

PRIOR SESSIONS

Session	LD	Proposal	Outcome
128th	1588	<p><u>Originally Proposed</u></p> <ul style="list-style-type: none"> - Public easement may not be discontinued if only access to any property; - Town must keep public easement "passable" if it's only access route for a residence; - Evidence that way is sole access for residence rebuts abandonment presumption; - ROW with mail route must be kept safe for use of mail carrier to USPS regs - Required to remove snow and render passable for "public ways" <p><u>Enacted</u></p> <ul style="list-style-type: none"> - Discontinuation notice must include: maintenance obligations; rights of abutters; including private easement agreements; - Adds 1 year waiting period 	<p>OTP-AM (U) ENACTED (substantial change from original)</p>
127th	494	<ul style="list-style-type: none"> - Proposed municipality must maintain public easement - Must vote affirmatively to create easement for recreational use 	<p>ONTP ONTP (H&S) (significant fiscal impact statewide)</p>
	1325	<ul style="list-style-type: none"> - New §3026-A, Discontinuance of town ways - New §3028, sub-§5, Filing - New §3029-A, Damage to public easement; cause of action 	<p>OTP-AM(U) VETO OVERRIDDEN</p>
	1637	<p>Minority Report</p> <ul style="list-style-type: none"> - require municipality maintain public easement where there is a mail route - maintain to USPS regulations - May remove snow fence and then replace at town's expense 	<p>ONTP(7) / OTP-AM(6) ONTP (H&S)</p>
126th	1177	<ul style="list-style-type: none"> - Similar bill enacted in 127th (LD 1325) & amended in 128th (LD 1558) - Proposed reconsideration of discontinuance order every 20 years not enacted by any subsequent legislature - Proposed new §3028, sub-§1 as in current bill 	<p>OTP-AM / OTP-AM died between Houses</p>

APPROVED
MARCH 28, 2018
BY GOVERNOR

CHAPTER
345
PUBLIC LAW

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND EIGHTEEN

—
H.P. 1092 - L.D. 1588

An Act To Maintain Access to Property on Discontinued Roads

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

Sec. 1. 23 MRSA §3026-A, sub-§1, as enacted by PL 2015, c. 464, §5, is amended to read:

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.~~

A. For a proposed discontinuance of a town way, the notice must include information regarding the potential discontinuance or retention of a public easement, including maintenance obligations for and the right of access to the way under the discontinuance or retention of a public easement, and information regarding the rights of abutting property owners to enter into agreements regarding maintenance of and access to the discontinued way.

B. For a proposed discontinuance of a town way that is abutted by property not otherwise accessible by a public way, the notice must include information, in addition to the information required in paragraph A, regarding the right of abutting property owners to create private easements and the municipal requirements under subsection 1-A.

Paragraphs A and B apply to town ways that are not discontinued as of October 1, 2018.

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.

Sec. 2. 23 MRSA §3026-A, sub-§1-A is enacted to read:

1-A. Discontinuance after October 1, 2018 of a town way with abutting property not otherwise accessible. A municipality may not discontinue a town way that is not discontinued as of October 1, 2018 pursuant to this section if that town way is abutted by property not otherwise accessible by a public way, unless the municipal officers have complied with this subsection.

A. The municipal officers shall wait one year from the date of notice provided pursuant to subsection 1, paragraph B before proceeding with the discontinuance process, to allow abutting property owners the opportunity to grant private easements that run with the title of the property owners' land for the purpose of allowing travel along the way for all abutting property owners and their lessees and guests.

B. After the one-year waiting period required in paragraph A, the municipal officers may:

(1) Proceed with the discontinuance process pursuant to this section, as long as a public easement is retained; or

(2) If the municipal officers verify that private easements that run with the title of the property owners' land for the purpose of allowing travel along the way for all abutting property owners and their lessees and guests have been filed with the registry of deeds, proceed with the discontinuance process without retaining a public easement.

Sec. 3. 23 MRSA §3026-A, sub-§4, as enacted by PL 2015, c. 464, §5, is amended to read:

4. Approval of order of discontinuance and damage awards. ~~Ten or more business days after the public hearing pursuant to subsection 3, the~~ 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

B. To disapprove the order of discontinuance.

The vote required by this subsection must be conducted 10 or more business days after the public hearing pursuant to subsection 3, except that, for a town way that is not discontinued as of October 1, 2018, in a municipality in which the municipal legislative body is the town meeting, the vote must be conducted at the next regularly scheduled annual town meeting.

Sec. 4. 33 MRSA c. 7, sub-c. 1-B is enacted to read:

SUBCHAPTER 1-B

NONRESIDENTIAL PROPERTY DISCLOSURES

§191. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Nonresidential real property. "Nonresidential real property" means real estate that is not residential real property as defined in section 171, subsection 6.

2. Public easement. "Public easement" has the same meaning as in Title 23, section 3021, subsection 2.

3. Town way. "Town way" has the same meaning as in Title 23, section 3021, subsection 3.

§192. Applicability; exemptions

This subchapter applies to the transfer of any interest in nonresidential real property, whether by sale, installment land contract, lease with an option to purchase or any other option to purchase. If a person licensed to practice real estate brokerage is involved in the transaction, the licensee is subject to the requirements of licensure in Title 32, chapter 114. The following transfers are exempt from this subchapter:

1. Court order. Transfers pursuant to court order, including, but not limited to, transfers ordered by a court in the administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain and transfers resulting from a decree for specific performance;

2. Default. Transfers to a mortgagee by a mortgagor or successor in interest who is in default or transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default;

3. Co-owner. Transfers from one or more co-owners solely to one or more other co-owners;

4. Testate; intestate succession. Transfers pursuant to testate or intestate succession;

5. Divorce. Transfers between spouses resulting from a judgment of divorce or a judgment of separate maintenance or from a property settlement agreement incidental to such a judgment;

6. Living trust. Transfers to a living trust; and

7. Corrective deed. Transfers that, without additional consideration and without changing ownership or ownership interest, confirm, correct, modify or supplement a deed previously recorded.

§193. Disclosures

Unless the transaction is exempt under section 192, the seller of nonresidential real property shall provide to the purchaser a property disclosure statement containing the following:

1. Roads on or abutting property. Information identifying any abandoned or discontinued town ways, any public easements and any private roads located on or abutting the property, if known by the seller; and

2. Road maintenance. Information identifying the party or parties responsible for maintenance of any abandoned or discontinued town way, public easement or private road on or abutting the property identified pursuant to subsection 1, including any responsible road association, if known by the seller.



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1588

H.P. 1092

House of Representatives, May 9, 2017

An Act To Maintain Mail Routes and Access to Residential Structures

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HILLIARD of Belgrade. (GOVERNOR'S BILL)

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

2 Sec. 1. 23 MRSA §3026-A, sub-§2, as enacted by PL 2015, c. 464, §5, is
3 amended to read:

4 2. **Municipal officers meet to discuss proposed discontinuance and file order of**
5 **discontinuance.** The municipal officers shall discuss a proposed discontinuance of a
6 town way or public easement at a public meeting and file an order of discontinuance with
7 the municipal clerk that specifies:

- 8 A. The location of the town way or public easement;
- 9 B. The names of abutting property owners;
- 10 C. The amount of damages, if any, determined by the municipal officers to be paid to
11 each abutting property owner; and
- 12 D. Whether or not a public easement is retained.

13 If a proposal includes the discontinuance of a town way without retention of a public
14 easement, that must be stated explicitly in the order of discontinuance; otherwise, the
15 public easement is retained. ~~If a public easement is retained, all other interests of the~~
16 ~~municipality in the discontinued way, if any, pass to abutting property owners to the~~
17 ~~center of the way~~ The public easement may not be discontinued if it provides the sole
18 access to any property. If a public easement is retained, the purpose for the public
19 easement must be stated in the order and the municipality is responsible for keeping the
20 easement passable for that purpose. If a public easement is not retained, all interests of
21 the municipality in the discontinued way pass to abutting property owners to the center of
22 the way.

23 Sec. 2. 23 MRSA §3026-B is enacted to read:

24 §3026-B. Maintenance of town ways providing access to residential structures

25 Notwithstanding section 3026-A, a town may not discontinue a way on which there is
26 a residential structure if that way is the only way that provides access to that residential
27 structure. A town is required to keep passable for use by motor vehicles a way that is
28 prevented from being discontinued pursuant to this section.

29 Sec. 3. 23 MRSA §3028, sub-§1, as enacted by PL 1991, c. 195, is amended to
30 read:

31 1. **Presumption of abandonment.** It is prima facie evidence that a town or county
32 way not kept passable for the use of motor vehicles at the expense of the municipality or
33 county for a period of 30 or more consecutive years has been discontinued by
34 abandonment. A presumption of abandonment may be rebutted by evidence that
35 manifests a clear intent by the municipality or county and the public to consider or use the
36 way as if it were a public way or by evidence that there is a residential structure that
37 depends upon the way for its sole access as described in section 3026-B. A proceeding to
38 discontinue a town or county way may not prevent or estop a municipality from asserting
39 a presumption of abandonment. A municipality or its officials are not liable for

1 nonperformance of a legal duty with respect to such ways if there has been a good faith
2 reliance on a presumption of abandonment. Any person affected by a presumption of
3 abandonment, including the State or a municipality, may seek declaratory relief to finally
4 resolve the status of such ways. A way that has been abandoned under this section is
5 relegated to the same status as it would have had after a discontinuance pursuant to
6 section 3026, ~~except that this status is at all times subject to an affirmative vote of the~~
7 ~~legislative body of the municipality within which the way lies making that way an~~
8 ~~easement for recreational use 3026-A.~~ A presumption of abandonment is not rebutted by
9 evidence that shows isolated acts of maintenance, unless other evidence exists that shows
10 a clear intent by the municipality or county to consider or use the way as if it were a
11 public way.

12 **Sec. 4. 23 MRSA §3201** is amended to read:

13 **§3201. Removal required; damages**

14 When any ways ~~are~~ public way is blocked or encumbered with snow, the road
15 commissioner shall forthwith cause so much of ~~it~~ the snow to be removed ~~or trodden~~
16 ~~down~~ as will render ~~them~~ the way passable. The town may direct the manner of doing it.
17 In case of sudden injury to public ways or bridges, ~~he~~ the road commissioner shall
18 without delay cause them to be repaired. All damage, accruing to a person in ~~his~~ the
19 person's business or property through neglect of such road commissioner or the municipal
20 officers of such town to so render passable public ways that are blocked or encumbered
21 with snow, within a reasonable time, may be recovered of such town by a civil action.

22 **Sec. 5. 23 MRSA §3202** is amended to read:

23 **§3202. Mail routes; snow fences**

24 ~~There shall be furnished and kept in repair in each section of the town through which~~
25 ~~there is a mail route some effectual apparatus for opening ways obstructed by snow, to be~~
26 ~~used to break and keep open the way to the width of 10 feet, and the~~ Wherever there is an
27 established mail route over a right-of-way held by a municipality, the municipal officers
28 of the municipality shall ensure that the way is kept safe for the use of the mail carrier
29 throughout the year in accordance with United States Postal Service regulations. When
30 any municipality fails to keep an established mail route safe for the mail carrier,
31 responsible persons may proceed as provided under sections 3652, 3653 and 3654. All
32 damage accruing to a person, business or property through neglect of such municipal
33 officers to render the way passable for the mail carrier within a reasonable time may be
34 recovered of such municipality by a civil action. The municipal officers of towns, or any
35 road commissioner under their direction, may take down fences upon the line of public
36 highways when they ~~deem~~ determine it necessary to prevent the drifting of snow ~~therein~~
37 on those public highways, but ~~they shall~~ the fences must in due season be replaced, in as
38 good condition as when taken down, without expense to the owner.

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SUMMARY

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This bill prohibits a municipality from discontinuing a road on which there is a residential structure that depends upon the road for its sole access and requires the municipality to plow snow from that road and keep it passable. The bill allows for the rebuttal of the presumption of abandonment of a public way if there is a residential structure that depends on the way for its sole access. The bill requires municipalities to maintain mail routes in accordance with United States Postal Service regulations.

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Date: (Filing No. H-)

STATE AND LOCAL GOVERNMENT

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1092, L.D. 1588, Bill, “An Act To Maintain Mail Routes and Access to Residential Structures”

Amend the bill by striking out the title and substituting the following:

'An Act To Maintain Access to Property on Discontinued Roads'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 23 MRSA §3026-A, sub-§1, as enacted by PL 2015, c. 464, §5, is amended to read:

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.~~

A. For a proposed discontinuance of a town way, the notice must include information regarding the potential discontinuance or retention of a public easement, including maintenance obligations for and the right of access to the way under the discontinuance or retention of a public easement, and information regarding the rights of abutting property owners to enter into agreements regarding maintenance of and access to the discontinued way.

B. For a proposed discontinuance of a town way that is abutted by property not otherwise accessible by a public way, the notice must include information, in addition to the information required in paragraph A, regarding the right of abutting property owners to create private easements and the municipal requirements under subsection 1-A.

Paragraphs A and B apply to town ways that are not discontinued as of October 1, 2018.

COMMITTEE AMENDMENT

1 As used in this subsection, "best practicable notice" means, at minimum, the mailing by
2 the United States Postal Service, postage prepaid, first class, of notice to abutting
3 property owners whose addresses appear in the assessment records of the municipality.

4 **Sec. 2. 23 MRSA §3026-A, sub-§1-A** is enacted to read:

5 **1-A. Discontinuance after October 1, 2018 of a town way with abutting property**
6 **not otherwise accessible. A municipality may not discontinue a town way that is not**
7 **discontinued as of October 1, 2018 pursuant to this section if that town way is abutted by**
8 **property not otherwise accessible by a public way, unless the municipal officers have**
9 **complied with this subsection.**

10 A. The municipal officers shall wait one year from the date of notice provided
11 pursuant to subsection 1, paragraph B before proceeding with the discontinuance
12 process, to allow abutting property owners the opportunity to grant private easements
13 that run with the title of the property owners' land for the purpose of allowing travel
14 along the way for all abutting property owners and their lessees and guests.

15 B. After the one-year waiting period required in paragraph A, the municipal officers
16 may:

17 (1) Proceed with the discontinuance process pursuant to this section, as long as a
18 public easement is retained; or

19 (2) If the municipal officers verify that private easements that run with the title
20 of the property owners' land for the purpose of allowing travel along the way for
21 all abutting property owners and their lessees and guests have been filed with the
22 registry of deeds, proceed with the discontinuance process without retaining a
23 public easement.

24 **Sec. 3. 23 MRSA §3026-A, sub-§4,** as enacted by PL 2015, c. 464, §5, is
25 amended to read:

26 **4. Approval of order of discontinuance and damage awards.** ~~Ten or more~~
27 ~~business days after the public hearing pursuant to subsection 3,~~ The municipal
28 legislative body must vote upon the order of discontinuance submitted to it:

29 A. To approve the order of discontinuance and the damage awards and to appropriate
30 the money to pay the damages; or

31 B. To disapprove the order of discontinuance.

32 The vote required by this subsection must be conducted 10 or more business days after
33 the public hearing pursuant to subsection 3, except that, for a town way that is not
34 discontinued as of October 1, 2018, in a municipality in which the municipal legislative
35 body is the town meeting, the vote must be conducted at the next regularly scheduled
36 annual town meeting.

37 **Sec. 4. 33 MRSA c. 7, sub-c. 1-B** is enacted to read:

38 **SUBCHAPTER 1-B**

1 **NONRESIDENTIAL PROPERTY DISCLOSURES**

2 **§191. Definitions**

3 As used in this subchapter, unless the context otherwise indicates, the following
4 terms have the following meanings.

5 **1. Nonresidential real property.** "Nonresidential real property" means real estate
6 that is not residential real property as defined in section 171, subsection 6.

7 **2. Public easement.** "Public easement" has the same meaning as in Title 23, section
8 3021, subsection 2.

9 **3. Town way.** "Town way" has the same meaning as in Title 23, section 3021,
10 subsection 3.

11 **§192. Applicability; exemptions**

12 This subchapter applies to the transfer of any interest in nonresidential real property,
13 whether by sale, installment land contract, lease with an option to purchase or any other
14 option to purchase. If a person licensed to practice real estate brokerage is involved in the
15 transaction, the licensee is subject to the requirements of licensure in Title 32, chapter
16 114. The following transfers are exempt from this subchapter:

17 **1. Court order.** Transfers pursuant to court order, including, but not limited to,
18 transfers ordered by a court in the administration of an estate, transfers pursuant to a writ
19 of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy,
20 transfers by eminent domain and transfers resulting from a decree for specific
21 performance;

22 **2. Default.** Transfers to a mortgagee by a mortgagor or successor in interest who is
23 in default or transfers to a beneficiary of a deed of trust by a trustor or successor in
24 interest who is in default;

25 **3. Co-owner.** Transfers from one or more co-owners solely to one or more other co-
26 owners;

27 **4. Testate; intestate succession.** Transfers pursuant to testate or intestate
28 succession;

29 **5. Divorce.** Transfers between spouses resulting from a judgment of divorce or a
30 judgment of separate maintenance or from a property settlement agreement incidental to
31 such a judgment;

32 **6. Living trust.** Transfers to a living trust; and

33 **7. Corrective deed.** Transfers that, without additional consideration and without
34 changing ownership or ownership interest, confirm, correct, modify or supplement a deed
35 previously recorded.

36 **§193. Disclosures**

37 Unless the transaction is exempt under section 192, the seller of nonresidential real
38 property shall provide to the purchaser a property disclosure statement containing the
39 following:

1 1. Roads on or abutting property. Information identifying any abandoned or
2 discontinued town ways, any public easements and any private roads located on or
3 abutting the property, if known by the seller; and

4 2. Road maintenance. Information identifying the party or parties responsible for
5 maintenance of any abandoned or discontinued town way, public easement or private
6 road on or abutting the property identified pursuant to subsection 1, including any
7 responsible road association, if known by the seller.'

8 **SUMMARY**

9 This amendment replaces the bill and changes the title. The amendment makes the
10 following changes to the law governing discontinuance of town ways.

11 1. It requires that notice of a proposed discontinuance of a town way include
12 information regarding the potential discontinuance or retention of a public easement,
13 including maintenance obligations for and the right of access to the way under the
14 discontinuance or retention of a public easement, and information regarding the rights of
15 abutting property owners to enter into agreements regarding maintenance of and access to
16 the discontinued way.

17 2. It requires that for a proposed discontinuance of a town way abutted by property
18 not otherwise accessible by a public way the municipal officers provide additional notice
19 to abutting property owners regarding their right to create private easements.

20 3. It prohibits the municipality from proceeding with discontinuance of a town way
21 abutted by property not otherwise accessible by a public way unless the municipal
22 officers have first given the additional notice to abutting property owners and allowed
23 one year for the abutting property owners to grant easements that run with the title of the
24 property owners' land for the purpose of allowing travel along that way for all abutting
25 property owners and their lessees and guests. If after one year the abutting property
26 owners have not created such private easements, the town may discontinue the way, but
27 only if a public easement is retained. If after one year the abutting property owners have
28 created such private easements, the town officers may proceed with discontinuance
29 without retaining a public easement.

30 4. It specifies that for a municipality in which the municipal legislative body is the
31 town meeting, a vote on the order of discontinuance must be conducted at the next
32 regularly scheduled annual town meeting.

33 5. It provides that the above changes apply only to town ways not discontinued as of
34 October 1, 2018.

35 The amendment also requires a seller of nonresidential real estate to provide the
36 purchaser a property disclosure statement that includes information about any abandoned
37 or discontinued roads, public easements or private roads on or abutting the property, if
38 known by the seller. The disclosure must also include information about who is
39 responsible for maintenance of such roads or easements, including any responsible road
40 association, if known by the seller. It exempts certain property transfers that do not
41 involve a traditional seller and purchaser from these requirements.

128th Maine Legislature, Second Regular Session

An Act To Maintain Access to Property on Discontinued Roads

(GOVERNOR'S BILL) (TITLE CHANGE)

LD 1588, HP 1092

Fiscal Status Not Yet Determined

Adopted Amendments

C-A (H-646) Fiscal Status No Fiscal Impact

Final Disposition Enacted, Mar 28, 2018

Governor's Action: Signed, Mar 28, 2018

Chaptered Law ACTPUB, Chapter 345

Amendments to LD 1588

Adopted by House & Senate

C-A (H-646) Fiscal Status No Fiscal Impact

Status In Committee

Referred to Committee on State and Local Government on May 9, 2017.

Latest Committee Action: Reported Out, Mar 12, 2018, OTP-AM

Latest Committee Report: Mar 12, 2018, Ought To Pass As Amended

Public Hearings

Wednesday, May 17, 2017 1:30 PM, Cross Building, Room 214

Disclaimer: The following documents are digital reproductions of written testimony presented to joint standing committees before and during public hearings. The Legislature is not responsible for the content, accuracy, or appropriateness of any testimony posted herein and takes no position supporting or opposing views expressed in the testimony. The documents are posted solely for convenient viewing by interested persons; they are not official copies and may not represent a complete record of a hearing. Contact the committee clerk for additional information.

Public Hearing Testimony, 14 items

Corbin, Garrett	Maine Municipal Association	(331 KB)
Dole, Elizabeth	Portland	(66 KB)
Gamage, Gay	New York	(59 KB)
Haskell, Timothy	Maine Water Environment Association	(83 KB)
Hepler, Allison	Woolwich	(70 KB)
Hilliard, Gary	Maine State Legislature	(56 KB)
Karlgren, Steven	Carthage	(45 KB)
Lanrteigne, Neil	West Paris	(77 KB)
Libby, Lance	Office of the Governor	(54 KB)
Lowell, Cecile	New Vineyard	(30 KB)
Manter, Roberta	Fayette	(463 KB)
Paul, Debra	Liberty	(140 KB)
Shaw, Donna	Otisfield	(51 KB)

Work Sessions

Monday, May 22, 2017 9:15 AM, Cross Building, Room 214

Wednesday, January 17, 2018 9:00 AM, Cross Building, Room 214

Wednesday, January 24, 2018 10:30 AM, Cross Building, Room 214

Committee Docket

Date	Action	Result
May 22, 2017	Work Session Held	TABLED
May 26, 2017	Carry Over Requested	
Aug 2, 2017	Carry Over Approved	
Jan 17, 2018	Work Session Held	TABLED
Jan 24, 2018	Work Session Held	
Jan 24, 2018	Voted	OTP-AM
Mar 12, 2018	Reported Out	OTP-AM

Divided Reports

No Divided Reports.

Affected Statute Titles and Sections

Title	Section	Subsection	Paragraph	Effect	Law Type	Chapter
23	3026-A		1	AMD	Public Law	345
33				NEW	Public Law	345
23	3026-A		4	AMD	Public Law	345
23	3026-A		1-A	NEW	Public Law	345
33	193			NEW	Public Law	345
33	191			NEW	Public Law	345
33	192			NEW	Public Law	345

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

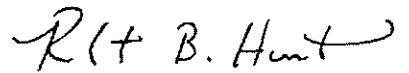
No. 494

H.P. 333

House of Representatives, February 24, 2015

An Act Regarding the Maintenance of Easements

Reference to the Committee on State and Local Government suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative HILLIARD of Belgrade.
Cosponsored by Representative: POULIOT of Augusta.

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

2 **Sec. 1. 23 MRSA §3026-A** is enacted to read:

3 **§3026-A. Maintenance of public easements held by a municipality**

4 A public easement held by a municipality must be maintained by the municipality to
5 ensure use and enjoyment in accordance with section 3021, subsection 2.

6 **Sec. 2. 23 MRSA §3028, sub-§1**, as enacted by PL 1991, c. 195, is amended to
7 read:

8 **1. Presumption of abandonment.** It is prima facie evidence that a town or county
9 way not kept passable for the use of motor vehicles at the expense of the municipality or
10 county for a period of 30 or more consecutive years has been discontinued by
11 abandonment. A presumption of abandonment may be rebutted by evidence that
12 manifests a clear intent by the municipality or county and the public to consider or use the
13 way as if it were a public way. A proceeding to discontinue a town or county way may
14 not prevent or estop a municipality from asserting a presumption of abandonment. A
15 municipality or its officials are not liable for nonperformance of a legal duty with respect
16 to such ways if there has been a good faith reliance on a presumption of abandonment.
17 Any person affected by a presumption of abandonment, including the State or a
18 municipality, may seek declaratory relief to finally resolve the status of such ways. A
19 way that has been abandoned under this section is relegated to the same status as it would
20 have had after a discontinuance pursuant to section 3026, except that this status is at all
21 times subject to an affirmative vote of the legislative body of the municipality within
22 which the way lies making that way an easement for recreational use. If the municipality
23 votes affirmatively to make the way an easement for recreational use, the municipality
24 shall maintain the easement for such use. A presumption of abandonment is not rebutted
25 by evidence that shows isolated acts of maintenance, unless other evidence exists that
26 shows a clear intent by the municipality or county to consider or use the way as if it were
27 a public way.

28 **SUMMARY**

29 This bill provides that a municipality must maintain a public easement held by the
30 municipality to ensure use and enjoyment in accordance with the definition of a public
31 easement. A municipality must also maintain an easement when a municipality votes
32 affirmatively to make a way an easement for recreational use.

127th Maine Legislature, First Regular Session

An Act Regarding the Maintenance of Easements

LD 494, HP 333

Fiscal Status Fiscal Impact

Final Disposition Ought Not to Pass Pursuant To Joint Rule 310, May 29, 2015

Amendments to LD 494

Status In Committee

Referred to Committee on State and Local Government on Feb 24, 2015.

Latest Committee Action: Reported Out, May 21, 2015, ONTP

Latest Committee Report: May 21, 2015, Ought Not To Pass

Public Hearings

Wednesday, April 29, 2015 1:00 PM, Cross Building, Room 214

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Public Hearing Testimony, 2 items

Corbin, Garrett *Maine Municipal Association* (55 KB)

Hilliard, Gary *Maine State Legislature* (70 KB)

Work Sessions

Wednesday, May 20, 2015 1:00 PM, Cross Building, Room 214

Committee Docket

Date	Action	Result
May 20, 2015	Work Session Held	
May 20, 2015	Voted	ONTP
May 21, 2015	Reported Out	ONTP

Divided Reports

No Divided Reports.

Affected Statute Titles and Sections

None listed at this time.

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1325

H.P. 903

House of Representatives, April 14, 2015

**An Act To Ensure a Public Process When Discontinuing or
Abandoning a Public Road**

Reference to the Committee on State and Local Government suggested and ordered printed.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative NADEAU of Winslow.
Cosponsored by Senator VALENTINO of York and
Representatives: CHENETTE of Saco, LONGSTAFF of Waterville, McCABE of Skowhegan,
PICKETT of Dixfield, SAUCIER of Presque Isle, SHORT of Pittsfield, WARREN of
Hallowell.

1 **Mandate preamble.** This measure requires one or more local units of government
2 to expand or modify activities so as to necessitate additional expenditures from local
3 revenues but does not provide funding for at least 90% of those expenditures. Pursuant to
4 the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to
5 each House have determined it necessary to enact this measure.

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

7 **Sec. 1. 23 MRSA §2060, sub-§2,** as enacted by PL 1999, c. 188, §2, is amended
8 to read:

9 **2. Effect and exceptions.** Upon discontinuance, all interests of the county or
10 municipality pass to the abutting property owners to the center of the way, including any
11 public easement, in accordance with section ~~3026~~ 3026-A. When the Department of
12 Transportation is an abutting owner, then the interests in the way pass to the property
13 owner opposite the department's ownership in accordance with a plan showing the right-
14 of-way line established for the new highway location by the department. The plan must
15 be referenced in the order of discontinuance.

16 **Sec. 2. 23 MRSA §3021, sub-§1-A** is enacted to read:

17 **1-A. Municipal legislative body.** "Municipal legislative body" has the same
18 meaning as in Title 30-A, section 2001, subsection 9.

19 **Sec. 3. 23 MRSA §3021, sub-§2,** as enacted by PL 1975, c. 711, §8, is amended
20 to read:

21 **2. Public easement.** "Public easement" means an easement held by a municipality
22 for purposes of public access to land or water not otherwise connected to a public way,
23 and includes all rights enjoyed by the public with respect to private ways created by
24 statute prior to ~~the effective date of this Act July 29, 1976~~. Private ways created pursuant
25 to former sections 3001 and 3004 prior to ~~the effective date of this Act July 29, 1976~~ are
26 public easements.

27 **Sec. 4. 23 MRSA §3026,** as repealed and replaced by PL 1981, c. 683, §1, is
28 repealed.

29 **Sec. 5. 23 MRSA §§3026-A** is enacted to read:

30 **§3026-A. Discontinuance of town ways**

31 A municipality may terminate in whole or in part any interests held by it for highway
32 purposes. A municipality discontinuing a town way or public easement in this State must
33 meet the following requirements.

34 **1. Notification of discontinuance to abutting property owners.** The municipal
35 officers shall give best practicable notice to all abutting property owners of a proposed
36 discontinuance of a town way or public easement. As used in this subsection, "best
37 practicable notice" means, at minimum, the mailing by the United States Postal Service,

1 postage prepaid, first class, of notice to abutting property owners whose addresses appear
2 in the assessment records of the municipality.

3 **2. Municipal officers meet to discuss proposed discontinuance and file order of**
4 **discontinuance.** The municipal officers shall discuss a proposed discontinuance of a
5 town way or public easement at a public meeting and file an order of discontinuance with
6 the municipal clerk that specifies:

7 A. The location of the town way or public easement;

8 B. The names of abutting property owners;

9 C. The amount of damages, if any, determined by the municipal officers to be paid to
10 each abutter;

11 D. For a town way, whether or not a public easement will be retained. If the existing
12 legal rights of abutting property owners to access their property will be eliminated, a
13 public easement or right-of-way for the abutting property owners must be retained;
14 and

15 E. If a public easement is to be retained:

16 (1) The extent of municipal maintenance and liability responsibilities, if any; and

17 (2) The restrictions on how the public may use the public easement, if any.

18 If a proposal includes the discontinuance of a public easement that must be stated
19 explicitly in the order of discontinuance.

20 **3. Public hearing.** The municipal officers shall hold a public hearing on the order of
21 discontinuance of a town way or public easement filed pursuant to subsection 2.

22 **4. Approval of order of discontinuance and damage awards.** Ten or more
23 business days after the public hearing pursuant to subsection 3, the municipal legislative
24 body must vote upon the order of discontinuance submitted to it:

25 A. To approve the order of discontinuance, including the public easement and the
26 restrictions set in the order and the damage awards, and to appropriate the money to
27 pay the damages; or

28 B. To disapprove the order of discontinuance.

29 If the order of discontinuance of a public easement is approved, the abutters of that public
30 easement must be granted a right-of-way prior to the filing of the certificate of
31 discontinuance pursuant to subsection 5.

32 **5. Certificate of discontinuance filed.** The municipal clerk shall record an attested
33 certificate of discontinuance after a vote by the municipal legislative body under
34 subsection 4 in the registry of deeds and with the municipality. The certificate must
35 describe the town way or public easement, any rights-of-way granted and the final action
36 by the municipal legislative body. The date the certificate of discontinuance is filed is the
37 date the town way or public easement is discontinued. The registry of deeds shall record
38 a certificate of discontinuance under the name of the town way or public easement, the
39 name of the municipality and the names of the abutters.

1 **1. Presumption of abandonment.** ~~¶ Except as provided by subsection 1-A, it is~~
2 prima facie evidence that a town or county way not kept passable for the use of motor
3 vehicles at the expense of the municipality or county for a period of 30 or more
4 consecutive years has been discontinued by abandonment. A presumption of
5 abandonment may be rebutted by evidence that manifests a clear intent by the
6 municipality or county and the public to consider or use the way as if it were a public
7 way. A proceeding to discontinue a town or county way may not prevent or estop a
8 municipality from asserting a presumption of abandonment. A municipality or its
9 officials are not liable for nonperformance of a legal duty with respect to such ways if
10 there has been a good faith reliance on a presumption of abandonment. Any person
11 affected by a presumption of abandonment, including the State or a municipality, may
12 seek declaratory relief to finally resolve the status of such ways. A way that has been
13 abandoned under this section is ~~relegated to the same status as it would have had after a~~
14 ~~discontinuance pursuant to section 3026, except that this status~~ retains a public easement
15 and all remaining interests of the municipality pass to the abutting property owners in fee
16 simple to the center of the way. A way that has been abandoned under this section is at
17 all times subject to an affirmative vote of the legislative body of the municipality within
18 which the way lies making that way an easement for recreational use. A presumption of
19 abandonment is not rebutted by evidence that shows isolated acts of maintenance, unless
20 other evidence exists that shows a clear intent by the municipality or county to consider
21 or use the way as if it were a public way.

22 **Sec. 8. 23 MRSA §3028, sub-§1-A** is enacted to read:

23 **1-A. Termination through discontinuance process only.** For a town way that does
24 not meet the requirements of subsection 1 as of January 1, 2020, a municipality may
25 terminate in whole or in part any interests held by it for highway purposes only through
26 the discontinuance process pursuant to section 3026-A. This subsection is not intended to
27 modify common law regarding abandonment of a road.

28 **Sec. 9. 23 MRSA §3028, sub-§5** is enacted to read:

29 **5. Filing.** If after the effective date of this subsection the municipal officers, either
30 on their own or after being presented with evidence of abandonment or discontinuance,
31 determine that a town way has been discontinued by abandonment pursuant to subsection
32 1, the municipal clerk shall file a record of this determination with the registry of deeds
33 and the municipality. The registry of deeds shall record a document regarding an
34 abandoned town way under the name of the town way, the name of the municipality and
35 the names of the abutters. If a municipality provides records obtained from the registry of
36 deeds, the municipality may charge a reasonable fee for these records.

37 **Sec. 10. 23 MRSA §3029-A** is enacted to read:

38 **§3029-A. Damage to public easement; cause of action**

39 **1. Cause of action.** An owner of property abutting a discontinued or abandoned
40 road in which a public easement exists may bring a civil action in Superior Court for
41 damages and injunctive relief against a person who causes damage to the road in a way

1 that impedes reasonable access by the property owner to the property owner's property by
2 motor vehicle as defined in Title 29-A, section 101, subsection 42.

3 2. Damages. Damages may be sought pursuant to subsection 1 in an amount
4 reasonably necessary to restore the road to its condition prior to the use by the person
5 against whom the action is brought.

6 3. Attorney's fees and costs. If the plaintiff under subsection 1 is the prevailing
7 party, the plaintiff may be awarded reasonable attorney's fees and costs.

8 **Sec. 11. 35-A MRSA §2308**, as amended by PL 2011, c. 623, Pt. B, §9, is further
9 amended to read:

10 **§2308. Protection of utility facilities upon discontinuance of public ways**

11 In proceedings for the discontinuance of public ways, public ways may be
12 discontinued in whole or in part. The discontinuance of a town way must be pursuant to
13 Title 23, section ~~3026~~ 3026-A. Unless an order discontinuing a public way specifically
14 provides otherwise, the public easement provided for in Title 23, section ~~3026~~ 3026-A
15 includes an easement for public utility facilities and for the permitted facilities of entities
16 authorized under section 2301 to construct lines. A utility or entity may continue to
17 maintain, repair and replace its installations within the limits of the way or may construct
18 and maintain new facilities within the limits of the discontinued way, if it is used for
19 travel by motor vehicles, in order to provide utility or telecommunications service, upon
20 compliance with the provisions of sections 2503, 2505, 2506, 2507 and 2508.

21 **Sec. 12. Municipalities to develop list of town ways.** A municipality may
22 prepare a list of all town ways in that municipality that are currently maintained with
23 public funds; a list of all town ways that have been discontinued since 1965 and whether
24 or not a public easement was retained, if known; and a list of all town ways that have
25 been abandoned since 1965 and whether or not a public easement was retained, if known.
26 A municipality shall publish any such lists on its publicly accessible website or make
27 copies available at the municipal office. A municipality may charge a reasonable fee for
28 the lists. A municipality shall record the lists at the appropriate county registry of deeds.
29 The registry of deeds shall record these lists under the name of the municipality. The
30 Department of Transportation may provide a municipality a list of that municipality's
31 state and state aid highways and individual town ways.

32 **SUMMARY**

33 This bill changes the laws governing discontinued and abandoned roads.

34 Under current law, a presumption of abandonment exists if a municipality fails to
35 keep a way passable for the use of motor vehicles at the expense of the municipality for a
36 period of 30 or more years. This bill eliminates that presumption for ways that have not
37 met that statutory requirement by January 1, 2020. Instead, for all other public ways, the
38 bill provides a new discontinuance process, which will be the only means for a
39 municipality to actively terminate its interests in a public way. The new discontinuance
40 process specifies 5 steps a municipality must follow to discontinue a road: the notification

1 of proposed discontinuance to the abutting property owners; a meeting of municipal
2 officers to discuss the proposed discontinuance and the filing of an order of
3 discontinuance specifying whether or not there will be a public easement and any public
4 use restrictions or municipal maintenance and liability responsibilities for the public
5 easement; a public hearing on the discontinuance; approval of the order of discontinuance
6 by the municipal legislative body; and the filing of the certificate of discontinuance by the
7 municipal clerk in the registry of deeds and with the municipality. The bill requires the
8 abutters of a public easement that is discontinued to be granted a right-of-way. The
9 municipality may charge a reasonable fee to fulfill any request for records obtained by the
10 municipality from the registry of deeds.

11 The bill continues to exempt a municipality from liability for nonperformance of a
12 legal duty with respect to a town or county way that has not been kept passable for the
13 use of motor vehicles at the expense of that municipality for a period of 30 or more years.

14 It requires that a public easement must be retained in a discontinued road if abutting
15 property owners need to use it to access their property. It also provides that a public
16 utility easement will be in place whenever a road is discontinued, regardless of whether a
17 public easement is retained.

18 A way that is presumptively abandoned retains a public easement, as is the default
19 position under current law. The bill does not modify common law abandonment.

20 The bill allows a municipality to prepare a list of all town ways in that municipality
21 that are currently maintained with public funds; a list of all town ways that have been
22 discontinued since 1965 and whether or not a public easement was retained, if known;
23 and a list of all town ways that have been abandoned since 1965 and whether or not a
24 public easement was retained, if known. If a municipality prepares a list, the municipality
25 must publish the list on its publicly accessible website or make copies available at the
26 municipal office, for which the municipality may charge a reasonable fee. The
27 municipality must record the list at the county registry of deeds.

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Date: (Filing No. H-)

STATE AND LOCAL GOVERNMENT

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 903, L.D. 1325, Bill, “An Act To Ensure a Public Process When Discontinuing or Abandoning a Public Road”

Amend the bill by striking out all of the mandate preamble (page 1, lines 1 to 5 in L.D.)

Amend the bill by striking out all of sections 5 to 10 and inserting the following:

Sec. 5. 23 MRSA §3026-A is enacted to read:

§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.

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.

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;
- B. The names of abutting property owners;
- C. The amount of damages, if any, determined by the municipal officers to be paid to each abutting property owner; and
- D. Whether or not a public easement is retained.

COMMITTEE AMENDMENT

1 If a proposal includes the discontinuance of a public easement, that must be stated
2 explicitly in the order of discontinuance; otherwise, the public easement is retained. If a
3 public easement is retained, all other interests of the municipality in the discontinued
4 way, if any, pass to abutting property owners to the center of the way. If a public
5 easement is not retained, all interests of the municipality in the discontinued way pass to
6 abutting property owners to the center of the way.

7 **3. Public hearing.** The municipal officers shall hold a public hearing on the order of
8 discontinuance of a town way or public easement filed pursuant to subsection 2.

9 **4. Approval of order of discontinuance and damage awards.** Ten or more
10 business days after the public hearing pursuant to subsection 3, the municipal legislative
11 body must vote upon the order of discontinuance submitted to it:

12 A. To approve the order of discontinuance and the damage awards and to appropriate
13 the money to pay the damages; or

14 B. To disapprove the order of discontinuance.

15 **5. Certificate of discontinuance filed.** The municipal clerk shall record an attested
16 certificate of discontinuance after a vote by the municipal legislative body under
17 subsection 4 in the registry of deeds. The certificate must describe the town way or
18 public easement and the final action by the municipal legislative body. The date the
19 certificate is filed is the date the town way or public easement is discontinued. The
20 registry of deeds shall record a certificate of discontinuance under the name of the town
21 way or public easement, the name of the municipality and the names of the abutting
22 property owners. The municipal clerk shall provide a photocopy of the certificate to the
23 Department of Transportation, Bureau of Maintenance and Operations.

24 **6. Utility easement.** An easement for public utility facilities necessary to provide or
25 maintain service remains in a discontinued town way regardless of whether a public
26 easement is retained. Upon approval by a municipal legislative body of an order to
27 discontinue a town way and retain a public easement, unless otherwise stated in the order,
28 all remaining interests of the municipality, if any, pass to the abutting property owners in
29 fee simple to the center of the way.

30 **Sec. 6. 23 MRSA §3027, sub-§1,** as amended by PL 1987, c. 385, §1, is further
31 amended to read:

32 **1. Vacation of ways.** Where When proposed town ways have been described in a
33 recorded subdivision plan and lots have been sold with reference to the plan, the
34 municipal officers, after notice to the municipal planning board or office, may, on their
35 own initiative, on petition of the abutting property owners or on petition of any person
36 claiming a property interest in the proposed way, vacate in whole or in part proposed
37 ways that have not been accepted. The municipal officers shall give best practicable
38 notice, as defined in section 3026 3026-A, subsection 2 1, of the proposed vacation to
39 owners of lots on the recorded subdivision plan and their mortgagees of record. The
40 notice shall must conform in substance to the following form:

41 NOTICE

42 (The municipal officers of) (A petition has been filed with the municipal officers
43 of) _____ (Name of Town or City) _____ (propose to)

1 (to vacate) the following (ways) (way) shown upon a subdivision plan (named) (dated)
2 (and) recorded in the _____ County Registry of Deeds, Book of
3 Plans, Volume _____, Page _____.

4 (Herein list or describe ways to be vacated)

5 If the municipal officers enter an order vacating (these ways) (this way) any person
6 claiming an interest in (these ways) (this way) (adverse to the claims of the petitioners)
7 must, within one (1) year of the recording of the order, file a written claim thereof under
8 oath in the _____ County Registry of Deeds and must, within one hundred
9 eighty (180) days of the filing of the claim, commence an action in the Superior Court in
10 _____ County in accordance with the Maine Revised Statutes, Title 23,
11 section 3027-A.

12 The municipal officers shall file an order of vacation with the municipal clerk that
13 specifies the location of the way, the names of owners of lots on the recorded subdivision
14 plan and the amount of damages, if any, determined by the municipal officers to be paid
15 to each lot owner or other person having an interest in the way. Damages and reasonable
16 costs as determined by the municipal officers shall must be paid by the petitioners, if any.

17 **Sec. 7. 23 MRSA §3028, sub-§5** is enacted to read:

18 5. Filing. If after the effective date of this subsection the municipal officers, either
19 on their own or after being presented with evidence of abandonment, determine that a
20 town way has been discontinued by abandonment pursuant to subsection 1, the municipal
21 clerk shall file a record of this determination with the registry of deeds. The absence of a
22 filing of a determination of discontinuation by abandonment may not be construed as
23 evidence against the status of abandonment. The registry of deeds shall record a
24 document regarding an abandoned town way under the name of the town way, the name
25 of the municipality and the names of the abutting property owners. The municipal clerk
26 shall provide a copy of the document regarding an abandoned town way to the
27 Department of Transportation, Bureau of Maintenance and Operations.

28 **Sec. 8. 23 MRSA §3029-A** is enacted to read:

29 **§3029-A. Damage to public easement; cause of action**

30 1. Cause of action. An owner of property abutting a discontinued or abandoned
31 road in which a public easement exists may bring a civil action in Superior Court for
32 damages and injunctive relief against a person who causes damage to the road in a
33 manner that impedes reasonable access by the property owner to the property owner's
34 property by motor vehicle as defined in Title 29-A, section 101, subsection 42.

35 2. Damages. Damages may be sought pursuant to subsection 1 in an amount
36 reasonably necessary to restore the road to its condition prior to the use by the person
37 against whom the action is brought.

38 3. Attorney's fees and costs. If the plaintiff under subsection 1 is the prevailing
39 party, the plaintiff may be awarded reasonable attorney's fees and costs.

40 4. Application. This section does not apply to:

1 A. A law enforcement officer who, in an emergency and within the scope of that law
2 enforcement officer's employment, operates a motor vehicle on a public easement; or

3 B. An emergency responder who, in an emergency and while performing the duties
4 of an emergency responder, operates a motor vehicle on a public easement.'

5 Amend the bill by striking out all of section 12 and inserting the following:

6 **'Sec. 12. Municipality to develop or supplement list of town ways.** A
7 municipality may develop or update publicly available inventories relating to all known
8 town ways or former town ways, or segments of town ways, discontinued and
9 discontinued by abandonment within its municipal borders and share such inventories
10 with the Department of Transportation, Bureau of Maintenance and Operations.
11 Information pertaining to discontinued town ways may include a sufficient description of
12 the town way or former town way, any known judicial determination regarding the status
13 of a public easement on the former town way, the date of discontinuance and the
14 governmental entity effecting the discontinuance. Information pertaining to town ways
15 discontinued by abandonment may include a sufficient description of the town way or
16 former town way, any known judicial determination regarding the status of a public
17 easement on the former town way and the last known date of regular, publicly funded
18 maintenance of the town way or former town way or segment of the town way. Boards of
19 county commissioners, landowners, road associations, surveyors and other interested
20 parties may share relevant information with municipalities and the Department of
21 Transportation, Bureau of Maintenance and Operations. By November 1, 2018, the
22 Department of Transportation shall share with the joint standing committee of the
23 Legislature having jurisdiction over state and local government matters an update on the
24 status of any road inventories developed by municipalities, including any noted
25 challenges or obstacles associated with determining the status of roads discontinued for
26 public maintenance by units of government other than the municipalities' legislative
27 bodies.'

28 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
29 section number to read consecutively.

30 **SUMMARY**

31 This amendment retains the new discontinuance process proposed in the bill for a
32 municipality to actively terminate its interests in a public way. The bill requires that if a
33 public easement is to be retained the municipal officers identify the extent of municipal
34 maintenance and liability responsibilities and any restrictions on how the public may use
35 the public easement. The amendment instead specifies that when filing an order of
36 discontinuance the municipal officers must specify whether or not a public easement is
37 retained, and, if this is not specified, the public easement is retained. The new
38 discontinuance process proposed in the bill specifies steps a municipality must follow to
39 discontinue a road: the notification of proposed discontinuance to the abutting property
40 owners; a meeting of municipal officers to discuss the proposed discontinuance and the
41 filing of an order of discontinuance; a public hearing on the discontinuance; approval of
42 the order of discontinuance by the municipal legislative body; and the filing of the
43 certificate of discontinuance by the municipal clerk in the registry of deeds and with the
44 municipality. The amendment adds that the municipal clerk must provide a photocopy of

1 the certificate to the Department of Transportation, Bureau of Maintenance and
2 Operations and removes the requirement that the clerk file the certificate with the
3 municipality.

4 The amendment removes from the bill the requirement that abutters of a public
5 easement must be granted a right-of-way prior to the filing of a certificate of
6 discontinuance if a discontinuance order is approved.

7 The amendment removes language in the bill that eliminates presumption of
8 abandonment for ways that do not meet the statutory requirements by January 1, 2020.
9 Statutory abandonment remains a means for a municipality to actively terminate its
10 interests in a public way.

11 The amendment retains the provision of the bill that provides that a public utility
12 easement is in place whenever a road is discontinued, regardless of whether a public
13 easement is retained.

14 The amendment retains the provision of the bill that provides that a municipal clerk
15 must file a record with the registry of deeds that a town way has been discontinued by
16 abandonment if, either on their own or after being presented with evidence of
17 abandonment, the municipal officers determine that a town way has been discontinued by
18 abandonment. The amendment requires the municipal clerk to provide a copy of the
19 document to the Department of Transportation, Bureau of Maintenance and Operations.

20 The amendment retains language in the bill regarding a cause of action for a property
21 owner whose property abuts a discontinued or abandoned road with a public easement.
22 The property owner may bring a civil action in Superior Court for damages and injunctive
23 relief against a person who causes damage to the road. The amendment excludes law
24 enforcement officers and emergency responders who damage the road while responding
25 to an emergency from having a civil action filed against them.

26 Instead of, as in the bill, allowing a municipality to prepare a list of all town ways in
27 the municipality maintained with public funds, a list of all town ways discontinued since
28 1965 and whether or not a public easement was retained and a list of all town ways
29 abandoned since 1965 and whether or not a public easement was retained, the amendment
30 allows a municipality to develop or update publicly available inventories of all known
31 town ways and former town ways, or segments of town ways, that have been
32 discontinued or discontinued by abandonment within its borders. Municipalities may
33 include the following information on discontinued town ways: a description of the town
34 way or former town way; any known judicial determination regarding the status of a
35 public easement on the former town way; the date of the discontinuance; and the
36 governmental entity effecting the discontinuance. Municipalities may include the
37 following for town ways discontinued by abandonment: a description of the town way or
38 former town way; any known judicial determination regarding the status of a public
39 easement on the former town way; and the last known date of regular, publicly funded
40 maintenance of the town way or former town way or segment of the town way.
41 Municipalities may share their inventories with the Department of Transportation, Bureau
42 of Maintenance and Operations.

1 The Department of Transportation is required to update the joint standing committee
2 of the Legislature having jurisdiction over state and local government matters by
3 November 1, 2018 on the status of any road inventories developed by municipalities.

4 The fiscal note on the amendment identifies a requirement in this amendment as a
5 potential insignificant state mandate. In order to be a mandate pursuant to the
6 Constitution of Maine, a provision must require a local unit of government to expand or
7 modify its activities so as to necessitate additional expenditures from local revenue. The
8 committee finds that the provisions identified as a potential mandate do not require a
9 local unit of government to expand or modify its activities so as to necessitate additional
10 expenditures from local revenue.

11 The requirement in the amendment that a municipality make an appropriate filing in
12 the registry of deeds if it makes a final determination that a road has been abandoned does
13 not require an expansion or modification of activities so as to necessitate additional
14 expenditures from local revenue since there is no requirement that a municipality
15 abandon one of its roads or determine the road has been abandoned. The amendment
16 requires only that a municipality take the appropriate legal step of recording a
17 determination of abandonment if the municipality chooses to make such a determination.

18 **FISCAL NOTE REQUIRED**

19 **(See attached)**

127th Maine Legislature, Second Regular Session

An Act To Ensure a Public Process When Discontinuing or Abandoning a Public Road

(MANDATE)

LD 1325, HP 903

Fiscal Status Not Yet Determined

Adopted Amendments

C-A (H-558) Fiscal StatusFiscal Impact

Sponsored By: Senator Libby of Androscoggin

S-A to C-A (S-414) Fiscal StatusFiscal Impact

Final Disposition Veto Overridden, Apr 14, 2016

Governor's Action: Veto, Apr 12, 2016

Chaptered Law ACTPUB , Chapter 464

Amendments to LD 1325

Sponsored By *Representative Nadeau of Winslow*

Adopted by House & Senate

null- (-0) Fiscal Status Not Yet Determined

C-A (H-558) Fiscal Status Fiscal Impact

Sponsored By *Senator Libby of Androscoggin,*

Adopted by House & Senate

S-A to C-A (S-414) Fiscal Status Fiscal Impact

Status In Committee

Referred to Committee on State and Local Government on Apr 14, 2015.

Latest Committee Action: Reported Out, Mar 11, 2016, OTP-AM

Latest Committee Report: Mar 11, 2016, Ought To Pass As Amended

Public Hearings

Wednesday, April 29, 2015 1:00 PM, Cross Building, Room 214

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Public Hearing Testimony, 7 items

Bulay, Susan	<i>Penobscot County Register of Deeds</i>	(61 KB)
Corbin, Garrett	<i>Maine Municipal Association</i>	(169 KB)
Cotta, David	<i>China, ME</i>	(75 KB)
Doak, Tom	<i>Small Woodland Owners Association of Maine</i>	(437 KB)
Fisher, Nina	<i>Maine DOT</i>	(55 KB)
Kulow, Rosemary	<i>Maine County Commissioners Association</i>	(63 KB)
Nadeau, Catherine	<i>Maine State Legislature</i>	(82 KB)

Work Sessions

Wednesday, May 20, 2015 1:00 PM, Cross Building, Room 214

Wednesday, January 20, 2016 1:30 PM, Cross Building, Room 214

Committee Docket

Date	Action	Result
May 20, 2015	Work Session Held	
May 29, 2015	Carry Over Requested	
Jun 5, 2015	Carry Over Approved	
Jan 20, 2016	Work Session Held	
Jan 20, 2016	Voted	OTP-AM
Mar 11, 2016	Reported Out	OTP-AM

Divided Reports

No Divided Reports.

Affected Statute Titles and Sections

Title	Section	Subsection	Paragraph	Effect	Law Type	Chapter
23	2060	2		AMD	Public Law	464
23	3021	1-A		NEW	Public Law	464
23	3021	2		AMD	Public Law	464
23	3026			RP	Public Law	464
23	3026-A			NEW	Public Law	464
23	3027	1		AMD	Public Law	464
23	3028	5		NEW	Public Law	464
23	3029-A			NEW	Public Law	464
35-A	2308			AMD	Public Law	464

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127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1637

H.P. 1114

House of Representatives, March 8, 2016

An Act To Assist Maine Citizens Residing along Public Easements

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT

Clerk

Presented by Representative HILLIARD of Belgrade. (GOVERNOR'S BILL)
Cosponsored by Senator SAVIELLO of Franklin.

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

2 **Sec. 1. 23 MRSA §3026, sub-§1**, as enacted by PL 1981, c. 683, §1, is amended
3 to read:

4 **1. General procedures; maintenance of public easement.** A municipality may
5 terminate in whole or in part any interests held by it for highway purposes. A
6 municipality may discontinue a town way or public easement after the municipal officers
7 have given best practicable notice to all abutting property owners and the municipal
8 planning board or office and have filed an order of discontinuance with the municipal
9 clerk that specifies the location of the way, the names of abutting property owners and the
10 amount of damages, if any, determined by the municipal officers to be paid to each
11 abutter.

12 Upon approval of the discontinuance order by the legislative body, and unless otherwise
13 stated in the order, a public easement shall, in the case of town ways, must be retained
14 and all remaining interests of the municipality shall pass to the abutting property owners
15 to the center of the way. If a public easement is retained and, at the time of approval of
16 the discontinuance order, there are legal residences on the property abutting that public
17 easement, the municipality, at the expense of that municipality, shall keep that public
18 easement reasonably passable for the use of motor vehicles for the purpose of access to
19 the residences abutting that public easement. If a public easement is not retained, all
20 interests of the municipality pass to the abutting property owners to the center of the way
21 and the municipality is not responsible for maintenance of that discontinued town way.
22 For purposes of this section, the words "public easement" shall include, without
23 limitation, an easement for public utility facilities necessary to provide service.

24 **Sec. 2. 23 MRSA §3202** is repealed and the following enacted in its place:

25 **§3202. Mail routes**

26 If a municipality holds a right-of-way over which there is a mail route, it is the
27 responsibility of that municipality to keep the mail route to the standard required by
28 United States Postal Service regulations.

29 **SUMMARY**

30 This bill requires a municipality that discontinues a town way but that retains a public
31 easement on that town way to continue to maintain that public easement, at the expense
32 of the municipality, so that it is reasonably passable by motor vehicles if there are legal
33 residences on the property abutting the town way at the time of discontinuance. If a
34 municipality discontinues a town way and specifically discontinues the public easement
35 on that town way, the interests of the municipality pass to the abutting property owners to
36 the center of the town way and the municipality is not required to keep the town way
37 passable. As defined in current law, a town way includes a county way not discontinued
38 prior to July 29, 1976.

1 This bill also requires a municipality to maintain a mail route located on a right-of-
2 way held by the municipality to the standard required by United States Postal Service
3 regulations.



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1177

S.P. 414

In Senate, March 26, 2013

**An Act To Implement the Recommendations from the Discontinued
and Abandoned Roads Stakeholder Group**

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in dark ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Representative KESCHL of Belgrade.

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

2 **Sec. 1. 23 MRSA §3026, sub-§1**, as enacted by PL 1981, c. 683, §1, is amended
3 to read:

4 **1. General procedures.** A municipality may terminate in whole or in part any
5 interests held by it for highway purposes. A municipality may discontinue a town way or
6 public easement after the municipal officers have given best practicable notice to all
7 abutting property owners and the municipal planning board or office and have filed an
8 order of discontinuance with the municipal clerk that specifies the location of the way,
9 the names of abutting property owners and the amount of damages, if any, determined by
10 the municipal officers to be paid to each abutter.

11 ~~Upon approval of the discontinuance order by the legislative body, and unless otherwise~~
12 ~~stated in the order, a public easement shall, in the case of town ways, be retained and all~~
13 ~~remaining interests of the municipality shall pass to the abutting property owners to the~~
14 ~~center of the way~~ If a legislative body decides to retain a public easement after
15 discontinuance of a town way, the legislative body must vote in the affirmative to retain
16 the public easement and to assume liability and responsibility for the easement to the
17 extent of its intended use. If the municipality fails to maintain the public easement for 2
18 years, the public easement is discontinued and the public's interest is abolished. An
19 easement must be given to a property owner requiring access to the owner's property if a
20 municipality discontinues a town way and no longer retains an interest in the property.
21 Continued use of an existing access may not be precluded unless an equivalent access is
22 available. For purposes of this section, the words "public easement" shall include,
23 without limitation, an easement for public utility facilities necessary to provide service.

24 **Sec. 2. 23 MRSA §3026, sub-§3** is enacted to read:

25 **3. Discontinued or abandoned town way.** Notwithstanding subsection 1,
26 beginning January 1, 2016, a town way may not be discontinued or abandoned by a
27 municipality unless the municipality decides by an affirmative vote to discontinue or
28 abandon the town way.

29 **Sec. 3. 23 MRSA §3028**, as amended by PL 2009, c. 59, §1, is repealed.

30 **Sec. 4. Develop list of town ways.** By January 1, 2016, a municipality shall
31 prepare a list of all town ways in that municipality the municipality intends to keep in
32 repair with public funds pursuant to the Maine Revised Statutes, Title 23, chapter 304. If
33 by January 1, 2016 a town way is not included on the municipality's list, the town way is
34 discontinued with no public easement. A municipality shall publish the list on its
35 publicly accessible website. An abutter of the town way has 2 years from the date of the
36 publication of the list to file a claim pursuant to Title 23, section 3027-A, subsection 2
37 with the legislative body of the municipality.

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SUMMARY

This bill implements the recommendations of the stakeholder group established by the Department of Agriculture, Conservation and Forestry pursuant to Resolve 2011, chapter 120 to review discontinued and abandoned roads. This bill provides that if a municipality decides to retain a public easement after the municipality discontinues a town way, the municipality must vote in the affirmative to retain the public easement and that if the municipality fails to maintain the public easement for 2 years, the public easement is discontinued and the public's interest in the easement is abolished. The bill requires that a municipality give an easement to a property owner that requires access to the property owner's property if the municipality discontinues a town way. Current law allows a municipality to discontinue a town way by giving notice to all abutting property owners and the municipal planning board and filing an order of discontinuance with the municipal clerk. The bill, beginning on January 1, 2016, requires that a municipality must vote in order to discontinue a town way. The bill also requires that by January 1, 2016 every municipality prepare a list of all municipal town ways that the municipality intends to keep in repair with public funds pursuant to the Maine Revised Statutes, Title 23, chapter 304 and to publish the list on its publicly accessible website. If a town way has not been included on the list by January 1, 2016, the town way is discontinued with no public easement and the abutters of the town way have 2 years to file a claim pursuant to Title 23, section 3027-A, subsection 2 against the municipality.

126th Maine Legislature, Second Regular Session

An Act To Implement the Recommendations from the Discontinued and Abandoned Roads Stakeholder Group

LD 1177, SP 414

Fiscal Status Not Yet Determined

Final Disposition Died Between Houses, Apr 8, 2014

Adopted by Senate

C-A (S-435) Fiscal Status Fiscal Impact

Sponsored By *Representative Cotta of China*

H-A to C-A (H-710) Fiscal Status Fiscal Impact

Sponsored By *Senator Thomas of Somerset*

S-A to C-A (S-463) Fiscal Status Fiscal Impact

Amendments to LD 1177

C-B (S-436) Fiscal Status Fiscal Impact

Sponsored By *Representative Cotta of China*

H-B to C-A (H-759) Fiscal Status Fiscal Impact

Sponsored By *Senator Madigan of Kennebec,*
Adopted by Senate

S-B to C-A (S-488) Fiscal Status Fiscal Impact

Status In Committee

Referred to Committee on State and Local Government on Mar 26, 2013.

Latest Committee Action: Reported Out, Mar 19, 2014, OTP-AM/OTP-AM

Latest Committee Report: Mar 19, 2014, MAJ: Ought To Pass As Amended, MIN: Ought To Pass As Amended

Public Hearings

Wednesday, April 10, 2013 1:00 PM, Cross Building, Room 214

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Public Hearing Testimony, 14 items

Alvee, Katherine	<i>unidentified</i>	(88 KB)
Carey, Mal	<i>Newcastle</i>	(52 KB)
Connor Bowen, Betsy	<i>Maine Alliance for Road Associations</i>	(84 KB)
Dearborn, Diana	<i>Mt. Vernon</i>	(346 KB)
Dearborn, Marjorie	<i>Mt. Vernon</i>	(64 KB)
Doak, Tom	<i>Small woodland Owners Association of Maine</i>	(318 KB)
Dodge, James	<i>Fayette</i>	(64 KB)
Dufour, Kate	<i>Maine Municipal Association</i>	(337 KB)
Englehardt, Eric	<i>Fayette</i>	(36 KB)
Gamage, Gay	<i>Rumford Center</i>	(26 KB)
Maines, Michael	<i>Gray</i>	(1565 KB)
Manter, Roberta	<i>Fayette</i>	(461 KB)
Merk, Rich	<i>Otisfield</i>	(45 KB)

Robinson, Mark

Town Manager, Town of Fayette

(83 KB)

Work Sessions

Wednesday, May 8, 2013 1:00 PM, Cross Building, Room 214

Monday, January 13, 2014 1:00 PM, Cross Building, Room 214

Wednesday, January 15, 2014 1:00 PM, State House, Room 438

Wednesday, January 22, 2014 10:00 AM, State House, Room 334

Committee Docket

Date	Action	Result
May 8, 2013	Work Session Held	
May 10, 2013	Carry Over Requested	
May 16, 2013	Carry Over Approved	
Jan 13, 2014	Work Session Held	TABLED
Jan 15, 2014	Work Session Held	TABLED
Jan 22, 2014	Work Session Held	
Jan 22, 2014	Voted	Divided Report
Mar 19, 2014	Reported Out	OTP-AM/OTP-AM

Divided Reports

Report	Report Signer
MAJ, Ought To Pass As Amended	Representative Anne Graham of North Yarmouth, Chair Senator Ronald Collins of York Representative Andrea Boland of Sanford Representative Brian Bolduc of Auburn Representative Justin Chenette of Saco Representative H. Cotta of China Representative Sharri MacDonald of Old Orchard Beach Representative Catherine Nadeau of Winslow Representative Allen Nadeau of Fort Kent Representative Jethro Pease of Morrill
MIN, Ought To Pass As Amended	Representative Teresea Hayes of Buckfield

Affected Statute Titles and Sections

None listed at this time.

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