
  - (1) To pay all costs of operation and maintenance of the turnpike, together with the necessary repairs to the turnpike;
  - (2) To meet and pay the principal and interest of all such bonds as they severally become due and payable;

(3) For the creation of these reserves for the principal and interest of all such bonds and for the meeting of contingencies and the operation and maintenance of the turnpike as the authority determines; and

(4) To pay other lawful charges or costs for which the authority is responsible; [1995, c. 138, §1 (NEW).]

P. For such other covenants as to such prices, rates and charges as the authority determines; [1995, c. 138, §1 (NEW).]

Q. For covenants as to the rights, liability, powers and duties arising upon the breach by the authority of any covenant, condition or obligation; [1995, c. 138, §1 (NEW).]

R. For covenants as to the bonds to be issued and as to the issuance of the bonds in escrow and otherwise and as to the use and disposition of the proceeds of the bonds; [1995, c. 138, §1 (NEW).]

S. For covenants as to the use of its property and the maintenance and replacement of the property and the insurance to be carried on the property and the use and disposition of insurance money; [1995, c. 138, §1 (NEW).]

T. For limitations upon the exercise of the powers conferred upon the authority by this chapter; [1995, c. 138, §1 (NEW).]

U. For the issuance of these bonds in series or in serial form or for a stated term of years with or without mandatory retirements from a sinking fund or otherwise; [1995, c. 138, §1 (NEW).]

V. For the issuance, in addition to the issuance of notes and other evidences of indebtedness or obligations authorized under this chapter, of notes in anticipation of authorized bonds and for the exercise with respect to the bond anticipation notes of any or all of its powers delineated in this chapter for the issuance of bonds; and [1995, c. 138, §1 (NEW).]

W. For the performance by the authority of any acts and things necessary or convenient or desirable in order to secure its bonds or in the absolute discretion of the authority as will tend to make the bonds more marketable notwithstanding that those acts or things may not be enumerated in this chapter. [1995, c. 138, §1 (NEW).]

[ 1999, c. 132, §1 (AMD) .]

#### SECTION HISTORY

1981, c. 595, §3 (NEW). 1987, c. 457, §5 (AMD). IB 1991, c. 1, §7 (AMD). 1993, c. 410, §MM7 (AMD). 1995, c. 138, §1 (RPR). 1995, c. 504, §C5 (AMD). 1997, c. 646, §1 (AMD). 1997, c. 646, §§1-3 (AMD). 1997, c. 646, §2 (AMD). 1997, c. 646, §3 (AMD). 1999, c. 132, §1 (AMD). 2001, c. 311, §1 (AMD). 2003, c. 32, §§1-3 (AMD). 2003, c. 566, §1 (AMD). 2007, c. 59, §1 (AMD). 2007, c. 270, §3 (AMD). 2013, c. 586, Pt. F, §1 (AMD).

## §1969. APPLICATION OF PROCEEDS OF BONDS OR NOTES IN ANTICIPATION THEREOF

Bonds shall be applied as follows. [1981, c. 595, §3 (NEW).]

**1. Application.** All moneys received from any bonds or bond anticipation notes issued pursuant to this chapter shall be applied solely:

A. To the payment of the cost of the construction and reconstruction of the turnpike or to the payment to the Department of Transportation of the cost of department projects or to the payment of the cost of the purchase of a section of Interstate 95 in Kittery; [2013, c. 586, Pt. F, §2 (AMD).]

B. To the repayment of grants or loans from the Federal Government that were used to construct or reconstruct the turnpike or portions of it or interconnecting access roads or portions of them but only to the extent that that repayment is required in order for the authority to maintain or establish tolls on the turnpike; [1993, c. 410, Pt. MM, §8 (AMD).]

C. To the payment of the costs of constructing or reconstructing interchanges that are determined by the Department of Transportation and the authority to have a sufficient relationship to the public's use of the turnpike and the orderly regulation and flow of traffic on the turnpike; [2015, c. 5, §7 (AMD).]

D. To the payment of the costs of issuance of the bonds; [1981, c. 595, §3 (NEW).]

E. To the creation of reasonable reserves for the payment of the principal of and interest on those bonds, and to meet the cost of extraordinary repairs to or maintenance of the turnpike; [1981, c. 595, §3 (NEW).]

F. To the appurtenant fund; and [1981, c. 595, §3 (NEW).]

G. To the payment of any temporary notes of the authority the proceeds of which were used for any of the foregoing purposes. [1981, c. 595, §3 (NEW).]

[ 2015, c. 5, §7 (AMD) .]

**2. Lien created.** There is created and granted a lien upon the moneys until so applied in favor of holders of those bonds or the trustee provided for under this chapter in respect of these bonds.

[ 1981, c. 595, §3 (NEW) .]

#### SECTION HISTORY

1981, c. 595, §3 (NEW). 1993, c. 410, §MM8 (AMD). 1995, c. 504, §C6 (AMD). 2011, c. 302, §14 (AMD). 2013, c. 586, Pt. F, §2 (AMD). 2015, c. 5, §7 (AMD).

## §1970. BONDS; HOW SECURED

**1. Trust indentures.** In the discretion of the authority, bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State, or by a loan or other security agreement with a lender or with such a trustee containing provisions that may be included in a bond resolution or trust indenture under this chapter. The trust indenture or loan or other security agreement may pledge or assign tolls or revenues to be received but may not convey or mortgage the turnpike or any part thereof. Either the resolution providing for the issuance of the bonds or the trust indenture or loan or other security agreement may contain provisions for protecting and enforcing the rights and remedies of the bondholders or other lenders or of the trustee, if any, as may be reasonable and proper and not in violation of law, including: covenants setting forth the duties of the authority in relation to the acquisition of property; the construction, maintenance, operation, repair and insurance of the turnpike; the custody, safeguarding and application of all money; and any other provisions that the authority determines are necessary, convenient or desirable for the security of bondholders and other lenders or of the trustee, if any. Any such indenture or loan or other security agreement may restrict the individual right of action of bondholders or other lenders to the extent the authority determines is necessary, convenient or desirable. All expenses incurred in carrying out the trust indenture or loan or other security agreement may be treated as a part of the cost of the maintenance, operation and repair of the turnpike.

[ 2003, c. 152, §1 (NEW) .]

**2. Other agreements.** The authority may enter into an agreement with a bank or financial institution incorporated within or outside of the State as necessary or convenient for the provision of trustee, paying agent, depository or other financial services in connection with bonds issued by the authority pursuant to this chapter, and it is lawful for any bank or trust company to enter into any such agreements with the authority and to furnish indemnity bonds or to pledge any securities required by the authority.

[ 2003, c. 152, §1 (NEW) .]

#### SECTION HISTORY

1981, c. 595, §3 (NEW). 2003, c. 152, §1 (RPR).

## §1971. EXEMPTION FROM TAXES

The accomplishment by the authority of the authorized purpose stated in this chapter being for the benefit of the people of the State and for the improvement of their commerce and prosperity in which accomplishment the authority will be performing essential governmental functions, the authority shall not be required to pay any taxes or assessment on any property acquired or used by it for the purposes provided in this chapter, except that restaurants, kiosks, fuel and service facilities, leased or rented by the authority to business entities, shall be subject to taxation, and assessments shall be made against the tenant in possession based upon the value of the leasehold interest, both real and personal, nor may the authority be required to pay any tax upon its income except as may be required by the laws of the United States, and the bonds or other securities and obligations issued from the authority, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within the State. [1983, c. 707, §2 (AMD) .]

#### SECTION HISTORY

1981, c. 595, §3 (NEW). 1983, c. 707, §2 (AMD).

## §1972. REFUNDING BONDS

The authority is authorized to provide by resolution for the issuance of turnpike revenue refunding bonds of the authority, including notes or other obligations defined as bonds under this chapter for the purpose of refunding any bonds then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of these bonds; and, if deemed advisable by the authority, for any additional purpose for which bonds authorized by this chapter may be issued. The issuance of the bonds, the maturities and other details thereof, the rights of the holders thereof and the rights, duties and obligations of the authority in respect of those rights, duties and obligations, shall be governed by this chapter insofar as these rights, duties and obligations may be applicable. [1981, c. 595, §3 (NEW) .]

#### SECTION HISTORY

1981, c. 595, §3 (NEW).

## §1973. MAINTENANCE OF THE TURNPIKE

**1. Maintenance and repair.** The turnpike shall be maintained and repaired by and under the control of the authority and, at the discretion of the authority, the services of the Department of Transportation, as far as the services are available or expedient, may be utilized for this purpose. All charges and costs for maintenance and repairs actually expended by the department shall be paid to it by the authority. The turnpike shall be operated by such force of toll takers and other operating employees as the authority may in its discretion employ. The authority may utilize the services of the State Police to enforce the rules of the authority with

respect to tolls, volume, weight and speed of traffic and with respect to such other matters of enforcement as it may in its discretion require, and all charges and costs for those services actually expended by the State Police shall be paid by the authority to the Treasurer of State in accordance with section 1974, subsection 5.

[ 1981, c. 595, §3 (NEW) . ]

**2. Speed limit.** The authority may by rule prescribe a maximum limitation on the speed of vehicles using the turnpike, but not exceeding 65 miles per hour or such maximum speed as is permitted on similar roads in the State, and so limit the speed at any point or place thereon, and may regulate the volume and weight of vehicles admitted to the turnpike.

[ 1987, c. 257, §1 (AMD) . ]

**3. Tolls.** Tolls, or the fixing of tolls, is not rulemaking and is not subject to supervision or regulation by any state commission, board or agency. Subject to subsection 4, the authority may fix and revise from time to time tolls for the use of the turnpike and the different parts or sections of the turnpike, and charge and collect the tolls, and contract with any person, partnership, association or corporation desiring the use of any part of the turnpike, including the right-of-way adjoining the paved portion. The tolls must be so fixed and adjusted as to provide a fund at least sufficient with other revenues of the turnpike, if any, to pay for each fiscal year:

A. The cost of maintaining, repairing and operating the turnpike, and providing and maintaining reasonable reserves for those costs; [1993, c. 698, §1 (AMD) . ]

B. The bonds and the interest on those bonds, and all sinking fund requirements, and other requirements provided by the resolution authorizing issuance of the bonds or by the trust indenture or loan or a security agreement as those bonds, interest, sinking fund requirements and other requirements become due; [1993, c. 698, §1 (AMD) . ]

C. Those sums for the purpose of maintaining, constructing or reconstructing access roads or portions of access roads that have been requested by the department and in the sole discretion of the authority are from time to time determined to warrant the expenditure of turnpike revenues; and [1993, c. 698, §1 (AMD) . ]

D. The cost of maintaining, constructing or reconstructing interchanges. [1981, c. 595, §3 (NEW) . ]

The authority may use any method for assessing and collecting tolls, including but not limited to toll tickets, barrier toll facilities, billing accounts, commuter passes and electronic recording or identification devices. The display of a recording or identification device issued or authorized by the authority for these purposes on or near the windshield of a motor vehicle is not a violation of a law or rule, including but not limited to Title 29-A, sections 1916 and 2082, unless the device is attached in a way that obstructs the driver's clear view of the highway or an intersecting highway.

[ 1995, c. 65, Pt. A, §63 (AMD); 1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. C, §15 (AFF) . ]

**4. Rates.** The rate of toll at each toll facility may be revised from time to time.

A. [2011, c. 476, §4 (RP) . ]

A-1. The authority is prohibited from imposing variable surcharges based on the time of day. [2011, c. 476, §4 (AMD) . ]

B. A reduction in the rates of fees, fares and tolls may be given to any class of vehicle based upon volume of use. [2011, c. 476, §4 (AMD) . ]

[ 2011, c. 476, §4 (AMD) . ]

**5. Use by military.** The turnpike may be used at any and all times by the Armed Forces of the United States, the State or any of their allies for defense purposes or preparations therefor free of all tolls and charges, and that use shall not constitute a taking of property without due process, provided that any structural damage to the turnpike created by that free use, ordinary deterioration or depreciation excepted, shall be compensated for at cost of repair or replacement.

[ 1981, c. 595, §3 (NEW) .]

#### SECTION HISTORY

1981, c. 595, §3 (NEW). 1987, c. 257, §1 (AMD). 1993, c. 698, §1 (AMD). 1995, c. 65, §A63 (AMD). 1995, c. 65, §§A153,C15 (AFF). 1995, c. 410, §§1,2 (AMD). 2011, c. 476, §4 (AMD).

## §1974. USE OF TURNPIKE REVENUES

**1. Expenditures.** Expenditure of all tolls collected from the Maine Turnpike toll facilities and all other revenues derived from the turnpike operations after the effective date of this chapter shall be limited to the following purposes:

A. Maintenance, repair and operation of the turnpike and the establishment of reserves required therefor including, without limitations, reserves required or permitted by the resolutions authorizing the issuance of bonds or by the trust indentures relating to those bonds, and including any costs specially incurred by the Department of Transportation or any other state agency in connection with the operation of the turnpike; [1981, c. 595, §3 (NEW).]

B. Payment of the cost of any debt incurred by the authority, including, but not limited to, payment of interest and principal on any bonds issued by the authority and payment into any sinking funds required by subsection 2; [1981, c. 595, §3 (NEW).]

C. Construction or reconstruction to improve the turnpike to meet greater traffic demands or improve safety of operation, including reserves therefor, as authorized in paragraph E, except that the traveled way shall not be widened or expanded beyond the limits set forth in section 1965, subsection 1, paragraph D without the express approval of the Legislature; [1987, c. 457, §6 (AMD).]

D. Maintenance, construction or reconstruction of access roads, or portions thereof, where the authority has made the determinations required by subsection 4; [1981, c. 595, §3 (NEW).]

E. Payments to reserve or sinking funds established by the authority to meet anticipated future costs of constructing or reconstructing designated interchanges or portions thereof submitted by the department, or to accomplish other designated purposes for which the authority is authorized to issue bonds, provided that the funding for those projects financed from reserves, together with the estimated future costs thereof, have been approved by the authority; [1987, c. 457, §6 (AMD).]

F. Repayment to the Federal Government for grants or loans that were used in connection with the construction or reconstruction of any portion of the turnpike or of any interconnecting access roads, but only to the extent that the repayment is required in order for the authority to maintain or establish tolls on the turnpike; and [1993, c. 410, Pt. MM, §9 (AMD).]

G. Payment or repayment to the Federal Government or any agency of the Federal Government of any charges, taxes or other payments required by law in connection with the construction, reconstruction or operation of the turnpike or the financing or refinancing of the turnpike or any part of the turnpike. [1987, c. 457, §7 (NEW).]

[ 1993, c. 410, Pt. MM, §9 (AMD) .]

**2. Sinking fund for payment of bonds.** The tolls and all other revenues derived from the turnpike, except such part thereof as may be required to pay the cost of maintaining, repairing and operating the turnpike and to provide such reserves therefor as may be provided for in a resolution authorizing the issuance

of the bonds or in the related trust indenture or loan or other security agreement, shall be set aside at such regular intervals as may be provided in the resolution or trust indenture or loan or other security agreement, in a sinking fund which is pledged to, and charged with, the payment of:

- A. The interest upon those bonds as that interest falls due; [1981, c. 595, §3 (NEW).]
- B. The principal of the bonds as that principal falls due; [1981, c. 595, §3 (NEW).]
- C. The necessary fiscal agency charges for paying principal and interest; and [1981, c. 595, §3 (NEW).]
- D. Any premiums upon bonds retired by call or purchase as provided in this subsection. [1981, c. 595, §3 (NEW).]

The use and disposition of the sinking fund shall be subject to such rules as may be provided in the resolution authorizing the issuance of bonds or in the related trust indenture or loan or other security agreement, but, except as may otherwise be provided in that resolution or trust indenture or loan or other security agreement, the sinking fund shall be a fund for the benefit of all bonds issued under this subsection without distinction or priority of one over another. Subject to the provisions of the resolution authorizing the issuance of bonds or of the trust indenture or loan or other security agreement, any moneys in the sinking fund in excess of an amount equal to one year's interest on all bonds then outstanding may be applied to the purchase or redemption of bonds. All bonds so purchased or redeemed shall immediately be canceled and shall not again be issued.

[ 1981, c. 595, §3 (NEW) .]

### **3. Revenues for additional interchanges.**

[ 2015, c. 5, §8 (RP) .]

### **4. Revenues for access roads and the state highway system.**

[ 1993, c. 680, Pt. A, §26 (RP) .]

**5. Payment for State Police services on the Maine Turnpike.** Payment for State Police services on the Maine Turnpike shall be as follows.

- A. The authority shall assume all costs incurred by the State Police in enforcing the rules of the authority, and in providing for the safety of the public traveling on the turnpike, provided that the authority has authorized the provision of those services by the State Police, and provided also that the services of any State Police personnel whose costs are so assumed shall be utilized only for turnpike-related activities, except in the event of emergency. [1981, c. 595, §3 (NEW).]
- B. The Chief of the State Police shall submit monthly statements of costs incurred in connection with the turnpike, and the authority shall pay the amount of those costs to the Treasurer of State within 20 days of receipt of the monthly statement. The Treasurer of State shall credit those payments proportionately to the Highway Fund and the General Fund. [1981, c. 595, §3 (NEW).]
- C. Prior to December 1st of each year, the Chief of the State Police shall file a report with the authority containing the following information with respect to the level of State Police services required in the following fiscal year to adequately enforce the rules of the authority and to adequately provide for the safety of the public traveling on the turnpike:
  - (1) The estimated level of personnel required for turnpike duty calculated according to the assignment of that personnel by shift;
  - (2) Monthly and annual estimates of the cost of personnel required for turnpike duty;
  - (3) The estimated number of vehicles and amount of equipment required for turnpike duty, including a schedule of anticipated replacement needs;
  - (4) Annual estimates of the cost of vehicles and equipment required for turnpike duty; and

(5) Any other information which will aid the authority in determining the required level of State Police services and the cost thereof. [1981, c. 595, §3 (NEW).]

D. The authority shall review the information provided in the annual report of the Chief of the State Police and shall authorize the provision of such patrol and other services as it shall deem necessary to enforce its rules and to provide for the safety of the public traveling on the turnpike. [1981, c. 595, §3 (NEW).]

[ 1981, c. 595, §3 (NEW) .]

**6. Revenues to secure special obligation bonds for department projects; determination of project eligibility for funding.** Subject to the terms and conditions of this chapter, the authority may authorize turnpike revenues to be transferred to a trustee or agent designated by the authority and that trustee or agent shall hold these revenues in trust to secure or to be applied to the payment of obligations issued pursuant to section 1968, subsection 2-A and as provided for in a resolution authorizing the issuance of these bonds or in a related trust indenture or loan or other security agreement.

The Department of Transportation shall provide the authority with a list of proposed department projects and any other information requested by the authority and relating to a project on the list. The Department of Transportation and the authority shall determine department projects that are eligible for funding with proceeds from bonds authorized by section 1968, subsection 2-A. In making this determination, the department and the authority may consider the following factors:

- A. The existing access roads and the state highway system; [1995, c. 504, Pt. C, §7 (NEW).]
- B. The traffic impact of the maintenance, construction or reconstruction on the existing road network; [1995, c. 504, Pt. C, §7 (NEW).]
- C. The total cost of the state highway system; [1995, c. 504, Pt. C, §7 (NEW).]
- D. The probable change in departmental expenditures resulting from maintenance, construction or reconstruction of the project; [1995, c. 504, Pt. C, §7 (NEW).]
- E. The relative number of vehicles using or expected to use the project on the way to or from the turnpike; [1995, c. 504, Pt. C, §7 (NEW).]
- F. The road distance or average road distance of the project or portions of the project from the nearest entrance to or exit from the turnpike; [1995, c. 504, Pt. C, §7 (NEW).]
- G. The effect that maintenance, construction or reconstruction will have on the flow of traffic to, from and on the turnpike and in diverting vehicular traffic off or away from the turnpike; [1995, c. 504, Pt. C, §7 (NEW).]
- H. The proportionate usage of the state highway system by vehicles using the turnpike and vehicles not using the turnpike; [1995, c. 504, Pt. C, §7 (NEW).]
- I. Vehicle classification and travel characteristics; [1995, c. 504, Pt. C, §7 (NEW).]
- J. Origins and destinations of trips; [1995, c. 504, Pt. C, §7 (NEW).]
- K. Fuel type and consumption; [1995, c. 504, Pt. C, §7 (NEW).]
- L. Existing sources of revenue; and [1995, c. 504, Pt. C, §7 (NEW).]
- M. Any other factors considered relevant, including, but not limited to, expert opinion. [1995, c. 504, Pt. C, §7 (NEW).]

[ 2011, c. 302, §15 (AMD) .]

#### SECTION HISTORY

1981, c. 595, §3 (NEW). 1981, c. 698, §§103-105 (AMD). 1987, c. 457, §§6,7 (AMD). 1987, c. 793, §A8 (AMD). IB 1991, c. 1, §8 (AMD). 1991, c. 9, §§E16,17 (AMD). 1993, c. 410, §MM9 (AMD). 1993, c. 680, §A26 (AMD). 1995, c. 504, §C7 (AMD). 2011, c. 302, §15 (AMD). 2015, c. 5, §8 (AMD).

## §1975. PROVISIONS IN CASE OF DEFAULT ON BONDS

Except as may otherwise be provided in a bond resolution or trust indenture or loan or security agreement, in the event that the authority shall default in the payment of principal or interest on any of its bonds after the principal or interest falls due and that default shall continue for a period of 60 days or shall default in any other agreement with the bondholders or with a trustee under a trust indenture or loan or security agreement, the holders of 25% in aggregate principal amounts of the bonds then outstanding by instrument filed in the office of the Secretary of State duly acknowledged may appoint a trustee to represent the bondholders for the purpose provided in this section. The trustee may upon the written request of the holders of 25% in principal amount of the bonds then outstanding: [1981, c. 595, §3 (NEW).]

**1. Enforcement of rights of bondholders.** By mandamus or other suit, action or proceeding at law or in equity enforce the rights of the bondholders;

[ 1981, c. 595, §3 (NEW) .]

**2. Suit upon bonds.** Bring suit upon the bonds;

[ 1981, c. 595, §3 (NEW) .]

**3. Enjoinment of acts or other things.** Enjoin any acts or other things which may be unlawful or in violation of the rights of the bondholders; or

[ 1981, c. 595, §3 (NEW) .]

**4. Require accounting.** By action or suit in equity require the authority to account as if it were trustee of an expressed trust for the bondholders. The trustee shall be entitled, as a right, to the appointment of a receiver who may, to the extent that the authority could itself do, enter and take possession of the facilities of the authority or any part thereof, the revenue or receipts from which are or may be applicable to the payment of the bonds so in default, and operate and maintain the same and collect and receive all revenue thereafter arising therefrom in the same manner as the authority might do and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and the receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any revenues and receipts derived from the turnpike, the revenues and receipts from which are or may be applicable to the payment of the bonds so in default. The trustees shall, in addition, have and possess all the powers necessary and appropriate for the exercise of any functions specifically set forth in this section or incident to the general representation of the bondholders in the enforcement and protection of their rights. Except as may otherwise be provided in a bond resolution or trust indenture or loan or other security agreement, in addition to other rights and limitations any bondholder shall have the right by mandamus or other suit, action or proceeding in law or in equity to enforce his rights against the authority, including the right to require the authority to carry out any agreement or covenant and to perform its duties under this chapter.

[ 1981, c. 595, §3 (NEW) .]

### SECTION HISTORY

1981, c. 595, §3 (NEW).

## §1976. INTERIM CERTIFICATES

Prior to the issuance of any bonds, the authority may issue interim certificates in such manner and with such conditions as the authority may determine to be exchanged for the bonds when issued. [1981, c. 595, §3 (NEW).]

### SECTION HISTORY

1981, c. 595, §3 (NEW).

## §1977. TRUST FUNDS

Subject to any agreement with the bondholders, all revenue received from the operation of the turnpike after deducting expenditures required for the construction, reconstruction, operation and maintenance of the turnpike and for the payment of the principal and the interest on the bonds of the authority or otherwise in accordance with the provisions thereof, and after deducting the amount provided to the department pursuant to section 1961, subsection 7, must be held and invested by the authority to establish trust funds for reserve and sinking funds for the retirement of bonded indebtedness. [2011, c. 302, §16 (AMD).]

### SECTION HISTORY

1981, c. 595, §3 (NEW). IB 1991, c. 1, §9 (AMD). 2011, c. 302, §16 (AMD).

## §1978. TERMINATION OF THE AUTHORITY

The authority shall not be dissolved until such time as: [1981, c. 595, §3 (NEW).]

**1. Legislature provide for termination.** The Legislature shall provide for its termination; and

[ 1981, c. 595, §3 (NEW) .]

**2. Payment of bonds, premiums and interest.** All bonds, the premium, if any, and the interest thereon shall have been paid or a sufficient amount for the payment of all bonds and the interest to maturity or prior redemption date thereon shall have been irrevocably set aside in trust for the benefit of the bondholders.

[ 1981, c. 595, §3 (NEW) .]

### SECTION HISTORY

1981, c. 595, §3 (NEW).

## §1979. GOVERNMENTAL FUNCTIONS

It is declared that the purposes of this chapter are public and that the authority shall be regarded as performing a governmental function in the carrying out of the provisions of this chapter. [1981, c. 595, §3 (NEW).]

### SECTION HISTORY

1981, c. 595, §3 (NEW).

## §1980. PENALTIES

Regulatory rules and laws shall be observed as follows. [1981, c. 595, §3 (NEW).]

**1. Traffic infraction.** Except as provided in subsection 1-A, a violation of published rules relating to the turnpike or its use or services is a traffic infraction and is punishable by a fine of not more than \$500.

[ 2003, c. 452, Pt. L, §4 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**1-A. Criminal violations.** The following violations of published rules relating to the turnpike or its use or services are crimes.

A. A person who operates a motor vehicle at a speed that exceeds, by 30 miles per hour or more, the speed fixed by the authority commits a Class E crime. [2003, c. 452, Pt. L, §5 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who fails or neglects to pay tolls, fares or charges for use of the turnpike commits a Class E crime. [2003, c. 452, Pt. L, §5 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

These crimes are strict liability crimes as defined in Title 17-A, section 34, subsection 4-A.

[ 2003, c. 452, Pt. L, §5 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2. Criminal acts and civil violations.** The Revised Statutes, and amendments thereto, and the decisions of the courts of the State, shall apply to criminal acts and civil violations committed on the turnpike.

[ 1981, c. 595, §3 (NEW) .]

**2-A. Toll violations.** In addition to potential criminal liability under subsection 1-A, the registered owner of a vehicle may be liable for civil penalties for failure to pay a toll as set out in this subsection.

A. If an operator of a vehicle fails to pay a toll, the registered owner of that vehicle is liable for payment of the toll and is subject to a civil penalty of:

(1) Fifty dollars, except as provided in subparagraph (2) or (3);

(2) One hundred dollars, if a failure to pay a toll occurs within 18 months of a prior failure to pay;  
or

(3) One hundred fifty dollars, if a failure to pay a toll occurs within 18 months of 2 or more prior failures to pay. [2003, c. 591, §2 (RPR).]

B. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Administrative fee" means the fee imposed pursuant to paragraph C, subparagraph (4).

(2) "Electronic toll collection system" means a system of collecting tolls or other charges that is capable of charging an account holder the appropriate amount by transmission of information between a device on a motor vehicle and a toll collection facility.

(3) "Pay" means paying a toll by cash, by permitting a charge against a valid account with the authority or by any other means of payment approved by the authority at the time.

(4) "Photo-monitoring system" means a motor vehicle sensor installed to work in conjunction with a toll collection facility that automatically produces a photograph, microphotograph, videotape or other recorded image of a motor vehicle when the operator of the motor vehicle fails to pay a toll.

(5) "Registered owner" means a person in whose name a motor vehicle is registered under the law of a jurisdiction, including a person issued a dealer or transporter registration plate.

(6) "Toll" or "tolls" means tolls or other charges prescribed by the authority for use of the turnpike or for other services provided to a turnpike patron under section 1965, subsection 1, paragraph V.

(7) "Violation clerk" means an employee of the authority designated by the authority to enforce violations and adjudicate appeals relating to those violations under this subsection. [2003, c. 591, §2 (RPR).]

C. The following procedures must be followed for the collection of tolls, administrative fees and civil penalties under this subsection.

- (1) The authority shall send a notice of liability by first class mail to a person alleged to be liable as a registered owner under this subsection. The notice must be sent to the address of the registered owner on record with the authority if the registered owner is an electronic toll collection patron of the authority or, if no such record exists, the address of the registered owner on record with the Secretary of State. If no address is on record with the authority or the Secretary of State, the notice may be sent to an address for the registered owner obtained by the authority through other reasonable means, including but not limited to through databases compiled by law enforcement or other government agencies. A written statement by the authority that the notice of liability has been mailed is prima facie evidence of the mailing of the notice.
- (2) A notice of liability must include the amount of the unpaid toll, the registration number of the vehicle involved, the toll collection facility at which the failure to pay occurred and the date and the approximate time of the failure. The notice must also include the name, address and telephone number of the violation clerk responsible for enforcing the penalty for the failure to pay.
- (3) A notice of liability must state how the alleged liability may be contested and must identify the statutory defenses described in paragraph E. The notice must also include a warning that failure to contest in the manner and time provided is an admission of liability and a waiver of defenses and that failure to pay or respond may result in revocation of the registration certificate and plates issued for a motor vehicle registered in the State or suspension of the right to operate the motor vehicle in this State if it is registered in another jurisdiction.
- (4) Within 30 calendar days after the date of issuance of the notice of liability, the registered owner shall:
  - (a) Pay the amount of the toll for which the person is liable, the civil penalty or penalties provided for in paragraph A and an administrative fee of \$20 for each unpaid toll for which the person is liable;
  - (b) Send a written dispute by mail to the violation clerk named in the notice, as provided by paragraph I; or
  - (c) Request a hearing with the violation clerk named in the notice as provided by paragraph J. [ 2015, c. 159, §1 (AMD) . ]

D. Except as provided in paragraph E, it is not a defense to liability under this subsection that a registered owner was not operating the motor vehicle at the time of the failure to pay. [ 2003, c. 591, §2 (RPR) . ]

E. Defenses to liability under this subsection are as set out in this paragraph.

- (1) If a person other than the registered owner of the motor vehicle is adjudicated criminally or civilly responsible for the failure to pay a toll, then the registered owner is not liable under this subsection.
- (2) If the registered owner of the motor vehicle is the lessor of motor vehicles and at the time of the failure to pay an authority toll the motor vehicle was in the possession of a lessee and the lessor provides the authority with a copy of the lease agreement containing the information required by Title 29-A, section 254, then the lessee, and not the lessor, is liable under this subsection.
- (3) If the motor vehicle is operated using a dealer or transporter registration plate and at the time of the failure to pay the motor vehicle was under the custody or control of a person other than the dealer or transporter, and if the dealer or transporter provides the authority with the name and address of the person who had custody or control over the motor vehicle at the time of the failure to pay, then that person and not the dealer or transporter is liable under this subsection.
- (4) If a report that the motor vehicle was stolen is given to a law enforcement officer or agency before the failure to pay occurs or within a reasonable time after the registered owner becomes aware of the theft, then the registered owner is not liable under this subsection. [ 2003, c. 591, §2 (RPR) . ]

F. Nothing in this subsection may be construed to limit the liability of an operator of a motor vehicle for a failure to pay an authority toll. If a person who is liable for a failure to pay under this subsection was not the operator of the motor vehicle at the time of the failure to pay, that person may maintain an action for indemnification against the operator to recover all tolls, administrative fees and civil penalties paid by that person under this subsection. [ 2003 , c . 591 , §2 (RPR) . ]

G. The authority shall notify the Secretary of State, who shall, in accordance with Title 29-A, section 154, subsection 6, suspend the registration certificate and plates issued for the vehicle involved in the alleged failure to pay if that vehicle is registered in this State or, if that vehicle is registered in another jurisdiction, suspend the right to operate the motor vehicle in accordance with Title 29-A, section 2461 if a registered owner:

- (1) Does not dispute a notice of liability or pay the tolls, administrative fees and civil penalties as required by paragraph C, subparagraph (4);
- (2) Does not pay the required tolls, administrative fees and civil penalties within 30 days of a final determination of liability as provided in paragraphs I and J; or
- (4) Does not pay the required tolls, administrative fees or civil penalties within 30 days of a final determination of liability by an away agency with whom the authority has a reciprocal collection arrangement under subsection 2-C.

When notifying the Secretary of State under this paragraph, the authority shall send a notice by first class mail informing the registered owner of the pending suspension. [ 2015 , c . 159 , §2 (AMD) . ]

H. [ 2011 , c . 476 , §7 (RP) . ]

I. The registered owner may, without waiving the right to a hearing before a violation clerk as provided by paragraph J and also without waiving the right to judicial review as provided by Title 5, chapter 375, subchapter 7, appeal a notice of liability as provided by paragraph C, subparagraph (4) and receive a review and disposition of the violation from a violation clerk by mail. The appeal by mail must contain a signed statement from the registered owner explaining the basis for the appeal. The signed statement may be accompanied by signed statements from witnesses, police officers, government officials or other relevant parties or photographs, diagrams, maps or other relevant documents that the registered owner determines appropriate to submit. Statements or materials sent to a violation clerk for review must have attached to them the name and address of the registered owner as well as the number of the notice of liability and the date of the violation. All information submitted by the registered owner becomes part of the violation record. The violation clerk shall, within 60 days of receipt of such material, review the material and dismiss or uphold the violation and notify the registered owner of the disposition of the hearing in writing by mail. If the appeal by mail is denied, the violation clerk shall explain the reasons for the determination. The review and disposition handled by mail is informal, the rules of evidence do not apply and the decision is final, subject to the hearing provisions of paragraph J. [ 2003 , c . 591 , §2 (NEW) . ]

J. As provided by paragraph C, subparagraph (4) or within 30 days of the issuance of a decision by a violation clerk under paragraph I, a registered owner may make a written request for an appeal hearing before a violation clerk designated by the authority. The violation clerk shall then notify the registered owner in writing by certified mail, return receipt requested of the date, time and place of the hearing. The hearing is informal, the rules of evidence do not apply and the decision of the violation clerk is final. The violation clerk shall notify the parties in person or by mail of the decision following the hearing. Each written appeal decision must contain a statement of reasons for the decision including a determination of each issue of fact necessary to the decision. Failure to appear at the date, time and place specified on the hearing notice automatically results in the denial of the appeal. [ 2003 , c . 591 , §2 (NEW) . ]

K. Any decision by a violation clerk under this section is subject to judicial review of final agency action in the manner provided by Title 5, chapter 375, subchapter 7. If a registered owner files an appeal pursuant to this subsection, the authority may not notify the Secretary of State to suspend the registration certificate and plate issued for the vehicle involved in the alleged failure to pay until the appeal is resolved. [2003, c. 591, §2 (NEW).]

[ 2015, c. 159, §§1, 2 (AMD) .]

**2-B. Admissibility of photo-monitoring evidence.** A photograph, microphotograph, videotape or other recorded image produced by a photo-monitoring device is admissible in a proceeding to collect a toll or other charge of the authority, to collect civil penalties imposed under subsection 2-A or to impose civil or criminal liability for a failure to pay the toll or charge.

A. An original or facsimile of a certificate, sworn to or affirmed by an agent of the authority that states that a failure to pay has occurred and states that it is based upon a personal inspection of a photograph, microphotograph, videotape or other recorded image produced by a photo-monitoring system, as defined in subsection 2-A, is prima facie evidence of the facts contained in the certificate. [1993, c. 698, §2 (NEW).]

B. A photograph, micro-photograph, videotape or other recorded image prepared for enforcement of authority tolls is for the exclusive use of the authority in the discharge of its duties under this section. This material is confidential and is not available to the public or to any person employed by the authority whose duties do not require access to the material. The authority shall make this information available to a law enforcement officer upon request and may share this information with other toll administrative agencies as provided in section 1982. Except as provided in this subsection or as may be necessary to prove a claim for indemnification under subsection 2-A, paragraph F or to prosecute a criminal offense, this material may not be used in a court in an action or proceeding. [2011, c. 302, §18 (AMD) .]

C. A photograph, microphotograph, videotape or recorded image obtained from a photo-monitoring system as defined in subsection 2-A may not be used by the authority for the purposes of collection of a toll or other charge if the photograph, microphotograph, videotape or recorded image shows the face of a passenger or driver of a motor vehicle. [2003, c. 591, §3 (NEW).]

This subsection takes effect July 1, 1995.

[ 2011, c. 302, §18 (AMD) .]

**2-C. Reciprocity with away agencies.** The authority may enter into reciprocal collection arrangements with away agencies in accordance with this subsection. When an away agency certifies with supporting evidence that the operator of a motor vehicle registered in this State has failed to pay a toll, the authority may collect the civil penalties and tolls properly imposed by the away agency as though those penalties and tolls were imposed by the authority if:

A. The away agency has its own effective reciprocal procedures for collecting penalties and tolls imposed by the authority and does, in fact, reciprocate in collecting penalties and tolls of the authority by employing sanctions that include denial of a person's right to register or reregister a motor vehicle; [2011, c. 302, §19 (NEW).]

B. The penalties, exclusive of tolls, claimed by the away agency against an owner of a motor vehicle registered in this State do not exceed \$100 for a first violation or \$600 for all pending violations; [2011, c. 420, Pt. H, §1 (AMD); 2011, c. 420, Pt. H, §2 (AFF).]

C. The away agency provides due process and appeal protections to avoid the likelihood that a false, mistaken or unjustified claim will be pursued against an owner; [2011, c. 302, §19 (NEW).]

D. An owner of a motor vehicle registered in this State may present evidence to the away agency or to the authority by mail, telephone, electronic means or other means to invoke rights of due process without having to appear personally in the jurisdiction where the violation occurred; and [2011, c. 420, Pt. H, §1 (AMD); 2011, c. 420, Pt. H, §2 (AFF).]

E. The reciprocal collection arrangement between the authority and the away agency provides that each party may charge the other a fee sufficient to cover the costs of collection services, including costs incurred by an agency that registers motor vehicles. [2011, c. 302, §19 (NEW).]

[2011, c. 302, §19 (NEW); 2011, c. 420, Pt. H, §1 (AMD); 2011, c. 420, Pt. H, §2 (AFF) .]

**3. Rules.** This section shall not affect the power of the authority to make rules governing use of the turnpike, or the power to prescribe limitations on the speed, volume and weight of vehicles using the turnpike, as granted to the authority by this chapter.

[1981, c. 595, §3 (NEW) .]

**4. Other collection procedures.** Nothing in this section prevents the authority from collecting payment for use of the turnpike or any other service in connection with the turnpike by action at law or in equity.

[2003, c. 452, Pt. L, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

#### SECTION HISTORY

1981, c. 595, §3 (NEW). 1993, c. 698, §2 (AMD). 1995, c. 65, §A64 (AMD). 1995, c. 65, §§A153,C15 (AFF). 1995, c. 339, §2 (AMD). 2001, c. 154, §§1-4 (AMD). 2001, c. 473, §1 (AMD). 2003, c. 452, §§L4-6 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 591, §§2,3 (AMD). 2011, c. 302, §§17-19 (AMD). 2011, c. 420, Pt. H, §1 (AMD). 2011, c. 420, Pt. H, §2 (AFF). 2011, c. 476, §§5-7 (AMD). 2015, c. 159, §§1, 2 (AMD).

### §1981. EFFECTIVE DATE

This chapter shall take effect when approved, except that the authority may not, at any time before any bonds outstanding on the effective date and the interest thereon shall have been paid or a sufficient amount for the payment of any such bonds, premium, if any, and the interest to maturity or prior redemption date thereon shall have been irrevocably set aside in trust for the benefit of the bondholders, provide any funds to the Department of Transportation for the construction, reconstruction, maintenance or repair of access roads. [1981, c. 595, §3 (NEW).]

#### SECTION HISTORY

1981, c. 595, §3 (NEW).

### §1982. CONFIDENTIALITY OF AUTHORITY RECORDS

A log or record identifying the name, address or travel patterns of a patron of the turnpike, whether prepared for enforcement of authority tolls or other purposes of the authority, is for the exclusive use of the authority in the discharge of its duties under this chapter. This material is confidential and is not available to the public except that a law enforcement officer or a representative of an insurance company making a request for specific records in the course of conducting the officer's or representative's business may have access to this material to the extent and in the manner access to such material is afforded under Title 1, chapter 13, subchapter I. The authority may release accident and other incident reports to affected parties and may release information specific to a commuter pass account or commercial billing account to the holder of that account.

The authority may disclose patron information, including information gathered by photo-monitoring devices, to other toll administrative agencies that are participating with the authority in multiple-facility, electronic, transportation-related collection systems. [2001, c. 473, §2 (AMD).]

## SECTION HISTORY

1995, c. 339, §3 (NEW). 2001, c. 473, §2 (AMD).

**§1983. INTEREST RATE AGREEMENTS**

The authority is authorized to enter from time to time into agreements with another party, on terms and conditions that the authority determines are necessary or convenient, in which the authority agrees to make a payment to, or to receive a payment from, the other party based on a comparison at a future date between an interest rate specified on the date of the agreement and a rate derived on or about that future date from an interest rate index. The authority is authorized to enter into any credit enhancement or liquidity agreement on terms and conditions that the authority determines are necessary or convenient for carrying out this section. [2003, c. 111, §1 (NEW).]

## SECTION HISTORY

2003, c. 111, §1 (NEW).

## Part 2: COUNTY HIGHWAY LAW

### Chapter 201: GENERAL PROVISIONS

#### §2001. ORGANIZED PLANTATIONS HAVE SAME LIABILITY AND POWERS AS TOWNS

Organized plantations have like powers and are subject to like liabilities and penalties as towns, respecting ways. Their assessors have like powers and shall perform like duties as municipal officers of towns, respecting them.

#### §2002. DAMAGES; RECOVERY

A person entitled to receive payment of damages or costs may, after 30 days from demand on the treasurer of the county or town or on the party liable therefor, recover them in a civil action.

#### §2003. TITLE OF PURCHASER AT ASSESSMENT SALE

Purchasers of land sold for nonpayment of assessments for opening and making roads have no claim against the county for any defect in the title under such sale, notwithstanding any irregularities in the proceedings or failure to comply with the law under which the sales were made. Deeds given pursuant to sales made for nonpayment of such assessments vest in the grantee the title of the county to the lands sold, subject to the conditions of sale, and no more.

#### §2004. PART OWNER MAY REDEEM

Any person having a legal interest in a tract so advertised, sold or forfeited may redeem his interest by paying within the times prescribed the amount so required to discharge the claim thereon. The rate of interest upon unpaid assessments by county commissioners for opening and making roads shall be 6% a year, commencing at the expiration of one year from the date of the assessments, except when otherwise provided.

#### §2005. NOTICE TO DEPARTMENT OF TRANSPORTATION OF CHANGE OF LOCATION

Whenever the location of any state, state aid or town way that was designated as a 3rd class highway at the time the 3rd class highway designations were rescinded is changed, added to, discontinued or a new location is established within a county, the county commissioners of said county shall place on file the description of such change and shall notify the Department of Transportation of such change with an accurate description of the courses and distances within 3 months from such action. Whenever the department has previous record of such action, no notification by the county commissioners to the department shall be deemed necessary. [1971, c. 593, §22 (AMD).]

#### SECTION HISTORY

1971, c. 593, §22 (AMD).

### Chapter 203: LAYING OUT, ALTERING OR DISCONTINUING HIGHWAYS

#### §2051. POWER OF COMMISSIONERS

**1. Layout, maintenance and discontinuance of roads in unorganized areas.** County commissioners may lay out, alter, close for maintenance or discontinue highways within the unorganized areas of their counties and grade hills in such a highway. The county commissioners may close a county road for maintenance and preserve the right-of-way for the use of abutting landowners, any others using that way for access to their property and public utilities and corporations with facilities legally located within that way, at

their own risk. At a regular session of the commissioners, responsible persons may present a written petition describing a way and stating that the location, alteration, grading or closing for maintenance or discontinuance of that way, in whole or in part, or an alternative action, is desired. The commissioners may act upon the petition, conforming substantially to the description without adhering strictly to its bounds.

[ 1997, c. 327, §1 (NEW) .]

**2. Closing roads in unorganized areas for the winter.** The county commissioners may close any county road in the unorganized areas of their county under the same conditions and following the same procedure established in section 2953, subsections 1 to 4 for the closure of roads in municipalities by the municipal officers, except that the county commissioners approve the order closing a road and may annul, alter or modify any such order. A copy of the order must be filed with the county clerk or county administrator. Any person may appeal from a decision of the county commissioners to close a county road for the winter in the same manner as provided in Title 17, section 2852.

[ 1997, c. 327, §1 (NEW) .]

#### SECTION HISTORY

1965, c. 168, (AMD). 1975, c. 711, §1 (AMD). 1997, c. 327, §1 (RPR).

### §2052. NOTICE

Being satisfied that the petitioners are responsible and that an inquiry into the merits is expedient, the county commissioners shall cause 30 days' notice to be given of the time and place of their meeting by posting copies of the petition, with their order thereon, in 3 public places in each town in which any part of the way is, by serving one on the Department of Transportation and serving one on the clerks of such towns and publishing it in some newspaper, if any, in the county. The fact that notice has been so given, being proved and entered of record, shall be sufficient for all interested, and evidence thereof. [1971, c. 593, §22 (AMD) .]

#### SECTION HISTORY

1971, c. 593, §22 (AMD) .

### §2053. COSTS

When their decision is against the prayer of the petitioners, the county commissioners shall order them to pay to the treasurer of the county, at a time fixed, all expenses incurred on account of it, and if they are not then paid, they shall issue a warrant of distress against the petitioners therefor.

### §2054. PROCEEDINGS; RETURN; DURABLE MONUMENTS ERECTED

The county commissioners shall meet at the time and place appointed and view the way, and there, or at a place in the vicinity, hear the parties interested. If they judge the way to be of common convenience and necessity or that any existing way shall be altered, graded or discontinued, they shall proceed to perform the duties required; make a correct return of their doings, signed by them, accompanied by an accurate plan of the way, and state in their return when it is to be done the names of the persons to whom damages are allowed, the amount allowed to each and when to be paid. When the way has been finally established and open to travel, they shall cause durable monuments to be erected at the angles thereof.

### §2055. RETURN FILED; APPEAL

The return of the commissioners, made at their next regular statute session after the hearing provided for in section 2054, shall be placed on file and remain in the custody of their clerk for inspection without record. The case shall be continued to their next regular term of record, and at any time on or before the 3rd day thereof, if no appeal from the location be taken, all persons aggrieved by their estimate of damages shall file their notice of appeal. If no such notice is then presented or pending, the proceedings shall be

closed, recorded and become effectual; all claims for damages not allowed by them be forever barred; and all damages awarded under sections 2051 to 2061, 2101, 2151 and 2152 paid out of the county treasury except as provided in section 2101. If an appeal from the location be taken in accordance with section 2063, then notice of appeal on damages may be filed with the clerk of the county commissioners within 60 days after the final decision of the appellate court in favor of such way as has been certified to him, to the Superior Court in the county where the land is situated, which court shall determine the same in the same manner as is provided in section 2058, when no appeal on location is taken.

### **§2056. DAMAGES; INCREASE**

When a notice of appeal for increase of damages is presented within the time allowed, the case shall be further continued until a final decision respecting damages is made. If the county commissioners then are of opinion that their proceedings, or any part thereof, ought not to take effect, subject to such damages as have been assessed, they shall enter a judgment that the prayer of the petitioners or any part thereof, designating what part, is not granted for that reason. Upon such judgment no damages shall be allowed for that part of the prayer of the petitioners not granted, but the costs shall be paid by the county; or if of opinion that such increase of damages should prevent a confirmation of a part or parts only of their proceedings, they shall designate such part or parts, and enter judgment accordingly; and the whole proceedings shall be recorded and become effectual. This section shall not apply when a location has been determined by a committee of the Superior Court upon appeal from the decision of the county commissioners thereon. In such case, proceedings regarding the location shall become effectual as if no appeal for increase of damages had been taken.

### **§2057. -- ESTIMATION AND AWARD**

If any person's property is damaged by laying out, altering or discontinuing a county highway, the county commissioners shall estimate the amount, and in their return state the share of each separately. Damages shall be determined as if the land were taken for highway purposes under chapter 3. Damages shall be allowed to the owners of reversions and remainders and to tenants for life and for years in proportion to their interests in the estate taken. Said commissioners shall not order such damages to be paid, nor shall any right thereto accrue to the claimant, until the land over which the highway or alteration is located has been entered upon and possession taken for the purpose of construction or use. [1975, c. 711, §§ 2, 3 (AMD).]

#### SECTION HISTORY

1975, c. 431, §10 (AMD). 1975, c. 711, §§2,3 (AMD).

### **§2058. -- APPEALS**

Any person aggrieved by the estimate of damages by the county commissioners, on account of the laying out or discontinuing of a way, may appeal therefrom, at any time within 30 days after the commissioners' return is made, to the Superior Court, in the county where the land is situated, which court shall determine the same by a committee of reference if the parties so agree, or by a verdict of its jury, and shall render judgment for the damages recovered, and judgment for costs in favor of the party entitled thereto, and shall issue execution for the costs only. The appellant shall file notice of his appeal with the county commissioners within the time above limited, and shall include in the complaint a statement setting forth substantially the facts, upon which the case shall be tried like other cases. The clerk shall certify the final judgment of the court to the county commissioners, who shall enter the same of record and order the damages therein recovered to be paid as provided in section 2057. The party prevailing recovers costs to be taxed and allowed by the court, except that they shall not be recovered by the party claiming damages, but by the other party, if on such appeal by either party, said claimant fails to recover a greater sum as damages than was allowed to him by the commissioners. The committee shall be allowed a reasonable compensation for their services to be fixed by the court upon the presentation of their report and paid from the county treasury upon the certificate of the clerk of courts.

## §2059. REMOVING GROWTH AND OPENING WAY

The owners of land taken under sections 2051 to 2060 shall be allowed not exceeding one year after the proceedings regarding the location are finally closed to take off timber, wood or any erection thereon. A time not exceeding 2 years shall be allowed for making and opening the way.

## §2060. DISCONTINUANCE WHERE NEW STATE HIGHWAY

**1. General procedures.** When the Department of Transportation has constructed a highway over substantially the same route as that of a county or town way and has recorded the plans of that highway in the registry of deeds, the county commissioners or municipal officers may, on their own motion, after notice and hearing, proceed to alter or discontinue the portion of that way not within the limits of the highway. The county commissioners or municipal officers shall give notice and proceed as provided in this chapter or chapter 304, as applicable, including serving any public utility having facilities located in that portion to be discontinued. Notice to abutters must include notice that all or a portion of the discontinued roadway may pass to the abutters unless an exception in the plans and order of discontinuance is requested. Any aggrieved person may appeal as provided in the applicable chapter. The plans prepared by the department and recorded in the registry of deeds must be referred to in describing those portions of the county or town way to be discontinued. The department shall prepare the description of the discontinuance order upon the request of the county commissioners or municipal officers.

[ 1999, c. 188, §2 (NEW) .]

**2. Effect and exceptions.** Upon discontinuance, all interests of the county or municipality pass to the abutting property owners to the center of the way, including any public easement, in accordance with section 3026-A. When the Department of Transportation is an abutting owner, then the interests in the way pass to the property owner opposite the department's ownership in accordance with a plan showing the right-of-way line established for the new highway location by the department. The plan must be referenced in the order of discontinuance.

[ 2015, c. 464, §1 (AMD) .]

### SECTION HISTORY

1971, c. 593, §22 (AMD). 1975, c. 711, §4 (AMD). 1999, c. 188, §2 (RPR). 2015, c. 464, §1 (AMD).

## §2061. DISCONTINUANCE BEFORE DAMAGES PAID; PROCEEDINGS

When the way is discontinued before the time limited for the payment of damages, the commissioners may revoke their order of payment, and estimate the damages actually sustained and order them paid. Any person aggrieved may have them assessed by a committee or jury as provided.

## §2062. SAME PETITION FOR TOWNS, PLANTATIONS OR OUTSIDE LANDS; APPEALS

*(REPEALED)*

### SECTION HISTORY

1975, c. 711, §5 (RP).

### **§2063. HEARINGS; APPEALS; STAY**

Parties interested may appear, jointly or severally, at the time of hearing before the commissioners on a petition for laying out, altering, grading or discontinuing a highway. Any such party may appeal from their decision thereon within 30 days after it has been placed on file to the Superior Court in said county, which appeal may be prosecuted by him or by any other party who so appeared. All further proceedings before the commissioners shall be stayed until a decision is made in the appellate court.

### **§2064. PROCEEDINGS ON APPEAL**

If no person appears to prosecute the appeal provided for in section 2063, the judgment of the commissioners may be affirmed. If the appellant appears, the court may appoint a committee of 3 disinterested persons, who shall be sworn, and if one of them dies, declines or becomes interested, the court may appoint some suitable person in his place. They shall give such notice as the court has ordered, view the route, hear the parties and make their report to the court within 60 days or such further time as the court allows after their appointment, whether the judgment of the commissioners should be in whole or in part affirmed or reversed; which, being accepted and judgment thereon entered, shall forthwith be certified to the clerk of the commissioners.

### **§2065. JUDGMENT ON APPEAL**

If the judgment of the commissioners in favor of laying out, grading or altering a way, as prayed for, is wholly reversed on appeal, they shall proceed no further. In all cases when the judgment of the commissioners is reversed on appeal, no petition praying substantially for the same thing shall be entertained by them for 2 years thereafter. If their judgment is affirmed in whole or in part, they shall carry into effect the judgment of the appellate court. In all cases they shall carry into full effect the judgment of the appellate court in the same manner as if made by themselves. The party appealing or prosecuting shall pay the costs incurred since the appeal, if so adjudged by the appellate court, which may allow costs in such cases to the prevailing party, to be paid out of the county treasury. The committee provided for in section 2064 shall be allowed a reasonable compensation for their services, to be fixed by the court upon the presentation of their report and paid from the county treasury upon the certificate of the clerk of courts. The costs allowed the prevailing party and the fees of the committee shall be collected as provided in section 2053. This section shall not apply to any case where the judgment has been reversed on account of informality in the proceedings.

### **§2066. COMMITTEE SWORN**

All such committees provided for in section 2064, whether agreed on or appointed on appeal from the county commissioners, may be sworn at any time before viewing the route and hearing the parties.

### **§2067. PATHS TO GREAT PONDS IN UNORGANIZED TERRITORY**

The county commissioners of any county may lay out, alter or discontinue paths or trails, for pedestrian use only, in the unorganized territory of the county which will provide a right of access to great ponds, provided a request therefor is made by petition signed by not less than 40 residents of said county. Such trails or paths shall not exceed 10 feet in width or one mile in length. Sections 2051 to 2059, where not inconsistent with this section, shall apply to the proceedings under this section. [1965, c. 96, (NEW).]

#### SECTION HISTORY

1965, c. 96, (NEW).

### **§2068. LIMITED-USER HIGHWAYS**

*(REPEALED)*

#### SECTION HISTORY

1967, c. 240, (NEW). 1969, c. 313, (AMD). 1971, c. 593, §22 (AMD).

1973, c. 20, (RP).

## Chapter 205: FIXING OF BOUNDARIES OR LOCATIONS

### §2101. LOST OR DOUBTFUL BOUNDARIES

When the true boundaries of highways or town ways duly located, or of which the location is lost, or which can only be established by user, are doubtful, uncertain or lost, the county commissioners of the county wherein such highway or town way is located, upon petition of the municipal officers of the town wherein the same lies, shall, after such notice thereon as is required for the location of new ways, proceed to hear the parties, examine said highway or town way, locate and define its limits and boundaries by placing stakes on side lines at all apparent intersecting property lines and at intervals of not more than 100 feet and cause durable monuments to be erected at the angles thereof at the expense of the town wherein said highway or town way lies, make a correct return of their doings, signed by them, accompanied by an accurate plan of the way. If any real estate is damaged by said action, they shall award damages to the owner as in laying out new highways, in the case of highways to be paid by the county and in the case of town ways to be paid by the town. Their return, made at the next regular statute session after the hearing, shall be placed on file and the case shall be continued to await a final decision respecting damages. Sections 2055 and 2056 shall be applicable to appeals for increase of damages under this section. Said municipal officers shall maintain all highway or town way monuments and replace them forthwith when destroyed. If any appeal for increase of damages is taken and the commissioners are of opinion that their proceedings or any part thereof ought not to take effect, they shall enter a judgment that the prayer of the original petitioners or any part thereof, designating what part, is not granted for that reason. Upon such judgment no damages shall be allowed for that part of the prayer of the petitioners not granted, but the costs shall be paid by the county.

### §2102. LOST OR DISREGARDED LOCATIONS; STAY

When a highway is laid out through a town and an agent appointed by the county commissioners to open and make it, and the record location thereof cannot be found on the face of the earth or consistently applied thereto or said agent is not making said highway according to the record location, the municipal officers or town agent may file a complaint in the Superior Court setting forth the facts and praying an injunction to stay the proceedings of said road agent. The court shall issue a summary notice to said road agent to appear before it to answer said complaint and on a hearing of the parties may issue a temporary injunction upon such terms and conditions as it deems reasonable. Subsequent proceedings on the complaint shall be similar to proceedings in other civil actions in which equitable relief is sought.

### §2103. LOST OR UNRECORDED BOUNDARIES

When a highway survey has not been properly recorded or preserved or the termination and boundaries cannot be ascertained, the board of selectmen or municipal officers of any municipality may use and control for highway purposes 1 1/2 rods on each side of the center of the traveled portion of such way. [ 2015, c. 494, Pt. A, §27 (AMD). ]

When any real estate is damaged by the use and control for highway purposes of such land outside the existing improved portion and within the limits of 1 1/2 rods on each side of the center of the traveled portion, they shall award damages to the owner as provided in section 3029. [ 2015, c. 494, Pt. A, §27 (AMD). ]

#### SECTION HISTORY

1971, c. 288, (NEW). 2015, c. 494, Pt. A, §27 (AMD).

## Chapter 207: ROADS IN TWO OR MORE COUNTIES

**§2151. CALL OF MEETING; NOTICES**

When a petition is presented respecting a way in 2 or more counties, the commissioners receiving the petition, being satisfied as aforesaid, may call a meeting of the commissioners of all the counties, to be held at a time and place named, by causing an attested copy of such petition and of their order thereon to be served upon their chairmen. They shall give notice of such meeting by causing a like copy to be published in the state paper and in one paper, if any, printed in every such county, and by posting it in 3 public places in each town interested and serving it on the clerk thereof. These notices shall be posted, served and published 30 days before the time of meeting.

**§2152. PROCEEDINGS**

Each county must be represented at such meeting by a majority of its commissioners. A majority of those present may decide upon the whole matter. The duty of carrying that judgment into effect shall be performed in each county by its own commissioners in the manner respecting ways wholly within it. When each county is not so represented, those present may adjourn the meeting to another time.

**§2153. APPEALS**

When proceedings have been had by the county commissioners on a petition for laying out, altering, grading or discontinuing a way in 2 or more counties, an appeal may be taken in the manner provided in case of a way wholly in one county.

**§2154. PROCEEDINGS ON APPEAL**

When an appeal is taken as provided for in section 2153, it shall be filed with the commissioners of, and subsequent proceedings shall be had in, the county where proceedings originated, and the commissioners with whom such appeal is filed shall immediately give notice of such appeal to the commissioners of all the counties interested, and the clerk of courts shall certify the final judgment of court to the commissioners of all said counties.

**Chapter 209: NEGLECT OR DELAY****§2201. TIME LIMITATIONS**

*(REPEALED)*

SECTION HISTORY

1975, c. 711, §6 (RP).

**§2202. ACTION WHEN TOWN FAILS; EXPENSES**

*(REPEALED)*

SECTION HISTORY

1975, c. 711, §6 (RP).

**Chapter 211: TOLL HOUSES****§2251. INJURY OR ATTEMPT TO PASS WITHOUT TOLL**

*(REPEALED)*

SECTION HISTORY

1981, c. 456, §A79 (RP).

**§2252. ACQUISITION OF LAND***(REPEALED)*

SECTION HISTORY

1981, c. 456, §A79 (RP).

**Chapter 213: FERRIES****Subchapter 1: GENERAL PROVISIONS****§2301. ESTABLISHMENT; TOLLS***(REPEALED)*

SECTION HISTORY

1981, c. 456, §A80 (RP).

**§2302. UNLAWFUL OPERATION; PENALTY***(REPEALED)*

SECTION HISTORY

1981, c. 456, §A80 (RP).

**§2303. EMINENT DOMAIN***(REPEALED)*

SECTION HISTORY

1981, c. 456, §A80 (RP).

**§2304. JURISDICTION OF SOMERSET COMMISSIONERS***(REPEALED)*

SECTION HISTORY

1981, c. 456, §A80 (RP).

**Subchapter 2: FERRYMAN****§2351. LICENSE; BOND***(REPEALED)*

SECTION HISTORY

1981, c. 456, §A80 (RP).

**§2352. ACTION ON BOND***(REPEALED)*

SECTION HISTORY

1981, c. 456, §A80 (RP).

**§2353. NEGLIGENCE OF DUTY***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A80 (RP).

## Subchapter 3: CARE AND EQUIPMENT

**§2401. STEAM OR HORSE FERRY**

*(REPEALED)*

## SECTION HISTORY

1977, c. 363, §3 (RP).

**§2402. -- FORFEIT OF LICENSE**

*(REPEALED)*

## SECTION HISTORY

1977, c. 363, §3 (RP).

**§2403. SAFE BOATS REQUIRED; PROMPT ATTENDANCE**

*(REPEALED)*

## SECTION HISTORY

1977, c. 363, §3 (RP).

**§2404. SUBSTITUTION OF SAFE BOATS**

*(REPEALED)*

## SECTION HISTORY

1977, c. 363, §3 (RP).

**§2405. PIERS SUNK TO GUIDE BOATS AT FERRIES**

*(REPEALED)*

## SECTION HISTORY

1977, c. 363, §3 (RP).

**§2406. LEVELING OF ICE AND REPAIR OF WAY IN WINTER**

*(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A80 (RP).

**§2407. OBSTRUCTION TO FERRIES**

*(REPEALED)*

## SECTION HISTORY

1977, c. 363, §3 (RP).

## Part 3: LOCAL HIGHWAY LAW

### Chapter 301: GENERAL PROVISIONS

#### Subchapter 1: ROAD COMMISSIONER

#### §2701. POWERS AND DUTIES

The road commissioner, under the direction of a majority of the selectmen, shall have charge of the repairs of all highways and bridges within the towns and shall have authority to employ the necessary personnel and equipment and purchase material for the repair of highways and bridges. The road commissioner shall give bond to the satisfaction of the selectmen and be responsible to them for the expenditure of money and discharge of his duties generally. In the absence of a statute, charter provision or ordinance to the contrary, any decision involving the duties and responsibilities of the road commissioner shall be made by a majority of the selectmen whose decision shall be final. The road commissioner's compensation shall be such sum as the legislative body votes annually. The road commissioner shall render to the selectmen monthly statements of his expenditures and receive no money from the treasury, except on the order of the selectmen. [1985, c. 80, (AMD).]

If a majority of the selectmen determine that a condition exists in any town way which creates a hazard and renders the way unsafe for travelers with motor vehicles, the selectmen shall give written notice to the road commissioner of this condition and order him to eliminate it or take interim measures to protect the public within 24 hours. If the road commissioner fails to act as directed by the selectmen, a majority of the selectmen may enter contracts or take any other steps necessary to eliminate the safety hazard. [1985, c. 80, (NEW).]

#### SECTION HISTORY

1985, c. 80, (AMD).

#### §2702. REGULAR INSPECTIONS

Road commissioners shall go over the roads in their towns, or cause it to be done, in April, May, June, August, September, October and November in each year, remove the loose obstructions to the public travel and, whenever so directed by the selectmen, remove all shrubbery and bushes growing within the limits of highways, not planted or cultivated therein for the purpose of profit or ornamentation, having care for the proper preservation of shade trees, and repair such defects as may occur from time to time, rendering travel dangerous, or they shall give notice of such defects to the municipal officers under a penalty of \$5 for neglect of such duty.

#### §2703. ACCOUNT OF EXPENDITURES

The road commissioner shall keep accurate accounts, showing in detail all moneys paid out by him, to whom and for what purpose. He shall settle his accounts on or before the 20th day of February, annually, and the same shall be reported in the annual town report in detail.

#### §2704. CONTRACTS FOR OPENING OR REPAIRING WAYS

Towns may authorize their road commissioners or other persons to make contracts for opening or repairing their ways.

**§2705. APPROPRIATION INSUFFICIENT**

When the amount appropriated is not sufficient to repair or maintain the ways, a road commissioner may, with the written consent of the municipal officers, pay an amount not exceeding 15% of the amount so appropriated in addition to the amount appropriated. [2009, c. 7, Pt. D, §1 (AMD).]

## SECTION HISTORY

1991, c. 272, (AMD). 2009, c. 7, Pt. D, §1 (AMD).

**Subchapter 2: HIGHWAYS AND BRIDGES ON TOWN LINES****§2751. DIVISION BY MUNICIPAL OFFICERS**

When a way is established on a line between towns, their municipal officers shall divide it crosswise and assign to each town its portion thereof by metes and bounds, which, within one year thereafter, being accepted by each town at a legal meeting, shall render each town liable in the same manner as if the way were wholly within the town. When a division of it is not so made, the selectmen of either town may petition the county commissioners, who shall give notice by causing a copy of such application with their order thereon appointing a time and place of hearing to be served upon the clerk of each town 30 days, or by causing it to be published in some newspaper printed in the county for 3 weeks, previous to the time appointed, and after hearing the parties, they may make such division.

**§2752. DIVISION BY COMMISSIONERS**

A highway may be laid out on the line between towns, part of its width being in each, and the commissioners may then make such division of it and enter the same of record, and each town shall be liable in all respects as if the way assigned to it were wholly in the town.

**§2753. BRIDGES CROSSING TOWN LINE**

Whenever a highway located after the first day of January, 1906 crosses any river which divides towns, the expense of constructing, maintaining and repairing any bridge across such river shall be borne by such towns in proportion to their last state valuation prior to such location. This section shall not apply to bridges built or rebuilt under sections 353 and 355. [1989, c. 502, Pt. A, §90 (AMD).]

## SECTION HISTORY

1981, c. 470, §A138 (AMD). 1989, c. 502, §A90 (AMD).

**Subchapter 3: PUBLIC LANDINGS AND PARKING PLACES****§2801. LAYOUT, ALTERATION OR DISCONTINUANCE; PUBLIC LANDINGS**

Towns may lay out public or common landings and may alter or discontinue said landings whether laid out under chapters 301 to 315 or now or hereafter established by dedication or otherwise. All procedure shall be in substance the same as is provided by law in the case of town ways.

**§2802. -- PARKING PLACES**

Towns and cities may lay out land within their corporate limits for use as public parking places for motor and other vehicles and may alter or discontinue such use. All procedure including assessment of damages and appeal therefrom shall be the same as is provided by general law for laying out, altering and discontinuing town and city ways.

**Subchapter 4: STREETS FOR SLIDING**

**§2851. DESIGNATION**

Municipal officers may designate by appropriate signs public streets, roads or sidewalks whereon persons may slide with any vehicle. They may restrict any traffic on such public streets, roads or sidewalks and anyone violating such restrictions shall be punished by a fine of \$5 for each offense. Police officers and constables shall enforce this section.

**§2852. RECORD**

When streets, roads or sidewalks have been so designated under section 2851, the municipal officers shall cause such designation and such reasonable restrictions as they may adopt to be recorded in the records of the town and their action shall be in force until modified or annulled by like authority.

**Subchapter 5: RAILROADS****§2901. LAND TAKEN FROM RAILROAD; NOTICE AND HEARING**

*(REPEALED)*

## SECTION HISTORY

1975, c. 711, §§6-A (AMD). 1989, c. 398, §1 (RP).

**§2902. LOCATION OF RAILROAD CROSSINGS; EXPENSE; APPEALS**

*(REPEALED)*

## SECTION HISTORY

1971, c. 593, §12 (RPR). 1989, c. 398, §1 (RP).

**§2903. MAINTENANCE OF RAILROAD CROSSINGS ALREADY LAID OUT**

*(REPEALED)*

## SECTION HISTORY

1971, c. 593, §§19,20 (AMD). 1987, c. 141, §B20 (AMD). 1989, c. 398, §1 (RP).

**§2904. RECORDING ADJUDICATIONS OF DEPARTMENT OF TRANSPORTATION**

*(REPEALED)*

## SECTION HISTORY

1971, c. 593, §19 (AMD). 1989, c. 398, §1 (RP).

**§2905. CROSSING OF PUBLIC WAYS**

*(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2906. WAYS RAISED OR LOWERED; COURSE ALTERED**

*(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2907. DISCONTINUANCE OF RAILROAD CROSSINGS***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2908. DAMAGES FOR NEGLIGENCE***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2909. BRIDGES OVER CANALS OR RAILROADS; REPAIRS; PROCEEDINGS WHERE UNSAFE CONDITIONS***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2910. TEMPORARY CROSSINGS***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2911. CROSSING SIGNS ON EACH SIDE OF TRACK; WHISTLE AND BELL***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2912. PRECAUTIONS AT CROSSINGS***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2913. CROSSINGS KEPT OPEN PART OF YEAR; EXPENSE APPORTIONED***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2914. SIGNBOARDS AT GRADE CROSSINGS; RINGING OF ENGINE BELLS***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2915. FAILURE TO COMPLY; DAMAGES***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2916. RIGHT OF ENTRY***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2917. PLANT RAILROAD DEFINED***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2918. BRIDGES ERECTED BY MUNICIPALITIES MAINTAINED***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2919. REPORT OF DECISIONS AND COPIES TO PARTIES INTERESTED***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2920. SPEED LIMIT AT HIGHWAY GRADE CROSSINGS***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2921. AUTOMATIC SIGNALS; EXPENSE; DEFINITION***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2922. CROSSINGS DESIGNATED***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2923. OBSTRUCTIONS ORDERED REMOVED; NOTICE***(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2924. EXPENSE OF REMOVAL PAID BY MUNICIPALITY; PARTIAL STATE REIMBURSEMENT**

*(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2925. DAMAGES; MUNICIPALITY AND STATE TO SHARE**

*(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2926. BUILDINGS NOT REMOVED WITHOUT OWNER'S CONSENT**

*(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2927. APPLICABILITY TO ALL RAILROADS**

*(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1989, c. 398, §1 (RP).

**§2928. RAILROAD COMPANY MAY ENTER PRIVATE PROPERTY**

*(REPEALED)*

## SECTION HISTORY

1981, c. 456, §A81 (NEW). 1987, c. 141, §B21 (AMD). 1989, c. 398, §1 (RP).

**§2929. MAINTENANCE CHARGES FOR PRIVATE CROSSINGS**

*(REPEALED)*

## SECTION HISTORY

1983, c. 255, (NEW). 1989, c. 398, §1 (RP).

**§2930. PARTIAL REIMBURSEMENT OF COST**

*(REPEALED)*

## SECTION HISTORY

1985, c. 442, §1 (NEW). 1985, c. 813, §1 (AMD). 1987, c. 657, (RPR).  
1989, c. 398, §1 (RP).

**Subchapter 6: MISCELLANEOUS**

## §2951. NOTIFICATION TO COUNTY COMMISSIONERS OF CHANGE IN HIGHWAY

Whenever the location of any state aid or town way that was designated as a 3rd class highway at the time that the 3rd class highway designations were rescinded is changed, added to, discontinued or a new location is established by a town or city, the municipal officers of said town or city shall notify the county commissioners of the county of which said town or city is a part of such change with an accurate description of the courses and distances, within 3 months from such action.

## §2952. LONGTIME BUILDINGS AND FENCES AS BOUNDS; ESTOPPEL

When buildings or fences have existed more than 20 years fronting upon any way, street, lane or land appropriated to public use, the bounds of which cannot be made certain by records or monuments, such buildings or fences shall be deemed the true bounds thereof. When the bounds can be so made certain, no time less than 40 years will justify their continuance thereon, and on indictment and conviction they may be removed. Persons owning lands beside a highway or town way on which are buildings or fences that encroach within the limits of said way may, by a writing under seal by them signed and acknowledged and recorded in the registry of deeds for the county or registry district in which the land lies, admit to the municipal officers of the town in which said way exists the true bounds or limits of said way and the extent of their wrongful occupancy thereof. Thereafter such persons, and all claiming title under or through them, shall be estopped from asserting any right to the continuance of such buildings or fences within said limits for the full term of 40 years from the date of such deed.

## §2953. CLOSING OF ROADS IN WINTER

**1. Announcement of winter closing of roads.** The municipal officers may on their own initiative, or upon petition by 7 legal voters of the municipality, at any time between May 1st and October 1st of any year, set forth that any road or roads, or portion thereof, in the municipality are so located with reference to population, use and travel thereon, that it is unnecessary to keep the road or roads maintained and open for travel during the months of November, December, January, February, March and April or any part of these months.

[ 1981, c. 215, (NEW) . ]

**2. Notice and hearing.** Prior to an announcement under subsection 1, the municipal officers shall hold a hearing on the proposed winter closing of a road or roads or portion thereof. The municipal officers shall place a written notice of the hearing in some conspicuous, public place in the municipality at least 7 days before the hearing.

[ 1981, c. 215, (NEW) . ]

**3. Order of closing.** After a hearing under subsection 2, the municipal officers shall file with the municipal clerk any order specifying the location of the road, the months or portions thereof for which it is to be closed and for how many years, not to exceed 10, the closing shall be operative. The legislative body of the municipality shall by vote either approve each order or provide that orders so made by the municipal officers shall be a final determination.

[ 1981, c. 215, (NEW) . ]

**4. Alteration of order.** The municipal officers may on their own initiative, or upon petition by 7 legal voters of the municipality, at any time subsequent to one year from the date of a final determination, after notice and hearing, annul, alter or modify the original determination. The municipal officers shall file with the

municipal clerk an order specifying any decision to annul, alter or modify, which shall not become final until the legislative body of the municipality by vote either approves each order or provides that orders so made by the municipal officers are a final determination.

[ 1981, c. 215, (NEW) .]

**5. Appeal.** The final determination by the legislative body or the municipal officers may be appealed to the board of county commissioners of the county in which the municipality lies, upon petition by 7 legal voters of the municipality within 30 days after the final determination is made. In an appeal before a board of county commissioners, the decision of the commissioners shall be governed by the standards set forth in this section.

[ 1981, c. 215, (NEW) .]

SECTION HISTORY

1979, c. 410, (RPR). 1979, c. 597, §§1,2 (AMD). 1981, c. 215, (RPR).

**§2954. ICE BRIDGES; PENALTY FOR INJURING**

*(REPEALED)*

SECTION HISTORY

1977, c. 363, §4 (RP).

**§2955. PLACING TURF IN STREET PROHIBITED**

*(REPEALED)*

SECTION HISTORY

1981, c. 456, §A82 (RP).

**Chapter 303: LAYING OUT, ALTERING OR DISCONTINUING HIGHWAYS**

**§3001. POWER OF OFFICERS; NOTICE**

*(REPEALED)*

SECTION HISTORY

1975, c. 711, §7 (RP).

**§3002. WINTER ROADS**

*(REPEALED)*

SECTION HISTORY

1975, c. 711, §7 (RP).

**§3003. ACCEPTANCE BY TOWN**

*(REPEALED)*

SECTION HISTORY

1975, c. 711, §7 (RP).

**§3004. DISCONTINUANCE OF WAY**

*(REPEALED)*

SECTION HISTORY

1965, c. 270, §1 (AMD). 1973, c. 456, (AMD). 1973, c. 625, §§133-A (AMD). 1975, c. 711, §7 (RP).

**§3005. DAMAGES; APPEALS**

*(REPEALED)*

SECTION HISTORY

1975, c. 431, §11 (AMD). 1975, c. 711, §7 (RP).

**§3006. REFUSAL OR NEGLECT OF MUNICIPAL OFFICERS**

*(REPEALED)*

SECTION HISTORY

1975, c. 711, §7 (RP).

**§3007. USE OF HIGHWAY PENDING DECISION**

*(REPEALED)*

SECTION HISTORY

1975, c. 711, §7 (RP).

**§3008. UNREASONABLE REFUSAL TO ACCEPT OR DISCONTINUE**

*(REPEALED)*

SECTION HISTORY

1975, c. 711, §7 (RP).

**§3009. ACTION BY COUNTY FORESTALLS ACTION BY TOWN**

*(REPEALED)*

SECTION HISTORY

1975, c. 711, §7 (RP).

**§3010. GRADING; COUNTY'S SHARE OF EXPENSES**

*(REPEALED)*

SECTION HISTORY

1975, c. 711, §7 (RP).

**§3011. REINSTATEMENT OF WAYS DISCONTINUED BY COUNTY; DAMAGES**

*(REPEALED)*

SECTION HISTORY

1975, c. 711, §7 (RP).

**§3012. CHANGE OF STREET LOCATION ON PLANS***(REPEALED)*

## SECTION HISTORY

1969, c. 306, (AMD). 1975, c. 711, §7 (RP).

**Chapter 304: ACQUISITION OF PROPERTY FOR HIGHWAY PURPOSES****§3021. DEFINITIONS**

As used in this chapter, unless the context clearly indicates otherwise, the following words shall have the following meaning. [1975, c. 711, §8 (NEW).]

**1. Highway purposes.** "Highway purposes" means use as a town way and those things incidental to the laying out, construction, improvement, maintenance, change of location, alignment and drainage of town ways, including the securing of materials therefor; provision for the health, welfare and safety of the public using town ways; provision for parking places, rest areas and preservation of scenic beauty along town ways.

[ 1975, c. 711, §8 (NEW) .]

**1-A. Municipal legislative body.** "Municipal legislative body" has the same meaning as in Title 30-A, section 2001, subsection 9.

[ 2015, c. 464, §2 (NEW) .]

**2. Public easement.** "Public easement" means an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to July 29, 1976. Private ways created pursuant to former sections 3001 and 3004 prior to July 29, 1976 are public easements.

[ 2015, c. 464, §3 (AMD) .]

**3. Town way.** "Town way" means:

A. An area or strip of land designated and held by a municipality for the passage and use of the general public by motor vehicle; [1981, c. 702, Pt. Z, §2 (NEW).]

B. All town or county ways not discontinued or abandoned before July 29, 1976; and [1981, c. 702, Pt. Z, §2 (NEW).]

C. All state or state aid highways, or both, which shall be classified town ways as of July 1, 1982, or thereafter, pursuant to section 53. [1981, c. 702, Pt. Z, §2 (NEW).]

[ 1981, c. 702, Pt. Z, §2 (RPR) .]

## SECTION HISTORY

1975, c. 711, §8 (NEW). 1981, c. 702, §2 (AMD). 2015, c. 464, §§2, 3 (AMD).

**§3022. LAYING OUT OF TOWN WAYS AND PUBLIC EASEMENTS**

The municipal officers may, personally or by agency, lay out, alter or widen town ways. They shall give written notice of their intentions posted at least 7 days in 2 public places in the municipality and in the vicinity of the way and shall in the notice describe the proposed way. [1975, c. 711, §8 (NEW).]

The municipal officers may, upon the petition of any person, lay out, alter or widen a town way. [1975, c. 711, §8 (NEW).]

The municipal officers may on petition therefor, personally or by agency, lay out a public easement for any occupant of land or for owners who have cultivated land in the municipality if the land will be connected to a town way or highway after the establishment of the public easement. [1979, c. 127, §153 (RPR).]

After a public easement has been laid out, it may be taken pursuant to section 3023. Notwithstanding any other provision of this chapter, public easements laid out under this section are limited to rights of access by foot or motor vehicle as defined in Title 29-A, section 101, subsection 42. [1995, c. 65, Pt. A, §65 (AMD); 1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. C, §15 (AFF).]

#### SECTION HISTORY

1975, c. 711, §8 (NEW). 1979, c. 127, §153 (AMD). 1995, c. 65, §A65 (AMD). 1995, c. 65, §§A153,C15 (AFF).

### §3023. EMINENT DOMAIN

A municipality may take property or interests therein for highway purposes if the municipal officers determine that public exigency requires the immediate taking of such property interests, or if the municipality is unable to purchase it at what the municipal officers deem reasonable valuation, or if title is defective. [1975, c. 711, §8 (NEW).]

In municipalities where the municipal officers have the legislative power of appropriation, the municipal officers shall file with the municipal clerk a condemnation order that includes a detailed description of the property interests to be taken, which shall specify its location by metes and bounds, the name or names of the owner or owners of record so far as they can be reasonably determined and the amount of damages determined by the municipal officers to be just compensation for the property or interest therein taken. The municipal officers shall then serve upon the owner or owners of record a copy of the condemnation order and a check in the amount of the damages awarded. In the event of multiple ownership, the check may be served on any one of the owners. Title shall pass to the municipality upon service of the order of condemnation and check or upon recordation in accordance with section 3024, whichever occurs first. [1975, c. 711, §8 (NEW).]

In towns where the town meeting has the legislative power of appropriation, the municipal officers shall file the condemnation order described in the previous paragraph with the town clerk and send a copy to the owner or owners of record by registered mail. No interest shall pass to the town unless an article generally describing the property interest to be taken and stating the amount of damages to be paid has been approved by a duly called town meeting. The town meeting may not amend the article, except to increase the amount of damages to be paid. If the article is approved, a check in the amount of damages authorized shall be served immediately upon the owner or owners of record. In the event of multiple ownership, the check may be served on any one of the owners. Title shall pass to the town upon service of the check or upon recordation in accordance with section 3024, whichever occurs first. [1975, c. 711, §8 (NEW).]

Unless specifically provided in the order of condemnation or unless the property or interests to be taken include land or right-of-way of a railroad corporation or a public utility, title to property taken for town ways after December 31, 1976, shall be in fee simple absolute. [1975, c. 770, §98 (RPR).]

In all proceedings under this section, an award of damages by the municipal legislative body shall be considered an appropriation for that purpose. [1975, c. 711, §8 (NEW).]

#### SECTION HISTORY

1975, c. 711, §8 (NEW). 1975, c. 770, §§98,99 (AMD).

## §3024. RECORDING OF PROCEEDINGS

No taking of property or interests therein by a municipality, or the discontinuance of a town way except by abandonment, after September 12, 1959, shall be valid against owners of record or abutting landowners who have not received actual notice, unless there is recorded in the registry of deeds for the county where the land lies either a deed, or a certificate attested by the municipal clerk, describing the property and stating the final action of the municipality with respect to it. [1975, c. 711, §8 (NEW).]

### SECTION HISTORY

1975, c. 711, §8 (NEW).

## §3025. DEDICATION AND ACCEPTANCE

No property or interests therein may be dedicated for highway purposes unless the owner of such property or interest has filed with the municipal officers a petition, agreement, deed, affidavit or other writing specifically describing the property or interest and its location, and stating that the owner voluntarily offers to transfer such interests to the municipality without claim for damages, or has filed in the registry of deeds an approved subdivision plot plan which describes property to be appropriated for public use. [1975, c. 711, §8 (NEW).]

A municipality may accept a dedication of property or interests therein by an affirmative vote of its legislative body. [1975, c. 711, §8 (NEW).]

Unless specifically provided by the municipality, title to property accepted for highway purposes after December 31, 1976 shall be in fee simple. [1975, c. 711, §8 (NEW).]

### SECTION HISTORY

1975, c. 711, §8 (NEW).

## §3026. DISCONTINUANCE OF TOWN WAYS

*(REPEALED)*

### SECTION HISTORY

1975, c. 711, §8 (NEW). 1977, c. 301, §1 (AMD). 1981, c. 683, §1 (RPR). 2015, c. 464, §4 (RP).

## §3026-A. DISCONTINUANCE OF TOWN WAYS

A municipality may terminate in whole or in part any interests held by it for highway purposes. A municipality discontinuing a town way or public easement in this State must meet the following requirements. [2015, c. 464, §5 (NEW).]

**1. Notification of discontinuance to abutting property owners.** The municipal officers shall give best practicable notice to all abutting property owners of a proposed discontinuance of a town way or public easement. As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, of notice to abutting property owners whose addresses appear in the assessment records of the municipality.

[ 2015, c. 464, §5 (NEW) .]

**2. Municipal officers meet to discuss proposed discontinuance and file order of discontinuance.** The municipal officers shall discuss a proposed discontinuance of a town way or public easement at a public meeting and file an order of discontinuance with the municipal clerk that specifies:

A. The location of the town way or public easement; [2015, c. 464, §5 (NEW).]

B. The names of abutting property owners; [2015, c. 464, §5 (NEW).]

C. The amount of damages, if any, determined by the municipal officers to be paid to each abutting property owner; and [ 2015, c. 464, §5 (NEW) . ]

D. Whether or not a public easement is retained. [ 2015, c. 464, §5 (NEW) . ]

If a proposal includes the discontinuance of a public easement, that must be stated explicitly in the order of discontinuance; otherwise, the public easement is retained. If a public easement is retained, all other interests of the municipality in the discontinued way, if any, pass to abutting property owners to the center of the way. If a public easement is not retained, all interests of the municipality in the discontinued way pass to abutting property owners to the center of the way.

[ 2015, c. 464, §5 (NEW) . ]

**3. Public hearing.** The municipal officers shall hold a public hearing on the order of discontinuance of a town way or public easement filed pursuant to subsection 2.

[ 2015, c. 464, §5 (NEW) . ]

**4. Approval of order of discontinuance and damage awards.** Ten or more business days after the public hearing pursuant to subsection 3, the municipal legislative body must vote upon the order of discontinuance submitted to it:

A. To approve the order of discontinuance and the damage awards and to appropriate the money to pay the damages; or [ 2015, c. 464, §5 (NEW) . ]

B. To disapprove the order of discontinuance. [ 2015, c. 464, §5 (NEW) . ]

[ 2015, c. 464, §5 (NEW) . ]

**5. Certificate of discontinuance filed.** The municipal clerk shall record an attested certificate of discontinuance after a vote by the municipal legislative body under subsection 4 in the registry of deeds. The certificate must describe the town way or public easement and the final action by the municipal legislative body. The date the certificate is filed is the date the town way or public easement is discontinued. The registry of deeds shall record a certificate of discontinuance under the name of the town way or public easement, the name of the municipality and the names of the abutting property owners. The municipal clerk shall provide a photocopy of the certificate to the Department of Transportation, Bureau of Maintenance and Operations.

[ 2015, c. 464, §5 (NEW) . ]

**6. Utility easement.** An easement for public utility facilities necessary to provide or maintain service remains in a discontinued town way regardless of whether a public easement is retained. Upon approval by a municipal legislative body of an order to discontinue a town way and retain a public easement, unless otherwise stated in the order, all remaining interests of the municipality, if any, pass to the abutting property owners in fee simple to the center of the way.

[ 2015, c. 464, §5 (NEW) . ]

#### SECTION HISTORY

2015, c. 464, §5 (NEW) .

## §3027. VACATION OF PROPOSED TOWN WAYS IN LAND SUBDIVISION; REVOCATION OF DEDICATION

**1. Vacation of ways.** When proposed town ways have been described in a recorded subdivision plan and lots have been sold with reference to the plan, the municipal officers, after notice to the municipal planning board or office, may, on their own initiative, on petition of the abutting property owners or on

petition of any person claiming a property interest in the proposed way, vacate in whole or in part proposed ways that have not been accepted. The municipal officers shall give best practicable notice, as defined in section 3026-A, subsection 1, of the proposed vacation to owners of lots on the recorded subdivision plan and their mortgagees of record. The notice must conform in substance to the following form:

#### NOTICE

(The municipal officers of) (A petition has been filed with the municipal officers of) \_\_\_\_\_ (Name of Town or City) \_\_\_\_\_ (propose to) (to vacate) the following (ways) (way) shown upon a subdivision plan (named) (dated) (and) recorded in the \_\_\_\_\_ County Registry of Deeds, Book of Plans, Volume \_\_\_\_\_, Page \_\_\_\_\_.

(Herein list or describe ways to be vacated)

If the municipal officers enter an order vacating (these ways) (this way) any person claiming an interest in (these ways) (this way) (adverse to the claims of the petitioners) must, within one (1) year of the recording of the order, file a written claim thereof under oath in the \_\_\_\_\_ County Registry of Deeds and must, within one hundred eighty (180) days of the filing of the claim, commence an action in the Superior Court in \_\_\_\_\_ County in accordance with the Maine Revised Statutes, Title 23, section 3027-A.

The municipal officers shall file an order of vacation with the municipal clerk that specifies the location of the way, the names of owners of lots on the recorded subdivision plan and the amount of damages, if any, determined by the municipal officers to be paid to each lot owner or other person having an interest in the way. Damages and reasonable costs as determined by the municipal officers must be paid by the petitioners, if any.

[ 2015, c. 464, §6 (AMD) .]

**2. Revocation of dedication.** A dedication of property or interest therein to the municipality described in a recorded subdivision plot plan may not be revoked or vacated by the dedicator unless no lot has been sold with reference to the plan, and unless an amended subdivision plan has been approved by the municipal subdivision review authority and recorded in the appropriate registry of deeds.

[ 1981, c. 683, §2 (NEW) .]

#### SECTION HISTORY

1975, c. 711, §8 (NEW). 1981, c. 683, §2 (RPR). 1987, c. 385, §1 (AMD). 2015, c. 464, §6 (AMD).

### §3027-A. RECORDING OF VACATION ORDERS; RIGHTS OF ACTION; PRIOR ORDERS

**1. Recording of vacation order.** A copy of the order of vacation by the municipal officers entered under section 3027 shall be recorded in the registry of deeds where the plan of subdivision is recorded and shall contain an alphabetical listing of the names of the subdivision lot owners and their mortgagees of record whose interests may be affected by the order. The register of deeds shall make a cross-reference to the order of vacation upon or attached to the face of the subdivision plan. The register of deeds shall also index the order under the names of the lot owners whose names appear in the body of the order. Any order of vacation entered prior to the effective date of this section may be recorded by the municipal officers in the same manner and with the same effect set forth in this section.

[ 1981, c. 683, §3 (NEW) .]

**2. Rights of action.** All persons are forever barred from maintaining any action at law or in equity to establish, recover, confirm or otherwise enforce any right claimed to or in a proposed or described vacated way by reason of the ownership by the claimant or by a predecessor in title of a lot or parcel of land shown on a recorded subdivision plan, unless, within one year of the date of recordation of the order of vacation, the claimant files in the registry of deeds where the subdivision plan is recorded a statement under oath specifying the nature, basis and extent of the claimed interest in the way. The claim is forever barred unless, within 180 days after the recording of the statement, the claimant or any other person acting on behalf of the claimant commences an action in equity under Title 14, chapter 723, to establish the rights asserted to or in the way. These limitation periods are not tolled or interrupted by any disability, minority, lack of knowledge or absence from this State of any claimant. Upon the trial of an action, the court shall grant judgment for the claimant only if it finds that the claimant has acquired an interest in the proposed way and that the deprivation of rights in the proposed way unreasonably limits access from a public way, a public body of water or common land or facility to the land of the claimant shown on the recorded subdivision plan. Any judgment rendered by the court in the action may, in the discretion of the court, grant the claimant reasonable damages instead of establishment of the claimant's rights.

[ 2013, c. 2, §34 (COR) .]

**3. Prior orders.** A person claiming an interest in a proposed unaccepted way vacated under section 3027 prior to the effective date of this section may cause an attested copy of that order to be recorded in the registry of deeds where the subdivision plan describing or showing the way is recorded. That person shall append to the order to be recorded an alphabetical listing of the names of the current subdivision lot owners and their mortgagees of record whose interest in the way may be affected by the order. The register of deeds shall also index the order under the names of the lot owners appearing in the appendix.

Within 20 days of the recording of a prior order, the person causing the order to be recorded shall give notice of the person's claim to all current owners of lots on the subdivision plan and their mortgagees of record by mailing by the United States Postal Service, postage prepaid, a notice informing them of the person's claim and advising them that, to preserve any claim adverse to the person's, they must file a claim and commence an action as required by subsection 2. The notice must conform in substance to the following form:

NOTICE

On \_\_\_\_\_, 19\_\_\_\_, the municipal officers of \_\_\_\_\_ (Name of Town or City) entered an order vacating the following (ways) (way) shown upon a subdivision plan (named) (dated) (and) recorded in the \_\_\_\_\_ Registry of Deeds Book of Plans, Volume\_\_\_\_\_, Page \_\_\_\_\_.

(Herein list vacated ways)

The undersigned claims to own the (ways) (way) described above. A copy of the order of the municipal officers was recorded in the Registry of Deeds on \_\_\_\_\_, 19\_\_\_\_, and any person claiming an interest in (these ways) (this way) adverse to the claims of the undersigned must, within one (1) year of the date of the recording of the above order, file a written claim under oath in the Registry of Deeds and must, within one hundred eighty (180) days thereafter, commence an action in the Superior Court in \_\_\_\_\_ County in accordance with the Revised Statutes, Title 23, section 3027-A.

[ 2015, c. 1, §24 (COR) .]

**4. Applicability.** This section applies to ways described or shown in recorded subdivision plans proposed before and after the effective date of this section.

[ 1981, c. 683, §3 (NEW) .]

SECTION HISTORY

1981, c. 683, §3 (NEW). RR 2013, c. 2, §34 (COR). RR 2015, c. 1, §24 (COR).

## **§3028. ABANDONMENT OF PUBLIC WAYS; DETERMINATION OF STATUS OF ANY TOWN WAY OR PUBLIC EASEMENT**

**1. Presumption of abandonment.** It is prima facie evidence that a town or county way not kept passable for the use of motor vehicles at the expense of the municipality or county for a period of 30 or more consecutive years has been discontinued by abandonment. A presumption of abandonment may be rebutted by evidence that manifests a clear intent by the municipality or county and the public to consider or use the way as if it were a public way. A proceeding to discontinue a town or county way may not prevent or estop a municipality from asserting a presumption of abandonment. A municipality or its officials are not liable for nonperformance of a legal duty with respect to such ways if there has been a good faith reliance on a presumption of abandonment. Any person affected by a presumption of abandonment, including the State or a municipality, may seek declaratory relief to finally resolve the status of such ways. A way that has been abandoned under this section is relegated to the same status as it would have had after a discontinuance pursuant to section 3026, except that this status is at all times subject to an affirmative vote of the legislative body of the municipality within which the way lies making that way an easement for recreational use. A presumption of abandonment is not rebutted by evidence that shows isolated acts of maintenance, unless other evidence exists that shows a clear intent by the municipality or county to consider or use the way as if it were a public way.

[ 1991, c. 195, (NEW) . ]

**2. Status of town way or public easement.** The determination of the municipal officers regarding the status of a town way or public easement is binding on all persons until a final determination of that status has been made by a court, unless otherwise ordered by a court during the pendency of litigation to determine the status.

[ 1991, c. 195, (NEW) . ]

**3. Removal of obstructions.** If the municipal officers have determined under subsection 2 that the way is a town way or public easement and a court has not ordered otherwise, the municipality or an abutter on the way, acting with the written permission of the municipal officers, may remove any gates, bars or other obstructions in the way.

[ 1991, c. 195, (NEW) . ]

**4. Quasi-judicial act.** The determination of the municipal officers regarding the status of a town way or public easement pursuant to subsection 2 is a quasi-judicial act under Title 14, section 8104-B, subsection 2.

[ 2009, c. 59, §1 (NEW) . ]

**5. Filing.** If after the effective date of this subsection the municipal officers, either on their own or after being presented with evidence of abandonment, determine that a town way has been discontinued by abandonment pursuant to subsection 1, the municipal clerk shall file a record of this determination with the registry of deeds. The absence of a filing of a determination of discontinuation by abandonment may not be construed as evidence against the status of abandonment. The registry of deeds shall record a document

regarding an abandoned town way under the name of the town way, the name of the municipality and the names of the abutting property owners. The municipal clerk shall provide a copy of the document regarding an abandoned town way to the Department of Transportation, Bureau of Maintenance and Operations.

[ 2015, c. 464, §7 (NEW) .]

#### SECTION HISTORY

1975, c. 711, §8 (NEW). 1977, c. 479, §4 (AMD). 1979, c. 127, §154 (AMD). 1979, c. 629, (AMD). 1989, c. 395, (AMD). 1991, c. 195, (RPR). 2009, c. 59, §1 (AMD). 2015, c. 464, §7 (AMD).

### §3029. DAMAGES; APPEAL

Damages shall be determined using the methods in sections 154 through 154E, as far as practicable, except that references to the "commission" or the "board" shall mean the "municipal officers" and references to the "state" shall mean the "municipality." [1977, c. 479, §5 (AMD).]

Any person aggrieved by the determination of the damages awarded to owners of property or interests therein under this chapter may, within 60 days after the day of taking, appeal to the Superior Court in the county where the property lies. The court shall determine damages 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. [1975, c. 711, §8 (NEW) .]

Any person aggrieved by the action or nonaction of municipal officers or the municipal legislative body in proceedings under this chapter, other than a determination of damages, may appeal to the Superior Court in the county where the property lies, pursuant to Rule 80B of the Rules of Civil Procedure. [1975, c. 711, §8 (NEW) .]

#### SECTION HISTORY

1975, c. 711, §8 (NEW). 1977, c. 479, §5 (AMD).

### §3029-A. DAMAGE TO PUBLIC EASEMENT; CAUSE OF ACTION

**1. Cause of action.** An owner of property abutting a discontinued or abandoned road in which a public easement exists may bring a civil action in Superior Court for damages and injunctive relief against a person who causes damage to the road in a manner that impedes reasonable access by the property owner to the property owner's property by motor vehicle as defined in Title 29-A, section 101, subsection 42.

[ 2015, c. 464, §8 (NEW) .]

**2. Damages.** Damages may be sought pursuant to subsection 1 in an amount reasonably necessary to restore the road to its condition prior to the use by the person against whom the action is brought.

[ 2015, c. 464, §8 (NEW) .]

**3. Attorney's fees and costs.** If the plaintiff under subsection 1 is the prevailing party, the plaintiff may be awarded reasonable attorney's fees and costs.

[ 2015, c. 464, §8 (NEW) .]

**4. Application.** This section does not apply to:

A. A law enforcement officer who, in an emergency and within the scope of that law enforcement officer's employment, operates a motor vehicle on a public easement; or [2015, c. 464, §8 (NEW) .]

B. An emergency responder who, in an emergency and while performing the duties of an emergency responder, operates a motor vehicle on a public easement. [2015, c. 464, §8 (NEW).]

[ 2015, c. 464, §8 (NEW) .]

#### SECTION HISTORY

2015, c. 464, §8 (NEW).

### §3030. PURCHASE; PRESCRIPTION

Nothing in this chapter shall be construed to abridge the authority of a municipality to acquire property or interests therein for highway purposes by purchase, or to modify the law relating to acquisition of property by a municipality through prescriptive use. [1975, c. 711, §8 (NEW).]

#### SECTION HISTORY

1975, c. 711, §8 (NEW).

### §3031. PUBLIC AND PRIVATE RIGHTS IN PROPOSED, UNACCEPTED WAYS IN SUBDIVISIONS

**1. Public rights.** From the date of recording of a subdivision plan in the registry of deeds, the public acquires rights of incipient dedication to public use of the ways laid out on the plan. If a proposed way laid out in the plan is not accepted by the municipality within 20 years from the date of recording of the plan, the public rights in that way terminate.

[ 1987, c. 385, §2 (NEW) .]

**2. Private rights.** A person acquiring title to land shown on a subdivision plan recorded in the registry of deeds acquires a private right-of-way over the ways laid out in the plan. If a proposed, unaccepted way is not constructed within 20 years from the date of recording of the plan, and if the private rights created by the recording of the plan are not constructed and utilized as private rights within that 20-year period, the private rights-of-way in that way terminate.

Unless title has been reserved pursuant to Title 33, section 469-A, when the private rights established by this subsection are terminated as provided in this subsection or by order of vacation by the municipality, the title of the fee interest in the proposed, unaccepted way for which the private rights-of-way have terminated passes to the abutting property owners to the centerline of the way.

[ 1987, c. 385, §2 (NEW) .]

**3. Shorter duration of public and private rights; rights of lesser extent.** Notwithstanding subsections 1 and 2, the developer or other person recording a subdivision plan in the registry of deeds may set a shorter duration for the public and private rights established in subsections 1 and 2 than the period provided in those subsections. The developer or other person recording the subdivision plan shall cause the shorter duration to be noted on the face of the subdivision plan.

Pursuant to a subdivision review under Title 30-A, chapter 187, subchapter IV, the municipal reviewing authority may set a shorter duration for the public and private rights established in subsections 1 and 2 than the period provided in those subsections. The municipal reviewing authority shall cause the shorter duration to be noted on the face of the subdivision plan.

Nothing in this section may be construed to prohibit the developer or other person recording a subdivision plan in the registry of deeds from granting rights of lesser extent than those established in subsections 1 and 2. If rights of lesser extent are granted, the person recording the subdivision plan shall cause the extent of those rights to be described on the face of the subdivision plan and in any conveyance of land shown on the plan.

[ 1995, c. 462, Pt. B, §4 (AMD) .]

**4. Fee interest reserved by owner of subdivision.** If the owner of land for which a subdivision is proposed reserves the fee interest in any ways proposed on the subdivision plan, the owner shall place a statement of this reservation in all conveyances by him of land in the subdivision.

[ 1987, c. 385, §2 (NEW) .]

#### SECTION HISTORY

1987, c. 385, §2 (NEW). 1995, c. 462, §B4 (AMD).

## §3032. PROPOSED, UNACCEPTED WAYS DEEMED VACATED

### 1. Deemed vacation.

[ 1997, c. 386, §1 (RP) .]

**1-A. Deemed vacation.** A proposed, unaccepted way or portion of a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds prior to September 29, 1987 is deemed to have been subject to an order of vacation under section 3027 if, by the later of 15 years after the date of the recording of the subdivision plan laying out the way or portion of the way or September 29, 1997, both of the following conditions have been met:

A. The way or portion of the way has not been constructed or used as a way; and [1997, c. 386, §2 (NEW) .]

B. The way or portion of the way has not been accepted as a town, county or state way or highway or as a public, utility or recreational easement. [1997, c. 386, §2 (NEW) .]

A way or portion of a way considered vacated under this subsection is subject to section 3033.

[ 1997, c. 386, §2 (NEW) .]

**2. Extensions.** The municipal officers of the affected municipality may except a proposed, unaccepted way or portion of a proposed, unaccepted way described in subsection 1-A from the operation of the time limitations of that subsection by filing, in the registry of deeds where the subdivision plan is recorded, a notice stating that the way or portion of the way is excepted from the operation of subsection 1-A for a period of 20 years from the filing of the notice. To be effective, this exception must be filed prior to the expiration of the time limitations of subsection 1-A. An extension accomplished under this subsection may be extended by the municipal officers for a subsequent 20-year period by the filing of a new notice within the preceding 20-year extension period.

[ 1997, c. 683, Pt. B, §10 (AMD); 1997, c. 683, Pt. B, §11 (AFF) .]

#### SECTION HISTORY

1987, c. 385, §2 (NEW). 1997, c. 386, §§1,2 (AMD). 1997, c. 683, §B10 (AMD). 1997, c. 683, §B11 (AFF).

## §3033. RIGHTS OF ACTION CONCERNING WAYS DEEMED VACATED

**1. Notice by person claiming ownership.** Any person claiming to own a proposed, unaccepted way or portion of a proposed, unaccepted way deemed vacated under section 3032 may record, in the registry of deeds where the subdivision plan, to which the notice set forth in this subsection pertains, is recorded, a conformed copy of the notice set forth in this subsection, with an alphabetical listing of the names of the current record owners of lots on the subdivision plan to which the notice pertains and their mortgagees of record. The person shall give notice of his claim to these current record owners and their mortgagees of record. Within 20 days of recording of the notice, the person shall give this notice by mailing, by the United States postal service, postage prepaid, to the current record owners and mortgagees, a copy of the notice set forth below:

### NOTICE

By virtue of the Maine Revised Statutes, Title 23, section 3032, the following proposed, unaccepted ways or portions of proposed, unaccepted ways were deemed by law to have been vacated by the municipal officers of (name of town or city) \_\_\_\_\_. The ways or portions of ways so vacated are shown on a plan (named) (dated) (and) recorded in the \_\_\_\_\_ County Registry of Deeds, Book of Plans, Volume \_\_\_\_\_, Page \_\_\_\_\_, (Folio #) and are described as follows:

(Herein list vacated ways or portions of ways)

The undersigned claims to own the (way or ways) (portion of way or ways) described above. Any person claiming an interest in (this way or these ways) (a portion of this way or these ways) adverse to the claim of the undersigned, within one year from the date of recording of a copy of this notice in the registry of deeds, must file a written claim, under oath, in the same registry and, within 180 days thereafter, must commence an action in Superior Court in \_\_\_\_\_ County in accordance with the Maine Revised Statutes, Title 23, section 3033. A copy of this notice was recorded in the registry of deeds on \_\_\_\_\_, 19\_\_\_\_.

[ 1987, c. 385, §2 (NEW) . ]

**2. Rights of action by persons receiving notice.** All persons receiving a notice under subsection 1, who claim any private right of any kind in the way or portion of a way to which the notice pertains, are forever barred from maintaining any action at law or in equity to establish, recover, confirm or otherwise enforce any right claimed to or in the way or portion of a way by reason of the ownership by the person, or by a predecessor in title, of a lot or parcel of land shown on the recorded subdivision plan to which the notice pertains, unless, within one year from the date of recording of the notice, the person files in the registry of deed where the pertinent subdivision plan is recorded a statement, under oath, specifying the nature, basis and extent of the claimed interest in the way or portion of a way. The claim is forever barred unless, within 180 days of the recording of the statement, the claimant, or a person acting on his behalf, commences an action in equity under Title 14, chapter 723, to establish the rights asserted to or in the way or portion of a way.

The limitation periods in this section are not tolled or interrupted by any disability, minority, lack of knowledge or absence from this State by the claimant.

[ 1987, c. 385, §2 (NEW) . ]

**3. Trial of an action.** Upon trial of an action initiated under subsection 2, the court shall grant judgment for the claimant only if it finds that:

A. The claimant has acquired an interest in the way or portion of a way; and [1987, c. 385, §2 (NEW) . ]

B. The deprivation of the claimant's rights in the way or portion of the way unreasonably limits the claimant's access from his land shown on the recorded subdivision plan to:

(1) A public way;

(2) A public body of water; or

(3) Common land or a common facility within the subdivision. [1987, c. 385, §2 (NEW) .]

Any judgment rendered by the court in an action under subsection 2, in the discretion of the court, may grant the claimant reasonable damages instead of establishment of the claimant's rights, except that under no circumstances shall a municipality be liable for any damages granted by any judgment rendered by the court under subsection 2.

[ 1987, c. 385, §2 (NEW) .]

#### SECTION HISTORY

1987, c. 385, §2 (NEW) .

### §3034. STRUCTURES LOCATED IN PROPOSED WAYS

**1. Action to compel removal.** When any structure, for 20 years, has been continuously located, in whole or in part, within a proposed, unaccepted way laid out in a subdivision plan recorded in the registry of deeds, and lots have been sold with reference to this plan, no action may be maintained by any person to compel removal of the structure based upon the fact of its location within the proposed, unaccepted way. For the purposes of this section, person includes a corporation, partnership, governmental entity or other entity.

Nothing in this section may be construed to restrict or affect private rights in a proposed, unaccepted way which come into existence under common law, in equity or under existing statutes. This section shall not be construed for any reason to extend the 20-year period set forth in this subsection.

[ 1987, c. 385, §2 (NEW) .]

**2. Applicability.** This section applies to structures existing and proposed, unaccepted ways laid out on subdivision plans recorded in registries of deeds before, on or after the effective date of this section, except that:

A. When a structure is located within a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds 20 years or more before the effective date of this section, any person, other than the owner of the structure, who claims a right or interest of any kind in the land within the proposed, unaccepted way, or any person claiming by, through or under such a person, may preserve his right or interest by recording the notice set forth in subsection 3, within 2 years after the effective date of this section, in the registry of deeds where the pertinent subdivision plan is recorded; and [1987, c. 385, §2 (NEW) .]

B. When a structure is located within a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds less than 20 years before the effective date of this section, any person, other than the owner of the structure, who claims a right or interest of any kind in the land within the proposed, unaccepted way, or any person claiming by, through or under such a person, may preserve his right or interest by recording the notice set forth in subsection 3, in the registry of deeds where the pertinent subdivision plan is recorded, within the later of:

(1) Twenty years from the date of the recording of the subdivision plan, on which the way is laid out, in the registry of deeds; or

(2) Two years after the effective date of this section. [1987, c. 385, §2 (NEW) .]

A person seeking to preserve a right or interest under paragraph A or B, within one year after the recording of the notice, shall bring an action to quiet title to establish the existence and extent of his claimed right or interest.

[ 1987, c. 385, §2 (NEW) .]

**3. Notice.** The notice required under subsection 2, paragraphs A and B, shall contain:

- A. An intelligible description of the land in which the right or interest is claimed; [1987, c. 385, §2 (NEW).]
- B. The name and address of the person on whose behalf the right or interest is claimed; [1987, c. 385, §2 (NEW).]
- C. A description of the structure claimed to be within the proposed, unaccepted way in which the person claims a right or interest; [1987, c. 385, §2 (NEW).]
- D. The name and address of the owner of the structure; [1987, c. 385, §2 (NEW).]
- E. A description, including specific reference, by date of recording and the volume and page numbers, of the recorded instrument upon which the person claims the right to or interest in the recorded source of title; and [1987, c. 385, §2 (NEW).]
- F. A duly verified oath taken by the person claiming the right or interest before a person authorized to administer oaths. [1987, c. 385, §2 (NEW).]

[ 1987, c. 385, §2 (NEW) .]

**4. Register's duties.** In indexing a notice presented for recording under subsection 2, the register of deeds shall make an entry:

- A. In the grantee index of deeds under the name of the person making the claim in the notice; and [1987, c. 385, §2 (NEW).]
- B. In the grantor index of deeds under the name of the owner of the structure described in the notice. [1987, c. 385, §2 (NEW).]

The register of deeds may charge the same fee for recording the notice that is charged for recording deeds.

[ 1987, c. 385, §2 (NEW) .]

**5. Who may present notice for recording.** The notice required under subsection 2 may be presented for recording by the person claiming the right or interest or a person acting on his behalf. Disability or lack of knowledge by the person claiming the right or interest shall not extend the time limitations related to the recording of the notice.

[ 1987, c. 385, §2 (NEW) .]

**6. Mailing the notice.** Within 20 days of the recording of the notice required under subsection 2, the person who presented the notice for recording shall deliver or mail, to the owner's last-known address, a copy of the notice to the owner of the structure described in the notice.

[ 1987, c. 385, §2 (NEW) .]

#### SECTION HISTORY

1987, c. 385, §2 (NEW).

### §3035. CONSTRUCTION OF LAWS

Nothing in sections 3031 to 3034 may be construed to extend the period for the bringing of an action or for the doing of any other required act under any statute of limitations. Nothing in those sections may be construed to affect the nature of any right or interest which may be claimed in property to which those sections apply, or to affect the law regarding the sale, release or other disposition of such a right or interest. [1987, c. 385, §2 (NEW).]

Sections 3031 to 3034 shall be liberally construed to affect the legislative purpose of enhancing the merits of title to land by eliminating the possibility of ancient claims to proposed, unaccepted, unconstructed ways that are outstanding on the record but unclaimed. [1987, c. 385, §2 (NEW).]

## SECTION HISTORY

1987, c. 385, §2 (NEW).

## Chapter 305: CONSTRUCTION, MAINTENANCE AND REPAIR

### Subchapter 1: PUBLIC WAYS

#### §3051. ROAD MACHINES USED AFTER AUGUST 10TH

*(REPEALED)*

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 456, §A83 (RP).

#### §3052. MATERIALS PLACED ON ROADSIDE; REMOVAL

If any municipality in the construction or repair of its highways places any stone, sod or other material upon land within the limit of any highway which the owner has cleared from stone and smoothed so that it is tillable land and so used, said municipality shall within 30 days remove the same from such land. Failing to do this, the owner of said land may remove such stone, sod or other material therefrom and be paid the same price per hour for such removal as is paid by said municipality for labor in the construction and repair of its roads.

#### §3053. CONTRACTS FOR CONSTRUCTION OF BRIDGES

*(REPEALED)*

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 456, §A84 (RP).

#### §3054. PERFORMANCE BONDS REQUIRED

No contract shall be awarded unless its faithful performance shall be secured to the State by a bond in penal sum of not less than 20% of the amount of the contract.

### Subchapter 2: PRIVATE WAYS

#### §3101. CALL OF MEETINGS; MAINTENANCE; REPAIRS

**1. Definitions.** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Private way" means a public easement as defined in section 3021, subsection 2. [2007, c. 625, §1 (NEW).]

B. "Repairs and maintenance" does not include paving, except in locations where limited paving is demonstrated to be a cost-effective approach for fixing an erosion problem or to repair and maintain pavement existing as of July 1, 2007. "Maintenance" includes, but is not limited to, snowplowing, snow removal, sanding and ice control; grading and adding gravel and surface material; installing, cleaning

and replacing culverts; creating and maintaining ditches, drains and other storm water management infrastructure; creating and maintaining sight distances on curves and at intersections; and cutting brush, trees and vegetation in the right-of-way. [ 2013, c. 198, §1 (AMD) . ]

[ 2013, c. 198, §1 (AMD) . ]

**2. Call of meeting.** When 4 or more parcels of land are benefited by a private road, private way or bridge as an easement or by fee ownership of the private road, private way or bridge, the owners of any 3 or more of the parcels, as long as at least 3 of the parcels are owned by different persons, may make written application to a notary public to call a meeting. The notary may issue a warrant or similar written notice setting forth the time, place and purpose of the meeting. Copies of the warrant or similar written notice must be mailed by means of the United States Postal Service to the owners of all the parcels benefited by the private road, private way or bridge at the addresses set forth in the municipal tax records at least 30 days before the date of the meeting. The notice must inform the owners of the planned meeting's agenda and specify all items to be voted on, including, but not limited to, all proposed budget items or amendments that will determine the amount of money to be paid by each owner pursuant to subsection 5. Subsequent meetings may be called in the same manner or by a commissioner or board appointed at a previous meeting pursuant to subsection 5.

[ 2013, c. 198, §2 (AMD) . ]

**3. E-mail.** E-mail may be used as an alternative to United States mail for sending notices and other materials under this section with the agreement of the receiving party as long as the communication includes the current address and telephone number of the sender for purposes of verification.

[ 2007, c. 625, §1 (NEW) . ]

**4. Voting.** Each parcel of land benefited by a private road, private way or bridge represents one vote under this section; except that, if the bylaws of the association authorize more than one vote, then each parcel may represent no more than 2 votes under this subsection. The call to a meeting may state that an owner may elect in writing to appoint another owner to vote in the owner's stead. Owners voting by absentee ballot must be polled on all voting items that were not included in the agenda and the final tally must be reported to the owners.

[ 2013, c. 198, §3 (AMD) . ]

**4-A. Road associations.** A road association under this subchapter through its commissioner or board may address present and future repair and maintenance of a private road, private way or bridge as authorized by the owners at meetings called and conducted pursuant to this section until the association is dissolved by a majority vote of its members.

[ 2013, c. 198, §4 (AMD) . ]

**5. Commissioner or board; assessment for repair, maintenance and other costs.** The owners of parcels of land benefited by a private road, private way or bridge at a meeting called pursuant to subsection 2 may choose a commissioner or board, to be sworn. By a majority vote of the owners present and voting in person or by written proxy or absentee ballot, the owners may determine what repairs and maintenance are necessary and the materials to be furnished or amount of money to be paid by each owner for repairs and maintenance and may determine the amount of money to be paid by each owner for other costs, including, but not limited to, the cost of liability insurance for the officers, directors and owners and costs of administration. The determination of each owner's share of the total cost must be fair and equitable and based upon a formula provided for in the road association's bylaws or adopted by the owners at a meeting called and conducted pursuant to this section. The commissioner or board shall report the outcome of all votes to all the owners by

United States mail within 30 days. Special assessments for emergency repairs and maintenance may be made at a duly held meeting called for that purpose. Emergency repairs and maintenance are those actions necessary to maintain or restore the functionality of the private road, private way or bridge.

[ 2013, c. 198, §5 (AMD) . ]

**5-A. Easements.** A road association under this subchapter may negotiate an easement for the installation of a ditch, drain, culvert or other storm water management infrastructure to benefit the private road, private way or bridge. The easement must specify when a ditch, drain, culvert or other storm water management infrastructure must be maintained and include reasonable performance standards to guide the timing and extent of its upkeep and repair. The easement must also be recorded at the registry of deeds in the county in which the property subject to the easement is located. A ditch, drain, culvert or other storm water management infrastructure subject to an easement under this subsection must be under the control of and maintained by the road association.

[ 2013, c. 198, §6 (AMD) . ]

**6. Commercial or forest management purposes.** This section does not apply to a private road, private way or bridge constructed or primarily used for commercial or forest management purposes.

[ 2007, c. 625, §1 (NEW) . ]

**7. Immunity from suit.** A commissioner, board or owner of a parcel of land who undertakes activities of a road association under this subchapter is immune from civil liability in all actions by owners or lessees of other lots for the following activities:

- A. The determination of repairs and maintenance to be undertaken; [2009, c. 238, §1 (NEW) . ]
- B. The determination of materials to be furnished or amount of money to be paid by each owner for repairs and maintenance; [2009, c. 238, §1 (NEW) . ]
- C. The collection of the money from each owner; and [2009, c. 238, §1 (NEW) . ]
- D. The awarding of a contract authorized under section 3103. [2009, c. 238, §1 (NEW) . ]

[ 2009, c. 238, §1 (NEW) . ]

**8. Environmental violations.** Notwithstanding subsection 7, a commissioner, board or owner of a parcel of land is not immune from an enforcement action for a violation of law under the jurisdiction of the Department of Environmental Protection or a municipality.

[ 2009, c. 238, §2 (NEW) . ]

**9. Insurance.** A road association under this subchapter may purchase liability insurance to defend and indemnify the road association's officers, directors and owner members for any and all claims of liability or violation of law concerning the private road, private way or bridge and may include the costs of such insurance in the determination of each owner's share of the total cost under subsection 5.

[ 2013, c. 198, §7 (NEW) . ]

#### SECTION HISTORY

1995, c. 227, §1 (AMD). 1997, c. 682, §1 (AMD). 1999, c. 552, §1 (AMD).  
2007, c. 162, §1 (AMD). 2007, c. 625, §1 (RPR). 2009, c. 238, §§1, 2  
(AMD). 2009, c. 239, §§1-3 (AMD). 2013, c. 198, §§1-7 (AMD).

### **§3102. COMMISSIONER'S OR BOARD'S DUTIES; NEGLIGENCE OF OWNERS TO PAY**

The commissioner or board chosen under section 3101, with respect to the private road, private way or bridge, has the powers of a road commissioner. If any owner, on requirement of the commissioner or board, neglects to furnish that owner's proportion of labor, materials or money, the same may be furnished by the other owners and recovered of the owner neglecting to pay in a civil action, together with costs of suit and reasonable attorney's fees. Such civil action may be brought in the name of and by the road association created pursuant to this subchapter and the decision to bring that civil action may be made by the commissioner or board or as otherwise provided for in the road association's bylaws. The commissioner's or board's apportioning of the cost of repairs to the road undertaken pursuant to the provisions of section 3101 may not exceed 1% of an individual owner's municipal property valuation in any calendar year. [ 2013, c. 198, §8 (AMD). ]

#### SECTION HISTORY

1997, c. 682, §2 (AMD). 1999, c. 552, §2 (AMD). 2007, c. 625, §2 (AMD). 2013, c. 198, §8 (AMD).

### **§3103. CONTRACTS FOR REPAIR**

The owners, at a meeting held under section 3101, may by a majority vote of the owners present and voting in person or by written proxy or absentee ballot authorize a contract to be made for making repairs to and maintaining the private road, private way or bridge by the year or for a lesser time and may raise money for that purpose pursuant to section 3101, subsection 5. [ 2013, c. 198, §9 (AMD). ]

#### SECTION HISTORY

1997, c. 682, §2 (AMD). 2005, c. 479, §1 (AMD). 2007, c. 625, §3 (AMD). 2013, c. 198, §9 (AMD).

### **§3104. PENALTIES AND PROCESS**

Money recovered under sections 3102 and 3103 is for the use of the owners. In any notice of claim or process for the money's recovery, a description of the owners in general terms as owners of parcels of land benefited by the private road, private way or bridge, clearly describing each owner's parcel of land by the book and page number of the owner's deed as recorded in the county's registry of deeds and the private road, private way or bridge, is sufficient. If the private road, private way or bridge is shown on a plan recorded in the county's registry of deeds, the plan's recording reference is sufficient. Such process is not abated by the death of any owner or by the transfer of any owner's interest. Any money owed pursuant to section 3101, 3102 or 3103 is an obligation that is personal to the owners of the subject parcels, jointly or severally, and also burdens the parcel and runs with the land upon the transfer of any owner's interest. The commissioner or board may cause to be recorded in the county's registry of deeds a notice of claim for money owed pursuant to section 3101, 3102 or 3103 that is more than 90 days delinquent and may add to the amount owed the recording costs. The recording of such notice does not constitute slander of title. Before recording such notice or service of process of a complaint for collection in a civil action, the commissioner or board shall give the owner against whom such action is to be taken written notice, in the same manner as written notices of meetings are provided for in section 3101, of the intended action if the debt is not paid within 20 days of the date of the written notice. This written notice to cure must be sent at least 30 days before the recording of the notice of claim or the service of process of the complaint for collection in a civil action. [ 2013, c. 198, §10 (AMD). ]

#### SECTION HISTORY

1997, c. 682, §2 (AMD). 2007, c. 625, §4 (AMD). 2013, c. 198, §10 (AMD).

## §3105. USE OF TOWN EQUIPMENT

(REPEALED)

### SECTION HISTORY

2009, c. 239, §4 (RPR). 2009, c. 501, §1 (RP).

## §3105-A. USE OF TOWN EQUIPMENT

The inhabitants of any town or village corporation at a legal town or village corporation meeting may authorize the municipal officers of the town or assessors of the village corporation to use its highway equipment on private ways within such town or village corporation whenever such municipal officers or assessors consider it advisable in the best interest of the town or village corporation for fire and police protection. [2009, c. 501, §2 (NEW).]

### SECTION HISTORY

2009, c. 501, §2 (NEW).

## §3106. MUNICIPAL ASSISTANCE FOR PURPOSES OF PROTECTING OR RESTORING A GREAT POND

**1. Repairs to a private road.** For the purpose of protecting or restoring a great pond, as defined in Title 38, section 480-B, subsection 5, a municipality may appropriate funds to repair a private road, way or bridge to prevent storm water runoff pollution from reaching a great pond if:

A. The private road, way or bridge is within the watershed of the great pond; [2009, c. 225, §1 (NEW).]

B. The great pond:

(1) Is listed on the Department of Environmental Protection's list of bodies of water most at risk pursuant to Title 38, section 420-D, subsection 3;

(2) Has been listed as impaired in an integrated water quality monitoring and assessment report submitted by the Department of Environmental Protection to the United States Environmental Protection Agency pursuant to the federal Clean Water Act, 33 United States Code, Section 1315(b) at least once since 2002; or

(3) Is identified as having threats to water quality in a completed watershed survey that uses a protocol accepted by the Department of Environmental Protection; [2009, c. 225, §1 (NEW).]

C. The Department of Environmental Protection or the municipality determines that the private road, way or bridge is contributing to the degradation of the water quality of the great pond based upon an evaluation of the road, way or bridge using a protocol accepted by the department; [2009, c. 225, §1 (NEW).]

D. The repair complies with best management practices required by the Department of Environmental Protection; and [2009, c. 225, §1 (NEW).]

E. The private road, way or bridge is maintained by a road association organized under this subchapter or Title 13-B. [2009, c. 225, §1 (NEW).]

[ 2009, c. 501, §3 (AMD) .]

**2. Rules.** The Department of Environmental Protection may adopt rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[ 2009, c. 225, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 225, §1 (NEW). 2009, c. 501, §3 (AMD).

### Subchapter 3: BRIDLE PATHS AND TRAILS

#### **§3151. BRIDLE PATHS AND TRAILS; DAMAGES**

Bridle paths and trails may be laid out, altered or discontinued by any town or city within such town or city on petition therefor in the same manner as is provided by law for the laying out, altering or discontinuing of town ways in a town or city streets in a city, except that no cultivated or improved land shall be taken without the consent of the owner and a 2/3 vote shall be required for the acceptance of such paths and trails by any town. All provisions now in force as to assessment of damages and appeal therefrom in cases of laying out, altering and discontinuing town ways in towns or city streets shall apply to laying out, altering and discontinuing bridle paths and trails, except that the petitioners shall have no right of appeal.

#### **§3152. TOWN REGULATIONS APPLY**

Bridle paths and trails, when laid out and accepted under section 3151, shall be subject to such regulations as to use as may be established by the city or town laying them out.

#### **§3153. NO OBLIGATION TO KEEP OPEN IN WINTER; BRIDGES TO BE SAFE; SIGNS**

Cities and towns maintaining bridle paths and trails mentioned in sections 3151 and 3152 shall not be under any obligation to keep them in repair or to break them out in winter. If any city or town shall erect a bridge on such bridle path or trail, it shall be under the same obligation to keep such bridge in a safe condition for the use of horses and riders as it is now under to keep highway bridges in repair for the purposes for which they are used. Such city or town shall erect at the entrance of such bridle paths and trails suitable signs, signifying that they are bridle paths or trails only, and not for use of vehicles, and that persons may use them at their own risk.

### Subchapter 4: SNOW REMOVAL

#### **§3201. REMOVAL REQUIRED; DAMAGES**

When any ways are blocked or encumbered with snow, the road commissioner shall forthwith cause so much of it to be removed or trodden down as will render them passable. The town may direct the manner of doing it. In case of sudden injury to ways or bridges, he shall without delay cause them to be repaired. All damage, accruing to a person in his business or property through neglect of such road commissioner or the municipal officers of such town to so render passable ways that are blocked or encumbered with snow, within a reasonable time, may be recovered of such town by a civil action.

#### **§3202. MAIL ROUTES; SNOW FENCES**

There shall be furnished and kept in repair in each section of the town through which there is a mail route some effectual apparatus for opening ways obstructed by snow, to be used to break and keep open the way to the width of 10 feet, and the municipal officers of towns, or any road commissioner under their direction, may take down fences upon the line of public highways when they deem it necessary to prevent the drifting of snow therein, but they shall in due season be replaced, in as good condition as when taken down, without expense to the owner.

### Subchapter 5: DRAINAGE AND WATERCOURSES

## §3251. DITCHES, DRAINS AND CULVERTS; CONTROL; DAMAGES

The municipal officers of a town may at the expense of the town construct ditches, drains and culverts to carry water away from any highway or road therein, and over or through any lands of persons or corporations, when they deem it necessary for public convenience or for the proper care of such highway or road, provided no such ditch, drain or culvert shall pass under or within 20 feet of any dwelling house without the consent of the owner thereof. Such ditches, drains and culverts may be constructed under such highways or roads. Such ditches, drains or culverts shall be under the control of said municipal officers and interference therewith may be punishable by a fine of not more than \$500 or by imprisonment for not more than 3 months, or by both. If such town does not maintain and keep in repair such ditches, drains and culverts, the owner or occupant of the lands through or over which they pass may have his action against the town for damages thereby sustained.

Before land is so taken, notice shall be given and damages assessed and paid therefor as is provided for the location of town ways.

## §3252. DRAINAGE OR OBSTRUCTION OF PUBLIC WAYS

**1. Change in drainage; obstruction.** A person, personally or through the person's agents or servants, may not do any of the following acts in a manner that changes the drainage of a public way or obstructs a public way:

A. Cultivate, in connection with the improvement of lands adjacent to a public way, any portion of the wrought portion of a public way; [2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Turn teams, tractors, farm machinery or other equipment upon the wrought portion of a public way; or [2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Deposit within or along any ditch or drain in a public way any material that will obstruct the flow of water in the ditch or drain or otherwise obstruct the way. With the written consent and in accordance with specifications of the legal authorities having supervision of the ditch or drain, a person may, to provide egress and regress to and from lands occupied by that person, lawfully construct and maintain a bridge across the ditch or drain. [2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2. Penalties.** The following penalties apply to violations of this section.

A. A person who intentionally or knowingly violates subsection 1 commits a civil violation for which a fine of not more than \$50 plus costs may be adjudged. [2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally or knowingly violates subsection 1 after having previously violated this section commits a civil violation for which a fine of not more than \$100 plus costs may be adjudged. [2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

All fines recovered under this section, except in cases where the way involved was maintained by the State, must be paid to the treasurer of the municipality, or, for an unorganized place, to the treasurer of the county, where such offense is committed and must be expended in the construction and maintenance of public ways or drains therein.

[ 2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**3. Damages.** In addition to the fines under subsection 2, a person who intentionally or knowingly violates subsection 1 is liable for double the amount of the actual damage, to be recovered in a civil action by the municipality, or, in behalf of any unorganized place, by the county where the offense is committed.

[ 2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**4. Jurisdiction.** In all prosecutions under this section, the District Court has, upon complaint, jurisdiction concurrent with the Superior Court.

[ 2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**5. Application.** This section does not apply to a person having legal supervision of a public way.

[ 2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

2003, c. 452, §X2 (AFF). 2003, c. 452, §L7 (RPR).

### **§3253. VIOLATIONS; JURISDICTION**

*(REPEALED)*

SECTION HISTORY

2003, c. 452, §X2 (AFF). 2003, c. 452, §L8 (RP).

### **§3254. COMPLAINTS**

When the attention of a municipal officer, or, for an unorganized place, a county commissioner, is directed to a violation of section 3252 within the municipal officer's or county commissioner's jurisdiction, the municipal officer or county commissioner shall enter a complaint against the offender and prosecute the violation to final judgment. [2003, c. 452, Pt. L, §9 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

2003, c. 452, §X2 (AFF). 2003, c. 452, §L9 (RPR).

### **§3255. WATERCOURSES NOT TO INJURE PROPERTY; REMEDY**

No road commissioner, without written permission from the municipal officers, shall cause a watercourse to be so constructed by the side of a way as to incommode any person's house or other building or to obstruct anyone in the prosecution of his business. Any person so aggrieved may complain to the municipal officers, who shall view the watercourse and may cause it to be altered as they direct.

## Subchapter 6: BARRIERS

### **§3271. DEFINITIONS**

As used in this subchapter, unless the context indicates otherwise, the following words have the following meanings. [1987, c. 75, (NEW) .]

**1. Barrier.** "Barrier" means any wire, cable, cable wire, chain link, lumber, gate or other similar device placed or erected across a town way for the purpose of barring access to that way.

[ 1987, c. 75, (NEW) .]

**2. Town way.** "Town way" means an area or strip of land designated and held by a municipality for passage by motor vehicles.

[ 1987, c. 75, (NEW) .]

SECTION HISTORY

1987, c. 75, (NEW).

## §3272. MARKED BARRIERS

The municipal officers of any municipality that erects or places a barrier across a town way shall cause the barrier to be marked in a manner that causes the barrier to be visible to a person traveling on the town way towards the barrier on a snowmobile, all-terrain vehicle, motorcycle or similar vehicle. The officers shall cause the barrier to be marked in a manner making the barrier visible at a distance that is a reasonable stopping distance. A barrier may be marked by flags, fluorescent coloring, signs or in any other manner making the barrier visible as required in this section. [1987, c. 75, (NEW).]

The municipal officers shall cause barriers marked under this section to be inspected periodically to ensure that the marking remains. [1987, c. 75, (NEW).]

### SECTION HISTORY

1987, c. 75, (NEW).

## §3273. PENALTY

Any person who violates section 3272 commits a civil violation for which a forfeiture not to exceed \$500 may be adjudged. [1987, c. 75, (NEW).]

### SECTION HISTORY

1987, c. 75, (NEW).

# Chapter 307: PROTECTION OF HIGHWAYS

## Subchapter 1: GUIDEPOSTS

### §3301. GUIDEPOSTS AT CROSSINGS

Towns shall erect and maintain at all crossings of highways, and where one public highway enters another, guideposts and guideboards indicating the name of the next town on the route and of such other place as the municipal officers direct, with the number of miles thereto. Such guideposts and guideboards shall be of such reasonable form, height and design as the Department of Transportation may direct; and for any neglect hereof towns are subject to a fine of not less than \$10 nor more than \$50, to be recovered by complaint or indictment. [1971, c. 593, §22 (AMD).]

The District Court shall have jurisdiction concurrent with the Superior Court. Of all fines provided for by this section, and recovered on complaint, 1/2 shall go to the prosecutor and 1/2 to the county where the town committing the offense is situated.

### SECTION HISTORY

1971, c. 593, §22 (AMD).

### §3302. FAILURE TO MAINTAIN; DAMAGES

If the municipal officers of any town unreasonably neglect to cause a guidepost to be erected in their town as provided by law, they forfeit \$5 for each month's neglect, to be recovered in a civil action by any person suing therefor. Plantations assessed in state or county taxes and their officers are under the same obligations and subject to the same penalties in these respects as towns.

## Subchapter 2: EXCAVATIONS

### Article 1: MUNICIPALITIES

## **§3351. NOTICE TO OWNERS TO CONNECT**

Prior to paving or substantially repairing any street or public highway, the road commissioner, the commissioner of public works or such officer as the municipal officers may appoint in the absence of a commissioner shall duly serve upon owners of property abutting on a street or highway and upon all corporations, persons, firms and bridge or water districts occupying a street or highway a notice directing owners, corporations, persons, firms and bridge or water districts to make sewer, water and conduit connections or other work as may be designated, within 60 days from date of notice. At the expiration of the time fixed and after a street has been paved or repaired, no permit may be granted to open that street for a period of 5 years, except as otherwise provided. [1999, c. 337, §2 (AMD).]

### SECTION HISTORY

1999, c. 337, §2 (AMD).

## **§3351-A. MORATORIUM RESTORATION REQUIREMENT**

If a municipality issues a permit to open a street within 5 years after that street or highway was paved or substantially repaired, the municipality may require the permittee to relay the full width of the road surface on both sides of the cut for a distance of 20 feet from the furthest outside edges of the cut. If that repair overlaps the edge of a repair from a previous opening, the municipality may require the permittee to relay the full width of the road to the furthest edge of that previous repair. The municipality may prescribe the depth and method of restoring the pavement based upon the class of the street, except that in no case may the depth of the restored pavement be less than 1 1/2 inches. [1999, c. 337, §3 (NEW).]

### SECTION HISTORY

1999, c. 337, §3 (NEW).

## **§3352. EMERGENCY PERMITS**

If the owners, corporations, persons, firms or bridge or water districts comply with the notice given under section 3351, the road commissioner, the commissioner of public works or such officer as the municipal officers may appoint in the absence of a commissioner may, in the case of an emergency, grant and renew permits for digging or making excavations in the driveways of any of the public highways of the municipality for the repairing of gas, water, steam, oil, gasoline, petroleum or any other liquid, or ammonia pipes or conduits or for any other lawful purpose. Every permit must specify the time prescribed by resolution or ordinance or, when no time is prescribed, the road commissioner, the commissioner of public works or such officer as the municipal officers may appoint in the absence of a commissioner shall specify a time during which the excavation may remain open, the place where that excavation may be made and the number of square yards of surface that may be disturbed. [1999, c. 337, §4 (AMD).]

### SECTION HISTORY

1999, c. 337, §4 (AMD).

## **§3353. PENALTIES**

Any person or persons, firm, corporation or bridge or water district, who shall dig or make an excavation in the driveway of any public highway without first obtaining such permit as provided for in section 3352 or who having obtained such permit shall disturb a greater area of surface than specified in such permit, may be punished by a fine of \$25 for each offense.

## **§3354. RECORD OF PERMITS KEPT; FEES**

The road commissioner, the commissioner of public works or such officer as the municipal officers may appoint in the absence of a commissioner shall keep a record of all permits granted by that person, work done by the municipal employees excepted. The applicant shall pay to the municipal treasurer for every permit for making an excavation within the driveways of any public highway paved with broken stone, concrete,

bitulithic, granite block, brick, wood block, sheet asphalt or other pavements fees established by the municipal officers. Those fees may not exceed the reasonable cost of replacement of the excavated pavement and base material as well as inspections performed by or for the municipality. The requirement for municipal inspections must bear a reasonable relationship to the complexity of the project or the performance history of the permittee. All such fees paid to the municipal treasurer must be regularly accounted for in the treasurer's report to the municipal officers and constitute a special fund for the repaving of excavations, repair of any roadway adjacent to the excavations and inspections. When such excavations are repaired or inspected by the municipality, the cost must be charged to the special fund. Municipal ordinances and regulations governing activities conducted in accordance with this subchapter may not be arbitrary or capricious. [1999, c. 337, §5 (AMD).]

#### SECTION HISTORY

1999, c. 337, §5 (AMD).

### **§3355. SIZE OF OPENING; FILLING; PROTECTION**

It is unlawful for any person or persons, firm, corporation or bridge or water district, having the right of opening or making excavations within the driveways of public highways in the municipality, to leave open at any time any trench or excavation of a greater length than 200 feet, except by permission of the officer granting such permit. Such person or persons, firm, corporation or bridge or water district shall fully and completely fill up such a trench to the surface of the roadway before making any further trench or excavation. The filling must be puddled or rammed as the nature of the soil may require and must be done and completed within the time designated in the permit for completing the trench or excavation. Any person or persons, firm, corporation or bridge or water district failing to comply with the requirements or infringing on the prohibitions of this section may be punished by a fine of \$50 for each offense. These requirements, prohibitions and penalties may not apply to excavations in grading, building or repairing any of the public highways under the supervision of the municipal authorities. Such person or persons, firm, corporation or bridge or water district shall protect the paving on either side of the opening by the use of sheet piling or such other means as will prevent the escape of sand from underneath it. In determining the number of square yards of paving disturbed, there must be included such area of paving adjoining the trench actually opened as will, in the opinion of the road commissioner, the commissioner of public works or such officer as the municipal officers may appoint in the absence of a commissioner, be required to be taken up and relaid by reason of such failure to properly protect the same. [1999, c. 337, §6 (AMD).]

#### SECTION HISTORY

1999, c. 337, §6 (AMD).

### **§3356. SKILL REQUIRED**

If the work or any part of the work mentioned in sections 3351 to 3355 of repairing or filling the trenches or excavations is unskillfully or improperly done, the road commissioner, the commissioner of public works or such officer as the municipal officers may appoint in the absence of a commissioner may immediately cause the work or any part of the work to be skillfully and properly done and shall keep an account of the expense. In such case, such person or persons, firm, corporation or bridge or water district in default shall forfeit and pay a penalty equal to the whole of the expense incurred by the municipality, with an addition of 50%. Thereafter, upon the completion of the work and the determination of the costs, the commissioner or appointee may not issue a further or new permit to any person or persons, firm, corporation or bridge or water district in default until the municipality receives, in addition to the fees provided, the amount of the penalty as by this section provided and determined. [1999, c. 337, §7 (AMD).]

#### SECTION HISTORY

1999, c. 337, §7 (AMD).

### §3357. RELAYING OF PAVEMENT

When any excavation is made in any paved public highway and the trench has been filled as required by sections 3355 and 3356, the municipality shall relay the pavement or enter into an agreement for relaying of the pavement by the permittee. If the municipality relays the pavement, the cost of relaying the pavement, including materials, labor and inspection, must be paid out of any money in the municipal treasury standing to the credit of the regular fund for this purpose. [1999, c. 337, §8 (AMD).]

#### SECTION HISTORY

1999, c. 337, §8 (AMD).

### §3358. FILING MAP OF LOCATION

The party applying for a permit for an excavation under sections 3351 to 3358 must file a map or sketch with the road commissioner, the commissioner of public works or such officer as the municipal officers may appoint in the absence of a commissioner, showing the location and size of cuts to be made. [1999, c. 337, §9 (AMD).]

#### SECTION HISTORY

1999, c. 337, §9 (AMD).

### §3359. MINIMUM EXCAVATION FOR PAVEMENT ON A CONCRETE BASE

Unless otherwise required in a municipal ordinance or regulation, when any excavation is made in any paved public highway and the pavement is laid on a concrete base, the excavation must have the pavement and concrete cut back on each side of the excavation ditch a distance of 8 inches, and in issuing the permits for cutting the pavement this extra width must be charged to the person applying for the permits. [1999, c. 337, §10 (AMD).]

#### SECTION HISTORY

1999, c. 337, §10 (AMD).

### §3360. NOTICE TO PUBLIC UTILITIES

*(REPEALED)*

#### SECTION HISTORY

1971, c. 284, (NEW). 1979, c. 362, §1 (RP).

### §3360-A. PROTECTION OF UNDERGROUND FACILITIES

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms shall have the following meanings.

A. "Business day" means any day other than Saturday, Sunday or a legal holiday. [1979, c. 362, §2 (NEW).]

A-1. "Borrow pit" has the same meaning as provided in Title 38, section 482, subsection 1-A. [1999, c. 718, §1 (NEW).]

A-2. "Commercial timber harvesting activity" means the cutting or removal of timber for the primary purpose of selling or processing forest products and includes the attendant operation of mobile or portable chipping mills and of cutting and skidding machinery and the creation, use and maintenance of skid trails, skid roads, winter haul roads and other roads to facilitate timber harvesting. [1999, c. 718, §1 (NEW).]

B. "Emergency excavation" means immediate excavation necessary to prevent injury, death or loss of an existing vital service. [1979, c. 362, §2 (NEW).]

C. "Excavation" means any operation in which earth, rock or other material below the ground is moved or otherwise displaced, by means of power tools, power equipment or explosives and including grading, trenching, digging, ditching, drilling, augering, tunneling, scraping and cable or pipe driving, except tilling of soil and gardening or displacement of earth, rock or other material for agricultural purposes. [2001, c. 577, §1 (AMD).]

C-1. "Excavator" means any person proposing to make, making or contracting for an excavation. [1991, c. 437, §1 (NEW); 1991, c. 437, §12 (AFF).]

D. "Person" means an individual, partnership, municipality, state, including an agency or department of the state, county, political subdivision, utility, joint venture or corporation and includes the employer of an individual. [2011, c. 588, §1 (AMD).]

D-1. "Shoulder-grading activity" means highway maintenance work that involves the use of a motorgrader or other suitable construction equipment with a blade on the shoulder of a road to remove accumulated sand, gravel, sod or other material to establish drainage away from the traveled portion of the highway. [2001, c. 577, §2 (NEW).]

E. "Underground facility" means any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, appurtenances and those parts of poles below ground. This definition does not include liquefied propane gas distribution systems that are not included within the scope of 49 Code of Federal Regulations, Part 192 and highway drainage culverts or under drains. [2011, c. 588, §2 (AMD).]

F. "Underground facility operator" means the owner or operator of any underground facility, other than an underground oil storage facility as defined in Title 38, section 562-A, subsection 21 or an airport aviation fuel hydrant piping system, used in furnishing electric, telephone, telegraph, gas, petroleum transportation or cable television service. "Underground facility operator" does not include a municipality or a public utility with fewer than 5 full-time employees or fewer than 300 customers or a person that owns underground facilities on its own property for commercial or residential purposes. [2001, c. 577, §3 (AMD).]

G. "Utility" means any public utility as defined in Title 35-A, section 102, subsection 13. [1991, c. 437, §1 (NEW); 1991, c. 437, §12 (AFF).]

[ 2011, c. 588, §§1, 2 (AMD) .]

**1-A. Damage prevention system.** Each underground facility operator shall be a member of and participate in an underground facility damage prevention system, referred to in this section as the "system." The system shall operate during regular business hours throughout the year and maintain adequate operations at all other times to receive and process emergency notifications of proposed excavations. The system shall receive notices of proposed excavations and immediately transmit those notices to underground facility operators whose facilities may be affected. The cost for operation of the system must be apportioned equitably among members. Nothing in this subsection prohibits a municipality, utility or other entity that owns or operates an underground facility from voluntarily becoming a member of the system. Notwithstanding subsection 1, paragraph F, a person that voluntarily becomes a member of the system is deemed an underground facility operator for the purposes of this section.

[ 1999, c. 718, §2 (AMD) .]

## **2. Responsibility of designers.**

[ 2001, c. 577, §4 (RP) .]

**3. Notice by excavator.** A person may not begin excavation without first giving notice as required by this section, unless exempted pursuant to this section.

A. In addition to any other notices required under this section, each excavator shall notify the system of the location of the intended excavation at least 3 business days but not more than 30 calendar days prior to the commencement of excavation, except as provided in paragraph G. [2003, c. 373, §1 (AMD) .]

B. Notice may be in writing, by telephone or by electronic facsimile as long as an excavator acquires and records an acknowledgement of the receipt of any notice the excavator sends by electronic facsimile. For purposes of this section, the system shall provide a toll-free telephone number. [1991, c. 437, §3 (NEW); 1991, c. 437, §12 (AFF) .]

C. Prior to notifying the system, the area of proposed excavation must be marked by the excavator in a manner designed to enable the operator of the underground facility to know the approximate boundaries of the proposed excavation. [1991, c. 437, §3 (NEW); 1991, c. 437, §12 (AFF) .]

D. If an excavation involves blasting, the excavator shall provide written notice of that blasting, either in the initial notice or in a subsequent notice, accurately specifying the date and location of that blasting. This written notice must be given and received at least 24 hours in advance except that, in the case of an unanticipated obstruction requiring blasting, the excavator shall provide written notice not less than 4 hours in advance of that blasting. [1991, c. 437, §3 (NEW); 1991, c. 437, §12 (AFF) .]

E. The excavation must commence within 30 days of notification under this subsection. If the proposed excavation or blasting is not completed 60 calendar days after notification under this subsection or the excavation or blasting will be expanded outside of the location originally specified in the notification, the excavator responsible for that excavation shall again notify the system as specified in paragraph A. [2015, c. 213, §1 (AMD) .]

F. In the case of an excavation involving subcontractors or other arrangements in which more than one entity qualifies as the excavator under this section, the excavator directly responsible for performing the excavation shall ascertain that all notifications required by this subsection and subsections 5, 5-A and 10-A are performed. [2011, c. 588, §3 (AMD) .]

G. If an excavator notifies the system and nonmember operators as required by this section and is informed by the system and each nonmember operator, including private landowners, that no underground facilities exist in the proposed excavation area, the excavator is not required to wait the 3 days as required by this subsection and subsection 10-A and may begin excavation immediately. [2011, c. 588, §4 (AMD) .]

[ 2015, c. 213, §1 (AMD) .]

**3-A. Notification by system.** Upon receiving notice of excavation, the system shall notify immediately all members whose underground facilities may be affected. The system shall maintain adequate records to document compliance with requirements of this chapter.

[ 1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF) .]

**3-B. Additional notification by certain utilities.** In addition to providing any other notices required under this section and before commencing any excavation for the purposes of working on an underground gas transmission line, a gas utility as defined in Title 35-A, section 102, subsection 8 or a natural gas pipeline utility as defined in Title 35-A, section 102, subsection 10 shall provide to the fire department within whose service area the excavation will occur notice of its intent to excavate. This notice must be in writing or by

telephone and must be given at least 3 business days prior to the utility commencing work. The utility may not commence work until it has received from the fire department an acknowledgment of the notice either by telephone or in writing.

[ 1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF) .]

**3-C. Information provided to municipalities, fire departments and emergency response agencies.**

Each gas utility as defined in Title 35-A, section 102, subsection 8 or natural gas pipeline utility as defined in Title 35-A, section 102, subsection 10 shall provide maps to:

A. Each municipality within which it operates gas or natural gas underground transmission facilities. These maps must clearly indicate the location and depth of all main supply underground transmission facilities located within the jurisdiction of the municipality; [1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF).]

B. Each fire department within whose service territory it operates gas or natural gas underground transmission facilities. These maps must clearly indicate the location and depth of all main supply underground transmission facilities located within the jurisdiction of the fire department; [1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF).]

C. Each county emergency management agency within which it operates gas or natural gas underground transmission facilities. These maps must clearly indicate the location and depth of all main supply underground transmission facilities located within the jurisdiction of the county emergency management agency; and [1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF).]

D. The Maine Emergency Management Agency. These maps must clearly indicate the location and depth of all main supply underground transmission facilities that the utility operates in this State. [1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF).]

The utility must provide updated maps to the appropriate entities whenever changes occur in the configuration of the utility's main supply underground facilities.

[ 1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF) .]

**4. Operator response to notice locating facilities.** An underground facility operator shall, upon receipt of the notice provided for in subsection 3-A, advise the excavator of the location and size of the operator's underground facilities and all underground facilities used in furnishing electric or gas service that are connected to the operator's facilities, located in the public way and known to the operator in the proposed excavation area by marking the location of the facilities with stakes, paint or by other identifiable markings. The marking must identify a strip of land not more than 3 feet wide directly over the facility or a strip of land extending not more than 1 1/2 feet on each side of the underground facility and must indicate the depth of the underground facility, if known. The underground facility operator shall complete this marking no later than 2 full business days after receipt of the notice. After the underground facility operator has marked the location of that operator's underground facilities in the proposed excavation area, the excavator is responsible for maintaining the markings at the location, unless the excavator requests remarking at the location due to obliteration, destruction or other removal of the markings. The underground facility operator shall remark the location within one business day following the receipt of a request to remark.

If the proposed excavation is of such length or size that the underground facility operator advises the excavator that the operator can not reasonably respond with respect to all the operator's underground facilities within 2 full business days, the excavator shall notify the operator of the specific location in which excavation will first be made and the operator shall respond with respect to the operator's underground facilities in that location within 2 full business days and for the remaining facilities within a reasonable time thereafter.

The system may adopt rules requiring, under certain circumstances, face-to-face meetings between excavators and underground facility operators.

[ 2001, c. 577, §6 (AMD) .]

**4-A. Alternative notice by certain excavators.**

[ 1999, c. 718, §4 (RP) .]

**4-B. Modification and revocation of clearance.**

[ 1999, c. 718, §4 (RP) .]

**4-C. Excavation methods.** An excavator may not use mechanical means of excavation when excavating within 18 inches of any marked underground facilities until the underground facilities have been exposed, except that mechanical means may be used, as necessary, for initial penetration and removal of pavement, rock or other materials requiring use of mechanical means of excavation. Once the underground facilities have been exposed, further excavation must be performed employing reasonable precautions to avoid damage to the underground facilities, including, but not limited to, any substantial weakening of structural or lateral support of the facilities or penetration or destruction of the facilities or their protective coatings. For the purposes of this subsection, "mechanical means of excavation" means excavation using any device or tool powered by an engine except air vacuum methods of excavation.

[ 1999, c. 718, §5 (NEW) .]

**4-D. Abandoned or inactive facilities.** Beginning on the date an owner or operator of underground facilities is required by the Public Utilities Commission to implement electronic mapping, the owner or operator shall indicate the existence of facilities abandoned or inactive after that date on its electronic mapping system and shall notify an excavator when abandoned or inactive facilities exist in the area of an excavation. If an owner or operator of an underground facility does not maintain an electronic mapping system, the owner or operator shall notify the excavator if the operator is aware of abandoned or inactive facilities in the area of an excavation.

[ 2001, c. 577, §7 (NEW) .]

**5. Emergency excavations.** In an emergency, an excavator may commence an excavation after having taken all reasonable steps, consistent with the emergency, to notify the system and to mark the excavation site consistent with subsection 3, paragraph C. The excavator shall commence an excavation undertaken pursuant to this subsection within 12 hours after providing notice to the system, or as soon thereafter as can safely be accomplished. Each underground facility operator shall locate its underground facilities as soon as reasonably possible after receiving notification of an emergency excavation whether or not the excavation has begun.

[ 2011, c. 72, §2 (AMD) .]

**5-A. Notice of damage.** When an underground facility is damaged, the excavator causing the damage shall immediately notify the affected underground facility operator. The excavator may not backfill an excavation where damage has occurred without first receiving permission from the affected operator.

[ 1991, c. 437, §6 (NEW); 1991, c. 437, §12 (AFF) .]

**5-B. Exemption; commercial forestry operations.** A person is exempt from the notice requirements of subsection 3 for any excavation undertaken in conjunction with a commercial timber harvesting activity as long as the excavation:

A. Is not conducted in a public place, on public land or within a public easement, including, but not limited to, a public way; [1999, c. 718, §7 (NEW) .]

B. Is not conducted within 100 feet of an easement or land owned by an underground facility operator; [1999, c. 718, §7 (NEW) .]

C. Is not conducted within 100 feet of an underground facility; and [1999, c. 718, §7 (NEW).]

D. Does not involve the use of explosives. [1999, c. 718, §7 (NEW).]

[ 2011, c. 72, §3 (AMD) .]

**5-C. Exemptions; written agreements.** A person undertaking an excavation in conjunction with a commercial timber harvesting activity within 100 feet of an underground facility or on an easement or land owned by an underground facility operator or within 100 feet of an easement or land owned by an underground facility operator is exempt from the notice requirements of subsection 3 and from the provisions of subsection 4-C if the person:

A. Has contacted the system to determine the identity of all underground facility operators that own or operate underground facilities within the area of the excavation; [1999, c. 718, §7 (NEW).]

B. Has entered into written agreements with all underground facility operators owning or operating facilities in the area of the excavation and with all persons owning the land on which the excavation occurs; and [1999, c. 718, §7 (NEW).]

C. Undertakes the excavation in accordance with the terms of the written agreements. [1999, c. 718, §7 (NEW).]

[ 1999, c. 718, §7 (NEW) .]

**5-D. Exemption; cemeteries.** An excavator is exempt from the notice requirements of subsection 3 and subsection 10-A for any excavation undertaken within the boundaries of a cemetery if the following procedures are followed.

A. The person responsible for operating the cemetery shall provide notice pursuant to subsections 3 and 10-A identifying the entire cemetery as a potential excavation site. Owners and operators of underground facilities within the cemetery shall mark those facilities in accordance with subsections 4 and 10-A, as applicable. Thereafter, the person responsible for operating the cemetery shall maintain sufficient records or markings to identify the location of underground facilities within the cemetery. [2011, c. 588, §5 (AMD).]

B. The person responsible for operating the cemetery shall identify the location of any underground facilities within the excavation area and take appropriate action to avoid damage to the facilities. [2001, c. 577, §8 (NEW).]

[ 2011, c. 588, §5 (AMD) .]

**5-E. Shoulder-grading procedure.** An excavator that is a licensing authority as defined by Title 35-A, section 2502, subsection 1 or its designee may be exempt from subsection 4-C for any excavation that is shoulder-grading activity if the excavator complies with this subsection. If an excavator chooses to excavate under this subsection, all owners of underground facilities within the area of excavation must comply with this subsection.

A. The excavator shall provide notice as required by subsections 3 and 10-A and the owner or operator of underground facilities shall respond as required by subsections 4 and 10-A. [2011, c. 588, §6 (AMD).]

B. The excavator shall contact each owner or operator of underground facilities within the area of proposed shoulder-grading activity and describe the scope of its proposed shoulder-grading activity, including the anticipated depth of grading. [2001, c. 577, §8 (NEW).]

C. The owner or operator of each underground facility shall within 3 business days determine and notify the excavator whether the depth of its facility is sufficient to avoid damage. [2001, c. 577, §8 (NEW).]

D. After receipt of notice provided pursuant to paragraph C, the excavator may commence its shoulder-grading activity in a manner that does not disturb the facilities indicated by the owners or operators of the underground facilities or, if a facility is located at an insufficient depth to allow the proposed shoulder-grading activity, prior to the shoulder-grading activity the licensing authority may require the owner or operator of the underground facility to lower or otherwise move its facility in accordance with applicable law and the terms of its license. [ 2001, c. 577, §8 (NEW) . ]

[ 2011, c. 588, §6 (AMD) . ]

**5-F. Water well construction; rulemaking.** The Public Utilities Commission shall by rule establish notice requirements for excavation associated with drinking water well construction. In establishing the rule, the commission shall consider:

A. Whether notice requirements established in the rule should be limited to the drilling of a well or should also apply to other excavation associated with well construction activities, such as trenching for installation of pipes and equipment; [ 2003, c. 373, §3 (NEW) . ]

B. Whether notice requirements established in the rule should be based on factors such as geographic location, population density or other criteria bearing on the efficiency and effectiveness of the notification process and any offsetting public safety risks; [ 2003, c. 373, §3 (NEW) . ]

C. Whether the amount of time required for notice prior to excavation should be reduced; and [ 2003, c. 373, §3 (NEW) . ]

D. Any notice requirements associated with drinking water well construction that the commission determines appropriate. [ 2003, c. 373, §3 (NEW) . ]

Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2003, c. 373, §3 (NEW) . ]

**5-G. Alternative notice requirement procedures for excavations; rulemaking.** The Public Utilities Commission may by rule extend alternative notice requirements established for excavation associated with drinking water well construction pursuant to subsection 5-F to other types of excavation. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 334, §1 (NEW) . ]

**5-H. Newly installed underground facilities in active excavation areas; rulemaking.** The Public Utilities Commission shall by rule establish procedures to reduce the incidence of damage to newly installed underground facilities in active excavation areas as defined by the commission by rule. In establishing the rule, the commission may consider adopting additional requirements for excavators or operators, including renotification and marking requirements and system notification procedures. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 334, §1 (NEW) . ]

**5-I. Exemption; quarries and borrow pits.** An excavator may undertake an excavation within a quarry or borrow pit in accordance with this subsection.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Lawfully expanded after March 1, 2011" means an expansion of a quarry or borrow pit after March 1, 2011:

(a) That requires an authorization, license, permit or variance issued by the Department of Environmental Protection pursuant to Title 38, chapter 3, article 6, 7 or 8-A or by the former Maine Land Use Regulation Commission or the Maine Land Use Planning Commission under Title 12, chapter 206-A and for which a valid authorization, license, permit or variance has been issued; or

(b) That requires a filing of a notice of intent to comply pursuant to Title 38, chapter 3, article 7 or 8-A and a complete filing has been made.

(2) "Lawfully located on March 1, 2011" means that on March 1, 2011 the quarry or borrow pit existed and:

(a) The owner or operator had been issued all authorizations, licenses, permits or variances by the Department of Environmental Protection pursuant to Title 38, chapter 3, article 6, 7 or 8-A or by the former Maine Land Use Regulation Commission under Title 12, chapter 206-A necessary to operate that quarry or borrow pit; and

(b) The quarry or borrow pit was in compliance with any applicable requirements of Title 38, chapter 3, article 7 or 8-A or with any applicable land use district standards of the former Maine Land Use Regulation Commission adopted under Title 12, chapter 206-A.

(3) "Lawfully located after March 1, 2011" means that the quarry or borrow pit is established after March 1, 2011 and:

(a) The owner or operator possesses all authorizations, licenses, permits or variances issued by the Department of Environmental Protection pursuant to Title 38, chapter 3, article 6, 7 or 8-A or by the former Maine Land Use Regulation Commission or the Maine Land Use Planning Commission under Title 12, chapter 206-A necessary to operate that quarry or borrow pit; and

(b) The quarry or borrow pit is in compliance with the requirements of Title 38, chapter 3, article 7 or 8-A or with applicable land use district standards of the former Maine Land Use Regulation Commission or the Maine Land Use Planning Commission adopted under Title 12, chapter 206-A.

(4) "Quarry" has the same meaning as in Title 38, section 490-W, subsection 17. [ 2013, c. 405, Pt. B, §4 (AMD). ]

B. Except as provided in paragraph C, an excavator is exempt from the notice requirements of subsection 3 and subsection 10-A when undertaking an excavation within a quarry or borrow pit lawfully located on March 1, 2011. [ 2011, c. 588, §7 (AMD). ]

C. An excavator undertaking an excavation within a quarry or borrow pit lawfully located after March 1, 2011 or lawfully expanded after March 1, 2011 is governed by the following.

(1) The owner or operator of the quarry or borrow pit shall provide notice pursuant to subsections 3 and 10-A identifying the entire area potentially subject to excavation.

(2) Owners and operators of underground facilities in the area identified pursuant to subparagraph (1) shall mark those facilities in accordance with subsections 4 and 10-A, as applicable. Thereafter, the owner or operator of the quarry or borrow pit shall maintain sufficient records or markings to identify the location of underground facilities within the area identified pursuant to subparagraph (1) and an excavator undertaking an excavation in that area is exempt from any further notice requirements under subsection 3 and subsection 10-A.

(3) The owner or operator of the quarry or borrow pit shall take appropriate action to avoid damage to the underground facilities identified pursuant to subparagraph (2). [ 2011, c. 588, §7 (AMD). ]

[ 2013, c. 405, Pt. B, §4 (AMD). ]

**5-J. Unpaved public road grading procedure.** A person may undertake qualified grading activity in accordance with this subsection.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

- (1) "Approved road" means a public way, or portion of a public way, on which a person may undertake qualified grading activity in accordance with this subsection.
- (2) "Licensing authority" has the same meaning as in Title 35-A, section 2502, subsection 1.
- (3) "Qualified grading activity" means maintenance work that involves the use of suitable equipment with a blade to level or otherwise maintain the sand, gravel, sod or other surface of an unpaved public way.
- (4) "Requested road" means a public way, or portion of a public way, on which a licensing authority requests authority to conduct qualified grading activity under this subsection.
- (5) "Shallow-depth facilities" means underground facilities located at an insufficient depth to allow qualified grading activity. [ 2011, c. 72, §5 (NEW) . ]

B. A licensing authority shall provide notice identifying the requested road and the intended depth of the qualified grading activity to the system and to persons who are not members of the system who own or operate underground facilities in the requested road. [ 2011, c. 72, §5 (NEW) . ]

C. Upon receiving notice pursuant to paragraph B, the system shall notify immediately all members whose underground facilities may be affected in accordance with subsection 3-A. [ 2011, c. 72, §5 (NEW) . ]

D. The owner or operator of each underground facility within the requested road shall within 3 business days of receiving notice advise the licensing authority of the location and size of the owner's or operator's underground facilities and all underground facilities used in furnishing electric or gas service that are connected to the owner's or operator's facilities and known to the owner or operator that are located in the requested road and whether the depth of the facilities is sufficient to avoid damage by qualified grading activity. [ 2011, c. 72, §5 (NEW) . ]

E. After waiting 3 business days of providing notice under paragraph B, the licensing authority may file with the Public Utilities Commission a notice of intent to conduct qualified grading activity on the requested road. Upon filing the notice of intent, the requested road becomes an approved road and any person may undertake qualified grading activity on the approved road at any time during the 12 months following filing of the notice of intent and is not required to provide any further notices under this section during those 12 months. If the licensing authority has been notified pursuant to paragraph D that there are shallow-depth facilities within the requested road, any qualified grading activity must be conducted in a manner that does not disturb the shallow-depth facilities. The licensing authority may require the owner or operator of the shallow-depth facilities to lower or otherwise move its facility in accordance with applicable law and the terms of its license. [ 2011, c. 72, §5 (NEW) . ]

[ 2011, c. 72, §5 (NEW) . ]

**5-K. Exemption; unpaved private road grading.** A person is exempt from the requirements of this section for any grading activities undertaken on private roads that meet the following criteria:

A. The grading activities are limited to the shaping, maintaining or scraping of a road surface or road shoulder to allow for proper drainage; and [ 2011, c. 588, §8 (NEW) . ]

B. The depth of the grading activities is no deeper than 6 inches as measured from the road surface or shoulder of the road surface prior to the commencement of those grading activities. [ 2011, c. 588, §8 (NEW) . ]

[ 2011, c. 588, §8 (NEW) . ]

**6. Liability of excavator.** If an excavator complies with subsection 3 and if information pursuant to subsections 3-A and 4 is not provided within the time specified or if the information provided fails to identify the location of the underground facilities in accordance with subsection 4 then an excavator damaging or injuring underground facilities is not liable for any damage or injury caused by the excavation, except on proof of negligence.

[ 1999, c. 718, §8 (AMD) . ]

**6-A. Forfeitures.**

[ 1999, c. 718, §9 (RP) . ]

**6-B. Failure to notify.** An excavation that is made without the excavator providing any or all of the notices required by this section that results in any damage to an underground facility or facilities is prima facie evidence in any civil or administrative proceeding that the damage was caused by the negligence of the excavator.

[ 1999, c. 718, §10 (AMD) . ]

**6-C. Penalties.** In an adjudicatory proceeding, the Public Utilities Commission may, in accordance with this subsection, impose an administrative penalty on any person who violates this subsection. The administrative penalty may not exceed \$500, except that, if the person has been found in violation of this subsection within the prior 12 months, the administrative penalty may not exceed \$5,000. Administrative penalties imposed pursuant to this subsection are in addition to any other remedies or forfeitures provided by law and any liability that may result from the act or omission constituting the violation. Before imposing any penalties under this subsection, the commission shall consider evidence of the record of the violator, including, to the extent applicable, the number of successful excavations undertaken by the violator or the number of locations successfully marked by the violator during the prior 12 months. The commission may require a person who violates any provision of this section to participate, at the expense of the violator, in an educational program developed and conducted by the system.

The Public Utilities Commission may impose administrative penalties for any of the following violations:

- A. Failure of an excavator to give notice of an excavation as required under subsection 3, except to the extent the excavator is exempt from the provisions of subsection 3 pursuant to other provisions of this section; [1999, c. 718, §11 (NEW).]
- B. Excavation by an excavator in a reckless or negligent manner that poses a threat to an underground facility; [1999, c. 718, §11 (NEW).]
- C. Excavation by an excavator that does not comply with the requirements of subsection 4-C, except to the extent the excavator is exempt from the provisions of subsection 4-C pursuant to subsection 5-C; [1999, c. 2, §27 (COR).]
- D. Failure of an underground facility operator to mark the location of the operator's underground facilities within the time limits required by subsection 4; [2001, c. 577, §9 (AMD).]
- E. Marking by an underground facility operator of the location of an underground facility in a reckless or negligent manner; or [2001, c. 577, §10 (AMD).]
- F. Failure of an excavator to comply with the requirements of subsection 5-C, 5-D, 5-E, 5-I or 5-J. [2011, c. 72, §6 (AMD).]

The commission shall establish by rule standards for when and at what level penalties must be assessed under this subsection. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2011, c. 588, §9 (AMD) . ]

**6-D. Penalty payment plan.** The Public Utilities Commission shall allow a qualified person who is assessed an administrative penalty under subsection 6-C to pay the penalty through a payment plan. For purposes of this subsection, "qualified person" means a person who demonstrates to the Public Utilities Commission that the person is unable to pay the penalty in full or that paying the penalty in full will cause undue financial hardship. The Public Utilities Commission shall establish a schedule of payments over time that allows the person to pay the fine within that person's financial means.

[ 2011, c. 72, §7 (NEW) . ]

**7. Imprudent action.** Compliance with this section does not excuse a person from acting in a careful and prudent manner nor does compliance with this section excuse a person from liability for damage or injury for failure to so act.

[ 1979, c. 362, §2 (NEW) . ]

**8. Effect on existing statutes or ordinances.** Nothing contained in this section shall be construed to effect or impair any statute or ordinance requiring permits for excavation in a street or public highway.

[ 1979, c. 362, §2 (NEW) . ]

**9. Exceptions.**

[ 1991, c. 437, §12 (AFF); 1991, c. 437, §9 (RP) . ]

**10. Further notice requirements.**

[ 2011, c. 588, §10 (RP) . ]

**10-A. Further notice requirements.** The following provisions govern excavations in areas where there are underground facilities owned or operated by a person who is not an underground facility operator and who is not a voluntary member of the system established under subsection 1-A.

A. In addition to other notice requirements under this section and except for an employee with respect to that employee's employer's facility, an excavator shall notify any person who is not a member of the system and has underground facilities in the area of the proposed excavation. This notice must be in writing or in person. [ 2011, c. 588, §11 (NEW) . ]

B. If the underground facilities are located on private property, provide service to a single-family residence and are owned and operated by the owner of that property:

- (1) That landowner may mark the underground facilities in accordance with paragraph D;
- (2) The excavator may wait 3 business days from the date of notification to commence the excavation or may commence the excavation upon notification;
- (3) If the excavator waits 3 business days from the date of notification or until after the underground facilities are marked, if sooner, to commence excavation or if the markings made by the landowner pursuant to subparagraph (1) fail to identify the location of the underground facilities in accordance with paragraph D, an excavator damaging or injuring underground facilities is not liable for any damage or injury caused by the excavation, except on proof of negligence; and
- (4) If the excavator does not wait until the underground facilities are marked or 3 business days from the date of notification to commence excavation, whichever occurs earlier, the excavator is liable for all damages to the underground facilities as a result of the excavation. [ 2013, c. 557, §2 (AMD) . ]

C. If the underground facilities are located on private or public land and are owned and operated by a person other than the owner of the property where the excavation is to occur:

(1) The person who owns or operates the underground facilities shall mark the underground facilities in accordance with paragraph D; and

(2) The excavator shall wait until the underground facilities are marked or 3 business days from the date of notification, whichever occurs earlier, before commencing the excavation.

If an excavator complies with paragraph A and subparagraph (2) and if information pursuant to paragraph D is not provided within the time specified or if the information provided does not identify the location of the underground facilities in accordance with paragraph D, an excavator damaging or injuring underground facilities is not liable for any damage or injury caused by the excavation, except on proof of negligence. [2011, c. 588, §11 (NEW).]

D. A person who marks underground facilities under this subsection shall mark the location and size of the underground facilities in the proposed excavation area by marking the location of the facilities with stakes, with paint or by any other identifiable markings within 36 inches horizontally from the exterior sides of the underground facilities and if the depth is known the depth of the underground facilities. The person providing information shall respond no later than 2 full business days after receipt of the notice. It is the responsibility of the excavator to maintain those location markings until the excavations are completed. [2011, c. 588, §11 (NEW).]

[ 2013, c. 557, §2 (AMD) .]

**11. Enforcement.** The Public Utilities Commission may adopt procedures necessary and appropriate to gather information and hear and resolve complaints concerning failure to comply with the provisions of this section.

[ 1999, c. 718, §12 (RPR) .]

**12. Injunctions; costs.** The owner or operator of an underground facility may request that the Public Utilities Commission issue a cease and desist order to prevent a person from undertaking an excavation that may result in damage to the underground facility. The Public Utilities Commission may issue a cease and desist order if the commission determines that the excavation or proposed excavation:

A. Is being conducted or is likely to be conducted in a negligent or unsafe manner; and [1997, c. 229, §2 (NEW).]

B. Is causing or is likely to cause damage to the underground facility. [1997, c. 229, §2 (NEW).]

If the owner or operator prevails in an action brought pursuant to this subsection, the owner or operator is entitled to an award of the costs of bringing the action, including reasonable attorney's fees.

[ 2003, c. 505, §4 (AMD) .]

**13. Rules.** The Public Utilities Commission may adopt rules necessary to implement this section. Except as otherwise specified in this section, rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 334, §3 (NEW) .]

**14. Discovered facilities.** When an underground facility is discovered during an excavation and the location of that facility was, prior to the discovery, unknown or unclear to the underground facility operator, the Public Utilities Commission may direct that operator to determine and map the location of the facility for a reasonable distance, as determined by the commission, from the point of discovery.

[ 2005, c. 334, §3 (NEW) .]

#### SECTION HISTORY

1979, c. 362, §2 (NEW). 1985, c. 111, §§1, 2 (AMD). 1989, c. 109, (AMD). 1991, c. 437, §§1-10 (AMD). 1991, c. 437, §12 (AFF). 1997, c. 229, §§1,2 (AMD). 1997, c. 631, §§1-4 (AMD). RR 1999, c. 2, §27 (COR). 1999, c. 718, §§1-13 (AMD). 2001, c. 577, §§1-11 (AMD). 2003, c. 373, §§1-3 (AMD). 2003, c. 505, §§3,4 (AMD). 2005, c. 334, §§1-3 (AMD). 2011, c. 72, §§1-7 (AMD). 2011, c. 588, §§1-11 (AMD). 2013, c. 405, Pt. B, §4 (AMD). 2013, c. 557, §§1, 2 (AMD). 2015, c. 213, §1 (AMD).

## Article 2: TOWNS

### **§3381. APPLICATIONS; REPAIR**

*(REPEALED)*

#### SECTION HISTORY

1999, c. 337, §11 (RP).

## Subchapter 3: ABOLISHMENT OF GRADE CROSSINGS

### **§3411. PETITION; DAMAGES; EXPENSES; TEMPORARY WAYS**

*(REPEALED)*

#### SECTION HISTORY

1971, c. 593, §13 (RPR). 1977, c. 112, §2 (AMD). 1981, c. 456, §A85 (AMD). 1989, c. 398, §2 (RP).

### **§3412. TRACKS OF MORE THAN ONE RAILROAD**

*(REPEALED)*

#### SECTION HISTORY

1971, c. 593, §§19,20 (AMD). 1989, c. 398, §2 (RP).

### **§3413. ORDER OF DEPARTMENT OF TRANSPORTATION; APPEALS**

*(REPEALED)*

#### SECTION HISTORY

1971, c. 593, §14 (RPR). 1989, c. 398, §2 (RP).

### **§3414. AMOUNT PAID BY STATE OR RAILROAD CORPORATION LIMITED**

*(REPEALED)*

#### SECTION HISTORY

1965, c. 89, (AMD). 1971, c. 593, §19 (AMD). 1977, c. 380, §B6 (AMD). 1981, c. 456, §A86 (RP).

## Subchapter 4: REMOVAL OF BARS, FENCES OR OBSTRUCTIONS

### **§3451. GATES, BARS AND FENCES; REMOVAL PERMITTED**

Any person may take down and remove gates, bars or fences upon or across any highway or town way, unless they are there to prevent the spread of infectious disease or were placed there by license of the county commissioners or municipal officers of the town. To those granting such license, a person aggrieved by such removal may apply and, on proof that such erections were made by their license, they may order them to be replaced by the person who removed them.

**§3452. REMOVAL OF OBSTRUCTIONS**

When logs, lumber or other obstructions without necessity are left on such ways described in section 3451, any road commissioner or municipal officer may remove them, and he shall not be liable for loss or damage thereof unless occasioned by design or gross negligence. When no one appears to pay the expense and trouble of removal, he may sell at public auction so much thereof as is sufficient for the purpose, with charges of sale, posting notice of the time and place of sale in 2 public places in the town 7 days prior thereto. The person through whose neglect or willful default they were left may be prosecuted as for a nuisance.

**§3453. NUISANCES; PAYMENT OF PROSECUTION EXPENSE**

When anything has been adjudged to be a nuisance and to be abated under section 3452, and the materials of which it is composed do not on sale produce sufficient to pay the charges of prosecution, removal and sale, the court may order the deficiency to be raised by levy on the personal property of the person convicted of causing such nuisance.

**§3454. TREES NEAR RAILROAD CROSSINGS**

*(REPEALED)*

## SECTION HISTORY

1971, c. 593, §22 (AMD). 1989, c. 398, §3 (RP).

**Chapter 309: EMINENT DOMAIN****§3501. MATERIALS TAKEN FROM LANDS NOT ENCLOSED OR PLANTED**

*(REPEALED)*

## SECTION HISTORY

1975, c. 711, §9 (RP).

**§3502. LAND TAKEN; DAMAGES**

*(REPEALED)*

## SECTION HISTORY

1975, c. 431, §12 (AMD). 1975, c. 711, §9 (RP).

**§3503. RECORDING OF PROCEEDINGS**

*(REPEALED)*

## SECTION HISTORY

1975, c. 711, §9 (RP).

**Chapter 311: FISCAL MATTERS****Subchapter 1: APPROPRIATIONS AND EXPENDITURES****§3551. RAISING OF MONEY**

Towns shall annually raise money to be expended on town ways and highways and for the repair of bridges, and the same shall be assessed and collected as other town taxes and expended for said purposes by a road commissioner or commissioners.

**§3552. EXPENDITURES TO BE SPACED***(REPEALED)*

## SECTION HISTORY

1977, c. 290, (RP).

## Subchapter 2: ASSESSMENTS ON ABUTTING OWNERS

**§3601. APPORTIONMENT OF DAMAGES OR BENEFITS**

Whenever the city government lays out any new street or public way, or widens or otherwise alters or discontinues any street or way in a city, and decides that any persons or corporations are entitled to damage therefor, and estimates the amount thereof to each in the manner provided by law, it may apportion the damages so estimated and allowed, or such part thereof as to it seems just, upon the lots adjacent to and bounded on such street or way, other than those for which damages are allowed, in such proportions as in its opinion such lots are benefited or made more valuable by such laying out or widening, alteration or discontinuance, not exceeding in case of any lot the amount of such benefit, but the whole assessment shall not exceed the damages so allowed. Before such assessment is made, notice shall be given to all persons interested of a hearing before said city government, at a time and place specified, which notice shall be published in some newspaper in said city at least one week before said hearing.

**§3602. NOTIFICATION TO OWNERS**

After said assessment provided for in section 3601 has been made upon such lots or parcels and the amount fixed on each, the same shall be recorded by the city clerk, and notice shall be given within 10 days after the assessment by delivering to each owner of said assessed lots resident in said city a certified copy of such recorded assessment, or by leaving it at his last and usual place of abode and by publishing the same 3 weeks successively in some newspaper published in said city, the first publication to be within said 10 days. Said clerk within 10 days shall deposit in the post office of said city, postage paid, a certified copy of such assessment directed to each owner or proprietor residing out of said city whose place of residence is known to said clerk, and the certificate of said clerk shall be sufficient evidence of these facts, and in the registry of deeds shall be the evidence of title in allowing or assessing damages and improvements, so far as notice is concerned.

**§3603. BOARD OF ARBITRATION**

Any person not satisfied with the amount for which he is assessed under section 3601 may, within 10 days after service of the notice provided for by section 3602 in either manner therein provided, by request in writing given to the city clerk, have the assessment upon his lot or parcel of land determined by arbitration. The municipal officers shall nominate 6 persons who are residents of said city, 2 of whom selected by the applicant with a 3rd resident person selected by said 2 persons shall fix the sum to be paid by him, and the report of such referees, made to the clerk of said city and recorded by him, shall be final and binding upon all parties. Said reference shall be had and their report made to said city clerk within 30 days from the time of hearing before the municipal officers as provided in section 3601.

**§3604. COLLECTION PROCEDURE**

All assessments and charges made under sections 3601 to 3603, shall be certified by the municipal officers and filed with the tax collector for collection. If the person assessed, within 30 days after written notice of the amount of such assessments and charges, fails, neglects or refuses to pay said municipality the expense thereby incurred, a special tax in the amount of such assessment and charges may be assessed by the municipal assessors upon each and every lot or parcel of land so assessed and buildings upon the same, and such assessment shall be included in the next annual warrant to the tax collector for collection, and shall be collected in the same manner as state, county and municipal taxes are collected.

### §3605. ACTION FOR COLLECTION; AMOUNT RECOVERED

If said assessments under section 3601 are not paid and said city does not proceed to collect said assessments by a sale of the lots or parcels of land upon which such assessments are made, or does not collect, or is in any manner delayed or defeated in collecting such assessments by a sale of the real estate so assessed, then the said city, in the name of said city, may maintain an action against the party so assessed for the amount of said assessment, as for money paid, laid out and expended, in any court competent to try the same, and in such action may recover the amount of such assessment with 12% interest on the same from the date of said assessment and costs.

### §3606. ASSESSMENT FOR IMPROVEMENTS

Whenever a majority of the abutters in number and value upon any street or road in the thickly settled portion of any city or town shall in writing petition the city government or municipal officers of the town to improve said street or road by grading, parking, curbing, graveling, macadamizing, paving or in any other way making a permanent street of the same, or any part thereof, and to provide for the making and reconstructing of such street improvements, and such improvements are made, 2/3 of the cost thereof may be assessed on the property adjacent to and bounded on said street or road in the manner and with the same right of appeal provided in sections 3601 to 3605, which are made applicable to such assessments.

### §3607. DAMAGES FOR RAISING OR LOWERING STREETS

When a way or street is raised or lowered by a road commissioner or person authorized to the injury of an owner of adjoining land, he may within a year apply in writing to the municipal officers, and they shall view such way or street and assess the damages, if any have been occasioned thereby, to be paid by the town. Any person aggrieved by said assessment may have them determined, on complaint to the Superior Court, in the manner prescribed in section 3005. Said complaint shall be filed in the Superior Court in the county where the land is situated within 60 days from the date of assessment.

## Chapter 313: LIABILITY FOR DAMAGES

### §3651. FAILURE TO PROVIDE SAFETY AND CONVENIENCE

Highways, town ways and streets legally established shall be opened and kept in repair so as to be safe and convenient for travelers with motor vehicles. In default thereof, those liable may be indicted, convicted and a reasonable fine imposed therefor. [1977, c. 363, §5 (AMD).]

**1. Legal objects not defects.** Trees, structures and other things which exist in accordance with municipal ordinances are not defects in a public way.

[ 1987, c. 583, §1 (NEW) .]

#### SECTION HISTORY

1977, c. 363, §5 (AMD). 1987, c. 583, §1 (AMD).

### §3652. NOTICE OF DEFECT; HEARING ON PETITION

When a town liable to maintain a way unreasonably neglects to keep it in repair as provided in section 3651, after one of the municipal officers has had 5 days' actual notice or knowledge of the defective condition, any 3 or more responsible persons may petition the county commissioners for the county, setting forth such facts, who, if satisfied that such petitioners are responsible for the costs of the proceedings, shall fix a time and place near such defective way for a hearing on such petition and cause such notice thereof to be given to the town and petitioners as they may prescribe. At the time appointed, the commissioners shall view the way alleged to be out of repair and hear the parties interested, and if they adjudge the way to be unsafe and inconvenient for travelers, motor vehicles, horses, teams and carriages, they shall prescribe what

repairs shall be made, fix the time in which the town shall make them, give notice thereof to the municipal officers and award the costs of the proceedings against the town. If they adjudge the way to be safe and convenient, they shall dismiss the petition and award the costs against the petitioners. If they find that the way was defective at the time of presentation of the petition, but has been repaired before the hearing, they may award the costs against the town, if in their judgment justice requires it.

### **§3653. MANNER OF PRESENTING PETITION**

The petition provided for in section 3652 may be presented to the county commissioners at any of their sessions, or in vacation to their chairman, who shall procure the concurrence of his associates in fixing the time and place in the order of notice and cause the petition to be entered at their next session. They shall make full return of their proceedings on the petition and cause the same to be recorded as of their next regular term after the proceedings are closed.

### **§3654. FAILURE TO COMPLY WITH COMMISSIONERS' ORDER; WARRANT OF DISTRESS**

If the town neglects to make the repairs prescribed by the commissioners under section 3652, within the time fixed therefor in such notice to the town, they may cause it to be done by an agent, not one of themselves. Such agent shall cause the repairs to be made forthwith and shall render to the commissioners his account of disbursements and services in making the same. His account shall not be allowed without such notice to the town as the commissioners deem reasonable. When the account is allowed, the town becomes liable therefor, with the agent's expenses in procuring the allowance of his account and interest after such allowance, and said commissioners shall render judgment therefor against the town in favor of the agent. If a town neglects to pay such judgment for 30 days after demand, a warrant of distress shall be issued by the commissioners to collect the same.

### **§3655. PERSONAL INJURY ACTIONS; LIMITATIONS; DAMAGES; NOTICE**

Whoever receives any bodily injury or suffers damage in his property through any defect or want of repair or sufficient railing in any highway, town way, causeway or bridge may recover for the same in a civil action, to be commenced within one year from the date of receiving such injury or suffering damage, of the county or town obliged by law to repair the same, if the commissioners of such county or the municipal officers or road commissioners of such town or any person authorized by any commissioner of such county or any municipal officer or road commissioner of such town to act as a substitute for either of them had 24 hours' actual notice of the defect or want of repair, but not exceeding \$6,000 in case of a town. If the sufferer had notice of the condition of such way previous to the time of the injury, he cannot recover of a town unless he has previously notified one of the municipal officers of the defective condition of such way. Any person who sustains injury or damage or some person in his behalf shall, within 180 days thereafter, notify one of the county commissioners of such county or of the municipal officers of such town by letter or otherwise, in writing, setting forth his claim for damages and specifying the nature of his injuries and the nature and location of the defect which caused such injury. If the life of any person is lost through such deficiency, his executors or administrators may recover of such county or town liable to keep the same in repair, in a civil action, brought for the benefit of the estate of the deceased, such sum as the jury may deem reasonable as damages, if the parties liable had said notice of the deficiency which caused the loss of life. In any action against a town for damages for loss of life permitted under this section, the claim for and award of damages, including costs, against a town and its employees shall be disposed of as provided under Title 18-A, section 2-804, but shall not exceed \$25,000 for each claim and \$300,000 for any and all claims arising out of a single occurrence. No damages for the loss of comfort, society and companionship of the deceased shall be allowed in an action under this section. At the trial of any such action the court may, on motion of either party, order a view of the premises where the defect or want of repair is alleged when it would materially aid in a clear understanding of the case. [1979, c. 663, §138 (AMD).]

#### SECTION HISTORY

1977, c. 2, §§3,5 (AMD). 1977, c. 578, §7 (AMD). 1977, c. 591, §§4-6 (AMD). 1979, c. 68, §§3,5 (AMD). 1979, c. 663, §138 (AMD).

### §3656. REPAIR WITHIN 6 YEARS; LOCATION CONCLUSIVE

When on trial of any such action or indictment as provided for in section 3655 it appears that the defendant county or town has made repairs on the way or bridge within 6 years before the injury, it shall not deny the location of such way or bridge.

### §3657. LOADS EXCEEDING 6 TONS; NO LIABILITY

*(REPEALED)*

#### SECTION HISTORY

1977, c. 363, §6 (RP).

### §3658. SIDEWALK ACCIDENT; NO TOWN LIABILITY

No town is liable to an action for damages to any person on foot on account of snow or ice on any sidewalk or crosswalk nor on account of the slippery condition of any sidewalk or crosswalk.

### §3659. PROTECTION OF PRIVATE WATER SUPPLIES

In the event a land owner believes that a private water supply on his land has been destroyed or rendered unfit for human consumption by a political subdivision constructing, reconstructing or maintaining a public highway under its jurisdiction, the owner may apply in writing to the political subdivision for a determination of the alleged cause and assessment of damages. [1987, c. 491, §1 (NEW).]

**1. Application presented within 2 years.** If the claim is founded on construction or reconstruction, the owner shall present the application within 2 years after completion of the work as that date appears in the records of the political subdivision. The application shall set forth:

- A. The name and address of the owner; [1987, c. 491, §1 (NEW).]
- B. The name and address of any lien holder; [1987, c. 491, §1 (NEW).]
- C. The owner's source of title; [1987, c. 491, §1 (NEW).]
- D. The location of the property; [1987, c. 491, §1 (NEW).]
- E. A description of the damage; and [1987, c. 491, §1 (NEW).]
- F. The cause to which the damage is attributed. [1987, c. 491, §1 (NEW).]

[ 1987, c. 491, §1 (NEW) .]

**2. Written response.** Within 90 days upon receipt of the owner's application, the political subdivision shall forward a written response to the owner.

[ 1987, c. 491, §1 (NEW) .]

**3. Offer of settlement.** If the political subdivision determines that any damage to the privately owned water supply was caused by the political subdivision constructing, reconstructing or maintaining the public highway, the political subdivision shall set forth in its response an offer of settlement. The political subdivision in its response shall consider the necessity for the installation or replacement of piping, tanks, pumps, heating systems or other related fixtures. In its offer of settlement, a political subdivision may consider the following remedies:

- A. Replacing the water supply; [1987, c. 491, §1 (NEW).]
- B. Repairing the damage to the water supply; [1987, c. 491, §1 (NEW).]
- C. Paying a designated sum of money; and [1987, c. 491, §1 (NEW).]

D. Purchasing the realty served by the water supply. [1987, c. 491, §1 (NEW).]

[ 1987, c. 491, §1 (NEW) .]

**4. Action filed.** If the landowner and political subdivision are unable to agree on the cause of the problem to the water supply or to the terms of settlement, the landowner may file an action in Superior Court in the county or counties where the land is located.

A. The complaint shall be filed within one year after receiving a written response by the municipality. [1987, c. 491, §1 (NEW).]

B. The case shall be determined by a referee and the court shall appoint one or more referees pursuant to the Maine Rules of Civil Procedure. [1987, c. 491, §1 (NEW).]

C. Damages to the property shall be based on the difference between the fair market value of the property before the water supply was destroyed or rendered unfit and the fair market value of the property after the water supply was destroyed or rendered unfit or based on the cost to cure the damage, whichever amount is less. [1987, c. 491, §1 (NEW).]

[ 1987, c. 491, §1 (NEW) .]

**5. Limitations on liability.** A political subdivision shall not be liable:

A. If the private water supply is located within the right-of-way limits of the highway; [1987, c. 491, §1 (NEW).]

B. If the location of the private water supply does not provide for adequate surface drainage, provided that surface drainage problems caused by the construction, reconstruction or maintenance of a public highway by the political subdivision do not relieve the political subdivision of liability under this section; or [1987, c. 491, §1 (NEW).]

C. If the private water supply prior to the construction, reconstruction or maintenance was contaminated or polluted by another source to the degree that the contamination or pollution rendered it unfit for human consumption. [1987, c. 491, §1 (NEW).]

[ 1987, c. 491, §1 (NEW) .]

#### SECTION HISTORY

1987, c. 491, §1 (NEW).

## Chapter 315: ACTIONS AGAINST TOWNS OR RAILROADS

### §3701. DEFECTIVE CROSSINGS; NOTICE TO RAILROAD OF ACTION AGAINST TOWN

In a civil action against a town for damages alleged to have occurred by reason of a defect in a railroad crossing constituting part of a highway which said town is obliged to keep in repair, the railroad company owning or occupying such crossing may be notified of the pendency of the action and take upon itself the defense of the same.

### §3702. LIABILITY OF RAILROAD COMPANY

In such trial described in section 3701, after notice as provided therein, if the plaintiff recovers and the jury finds specially that the damage was occasioned by the fault of such company, it shall be liable to the defendants in said action in a civil action for all damage and costs paid by them.

**§3703. FORM OF NOTICE**

The notice required in section 3701 shall be by copy of the summons and complaint served upon the company at least 30 days before the action is in order for trial unless the court orders otherwise.

**§3704. ONE INDICTMENT ONLY AT A TERM**

One indictment only for neglect to open ways or to keep them in repair shall be presented against a town at the same term of court, but it may contain as many counts as are necessary to describe all portions of ways alleged to be defective. The word "highway" used therein includes town ways, causeways and bridges.

**§3705. DISPOSITION OF FINES; AGENTS; DUTIES**

All fines imposed under sections 3701 to 3704 shall be appropriated to the repair of such ways. The court imposing them shall appoint one or more agents to superintend their collection and application. Within 3 months after collection, they shall make return of their doings to the clerk of the court, to remain on file for the inspection of those interested, and subject on their motion to be audited and corrected by the court. If an agent is guilty of gross neglect of duty or fraudulently misapplies or retains the fine, he forfeits to the town double its amount, to be recovered by indictment.

**§3706. FINES COLLECTED BY ASSESSMENT AS TAXES**

When a fine is imposed on a town under sections 3701 to 3704, the clerk of the court shall certify it forthwith to the assessors, who shall assess the amount thereof as other town taxes, certify the same to said clerk and cause the amount to be collected by their collector, who shall pay the same to such agent at such time as the court orders. If not paid by that time, the clerk on application of such agent shall issue a warrant for its collection, as the Treasurer of State may do for the collection of a state tax.

**§3707. FAILURE TO REPAIR IN 4 MONTHS; COLLECTION**

If the assessors neglect to make such assessment provided for in section 3706 and to certify it to the clerk and the defective way is not repaired to the acceptance of such agent within 4 months after notice of the fine, the court may issue a warrant to collect of the town the fine and costs or the unpaid part thereof.

## Part 4: UNINCORPORATED, UNORGANIZED PLACES AND PLANTATIONS

### Chapter 401: LAYING OUT, ALTERING OR DISCONTINUING HIGHWAYS

#### §4001. HEARING

The county commissioners, on petition as provided in section 2051, may lay out, alter or discontinue a highway on any tract of land in their county not within any town or plantation required to raise money to make and repair highways. [1983, c. 471, §2 (AMD).]

If the county commissioners think that there ought to be a hearing, they shall cause notice to be given of the time and place appointed therefor, by service of an attested copy of the petition with their order thereon, upon the Department of Transportation and upon the owners of such lands, if known, 14 days before that time, and if unknown, by a publication thereof in any paper published in the county, or in the state paper if no paper is published in the county, for 6 successive weeks, the last, 30 days before that time. The names of the petitioners shall be printed by giving the name of the first signer and signifying how many others signed, as "John Doe and 20 others." No proceedings shall take place until it is proved that such notice has been given. [1971, c. 593, §22 (AMD).]

After hearing the parties at the time and place appointed, they may proceed as provided in section 2054.

#### SECTION HISTORY

1971, c. 593, §22 (AMD). 1983, c. 471, §2 (AMD).

#### §4002. APPEALS; COMMITTEE; DUTIES; REPORT

Any party interested in such decision under section 4001 may appeal therefrom to the Superior Court in said county within 30 days. All further proceedings before the commissioners shall be stayed until a decision is made in the appellate court. If no person appears to prosecute the appeal, the judgment of the commissioners shall be affirmed. If the appellant appears, the court may appoint a committee of 3 disinterested persons, who shall be sworn, and if one of them dies, declines or becomes interested, the court shall appoint another in his place and they shall cause notice to be given of the time and place of hearing before them by publication thereof in the state paper for 6 successive weeks, the last publication to be 14 days at least before the day of hearing, and personal notice to the appellant and to the chairman of the county commissioners, 30 days at least before the time set for hearing. They shall view the route, hear the parties and make their report to the court within 60 days or such further time as the court allows after their appointment, whether the judgment of the commissioners should be in whole or in part affirmed or reversed, which, being accepted and judgment thereon entered, shall forthwith be certified to the clerk of the commissioners. If the judgment of the commissioners in favor of laying out, grading or altering a way as prayed for is wholly reversed on appeal, the commissioners shall proceed no further. If their judgment is affirmed in whole or in part, they shall carry into effect the judgment of the appellate court. In all cases, they shall carry into full effect the judgment of the appellate court in the same manner as if made by themselves. The party appealing or prosecuting shall pay the costs incurred since the appeal, if so adjudged by the appellate court, which may allow costs in such cases to the prevailing party to be paid out of the county treasury. The committee shall be allowed a reasonable compensation for their services, to be fixed by the court upon the presentation of their report and paid from the county treasury upon the certificate of the clerk of courts. The costs allowed to the prevailing party and the fees of the committee shall be collected as provided in section 2053.

#### §4003. NO NEW PETITION FOR ONE YEAR

If the final decision of the commissioners or of the committee is against the prayer of the petition provided for in section 4001, no new petition for the same road shall be entertained by the commissioners for one year thereafter.

## Chapter 403: MAINTENANCE AND REPAIRS

### **§4051. INSPECTION OF ROADS; ASSESSMENTS FOR REPAIRS; AGENT TO SUPERINTEND REPAIRS**

*(REPEALED)*

SECTION HISTORY

1983, c. 471, §3 (RP).

### **§4052. REPAIR OF ROADS AND BRIDGES; ASSESSMENT; AGENTS**

*(REPEALED)*

SECTION HISTORY

1983, c. 471, §3 (RP).

## Chapter 405: FISCAL MATTERS

### **§4101. RAISING OF MONEY**

*(REPEALED)*

SECTION HISTORY

1983, c. 471, §4 (RP).

### **§4102. ASSESSMENT FOR OPENING ROADS; PART COUNTY EXPENSE; APPEAL; AGENT TO SUPERVISE**

*(REPEALED)*

SECTION HISTORY

1983, c. 471, §4 (RP).

### **§4103. OWNERS MAY DISCHARGE ASSESSMENTS BY BUILDING ROADS**

*(REPEALED)*

SECTION HISTORY

1983, c. 471, §4 (RP).

### **§4104. OWNER'S FAILURE TO PAY ASSESSMENTS; REMEDY**

*(REPEALED)*

SECTION HISTORY

1983, c. 471, §4 (RP).

### **§4105. PRIMA FACIE PROOF OF TITLE BY PURCHASE AT ASSESSMENT SALE**

*(REPEALED)*

SECTION HISTORY

1983, c. 471, §4 (RP).

**§4106. ASSESSMENTS REPEALED**

*(REPEALED)*

SECTION HISTORY

1971, c. 616, §4 (NEW). 1983, c. 471, §4 (RP).

## Part 5: DEPARTMENT OF TRANSPORTATION

### Chapter 410: DEPARTMENT OF TRANSPORTATION

#### Subchapter 1: GENERAL PROVISIONS

#### §4201. DEPARTMENT; COMMISSIONER

*(REPEALED)*

##### SECTION HISTORY

1971, c. 498, §1 (NEW). 1971, c. 593, §15 (RP).

#### §4202. SHORT TITLE

This chapter may be known and cited as the Maine Transportation Act. [2011, c. 420, Pt. A, §16 (AMD).]

##### SECTION HISTORY

1971, c. 593, §16 (NEW). 1971, c. 622, §§77-C, 77-E (AMD). 2011, c. 420, Pt. A, §16 (AMD).

#### §4203. DEFINITIONS

The following terms, when used in this chapter, have the following meanings, unless the context otherwise requires. [2011, c. 420, Pt. A, §17 (AMD).]

**1. Commissioner.** "Commissioner" means the Commissioner of Transportation.

[ 1971, c. 593, §16 (NEW) .]

**2. Department.** "Department" means the Department of Transportation.

[ 1971, c. 593, §16 (NEW) .]

**3. Transportation.** "Transportation" means any form of transportation for people or goods within, to or from the State, whether by highway, air, water or rail.

[ 1971, c. 593, §16 (NEW) .]

##### SECTION HISTORY

1971, c. 593, §16 (NEW). 1971, c. 622, §§77-D, 77-E (AMD). 2011, c. 420, Pt. A, §17 (AMD).

#### §4204. DECLARATION OF POLICY

It is declared to be the policy of the State of Maine that adequate, safe and efficient transportation facilities and services are essential to the economic growth of the State and the well-being of its people and that the planning and development of such facilities and services shall be coordinated by a state department of transportation with overall responsibility for balanced transportation policy and planning. [1971, c. 593, §16 (NEW).]

##### SECTION HISTORY

1971, c. 593, §16 (NEW).

## §4205. DEPARTMENT; COMMISSIONER

There is created and established the Department of Transportation to consist of a Commissioner of Transportation appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over transportation and to confirmation by the Legislature, who shall serve at the pleasure of the Governor. [1981, c. 698, §106 (RPR).]

### 1.

[ 1981, c. 456, Pt. A, §87 (RP) .]

### 2.

[ 1981, c. 456, Pt. A, §87 (RP) .]

### 3.

[ 1981, c. 456, Pt. A, §87 (RP) .]

### 4.

[ 1981, c. 698, §106 (RP) .]

### 5.

[ 1981, c. 698, §106 (RP) .]

### 6.

[ 1981, c. 98, §2 (RP) .]

### 7.

[ 1981, c. 98, §2 (RP) .]

#### SECTION HISTORY

1971, c. 593, §16 (NEW). P&SL 1973, c. 214, §1 (AMD). 1973, c. 788, §105 (AMD). 1975, c. 580, §3 (AMD). 1975, c. 771, §257 (RPR). 1981, c. 98, §§1,2 (AMD). 1981, c. 456, §A87 (AMD). 1981, c. 698, §106 (RPR).

## §4206. DUTIES OF COMMISSIONER

**1. Duties.** The commissioner shall have the following general powers, duties and responsibilities:

A. To develop for the State, comprehensive, balanced transportation policy and planning as will meet the present and future needs for adequate, safe and efficient transportation facilities and services; [1971, c. 593, §16 (NEW).]

B. To assist in the development and operation of transportation facilities and services in the State; [1971, c. 593, §16 (NEW).]

C. To promote the coordinated and efficient use of all available and future modes of transportation; [1971, c. 593, §16 (NEW).]

D. To exercise and perform such other functions, powers and duties as shall have been or may be from time to time conferred or imposed by law, including all the functions, powers and duties assigned and transferred to the Department of Transportation from and as now imposed by law or otherwise conferred on these units designated in section 4205; [1971, c. 593, §16 (NEW).]

E. To appear as chief spokesman for the State before such national, regional, state and local agencies, groups or organizations including regulatory agencies as he deems necessary to enhance and promote the transportation interest of Maine, to counsel, advise and participate for the furtherance of the intent and purpose of this chapter; [1971, c. 593, §16 (NEW).]

F. To stimulate active support for and to develop, administer and promote transportation safety action programs throughout the State of Maine and to formulate and recommend to the Legislature specific measures for these purposes; [1971, c. 593, §16 (NEW).]

G. To establish a system of scenic highways in the State of Maine and preserve the scenic values along the system of highways; to develop and adopt procedures for the designation and development of that system of scenic highways and the preservation of the scenic value in the highway corridor and in the implementation of this intent and purpose consider the scenic value, safety aspects, economic implications, preservation of scenic value and compatibility with other national, regional and local conservation plans; [1971, c. 593, §16 (NEW).]

H. To acquire, construct, operate and maintain such harbor facilities as may be necessary to implement the planned development of coastal resources, ports and harbors; to operate and maintain the port facilities as now within or as may hereafter come within the jurisdiction of the Department of Transportation; and to oversee the administration of the Maine State Pilotage Commission; [1997, c. 727, Pt. C, §5 (AMD).]

I. To accept and receive and be the sole administrator of all federal or other moneys for and in behalf of this State or any political subdivision thereof now or hereafter available for purposes of transportation or which would further the intent and specific purposes of this chapter; [1983, c. 310, §1 (AMD).]

J. To oversee matters relating to railroad safety, provided that jurisdiction of the commissioner shall in no way diminish, infringe upon or replace the jurisdiction of the United States Department of Transportation, Federal Railroad Administration with regard to employee safety; [1983, c. 310, §2 (AMD).]

K. [1981, c. 492, Pt. D, §5 (RP).]

L. [1985, c. 506, Pt. A, §48 (RP).]

M. Acting upon the advice of the State Tax Assessor, to negotiate a compact with other states, the District of Columbia and Canadian provinces for the administration of user license fees on condition that the compact provides for:

- (1) The collection of the annual user license fee for any other state or province by the state or province in which the motor truck is registered;
- (2) The disbursement of revenues due to other states or provinces subject to the compact;
- (3) The free exchange of information between and among the states or provinces subject to the compact; and
- (4) The establishment of identification tags or decals.

The compact must provide for reciprocal enforcement of the laws establishing the annual user license fees and for the auditing of all books, records and logs of the operator of a motor truck by the state or province in which the motor truck is registered, which pertains to travel in it and any other state or province subject to the compact; [2005, c. 277, §1 (AMD).]

N. To make contracts and enter into agreements with and make assurances and certifications to the Maine Turnpike Authority, and other 3rd parties, necessary in connection with determination of department projects and the issuance of bonds or obligations pursuant to section 1968, subsection 2-A; and [2011, c. 302, §20 (AMD).]

O. To bring before the joint standing committee of the Legislature having jurisdiction over transportation matters for review and approval any proposal that would alter the current land use, ownership or jurisdiction of lands owned by the State within the Port of Searsport presently under the jurisdiction of the department. [2005, c. 277, §3 (NEW).]

[ 2011, c. 302, §20 (AMD) .]

**2. Organization.** The commissioner shall organize the department into such bureaus, divisions and other units as he deems necessary to fulfill the duties of the department, provided at all times there shall be the following bureaus:

A. Bureau of Finance and Administration; [1981, c. 45, §2 (RPR).]

C. Bureau of Planning; [1981, c. 45, §2 (RPR).]

D. Bureau of Project Development; and [1981, c. 45, §2 (RPR).]

E. Bureau of Maintenance and Operations. [1981, c. 45, §2 (RPR).]

[ 1995, c. 504, Pt. B, §7 (AMD) .]

**3. Advisory boards.** The commissioner, subject to approval by the Governor, shall organize and create such advisory committees and boards to serve at the pleasure of the commissioner for such terms and purposes as are deemed to be in the best interest of furthering the intent and purposes of this chapter. Such committees and boards shall be made up of persons especially skilled, knowledgeable or experienced in some phase of transportation. The commissioner shall fix the compensation for those who serve on such boards and committees with the consent and approval of the Governor.

[ 1975, c. 771, §258 (AMD) .]

**4. Personnel.** The commissioner may appoint such deputies, directors, assistants, general counsel and other officers and employees as may be needed for the performance of his duties. These appointments shall be subject to the Civil Service Law, except for the following who shall serve at the pleasure of the commissioner: Deputy Commissioners of Transportation; Chief Counsel, Bureau of Legal Services; Assistant to the Commissioner; and Assistant to the Commissioner for Public Information.

[ 1985, c. 785, Pt. B, §105 (AMD) .]

**5. Rules and regulations.** The commissioner may prescribe and promulgate all necessary rules and regulations in order to fulfill the purposes of this Title.

[ 1971, c. 593, §16 (NEW) .]

**6. Hearings.** The commissioner may conduct investigations, inquiries and hearings concerning all matters within the jurisdiction of the department. The commissioner may administer oaths and affirmations, certify to all official acts, issue subpoenas and compel the attendance and testimony of witnesses and the production of papers, records, books and documents and if any person refuses to attend, testify or produce papers, records, books and documents as ordered, a Justice of the Superior Court, upon application of the commissioner, may make such order as is appropriate to aid in enforcement of the order.

[ 1971, c. 593, §16 (NEW) .]

**7. Delegation.** The commissioner may delegate to deputies, directors, assistants and other officers and employees of the department such of his duties as he deems appropriate.

[ 1971, c. 593, §16 (NEW) .]

**8. Experimental projects.** The commissioner may engage in such experimental projects as he deems will contribute to furthering the purposes of this chapter.

[ 1971, c. 593, §16 (NEW) .]

**9. Experimental vehicle permits.** The Commissioner of Transportation, with the advice of the Commissioner of Public Safety and the Director of Motor Vehicles, may establish a program providing for the issuance of temporary experimental vehicle permits on a discretionary basis, each for a period not exceeding 2 years, upon proper application in writing from a trucker representing a significant sector of the trucking industry. The permits are to provide for the operation and the evaluation of the operation of experimental vehicles that have a length, width, height, weight and other conditions beyond that specified in Title 29-A, over any nonlimited way or bridge. These permits carry no fee. Registration must be assessed for the applicable road limit exclusive of general or special commodity permits, despite expected operation beyond these limits, in an experimental mode. Multistate experiments are to be encouraged. Registration in another state in the context of a regional multistate experiment will be honored without the necessity of acquiring a Maine registration. These permits may be granted only within the context of a structured joint industry-government evaluation program, including preparatory off-road performance tests, strictly controlled operational testing on the highway system and both in-process and final evaluation reports covering productivity, operating characteristics and safety. Additional reports may be required by the commissioner if considered necessary during the experimental phase. The Commissioner of Transportation shall issue these permits on a limited basis and only if the commissioner judges that a significant potential exists for increased productivity without undue compromise in safety by the eventual legal general operation of the experimental vehicle, without permit, on the highway system. No commitment to that eventual operation is implied by the issuance of the temporary experimental vehicle permit. The Commissioner of Transportation shall ratify, at the commissioner's discretion, all conditions of the experimental programs proposed, including, but not limited to, preparatory off-road vehicle tests, time limits, vehicle dimensions, axle and gross weight limits, routing, insurance and reporting provisions. The commissioner may terminate any evaluation at any time if in the commissioner's judgment the operation of the vehicle poses an undue threat to public safety or the integrity of the highway system or if the conditions of the permit are violated.

The commissioner shall submit a report biennially to the joint standing committee of the Legislature having jurisdiction over transportation before the first regular session of each Legislature. This report must discuss the progress of any experimental vehicle evaluations and contain recommendations, if any, for legislation leading to their eventual general use on the highway system. If during the previous biennium there has been no activity relating to the evaluation and permitting of experimental vehicles, the reporting requirement is waived.

[ 1999, c. 152, Pt. H, §1 (AMD) .]

#### SECTION HISTORY

1971, c. 593, §16 (NEW). 1973, c. 186, §2 (AMD). 1973, c. 685, (AMD). 1975, c. 771, §258 (AMD). 1977, c. 341, §1 (AMD). 1977, c. 658, §§3-5 (AMD). 1977, c. 674, §22 (AMD). 1979, c. 127, §155 (AMD). 1979, c. 505, §§1-3 (AMD). 1981, c. 45, §2 (AMD). 1981, c. 492, §§D3-D5,9 (AMD). 1981, c. 505, §5 (AMD). 1981, c. 591, (AMD). 1981, c. 595, §4 (AMD). 1983, c. 310, §§1-4 (AMD). 1983, c. 477, Pt. E, Subpt. 26, §§8 (AMD). 1983, c. 489, §11 (AMD). 1985, c. 506, §A48 (AMD). 1985, c. 741, (AMD). 1985, c. 785, §B105 (AMD). 1987, c. 109, (AMD). 1995, c. 65, §A66

(AMD). 1995, c. 65, §§A153,C15 (AFF). 1995, c. 504, §§B7,C8,9 (AMD). 1997, c. 727, §C5 (AMD). 1999, c. 152, §H1 (AMD). 2005, c. 277, §§1-3 (AMD). 2011, c. 302, §20 (AMD).

## **§4207. RAILROADS; LEASE OR PURCHASE OF CERTAIN RAILROAD LINES BY THE DEPARTMENT OF TRANSPORTATION**

*(REPEALED)*

### SECTION HISTORY

1975, c. 221, (NEW). 1975, c. 629, (AMD). 1979, c. 374, (AMD). 1983, c. 392, (AMD). 1985, c. 398, (AMD). 1987, c. 534, §§B13,B23 (AMD). 1989, c. 398, §4 (RP). 1989, c. 501, §P28 (AMD). 1989, c. 600, §§9, 10 (AMD).

## **§4207-A. RAILROADS; ACQUISITION OF RAILROAD OPERATING EQUIPMENT BY THE DEPARTMENT OF TRANSPORTATION**

*(REPEALED)*

### SECTION HISTORY

1979, c. 650, (NEW). 1989, c. 398, §5 (RP).

## **§4208. DEFENSIVE DRIVING COURSES; FEES**

The Department of Public Safety is authorized to conduct defensive driving courses for the purpose of promoting highway safety and to charge a registration fee of \$35 to participants in the defensive driving courses conducted under the auspices of the department. The fee must be used to cover the cost of conducting the courses. Any balances remaining at the end of the fiscal year may not lapse but must be carried forward to be used for the purposes stated in this section. [2007, c. 295, §1 (AMD).]

The course must include instruction in the existence and the practical purpose of parking laws and ordinances for persons with disabilities. [1995, c. 505, §10 (AMD); 1995, c. 505, §22 (AFF).]

### SECTION HISTORY

1977, c. 423, §B1 (NEW). 1981, c. 292, (AMD). 1989, c. 616, §1 (AMD). 1989, c. 721, §2 (AMD). 1995, c. 505, §10 (AMD). 1995, c. 505, §22 (AFF). 2007, c. 295, §1 (AMD).

## **§4209. PUBLIC TRANSPORTATION ADMINISTRATION**

**1. Geographic regions.** The department shall divide the State into a number of geographic regions for regional distribution of state-administered transportation funds. Upon designation of the geographic regions, a regional public transportation agency must be selected from each region to formulate a quinquennial locally coordinated plan for regional transit in accordance with federal requirements. The department shall select regional public transportation agencies in collaboration with transit stakeholders, including transportation providers, social service organizations, the United States Department of Transportation, Federal Transit Administration and the Public Transit Advisory Council under section 4209-A. The department shall establish a schedule for submittal of the quinquennial locally coordinated plans for regional transit to the department for review and approval in accordance with subsection 2.

[ 2015, c. 182, §2 (AMD) .]

**1-A. Interagency Transportation Coordinating Committee.**

[ 2015, c. 182, §3 (RP) .]

**2. Quinquennial locally coordinated plan for regional transit.** The quinquennial locally coordinated plan for regional transit submitted by each regional public transportation agency must provide for the following:

- A. Maximum feasible coordination of funds among all state agencies that sponsor transportation in the region; [1987, c. 428, §1 (AMD) .]
- B. Development and maintenance of a permanent and effective public transportation system, with particular regard to riders who are low-income or elderly or who have disabilities; [2009, c. 130, §3 (AMD) .]
- C. Participation of private transit operators in the service, to the greatest extent possible; [2009, c. 130, §3 (AMD) .]
- D. Conformity with general operations requirements as may be prescribed by the commissioner; and [2009, c. 130, §3 (AMD) .]
- E. Compliance with any appropriate federal regulations, including but not limited to the federally required locally coordinated plan. [2009, c. 130, §3 (NEW) .]

In years in which no quinquennial plan is required, amendments to the effective operations may be submitted. Approval of each locally coordinated plan for regional transit must be by the department in collaboration with transit stakeholders, including transportation providers, social service organizations, the United States Department of Transportation, Federal Transit Administration and the Public Transit Advisory Council under section 4209-A. Upon approval, all agencies, groups or organizations named to participate in the provision of service in accordance with a locally coordinated plan for regional transit are eligible to receive funds administered by the department and the Department of Health and Human Services.

[ 2015, c. 182, §4 (AMD) .]

**3. State assistance.** Within the limits of available funding, the department shall provide assistance as follows:

- A. Planning and technical assistance, information transfer, capital and operations planning, performance monitoring and evaluation, quality assurance, accounting, assistance with management information systems and service reporting to a locally coordinated plan for regional transit drafter or transportation provider and securing of provider compliance with the requirements of other state agencies in these areas; [2015, c. 182, §5 (AMD) .]
- A-1. Act as mediator and, if necessary, final arbiter of disputes between state agencies and transportation providers regarding service; [1987, c. 428, §2 (NEW) .]
- A-2. In consultation with the Bureau of Insurance, advise transportation providers regarding the liability of volunteer drivers; [1991, c. 859, §1 (NEW) .]
- B. Capital assistance to transportation providers for up to 100% of the nonfederal share required by federal assistance programs; [1991, c. 103, (AMD) .]
- C. Operating assistance to transportation providers in an amount up to 1/2 of the operating deficit incurred in fulfillment of the quinquennial locally coordinated plan for regional transit; and [2015, c. 182, §5 (AMD) .]
- D. Notwithstanding any other provision of law and except as funds are necessary to carry out the object of this section, funds appropriated for public transportation shall not lapse at the end of a fiscal year, but shall be carried forward from year to year to be expended for the same purpose. [1985, c. 174, Pt. E, (NEW) .]

The department may enter into a request for proposals process for grants to nonprofit organizations for innovative regional projects that reflect the priorities in subsection 2, paragraph B, involve and integrate multiple service providers and modes of transportation and address service gaps identified as priorities in regional or state planning.

[ 2015, c. 182, §5 (AMD) .]

**4. Human services assistance; priorities.** The Public Transit Advisory Council under section 4209-A shall serve in an advisory capacity to the department, the Department of Health and Human Services and the Department of Labor in matters concerning public transportation. In the event that transportation funds for human services programs are insufficient for full implementation of the human services portion of an approved quinquennial locally coordinated plan for regional transit, priorities established by the Department of Health and Human Services determine the priority clients that must be initially served by human services funds. The department, the Department of Health and Human Services and the Department of Labor and their contractors shall actively engage local transportation providers in the planning of new services that are expected to have a transportation component.

The Department of Health and Human Services and the Department of Labor shall ensure that any new service to be provided is adequately funded to cover the costs of the transportation component of the program.

[ 2015, c. 182, §6 (AMD) .]

**5. Intercity service.** Intercity service is service designated as such in a public transportation plan developed by the department. Intercity service planning must fulfill the requirements set forth in subsection 2 and must address public transportation needs that cannot be met by locally coordinated regional transit planning. The State may contribute to the nonfederal costs of intercity service.

[ 2015, c. 182, §7 (AMD) .]

**6. Letters of credit; reporting requirements; general powers.** To further the purposes of this section, the Department of Transportation may do the following:

A. Make available letters of credit or other appropriate assistance to transportation providers faced with unavoidable difficulties in securing day-to-day operating expenses; [1979, c. 505, §4 (NEW) .]

B. Investigate all practicable ways that reporting requirements might be unified to reduce the paper workload for state and regional public transportation administration; and [1979, c. 505, §4 (NEW) .]

C. Exercise all powers necessary, convenient or incidental to assuring the development and maintenance of effective public transportation service throughout the State. [1979, c. 505, §4 (NEW) .]

[ 1979, c. 505, §4 (NEW) .]

#### **7. Review.**

[ 1987, c. 428, §4 (RP) .]

#### SECTION HISTORY

1979, c. 505, §4 (NEW). 1981, c. 493, §2 (AMD). 1981, c. 559, (AMD). 1983, c. 812, §144 (AMD). 1985, c. 174, §E (AMD). 1987, c. 428, §§1-4 (AMD). 1991, c. 103, (AMD). 1991, c. 859, §1 (AMD). RR 1995, c. 2, §§47,48 (COR). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §§83,84 (COR). 2009, c. 130, §§1-4 (AMD). 2015, c. 182, §§2-7 (AMD).

## §4209-A. PUBLIC TRANSIT ADVISORY COUNCIL

**1. Council established.** The Public Transit Advisory Council, referred to in this section as "the council," is established in accordance with Title 5, section 12004-I, subsection 82-A to advise the Legislature and the department regarding public transit services in the State. The council shall advise the department on the review and approval of locally coordinated plans for regional transit under section 4209 and shall advise on any statewide strategic transit planning undertaken by the department, including short-term and long-term fiscal, operating and capital investments, and the integration of transit planning with the Sensible Transportation Policy Act.

[ 2015, c. 182, §8 (NEW) .]

**2. Membership.** The council must include, but is not limited to, the following:

A. The commissioner or the commissioner's designee; and [ 2015, c. 182, §8 (NEW) .]

B. The following individuals appointed by the commissioner:

- (1) One representative each from the federally designated planning organizations for the Bangor, Kittery, Lewiston and Auburn and Portland regions;
- (2) One representative of private bus operators;
- (3) One representative of a statewide nonprofit organization advocating on behalf of the elderly;
- (4) One representative of a medical provider;
- (5) One representative of a business that relies on public transportation;
- (6) One representative of a statewide association of planning and development agencies;
- (7) One representative of an organization representing persons with disabilities;
- (8) One representative of a nonprofit transit provider;
- (9) One representative of an economic development organization; and
- (10) One representative of an organization representing low-income persons.

In making appointments, the commissioner shall ensure that rural and urban areas are represented.

[ 2015, c. 182, §8 (NEW) .]

[ 2015, c. 182, §8 (NEW) .]

**3. Council invitees.** In addition to the requirements in subsection 2, the commissioner shall invite at least 2 members of the joint standing committee of the Legislature having jurisdiction over transportation matters representing different political parties and at least one representative of the Northern New England Passenger Rail Authority, established in Title 5, section 12004-F, subsection 16, to participate in council meetings.

[ 2015, c. 182, §8 (NEW) .]

**4. Terms, vacancies and council chair.** A member of the council appointed pursuant to subsection 2, paragraph E serves for a term of 3 years. If a member is unable to complete the term, the commissioner shall appoint a member from the same category of members listed in subsection 2, paragraph E as the member who vacated the council to serve out the unexpired portion of the term. The commissioner shall determine how the council is to choose a chair and for how long the chair is to serve.

[ 2015, c. 182, §8 (NEW) .]

**5. Report.** The council shall report on its deliberations and any recommendations by March 1st of each odd-numbered year to the Governor and the joint standing committees of the Legislature having jurisdiction over transportation matters and health and human services matters. The report must include the following:

A. An assessment of the level of public transportation services provided to the public; [ 2015, c. 182, §8 (NEW) . ]

B. Recommendations for the level of service that should be provided and an estimate of the cost of providing those services; and [ 2015, c. 182, §8 (NEW) . ]

C. Recommendations for the optimal coordination of transit services with other senior and veteran services. [ 2015, c. 182, §8 (NEW) . ]

[ 2015, c. 182, §8 (NEW) . ]

#### SECTION HISTORY

2015, c. 182, §8 (NEW) .

## §4210. TRANSPORTATION FACILITIES FUND

**1. Fund established.** The Transportation Facilities Fund, referred to in this section as the "fund," is established as a nonlapsing fund through the Department of Administrative and Financial Services, Office of the State Controller as an internal service fund administered by the Department of Transportation.

[ 2001, c. 83, Pt. C, §1 (NEW); 2003, c. 600, §4 (REV) . ]

**2. Fund services.** Money deposited in the fund may include, but is not limited to, money transferred to the account from within the department, money received from the units within the department using the rental spaces provided by the fund and earnings by the fund from the Treasurer of State's cash pool.

[ 2001, c. 83, Pt. C, §1 (NEW) . ]

**3. Distribution from fund.** Money distributed from the fund may be used for the purpose of purchasing, operating, maintaining, improving, repairing, constructing and managing buildings, including permanent storage facilities, garages and field office buildings, except for buildings and facilities under the supervision of the Department of Administrative and Financial Services, Bureau of General Services.

[ 2001, c. 83, Pt. C, §1 (NEW) . ]

**4. Leased space.** Use of the fund in order to lease space to the operating units of the department must comply with the rate schedule approved by the commissioner. Lease payments must provide for repair costs, operating costs, necessary capital investment, working capital for the fund and must be developed and levied in accordance with the provisions of Federal Office of Management and Budget Circular A-87 or its successor document.

[ 2001, c. 83, Pt. C, §1 (NEW) . ]

**5. Budget.** Upon recommendation of the State Budget Officer and approval by the Governor, prior legislatively authorized budgets within the department may be realigned to ensure adequate funding for projected lease payments. Within 10 days of any realignment of a prior legislatively authorized budget, the commissioner shall submit a written report that details the realignments to the joint standing committee of the

Legislature having jurisdiction over transportation matters. After realignment of the budgets, full and normal budgeting will occur for the fund in future years. Expenditures from the fund are subject to allocations that must be approved by the Legislature.

[ 2001, c. 83, Pt. C, §1 (NEW) .]

#### SECTION HISTORY

2001, c. 83, §1 (NEW). 2003, c. 600, §4 (REV).

### **§4210-A. PAYMENT FOR COST OF RELOCATING UTILITY FACILITIES UNDERGROUND IN FEDERALLY DESIGNATED HISTORIC DISTRICTS ON FEDERAL AID HIGHWAYS**

**1. Reimbursement.** The department, in the course of delivering the federal surface transportation program, 23 United States Code, Section 133 (2005) may reimburse a National Register Historic District or the community in which the National Register Historic District is located for the portion of the cost to move or relocate overhead utilities underground to the extent that such payments by the department are eligible for reimbursement under the federal surface transportation program pursuant to 23 United States Code, Section 133(b)(8) (2005). To be eligible for this reimbursement, the project must be located in a National Register Historic District and on the National Highway System and may not increase the department's cost or liability in complying with the National Historic Preservation Act, 16 United States Code, Sections 470 to 470x-6 (2005) or with 49 United States Code, Section 303 (2005). For the purposes of this section, "National Register Historic District" means a district that is individually listed in the National Register of Historic Places pursuant to the National Historic Preservation Act, 16 United States Code, Sections 470 to 470x-6 (2005).

The amount paid in any biennium under this section may not exceed federal surface transportation program funds available under 23 United States Code, Section 133(b)(8) (2005) to reimburse the State in that biennium.

[ 2007, c. 306, §4 (AMD) .]

**2. Rules.** The department may adopt rules necessary to implement this section. The rules must be consistent with any applicable federal regulations relating to the cost of relocation and with rules adopted pursuant to section 255. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 282, §1 (NEW) .]

#### SECTION HISTORY

2005, c. 282, §1 (NEW). 2007, c. 306, §4 (AMD).

### **§4210-B. MULTIMODAL TRANSPORTATION FUND**

**1. Establishment of fund.** The Multimodal Transportation Fund, referred to in this section as "the Multimodal Transportation Fund" is established as an Other Special Revenue Funds program through the Department of Administrative and Financial Services. Funds appropriated, allocated, transferred or deposited in the account accrue interest earnings that must be used within the Multimodal Transportation Fund.

[ 2011, c. 649, Pt. E, §2 (AMD) .]

**2. Establishment of program.** The department shall establish the Multimodal Transportation Fund program through the Department of Administrative and Financial Services, Office of the State Controller.

[ 2011, c. 649, Pt. E, §2 (AMD) .]

**3. Use of funds.** The money deposited into and disbursed from the Multimodal Transportation Fund must be used for the purposes of purchasing, operating, maintaining, improving, repairing, constructing and managing the assets of multimodal forms of transportation, including, but not limited to, transit, aeronautics, marine and rail, of the State, municipalities and multimodal providers.

[ 2011, c. 649, Pt. E, §2 (AMD) .]

**4. Disbursements from fund.**

[ 2011, c. 649, Pt. E, §2 (RP) .]

**5. Other fund sources.** The Multimodal Transportation Fund may accept funds from other sources, including, but not limited to, the Federal Rail Administration, to carry out the provisions of this section.

[ 2011, c. 649, Pt. E, §2 (AMD) .]

**6. Financial management.** All assets including the cash balance, liabilities and equity in the Augusta State Airport Fund must be transferred to the Multimodal Transportation Fund and accounted for in a manner prescribed by the Department of Administrative and Financial Services, Office of the State Controller.

[ 2011, c. 649, Pt. E, §2 (AMD) .]

**7. Sales tax revenue.**

[ 2011, c. 649, Pt. E, §2 (AMD); T. 23, §4210-B, sub-§7 (RP) .]

**7-A. Sales tax revenue.** Beginning July 1, 2012 and every July 1st thereafter, the State Controller shall transfer to the Multimodal Transportation Fund an amount, as certified by the State Tax Assessor, that is equivalent to 100% of the revenue from the tax imposed on the value of rental of a pickup truck or van with a gross weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles and the value of rental for a period of less than one year of an automobile pursuant to Title 36, section 1811 for the first 6 months of the prior fiscal year. Beginning on October 1, 2012 and every October 1st thereafter, the State Controller shall transfer to the Multimodal Transportation Fund an amount, as certified by the State Tax Assessor, that is equivalent to 100% of the revenue from the tax imposed on the value of rental of a pickup truck or van with a gross weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles and the value of rental for a period of less than one year of an automobile pursuant to Title 36, section 1811 for the last 6 months of the prior fiscal year. The tax amount must be based on actual sales for that fiscal year and may not consider any accruals that may be required by law.

[ 2011, c. 649, Pt. E, §2 (AMD) .]

SECTION HISTORY

2005, c. 457, §GGG3 (NEW). 2007, c. 677, §1 (AMD). 2011, c. 380, Pt. G, §§1, 2 (AMD). 2011, c. 380, Pt. G, §3 (AFF). 2011, c. 420, Pt. J, §§1, 2 (AMD). 2011, c. 420, Pt. J, §3 (AFF). 2011, c. 649, Pt. E, §2 (AMD). MRSA T. 23, §4210-B; §7 (AMD).

## §4210-C. MARINE HIGHWAY ACCOUNT

**1. Establishment of account.** The department shall establish, through the Department of Administrative and Financial Services, Office of the State Controller, the Marine Highway account, referred to in this section as "the account," in the Highway Fund.

[ 2005, c. 457, Pt. GGG, §3 (NEW) .]

**2. Purpose of account.** The purpose of the account is to allow the Highway Fund to provide support to the Maine State Ferry Service that was previously provided by the General Fund because ferries are an integral part of the highway system and carry motor vehicles and are the only method of vehicular transportation available to and from the islands. The state support to the Marine Highway account may not exceed 50% of the budgeted revenues that support the operating cost of the Maine State Ferry Service.

[ 2005, c. 664, Pt. C, §1 (AMD) .]

**3. Calculation.** The account is not considered a General Fund appropriation or Highway Fund allocation for highway purposes in order to calculate the annual funding for the Local Road Assistance Program pursuant to section 1803-B.

[ 2011, c. 652, §10 (AMD); 2011, c. 652, §14 (AFF) .]

### SECTION HISTORY

2005, c. 457, §GGG3 (NEW). 2005, c. 664, §C1 (AMD). 2011, c. 652, §10 (AMD). 2011, c. 652, §14 (AFF).

## §4210-D. ACCOUNTING

The department shall comply with accounting policies and procedures promulgated by the Department of Administrative and Financial Services, Office of the State Controller. Any changes in accounting methodology proposed by the department must be approved by the Office of the State Controller. [ 2005, c. 457, Pt. GGG, §3 (NEW).]

### SECTION HISTORY

2005, c. 457, §GGG3 (NEW).

## §4210-E. TRANSPORTATION EFFICIENCY FUND

*(REPEALED)*

### SECTION HISTORY

2009, c. 655, Pt. B, §2 (NEW). 2011, c. 652, §14 (AFF). 2011, c. 652, §11 (RP).

## §4210-F. INDUSTRIAL DRIVE FACILITY FUND ACCOUNT

**1. Industrial Drive Facility Fund account established.** There is established in the department, through the Office of the State Controller, the Industrial Drive Facility Fund account, referred to in this section as "the account." The account is an internal service fund and is under the control of the commissioner. The account is a continuing fund, and funds in the account do not lapse but must be carried forward from year to year. The Treasurer of State shall credit interest earned to the fund. The funds deposited in the account include, but are not limited to, appropriations and allocations made to the account, funds transferred to the account from

within the department, funds received from fees charged to state departments and agencies for the use of the department's facility located on Industrial Drive in the City of Augusta or for the services of that facility and earnings by the account from the Treasurer of State's pool.

[ 2015, c. 268, Pt. I, §1 (NEW) .]

**2. Use of funds.** The funds deposited into and disbursed from the account must be used for the purposes of purchasing, operating, maintaining, improving and repairing the facility described in subsection 1.

[ 2015, c. 268, Pt. I, §1 (NEW) .]

SECTION HISTORY

2015, c. 268, Pt. I, §1 (NEW).

Subchapter 2: INSPECTION AND INVESTIGATION OF RAILROADS

**§4211. RAILROADS EXAMINED; ANNUAL REPORT**

*(REPEALED)*

SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

**§4211-A. APPLICATION FOR FINANCIAL ASSISTANCE**

*(REPEALED)*

SECTION HISTORY

1987, c. 792, §1 (NEW). 1989, c. 398, §6 (RP). 1989, c. 502, §A91 (AMD).

**§4212. CERTIFICATE OF SAFETY FOR PASSENGER TRAINS**

*(REPEALED)*

SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

**§4213. EXPERIENCED ENGINEER TO EXAMINE BRIDGES**

*(REPEALED)*

SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

**§4214. MANAGERS NOTIFIED WHEN ROAD UNSAFE**

*(REPEALED)*

SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

**§4215. COURT PROCEEDINGS FOR NONCOMPLIANCE**

*(REPEALED)*

SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

**§4216. PASSENGER TRAINS PROHIBITED FROM RUNNING OVER UNSAFE ROADS**

*(REPEALED)*

## SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

**§4217. CROSSINGS AND BRIDGES**

*(REPEALED)*

## SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

**§4218. SAFETY PROVISIONS**

*(REPEALED)*

## SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

**§4219. ORDERS OF THE COMMISSIONER**

*(REPEALED)*

## SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

**§4220. PRIOR ORDERS AND RULES EFFECTIVE**

*(REPEALED)*

## SECTION HISTORY

1977, c. 341, §2 (NEW). 1987, c. 141, §B22 (AMD). 1989, c. 398, §6 (RP).

**§4221. INVESTIGATION AND REPORTS OF ACCIDENTS**

*(REPEALED)*

## SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

## Subchapter 3: TRACK AND EQUIPMENT INSPECTION PROGRAM

**§4231. PARTICIPATION IN THE FEDERAL RAILROAD ADMINISTRATION TRACK AND EQUIPMENT SAFETY AND INSPECTION PROGRAM**

*(REPEALED)*

## SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

## Subchapter 4: CONTRACTS

## §4241. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 313, §6 (NEW).]

**1. Transportation infrastructure.** "Transportation infrastructure" means infrastructure related to all modes of transportation, including highways, bridges, railroads, ferries, mass transit, airports and bicycle and pedestrian facilities, as well as all buildings, utilities, facilities and other appurtenances related to those modes.

[2005, c. 313, §6 (NEW) .]

**2. Transportation-related services.** "Transportation-related services" means all services necessary or convenient to discharge the powers, duties and responsibilities of the department and the commissioner as provided by law including those provided in section 4206. These services include all services necessary or convenient to plan, design, engineer, construct, improve, demolish, maintain or use transportation infrastructure. These services may include, but are not limited to, planning and feasibility studies, engineering, surveying, mapping, environmental services, architectural-related services, appraisal, title services, right-of-way services, project and program management, construction support services and equal opportunity and civil rights services.

[2005, c. 313, §6 (NEW) .]

### SECTION HISTORY

2005, c. 313, §6 (NEW).

## §4242. CONTRACTS FOR TRANSPORTATION-RELATED SERVICES

The department has full power in the procurement and letting of all contracts for transportation-related services. The department may award contracts for these services pursuant to procedures permitted by federal law. The department may solicit statements of qualifications and proposals, and award contracts for services based upon the criteria contained in the solicitations, only if the solicitations are posted electronically on the department's publicly accessible site on the Internet for at least 2 weeks or advertised in newspapers. If advertisements are published in newspapers, they must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed work is to be done, if any such newspaper is circulated in that county. [2005, c. 313, §6 (NEW) .]

The department has the full power to maintain qualifications and performance data on firms and individuals that seek to provide transportation-related services. The commissioner may designate projects requiring additional project-specific prequalification standards and procedures for interested firms and individuals. [2005, c. 313, §6 (NEW) .]

### SECTION HISTORY

2005, c. 313, §6 (NEW).

## §4243. CONTRACTS FOR CONSTRUCTION AND MAINTENANCE

The department has full power in the procurement and letting of all contracts to construct, demolish or maintain transportation infrastructure. The department shall make, or cause to be made, all surveys, plans, estimates, specifications and contracts for all proposed work. If the work is to be contracted, the department shall, except as otherwise provided in this Title, advertise for bids for the proposed work electronically through the department's publicly accessible site on the Internet or through advertisements in newspapers. If advertisements are published in newspapers, advertisements must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed work is to be done if any such newspaper is circulated in that county. The advertisement

must state the place where the bidders may purchase or examine the plans and specifications and the time and place where the bids for the work will be received by the department. Each bidder must accompany its bid with a bid guaranty in accordance with the department's specifications. All bids submitted must be publicly opened and read at the time and place stated in the advertisement. The department has the right to reject any bids and to advertise for new bids if, in the department's opinion, doing so is in the best interest of the department; otherwise, the department shall award the contract to the responsible bidder submitting the lowest bid. A town may submit bids for construction, demolition or maintenance of transportation infrastructure within that town's limits and is subject to all requirements prescribed for other contractors, except that a bond is not required of the town. The department may construct, demolish or maintain transportation infrastructure by day labor without advertising for bids and may, with the approval of the Governor, award contracts for the construction, demolition or maintenance of transportation infrastructure without advertising for bids if doing so is in the best interest of the State. [2005, c. 313, §6 (NEW).]

The department has the full power to prequalify bidders for construction, demolition and maintenance projects based on factors contained in the department's written prequalification procedures. The commissioner may designate projects requiring project-specific prequalification standards and procedures for bidders. [2005, c. 313, §6 (NEW).]

The department may adopt its own standard contract specifications. The department's standard specifications must be used in lieu of federally mandated contract clauses. [2005, c. 313, §6 (NEW).]

#### SECTION HISTORY

2005, c. 313, §6 (NEW).

## §4244. DESIGN-BUILD CONTRACTING

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Best value" means the highest overall value to the State, considering quality and cost. [2009, c. 648, Pt. B, §2 (NEW).]

B. "Design-build contracting" means a method of project delivery whereby a single firm is contractually responsible for performing design, construction and related services. [2009, c. 648, Pt. B, §2 (NEW).]

C. "Major participant" means a firm that would have a major role in the design or construction of a project as specified by the department in its procurement documents. [2009, c. 648, Pt. B, §2 (NEW).]

D. "Project" means the highway, bridge, railroad, pier, airport, trail, ferry vessel, building or other improvement being constructed or rehabilitated, including all professional services, labor, equipment, materials, tools, supplies, warranties and incidentals needed for a complete and functioning product. [2009, c. 648, Pt. B, §2 (NEW).]

E. "Proposal" means an offer by the proposer to design and construct the project in accordance with all request-for-proposals provisions. [2009, c. 648, Pt. B, §2 (NEW).]

F. "Proposer" means an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a proposal. [2009, c. 648, Pt. B, §2 (NEW).]

G. "Public notice" means notice given electronically through the department's publicly accessible website or through advertisements in newspapers. If notice is to be given exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed project is located if any such newspaper is circulated in that county. [2009, c. 648, Pt. B, §2 (NEW).]

H. "Quality" means those features that the department determines are most important to the project. Quality criteria include design, constructability, long-term maintenance costs, aesthetics, local impacts, traveler and other user costs, service life, time to construct and other factors that the department considers to be in the best interest of the State. [ 2009, c. 648, Pt. B, §2 (NEW) . ]

[ 2009, c. 648, Pt. B, §2 (NEW) . ]

**2. Authorization.** Notwithstanding section 4243 or any other provision of law, the department may use design-build contracting to deliver projects. The department may evaluate and select proposals on either a best-value or low-bid basis. If the scope of work requires substantial engineering judgment, the quality of which may vary significantly, as determined by the department, then the basis of award must be the best value.

The department retains the authority to terminate the contracting process at any time, to reject any proposal, to waive technicalities or to solicit new proposals if the department determines that doing so is in the best interest of the State.

[ 2009, c. 648, Pt. B, §2 (NEW) . ]

**3. Prequalification.** A proposer must be prequalified to be eligible to submit a proposal. A proposer must be prequalified by a project-specific request-for-qualifications process described in this subsection, or a proposer may be a team formed of contractors and designers that are each prequalified separately for design-build contracting in accordance with ongoing prequalification procedures established by the department. The department shall specify the method of prequalification in its discretion, except that if the basis of award is the best value, then prequalification must be through a project-specific request-for-qualifications process.

The department shall give public notice of a project-specific request-for-qualifications process. The department shall issue a request-for-qualifications package to all firms requesting one in accordance with the notice. Interested firms shall supply, for themselves and all major participants, all information required by the department. The department may investigate and verify all information received. All financial information, trade secrets or other information customarily regarded as confidential business information submitted to the department is confidential. The department shall evaluate and rate all firms submitting a conforming statement of qualifications and select the most qualified firms to receive a request for proposals. The department may select any number of firms, except that, if the department fails to prequalify at least 2 firms, the department shall repeat the request-for-qualifications process or select a different project delivery method.

[ 2009, c. 648, Pt. B, §2 (NEW) . ]

**4. Request for proposals.** If prequalification is through project-specific prequalification, the department shall issue a request for proposals to those firms prequalified. If prequalification is through ongoing prequalification procedures established by the department, the department shall give public notice of the request for proposals. The request for proposals must set forth the scope of work, design parameters, construction requirements, time constraints and all other requirements that have a substantial impact on the cost or quality of the project and the project development process, as determined by the department. The request for proposals must include the criteria for acceptable proposals and must include a request-for-information process that allows for clarification of such criteria. For projects to be awarded on a best-value basis, the scoring process and quality criteria must also be contained in the request for proposals. The request for proposals may also provide for a process for the department to meet with each proposer individually to review conceptual technical elements of each proposal before full proposal submittal for the purposes of identifying design or other technical elements that are unacceptable to the department or that obviously would cause rejection of the proposal as nonresponsive. All such conceptual technical meetings, including submittals and responses, are confidential until award of the contract, but the department may issue addenda to all proposers to clarify design or other technical elements that will or will not be allowed. Upon award of the contract and after resolution of any procurement disputes, the department shall return documents

submitted by unsuccessful proposers upon request. The request for proposals may also provide for a stipend upon specified terms to unsuccessful proposers that submit proposals conforming to all material request-for-proposals requirements as determined by the department.

[ 2009, c. 648, Pt. B, §2 (NEW) . ]

**5. Low-bid award.** If the basis of the award is lowest cost, then each proposal must be submitted by the proposer to the department in 2 separate components, a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously. The department shall first review technical proposals for responsiveness. The department shall award the contract to the proposer that submits a responsive proposal with the lowest price, if the proposal meets all material request-for-proposals requirements as determined by the department.

[ 2009, c. 648, Pt. B, §2 (NEW) . ]

**6. Best-value award.** If the basis of the award is best value, then each proposal must be submitted by the proposer to the department in 2 separate components, a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously.

The department shall open first each technical proposal and evaluate and score it based on the quality criteria contained in the request for proposals. The request for proposals may provide that the range between the highest and lowest quality score of responsive technical proposals must be limited to an amount certain. During this evaluation process, the price proposals must remain sealed and all technical proposals are confidential.

After completion of the review for responsiveness, the department shall publicly open and read each price proposal associated with each responsive technical proposal. The department shall calculate the overall value rating for each proposal, which is the total price divided by the quality score. The department shall award the contract to the proposer with the lowest price per quality score point, if the proposal meets all material request-for-proposals requirements as determined by the department.

[ 2009, c. 648, Pt. B, §2 (NEW) . ]

**7. Procurement disputes.** The request for proposals must provide for resolution of disputes that may arise before award of the contract by including a dispute review board procedure in accordance with the department's standard specifications. Except in extraordinary circumstances as determined by the department, including emergency work or situations in which delay could result in the loss of funding, the request for proposals must include a provision that requires that the procurement process be suspended pending final resolution of such disputes. In cases involving such extraordinary circumstances when suspension of the procurement process does not occur, proposers that are not selected may seek monetary damages directly related to such nonselection.

[ 2009, c. 648, Pt. B, §2 (NEW) . ]

#### SECTION HISTORY

2009, c. 648, Pt. B, §2 (NEW) .

## Subchapter 5: PUBLIC-PRIVATE PARTNERSHIPS

### §4251. PUBLIC-PRIVATE PARTNERSHIPS; TRANSPORTATION PROJECTS

**1. Definitions.** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agreement" means a contract between the department and a private entity to create a public-private partnership that allows for private sector participation in the financing, development, operation, management, ownership, leasing or maintenance of a transportation facility and that sets forth rights and obligations of the department and the private entity in that partnership. [2009, c. 648, Pt. A, §1 (NEW).]

B. "Project" means the initial capital development of a transportation facility. [2009, c. 648, Pt. A, §1 (NEW).]

C. "Proposal" means a conditional offer of a private entity that, after review, negotiation, documentation and legislative approval, may lead to an agreement as provided in this subchapter. [2009, c. 648, Pt. A, §1 (NEW).]

D. "Transportation facility" means a facility that is or if developed would be within the jurisdiction of the department including a highway, bridge, railroad line, pier, airport, trail, ferry vessel, building or other improvement. [2009, c. 648, Pt. A, §1 (NEW).]

[2009, c. 648, Pt. A, §1 (NEW).]

**2. Applicability.** This subchapter applies to a proposal or agreement for a private entity to form a public-private partnership when the department estimates that the initial capital cost of a project is \$25,000,000 or more or when the proposal includes placing tolls on existing transportation facilities that were not previously subject to tolls. Nothing in this section is intended to prohibit or otherwise affect programs that do not meet the criteria of this subsection.

[2009, c. 648, Pt. A, §1 (NEW).]

**3. Authorization.** Notwithstanding any other provision of law, the department is authorized to receive or solicit proposals to form a public-private partnership with respect to a transportation facility. Proposals must be reviewed in accordance with this subchapter. Upon approval of the Legislature as provided in this subchapter, the department may enter into an agreement. All proposals must comply with section 73.

[2015, c. 263, §1 (AMD).]

**4. Standards for review.** Before submitting a proposal to the Legislature for approval the department must find that the proposal meets the following standards.

A. The purpose of and need for the transportation facility must be consistent with the long-term planning of the department. [2009, c. 648, Pt. A, §1 (NEW).]

B. The private entity must have the financial, technical and operational capacity to discharge the responsibilities set forth in the proposal cost-effectively and responsibly as determined by the department. This capacity must include, but is not limited to, meeting department prequalification standards for professional engineering services and general contracting. [2009, c. 648, Pt. A, §1 (NEW).]

C. The proposed transportation facility must be owned, controlled, operated and maintained in a manner satisfactory to the department. [2009, c. 648, Pt. A, §1 (NEW).]

D. The proposal must be cost-effective in the long term. [2009, c. 648, Pt. A, §1 (NEW).]

E. The proposal must limit the use of state capital funding to less than 50% of the initial capital cost of the transportation facility and to the extent practicable minimize the use of transportation funding sources such as the Highway Fund, general obligation bonds supported by the Highway Fund, the TransCap Trust Fund under Title 30-A, section 6006-G and program funding provided by the Federal Highway Administration. [2009, c. 648, Pt. A, §1 (NEW).]

F. If the proposed transportation facility is to be supported by tolls or other user fees, the private entity must provide a traffic and revenue study prepared by an expert acceptable to the department and national bond rating agencies. The private entity must also provide a finance plan consistent with the traffic and revenue study that identifies the proposal costs, revenues by source, financing, major assumptions, internal rate of return on private investments and whether any government funds are assumed to deliver a cost-feasible project and that provides a total cash flow analysis beginning with implementation of the project and extending for the term of the agreement. [2009, c. 648, Pt. A, §1 (NEW).]

G. The proposal must demonstrate safeguards adequate to ensure that no significant additional costs or service disruptions would be borne by the traveling public and residents of the State if the private entity defaults or cancels the agreement. [2009, c. 648, Pt. A, §1 (NEW).]

H. The proposal must include a provision that any contractor performing construction work required by the agreement must furnish performance and payment bonds or irrevocable letters of credit in an amount equal to the cost of the construction work. Any action on such a payment bond or irrevocable letter of credit is subject to the requirements of Title 14, section 871, subsection 4. [2009, c. 648, Pt. A, §1 (NEW).]

I. The proposal and the transportation facility must comply with all requirements of applicable federal, state and local laws and department rules, policies and procedures. [2009, c. 648, Pt. A, §1 (NEW).]

J. The proposal must identify the law enforcement jurisdictions and responsibilities relative to the transportation facility. [2009, c. 648, Pt. A, §1 (NEW).]

K. The proposal must provide that all reasonable costs of substantially affected local governments and utilities related to the transportation facility are borne by the private entity or are otherwise provided for to the satisfaction of the department. [2009, c. 648, Pt. A, §1 (NEW).]

L. [2013, c. 208, §1 (RP).]

[ 2013, c. 208, §1 (AMD) .]

**5. Proposal and selection processes; solicited and unsolicited.** The department may request proposals from private entities for a public-private partnership for a transportation facility or may accept unsolicited proposals pursuant to this subsection.

A. If the department receives an unsolicited proposal and determines that it meets the standards in this subchapter, the department shall publish a notice of the receipt of the proposal on the department's publicly accessible website or through advertisements in newspapers. If a notice is published exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed transportation facility is to be located if any such newspaper is circulated in that county. The notice must provide that the department will accept, for 120 days after the initial date of publication, proposals meeting the standards in subsection 4 from other private entities for transportation facilities that satisfy the same basic purpose and need. A copy of the notice must be mailed to each local government in the area affected by the proposal. [2009, c. 648, Pt. A, §1 (NEW).]

B. After the proposal or proposals have been received, and any public notification period has expired, the department shall rank the proposals in order of preference. In ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans and the need for state funds to deliver the project and discharge the agreement. The department shall undertake negotiations with the private entity submitting the 1st-ranked proposal. If the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations with that entity and the department may negotiate with the other entities in order of the ranking of their proposals. If only one proposal is received, the department shall negotiate in good faith and, if the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations. [2009, c. 648, Pt. A, §1 (NEW).]

C. The department may require that the private entity assume responsibility for all costs incurred by the State or local governments before execution of the agreement, including costs of retaining independent experts to review, analyze and advise the department with respect to the proposal. [2009, c. 648, Pt. A, §1 (NEW).]

[ 2009, c. 648, Pt. A, §1 (NEW) .]

**6. Tolls; fares.** An agreement may authorize the private entity to impose tolls or fares for the use of the transportation facility. The following provisions apply to such an agreement.

A. The agreement must be consistent with the traffic and revenue study required under subsection 4, paragraph F. [2009, c. 648, Pt. A, §1 (NEW).]

B. The agreement must ensure that the transportation facility and any related toll facility are properly operated and maintained in accordance with department standards or standards generally accepted in the transportation industry. [2009, c. 648, Pt. A, §1 (NEW).]

C. The agreement must include provisions governing changes in tolls or fares. [2009, c. 648, Pt. A, §1 (NEW).]

D. The department may require provisions in the agreement that ensure that a negotiated portion of revenues from a toll-generating or a fare-generating transportation facility is returned to the department over the life of the agreement. [2009, c. 648, Pt. A, §1 (NEW).]

[ 2009, c. 648, Pt. A, §1 (NEW) .]

**7. Exercise of powers.** If the department exercises its power of eminent domain for the development and construction of a transportation facility pursuant to this subchapter and section 73, the department must retain ownership rights and interests taken. The department's power of eminent domain may not be conferred on a private entity. The State may provide maintenance, law enforcement and other services with respect to a transportation facility owned by a private entity when the agreement provides for reasonable reimbursement for such services.

[ 2015, c. 263, §2 (AMD) .]

**8. Term of agreement.** An agreement may not exceed a term of 50 years unless the Legislature, upon the recommendation of the Commissioner of Transportation, approves a longer term.

[ 2009, c. 648, Pt. A, §1 (NEW) .]

**9. Legislative approval.** If the department determines that a public-private partnership proposal and draft agreement meets the standards of this subchapter, the department shall submit to the Legislature a bill that authorizes the agreement. The bill must include a statement that the proposal meets the standards in subsection 4, a summary of the substance of the draft agreement and a description of the nature and amount of state investment, if any, including effects on programmed capital work. If legislative approval is granted, the department shall report to the joint standing committee of the Legislature having jurisdiction over transportation matters by February 1st of each year as to the status of the project and any substantive changes to the public-private partnership proposal.

[ 2015, c. 263, §2 (AMD) .]

**10. Information in public record.** Except as provided in subsection 10-A, information obtained by the department under this subchapter is a public record pursuant to Title 1, chapter 13, subchapter 1.

[ 2013, c. 208, §2 (RPR) .]

**10-A. Confidential information.** Information submitted to the department relating to a public-private partnership proposal under this subchapter is confidential and not a public record under Title 1, chapter 13, subchapter 1 if the private entity submitting the information designates the information as being only for the confidential use of the department and if:

- A. The information is a trade secret as defined in Title 10, section 1542, subsection 4; or [ 2013, c. 208, §3 (NEW) .]
- B. Disclosure of the information would result in a business or competitive disadvantage, loss of business, invasion of privacy or other significant detriment to the private entity to whom the record belongs or pertains. [ 2013, c. 208, §3 (NEW) .]

If legal action is filed to gain access to the information designated as confidential under this subsection, the private entity must defend its designation and the department shall release the information in accordance with the order of the reviewing court. Failure to defend the designation under this subsection constitutes a waiver of confidentiality by the private entity and the department shall release the information.

[ 2013, c. 208, §3 (NEW) .]

**11. Report of proposals.** By February 1st, annually, the department shall provide to the joint standing committee of the Legislature having jurisdiction over transportation matters a report summarizing all proposals that the department has determined meet the standards of this subchapter or that have been finally rejected during the previous calendar year.

[ 2009, c. 648, Pt. A, §1 (NEW) .]

**12. Rules.** The department may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2009, c. 648, Pt. A, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 648, Pt. A, §1 (NEW). 2013, c. 208, §§1-3 (AMD). 2015, c. 263, §§1, 2 (AMD).

## Chapter 410-A: MAINE TRANSPORTATION CAPITAL IMPROVEMENT PLANNING COMMISSION

### §4261. COMMISSION

*(REPEALED)*

#### SECTION HISTORY

1987, c. 769, §A86 (NEW). 1989, c. 503, §B101 (AMD). 1993, c. 420, §2 (RP).

### §4262. COMPOSITION; APPOINTMENT; TERM

*(REPEALED)*

#### SECTION HISTORY

1987, c. 769, §A86 (NEW). 1993, c. 420, §2 (RP).

### §4263. ADMINISTRATIVE AUTHORITY

*(REPEALED)*

SECTION HISTORY

1987, c. 769, §A86 (NEW). 1993, c. 420, §2 (RP).

**§4264. DUTIES**

*(REPEALED)*

SECTION HISTORY

1987, c. 769, §A86 (NEW). 1993, c. 420, §2 (RP).

## Part 6: WATERBORNE TRANSPORTATION

### Chapter 411: MAINE STATE FERRY ADVISORY BOARD

#### §4301. BOARD ESTABLISHED

The Maine State Ferry Advisory Board, established by Title 5, section 12004-I, subsection 82, and in this section called "the board," shall be a board within the Department of Transportation. [1989, c. 503, Pt. B, §102 (AMD).]

##### SECTION HISTORY

1975, c. 580, §4 (NEW). 1983, c. 812, §145 (AMD). 1989, c. 503, §B102 (AMD).

#### §4302. MEMBERSHIP

The membership of the board consists of one person from each of the island municipalities and plantations serviced by the Maine State Ferry System and 3 members appointed by the Commissioner of Transportation. The members representing the island municipalities and plantations shall be appointed by the municipal officers of the member's municipality or by the assessors of the member's plantation and all members shall serve a term of office of 2 years. Each island municipality shall appoint one alternate member to the board. In the absence of the island's primary representative, its alternate may represent the island at all board meetings. Vacancies in membership must be filled in the same manner as the original appointment. [1997, c. 643, Pt. QQ, §2 (AMD).]

##### SECTION HISTORY

1975, c. 580, §4 (NEW). 1997, c. 643, §QQ2 (AMD).

#### §4303. MEETINGS

**1. Chairman; meetings.** The board shall annually elect a chairman from among its members, and the chairman shall serve a term of one year. The board shall meet at the call of the chairman, or at the call of at least 3 members of the board, and there shall be at least 3 meetings held a year.

[ 1975, c. 580, §4 (NEW) .]

**2. Transportation for meetings.** The Department of Transportation shall provide free transportation for board members on the Maine State Ferry Service on the days which the board holds its regular meetings. Such transportation shall be on a regularly scheduled trip, shall include both the automobile and one passenger, shall be round-trip between the mainland and the island of residence of the board member and shall include the reservation fee.

[ 1975, c. 580, §4 (NEW) .]

##### SECTION HISTORY

1975, c. 580, §4 (NEW).

### §4304. DUTIES

The board shall advise the Department of Transportation on matters relating to the Maine State Ferry Service and shall submit to the Commissioner of Transportation an annual report which shall include recommendations for change to the Maine State Ferry Service and comments upon the present and future needs of that service. Written reports and comments shall be available to the public. [1975, c. 580, §4 (NEW).]

The board, in consultation with the Commissioner of Transportation, shall name ferry terminals and ferries constructed for and maintained by the Department of Transportation to operate as part of the Maine Ferry Service. [1985, c. 253, (NEW).]

#### SECTION HISTORY

1975, c. 580, §4 (NEW). 1985, c. 253, (AMD).

### §4305. STAFF SUPPORT

The Department of Transportation shall supply reasonable staff support requested by the board. [1975, c. 580, §4 (NEW).]

#### SECTION HISTORY

1975, c. 580, §4 (NEW).

## Chapter 412: WATERBORNE TRANSPORTATION

### Subchapter 1: FERRIES

### §4401. FERRY SERVICE FOR NORTH HAVEN, VINALHAVEN, ISLESBORO, MATINICUS ISLE, SWAN'S ISLAND AND FRENCHBORO

It is the duty of the Department of Transportation to operate a ferry route or routes between the mainland and the towns of North Haven, Vinalhaven, Islesboro, Matinicus Isle and Swan's Island for the purpose of transporting vehicles, freight and passengers to and from these towns, and the department may operate the ferry route or routes to and from Frenchboro. Ferry service to Matinicus Isle must be at least 12 times per year and may be up to 36 times per year and may be provided by state-owned or privately contracted vessels. These ferry routes are designated as the "Maine State Ferry Service." During periods of facility repair or maintenance or during periods of extraordinary demand, the department may carry out its responsibilities by utilizing privately contracted vessels to provide additional or substitute service to islands served by the Maine State Ferry Service as long as the use of privately contracted vessels is in accordance with an agreement between the department and the State's collective bargaining agent as defined in Title 26, section 979-A, subsection 1. [1999, c. 20, §1 (AMD).]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW). 1989, c. 544, §1 (AMD). 1997, c. 612, §1 (AMD). 1999, c. 20, §1 (AMD).

### §4402. CHARTER SERVICE

The Department of Transportation may operate a special charter service to Hurricane Island in Knox County, or to ports added or to be added by legislative enactment. The operation of this charter service shall not interfere nor curtail in any way the schedule of the Maine State Ferry Service to ports named in this section or to ports added or to be added by legislative enactment. [1987, c. 402, Pt. A, §148 (AMD).]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW). 1987, c. 402, §A148 (AMD).

### §4403. FERRY SERVICE BETWEEN MAINLAND AND ISLANDS IN CASCO BAY

Whenever it is determined by the Public Utilities Commission that ferry transportation for persons and property between the mainland and the islands in Casco Bay located within the limits of the City of Portland and the Town of Cumberland can no longer feasibly be provided by private operators at rates established by the Public Utilities Commission, the Department of Transportation shall take such means as necessary to provide the service, either through contract with private operators or by acquiring and operating the necessary facilities as provided in this section. [1981, c. 456, Pt. A, §88 (NEW).]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW).

### §4404. TOLLS

The Department of Transportation shall, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, establish tolls for the use of such ferry line or lines by vehicles, freight and passengers. Tolls collected from the operation of the Maine State Ferry Service shall at all times be kept in a separate fund distinct from all other moneys of the State and shall be used for the operation and debt retirement of the ferry service. [1981, c. 456, Pt. A, §88 (NEW).]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW).

### §4405. STUDENT RATES

The Department of Transportation shall grant to the towns of North Haven, Vinalhaven, Isleboro, Swan's Island and Frenchboro free use of the scheduled ferry service for: [2005, c. 9, §1 (AMD).]

**1. School functions.** Students and their adult supervisors using the ferry for transportation as part of a school function or school sponsored activity. Students are classified as children attending nursery schools or day care centers, children attending public or private schools approved by the State to educate students from grades kindergarten to grade 12, or any one or several of those grades;

[ 1981, c. 456, Pt. A, §88 (NEW) .]

**2. Accompanying staff.** The superintendent of schools, principal or staff members accompanying students as a part of a school function or school sponsored activity; and

[ 1981, c. 456, Pt. A, §88 (NEW) .]

**3. Inter-school trips.** Trips made by students from the mainland schools for the purpose of visiting the schools of the towns mentioned in this section.

[ 1981, c. 456, Pt. A, §88 (NEW) .]

All vehicles used to transport students, as the term students is defined in this section, are subject to applicable tariff charges, [1981, c. 456, Pt. A, §88 (NEW).]

The department may develop rules and regulations pertaining to the administration of this section. [1981, c. 456, Pt. A, §88 (NEW).]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW). 2005, c. 9, §1 (AMD).

## §4406. RADAR REQUIREMENTS ON VESSELS OPERATING IN CASCO BAY

**1. Radar device required.** Every person, firm or corporation engaged in the transport of 6 or more passengers by vessel, for compensation, between or among the islands of Casco Bay and the mainland, shall provide an operable radar device on each vessel operated by the person or corporation which carries 6 or more passengers and shall provide a person qualified to operate the radar device in accordance with all federal regulations relating to the operation of federally licensed passenger carrying vessels.

[ 1987, c. 475, §1 (NEW) . ]

**2. Standards; promulgation; enforcement; penalty.** The Department of Transportation shall adopt rules relating to the use and installation of radar devices in the vessels referred to in subsection 1. These rules must include, but not be limited to, the specification of standards for the radar devices to be carried by the vessels and the qualifications of those persons responsible for the proper operation of the radar devices. Until those rules are adopted, the rules previously adopted by the Public Utilities Commission remain in effect.

[ 1989, c. 866, Pt. B, §2 (AMD); 1989, c. 866, Pt. B, §26 (AFF) . ]

### SECTION HISTORY

1987, c. 475, §1 (NEW). 1989, c. 866, §§B2,26 (AMD).

## §4407. FREE NONEMERGENCY TRANSPORTATION SERVICES FOR CATASTROPHIC MEDICAL REASONS

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Catastrophic illness" means an unforeseen, prolonged and extended illness or medical condition, the medical and associated travel expenses of which are not covered by any other state or federal program or any insurance contract. [ 2005, c. 472, §1 (NEW) . ]

B. "Free transportation services" means round-trip transportation without charge from an island served by the Maine State Ferry Service to the mainland and back on scheduled trips of vessels of the Maine State Ferry Service for one eligible resident and one personal vehicle to transport the eligible resident to a scheduled medical appointment. "Free transportation services" includes transportation for one adult attendant to accompany an eligible resident to a scheduled medical appointment. [ 2005, c. 472, §1 (NEW) . ]

C. "Medically necessary" means prescribed by a physician and reasonably necessary to treat a catastrophic illness. [ 2005, c. 472, §1 (NEW) . ]

D. "Unforeseen, prolonged and extended illness or medical condition" means a severe illness or medical condition of a life-threatening nature, the treatment of which is expected to require a series of procedures or therapeutic interventions at regular intervals extending over a period of months, including, but not limited to, cancer requiring chemotherapy or radiation treatments or kidney disease requiring dialysis treatments. [ 2005, c. 472, §1 (NEW) . ]

[ 2005, c. 472, §1 (NEW) . ]

**2. Eligibility.** Residents of the island communities served by the Maine State Ferry Service are eligible for free transportation services when traveling to and from regularly scheduled, medically necessary appointments with medical care providers if those appointments pertain to a catastrophic illness. Free transportation services under this section are not available for routine visits to medical care providers or to

meet transportation needs arising from an emergency, medical or otherwise. Free transportation services under this section are available only upon approved application. Reimbursement of expenses incurred prior to application for services pursuant to this section is prohibited.

[ 2005, c. 472, §1 (NEW) .]

**3. Rulemaking authorized.** The Maine State Ferry Service may, pursuant to the Maine Administrative Procedure Act, adopt rules necessary to interpret and administer this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The ferry service also may develop, adopt, use and from time to time amend forms for use in connection with the administration of this section. The development, adoption, use and amendment of these forms is exempt from the rule-making process.

[ 2005, c. 472, §1 (NEW) .]

#### SECTION HISTORY

2005, c. 472, §1 (NEW) .

## Subchapter 2: MAINE PORT AUTHORITY

### §4420. PURPOSE

The Maine Port Authority, as established by Title 5, section 12004-F, subsection 8, is a body both corporate and politic in the State established for the general purpose of acquiring, financing, constructing and operating any kind of port terminal facility and railroad facility within the State with all the rights, privileges and power necessary. Oil pipelines and other oil off-loading facilities are limited to sites in Portland and Searsport harbors. [1999, c. 753, §4 (AMD).]

It is declared that the purposes of this chapter are public and that the authority is performing a governmental function in carrying out this chapter. [1997, c. 395, Pt. J, §1 (NEW).]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW). 1983, c. 812, §146 (AMD). 1989, c. 503, §B103 (AMD). 1993, c. 649, §J1 (AMD). 1997, c. 395, §J1 (AMD). 1997, c. 643, §AA1 (AMD). 1999, c. 753, §4 (AMD).

### §4421. DIRECTORS; APPOINTMENT; PRESIDENT; VACANCY

The Maine Port Authority consists of a board of directors, referred to in this section as "the board." The board consists of 7 directors who must be broadly representative of the State and must have a background in international trade, marine transportation, finance or economic development. Five directors are appointed by the Governor, each to serve for 4 years. The Commissioner of Transportation serves as an ex officio member of the board and as chair of the board and president. The president of the Maine International Trade Center serves as an ex officio member of the board. The directors shall elect a vice-chair, treasurer and other officers as the board determines necessary. A vacancy must be filled for an unexpired term by the Governor. [2007, c. 134, §4 (RPR).]

**1. Meetings of directors; compensation.** All the powers of the Maine Port Authority may be exercised by the board in lawful meeting and a majority of the directors is necessary for a quorum. Regular meetings of the board may be established by bylaw, and notice need not be given to the directors of a regular meeting. Each director, other than those who serve ex officio, is entitled to compensation in the amount of \$100 per board meeting plus expenses, but only if the compensation is provided solely from the revenues of the Maine Port Authority.

[ 2007, c. 134, §4 (RPR) .]

**2. Actions at law or in equity.** Actions at law or in equity in the courts of this State or before the Public Utilities Commission or Workers' Compensation Board may be brought by or against the Maine Port Authority as if it were a private corporation, except that its property may not be attached, trusteeed or sequestered, but, if a judgment recovered against it is not paid within 30 days, its personal property may be seized on execution.

[ 2007, c. 134, §4 (RPR) .]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW). 1983, c. 812, §147 (AMD). 2007, c. 134, §4 (RPR).

## §4422. AGREEMENTS

The Maine Port Authority and the Department of Transportation may enter into such agreements as the directors and commissioner determine to be in the best interests of the State for the department to acquire, construct, maintain and operate any or all facilities funded from bonds issued under section 4423. The department may not operate a railroad that is constructed or acquired under this chapter. Any agreements must set forth the terms and conditions of the operation and be subject to all the terms and conditions of any trust indenture and covenants relating to revenue bonds. The Maine Port Authority or the department may establish, own, operate and maintain such navigational aids in coastal waters adjacent to the shores and harbors of the State as the directors or commissioner determine essential for safety. Any such navigational aids must conform to and be consistent with any and all federal regulation. [1993, c. 649, Pt. J, §2 (AMD) .]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW). 1993, c. 649, §J2 (AMD).

## §4423. BONDS

**1. Authorization.** The Maine Port Authority may provide by resolution from time to time for the issuance of bonds for the purpose of funding the establishment, acquisition or effectuation of port terminal facilities, railroad facilities and things incidental thereto, for construction of proposed facilities and improvement of existing or acquired facilities and for the fulfillment of other undertakings that it may assume. The bonds of the Maine Port Authority do not constitute a debt of the State, or of any agency or political subdivision thereof, but are payable solely from the revenue of the authority, and neither the faith nor credit nor taxing power of the State, or any political subdivision thereof, is pledged to payment of the bonds. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this subchapter are fully negotiable. In case any director whose signature appears on the bond or coupons ceases to be a director before the delivery of those bonds, that signature is valid and sufficient for all purposes as if that director had remained a director until delivery.

[ 1993, c. 649, Pt. J, §3 (AMD) .]

**2. Resolution; prospective issues.** The authority may by resolution authorizing prospective issues provide:

A. The manner of executing the bonds and coupons; [1981, c. 456, Pt. A, §88 (NEW) .]

B. The form and denomination thereof; [1981, c. 456, Pt. A, §88 (NEW) .]

C. Maturity dates; [1981, c. 456, Pt. A, §88 (NEW) .]

D. Interest rates thereon; [1981, c. 456, Pt. A, §88 (NEW) .]

E. For redemption prior to maturity and the premium payable therefor; [1981, c. 456, Pt. A, §88 (NEW) .]

F. The place or places for the payment of interest and principal; [1981, c. 456, Pt. A, §88 (NEW).]

G. For registration if the authority deems it to be desirable; [1981, c. 456, Pt. A, §88 (NEW).]

H. For the pledge of all or any of the revenue for securing payment; [1981, c. 456, Pt. A, §88 (NEW).]

I. For the replacement of lost, destroyed or mutilated bonds; [1981, c. 456, Pt. A, §88 (NEW).]

J. For the setting aside of reserve and sinking funds and the regulations and disposition thereof; [1981, c. 456, Pt. A, §88 (NEW).]

K. For limitation on the issuance of additional bonds; [1981, c. 456, Pt. A, §88 (NEW).]

L. For the procedure, if any, by which the contract with the bondholder may be abrogated or amended; [1981, c. 456, Pt. A, §88 (NEW).]

M. For the manner of sale and purchase thereof; [1981, c. 456, Pt. A, §88 (NEW).]

N. For covenants against pledging of any of the revenue of the Maine Port Authority; [1981, c. 456, Pt. A, §88 (NEW).]

O. For covenants fixing and establishing rates and charges for use of its facilities and services made available so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance, meet and pay the principal and interest of all bonds as they severally become due and payable; for the creating of such revenues for the principal and interest of all bonds and for the meeting of contingencies and the operation and maintenance of its facilities as the directors determine; [1981, c. 456, Pt. A, §88 (NEW).]

P. For such other covenants as to rates and charges as the directors determine; [1981, c. 456, Pt. A, §88 (NEW).]

Q. For covenants as to the rights, liability, powers and duties arising upon the breach by the Maine Port Authority of any covenant, condition or obligation; [1981, c. 456, Pt. A, §88 (NEW).]

R. For covenants as to the bonds to be issued, as to the issuance of those bonds in escrow and otherwise and as to the use and disposition of the proceeds; [1981, c. 456, Pt. A, §88 (NEW).]

S. For covenants as to the use of its facilities and their maintenance and replacement, and the insurance to be carried on them, and the use and disposition of insurance money; [1981, c. 456, Pt. A, §88 (NEW).]

T. For the issuance of such bonds in series; [1981, c. 456, Pt. A, §88 (NEW).]

U. For the performance of any and all acts as may be in the discretion of the directors necessary, convenient or desirable to secure the bonds, or will tend to make the bonds more marketable; and [1981, c. 456, Pt. A, §88 (NEW).]

V. To issue bonds on terms and conditions so as to effectuate the purpose of this subchapter. [1981, c. 456, Pt. A, §88 (NEW).]

[ 1981, c. 456, Pt. A, §88 (NEW) .]

**3. Money received.** All money received from any bonds issued must be applied solely for the establishment, acquisition or effectuation of port terminal facilities, railroad facilities and things incidental thereto, for the construction of proposed facilities, improvement of existing or acquired facilities and the fulfillment of other undertakings that are within the power of the authority. There is created a lien upon the money until so applied in favor of the bondholders or any trustee as may be provided in respect of the bonds.

[ 1993, c. 649, Pt. J, §3 (AMD) .]

**4. Trust indenture.** In the discretion of the directors, the bonds may be secured by a trust indenture by and between the Maine Port Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company, located either within or outside the State. Such a trust indenture may pledge or assign the revenues of the Maine Port Authority or any part of it. Any indenture may set forth the rights and remedies of the bondholders and the trustee, and may restrict the individual right of action of bondholders, and may contain such other provisions as the directors may deem reasonable and proper for the security of bondholders. Expenses incurred in carrying out any trust indenture may be treated as a part of maintenance.

[ 1981, c. 456, Pt. A, §88 (NEW) .]

**5. Rights of bondholders.** Provisions may be made for protecting and enforcing the rights and remedies of the bondholders, including covenants as to acquisition of property, construction, maintenance, operation and repair, insurance and the custody, security and application of all moneys.

[ 1981, c. 456, Pt. A, §88 (NEW) .]

**6. Depositories.** Any trust company or bank having the powers of a trust company and located either within or outside the State may act as depositories of the proceeds of the bonds and revenue and may furnish such indemnity or pledge such securities as may be required by the Maine Port Authority.

[ 1981, c. 456, Pt. A, §88 (NEW) .]

**7. Tax free.** The purposes of this subchapter being public and for the benefit of the people of the State, the Maine Port Authority bonds shall at all times be free from taxation by the State.

[ 1981, c. 456, Pt. A, §88 (NEW) .]

**8. Revenue refunding bonds.** The Maine Port Authority may issue revenue refunding bonds for the purpose of refunding the revenue bonds issued under this subchapter. The issuance of any refunding bonds shall be the same as provided for in this subchapter relating to revenue bonds.

[ 1981, c. 456, Pt. A, §88 (NEW) .]

**9. Default.** In the event of default on the bonds and in the event the default continues for a period of 3 months, action may be brought to enforce the rights of the bondholders by insuring that the operation by the directors be in conformity with the covenants of the bonds or indenture.

[ 1981, c. 456, Pt. A, §88 (NEW) .]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW). 1993, c. 649, §J3 (AMD).

## §4424. PROPERTY OF THE STATE

All real and personal property owned by and in the name of the Maine Port Authority shall be considered as property of the State and entitled to the privileges and exemptions of property of the State, except insofar as waived by the duly authorized contract, or other written instrument of the Maine Port Authority or by this subchapter. The Maine Port Authority and the Department of Transportation shall agree upon and from time to time review the preferred status of property held or controlled by them and necessary to either body's performing its statutory duty and shall arrange to sell, exchange, give or otherwise transfer title or possession of various properties between themselves consistent with sound business management and as may serve the best interest of the State in their opinion; and shall be authorized to execute and record a deed or lease

between them to effectuate the transfer. The Governor may grant to the Maine Port Authority such rights in submerged land owned by the State and located within harbor limits as may be necessary for the Maine Port Authority to fulfill its powers, duties and obligations. [1981, c. 456, Pt. A, §88 (NEW).]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW).

### §4425. ACQUISITION OF LAND

Land required for improvement to existing facilities or construction of new facilities undertaken by the Maine Port Authority or in cooperation with the Department of Transportation may be acquired for these purposes in the same manner as provided in chapter 3, subchapter III. [1993, c. 649, Pt. J, §4 (AMD).]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW). 1993, c. 649, §J4 (AMD).

### §4426. CONFLICT OF INTEREST

No member, officer or employee of the Maine Port Authority may acquire any interest, direct or indirect, in any contract or proposed contract of the authority nor may any member, officer or employee participate in any decision on any contract entered into by the authority if he has any interest, direct or indirect, in any firm, partnership, corporation or association which will be party to such contract or financially involved in any transaction with the authority, except this prohibition shall not be applicable to the acquisition of any interest in notes or bonds of the authority issued in connection with any contracts or agreements of the authority or to the execution of agreements by banking institutions for the deposit or handling of authority funds in connection with any contract or to act as trustee under any trust indenture or to utility services, the rates for which are fixed or controlled by a governmental agency. [1981, c. 456, Pt. A, §88 (NEW).]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW).

### §4427. ENVIRONMENTAL LAWS

Facilities acquired, constructed, operated or maintained under this subchapter, and land upon which the facilities are located is subject to such of the environmental laws of the State as would be applicable to private enterprise were the facilities owned or operated by the private sector and further providing that the Department of Transportation and the Maine Port Authority, its successors or assigns, are subject to Title 38, chapter 3, subchapter II-A. [1981, c. 456, Pt. A, §88 (NEW).]

#### SECTION HISTORY

1981, c. 456, §A88 (NEW).

### §4428. STATEWIDE TRANSPORTATION INFRASTRUCTURE STRATEGY

Notwithstanding any other provision of this subchapter, funds repaid to the Maine Port Authority as a result of state investments or loans for the redevelopment of Mack Point must be used by the Maine Port Authority, in cooperation with the Department of Transportation, to undertake projects that link the State's ports and rail systems with the transportation infrastructure throughout the State. [1997, c. 643, Pt. AA, §2 (NEW).]

#### SECTION HISTORY

1997, c. 643, §AA2 (NEW).

## §4429. MARKETING PROGRAM

The Maine Port Terminal Facilities Marketing Program is established to encourage and promote business opportunities for Eastport's port terminal facility. The Maine Port Authority shall develop and implement the marketing program. The authority may enter into agreements or cooperative arrangements with any person or entity for the purpose of increasing the use of Eastport's port terminal facility. The authority may receive, administer and disburse funds, either independently or in conjunction with state funds allocated for the purpose, provided that funds so contributed must be used only for the purpose of marketing and economic development programs. [2001, c. 439, Pt. LLLL, §1 (NEW).]

### SECTION HISTORY

2001, c. 439, §LLLL1 (NEW).

## §4430. EMPLOYEES

**1. Employees.** The board of directors of the Maine Port Authority may hire employees as the board considers necessary to fulfill its purposes. The board may also contract for the services of assistants, attorneys, experts, inspectors and consultants as the board considers necessary or desirable for its purposes.

[ 2007, c. 134, §5 (NEW) .]

**2. Retirement.** Employees of the Maine Port Authority are subject to the state retirement system provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter 2.

The retirement accounts of state employees transferred to the authority in its capacity as an independent agency must remain in the state regular plan. New employees of the authority shall also become members of the Maine State Retirement System under the state regular plan. The authority shall make employer retirement plan contributions at the state regular plan rate. Employee retirement plan contributions are at the state regular plan rate.

Authority employees are entitled to receive the same retirement health benefits as state employees.

[ 2007, c. 134, §5 (NEW) .]

**3. Fringe benefits.** The accrued fringe benefits of state employees transferred to the Maine Port Authority in its capacity as an independent agency, including vacation and sick leave, health and life insurance and retirement, remain with the transferred employee.

[ 2007, c. 134, §5 (NEW) .]

### SECTION HISTORY

2007, c. 134, §5 (NEW).

## Chapter 413: MAINE TRANSPORTATION CAPITAL IMPROVEMENT PLANNING COMMISSION

## §4501. COMMISSION

*(REPEALED)*

### SECTION HISTORY

1987, c. 542, §§G2,G3 (NEW). 1987, c. 769, §A87 (RP).

## **§4502. COMPOSITION; APPOINTMENT; TERM**

*(REPEALED)*

### SECTION HISTORY

1987, c. 542, §§G2,G3 (NEW). 1987, c. 769, §A87 (RP).

## **§4503. ADMINISTRATIVE AUTHORITY**

*(REPEALED)*

### SECTION HISTORY

1987, c. 542, §§G2,G3 (NEW). 1987, c. 769, §A87 (RP).

## **§4504. DUTIES**

*(REPEALED)*

### SECTION HISTORY

1987, c. 542, §§G2,G3 (NEW). 1987, c. 769, §A87 (RP).

## Part 7: RAILROADS

### Chapter 601: DEFINITIONS AND MISCELLANEOUS

#### §5001. DEFINITIONS

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 141, Pt. A, §4 (NEW).]

**1. Railroad.** "Railroad" includes every commercial, interurban and other railway and each and every branch and extension thereof by whatsoever power operated, together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures and equipment and all other real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property.

[ 1987, c. 141, Pt. A, §4 (NEW) .]

**1-A. Off-system railroad.** "Off-system railroad" includes any railroad not connected to the national rail system and not regulated by the Federal Railroad Administration or its successors.

[ 1993, c. 67, §1 (NEW) .]

**2. Railroad company.** "Railroad company" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any railroad for compensation within this State.

[ 1987, c. 141, Pt. A, §4 (NEW) .]

**3. Steam railroad or steam railroad company.** "Steam railroad" or "steam railroad company" means any railroad or terminal company, however chartered, using steam as its motive power or using Diesel engines; and the term "electric railroad" or "electric railroad company" means any railroad or terminal company using electricity as its motive power.

[ 1987, c. 141, Pt. A, §4 (NEW) .]

**4. Transportation of persons.** "Transportation of persons" includes every service in connection with or incidental to the safety, comfort and convenience of the person transported and the receipt, carriage and delivery for that person and his baggage.

[ 1987, c. 141, Pt. A, §4 (NEW) .]

**5. Transportation of property.** "Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage and handling, and the transmission of credit by express or telegraph companies.

[ 1987, c. 141, Pt. A, §4 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW). 1993, c. 67, §1 (AMD).

## §5002. LIABILITY OF RAILROADS FOR PAYMENT OF LABORERS

Every railroad company, in making contracts for the building of its road, shall require sufficient security from the contractors for the payment of all labor thereafter performed in constructing the road by persons in their employment. The company is liable to the laborers employed for labor actually performed on the road if they, within 20 days after the completion of the labor, in writing, notify its treasurer that they have not been paid by the contractors, but the liability terminates unless the laborer commences an action against the company within 6 months after giving the notice. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §5003. COLLECTION OF JUDGMENT AGAINST FOREIGN LESSEE

When any foreign railroad company, which is or has been doing business in this State as the lessee of any railroad, refuses or neglects for 60 days after demand to pay and discharge any judgment recovered by any person against the company owning that leased road for damages to the property of the person by the doings, misdoings or neglects of the foreign company, its agents or servants, which judgment belongs to the foreign company to pay and discharge, the Superior Court, on complaint, may compel payment thereof by the foreign corporation and make, pass and enforce all necessary orders, decrees and processes for the purpose. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §5004. JUDGMENT CREDITOR MAY HAVE REMEDY AGAINST LESSORS

When any judgment is recovered and the foreign company neglects, for 60 days, to satisfy it, the judgment creditor may have a civil action against the foreign company for the recovery of the amount of the judgment, with interest and costs. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §5005. POWERS AND DUTIES OF THE COMMISSIONER OF TRANSPORTATION RELATED TO RAILROAD SAFETY OF OFF-SYSTEM RAILROADS

The commissioner shall formulate and adopt reasonable rules for safe and healthful operation of off-system railroads operating for the transportation of persons or goods. The rules formulated must conform as far as practicable to nationally recognized standards for the safe operation of railroads. These rules may not become effective sooner than 90 days after the date of their adoption. [1993, c. 67, §2 (NEW).]

### SECTION HISTORY

1993, c. 67, §2 (NEW).

## Chapter 603: ORGANIZATION

## §5071. APPROVAL OF LOCATION; PROCEEDINGS

Every corporation organized under this Title, former Title 13-A, Title 13-C or former Title 35, before commencing the construction of its road, shall present to the Department of Transportation a petition for approval of location, defining its courses, distances and boundaries accompanied with a map of the proposed route; with a profile of the line on the relative scales of profile paper in common use; and with a report

and estimate prepared by a skillful engineer from actual survey. The department shall, on presentation of that petition, appoint a day for hearing and the petitioners shall give such notice as the department deems reasonable and proper, in order that all persons interested may have an opportunity to appear and object. If the department, after hearing the petition, approves the proposed location, the corporation may proceed with the construction, provided they first file with the clerk of the county commissioners of each county through which the road passes a plan of the location of the road, defining its courses, distances and boundaries, and a copy of the plan with the department. The location filed may not vary, except to avoid expense of construction, from the route first presented to the department. The location, together with any variation made in that location, must be filed within 2 years from the time when the articles of incorporation are filed in the office of the Secretary of State. The Department of Transportation, upon written application, may extend the time of filing the variations in its discretion. No railroad may be made across tide waters where vessels can navigate without first obtaining special permission of the Legislature. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §40 (COR).]

To carry out its directive to ensure the development and maintenance of safe, efficient and reliable rail transportation, the Department of Transportation may locate and construct railroad lines. The department shall give notice of the location of each such railroad line by publishing a description of the location in a newspaper of general circulation in each county through which the line passes. Before commencing construction, the department shall set a day and time for hearing so that all interested persons have an opportunity to appear. If the department, after hearing, determines to proceed with the construction of the railroad line, the department shall file with the registry of deeds of each affected county a plan of the location of the line defining its course, distance and boundaries. This plan must be kept on file and available to the public at the department's office in Augusta. For the purpose of locating and constructing railroad lines, the department may acquire all necessary property interests through purchase, lease, or condemnation pursuant to section 154. [2001, c. 74, §1 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B40 (COR). 2001, c. 74, §1 (AMD).

### **§5072. LOCATION; SUBSCRIBERS' OBJECTIONS; PROCEEDINGS**

The railroad shall be located within the time and substantially according to the description of its charter and the location shall be filed with the county commissioners, who shall endorse the time of filing thereon and order that location recorded. When a corporation, by its first location, fails to acquire the land actually embraced in its roadway, or the location as recorded is defective or uncertain, it may, at any time, correct and perfect its location and file a new description. In that case, it is liable in damages, by reason of the new or amended location, only for land embraced therein for which the owner had not previously been paid. Railroad charters, whenever granted, limiting the time within which the railroad must be completed do not affect the portion completed within that time and all charters under which railroads have been constructed for a portion of the line authorized are confirmed and made valid as to that portion. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## **Chapter 605: MANAGEMENT AND OPERATION**

### **Subchapter 1: FARES AND TOLLS**

## §5121. FARES AND TOLLS ESTABLISHED

Any railroad corporation may establish and collect for its sole benefit, fares, tolls and charges upon all passengers and property conveyed and transported on its railroad, at such rates as may be determined by the directors of the railroad corporation and shall have a lien on its freight therefor, and may from time to time regulate by its directors the use of its road. The rates of fares, tolls, charges and regulations are at all times subject to alteration by the Legislature or by such officers or persons as the Legislature may appoint for the purpose, anything in the charter of the corporation to the contrary notwithstanding. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §5122. RIGHTS OF TICKET HOLDERS

No railroad company may limit the right of a ticket holder to any given train, but the ticket holder may travel on any train, whether regular or express, and may stop at any of the stations along the line of the road at which the trains stop. The ticket shall be good for passage for one year from the day it was first issued. Railroad companies may sell excursion, return or other special tickets at less than the regular rates of fare, to be used only as provided on the ticket. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §5123. RAILROAD TICKETS; CANCELLATION AND EXCHANGE

Section 5122 shall not prevent railroad corporations from establishing necessary rules and regulations for the cancellation of tickets and exchange of partially used tickets, but the rules and regulations shall be publicly posted at each ticket office and on all passenger trains and, when practicable, printed upon the tickets. Any ticket or check given in exchange for the unused portion of a partially used ticket continues in force for the full term of the original ticket, as provided in section 5122. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §5124. SALE OF LIMITED TICKETS

No person, other than a duly authorized agent of the railroad company issuing a railroad ticket, may sell, offer for sale or loan any railroad ticket limited to the use of a person or persons specified on the ticket at the time of its issuance by the railroad company, under a penalty of not less than \$10 nor more than \$100, for each offense, to be recovered on complaint. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §5125. EVADING PAYMENT OF FARE OR RIDING FREIGHT TRAIN

No person is entitled to transportation over a steam railroad or upon any ferry or in a taxicab or public automobile, who does not on demand first pay the established fare. Whoever, while being transported over any steam railroad, ferry or in a taxicab or public automobile, willfully refuses on demand to pay the established fare and whoever fraudulently evades payment of the established fare by giving a false answer, by traveling beyond the place to which the person has paid or by leaving a train, ferry, taxicab or public automobile without paying the established fare, whether that fare is demanded or not, forfeits not less than \$5 nor more than \$20, to be recovered on complaint. No person, without right, may loiter or remain or place or

cause to be placed any property or obstruction on the right-of-way of a railroad corporation or on land owned by a railroad corporation adjoining or adjacent to its right-of-way or, without right, may board or attempt to board or remain on any railroad freight train, freight car, caboose, locomotive or work equipment. Any person violating this portion of this section is guilty of a Class E crime. [2013, c. 2, §35 (COR).]

SECTION HISTORY

1987, c. 141, §A4 (NEW). RR 2013, c. 2, §35 (COR).

## Subchapter 2: SERVICES

### **§5141. INTERSECTING ROADS**

Railroads intersecting or crossing each other shall be deemed, for all business purposes, connecting roads. [1987, c. 141, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5142. TRAINS CROSSING AT SAME HOUR; EXCHANGE OF BAGGAGE**

When railroads cross each other and passenger trains are due at the crossing at the same hour, the train first arriving shall wait for the arrival of the other, if it comes within 20 minutes. Each shall afford suitable opportunity for passengers desiring to change with their baggage from one train to the other. The superintendent, conductor and engineer of the road violating this provision forfeits to the State for each offense not less than \$10 nor more than \$50, to be recovered on complaint. [1987, c. 141, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5143. EQUAL FACILITIES TO ALL EXPRESSES**

Every railroad operating in the State shall furnish reasonable and equal facilities and accommodations to all persons engaged in express business for transportation of themselves, agents, servants, merchandise and other property; for the use of their stations, buildings and grounds; and for exchanges at points of junction with other roads, under a penalty of not more than \$500, to be recovered by indictment and are liable to the aggrieved party in a civil action for damages. [1987, c. 141, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5144. DISCONTINUANCE OF SERVICE**

No railroad or railroad company may discontinue service to any point served prior to January 1, 1982, unless the railroad or railway company has filed with the Department of Transportation and with any municipality affected by the discontinuance of service and, in the case where service is discontinued solely to one shipper, with that shipper, a written notice of intention to discontinue that service. The written notice shall be given at least 30 days prior to discontinuing the service. This section does not apply to any railroad corporation engaged in interstate commerce while and so long as that corporation is required by federal law to make application to and procure consent from the Interstate Commerce Commission as a condition precedent to any such abandonment of property or discontinuance of service as is contemplated in this section. [1987, c. 141, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 141, §A4 (NEW).

### Subchapter 3: SHARES, COUPONS AND MORTGAGES

#### **§5151. SHARES**

Shares in the capital of railroad corporations are personal estate and may be transferred in the same manner and with the same rights as shares in other corporations are transferred. [1987, c. 141, Pt. A, §4 (NEW).]

##### SECTION HISTORY

1987, c. 141, §A4 (NEW).

#### **§5152. RIGHTS OF COUPON HOLDERS**

When coupons for interest issued with bonds are, for a valuable consideration, detached and assigned by delivery, the assignee may maintain a civil action upon them in his own name against the corporation engaging to pay them. [1987, c. 141, Pt. A, §4 (NEW).]

##### SECTION HISTORY

1987, c. 141, §A4 (NEW).

#### **§5153. TRUSTEES; VACANCIES; ELECTIONS AFFIRMED; DECREES ENFORCED**

When a railroad corporation mortgages its franchise for the payment of its bonds or coupons and trustees are appointed by the corporation, by special law or by the mortgage, the bondholders, at a regular meeting called for the purpose and notified as provided may, from time to time, elect by ballot new trustees to fill vacancies, when no other method for filling vacancies is specifically provided in the appointment, special law or mortgage. Any party interested may present the proceedings of the meeting to the Superior Court. The court shall appoint a time of hearing and order such notice to parties interested as it deems proper, and may affirm the elections and make and enforce any decrees necessary for the transfer of the trust property to the new trustees. The decrees shall be filed with the clerk of the judicial court where the hearing is had and be recorded by him. [1987, c. 141, Pt. A, §4 (NEW).]

##### SECTION HISTORY

1987, c. 141, §A4 (NEW).

#### **§5154. BREACH OF MORTGAGE; MEETING OF BONDHOLDERS**

The neglect of the corporation to pay any overdue bonds or coupons secured by a mortgage, for 90 days after presentment and demand on the treasurer or president of the corporation, is a breach of the conditions of the mortgage. Upon such a breach, the trustees shall call a meeting of the bondholders, by publishing the time and place of the meeting for 3 weeks successively in the state paper and in some paper in the county where the road lies, the last publication to be at least one week before the time of the meeting. [1987, c. 141, Pt. A, §4 (NEW).]

##### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5155. ONE VOTE FOR EVERY \$100 OF BONDS**

At such a meeting and all others, each bondholder present shall have one vote for each \$100 of bonds held by him or represented by proxy. They may organize by the choice of a moderator and clerk and determine whether the trustees shall take possession of the road and manage and operate it in their behalf. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5156. TRUSTEES TAKING POSSESSION HAVE CORPORATE POWERS**

If the bondholders so determine, the trustees shall take possession of the road and all other property covered by the mortgage and have all the rights and powers and be subject to all the obligations of the directors and corporation of the road and may prosecute and defend suits in their own name as trustees. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5157. RECEIPTS AND EXPENDITURES; TRUSTEES NOT LIABLE; ROAD SURRENDERED**

The trustees shall keep an accurate account of the receipts and expenditures of the road and exhibit it, on request, to any officer of the corporation or other person interested. They shall, from the receipts, keep the road, buildings and equipment in repair, furnish such new rolling stock as is necessary and the balance, after paying running expenses, shall be applied to the payment of any damages arising from misfeasance in the management of the road and after that, according to the rights of parties under the mortgage. They are not personally liable except for malfeasance or fraud. When all overdue bonds and coupons secured by the mortgage are paid, they shall surrender the road and other property to the parties entitled to them. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5158. BONDHOLDERS' MEETINGS; REPORTS; COMPENSATION AND INSTRUCTIONS FOR TRUSTEES**

The trustees shall annually, and at other times on written request of 1/5 of the bondholders in amount, call a meeting of the bondholders in the manner prescribed in the bylaws of the corporation for calling a meeting of stockholders and report to them the state of the property, the receipts, expenses and the application of the funds. At the meeting, the bondholders may fix the compensation of the trustees; instruct them to contract with the directors of the corporation or other competent party to operate the road while the trustees have the right of possession, if approved by the bondholders at a regular meeting, otherwise not exceeding 2 years and to pay them the net earnings; or may give them any other instruction that they deem advisable; and the trustees shall conform thereto, unless inconsistent with the terms of the trust. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## Subchapter 4: FORECLOSURE AND REDEMPTION OF MORTGAGES

## §5161. RAILROAD MORTGAGES FORECLOSED

The trustees, on application of 1/3 of the bondholders in amount to have railroad mortgage foreclosed, shall immediately give notice thereof, by publishing it 3 weeks successively in the state paper and in some paper, if any, in each county into which the road extends, stating the date and conditions of the mortgage, the claims of the applicants under it, that the conditions of the mortgage have been broken and that for that reason they claim a foreclosure. They shall cause a copy of the notice and the name and date of each newspaper containing it to be recorded in the registry of deeds in every such county within 60 days from the first publication. Unless, within 3 years from the first publication, the mortgage is redeemed by the mortgagors or those claiming under them or equitable relief as in cases of the redemption of mortgage lands is sought, founded on payment or a legal tender of the amount of overdue bonds and coupons or containing an averment that the complainants are ready and willing to redeem on the rendering of an account, the right of redemption shall be forever foreclosed. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §5162. OVERDUE BONDS AND COUPONS FOR RECORD

Each holder of overdue bonds or coupons shall present them to the trustees at least 30 days before the right of redemption expires, to be recorded by them. That right is not lost by the nonpayment of any claims not so presented. The parties having the right to redeem shall have free access to the record of the claims. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §5163. SECURED CREDITORS BECOME CORPORATION AND TRUSTEES SHALL CONVEY TO IT

The foreclosure of the mortgage shall inure to the benefit of all the holders of bonds, coupons and other claims secured thereby. They, their successors and assigns are constituted a corporation as of the date of the foreclosure, for all the purposes and with all the rights and powers, duties and obligations of the original corporation by its charter. The trustees shall convey to that new corporation by deeds all the right, title and interest which they had by the mortgage and the foreclosure, and thereupon they shall be discharged. If they neglect or refuse so to convey, the court, on application for equitable relief, may compel them to do so. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §5164. FIRST MEETING OF NEW CORPORATION; NAME; POSSESSION AND USE OF MORTGAGED PROPERTY

The new corporation may call its first meeting in the manner provided for calling the first meeting of the original corporation, and may use for that purpose the old name, or by a notice, signed by one or more of the bondholders, setting forth the time, place and purpose of the meeting, a copy of which is to be published in a newspaper in the county, if any, otherwise in the state paper, 7 days before the meeting. At that meeting, it may adopt a new name by which it shall be known. It may take and hold the possession and have the use of the mortgaged property, although an action for equitable relief to redeem is pending, and it may become a party defendant to the action. This section applies to all corporations mentioned in section 5185. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5165. VOTE TO REDEEM PRIOR MORTGAGE AND ASSESSMENTS**

If any part of the property or franchise is subject to a prior mortgage, the new corporation, at a legal meeting called for that purpose, may vote to redeem the property or franchise and make an assessment on all holders of stock, certificates for fractions of stock, bonds or coupons in the corporation in proportion to their amounts. The directors shall immediately assess the sum and fix a time and place for the payment of it to the treasurer, who shall publish notice accordingly 6 weeks successively in some newspaper, if any, in each of the counties where the road extends, the last publication to be at least 2 weeks before the time fixed for payment. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5166. SALE OF STOCK FOR NONPAYMENT; RIGHTS OF DELINQUENT STOCKHOLDERS**

If any person fails to pay his assessment within the time fixed, the treasurer shall sell enough of his stock at auction to pay the same, with 12% interest and the cost of advertising and selling, by first publishing notice of the sale 3 weeks successively in a newspaper printed in the county where the sale is to be, if any, and if not, in an adjoining county. Upon sale the president and treasurer shall issue a new certificate of stock to the purchaser and the delinquent stockholder shall surrender his certificate to be canceled and may have a new one for his unsold shares. If he held bonds, coupons or certificates for fractions of stock, he shall not be entitled to commute them or to receive any dividends on them until he has paid his assessment, with 12% interest. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5167. APPLICATION OF FUNDS**

The directors shall apply the money realized from the assessments solely to the redemption of the prior mortgage until it is fully paid and then all the property, rights and interests secured by the mortgage vest in the new corporation. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5168. REDEMPTION OF PRIOR MORTGAGES BY JUNIOR MORTGAGES**

When a subsequent mortgage of a railroad, its franchise or any part of its other property contains no provision for a sale, or contains a conditional provision depending on the application of a majority in amount of the claims secured thereby and no such application has been made to the trustees, the holder of the mortgage may redeem a prior mortgage on the same property which is under process of foreclosure at any time before it becomes absolute and hold it in trust for those who contributed thereto in proportion to the amount paid by each. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5169. MEETING REGARDING REDEMPTION OF PRIOR MORTGAGES; CONTRIBUTION**

For such a purpose, the trustees of the subsequent mortgage, on application of one or more persons interested in the mortgage, made 6 months prior to the absolute foreclosure of the prior mortgage and on payment of reasonable expenses to be incurred thereby, shall call a meeting of all interested and publish a

notice of the meeting, stating the time, place and purpose, 3 weeks successively in the state paper and such other papers as they think proper. If at that meeting, or one called by the trustees without application, the holders of a majority of the interests there represented vote to redeem the prior mortgage, each one may contribute his proportion to the redemption. The trustees shall give immediate notice of the vote by publishing it as above and shall in the notice state the time and place of payment and the amount to be paid on each \$100 as nearly as may be. If anyone fails to pay his proportion, any other person interested in the subsequent mortgage may pay it and succeed to all his rights except as otherwise provided. [1987, c. 141, Pt. A, §4 (NEW).]

## SECTION HISTORY

1987, c. 141, §A4 (NEW).

**§5170. ANYONE INTERESTED IN SUBSEQUENT MORTGAGE MAY REDEEM**

If no meeting is called or it is voted not to redeem, one or more of the persons interested in the subsequent mortgage may pay to the trustees the amount required to redeem the prior mortgage, and the trustees shall redeem it accordingly and then hold it in trust for the person so paying. [1987, c. 141, Pt. A, §4 (NEW).]

## SECTION HISTORY

1987, c. 141, §A4 (NEW).

**§5171. DELINQUENTS PAY PROPORTION AND RIGHTS RESTORED; NEW CORPORATION**

When a prior mortgage has been redeemed in either mode, and all persons interested in the subsequent mortgage have not paid their proportions, the trustees shall publish a notice 10 weeks successively in the state paper, the first publication not to be until the right of redeeming the prior mortgage would have expired, that delinquents may pay the same to them or their agents, with 12% interest, within one year from the first publication of the notice. Any person so paying has the same rights as if he had paid originally and those not paying are barred. Money so paid shall be divided ratably to those who advanced the redemption money and they may become a new corporation and new certificates of stock or fractions of stock may be issued in the manner and with the rights, powers and obligations provided. [1987, c. 141, Pt. A, §4 (NEW).]

## SECTION HISTORY

1987, c. 141, §A4 (NEW).

**§5172. REDEMPTION BY STOCKHOLDERS OF OLD CORPORATION**

When a prior mortgage is redeemed, any number of the stockholders of the old corporation may redeem it within 2 years thereafter by paying to the trustees of the subsequent mortgage the amount paid, with 10% interest, and the amount secured by the subsequent mortgage due to those who had contributed to redeem the prior mortgage, after deducting the net earnings of the road or adding the net deficiencies, if operated by the trustees of the subsequent mortgage. The stockholders may demand of the trustees an accurate account of the receipts and expenditures and amount due on the mortgage and have the same remedies for a failure as in case of mortgages of real estate. After the redemption, the redeeming stockholders have all the rights of those from whom they redeemed. [1987, c. 141, Pt. A, §4 (NEW).]

## SECTION HISTORY

1987, c. 141, §A4 (NEW).

**§5173. NONCONTRIBUTORS; NOTICE; RIGHTS**

The stockholders, redeeming, shall give notice to the stockholders who have not contributed to the redemption and the latter shall have the same rights as provided in the case of bondholders. [1987, c. 141, Pt. A, §4 (NEW).]

## SECTION HISTORY

1987, c. 141, §A4 (NEW).

**§5174. EXTENSION OF REDEMPTION TIME AFTER FORECLOSURE COMMENCED**

The persons interested in a prior mortgage on which a foreclosure is commenced, at a meeting called for the purpose, may extend the time of redemption. Thereupon the trustees of the mortgage, by a suitable writing, delivered to the party entitled to redeem, shall extend the time accordingly. [1987, c. 141, Pt. A, §4 (NEW).]

## SECTION HISTORY

1987, c. 141, §A4 (NEW).

**Subchapter 5: RIGHTS OF PURCHASERS UNDER SALE****§5181. PURCHASERS AT SALE HAVE RIGHTS OF ORIGINAL CORPORATION; REDEMPTION**

When the franchise of a railroad and its road, wholly or partly constructed, or the right of redeeming the same from a mortgage, are sold by a decree of court by a power of sale in a mortgage, or on execution, the purchasers have all the rights, powers and obligations of the corporation under its charter and may form a new corporation in the manner provided. If the original corporation or those claiming under it have a right to redeem, they may do so in the manner provided for the redemption of mortgaged real estate, but shall pay, in addition to the amount of the sale and interest, the reasonable expenditures made by the new corporation in completing, repairing and equipping the road, and in the purchase of necessary property, after deducting the net earnings. [1987, c. 141, Pt. A, §4 (NEW).]

## SECTION HISTORY

1987, c. 141, §A4 (NEW).

**§5182. SUCCESSION TO RIGHTS AND OBLIGATIONS OF ORIGINAL CORPORATION**

The trustees of bondholders or other parties under contract with them operating a railroad and all corporations formed in the modes provided have the same rights, powers and obligations as the old corporation had by its charter and the general laws. All rights and privileges are subject to amendment, alteration or repeal by the Legislature and to all the general laws concerning railroads, notwithstanding anything to the contrary in the original charter. [1987, c. 141, Pt. A, §4 (NEW).]

## SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5183. ORIGINAL CORPORATION CONTINUES, TO CLOSE BUSINESS, AND FOR ACTIONS**

The original corporation shall exist, after the foreclosure of the mortgage, for the sole purpose of closing its unsettled business and the right of action against it or its stockholders is not impaired. In actions founded on any of the bonds or coupons secured by the mortgage, the proportional actual value of the property taken under the mortgage shall be deducted. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5184. COURTS HAVE JURISDICTION OF ALL DISPUTES**

The Supreme Judicial Court and the Superior Court, in addition to the jurisdiction specifically conferred by this chapter, have jurisdiction of all other matters in dispute, arising under this chapter relating to trustees, mortgages and the redemption and foreclosure of mortgages; but not to take away any rights or remedies that any party has and may elect to enforce by any civil action. In all proceedings relating to trustees or to mortgages, their foreclosure and redemption, not otherwise specifically provided for, the law relating to trusts and mortgages of real estate may be applied. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5185. APPLICATION OF PROVISIONS TO MORTGAGES OF CORPORATIONS GIVEN TO TRUSTEES, AS IF LEGALLY FORECLOSED**

This subchapter and subchapters III and IV apply to and include all mortgages of franchises, lands, property, hereditaments and rights of property of every kind whatever, whether previously given or to be given by any corporation to trustees, to secure the payment of scrip or bonds of the corporation, in all cases in which the principal of the scrip or bonds has been due and payable for more than 3 years, and remains unpaid in whole or in part, or on which no interest has been paid for more than 3 years, in the same way and to the same extent as if the mortgage had been legally foreclosed, subject to all rights of redemption, as provided in section 5165. The holders of the scrip or bonds shall have the benefit of this subchapter and subchapters III and IV and all the rights and powers of the corporation under its charter and may form a new corporation in the manner provided in this chapter whenever the holders of the scrip or bonds to an amount exceeding 1/2 of the same so elect in writing. Any subsequent foreclosure, in any method provided by law, of the mortgage given to secure the bonds or scrip, shall inure at once for the benefit of the corporation and vest in the corporation the title acquired by the foreclosure. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5186. HOLDERS OF UNPAID SCRIP AND BONDS MAY FORECLOSE MORTGAGES**

A corporation formed by the holders of the scrip or bonds, or if no such corporation has been formed, the holders of not less than a majority of the scrip or bonds, may commence a civil action to foreclose the mortgage and the court may decree a foreclosure thereof, unless the arrears are paid within such time as the court orders. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5187. CAPITAL STOCK OF NEW CORPORATION; VALUE OF SHARES; NO FURTHER ASSESSMENT**

The capital stock of the new corporation shall be equal to the amount of unpaid bonds and overdue coupons secured by the mortgage, taken at their face value at the time of the organization of the new corporation, together with the amount required to redeem any prior mortgage and shall be divided into shares of \$100 each. All stock issued shall be taken and considered as paid for in full and shall not be liable to further assessment. No person, taking or holding the stock, may by reason of the taking or holding be liable for the debts of the corporation. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5188. ORGANIZATION CERTIFICATE FILED WITH SECRETARY OF STATE**

Whenever a corporation is organized under section 5163, 5181 or 5185, or under any other law by which a return is not specifically required, the corporation shall file with the Secretary of State a certificate signed and sworn to by the president, treasurer and a majority of the directors of that corporation, setting forth the name of the corporation and all facts as to that organization which are necessary to give full information in relation to that organization. The organization of that corporation shall date from, and it shall have the authority and rights of a corporation, only after filing the certificate. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5189. NEW CORPORATION MAY BUY RIGHT OF REDEMPTION**

Any corporation formed under this chapter by the holders of railroad bonds may acquire, by purchase, the right of redemption under the mortgage securing the bonds. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§5190. WHEN FRANCHISE LOST; ACTION FOR DISSOLUTION**

Whenever any railroad corporation, by foreclosure of a mortgage or in any other method authorized by law, has finally parted with its franchise to construct, operate and maintain the railroad described in its charter, any stockholder may maintain a civil action in the Superior Court for the winding up of the affairs and dissolution of that corporation. In such case the court shall order such notice to all parties interested as it may deem proper and proceed according to the usual course of civil actions. No trustee may be appointed, except upon motion of some party to the proceedings and then only in the discretion of the court. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## **Chapter 607: REAL ESTATE**

## §6001. LAND BOUGHT OR TAKEN

A railroad corporation, for the location, construction, repair and convenient use of its road, may purchase or take and hold, as for public uses, land and all materials in and upon it. Through woodland and forest the land so taken shall not exceed 6 rods in width unless necessary for excavation, embankment or materials and through all land other than woodland and forest, the land so taken shall not exceed 4 rods in width unless necessary for excavation, embankment or materials. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6002. LAND FOR IMPROVEMENTS; PROCEEDINGS

Any railroad corporation may purchase or take and hold, as for public uses, additional land or rights in land, at any time required for improving the alignment or grades of its road, for double tracking its road, for protecting the tracks against erosion of adjoining or adjacent land or against the action of the elements, or reasonably necessary in the enhancement of public safety at dangerous curves or crossings; and land or rights therein, for borrow, ballast and gravel pits, necessary tracks, side-tracks, spur tracks, freight or passenger yards, stations, station grounds, approaches to stations and station grounds and to other facilities furnished by the railroad for public use, coal sheds, woodsheds, water tanks, repair shops, car, engine, freight and section houses, section dwelling houses and storage warehouses, or other structures, which the Department of Transportation, after hearing, finds to be reasonably required in the safe, economical and efficient operation of the railroad and in rendering of adequate service to the public. If the owner or owners of that land do not consent, if the parties do not agree as to the necessity for the taking or as to the area to be taken or if the parties are unable to agree as to the fair value of the land, the corporation may make written application to the Department of Transportation requesting its approval of the taking by the railroad corporation for any such public uses, describing the land and appurtenances and naming the persons interested. The department shall then appoint a time for a hearing near the premises and require notice to be given to the persons interested, as they may direct, at least 14 days before that time. The department shall then view the premises; hear the parties; determine how much, if any, of the real estate should be taken for the reasonable accommodation of the traffic, the safe operation of the railroad and the appropriate business of the corporation; and enter an order containing a definite description of the real estate and furnish the corporation with a true copy of the order. When a certified copy of the order is filed with the registry of deeds in the county where the land lies, the land shall be deemed and treated as taken. When land is held by a tenant for life and the reversion is contingent as to the persons in whom it may vest on the termination of the life estate, that fact shall be stated in the application and the department shall, in addition to the notice to the tenant for life, give notice by publication to all others interested, in such manner as it deems proper. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6003. CHANGE IN LOCATION

Any railroad corporation may make any changes in the location of its road which it deems necessary or expedient and the changes shall be recorded where the original location was required by law to be recorded. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§6004. LAND TAKEN FOR CHANGE**

Any railroad corporation may purchase, or take and hold as for public uses, land and materials necessary for making any changes authorized by section 6003, in the manner authorized by its charter or the general provisions of law and may cross highways and town ways in accordance with the law regulating those crossings. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§6005. LIMITATION OF RIGHT TO ENTER OR TAKE LAND**

The land taken shall not be entered upon, except to make surveys, before the location has been filed and the damages estimated and secured as provided. No railroad corporation may take, without consent of the owners, meetinghouses, dwelling houses or public or private burying grounds. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§6006. BRANCH TRACKS**

Any railroad corporation may locate, construct and maintain branch railroad tracks to any railroad station of another corporation or to connect with another railroad or to any mills, mines, quarries, gravel pits, log landing or yard, warehouses and storehouses, airports, piers, docks, shipyards, educational institutions or manufacturing establishments erected, or in process of erection, in any town or township through which the main line of that railroad is constructed, but not within any city without the consent of the city government and for that purpose the corporation shall have all the powers and rights granted and be subject to all the duties imposed upon it by its charter. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§6007. ESTIMATE OF DAMAGES; GUARDIAN; SECURITY FOR COSTS**

For real estate taken pursuant to section 6002, the owners are entitled to damages to be paid by the corporation. The corporation shall attempt to settle the amount of damages, with the consent of the owners, within 60 days from the date of the taking. If all parties do not agree on the amount of damages, they shall be estimated by the county commissioners on written application by either party. The county commissioners shall estimate the damages within one year of the date application is made. When no estimate is made within that time, the owner may maintain a civil action or have any remedy provided. The guardian of a person incapable of giving a valid conveyance whose land is taken may settle and give a valid release for damages. Persons having any interest in that land have the rights and remedies of owners to the extent of their interest. When requested by the owner, the commissioners shall require the corporation to give security for the payment of damages and costs by depositing, at its risk, with the clerk, specie, notes or obligations of a state or public corporation or other security satisfactory to the party requiring it. When entitled to it, so much of any specie so deposited shall be paid to him as will satisfy his judgment. Notes or obligations so deposited shall be delivered to the officer having a warrant of distress, to be by him sold as personal property is sold on execution, to satisfy the warrant and fees and any balance shall be paid to the treasurer of the corporation. When it neglects for more than 30 days to give the security required, the owner is entitled to the remedies by injunction. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6008. PETITIONS FOR ASSESSMENT OF DAMAGES

In all cases of petition to the commissioners of any county praying for the assessment of damages on account of any railroad corporation having taken lands in the county, the notice to the adverse party of the time and place of the hearing shall be a personal notice of 14 days or by publication of the petition and order of notice on the petition in some newspaper published in said county, 2 weeks successively, the last publication to be 14 days before the hearing. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6009. CATTLE GUARDS AND PASSES; DOUBLE DAMAGES

The county commissioners shall order the corporation to make and maintain such cattle guards, cattle passes and farm crossings as they think reasonable and prescribe the time and manner of making them and consider this work in awarding pecuniary damages. If the corporation after 48 hours' notice in writing to its president or superintendent neglects to commence the work or complete it within a reasonable time, the owner may apply to the Superior Court and the court, after due notice to the corporation, shall issue all necessary processes to enforce the specific performance of the orders or restrain it by injunction or the party interested may recover, in a civil action, double the damage that he has sustained by the neglect. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6010. AWARD OF DAMAGES; TERMS AND CONDITIONS

The county commissioners in awarding damages for land or other property taken by any railroad company may, on the application of the railroad company, prescribe such terms and conditions, in all respects, for the use of the land or property taken, by the owners of the land or property and the railroad company respectively, as will secure the best accommodation of the owners and the proper and convenient use of the land or property by the railroad company. In case of appeal by either party, the only question in issue shall be the amount or measure of damages on the terms and conditions imposed by the commissioners. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6011. COMMISSIONERS' REPORT OF DAMAGES AND RIGHTS OF PARTIES; NOTICE

The county commissioners shall at a regular session make a report of their general estimate of damages, stating specifically the terms and conditions imposed by them, the rights and obligations of each party and the elements of damage as provided for land taken for highway purposes under section 154, subsections 2, 3 and 4, and cause it to be recorded. Their clerk shall then make out a notice to each person, stating the amount of damages awarded to him and the elements of damage, which shall be served by an officer on those resident in the State and upon others, if any, by a publication 3 weeks successively in a newspaper printed in the county, if any or, if not, in the state paper. The expense of notices shall be added to the costs of the proceedings and paid accordingly. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6012. APPEALS; NOTICE AND PROCEEDINGS

Any person, aggrieved by the decision or judgment of the county commissioners in relation to damages for land taken for railroad purposes, may appeal to the Superior Court to be held in the county where the land is situated, within 30 days after the report of the commissioners is made, which court shall determine the damages by a committee of reference if the parties so agree or by a verdict of its jury and shall render judgment and issue execution for the damages recovered, with costs to the party prevailing in the appeal. No committee or jury shall alter the requirements in the report of the commissioners. The appellants shall, when the appeal is taken, include in the complaint a statement setting forth substantially the facts of the case and shall give written notice of appeal with a copy of the complaint to the opposite party. An appeal may be taken to the Law Court as in other actions. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6013. DEPOSIT OF DAMAGES, INTEREST AND COSTS

When the proceedings are closed, the corporation may deposit with the clerk the amount of damages, with interest from the time when the estimation was recorded, and legal costs, in full satisfaction therefor, unless a demand had been previously made and payment neglected. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6014. WHEN DAMAGES NOT PAID

When the damages remain unpaid for more than 30 days after they are due and demanded, equitable relief may be requested by the person entitled to them, praying for an injunction against the use or occupation of his land taken. If proceedings for an estimation of damages are not commenced within 3 years and the owner of the land requests equitable relief, the court may estimate the damages, decree their payment and issue an execution. The court, after summary notice to the corporation and upon proof of the facts may, without any bond filed, issue an injunction prohibiting the use and occupation until all damages and costs are paid. If payment has not been made within 90 days, a permanent injunction may be issued; and all rights acquired by taking the land and all rights of property in and to whatever has been placed upon it cease and the owner may maintain an action for its recovery and protection. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6015. SERVICE OF PROCESS AND NOTICE

Service of process and notice may be made as process is served in other actions. Service of an injunction issued against any person, whether a party to the action or not, may be made upon him and he shall be liable to all the penalties and consequences provided for a breach of it. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6016. BREACH OF INJUNCTION

The court may order persons violating the injunction, after service or using the land, to show cause at a time fixed, why a decree should not be entered and execution issued against them individually and their goods and estate, for the damages, interest, costs and for additional damages and costs for breach of the injunction. Upon service and return of the order, the court may enter such decree as is just and equitable against those persons and issue execution accordingly or may proceed against them as for breach of injunction in other civil actions. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6017. STATION GROUNDS NOT TO BE TAKEN BY ANOTHER COMPANY

No railroad corporation may take the grounds occupied by any other railroad company and necessary for its use for station purposes, without its consent. When application is made to take those grounds, the Department of Transportation, upon notice and hearing, shall determine whether the land proposed to be taken is necessary or not and whether any public necessity requires it to be taken. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6018. USE OF PASSENGER STATIONS

Whenever any railroad passenger station is erected or maintained in any city or town in this State, any railroad corporation having or using a track or passenger station within that city or town may run its passenger trains to and from the station, over any railroad track or tracks leading to the station, and use the same for the purpose of delivering and receiving through passengers, under such reasonable terms and regulations and over such tracks as may be agreed upon by the owner of the station, the railroad whose tracks are used in running to and from the same and the railroad corporation so desiring its use for that purpose and, in case of disagreement, upon petition, notice and hearing, the Department of Transportation shall fix and determine those terms, tracks and rules. No corporation which denies, in any proceedings, the authority of the Department of Transportation to proceed and make the determination, or which refuses to abide by its decision rendered in the proceedings, may avail itself of this section. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §6019. LOITERING ABOUT OR SOLICITING PASSENGERS

**1. Loitering prohibited.** A person may not loiter or remain, without right, within any car or station house of a railroad corporation or upon the platform or grounds adjoining that station after being requested to leave by a railroad officer.

[ 2003, c. 452, Pt. L, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2. Soliciting passengers prohibited.** A person may not solicit passengers, in competition with a railroad corporation, in a station or on the station grounds or wharves of the railroad corporation without a written permit signed by an officer of the corporation authorized to issue the permit.

[ 2003, c. 452, Pt. L, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**3. Penalties.** A person who violates this section commits a civil violation for which a fine of not more than \$100 may be adjudged.

[ 2003, c. 452, Pt. L, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1987, c. 141, §A4 (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §L10 (RPR).

### §6020. LAW POSTED

The officers of all railroad corporations shall cause a copy of section 6019 to be posted in a conspicuous place at the several stations along the line of their roads. [1987, c. 141, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 141, §A4 (NEW).

### §6021. FENCES; LIABILITY FOR INJURIES

Where a railroad passes through enclosed or improved land, or woodlots belonging to a farm, legal and sufficient fences shall be made on each side of the land taken therefor, before the construction of the road is commenced, and the fences shall be maintained and kept in good repair by the corporation. For any neglect of that duty during the construction of the road, and for injuries thereby occasioned by its servants, agents or contractors, the directors are jointly and severally personally liable. For any subsequent neglect, the corporation shall be fined a sum sufficient to make or repair the fence, to be recovered by indictment and expended by an agent appointed by the court. [1987, c. 141, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 141, §A4 (NEW).

### §6022. LINE FENCES BUILT ON NOTICE OF ABUTTER

The owner of any enclosed or improved land or woodlot belonging to a farm abutting upon any railroad, which is finished and in operation, may at any time between the 20th day of April and the end of October give written notice to the president, treasurer or any of the directors of the corporation owning, controlling or operating that railroad that the line fence against his land has not been built, or if built, that the fence is defective and needs repair. If the corporation neglects to build or repair the fence for 30 days after receiving notice, it forfeits to the owner \$100, to be recovered in a civil action. [1987, c. 141, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 141, §A4 (NEW).

### §6023. INJURING FENCES; TURNING ANIMALS INTO RAILROAD ENCLOSURE

**1. Injuring fence.** A person may not take down or intentionally injure a fence erected to protect the line of a railroad.

[ 2003, c. 452, Pt. L, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2. Turning animals into railroad enclosure.** A person may not turn a horse, cattle or other animal upon or within the enclosure of a railroad.

[ 2003, c. 452, Pt. L, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**3. Penalty.** A person who violates this section commits a Class E crime. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[ 2003, c. 452, Pt. L, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW). 1991, c. 797, §7 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §L11 (RPR).

### §6024. COMPANY LIABLE FOR TRESPASSES ON ADJOINING LAND

The corporation is liable for trespasses and injuries to lands and buildings adjoining or in the vicinity of its road committed by a person in its employment or occasioned by its order, if the party injured within 60 days after the injured gives notice to the corporation; but its liability does not extend to acts of willful and malicious trespass. The person committing a trespass is also liable. [1987, c. 141, Pt. A, §4 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### §6025. NO TITLE TO LANDS OF RAILROADS BY ADVERSE POSSESSION

No title to any real estate or any interest in real estate may be acquired against any railroad corporation by adverse possession, however exclusive or long continued. [1987, c. 141, Pt. A, §4 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## Chapter 609: MAINE STATE RAILROAD POLICE ACT

### §6071. SHORT TITLE

This chapter shall be known and may be cited as the "Maine State Railroad Police Act." [1987, c. 141, Pt. A, §4 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### §6072. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 141, Pt. A, §4 (NEW) .]

**1. Qualified person.** "Qualified person" means a person who:

A. Has met all the education and training requirements as outlined under former Title 25, section 2805, first paragraph or Title 25, section 2804-B or 2804-C; [2009, c. 317, Pt. B, §1 (AMD) .]

A-1. Continues to meet all the in-service training requirements pursuant to Title 25, section 2804-E; and [2003, c. 199, §1 (NEW) .]

B. Is of good moral character and has no record of conviction of a serious crime. [1987, c. 141, Pt. A, §4 (NEW) .]

The qualification requirements of paragraph A do not apply to any individual who was employed on a full-time basis by a railroad as a police officer on October 24, 1977.

[ 2009, c. 317, Pt. B, §1 (AMD) .]

**2. Railroad; railroads; railway company.** "Railroad," "Railroads" or "railway company" or any combination of those terms means a corporation engaged as a common carrier in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Interstate Commerce Commission.

[ 1987, c. 141, Pt. A, §4 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW). 2003, c. 199, §1 (AMD). 2009, c. 317, Pt. B, §1 (AMD).

### §6073. APPOINTMENT

The Commissioner of Public Safety may commission and rescind the commissions of all railroad police officers in the State. The commissioner may commission and rescind the commissions of railroad police officers recommended and appointed by the chief police officer, or in his absence the chief operating officer of any railroad located wholly or partially within the State. Railroad police officers shall be qualified persons as defined in section 6072, subsection 1, and are subject to the existing rules of the commissioner. Nothing contained in this Act may relieve any railroad from any civil liability for acts of a policeman in exercising or attempting to exercise the powers conferred by this Act. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### §6074. OATH OF OFFICE

Each policeman so appointed and commissioned shall, before entering upon the duties of his office, take an oath of office administered by the Commissioner of Public Safety. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### §6075. POWERS

Each policeman may, in all cases in which the rights of the appointing railroad are involved, exercise within this State all powers, including the powers of arrest and the carrying of firearms, for the reasonable purpose of his office. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### §6076. DISPOSITION OF PERSONS ARRESTED

The keepers of jails, lockups and station houses in any county, city or town, shall receive all persons arrested by railroad police for the commission of any offense against the laws of this State, or the ordinances of any city or town, to be dealt with according to law and persons arrested shall be received by keepers of jails, lockups or station houses and those persons have the same status as other persons arrested by any other police or peace officer of this State. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### §6077. CARRYING OF SHIELD

Each policeman so appointed and commissioned shall, when on duty, carry a shield or star with the words "Police," "Railroad Police" or "Railway Police" and the name of the appointing railroad inscribed on the shield. The shield or star shall be of uniform design. This shield or star shall be worn in plain view when in uniform. The policeman shall also carry, when on duty, an identification card issued by the appointing railroad. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### §6078. COMPENSATION AND TRAINING

The railroad to which each railroad police officer is assigned shall be responsible for the compensation and financial cost of training of railroad police officers. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### §6079. RECIPROCITY

In order to more effectively carry out the purposes of this Act, the Governor of this State, referred to as the empowering State, may enter into a reciprocal agreement with the governor of any other state, referred to as the reciprocal state, subject to any regulations prescribed under that agreement, empowering a railroad policeman with the right to perform any police function that can be lawfully exercised by a police officer of the reciprocal state relating to the detection and apprehension of any person committing an offense or offenses against the empowering or the reciprocal state, but only to the extent that the offense is, or offenses are, committed on property owned, operated or maintained by the appointing railroad or committed against property owned or in the possession of that railroad. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### §6080. TERMINATION OF AUTHORITY

Upon termination of employment of any railroad policeman, the powers of that policeman shall cease and terminate. Within 10 days after the termination, the appointing railroad shall, through its designated chief police officer or, in the absence of a chief police officer, its chief operating officer, file a notice of termination of employment of that individual with the Commissioner of Public Safety. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## Chapter 611: SAFETY PROVISIONS

### §7001. BRAKEMEN

No train of passenger cars, moved by steam, may be run without one trusty and skillful brakeman to every 2 cars. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§7002. DANGER SIGNALS, WHERE DISCONNECTED CARS LEFT ON TRACK; PENALTY**

No car disconnected from a train may be left or permitted to remain standing on the main track of any railroad, unless accompanied by danger signals, such as flagging by day and lanterns by night, placed at such distances from the obstruction on the main line of the road as will insure safety to and from moving trains. The signals shall be in the charge of and constantly attended by employees of the corporation owning or operating the road. [1987, c. 141, Pt. A, §4 (NEW).]

A railroad corporation violating any provision of this section forfeits for each offense, \$100 to the State, to be recovered in a civil action or by complaint and indictment; and the Attorney General shall prosecute for that violation. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§7003. RAILROAD LIABLE FOR DAMAGES FROM LOCOMOTIVE FIRE; ENTITLED TO BENEFIT OF ANY INSURANCE**

When a building or other property is injured by fire communicated by a locomotive engine, the corporation using it is responsible for that injury and it has an insurable interest in the property along the route for which it is responsible, and may procure insurance on that property. The corporation shall be entitled to the benefit of any insurance upon such property effected by the owner of the property less the premium and expense of recovery. The insurance shall be deducted from the damages, if recovered before the damages are assessed or, if not, the policy shall be assigned to the corporation which may maintain an action on the policy, or prosecute, at its own expense, any action already commenced by the insured, in either case with all the rights which the insured originally had. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§7004. INTOXICATION OF RAILROAD EMPLOYEES ON DUTY**

Whoever, having charge of a locomotive engine or acting as conductor, brakeman, motorman or switchman, is intoxicated while employed on a railroad shall be punished by a fine of not more than \$100 or by imprisonment for not more than 6 months. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§7005. NEGLIGENCE OF EMPLOYEES**

Any person employed in conducting trains, who is guilty of negligence or carelessness causing an injury, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months; but the corporation employing him is not thereby exempt from responsibility. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §7006. NO LIABILITY FOR DEATH OF PERSON WALKING ON ROAD

No railroad corporation is liable for the death of a person walking or being on its road contrary to law or to its valid rules. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §7007. PENALTY FOR BEING ON TRACK OR BRIDGE OR ENTERING TRACK WITH TEAM OR VEHICLE

**1. Walking or standing on track or bridge.** A person may not, without right, stand or walk on a railroad track or railroad bridge or pass over a railroad bridge except by railroad conveyance.

[ 2003, c. 452, Pt. L, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2. Entering track.** A person may not, without right, enter upon a railroad track with a team or a vehicle however propelled or drive any team or propel a vehicle upon a railroad track.

[ 2003, c. 452, Pt. L, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**3. Penalties.** The following penalties apply to violations of this section.

A. A person who violates subsection 1 commits a civil violation for which a fine of not less than \$50 and not more than \$100 may be adjudged. [2015, c. 204, §1 (AMD).]

B. A person who violates subsection 1 after having previously violated subsection 1 commits a civil violation for which a fine of not less than \$250 and not more than \$500 may be adjudged. [2015, c. 204, §1 (AMD).]

C. A person who violates subsection 1 after having previously violated subsection 1 2 times commits a civil violation for which a fine of not less than \$750 and not more than \$1,000 may be adjudged. [2015, c. 204, §1 (AMD).]

C-1. A person who violates subsection 1 after having previously violated subsection 1 3 or more times commits a Class E crime. [2015, c. 204, §1 (NEW).]

D. A person who violates subsection 2 commits a Class E crime. Violation of subsection 2 is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. L, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2015, c. 204, §1 (AMD) .]

### SECTION HISTORY

1987, c. 141, §A4 (NEW). 1991, c. 797, §8 (AMD). 1999, c. 318, §1 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §L12 (RPR). 2015, c. 204, §1 (AMD).

## §7008. POSTING OF LAW

A printed copy of section 7007 shall be kept posted in a conspicuous place in every railroad passenger station; for failure to post, the corporation forfeits not more than \$100 for every offense. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§7009. STRANGER ENTERING OR LEAVING MOVING TRAIN; LIABILITY OF CORPORATION NOT AFFECTED**

Any person, other than a servant or employee of the road, or a passenger holding a ticket for a passage over the road, or mail agent or expressman, who gets upon or leaves any steam engine, tender or car at any place outside of a railroad station while that engine, tender or car is in motion, shall be punished by a fine of not more than \$10 or by imprisonment for not more than 30 days. This provision does not affect the liability of any railroad corporation for injuries or damages caused by the fault or negligence of the corporation or its servants. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§7010. CHANGING SWITCH OR LIGHTS**

Whoever, without authority, alters, changes or in any manner interferes with any safety switch or switch lights on any railroad commits a Class E crime. [1991, c. 797, §8 (AMD).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW). 1991, c. 797, §8 (AMD).

### **§7011. INJURING OR TAMPERING WITH SIGNALS**

Whoever intentionally and without right injures, destroys or molests any signal of a railroad corporation, or any line, wire, post, lamp or other structure or mechanism used in connection with any signal on a railroad or destroys, or in any manner interferes with the proper working of, any signal on a railroad, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 2 years. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§7012. LOCATION OF RAILROAD NEAR STATION OF ANOTHER COMPANY**

No railroad company may construct or maintain a track or run an engine or cars on a street or highway so near any station of another railroad as to endanger the safety and convenient access to and use of that station for ordinary station purposes. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§7013. INTERFERENCE WITH PERFORMANCE OF DUTY**

Obstruction or interference with the performance of any act authorized or required in this chapter is declared to be a misdemeanor and any person convicted of the same shall be punished by a fine of not more than \$20 or by imprisonment for not more than 30 days. Jurisdiction over each such offense is conferred on the District Court. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §7014. ORDERS

The Superior Court is given full jurisdiction to enforce compliance with any order issued prior to January 1, 1982, by the Public Utilities Commission or any order issued by the Department of Transportation under this chapter. It is the duty of the Department of Transportation to see that the rights of the public under this chapter are fully protected. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## Chapter 613: MUNICIPAL AID TO CONSTRUCTION

## §7081. CONSTRUCTION AID; PROCEEDINGS

A city or town by a 2/3 vote, at any legal meeting called for the purpose, may raise by tax or loan, from time to time or all at once, a sum not exceeding in all 5% on its regular valuation for the time being, to aid in the construction of railroads in such manner as it deems proper and for that purpose may contract with any person or railroad corporation. At the meetings the legal voters shall ballot, those in favor of the proposition voting "Yes," and those opposed voting "No." The ballots cast shall be sorted, counted and declared in open town meeting and recorded and the clerk shall make return of the ballots to the municipal officers who shall examine the return and, if 2/3 of the ballots cast are in favor of the proposition, the officers shall proceed to carry the proposition into effect. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §7082. PAYMENT OF LOAN

A city or town raising money by loan or under authority conferred by special Act of the Legislature shall raise and pay or fund besides the interest, each year after the third, not less than 3% of the principal. Any city or town receiving money, bonds, certificates of indebtedness or other evidence of debt in consideration of exchange, release or sale of its securities held to indemnify the city or town for having loaned its credit or issued its bonds in aid of any railroad shall hold that money, bonds, certificates of indebtedness or other evidence of debt, or the proceeds thereof as a trust fund to liquidate the outstanding liabilities so long as they may continue. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## §7083. CALL FOR MEETINGS IN CITIES AND PROCEEDINGS

Meetings for the purposes set out in this chapter in cities shall be called by the municipal officers, on the order of the common council, like meetings for the election of city officers and the council shall set forth in their order the substance of the proposition to be inserted in the warrant. At the meetings, the voters shall vote in wards by ballot, those in favor of the proposition in the warrant voting "Yes," and those opposed voting "No," and the ballots cast shall be sorted, counted and declared in open ward meeting and recorded. The clerks shall make returns of the ballots to the municipal officers who shall examine them. If 2/3 of the ballots cast are in favor of the proposition, the officers shall proceed to carry it into effect. Lists of voters for use at the meetings shall be prepared in the same manner as for meetings for elections of town or city officers and the lists shall be used at all meetings held under this section and section 7081. [1987, c. 141, Pt. A, §4 (NEW).]

### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§7084. ONLY ONE VOTE A YEAR ON SAME QUESTION**

Whenever a city or town has voted at any legal meeting upon any question of loaning its credit to, or taking stock in, or in any way aiding any person or corporation, the city or town shall not vote again upon the same subject, except at its annual meetings. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§7085. TOWN AGENTS MAY VOTE ON TOWN STOCK**

When a city or town holds stock in a railroad, the municipal officers, or an agent appointed by them in writing, may vote at any meeting of the corporation. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

### **§7086. CITIZENS ELIGIBLE AS DIRECTORS**

Whenever any city or town in the State, in its corporate capacity, holds 1/5 or more of the shares in the capital stock of any railroad incorporated by the Legislature, any citizen of the city or town, being a freeholder and resident, is eligible as a director of the railroad company. [1987, c. 141, Pt. A, §4 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A4 (NEW).

## **Chapter 615: STATE RAILROAD PRESERVATION ACT**

### **Subchapter 1: RAILROAD PRESERVATION, ASSISTANCE AND ACQUISITION**

#### **§7101. SHORT TITLE**

This subchapter shall be known and may be cited as the "State Railroad Preservation and Assistance Act." [1989, c. 398, §7 (RPR).]

#### SECTION HISTORY

1987, c. 792, §2 (NEW). 1987, c. 794, §1 (NEW). 1989, c. 398, §7 (RPR).

#### **§7102. FINDINGS OF FACT**

The Legislature makes a finding of fact that a viable and efficient rail transportation system is necessary to the economic well-being of the State. [1989, c. 398, §7 (RPR).]

The Legislature makes a further finding of fact that the State must take active steps to protect and promote rail transportation in order to further the general welfare. [1989, c. 398, §7 (RPR).]

#### SECTION HISTORY

1987, c. 794, §1 (NEW). 1989, c. 398, §7 (RPR).

#### **§7103. RAILROAD PRESERVATION AND ASSISTANCE FUND**

*(REPEALED)*

#### SECTION HISTORY

1987, c. 794, §1 (NEW). 1989, c. 398, §7 (RPR). 1989, c. 791, §§1,2 (AMD). 1995, c. 504, §B8 (AMD). 2003, c. 498, §3 (AMD). 2003, c. 498, §12 (AFF). 2005, c. 248, §1 (AMD). 2005, c. 457, §GGG4 (RP).

### §7103-A. DEPOSIT INTO MULTIMODAL TRANSPORTATION FUND ACCOUNT

The Treasurer of State shall receive all revenue derived from the tax levied pursuant to Title 36, chapter 361 and taxes paid under Title 36, section 1865 and shall deposit all revenue in the Multimodal Transportation Fund account established in section 4210-B. [2011, c. 649, Pt. E, §3 (AMD).]

#### SECTION HISTORY

2005, c. 457, §GGG5 (NEW). 2011, c. 649, Pt. E, §3 (AMD).

### §7104. MAJOR MODIFICATIONS IN RAIL SERVICE

**1. Notice required.** Any railroad which files a petition or proposal with the United States Interstate Commerce Commission concerning the sale, merger, abandonment or embargo of any railroad line in this State shall concurrently file a copy of the petition or proposal with the department. Any person, corporation or other entity which proposes to acquire or construct an additional railroad line in this State or provide rail transportation over or by means of an extended or additional railroad line and which files a petition or proposal with the United States Interstate Commerce Commission to do so shall concurrently file a copy of the petition or proposal with the department, and shall include information on the fitness and ability, including management, financial condition and employee complement, of the entity proposing to provide the rail service to provide safe, efficient and reliable rail service.

[ 1989, c. 398, §7 (NEW) .]

**2. Review; report.** The department shall review any petition or proposal for major modification to the rail service in the State filed under subsection 1. On the conclusion of its review, the department shall report to the Governor and the Legislature if the proposal has a major effect on rail service in the State.

[ 1989, c. 398, §7 (NEW) .]

**3. Failure to notify.** Any entity which fails to file notice with the department required by this section, shall not be approved to receive financial assistance from the State, as defined in section 7320, subsection 1, for one year next following the date the notice is required to be filed.

[ 1989, c. 398, §7 (NEW) .]

#### SECTION HISTORY

1989, c. 398, §7 (NEW).

### §7105. RAILROADS; LEASE OR PURCHASE OF CERTAIN RAILROAD LINES BY THE DEPARTMENT OF TRANSPORTATION

**1. Definition of term "railroad line."** Unless otherwise defined in this section, the term "railroad line" or "lines" shall be construed to mean the right-of-way, track, track appurtenances, ties, bridges, station houses and other appurtenant structures.

[ 1989, c. 398, §7 (NEW) .]

**2. Temporary lease and contracts for continuation of service on certain railroad lines.** The Department of Transportation may enter into a contract with a railroad and its duly constituted officers, trustees or owners for the temporary lease of railroad lines or any part of a railroad line, located in the State,

owned or otherwise lawfully controlled by the railroad for which abandonment has been authorized by a duly constituted authority, state or federal, when in the judgment of the Department of Transportation the preservation of the railroad line or lines is necessary to protect the public interest. When in the judgment of the Department of Transportation the economic well-being of this State, or a significant portion of the State, will be impaired by the discontinuance of rail service over the railroad line or lines that have been authorized for abandonment, the department may contract for the continued operation of rail service over any line or lines on a temporary basis under rules to be prescribed by the department after notice and hearing at which interested parties have an opportunity to express their views, and on terms and conditions as the department and the owner of the railroad may agree. The leases authorized may be made to cover the right-of-way only or may cover the line intact, including the track, track appurtenances, ties, bridges, station houses and other necessary structures. Contracts for continuation of rail service may be made to include the lease of the line and may provide for service on less than a daily basis. The department shall report to the next session of the Legislature with a recommendation for disposition of the leased or subsidized lines.

[ 1989, c. 398, §7 (NEW) .]

**3. Purchase or lease of certain railroad lines.** The Department of Transportation may purchase or lease railroad lines or any part of a railroad line or any other property located in the State, owned or otherwise lawfully controlled by any railroad when, in the judgment of the department, the purchase or lease of those railroad lines or property is necessary to protect the public interest.

A. Before dismantling any track that results in a cessation of rail service upon all or part of a railroad line, or offering any railroad property for sale, or upon the abandonment of service along all or a portion of a railroad line, the department must be given the first option to lease or purchase, on just and reasonable terms, the railroad line, any part of the railroad line or other property. In the event that a lease is negotiated for the rights-of-way, the department shall consult with municipal officials and officers in the municipalities affected by the abandonment of service along the line to determine the need for preserving the rights-of-way along the abandoned portion of the line for rail transportation. If the department finds that the welfare of the State would be significantly and adversely affected by the loss of the line for railroad transportation purposes, the department shall seek to negotiate the purchase of the abandoned portion of the line. In making this determination, the department shall consider, among other criteria considered significant by the department, future economic development activities and opportunities in the area served by the abandoned railroad service. In addition, the department shall consult with the Department of Economic and Community Development and the Department of Agriculture, Conservation and Forestry in making the determination required in this section.

The department shall, in good faith, seek to lease the railroad rights-of-way until it finds that the preservation of the rights-of-way is not necessary for the welfare of the State or until the voters of the State approve or disapprove, at a statewide election, the issue of bonds to purchase the rights-of-way along the abandoned portion of the line.

Nothing in this paragraph may require the department to lease or purchase the railroad rights-of-way to an entire railroad line or any portion of the line for which railroad service has been abandoned if the railroad corporation owner does not intend to sell, lease or in any other way dispose of the rights-of-way by which railroad service could be easily restored along the abandoned service portion of the line.

[ 2011, c. 655, Pt. JJ, §10 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV). ]

B. The abandonment of service shall not mean or imply that the rights-of-way on a railroad line have been abandoned. In the event that the railroad, any person, firm or corporation, or any agency shows interest in the eventual restoration of service, the rights-of-way shall not be deemed abandoned.

Since it is in the best interest of the State to retain the rights-of-way intact, this paragraph shall apply to all existing and future rights-of-way created prior to or following September 30, 1989. [ 1989, c. 398, §7 (NEW); 1989, c. 600, Pt. A, §§11, 12 (AMD); 1989, c. 878, Pt. G, §3 (AMD). ]

C. Whenever the department acquires railroad lines, to hold and to manage for future railroad uses, those lines shall not be considered abandoned for railroad purposes. The commissioner shall periodically review the need to hold those lines for future railroad uses. [1989, c. 398, §7 (NEW).]

[ 2011, c. 655, Pt. JJ, §10 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

**4. Cooperation, acceptance and use of federal, state, local or private funds.** The Department of Transportation may accept, for the State, federal funds that may be apportioned under the United States Regional Rail Reorganization Act of 1973, Public Law 93-236 as amended and supplemented, other federal funds, state funds and such municipal funds and private funds as may be available; to act for the State, in conjunction with the representatives of the Federal Government, municipal governments and private groups having a direct interest, in all matters relating to the acquisition, rehabilitation, construction or lease of railroad line or lines in the State and contracts for rail service continuation over railroad lines as provided in this section.

[ 1989, c. 398, §7 (NEW) .]

**5. Department to lease, purchase and dispose of operating equipment.** The Department of Transportation may lease, purchase and dispose of railroad operating equipment used on rail lines acquired or leased pursuant to this chapter. The department may provide financial assistance and may lease or sell railroad operating equipment to short line operators providing rail service to those rail lines when determined to be in the best interest of the State.

[ 1989, c. 791, §3 (NEW) .]

#### SECTION HISTORY

1989, c. 398, §7 (NEW). 1989, c. 600, §§A11,12 (AMD). 1989, c. 600, §§A11,A12 (AMD). 1989, c. 626, (AMD). 1989, c. 791, §3 (AMD). 1989, c. 878, §G3 (AMD). 2011, c. 655, Pt. JJ, §10 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV).

## §7106. RAILROADS; ACQUISITION OF RAILROAD OPERATING EQUIPMENT BY THE DEPARTMENT OF TRANSPORTATION

### 1. Definition of term "railroad operating equipment."

[ 1989, c. 398, §7 (NEW); 1989, c. 791, §4 (RP) .]

**2. Acquisition of railroad operating equipment.** The Department of Transportation is authorized to lease, purchase and dispose of railroad operating equipment when in the judgment of the department the purchase or disposal of the equipment is necessary to protect the public interest.

[ 1989, c. 398, §7 (NEW) .]

**3. Cooperation, acceptance and use of federal, local or private funds.** The Department of Transportation is authorized and empowered to accept, for the State any federal, municipal or private funds as may be available and to act for the State, in conjunction with the Federal Government, municipal governments and private groups having a direct interest in the acquisition of railroad operating equipment.

[ 1989, c. 398, §7 (NEW) .]

#### 4. Use of state funds prohibited.

[ 1989, c. 398, §7 (NEW); 1989, c. 791, §4 (RP) .]

**5. State liability.** The State is not held liable in any contract pursuant to this chapter for the leasing or purchasing of equipment, facilities or services; for the delivery of products; for the storage of products; or for any other service or financial commitment that may result from the implementation of this chapter.

[ 1989, c. 398, §7 (NEW); 1989, c. 791, §5 (AMD) .]

#### SECTION HISTORY

1989, c. 398, §7 (NEW). 1989, c. 791, §§4,5 (AMD).

### §7107. DISMANTLING OF STATE-OWNED TRACK

Except as provided in this section, the Department of Transportation may not dismantle or contract with a state agency or private entity for the dismantling of state-owned track. When the department, in consultation with a regional economic planning entity and a regional transportation advisory committee established in accordance with rules adopted under section 73, subsection 4, determines that removal of a specific length of rail owned by the State will not have a negative impact on a region or on future economic opportunities for that region, the Commissioner of Transportation shall seek review by the joint standing committee of the Legislature having jurisdiction over transportation matters prior to removal. [ 2003, c. 498, §4 (NEW) .]

#### SECTION HISTORY

2003, c. 498, §4 (NEW).

### §7108. CALAIS BRANCH RAIL CORRIDOR

**1. Repaid funds to be used to preserve rail corridor.** Notwithstanding any other provision of law, funds repaid to the Department of Transportation as a result of state investments or loans for the redevelopment of the Calais Branch rail corridor must be used by the department to preserve the rail corridor.

[ 2007, c. 329, Pt. O, §1 (NEW) .]

**2. Reservation of right to use rail corridor for rail purposes.** The Department of Transportation reserves the right to terminate at any time the use of the Calais Branch rail corridor for recreational purposes and to use the Calais Branch rail corridor for railroad purposes.

[ 2007, c. 329, Pt. O, §1 (NEW) .]

#### SECTION HISTORY

2007, c. 329, Pt. O, §1 (NEW).

## Subchapter 2: ACQUISITION OF RAILROAD LINES

### §7151. LEGISLATIVE FINDINGS; DECLARATION OF POLICY

**1. Legislative findings.** The Legislature finds that safe, efficient and reliable rail service is essential to the economy of the State, the economic livelihood of industries located in the State, conservation and protection of the environment and the quality of life of the citizens of the State. The Legislature further finds

that safe and efficient railroad service is essential to the State's public safety and the continued health and well-being of its citizens, particularly because of railroad transportation of bulk cargoes and hazardous and toxic substances, and the significant dangers that result from mishandling those and other cargoes.

[ 1989, c. 398, §7 (RPR) .]

**2. Declaration of policy.** It is declared to be the policy of the State that the State and its agencies shall cooperate with the Congress of the United States and the appropriate federal agencies to assure the development and maintenance of safe, efficient and reliable rail service for the State. For any railroad line acquired under this chapter, it is the intent of the Legislature that the State may acquire the railroad line, but the State may not be an operator of the railroad.

[ 1991, c. 371, (AMD) .]

#### SECTION HISTORY

1987, c. 748, (NEW). 1989, c. 398, §7 (RPR). 1991, c. 371, (AMD).

## §7152. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 398, §7 (RPR).]

**1. Financially responsible person.** "Financially responsible person" means a financially responsible person, as defined in the United States Code, Title 49, Section 10910(a), who intends to acquire, lease or contract to operate all or part of the railroad line in question.

[ 1989, c. 398, §7 (RPR) .]

**2. Person.** "Person" means a natural person, corporation, partnership or state agency.

[ 1989, c. 398, §7 (RPR) .]

**3. Railroad line.** "Railroad line" means the right-of-way, track, track appurtenances, ties, bridges, station houses, sidings, terminals and other appurtenant structures of a railroad.

[ 1989, c. 398, §7 (RPR) .]

#### SECTION HISTORY

1987, c. 748, (NEW). 1989, c. 398, §7 (RPR).

## §7153. HEARINGS AND REPORT

**1. Request for hearing.** The department shall hold a hearing with regard to a railroad line if requested by any of the following:

A. A shipper or shippers whose traffic on the railroad line totaled 500 tons in the year immediately preceding the application; [1989, c. 398, §7 (RPR).]

B. Any municipality having a siding, terminal, station or agency station of the railroad line within its bounds; or [1989, c. 398, §7 (RPR).]

C. A financially responsible person. [1989, c. 398, §7 (RPR).]

[ 1989, c. 398, §7 (RPR) .]

**2. Notice; testimony at hearing.** Not less than 14 days prior to holding a hearing, the department shall send written notice of the date and location to the parties requesting a hearing as well as the affected railroad company. In addition, the department shall publish 2 notices of the hearing in a newspaper of general circulation in the area of the State affected. Testimony received at the hearing may include the following:

- A. Whether the railroad has adequate rail service to fulfill public convenience and necessity; [1989, c. 398, §7 (RPR).]
- B. Whether the operator of the railroad is providing safe, efficient and reliable rail service; [1989, c. 398, §7 (RPR).]
- C. Whether the rail service over the railroad has substantially impaired the ability of the shippers or municipalities that depend upon it; [1989, c. 398, §7 (RPR).]
- D. Whether the operation of the railroad has endangered the lives or property of the citizens of this State, including railroad employees; [1989, c. 398, §7 (RPR).]
- E. Whether the operator of the railroad has refused or failed within a reasonable time to make necessary improvement to provide safe, efficient and reliable rail service; and [1989, c. 398, §7 (RPR).]
- F. Other relevant issues. [1989, c. 398, §7 (RPR).]

[1989, c. 398, §7 (RPR).]

**3. Report.** Upon conclusion of the hearing, the department shall issue a report concerning the operation of the railroad which shall be forwarded to the petitioning parties as well as the railroad company. In addition, this report shall be presented to the Governor as well as the President of the Senate and the Speaker of the House of Representatives. The department may also forward this report to the Interstate Commerce Commission, the Federal Railroad Administration or any other federal agency which is involved in the regulation of railroads.

[1989, c. 398, §7 (RPR).]

#### SECTION HISTORY

1987, c. 748, (NEW). 1989, c. 398, §7 (RPR).

## §7154. ACQUISITION OF RAILROADS

**1. Authorization to acquire.** Upon forwarding the report set forth in section 7153 and if the report recommends acquisition of the railroad line by the department, the department may acquire, as provided in this section, the railroad line and associated real property located in the State and personal property, including rail facilities such as equipment and rolling stock, when, in the judgment of the department, acquisition of the railroad line is necessary to protect the public interest.

[1989, c. 398, §7 (RPR).]

**2. Federal regulation.** If the railroad line is under the exclusive jurisdiction of a federal regulatory agency, the department shall petition that agency and take all steps necessary to obtain all regulatory approvals required under federal law to acquire the railroad line.

[1989, c. 398, §7 (RPR).]

**3. Acquisition.** Upon obtaining all necessary federal regulatory approvals or if approval of a federal regulatory agency is not required, the department may acquire the railroad line and associated property by purchase or the taking by eminent domain.

[1989, c. 398, §7 (RPR).]

**4. Limitation.** Any acquisition under this section is subject to sufficient funds being made available by legislative act to acquire the railroad line.

[ 1989, c. 398, §7 (RPR) .]

**5. Eminent domain.** In the event that the department decides to acquire the railroad line by condemnation, the department shall have the railroad line and associated property appraised and offer to the owner as just compensation the constitutional minimum value, which shall be not less than the net liquidation value or the value as a going concern, whichever is greater, but shall not include the cost of providing a protective arrangement concerning the interest of the railroad's employees.

The department shall file in the registry of deeds for the county or counties, or registry district or districts, where the railroad line is located a notice of condemnation which shall contain a description of the property and the interest taken and the name or names of the owner or owners of record as far as they can be reasonably determined. The department may join in the same notice one or more separate properties whether in the same or different ownership. A check in the amount of the offer and a copy of the notice of condemnation shall be served on the owner or owners of record. If there is multiple ownership, the check may be served on any one of the owners of each separate property. The notice of condemnation shall be published once in a newspaper of general circulation in the county where the property is located and that publication shall constitute service on any unknown owner or owners or other persons who may have or claim an interest in the property.

[ 1989, c. 398, §7 (RPR) .]

**6. Appeals.** In the event that any owner or owners of record are aggrieved by the department's offer, they may appeal from it to the Kennebec County Superior Court within 30 days after the date of service or publication of the notice of condemnation. The appeal shall be taken by filing a complaint setting forth the facts upon which the case shall be tried according to the Maine Rules of Civil Procedure. The Superior Court shall determine compensation by a jury verdict or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for any compensation, with interest when it is due, and for costs in favor of the party entitled to them, pursuant to just compensation standards set forth in subsection 5.

[ 1989, c. 398, §7 (RPR) .]

**7. Use of railroad line.** The department may lease the railroad line, or otherwise contract for operation of the railroad line, to a railroad operator who is a financially responsible person, or it may hold and manage the railroad line for future transportation use.

[ 1989, c. 398, §7 (RPR) .]

#### SECTION HISTORY

1987, c. 748, (NEW). 1989, c. 398, §7 (RPR).

## §7155. CONDITIONS OF SALE, LEASE AND OPERATION

**1. Financial conditions on sale, lease or operating contract.** Any railroad line acquired pursuant to this chapter may be sold, leased or contracted to an operator, but only upon terms at least as favorable to the State as follows:

A. All of the costs of acquiring the railroad line and associated property shall be recovered by the State; and [1989, c. 398, §7 (RPR).]

B. The credit of the State shall not be pledged unless separately authorized as required by the Constitution of Maine, Article IX, Section 14. [1989, c. 398, §7 (RPR).]

[ 1989, c. 398, §7 (RPR) .]

**2. State operation of railroad prohibited.** In no event may the department or any other unit of State Government directly operate a railroad over a railroad line acquired under this chapter. The department may own the railroad line and lease or otherwise contract for its use by a private operator.

[ 1989, c. 398, §7 (RPR) . ]

#### SECTION HISTORY

1987, c. 748, (NEW). 1989, c. 398, §7 (RPR).

## §7156. EMPLOYEE PROTECTION

Any person acquiring or operating a railroad line under this chapter shall: [1989, c. 398, §7 (RPR) . ]

**1. Hiring priority.** Give a first right of hire to fill any subordinate official or nonmanagement position in the staffing of the new rail operation in the following order of priority:

A. First, all employees who are required to be accorded priority under federal law, employee protection obligations imposed by law, regulations or contracts which require the new operator to select employees of the prior operator and existing or future collective bargaining agreements; [1989, c. 398, §7 (RPR) . ]

B. Second, all employees, in seniority order for each craft or class, who hold or held seniority rights in, or in connection with, the railroad line when it was last operated by its prior operator; [1989, c. 398, §7 (RPR) . ]

C. Third, employees drawing benefits under the United States Railroad Unemployment Insurance Act, United States Code, Title 45, chapter 11, first in the geographical area in which the railroad line is located and then elsewhere within the State; and [1989, c. 398, §7 (RPR) . ]

D. Fourth, any other individual; [1989, c. 398, §7 (RPR) . ]

[ 1989, c. 398, §7 (RPR) . ]

**2. Existing employment obligations and practices.** Assume the existing employment obligations and practices of the railroad whose property is condemned, including all agreements governing rates of pay, rules and working conditions, until changes are made by agreement or otherwise, in accordance with applicable law; and

[ 1989, c. 398, §7 (RPR) . ]

**3. Employee protection.** Agree to provide a fair arrangement to protect the interests of railroad employees who are affected by the condemnation which is at least as protective of the interests of those employees as the levels of protection established by regulation or decision of the Interstate Commerce Commission.

[ 1989, c. 398, §7 (RPR) . ]

Any person who is entitled to priority of employment under this section shall be presumed to be physically and mentally qualified to perform the same or comparable work with the new employer. [1989, c. 398, §7 (RPR) . ]

#### SECTION HISTORY

1987, c. 748, (NEW). 1989, c. 398, §7 (RPR).

## Subchapter 3: PASSENGER RAIL SERVICE

**§7171. SHORT TITLE***(REPEALED)*

## SECTION HISTORY

RR 1991, c. 1, §33 (COR). 1991, c. 587, (NEW). 1995, c. 374, §2 (RP).

**§7172. DEFINITIONS***(REPEALED)*

## SECTION HISTORY

RR 1991, c. 1, §33 (COR). 1991, c. 587, (NEW). 1995, c. 374, §2 (RP).

**§7173. INITIATION AND ESTABLISHMENT OF PASSENGER RAIL SERVICE***(REPEALED)*

## SECTION HISTORY

RR 1991, c. 1, §33 (COR). 1991, c. 587, (NEW). 1995, c. 374, §2 (RP).

**§7174. CONTRACTS; STUDIES***(REPEALED)*

## SECTION HISTORY

RR 1991, c. 1, §33 (COR). 1991, c. 587, (NEW). 1995, c. 374, §2 (RP).

**§7175. INITIAL FUNDING***(REPEALED)*

## SECTION HISTORY

RR 1991, c. 1, §33 (COR). 1991, c. 587, (NEW). 1995, c. 374, §2 (RP).

**§7176. ADDITIONAL FUNDING***(REPEALED)*

## SECTION HISTORY

RR 1991, c. 1, §33 (COR). 1991, c. 587, (NEW). 1995, c. 374, §2 (RP).

**§7177. FEDERAL FUNDS***(REPEALED)*

## SECTION HISTORY

RR 1991, c. 1, §33 (COR). 1991, c. 587, (NEW). 1995, c. 374, §2 (RP).

**§7178. MUNICIPALITIES***(REPEALED)*

## SECTION HISTORY

RR 1991, c. 1, §33 (COR). 1991, c. 587, (NEW). 1995, c. 374, §2 (RP).

**§7179. REASONABLE FARES***(REPEALED)*

## SECTION HISTORY

RR 1991, c. 1, §33 (COR). 1991, c. 587, (NEW). 1995, c. 374, §2 (RP).

**§7180. SATISFACTION OF OPERATING DEFICITS**

*(REPEALED)*

## SECTION HISTORY

RR 1991, c. 1, §33 (COR). 1991, c. 587, (NEW). 1995, c. 374, §2 (RP).

**§7181. RULES OF CONSTRUCTION**

*(REPEALED)*

## SECTION HISTORY

RR 1991, c. 1, §33 (COR). 1991, c. 587, (NEW). 1995, c. 374, §2 (RP).

**Chapter 617: RAILROAD CROSSINGS****§7201. LAND TAKEN FROM RAILROAD; NOTICE AND HEARING**

No town way, city street, public easement or highway taking land of any railroad corporation shall be located, unless a notice of the time and place of the hearing on the location has been served on the president, any vice-president, any director, the treasurer or any assistant treasurer, the general manager or the clerk of the corporation at least 7 days before the time for the hearing. In case a corporation has no officer within the State, service shall be made on its duly authorized agent or attorney within the State. Service in like manner shall be made on any corporation which operates a railroad of another corporation under lease or other agreement. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

**§7202. LOCATION OF RAILROAD CROSSINGS; EXPENSE; APPEALS**

Town ways and highways may be laid out across, over or under any railroad track or through or across any land or right-of-way of any railroad corporation, if the Department of Transportation, after notice and hearing, so determines. The Department of Transportation may refuse its permission or grant permission on terms and conditions as it may prescribe, and the need, if any, for installation, maintenance and operation of signals, gates or other protective measures and may determine whether the expense of building and maintaining so much of the way as is within the limits of the railroad corporation shall be borne by the corporation or by the municipality in which the way is located or by the State, or the Department of Transportation may apportion the expense between the railroad corporation and the municipality or State. The expense of operating and maintaining any protective device shall be borne by the corporation operating the railroad. The expense of installing protective devices at crossings on state and state aid highways shall be apportioned between the railroad corporation and the State as the Department of Transportation shall determine. The expense of installing protective devices at crossings on town ways shall be apportioned between the railroad corporation and the municipality as the department shall determine. The Department of Transportation shall report its determinations and decisions, file the same in its principal office at Augusta and send copies by mail or otherwise to each of the parties subject to the determination, order or decision. Determinations, orders or decisions shall be final and binding on all parties unless an appeal from any determination, order or decision shall be taken to the Superior Court in the county where the crossing is located. The Department of Transportation shall be made a party in the appeal. The appellant shall, within 14 days from the date of the filing of the determination, order or decision, file in the office of the department

its reasons for appeal and shall cause to be served on any other interested parties a copy of the reasons for appeal certified by the department. The presiding Justice shall make an order or decree on the appeal as law and justice may require. An appeal may be taken to the law court as in other actions. The final adjudication shall be recorded as provided in section 7204 and a copy of the final decision sent to the Department of Transportation. Costs may be taxed and allowed to either party at the discretion of the court. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

**§7203. MAINTENANCE OF RAILROAD CROSSINGS ALREADY LAID OUT**

Notwithstanding any section of Part 7, in case of ways already laid out which cross over or under any railroad track or tracks and not at grade, the allocation of the expense of maintaining so much of the way as is within the limits of the railroad shall be determined, de novo, as provided by section 7202, by the Department of Transportation on application to it by any corporation whose track is or tracks are so crossed, or on application by the municipal officers of any town in which the crossing is located, or on application by the Department of Transportation. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

**§7204. RECORDING ADJUDICATIONS OF DEPARTMENT OF TRANSPORTATION**

Adjudications of the Department of Transportation relating to ways shall be recorded in the office in which the location of the way must be recorded. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

**§7205. CROSSING OF PUBLIC WAYS**

Railroads may cross any public highways in the line of the railroad, but may not pass along public highways without the written consent of the officials charged by statute with the duty of maintenance of these ways; but when a railroad is hereafter laid out across a public way, it shall be constructed so as to pass either over or under the way unless the Department of Transportation, after notice and hearing, authorizes a crossing at grade. Before entering on the construction of any railroad along or across public ways, the manner and conditions of crossings shall be determined as provided by section 7202. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

**§7206. WAYS RAISED OR LOWERED; COURSE ALTERED**

Highways and other ways may be raised or lowered, or the course of the highways may be altered, to facilitate a crossing or to permit a railroad to pass over or under the highway or at the side of it, on application to the Department of Transportation, and proceedings as provided by section 7202, and for these purposes land may be taken and damages awarded as provided for laying out highways and other ways. The department may prescribe the manner in which the work shall be done by the corporation. While the use of any way is thereby obstructed, a temporary way shall be provided by the corporation. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

## **§7207. DISCONTINUANCE OF RAILROAD CROSSINGS**

Any railroad corporation or the municipal officers of a city or town in which a public way crosses or is crossed by a railroad, whether at grade or otherwise, may file a petition in writing with the Department of Transportation alleging that the crossing is no longer required by the public and praying that it may be closed or discontinued. The department shall, on receipt of a petition, appoint a time for hearing on the petition, after notice of not less than 10 days to the petitioners, the railroad corporation owning or operating the railroad and the city or town in which the crossing is located. After the notice and hearing, if the department finds that the crossing is no longer required by the public, it may order that the crossing be closed or discontinued. The department may close or discontinue railroad crossings, after notice of not less than 10 days to the railroad and municipality, or after hearing if requested within the 10 days either by the railroad or the municipality. [1989, c. 398, §8 (NEW).]

### SECTION HISTORY

1989, c. 398, §8 (NEW).

## **§7208. DAMAGES FOR NEGLIGENCE**

When the corporation unnecessarily neglects to perform the acts so required, those injured may recover damages in a civil action, commenced within one year after performance is required. [1989, c. 398, §8 (NEW).]

### SECTION HISTORY

1989, c. 398, §8 (NEW).

## **§7209. BRIDGES OVER CANALS OR RAILROADS; REPAIRS; PROCEEDINGS WHERE UNSAFE CONDITIONS**

A railroad may be carried over or under a canal or railroad in a manner as not unnecessarily to impede the travel or transportation on them. The corporation making the crossing is liable for damages, occasioned by making the crossing, in a civil action. Bridges and their abutments, constructed for a crossing of any way, shall be kept in repair by the corporation, or by persons or parties running trains on any railroad crossing a highway or town way. The municipal officers of any city or town may give notice in writing to persons, parties or corporations that a bridge required at the crossing has not been erected, or is out of repair and not safe and convenient, within the requirements of section 3651, or that the crossing of any highway or town way passing the railroad at grade, within their respective cities or towns, is not made or maintained safe and convenient as required by this section. Those persons, parties or corporations shall erect or repair the bridge or make the crossing safe and convenient within 10 days from the service of the notice. If they neglect to do so, any one of the municipal officers may apply to the Superior Court to compel the delinquents to erect or repair the bridge or make the crossing. After hearing, the court may make any order on the hearing, which the public convenience and safety require, and may by injunctions compel the respondents to comply with the order. The officers may, after 10 days from the service of the notice, cause necessary repairs to be made and the expense of the repairs shall be paid by the persons, parties or corporations whose duty it is to keep the crossing safe and convenient. [1989, c. 398, §8 (NEW).]

### SECTION HISTORY

1989, c. 398, §8 (NEW).

## **§7210. TEMPORARY CROSSINGS**

A railroad company may, for the purpose of accommodating lumbering operations and for the transportation in ordinary vehicles of wood, coal, ice, hay or other commodities, establish and maintain temporary crossings of any railroad operated by it, by agreement with any person who may request the

crossing for its purposes. On petition, the Department of Transportation, after notice and hearing, may direct any railroad company to establish and maintain the temporary crossings at places on its line of road as the department deems expedient, and after that the railroad company shall establish the crossings and maintain them in accordance with this section and sections 7211 to 7213. [1989, c. 398, §8 (NEW).]

Whenever, in the opinion of the department, any temporary railroad crossing established under this section is no longer necessary, the department may, on its own motion or on petition of any interested party, after notice and hearing, order the crossing discontinued. [1989, c. 398, §8 (NEW).]

**SECTION HISTORY**

1989, c. 398, §8 (NEW).

**§7211. CROSSING SIGNS ON EACH SIDE OF TRACK; WHISTLE AND BELL**

At every temporary crossing, established in accordance with section 7210, boards with the words "Temporary railroad crossing, stop, look, listen" distinctly painted on each side, in letters plainly legible, shall be placed on each side line of the railroad right-of-way at the crossing, on a post or other structure, in a position as to be easily seen by persons about to cross the railroad at those places. For any crossing so established, engine bells shall be rung and engine whistles sounded, as provided in section 7214. [1989, c. 398, §8 (NEW).]

**SECTION HISTORY**

1989, c. 398, §8 (NEW).

**§7212. PRECAUTIONS AT CROSSINGS**

No team or vehicle may be driven over any temporary crossing unless the team or vehicle is first stopped within a reasonable distance from the nearest rail of the crossing, and the operator, by looking and listening, determines that nothing is approaching on the tracks of the railroad. Nothing in this section may prevent the Department of Transportation from making further rules for safety at any crossing established under its direction as it deems expedient or necessary. [1989, c. 398, §8 (NEW).]

**SECTION HISTORY**

1989, c. 398, §8 (NEW).

**§7213. CROSSINGS KEPT OPEN PART OF YEAR; EXPENSE APPORTIONED**

Each temporary crossing shall be kept open only during the time each year as the parties interested in the crossing may agree on, or as the Department of Transportation may specify in cases where the department directs the crossings to be established. When the department directs any temporary crossing to be established, it shall determine who shall bear the expense of establishing and maintaining the crossing and it may, if it sees fit, apportion the expense between the railroad company and the person or persons who have petitioned for the crossing. The expense of the crossing signs and the planking between the rails shall in any event be borne by the railroad company. [1989, c. 398, §8 (NEW).]

**SECTION HISTORY**

1989, c. 398, §8 (NEW).

**§7214. SIGNBOARDS AT GRADE CROSSINGS; RINGING OF ENGINE BELLS**

Every railroad corporation shall cause signboards with the words "Railroad Crossing" distinctly painted on each side of the signboards, or as a minimum on one side if signboards are placed facing on-coming traffic in each direction, in letters plainly legible, to be placed and constantly maintained at the side of highways and town ways where they are crossed at grade by those railroads, on posts or other structures, in a position as to be easily seen by persons passing on those ways. Every corporation shall cause a whistle and a bell

of at least 35 pounds in weight to be placed on each locomotive used on its railroad, and the whistles shall be sounded as a warning beginning at a distance of 990 feet, on standard or narrow gauge railroads, from all crossings of those ways on the same level, unless the Department of Transportation, on petition of the corporation or of the municipal officers or of 10 or more residents of any city or town in which the crossing is located, after notice and hearing, shall order the sounding of the whistle to be discontinued in any city or village until further order of the department. The bell shall be rung at a distance of 990 feet, on standard or narrow gauge railroads, from grade crossings and be kept ringing until the engine has passed the crossings. On petition of 10 or more residents of the State, after notice to the railroad corporation and a public hearing, the department may in writing order the corporation to give additional warning to travelers on those ways by requiring the sounding of the whistles or the ringing of the bells at other places where the railroads cross the public ways other than at grade or run contiguous to the ways, and the orders shall have the same force and place the same obligations on railroad corporations as when required under this section. [1989, c. 398, §8 (NEW).]

The Commissioner of Transportation may temporarily erect experimental signs at certain grade crossings instead of the signboards with the words "Railroad Crossing," as required in this section, for the purpose of conducting research for the development of improved signs. The erection of experimental signs by the department at a particular crossing shall relieve the railroad company using that crossing from any liability in damages, which might otherwise arise against that company by the temporary removal or temporary obliteration of the railroad company signboard required by this section. The erection and removal of the temporary signs shall be at the expense of the department and the removal and reinstallation of signboards with the words "Railroad Crossing" shall also be at the expense of the department. [1989, c. 398, §8 (NEW).]

Nothing in this section prevents the department from making further rules for safety at any crossing, including a private, temporary, farm or industrial crossing, as it deems expedient or necessary. [1989, c. 398, §8 (NEW).]

#### SECTION HISTORY

1989, c. 398, §8 (NEW).

### **§7215. FAILURE TO COMPLY; DAMAGES**

For unnecessarily neglecting to comply with any provision of section 7214, the corporation forfeits not more than \$500. The corporation is liable for damages for its neglect to comply with these provisions, or for the neglect of any agent or for the mismanagement of an engine, to be recovered in a civil action by the person damaged by the neglect. [1989, c. 398, §8 (NEW).]

#### SECTION HISTORY

1989, c. 398, §8 (NEW).

### **§7216. RIGHT OF ENTRY**

The officers, agents and employees of the Department of Transportation may enter in and on property of any railroad corporation for the purpose of inspecting railroad-highway crossings and attendant facilities, including grade separation facilities. [1989, c. 398, §8 (NEW).]

#### SECTION HISTORY

1989, c. 398, §8 (NEW).

### **§7217. PLANT RAILROADS**

Sections 1251, 1254, 7202, 7205, 7206 and 7214, so far as applicable, apply to plant railroads. The term "plant railroad" means a railroad of the owners of any mills, mines, quarries, gravel pits, log landings or yards, warehouses, storehouses, stock yards, bulk storage yards, airports, piers, docks, shipyards, educational institutions, power plants, gas works, petroleum tank farms or bulk stations, or other manufacturing,

processing or mercantile establishments, and including state and federal institutions and developments, erected or in process of erection, which is located on land provided or acquired for the purpose by the owners, and whether operated by the owners or by state or federal government or an agency thereof or through connection with a public railroad under operating contract with it and by operation of its equipment over the plant railroad. [2013, c. 36, §11 (AMD).]

**SECTION HISTORY**

1989, c. 398, §8 (NEW). 2013, c. 36, §11 (AMD).

**§7218. BRIDGES ERECTED BY MUNICIPALITIES MAINTAINED**

Bridges erected by any municipality, over which any railroad passes, shall be constructed and maintained in a manner and condition as to safety as the Department of Transportation may determine. The department may require the officers of the railroad company and of the municipality to attend a hearing in the matter, after notice of the hearing to all parties in interest as the department deems proper. The department shall determine at the hearing the repairs, renewals or strengthening of parts, or if necessary the manner of rebuilding the bridge required to make the bridge safe for the uses to which it is put. The department shall determine who shall bear the expenses of the repairs, renewals, strengthening or rebuilding, or it may apportion the expense between the railroad company and the city or town, as the case may be, in a manner as deemed by the department to be just and fair and shall make its report. [1989, c. 398, §8 (NEW).]

**SECTION HISTORY**

1989, c. 398, §8 (NEW).

**§7219. REPORT OF DECISIONS AND COPIES TO PARTIES INTERESTED**

The department shall make a report in writing of its decision in all matters named in section 7218, file the report in the department's office, and cause a copy of the decision to be sent by mail to each of the railroad corporations and to the municipal officers of the cities or towns, as the case may be, interested in the report. [1989, c. 398, §8 (NEW).]

**SECTION HISTORY**

1989, c. 398, §8 (NEW).

**§7220. SPEED LIMIT AT HIGHWAY GRADE CROSSINGS**

The department is authorized to fix a maximum speed limit at which trains may be run over any grade crossing of a highway or other way and, when the limit has been fixed by the department, no engine or train may be run over the crossings at a greater speed than that fixed by the department and no way may be unreasonably and negligently obstructed by engines, tenders or cars. Any railroad corporation forfeits not more than \$100 for every violation of this section. [1989, c. 398, §8 (NEW).]

**SECTION HISTORY**

1989, c. 398, §8 (NEW).

**§7221. AUTOMATIC SIGNALS; EXPENSE; DEFINITION**

The department may require each railroad company operating within this State to install, operate and maintain an automatic signal, gates or other protective device or to require a flagger to be stationed at any highway crossing within this State where, after reasonable notice and hearing, the department decides that public safety requires a signal, gates or other protective device or flagger as a proper measure of protection. Notice and hearing are not required for automatic grade crossing protection funded and installed under the federal program. The expense of installing, operating and maintaining any signal, gates or other protective device or of providing the flagger must be borne by the corporation operating the railroad passing over the crossing to be protected, except that at crossings located on state and state aid highways the expense of

installing the signal, gates or other protective device must be apportioned between the corporation and the State in proportions as the department determines. Wherever the term "signal" or "automatic signal" is used in this chapter, it is construed to be an appliance that gives warning of the approach of a train and that is either audible and visible by day and by night, or audible or visible as determined by the department. [1993, c. 164, §1 (AMD).]

#### SECTION HISTORY

1989, c. 398, §8 (NEW). 1993, c. 164, §1 (AMD).

### **§7222. CROSSINGS DESIGNATED**

The Department of Transportation shall designate by general orders, which may be issued without formal notice or hearing, the grade crossings in this State at which, from all points on the highway or other way within 300 feet of these crossings, and on either side of the crossings, measured along the highway or way, a traveler on the way carrying the crossing can have a fair view of an approaching train, engine or car continuously from the time the train, engine or car is 300 feet from the crossing, until it has passed over the crossing, either under existing conditions or by bushes, trees, fences, signboards or encroachments being trimmed, cut down or removed. [1989, c. 398, §8 (NEW).]

#### SECTION HISTORY

1989, c. 398, §8 (NEW).

### **§7223. OBSTRUCTIONS ORDERED REMOVED; NOTICE**

At every crossing of a highway or other way, except state and state aid highways and a railroad at grade, the municipal officers of the town or unorganized place in which the crossing is located are authorized and required on order of the Department of Transportation to remove embankments and other obstructions within highway limits and to enter on private property and properly trim, cut down, remove or apply chemical treatment to bushes, and from time to time as may be necessary to cut down and remove trees, fences, signboards and encroachments which obstruct the view of an engine, train or car by a traveler at or near any crossing. The department shall cause the same to be done on state and state aid highways. The authority of the department in any order to the municipal officers shall not extend beyond the land bounded on a line from a point 300 feet on either side of any crossing, measured along the highway or other way, and a point 300 feet on either side of any crossing measured along the railroad right-of-way, for the purpose of enabling a traveler on any way, when the traveler is 300 feet or less distant from any crossing, to have a fair view of an approaching train, engine or car from one or more angles continuously from the time the train, engine or car is 300 feet from the crossing until it has passed over the crossing. Entry on private property for the purposes stated shall be only after a 10 days' notice, mailed to the last known address of the property owner, and posting of the notice in a conspicuous place in the municipality. [1989, c. 398, §8 (NEW).]

#### SECTION HISTORY

1989, c. 398, §8 (NEW).

### **§7224. EXPENSE OF REMOVAL PAID BY MUNICIPALITY; PARTIAL STATE REIMBURSEMENT**

Within a time as the Department of Transportation by order directs, the municipal officers or county commissioners shall cause the bushes to be cut down and removed, or chemically treated, and shall cause the trees, fences, signboards or other encroachments to be trimmed, cut down or removed and from time to time, as may be ordered by the department, to keep them trimmed, cut down or removed, and the expense shall in the first instance be paid by the municipality where the labor is performed, but, on the filing with the department of proper proof of the payment, 1/2 of any amount shall be repaid by the State to the municipality. The payment shall be paid from the appropriation for the operation of the department. Any expense incurred

by the department in applying chemical treatment, or to properly trim, cut down or remove and from time to time, as may be necessary, to keep trimmed, cut down and removed, bushes, trees and signboards, shall be borne by the department. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

**§7225. DAMAGES; MUNICIPALITY AND STATE TO SHARE**

If any person claims damages on account of any such act done under sections 7223 and 7224, the person may, within 2 years after the doing of any act, petition the Department of Transportation to assess damages and the department, after reasonable notice to the petitioner and to the interested municipality and, after hearing, shall award a sum as seems proper as damages to be paid by the municipality where the property is located. On proper proof of any payment, the Governor shall cause 1/2 of the payment to be paid by the State to the municipality. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

**§7226. BUILDINGS NOT REMOVED WITHOUT OWNER'S CONSENT**

Nothing contained in sections 7222 to 7225 authorizes the removal of any building without the consent of the owner. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

**§7227. APPLICABILITY TO ALL RAILROADS**

Except where otherwise expressly specified, sections 7221 to 7226 and section 7228 apply to all railroads operated by steam, electric, diesel-electric, diesel-motor, gasoline-electric or gasoline-motor power and engaged in the transportation of freight or passengers in standard railroad freight or passenger cars. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

**§7228. RAILROAD COMPANY MAY ENTER PRIVATE PROPERTY**

For the purpose of creating and maintaining the fair view mentioned in sections 7221 to 7227 or for the purpose of improving the view at one or more angles, any steam railroad company subject to this chapter may enter on private property and remove any embankment or other obstruction except a dwelling house. The owner of the property is entitled to damages, and may have the damages estimated and paid in a manner provided in chapter 607, and there is the same right of appeal as given in that chapter. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

## §7229. MAINTENANCE CHARGES FOR PRIVATE CROSSINGS

In a municipality in which a private way is crossed by a railroad crossing, the municipal officers may act as agents for a railroad corporation in collecting maintenance and insurance charges from those persons using that crossing. Nothing in this section may authorize a municipality to assess or levy these charges nor to use its taxing power to collect these charges. [1989, c. 398, §8 (NEW).]

### SECTION HISTORY

1989, c. 398, §8 (NEW).

## §7230. PARTIAL REIMBURSEMENT OF COST

The State, by or through the Department of Transportation, may reimburse railroad corporations for up to 50% of their annual cost of maintaining public at-grade railroad crossings and crossing protection devices. These crossing protection devices shall include signals, gates, crossbucks and grade separation bridges carrying highways over railroad lines. The actual reimbursement shall be calculated for each railroad based on the following formula. "Cost" shall include all reimbursable costs incurred by the railroad, as determined by the commissioner, less any payments made to the railroad by any other entities. [1989, c. 398, §8 (NEW).]

For the purpose of this section, public at-grade crossings shall be those crossings determined by the Commissioner of Transportation to be public crossings. Public crossings shall not include crossings on rail lines abandoned, embargoed or listed by the railroad corporation in Category I, Category II or Category III, as defined by the United States Interstate Commerce Commission, on the railroad corporation's most recent system diagram map filed with the United States Interstate Commerce Commission. [1989, c. 398, §8 (NEW).]

The State may provide annually each railroad corporation with a reimbursement payment. For at-grade crossings, the payment must be determined based on each railroad corporation's verified average cost for crossing maintenance multiplied by the number of eligible crossings, with a maximum payment of \$2,500 per crossing. [2003, c. 498, §5 (AMD).]

Payment to any railroad corporation may be made contingent on the railroad corporation performing specified maintenance on specific crossings or grade separation bridges when, in the judgment of the commissioner, the public welfare or safety requires that the maintenance be performed. If the railroad corporation fails to perform the required maintenance, the department may contract with others for the work or perform the work itself. In either case, reimbursement of the actual costs shall be made to the entity performing the maintenance or causing the maintenance to be performed. The reimbursement payment to each railroad corporation shall be adjusted to reflect the costs of any maintenance performed by others on lines for which the railroad corporation is responsible under this provision. The adjustment shall also reflect an amount to cover the department's administrative costs for arranging the maintenance to be performed. [1989, c. 398, §8 (NEW).]

Each railroad corporation which seeks reimbursement under this section must report annually its actual maintenance costs for the previous calendar year which shall be used to calculate the reimbursement. The department shall establish guidelines to determine allowable maintenance costs. [1989, c. 398, §8 (NEW).]

This annual report shall describe its maintenance program for public grade crossings and highway over railroad grade separation bridges. The report shall include the total actual costs incurred, total quantities of materials used and work hours expended for the previous year. The department may audit records and supporting documentation relating to costs incurred by railroad corporations. [1989, c. 398, §8 (NEW).]

The commissioner shall develop guidelines to require that any railroad corporation, prior to receiving a reimbursement for the maintenance of the line on which an eligible crossing is located shall file an annual plan by December 1st of each calendar year. The plan shall describe the condition of the line, the maintenance to be performed in the year for which reimbursement is sought, the speed at which trains will be allowed to

operate over that line, the posted vehicle load limit on grade separation bridges and any other information required by the commissioner. The commissioner may also require as a condition of reimbursement that certain noncrossing maintenance or repairs be performed on the line or that the line be maintained to allow trains to operate at a certain speed, that vehicle load limits on grade separation bridges be maintained or that other measures affecting the safety and maintenance of the track be taken by the railroad corporation. [1989, c. 398, §8 (NEW).]

#### SECTION HISTORY

1989, c. 398, §8 (NEW). 2003, c. 498, §5 (AMD).

### **§7231. PETITION; DAMAGES; EXPENSES; TEMPORARY WAYS**

The municipal officers in instances of town ways crossing or crossed by a railroad, whether the crossing be at grade or otherwise, or any railroad corporation may petition the Department of Transportation alleging that public safety or public convenience either to the traveling public or in the operation of the railroad services requires abolishment of or reconstruction of or alteration of crossings or its approaches; or change in the method of crossing a public way; or the closing of a crossing and the substitution of another; or the removal of obstructions to the sight at the crossing and requesting the situation be remedied. The Department of Transportation shall appoint a time and place for a hearing after notice of not less than 10 days to the petitioners, the railroad corporation, the municipality in which the crossing is situated, the owners or occupants of the land adjoining the crossing or adjoining that part of the way to be changed in grade. After notice and hearing, the Department of Transportation shall make its determination to insure safety or public convenience and by whom the abolishment, reconstruction, alteration, change or removal shall be made. The jurisdiction of the Department of Transportation shall exist whether the change or alterations in the crossing is within or without the limits of a public way. To facilitate the abolishment, reconstruction, alterations, changes or removals, highways and other ways may be raised or lowered or the courses of the same way may be altered to permit a railroad to pass at the side thereof. For the purposes aforesaid land may be taken and damages awarded as provided for laying out highways. The Department of Transportation shall determine how much land may be taken and shall fix the damages sustained by any person whose land is taken and the special damages which the owner of land adjoining the public way may sustain by reason of any change in the grade of the way. [1989, c. 398, §8 (NEW).]

Appeal from any decision, order or award of the commission may be had as provided in section 7233. The Department of Transportation shall apportion the expenses pertaining thereto and damages as follows: If the way involved is a state highway, 50% to the department and 50% to the railroad corporation; if the way involved is a state aid highway, 50% to the department and the municipality or municipalities in which the way is located, the pro rata share being determined by the percentage of state aid granted on the way involved and 50% to the railroad corporation; if the way involved is a town way, 35% to the State, to be paid out of the General Fund, 15% to the town, or in cases under the last paragraph of this section 15% to the county commissioners of the county in which the way is located and over which the county commissioners have jurisdiction, and 50% to the railroad corporation, provided that the department may vary the aforesaid percentages of expense and damages as it may deem proper after due consideration of the relative benefits to be derived from the abolishment, alteration or reconstruction, and provided that the amount ordered to be paid by the railroad corporation shall not in any event exceed 50% of the expenses and damages. The Department of Transportation may approve agreements made by the railroad corporation and other parties in interest in respect to the work or varying the percentages, provided the amount to be paid by the town shall not exceed the 15% specified unless the town shall vote otherwise, as to any elimination or alteration made under this section, the department may determine what work fairly and properly should be regarded as highway construction. [1989, c. 398, §8 (NEW).]

Notwithstanding the preceding paragraph, the cost of reconstruction of railroad grade separation structures carrying the highway over the railroad, including the alterations to the approaches to said structure, on nonfederal aid state aid highways shall be apportioned as follows: 70% to the Department of Transportation, 10% to the railroad corporation and 20% to the municipality or the county having jurisdiction

of the roads in any unorganized township in which said structure is located, provided that the department may vary the aforesaid percentages of cost as it may deem proper after due consideration of the relative benefits to be derived from the reconstruction. [1989, c. 398, §8 (NEW).]

The Department of Transportation may make an order relative to the maintenance of crossings at grade or otherwise as it may deem necessary, and may determine whether expense shall be borne by the railroad corporation, by the municipality in which any crossing is located or by the State by or through the department; or the department may apportion the expense equitably between the railroad corporation, the municipality and the State by or through the Department of Transportation. [1989, c. 398, §8 (NEW).]

While the use of any way is obstructed in carrying out the foregoing provisions of this section, such temporary way shall be provided as the department may order. The Department of Transportation shall not make any order on any petition filed under this section until they are satisfied, by investigation or otherwise, that the financial condition of the corporation operating the railroad in question will enable the corporation to comply with the order, and that the probable benefit to the public will warrant the order and the probable expense resulting from the order, and that the order can be complied with without exceeding the state appropriation available. [1989, c. 398, §8 (NEW).]

The county commissioners shall have the same right of petition under this section, with respect to roads in unorganized places laid out by them under section 4001, as have municipal officers of a municipality under the provisions of this section. In case a petition is filed by them, all parties interested in the subject matter of the petition shall be notified by the Department of Transportation of the filing of the petition and given opportunity to appear and be heard. [1989, c. 398, §8 (NEW).]

#### SECTION HISTORY

1989, c. 398, §8 (NEW).

### **§7232. TRACKS OF MORE THAN ONE RAILROAD**

Whenever the Department of Transportation, on an application or petition brought under section 7231, finds that a public way crosses or is crossed by tracks of more than one railroad and the tracks of the railroads are so near together that public safety or convenience requires the work of abolishment, reconstruction, alteration, change or removal to be done under and in compliance with one order, the department shall give notice to all the corporations operating the railroads to appear before it and be heard on the application. After notice and hearing the department shall determine what abolishment, reconstruction, alteration, change or removal, if any, of the crossing shall be made and shall determine by whom the work shall be done and shall apportion the percentage of expense to be borne by the railroad corporations between the corporations in such manner as the department shall deem just and proper. [1989, c. 398, §8 (NEW).]

#### SECTION HISTORY

1989, c. 398, §8 (NEW).

### **§7233. ORDER OF DEPARTMENT OF TRANSPORTATION; APPEALS**

The order of the Department of Transportation relating to any matter on which the department may act under the authority of sections 7231 and 7232 shall be communicated in writing to the petitioners and to all persons to whom notice of the hearing on the petition was given. Any person aggrieved by the order, who was a party to the proceedings, may appeal from the order to the Superior Court within and for the county in which the way or crossing is located in the manner now provided in section 7202. Any person aggrieved by the decision or judgment of the Department of Transportation in relation to damages for land taken for the purposes of section 7231 may appeal from the decision to the Superior Court to be held in the county where the land is situated, within 30 days after the report of the department is made, which court shall determine the same by a committee of reference if the parties so agree or by a verdict of its jury, and shall render judgment for the damages recovered with costs to the party prevailing in the appeal, but the committee or jury shall not alter the requirements in the report of the department. The appellants shall, when an appeal is taken, include

in the complaint a statement setting forth substantially the facts of the case and shall give written notice of the appeal with a copy of the complaint to the opposite party. An appeal may be taken to the law court as in other actions. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

**§7234. TREES NEAR RAILROAD CROSSINGS**

Whenever the Department of Transportation deems that trees, bushes or other encroachments within the limits of a public way obstruct the view at railroad crossings or where one public way enters another and thereby renders the way dangerous to travelers, it shall cause the removal of the obstructions. [1989, c. 398, §8 (NEW).]

## SECTION HISTORY

1989, c. 398, §8 (NEW).

**Chapter 619: INSPECTION AND INVESTIGATION OF RAILROADS****Subchapter 1: REVIEW AND MAINTENANCE****§7301. RAILROADS EXAMINED; ANNUAL REPORT**

*(REPEALED)*

## SECTION HISTORY

1989, c. 398, §9 (NEW). 2013, c. 36, §12 (RP).

**§7302. CERTIFICATE OF SAFETY FOR PASSENGER TRAINS**

*(REPEALED)*

## SECTION HISTORY

1989, c. 398, §9 (NEW). 2013, c. 36, §12 (RP).

**§7303. EXPERIENCED ENGINEER TO EXAMINE BRIDGES**

*(REPEALED)*

## SECTION HISTORY

1989, c. 398, §9 (NEW). 2013, c. 36, §12 (RP).

**§7304. MANAGERS NOTIFIED WHEN ROAD UNSAFE**

*(REPEALED)*

## SECTION HISTORY

1989, c. 398, §9 (NEW). 2013, c. 36, §12 (RP).

**§7305. COURT PROCEEDINGS FOR NONCOMPLIANCE**

*(REPEALED)*

## SECTION HISTORY

1989, c. 398, §9 (NEW). 2013, c. 36, §12 (RP).

## **§7306. PASSENGER TRAINS PROHIBITED FROM RUNNING OVER UNSAFE ROADS**

*(REPEALED)*

### SECTION HISTORY

1989, c. 398, §9 (NEW). 2013, c. 36, §12 (RP).

## **§7307. CROSSINGS AND BRIDGES**

*(REPEALED)*

### SECTION HISTORY

1989, c. 398, §9 (NEW). 2013, c. 36, §12 (RP).

## **§7308. SAFETY PROVISIONS**

*(REPEALED)*

### SECTION HISTORY

1989, c. 398, §9 (NEW). 2013, c. 36, §12 (RP).

## **§7309. ORDERS OF THE COMMISSIONER**

The Superior Court is given full jurisdiction to enforce compliance with any order issued by the Commissioner of Transportation under this chapter. It shall be the duty of the commissioner to see that the rights of the public under this subchapter are fully protected. [1989, c. 398, §9 (NEW).]

### SECTION HISTORY

1989, c. 398, §9 (NEW).

## **§7310. PRIOR ORDERS AND RULES EFFECTIVE**

All rules, orders and decrees in effect prior to October 24, 1977, which were issued by the Public Utilities Commission pursuant to the provisions in former Title 35, which provisions are embraced in this subchapter, shall remain in full force and effect until the Commissioner of Transportation has acted pursuant to applicable provisions of this subchapter. [1989, c. 398, §9 (NEW).]

### SECTION HISTORY

1989, c. 398, §9 (NEW).

## **§7311. INVESTIGATION AND REPORTS OF ACCIDENTS**

**1. Investigation.** The Commissioner of Transportation shall investigate all accidents resulting in loss of human life, or personal injury requiring 3 full days of hospitalization, occurring upon the premises of any railroad company or directly or indirectly arising from or connected with its maintenance or operation. Any accident so occurring and which results in property damage or personal injury that requires less than 3 full days of hospitalization also may be investigated if, in the judgment of the commissioner, the public interest requires it. The commissioner may hold hearings in connection with any investigation and shall reasonably notify the railroad company of the time and place of the hearing, and the railroad company may then be heard and the commissioner shall have the power to make such order or recommendation with respect thereto as deemed just and reasonable.

[ 1989, c. 398, §9 (NEW) .]

**2. Reports of accidents.** Every railroad company is required to file with the Commissioner of Transportation, under such rules as the commissioner may prescribe, reports of accidents so occurring, in the manner and form designated by the commissioner. In case of accidents resulting in loss of human life, such reports shall be made immediately by telephone or telegraph, followed by a detailed written report.

[ 1989, c. 398, §9 (NEW) .]

**3. Disposition of reports.** The orders and recommendations of the Department of Transportation, and accident reports and all other materials in the department's file pertaining to such railroad company accidents, shall be made available, upon request, to the railroad company, the injured person or their representatives.

[ 1989, c. 398, §9 (NEW) .]

**4. Reports inadmissible as evidence.** The orders and recommendations of the Department of Transportation, accident reports and any other material in the department's file pertaining to such accidents obtained or prepared pursuant to an investigation under this section shall not be admitted as evidence in any suit or action for damages growing out of any matter mentioned in any such investigation.

[ 1989, c. 398, §9 (NEW) .]

#### SECTION HISTORY

1989, c. 398, §9 (NEW) .

## §7312. PARTICIPATION IN THE FEDERAL RAILROAD ADMINISTRATION TRACK AND EQUIPMENT SAFETY AND INSPECTION PROGRAM

The commissioner shall have the authority to participate in carrying out investigative and surveillance activities in connection with any rule, regulation, order or standard prescribed by the Secretary of Transportation of the United States under the authority of the Federal Railroad Safety Act of 1970, Public Law 91-458, provided that the commissioner shall comply with all the requirements imposed by the United States Code, Title 45, section 435. The commissioner may employ such expert, professional or other assistance as is necessary to carry out the activities authorized by this section. [1989, c. 398, §9 (NEW) .]

#### SECTION HISTORY

1989, c. 398, §9 (NEW) .

### Subchapter 2: FINANCIAL ASSISTANCE

## §7320. APPLICATION FOR FINANCIAL ASSISTANCE

**1. Annual application and approval required.** Any person, corporation, partnership or other business entity which provides railroad transportation for compensation in the State, or seeks to acquire or construct additional rail lines in the State, shall apply to the Department of Transportation for the privilege of receiving financial assistance from the State, for the year in question. Financial assistance from the State is defined as grants, loans, subsidies, tax exemptions, cost reimbursement for maintenance of railroad crossings or payments from other sources. The applicant may not receive the financial assistance unless the application is approved.

[ 1989, c. 398, §9 (NEW) .]

**2. Criteria.** In determining approval for an application under this section, the department shall consider, among other matters:

A. The need for this rail service; [1989, c. 398, §9 (NEW) .]

B. The effect of the rail service on the health, safety and general welfare of the people of the State; and [1989, c. 398, §9 (NEW).]

C. For any entity which already provides railroad transportation for compensation within the State, the record of that railroad in investing within the State, maintaining track and rights-of-way within the State, use of funds from previous financial assistance from the State and the safety, reliability and efficiency of the service actually provided by that railroad within the State. [1989, c. 398, §9 (NEW).]

[ 1989, c. 398, §9 (NEW) . ]

**3. Procedure for entities seeking to acquire or construct additional rail lines.** An entity seeking to acquire or construct an additional rail line or lines shall proceed in accordance with this subsection.

A. The applicant shall provide notice by:

- (1) Publishing an accurate and understandable summary of the application in a newspaper of general circulation in each area affected by the rail service;
- (2) Mailing a copy of its application to all shippers which used the rail line during any of the 12 months prior to the date the application was filed, as well as those shippers who may reasonably be expected to use that line within one year from the date of application;
- (3) Mailing a copy of its application to the employee representatives of the employees of the railroad or who may be affected by a proposed rail service; and
- (4) Mailing a copy of its application to any municipality served by the rail line or in which that service may be affected. [1989, c. 398, §9 (NEW).]

B. After receipt of a substantially complete application and compliance by the applicant with the notice requirements of this subsection, the department shall hold a public hearing on any application covered by this subsection, in accordance with its rules. [1989, c. 398, §9 (NEW).]

C. Any party affected by the application has the right to intervene in a proceeding under this section. Intervention of other parties shall be granted liberally in order that a complete record may be developed. [1989, c. 398, §9 (NEW).]

[ 1989, c. 398, §9 (NEW) . ]

**4. Procedure for existing operations.** An entity which intends only to continue existing operations shall proceed in accordance with this subsection.

A. After receipt of a substantially complete application, the department shall provide notice of the application and opportunity for hearing on any application covered by this subsection by sending an accurate and understandable summary of the application to a newspaper of general circulation in each area affected by the rail service for publication at the applicant's expense. [1989, c. 398, §9 (NEW) . ]

B. The department may hold a public hearing on the application and shall hold a hearing when a request for a hearing shows a substantial likelihood that the application may be denied or granted with qualifications under the criteria of subsection 2 and the hearing is requested by:

- (1) A shipper or shippers whose traffic on the railroad line totaled 500 tons in the year preceding the application;
- (2) Any municipality having a siding, terminal, station or agency station of the railroad line within its bounds; or
- (3) A petition of 25 individuals who state that they are affected by the operation of the railroad.

The hearing shall be subject to the rules of the department. [1989, c. 398, §9 (NEW) . ]

[ 1989, c. 398, §9 (NEW) . ]

**5. Approval.** At the conclusion of the proceedings and within 30 days of the conclusion of the public hearing, if any, the department shall:

A. Approve the application as filed; [1989, c. 398, §9 (NEW).]

B. Approve the application with conditions as the department determines necessary to assure that the investment of state funds in providing assistance for the rail service will be consistent with the public interest; or [1989, c. 398, §9 (NEW).]

C. Deny the application. [1989, c. 398, §9 (NEW).]

Approval shall be valid for a year. In the case of denial, reapplication shall be in accordance with the rules of the department. Approval may be revoked in case of noncompliance with any conditions.

[ 1989, c. 398, §9 (NEW) .]

**6. Temporary approval.** When the commissioner determines that the public interest requires immediate financial assistance from the State to a railroad, the department may issue temporary approval for a period not to exceed 90 days without notice or hearing.

[ 1989, c. 398, §9 (NEW) .]

**7. Appeal.** Any applicant or intervenor aggrieved by the decision of the department under subsection 5 has a right to judicial review in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

[ 1989, c. 398, §9 (NEW) .]

**8. Rules.** The department shall promulgate rules concerning the implementation and enforcement of this section.

[ 1989, c. 398, §9 (NEW) .]

**9. Existing operations; temporary approval.** Any operation ongoing as of the effective date of this section, as long as the ownership or management of that operation is not transferred to another entity, shall be deemed approved until March 1, 1990.

[ 1989, c. 398, §9 (NEW) .]

**10. Consolidation of hearings.** The Department may consolidate any hearing under this section with another hearing concerning railroad service by the same entity in the same area.

[ 1989, c. 398, §9 (NEW) .]

#### SECTION HISTORY

1989, c. 398, §9 (NEW).

## Chapter 621: PASSENGER RAIL SERVICE

### Subchapter 1: GENERAL PROVISIONS

#### §8001. SHORT TITLE

This chapter may be known and cited as the "Passenger Rail Service Act." [1995, c. 374, §3 (NEW).]

#### SECTION HISTORY

1995, c. 374, §3 (NEW).

## §8002. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 374, §3 (NEW).]

**1. Authority.** "Authority" means the Northern New England Passenger Rail Authority and any successors to that authority.

[ 1995, c. 374, §3 (NEW) .]

**2. Government agency.** "Government agency" includes any department, agency, commission, bureau, authority, instrumentality and political subdivision of:

A. The Federal Government; [1995, c. 374, §3 (NEW).]

B. The State; [1995, c. 374, §3 (NEW).]

C. Any other state; and [1995, c. 374, §3 (NEW).]

D. Canada and any of its provinces. [2005, c. 312, §1 (AMD).]

[ 2005, c. 312, §1 (AMD) .]

**3. Railroad line.** "Railroad line" or "lines" means the right-of-way, track, track appurtenances, ties, bridges, station houses and other appurtenant structures.

[ 1995, c. 374, §3 (NEW) .]

### SECTION HISTORY

1995, c. 374, §3 (NEW). 2005, c. 312, §1 (AMD).

## §8003. INITIATION AND ESTABLISHMENT OF PASSENGER RAIL SERVICE

**1. Establishment of service.** The authority is directed to take all actions that are reasonably necessary to initiate, establish or reinstate regularly scheduled passenger rail service between points within this State and points within and outside this State. These actions may include, but are not limited to, the acquisition, holding, use, operation, repair, construction, reconstruction, rehabilitation, modernization, rebuilding, relocation, maintenance and disposition of railroad lines, railway facilities, rolling stock, machinery and equipment, trackage rights, real and personal property of any kind and any rights in or related to that property.

[ 1995, c. 374, §3 (NEW) .]

**2. Acquisition of properties; rights.** The authority may acquire any of the properties or rights listed in subsection 1 through purchase, lease, lease-purchase, gift, devise or otherwise. In making these acquisitions the authority may exercise the power of eminent domain following the same procedure set forth in section 7154, subsection 5; except that any notice of condemnation must be filed in the registry of deeds for the county or counties, or registry division or divisions, in which the property is located, in the case of real property, and with the office of the Secretary of State in the case of personal property.

[ 1995, c. 374, §3 (NEW) .]

**3. Responsibilities of State.** Nothing in this chapter precludes the State from acquiring railroad lines for passenger rail service or precludes the Department of Transportation from taking actions to facilitate the operation of passenger rail service within the State or from contracting with 3rd parties for the operation of passenger rail service within the State. Nothing in this chapter affects the responsibilities of the department for transportation policy and planning as set forth in this Title.

[ 2005, c. 312, §2 (NEW) .]

#### SECTION HISTORY

1995, c. 374, §3 (NEW). 2005, c. 312, §2 (AMD).

### §8004. CONTRACTS; STUDIES

In order to implement section 8003 and the purposes of this chapter, the authority is directed to:  
[1995, c. 374, §3 (NEW) .]

**1. Conduct studies.** Conduct or cause to be conducted any studies that the authority determines necessary or proper;

[ 1995, c. 374, §3 (NEW) .]

**2. Enter into contracts.** Enter into and fulfill any contracts and agreements the authority determines necessary or proper;

[ 1995, c. 374, §3 (NEW) .]

**3. Acquire property.** Acquire property, including, but not limited to, railroad lines, both within and outside of this State; and

[ 1995, c. 374, §3 (NEW) .]

**4. Cooperate with government agencies.** Cooperate and enter into agreements, contracts and compacts with any government agency, the National Railroad Passenger Corporation and any other person, public or private.

[ 1995, c. 374, §3 (NEW) .]

#### SECTION HISTORY

1995, c. 374, §3 (NEW).

### §8005. INITIAL FUNDING

*(REPEALED)*

#### SECTION HISTORY

1995, c. 374, §3 (NEW). 1995, c. 543, §2 (AMD). 2005, c. 312, §3 (RP).

### §8006. FUNDING

The authority is directed to use any revenues it receives from the operation of the passenger rail service established pursuant to this chapter to pay the operational expenses of that passenger rail service. The authority is directed to seek and use funds necessary to pay all operational expenses of this passenger rail

service that are not met by fares and other funds or revenues. For the purposes of this section, "operational expenses" include, but are not limited to, all additional capital expenses necessary to maintain the passenger rail service. [2005, c. 312, §4 (AMD).]

SECTION HISTORY

1995, c. 374, §3 (NEW). 2005, c. 312, §4 (AMD).

### **§8007. FEDERAL FUNDS**

The authority may take all actions consistent with this chapter necessary to qualify for, accept and disburse any money that the Federal Government may grant or loan to the authority to fund any actions required of the authority under the terms of this chapter. [1995, c. 374, §3 (NEW).]

SECTION HISTORY

1995, c. 374, §3 (NEW).

### **§8008. GOVERNMENT AGENCIES**

Any government agency may allocate money and take other actions that may aid in the implementation of this chapter. The authority may provide funds, including loans and matching grants, to government agencies in order to encourage their participation in implementing this chapter. [1995, c. 374, §3 (NEW).]

SECTION HISTORY

1995, c. 374, §3 (NEW).

### **§8009. REASONABLE FARES**

Fares for the passenger rail service established pursuant to this chapter must be set at reasonable levels to encourage use of this service. [1995, c. 374, §3 (NEW).]

SECTION HISTORY

1995, c. 374, §3 (NEW).

### **§8010. SATISFACTION OF OPERATING DEFICITS**

The authority is directed to obtain all additional funds, through borrowing, revenues or other means, necessary to satisfy operating deficits arising from expenses, including capital expenditures, necessary to ensure the continuation of passenger rail service established pursuant to this chapter. [1995, c. 374, §3 (NEW).]

SECTION HISTORY

1995, c. 374, §3 (NEW).

### **§8011. RULES OF CONSTRUCTION**

This chapter must be construed liberally to effectuate the purposes of this chapter. [2005, c. 312, §5 (AMD).]

SECTION HISTORY

1995, c. 374, §3 (NEW). 2005, c. 312, §5 (AMD).

## §8012. PASSENGER RAIL LIABILITY LIMITATION

In the event one or more passenger rail service providers are protected by a liability insurance policy covering liability for property damage, personal injury, bodily injury and death arising from rail incidents or accidents occurring in this State involving passenger trains with policy limits of not less than \$75,000,000 per occurrence annually and \$75,000,000 in the aggregate annually regardless of the number of passenger rail service providers protected by such an insurance policy, each passenger rail service provider protected by such an insurance policy is not liable in excess of the coverage limits of such an insurance policy for any and all claims for damage, whether compensatory or punitive, for property damage, personal injury, bodily injury or death arising out of such rail incidents or accidents. For purposes of this section, "passenger rail service provider" includes for-profit and nonprofit corporations and legal entities that own, lease, operate or manage passenger trains or passenger rail service; the authority; railroad companies that own, lease, provide track rights to or maintain rail lines over which passenger trains pass; and operators of passenger train services. "Passenger rail service provider" does not include the National Railroad Passenger Corporation or its successor organization. This section does not affect immunities, limitation on damages, limitation of actions, limitation of liability or other protections provided to the State as defined in Title 14, section 8102, subsection 4. [2005, c. 312, §6 (RPR).]

### SECTION HISTORY

2001, c. 54, §1 (NEW). 2005, c. 312, §6 (RPR).

## Subchapter 2: NORTHERN NEW ENGLAND PASSENGER RAIL AUTHORITY

### §8111. PURPOSE

The Northern New England Passenger Rail Authority, as established by Title 5, section 12004-F, subsection 16, is a body both corporate and politic in the State established for the general purpose of promoting passenger rail service as set forth in subchapter 1. It is declared that the purposes of this chapter are public and that the authority must be regarded as performing a governmental function in carrying out this chapter. [2005, c. 312, §7 (AMD).]

### SECTION HISTORY

1995, c. 374, §3 (NEW). 2005, c. 312, §7 (AMD).

### §8112. DIRECTORS

**1. Board of directors.** The authority consists of a board of 7 directors. The 7 directors are the Commissioner of Transportation, who is a director ex officio, the Commissioner of Economic and Community Development, who also is a director ex officio, and 5 directors who are members of the public, appointed by the Governor and confirmed by the Legislature for 5-year staggered terms, who shall serve until their respective successors are appointed and qualified. A vacancy in a position held by a director who is a member of the public occurring other than by the expiration of a term must be filled by the Governor and confirmed by the Legislature for the unexpired term.

[ 2005, c. 312, §8 (RPR) .]

**2. Compensation and removal of directors who are members of public.** Each director who is a member of the public is entitled to compensation according to the provisions of Title 5, chapter 379. The Governor may remove any director who is a member of the public for cause.

[ 2005, c. 312, §8 (RPR) .]

**3. Ex officio directors.** Each ex officio director may vote and may designate 2 employees of that director's department or agency, either of whom may represent that director and may vote and otherwise act on behalf of that director at meetings of the board. Any such designation must be in writing and delivered to the board, and the designation continues in effect until revoked or amended by the director in a written document delivered to the board.

[ 2005, c. 312, §8 (NEW) . ]

**4. Chair.** The Governor shall appoint one director to serve as chair of the board, who is responsible for scheduling, convening and chairing all board meetings.

[ 2005, c. 312, §8 (NEW) . ]

**5. Officers.** The board shall elect a treasurer, a secretary and any other officers the board from time to time considers necessary, none of whom needs to be a director.

[ 2005, c. 312, §8 (NEW) . ]

**6. Quorum.** All powers of the authority may be exercised by the board in lawful meeting, and a majority of directors then in office constitutes a quorum. A vacancy on the board does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

[ 2005, c. 312, §8 (NEW) . ]

**7. Regular meetings.** Regular meetings of the board may be established by bylaw, and notice of such regular meetings need not be given to directors.

[ 2005, c. 312, §8 (NEW) . ]

#### SECTION HISTORY

1995, c. 374, §3 (NEW). 1995, c. 543, §3 (AMD). 2005, c. 312, §8 (RPR).

### §8113. CONFLICT OF INTEREST

A director, officer or employee of the authority may not acquire any interest, direct or indirect, in any contract or proposed contract of the authority. A director, officer or employee may not participate in any decision on any contract entered into by the authority if that individual has any interest, direct or indirect, in any firm, partnership, corporation or association that will be party to such a contract or financially involved in any transaction with the authority; except this prohibition does not apply to the execution of agreements by banking institutions for the deposit or handling of authority funds in connection with any contract or to utility services, the rates for which are fixed or controlled by a governmental agency. [1995, c. 374, §3 (NEW) . ]

#### SECTION HISTORY

1995, c. 374, §3 (NEW).

### §8114. POWERS

The authority may: [1995, c. 374, §3 (NEW) . ]

**1. Suit.** Sue and be sued;

[ 1995, c. 374, §3 (NEW) . ]

**2. Seal.** Have a seal and alter the seal at pleasure;

[ 1995, c. 374, §3 (NEW) . ]

**3. Bylaws; rules.** Adopt from time to time and amend bylaws covering its procedure and rules for the purposes set forth in this chapter; develop and adopt rules in accordance with the Maine Administrative Procedure Act; publish bylaws and rules as necessary or advisable; and cause records of its proceedings to be kept;

[ 1995, c. 374, §3 (NEW) . ]

**4. Employees.** Employ such assistants, attorneys, experts, inspectors and such other employees and consultants as the authority considers necessary or desirable for its purposes;

[ 1995, c. 374, §3 (NEW) . ]

**5. Department of Transportation.** Utilize the services of the State's Department of Transportation that are available and expedient and all charges for services provided by the department may be paid to it by the authority as mutually agreed upon; and

[ 1995, c. 374, §3 (NEW) . ]

**6. Other action.** Take all lawful action necessary and incidental to effectuate the purposes set forth in this chapter.

[ 1995, c. 374, §3 (NEW) . ]

#### SECTION HISTORY

1995, c. 374, §3 (NEW).

## §8115. OBLIGATIONS OF AUTHORITY

All expenses incurred in carrying out this chapter must be paid solely from funds provided to or obtained by the authority pursuant to this chapter. Any notes, obligations or liabilities under this chapter may not be deemed to be a debt of the State or a pledge of the faith and credit of the State; but those notes, obligations and liabilities are payable exclusively from funds provided to or obtained by the authority pursuant to this chapter. Pecuniary liability of any kind may not be imposed upon the State or any locality, town or landowner in the State because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance by or on the part of the authority or its agents, servants or employees. [2011, c. 524, §6 (AMD).]

#### SECTION HISTORY

1995, c. 374, §3 (NEW). 2005, c. 312, §9 (AMD). 2011, c. 524, §6 (AMD).

### §8115-A. AUTHORITY RECORDS

**1. Confidential records.** The following records of the authority are confidential:

A. Records and correspondence relating to negotiations of agreements to which the authority is a party or in which the authority has a financial or other interest. Once entered into, an agreement is not confidential; [2011, c. 524, §7 (NEW).]

B. Trade secrets; [2011, c. 524, §7 (NEW).]

C. Estimates prepared by or at the direction of the authority of the costs of goods or services to be procured by or at the expense of the authority; and [2011, c. 524, §7 (NEW).]

D. Any documents or records solicited or prepared in connection with employment applications, except that applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O. [ 2011, c. 524, §7 (NEW) . ]

[ 2011, c. 524, §7 (NEW) . ]

**2. Lawyer-client privilege.** The authority may claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

[ 2011, c. 524, §7 (NEW) . ]

#### SECTION HISTORY

2011, c. 524, §7 (NEW) .

## §8116. REPORT TO THE LEGISLATURE; DEPARTMENTAL REVIEW

**1. Annual report.** Beginning January 1, 1996, on an annual basis, the authority shall present its report to the Legislative Council and send copies to the joint standing committee of the Legislature having jurisdiction over transportation matters and the Commissioner of Transportation. The report shall include a description of the authority's activities for the preceding fiscal year, including a report of its receipts and expenditures from all sources.

[ 1995, c. 374, §3 (NEW) . ]

**2. Operating budget.** Beginning January 31, 1996, on an annual basis, the authority shall present the operating budget of the authority for the next fiscal year beginning July 1st to the Commissioner of Transportation for approval. The authority may only make expenditures in accordance with allocations approved by the commissioner. Any balance of an allocation that at any time may not be required for the purpose named in that allocation may be transferred at any time prior to the closing of the books to any other allocation for the use of the authority for the same fiscal year subject to review and approval by the commissioner. Fiscal statements describing a transfer must be submitted by the authority to the commissioner 30 days before the transfer is to be implemented. These fiscal statements must include information specifying the accounts that are affected, amounts to be transferred, a description of the transfer and a detailed explanation as to why the transfer is needed.

[ 1995, c. 374, §3 (NEW) . ]

#### SECTION HISTORY

1995, c. 374, §3 (NEW) .

## §8117. FAIR PRACTICES; AFFIRMATIVE ACTION

The authority is subject to and shall comply with Title 5, chapter 65. [ 1995, c. 374, §3 (NEW) . ]

#### SECTION HISTORY

1995, c. 374, §3 (NEW) .

## §8118. PROPERTY OF THE AUTHORITY

**1. Property of the authority.** All property of the authority pursuant to the provisions of this chapter is exempt from levy and sale by virtue of any execution and an execution or other judicial process is not a valid lien upon its property held pursuant to the provisions of this chapter. The authority may use its property only for the purposes set forth in this chapter.

[ 1995, c. 374, §3 (NEW) .]

**2. Entry upon lands.** The authority and its authorized agents and employees may enter upon any lands, waters and premises in the State for the purpose of making surveys, soundings, drillings and examinations as it determines necessary or convenient for the purpose of this chapter and the entry may not be deemed a trespass nor is the authority liable for the discovery of any form of waste or environmental contamination.

[ 1995, c. 374, §3 (NEW) .]

**3. Authority for transfer of interest in land to the authority.** Any county, municipality or other political subdivision, any public agency or commission of the State and any public service corporation or district, notwithstanding any contrary provisions of law, may lease, lend, grant or convey to the authority, upon its request and upon such terms and conditions as the proper authorities of the political subdivision, agency, commission, public service corporation or district determine reasonable and fair, any real or personal property or rights in the property that are necessary or convenient to the effectuation of the authorized purposes of the authority, including real and personal property or rights in the property already devoted to public use. As used in the subsection, the term "public service corporation" includes a public utility as defined in Title 35-A, section 102, subsection 13 and a corporation referred to in Title 13-C.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §41 (COR) .]

### SECTION HISTORY

1995, c. 374, §3 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B41 (COR).

## §8119. EXEMPTION FROM TAXES

Because the accomplishment by the authority of the authorized purpose stated in this chapter is for the benefit of the people of the State and for the improvement of their commerce and prosperity and is the performance of essential governmental functions, the authority may not be required to pay any taxes or assessment on any property acquired or used by it for the purposes provided in this chapter; except that service facilities leased or rented by the authority to business entities are subject to taxation and assessments must be made against the tenant in possession based upon the value of the leasehold interest, both real and personal. The authority may not be required to pay any tax upon its income except as may be required by the laws of the United States. [1995, c. 374, §3 (NEW).]

### SECTION HISTORY

1995, c. 374, §3 (NEW).

## §8120. EMPLOYEES

Employees of the Northern New England Passenger Rail Authority are subject to the state retirement provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter II. [1999, c. 152, Pt. E, §4 (NEW).]

The retirement accounts of state employees transferred to the authority in its capacity as an independent agency must remain in the state regular plan. New employees of the authority shall also become members of the Maine Public Employees Retirement System under the state regular plan. The authority shall make

employer retirement plan contributions at the state regular plan rate. Employee retirement plan contributions must be at the state regular plan rate. [1999, c. 152, Pt. E, §4 (NEW); 2007, c. 58, §3 (REV).]

The accrued fringe benefits of state employees transferred to the authority in its capacity as an independent agency, including vacation and sick leave, health and life insurance and retirement, remain with the transferred employee. [1999, c. 152, Pt. E, §4 (NEW).]

Authority employees are entitled to receive the same retirement health benefits as state employees. [1999, c. 152, Pt. E, §4 (NEW).]

#### SECTION HISTORY

1999, c. 152, §E4 (NEW). 2007, c. 58, §3 (REV).

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