

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 682

H. P. 542

House of Representatives, February 24, 1977

On motion of Mr. Carroll of Limerick, referred to the Committee on Transportation. Sent up for concurrence and 1,800 copies ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Brown of Mexico.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Pertaining to Town Ways.

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

Sec. 1. 23 MRSA § 2051, as last amended by PL 1975, c. 711, § 1, is repealed and the following enacted in its place:

§ 2051. Power of commissioners

County commissioners may lay out, alter, close for maintenance or discontinue highways leading from town to town and grade hills in any such highway. The county commissioners may close county roads for maintenance and preserve the right-of-way for the use of abutting landowners, and any others using that way for the access to their property, and public utilities and corporations with facilities legally located within that way, at their own risk. Nothing in any city charter shall be so construed as to deprive them of the power to lay out, alter, close for maintenance or discontinue county roads within the limits thereof. Responsible persons may present, at their regular session, a written petition describing a way and stating whether its location, alteration, grading, closing for maintenance or discontinuance is desired, or an alternative action, in whole or in part. The commissioners may act upon it, conforming substantially to the description, without adhering strictly to its bounds.

Sec. 2. 23 MRSA § 2057, 1st sentence, as amended by PL 1975, c. 711, § 2, is further amended to read:

If any person's property is damaged by laying out, altering or discontinuing a ~~county~~ highway or town way, the county commissioners or the municipal officers of towns shall estimate the amount, and in their return state the share of each separately.

Sec. 3. 23 MRSA § 2057, last sentence, as amended by PL 1975, c. 711, § 3, is further amended to read:

Said commissioners ~~or officers~~ shall not order such damages to be paid, nor shall any right thereto accrue to the claimant, until the land over which the highway or alteration is located has been entered upon and possession taken for the purpose of construction or use.

Sec. 4. 23 MRSA § 2060, as last amended by PL 1975, c. 711, § 4, is further amended to read:

§ 2060. Discontinuance where new state highway

When the Department of Transportation has constructed a highway over substantially the same route as that of a county ~~road or town way~~ and has recorded the plans of same in the registry of deeds, the county commissioners ~~or municipal officers~~ may, on their own motion, after notice and hearing, proceed to alter or discontinue the portion of said ~~county road way~~ not within the limits of said highway. They shall give notice and proceed as provided in ~~sections 2052 and 2054 to 2058 this chapter or chapter 304, as applicable,~~ including serving any public utility having facilities located in said portion to be discontinued, and any aggrieved person shall have an appeal as therein provided. The plans prepared by the department and on record in the registry of deeds may be referred to in describing those portions of the county ~~road or town way~~ to be discontinued.

Sec. 5. 23 MRSA § 2062, as repealed by PL 1975, c. 711, § 5, is reenacted to read:

§ 2062. Same petition for towns, plantations or outside lands; appeals

County commissioners in their counties may, upon the same petition, lay out, alter or discontinue highways through a town or towns or a plantation or plantations and tracts of land not in any town or plantation. In respect to that part of the highway situate in any town or plantation required by law to raise money to make and repair highways, the same proceedings shall be had as are now provided by law in case of a petition to lay out, alter or discontinue highways leading from town to town. In respect to that part of the highway not situate in any town or plantation required by law to raise money to make and repair highways, the same proceedings shall be had as are now provided by law in case of a petition to lay out, alter or discontinue a highway in places not incorporated. The time and place of hearing upon such petition shall be according to section 4001. In case of an appeal to the Superior Court, the appeal may be made within 30 days after the return of the commissioners has been placed on the files. The proceedings upon the appeal shall be according to section 4002. If no appeal is made, the case shall be continued to the next regular term after the regular term to which the return is made.

Sec. 6. 23 MRSA c. 209, as repealed by PL 1975, c. 711, § 6, is reenacted to read:

CHAPTER 209 NEGLECT OR DELAY

§ 2201. Time limitations

When a town way, private way or highway is wholly or partly discontinued by the county commissioners, a time shall be fixed for it, and when laid out by them the way shall be regarded as discontinued if not opened within 6 years from the time allowed therefor. When town or private ways are finally located by municipal officers, unless the land is entered upon and possession taken for that purpose within 2 years after the laying out or alteration, the proceedings are void.

§ 2202. Action when town fails; expenses

When a town way or highway is not opened and made passable by the town liable or a hill therein has not been graded within the time prescribed therefor by the commissioners, they may, after notice to the town, cause it to be done by an agent, not one of themselves, on petition of those interested. The agent shall make a written contract therefor and file a copy of it in the clerk's office. The commissioners shall forthwith certify to the assessors of the town interested the time when such contract is to be completed and the amount to be paid therefor. They may examine the doings of their agent and at pleasure remove him and appoint another. His account shall not be allowed without notice to the town. When the contract has been completed and the accounts allowed, the town shall pay the amount expended, with the expenses of the agent for superintendence, and for procuring the allowance of his account. If the town neglects to pay for 30 days, a warrant of distress shall be issued by the commissioners to collect the same.

Sec. 6-A. 23 MRSA § 2901, 1st sentence, as amended by PL 1975, c. 711, § 6-A, is further amended to read:

No ~~private way~~, town way, city street ~~public easement~~ or highway taking land of any railroad corporation shall be located, unless a notice of the time and place of the hearing upon the location has been served upon the president, any vice-president, any director, the treasurer or any assistant treasurer, the general manager or the clerk of the corporation at least 7 days before the time for the hearing.

Sec. 7. 23 MRSA c. 303, as repealed by PL 1975, c. 711, § 7, is reenacted to read:

CHAPTER 303

LAYING OUT, ALTERING OR DISCONTINUING HIGHWAYS

§ 3001. Power of officers; notice

The municipal officers of a town may on petition therefor, personally or by agency, lay out, alter or widen town ways and private ways for any inhabitant or for owners of cultivated land therein, if such inhabitant occupies or such owner has cultivated land in the town which such private way will connect with a town way or highway. They shall give written notice of their intentions, to be posted for 7 days in 2 public places in the town and in the vicinity

of the way, describing it in such notice, and they shall determine whether it shall be a town way or a private way, and if a private way, whether it shall be subject to gates and bars.

§ 3002. Winter roads

The municipal officers may lay out such a way for the hauling of merchandise, hay, wood or lumber, to be used only when the ground is so covered with snow that such hauling shall not break the soil. When so laid out, they shall state in their return the purposes for which it is laid and that it shall be used only in the winter season, and shall order the persons for whose accommodation it is laid to pay into the town treasury an amount equal to the damages of such location for the benefit of the owner of the land over which it is laid and the expenses of such location, and it shall not be accepted by the town until such amount is so paid. No town shall be liable for damage to any person traveling on such way.

§ 3003. Acceptance by town

A written return of the proceedings of the municipal officers under sections 3001 and 3002, containing the bounds and admeasurements of the way and the damages allowed to each person for land taken, shall be made and filed with the town clerk in all cases. The way is not established until it has been accepted in a town meeting legally called, after the return has been filed, by a warrant containing an article for the purpose.

§ 3004. Discontinuance of way

A town, at a meeting called by warrant containing an article for the purpose, may discontinue a town or private way. The discontinuance of a town way shall be presumed to relegate the town way to the status of a private way unless the town meeting article shall specifically state otherwise. The municipal officers shall estimate the damages suffered by any person thereby.

§ 3005. Damages; appeals

Damages shall be determined as if the land were taken by the State for highway purposes under chapter 3. The damages for a town way shall be paid by the town; for a private way, by those for whose benefit it is stated in the petition to be, or wholly or partly by the town, if under an article in the warrant to that effect it so votes at the meeting accepting such private way; or by cities, if it is proposed in the return laying out such way. Any person aggrieved by the estimate of such damages may have them determined as provided in section 2058, by written complaint to the Superior Court, in the county where the land lies, within 60 days from the date of the establishment, alteration or discontinuance of such way by the town at its town meeting. Service shall be made upon the town where the land lies as in other actions, and by posting attested copies in 2 public and conspicuous places within that town and in the vicinity of the way; but the final judgment shall be recorded in the court and shall not be certified to the county commissioners. When any person, aggrieved by the estimate of damages for his land taken for a town or private way, honestly intended to appeal therefrom and has by accident or mistake omitted to take his appeal within the time provided by law,

he may, at any time within 6 months after the expiration of the time when the appeal might have been taken, apply to any justice of the court, stating in his application the facts of his case. The justice, after due notice and hearing, may grant to such petitioner permission to take his appeal within such time as the justice shall direct and on such terms as the justice shall order, and the subsequent proceedings thereon shall be the same and with the same effect as if the appeal had been seasonably taken.

§ 3006. Refusal or neglect of municipal officers

When the municipal officers unreasonably neglect or refuse to lay out or alter a town way, or a private way on petition of an inhabitant or of an owner of land therein for a way leading from such land under improvement to a town or highway, the petitioner may, within one year thereafter, present a petition stating the facts to the commissioners of the county at a regular session, who shall give notice thereof to all interested and act thereon as is provided respecting highways. When the decision of the municipal officers is in favor of such laying out or alteration, any owner or tenant of the land over or across which such way has been located shall have the same right of petition. When the decision of the commissioners is returned and placed on file, such owner or tenant or other party interested has the same right to appeal to the Superior Court as is provided in sections 2063 to 2066, and to have his damages estimated as provided in section 2058.

§ 3007. Use of highway pending decision

No such way described in section 3006 shall be opened or used until after 60 days from its acceptance by the town, and if within that time notice of such appeal or petition is filed with the town clerk, such way shall not be opened or used until finally located by the appellants tribunal.

§ 3008. Unreasonable refusal to accept or discontinue

When a town unreasonably refuses to discontinue a town or private way or to accept one laid out or altered by the selectmen, the parties aggrieved may, within the time and in the manner provided in section 3006, present a petition to the county commissioners, who shall in like manner proceed and act thereon and cause their proceedings to be recorded by their own and by the town clerk. The right of all parties may be preserved and determined as provided in sections 3006 and 3007.

§ 3009. Action by county forestalls action by town

When a town way has been laid out, graded or altered by the commissioners, their proceedings cannot be affected by any action of the town within 5 years, and when one has been discontinued by them, it cannot be again laid out by the town within 2 years. The commissioners have the same power to alter or discontinue such ways for 5 years as they have respecting highways.

§ 3010. Grading; county's share of expenses

The county commissioners, in laying out new ways or altering or grading ways already laid out, may direct the amount of such grading, which shall be

stated in their return. They may order a portion of the expense of such altering or grading, not exceeding 50% thereof, to be paid to the town in which the altering or grading has been done from the county treasury.

§ 3011. Reinstatement of ways discontinued by county; damages

When a town has accepted a town way, and such town way is subsequently discontinued by the county commissioners on appeal before such road has been opened for travel, such town may, at its annual meeting held within 3 years thereafter, by a majority of the voters present and voting, reinstate and lay out such town way under an article for such purpose in the warrant. The damages shall be assessed and the owners of the land over which such way passes shall be notified thereof by the municipal officers within 20 days after such meeting. Any person aggrieved by the estimate of damages may have them determined in the manner provided in section 3005 in case of town ways laid out on petition. A town way so reestablished and laid out shall not be discontinued for 5 years thereafter.

§ 3012. Change of street location on plans

When land has been plotted and a plan thereof made, whether recorded or not, showing the proposed location of streets thereon, and lots have been sold by reference to that plan, the municipal officers of the town or city where such land is situated may, on petition of owners of the fee in such of the proposed streets as are named in the petition, vacate in whole or in part the proposed location of any or all such streets as do not then have the status of accepted and located public ways. The proceedings shall be the same as in case of the location of town ways. All damages thereby occasioned shall be paid by the petitioners, and parties aggrieved by the estimate of damages may have them determined in the manner provided respecting damages caused by the location of town ways and with the same right of appeal. The action on the report of the municipal officers of such town or city shall be filed within 10 days after the action on such report is taken in the office of the town or city clerk and made a part of the record. Such clerk shall furnish an attested copy of such action on the report to anyone upon payment of a fee of 75¢ therefor, which attested copy may be recorded in the registry of deeds of the district or county where the land of the proposed streets is located, and such attested copy need not be acknowledged for the purpose of such record. The fee at the registry of deeds for such record shall be the same as fees for recording therein miscellaneous instruments.

Sec. 8. 23 MRSA c. 304, as enacted by PL 1975, c. 711, § 8 and as amended by PL 1975, c. 770, §§ 98 and 99, is repealed.

Sec. 9. 23 MRSA c. 309, as repealed by PL 1975, c. 711, § 9, is reenacted to read:

**CHAPTER 309
EMINENT DOMAIN**

§ 3501. Materials taken from lands not enclosed or planted

A road commissioner may remove any obstacle which obstructs or is likely to obstruct a way or render its passage dangerous. He may dig for stone,

gravel or other material suitable for making or repairing ways in land not enclosed or planted and remove the same to the ways. If the land from which such materials were taken is not within the limits of the way, the owner of it shall be paid therefor in money by the town, to be recovered after demand and refusal by the road commissioner, in an action as on an implied promise.

§ 3502. Land taken; damages

The municipal officers of any municipality may purchase, take over and hold for any municipality, for public use, such materials and land as may be necessary to provide a change of location or alignment of any highway, or to secure materials, including clay, gravel, sand and rock, with the necessary ways and access thereto, for the improvement, construction and maintenance of highways. If the municipal officers of any municipality are unable to purchase such materials or land with the necessary ways and access thereto, at what they deem a reasonable valuation, the county commissioners of the county wherein such material or land is located shall, on petition of the municipal officers or interested parties, ascertain and determine the damages in the same manner as provided by statute for land taken for highway purposes under chapter 3, and all parties aggrieved by the estimate of damages shall have like remedy as provided by statute for appraisal of damages for land taken by towns for highway purposes.

§ 3503. Recording of proceedings

No taking, layout or acceptance of land or any interest therein by a municipality or other municipal corporation, or the discontinuance of same, after September 12, 1959, shall be effectual against persons without actual notice thereof, unless there is recorded in the registry of deeds for the county where the land lies either a deed or certificate attested by the clerk of that municipal corporation, describing the land, and setting forth the final action of the municipal corporation in regard thereto.

STATEMENT OF FACT

The purpose of this bill is to return the law to the way it was before the passage of PL 1975, c. 711.