

## 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. [PL 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. [PL 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. [PL 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. [PL 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. [PL 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. [PL 1999, c. 468, §1 (AMD).]

#### SECTION HISTORY

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

[PL 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 or hydrogeologically downgradient from a state-owned salt storage facility suspects that a private water supply on that land has been destroyed or rendered unfit for human consumption by the department constructing, reconstructing or maintaining a state or state aid highway or storing salt in a state-owned salt storage facility, the owner may apply in writing to the department for a determination of the alleged cause and assessment of the damage and, if the claim is founded on construction, the owner shall present the application within 24 months after the completion date of the work as that date appears in the records of the department.

The application must 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 the water supply, a copy of the determination must 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. [PL 2023, c. 367, §1 (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 or storing salt, a copy of the determination must 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 the department shall set forth an offer of settlement that offers:

- (1) To replace the water supply;
- (2) To repair the damage to the water supply;
- (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. [PL 2023, c. 367, §1 (AMD).]

C. The department may issue rules and regulations in accordance with standards of the Department of Health and Human Services and the United States Department of Health and Human Services, Public Health Service regarding water potability for the determination of the degree of contamination, pollution or fitness for domestic use. [PL 2023, c. 367, §1 (AMD).]

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 may 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 the land to any agency of this State, unless agreed to by the property owner. [PL 2023, c. 367, §1 (AMD).]

E. If the department is unable to settle at what it determines to be 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 are then the same as in condemnation cases. [PL 2023, c. 367, §1 (AMD).]

F. This subsection does not apply to private water supplies after June 26, 1969 where the location does not allow for or provide for adequate surface drainage. [PL 2023, c. 367, §1 (AMD).]

G. This subsection does not apply to private water supplies now located or hereafter located within the right-of-way limits. [PL 2023, c. 367, §1 (AMD).]

H. This subsection does not apply to any private water supply damaged by construction, reconstruction or maintenance of the highway or the storage of salt that the department determines to have already been contaminated or polluted by another source to the degree the contamination or pollution would have rendered it unfit for human consumption. [PL 2023, c. 367, §1 (AMD).]

I. With respect to a private water supply located on land that is adjacent to a state or state aid highway or is hydrogeologically downgradient from a state-owned salt storage facility, the department, on the request of the landowner, shall arrange for and pay the cost of testing the private water supply for any contaminants that may derive from the department constructing, reconstructing or maintaining a state or state aid highway or storing salt in a state-owned salt storage facility. [PL 2023, c. 367, §1 (NEW).]

For purposes of this subsection, "hydrogeologically downgradient" means that a location receives groundwater from another location.

[PL 2023, c. 367, §1 (AMD).]

**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.

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

## SECTION HISTORY

PL 1969, c. 435 (AMD). PL 1971, c. 593, §22 (AMD). PL 1973, c. 625, §132 (AMD). PL 1975, c. 2 (AMD). PL 1975, c. 293, §4 (AMD). PL 1979, c. 140 (AMD). PL 1987, c. 395, §§A105,A106 (AMD). PL 1987, c. 402, §§B18,B19 (AMD). PL 1987, c. 769, §§A83,A84 (AMD). PL 2003, c. 689, §B6 (REV). PL 2023, c. 367, §1 (AMD).

## §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. [PL 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.

[PL 1999, c. 188, §1 (NEW).]

#### SECTION HISTORY

PL 1971, c. 593, §22 (AMD). PL 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. [PL 1989, c. 108, §1 (RPR).]

#### SECTION HISTORY

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

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