

23 M.R.S.A. §52. General powers and duties

The department may from time to time make and shall enforce rules and regulations relating to construction, maintenance and use of all state and state aid highways and all other highways to which the State contributes by law for the improvement thereof, and relating to the manner of conducting all investigations and hearings and the administration of its office, powers and duties, subject to chapters 1 to 19; and shall direct the expenditure of all moneys for construction, maintenance and use of all state and state aid highways and of all other highways for which state funds are provided by law. It may obtain leases for such land and office space as it deems necessary for the performance of its duties. [1971, c. 593, § 22 (amd).]

Except as otherwise provided in chapters 1 to 19, the purchase of supplies, materials and equipment for highway maintenance and construction purposes shall be made through the State Purchasing Agent as provided by law. The department may be consulted by and shall, without charge, advise municipal officers and road commissioners on the subject of construction 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. [1971, c. 593, § 22 (amd).]

In order to promote engineering and design quality and ensure maximum competition by firms providing consultant services, 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 utilized in lieu of federally mandated provisions. [1997, c. 52, §1 (new).]

23 M.R.S.A. §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).]

23 M.R.S.A. §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).]

23 M.R.S.A. §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

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MaineDOT Highway Driveway and Entrance Rules

Note: Citations are intended to provide a quick reference guide. Amendments to these statutes that may occur from time to time may not be reflected here. For the most accurate information, the Legislative Home Page should be consulted on a regular basis.

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).]

23 M.R.S.A. §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. [1999, c. 676, §1 (new).]

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).]

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); §2 (aff).]

5. Exemptions. A permit is not required for the following: [1999, c. 676, §1 (new); §2 (aff).]

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); §2 (aff).]

6. Access denied. The Department of Transportation and the municipalities shall deny ingress to and egress from property abutting the highway when access rights have been acquired by the department, except that the Commissioner of Transportation may allow access for the development of state and state aid highways and may approve a relocation of an existing break in a control of access consistent with the rules adopted pursuant to subsection 2. [2003, c. 571, §2 (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); §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).]

23 M.R.S.A. §704-A. Traffic movement permit

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings. [2003, c. 363, §§1, 2 (amd).]

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).]

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. [2003, c. 363, §§3, 4 (amd).]

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).]

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: [1999, c. 468, §2 (new).]

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. [1999, c. 468, §2 (new).]

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. [1999, c. 468, §2 (new).]

The department may provide technical assistance to municipalities upon request for projects reviewed under this section. [1999, c. 468, §2 (new).]

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. [1999, c. 468, §2 (new).]

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. [1999, c. 468, §2 (new).]

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).]

23 M.R.S.A. §705. Culverts

The Department of Transportation is responsible for administering the placement of culverts within the right-of-way on improved state and state aid highways lying outside the compact area of an urban compact municipality as defined in section 754. When an abutter wants an entrance to be constructed on these highways, the abutter shall petition the department for a permit as provided under section 704. Should a permit be issued and a culvert is required, the abutter shall provide, at the abutter's expense, a culvert satisfactory to the department, which the department shall install and maintain. [1999, c. 473, Pt. C, §2 (amd).]

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).]

23 M.R.S.A. §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 Urban-Rural Initiative Program, established in chapter 19, subchapter VI. The amounts collected from these towns must be added to the fund for maintenance of state and state aid highways. [1999, c. 473, Pt. C, §3 (new).]

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. [1999, c. 473, Pt. C, §3 (new).]

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).]

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, 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. This subsection applies to a municipality that has previously opted out of summer maintenance pursuant to subsection 2, paragraph C at such point as population growth makes the municipality ineligible to opt out. [1999, c. 473, Pt. C, §3 (new).]

30-A M.R.S.A. §4301. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 104, Pt. A, §45 and Pt. C, §10 (new).]

5-A. Downtown. "Downtown" means: [1999, c. 776, §7 (new).]

A. The central business district of a community that serves as the center for socioeconomic interaction in the community and is characterized by a cohesive core of commercial and mixed-use buildings, often interspersed with civic, religious and residential buildings and public spaces, typically arranged along a main street and intersecting side streets, walkable and served by public infrastructure; or [1999, c. 776, §7 (new).]

B. An area identified as a downtown in a comprehensive plan adopted pursuant to chapter 187, subchapter II.

[1999, c. 776, §7 (new).]

23 CFR 470.105

§ 470.105 Urban area boundaries and highway functional classification.

(a) Urban area boundaries. Routes on the Federal-aid highway systems may be designated in both rural and urban areas. Guidance for determining the boundaries of urbanized and nonurbanized urban areas is provided in the "Federal-Aid Policy Guide," Chapter 4 [G 4063.0], dated December 9, 1991. *n1*

n1 The "Federal-aid Policy Guide" is available for inspection and copying as prescribed in 49 CFR part 7,

Appendix D.

(b) Highway Functional Classification. (1) The State transportation agency shall have the primary responsibility for developing and updating a statewide highway functional classification in rural and urban areas to determine functional usage of the existing roads and streets. Guidance criteria and procedures are provided in the FHWA publication "Highway Functional Classification-Concepts, Criteria and Procedures." ⁿ² The State shall cooperate with responsible local officials, or appropriate Federal agency in the case of areas under Federal jurisdiction, in developing and updating the functional classification.

ⁿ² This publication, revised in March 1989, is available on request to the FHWA, Office of Environment and Planning, HEP-10, 400 Seventh Street, SW., Washington, DC 20590.

(2) The results of the functional classification shall be mapped and submitted to the Federal Highway Administration (FHWA) for approval and when approved shall serve as the official record for Federal-aid highways and the basis for designation of the National Highway System.