

MAINE STATE LEGISLATURE

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(EMERGENCY)
(NEW DRAFT OF H.P. 1541, L.D. 2096)
(NEW TITLE)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2580

H.P. 1886 House of Representatives, March 24, 1988
Reported by Representative BICKFORD from the Committee on
State and Local Government and printed under Joint Rule 2.

EDWIN H. PERT, Clerk

Original bill sponsored by Representative GREENLAW of
Standish. Cosponsored by Representatives TRACY of Rome,
PARADIS of Old Town, and Senator BLACK of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 **RESOLVE, Creating the Commission to Study the**
2 **Subject of Private Ways and Private Roads.**
3

4 **Emergency preamble.** Whereas, Acts and resolves
5 of the Legislature do not become effective until 90
6 days after adjournment unless enacted as emergencies;
7 and

8 Whereas, considerable confusion exists as to the
9 terms "town way," "private way" and "private road" and

1 the responsibilities and rights of municipalities
2 regarding them; and

3 Whereas, it is desirable that this item be
4 resolved by the First Regular Session of the 114th
5 Legislature; and

6 Whereas, this is a complex issue requiring study
7 by a variety of specialized interests; and

8 Whereas, unless this legislation is passed on an
9 emergency basis this study will not be able to begin
10 until July, 1988; and

11 Whereas, in the judgment of the Legislature, these
12 facts create an emergency within the meaning of the
13 Constitution of Maine and require the following
14 legislation as immediately necessary for the
15 preservation of the public peace, health and safety;
16 now, therefore, be it

17 Commission created and charged. Resolved: That
18 the Commission to Study the Subject of Private Ways
19 and Private Roads is hereby established. The
20 commission shall study the issue of whether a
21 municipality should maintain and plow roads that are
22 on private land but accessible to the public and roads
23 that are on private land but not accessible to the
24 public.

25 This study shall include the following issues:

26 1. The constitutional issue of using public
27 equipment on private property;

28 2. The issue of long-term maintenance creating a
29 requirement that this be continued and the issue of
30 this maintenance resulting in the road becoming public
31 property;

32 3. A definition of the phrase "capable of
33 carrying" motor vehicles;

34 4. The possibility of requiring that privately
35 owned roads be maintained to a certain standard by the

1 owner; and

2 5. How to prevent disputes between municipalities
3 and land owners as to road ownership and maintenance.

4 In its study, the commission shall review the
5 Attorney General's opinion of November 16, 1977, and
6 offer to members of the public who testified at the
7 public hearing on H.P. 1541, L.D. 2096, "AN ACT to
8 Allow Plowing of Private or Public Ways or Roads by
9 Municipalities" the opportunity to present testimony
10 to the commission.

11 The commission shall present legislation as to
12 whether it wishes the various categories of roads and
13 ways to be maintained and plowed, what name should be
14 given to each category of road and whether it should
15 amend the various current laws to reflect these wishes
16 and to make these laws consistent. The commission
17 shall review the following laws in this connection:
18 The Maine Revised Statutes, Title 23, sections 3021,
19 3105, 3201, 3651; and Title 29, section 944; and be it
20 further

21 **Appointment. Resolved:** That the commission
22 shall consist of 7 members, appointed in the following
23 manner:

24 1. Four Legislators, at least one of whom shall
25 be a Senator and one of whom shall represent each of
26 the Joint Standing Committees on Judiciary, State and
27 Local Government and Transportation. These
28 appointments are to be made jointly by the President
29 of the Senate and the Speaker of the House;

30 2. One Executive Department official selected by
31 the Governor;

32 3. A representative of the Maine Municipal
33 Association to be appointed by that organization; and

34 4. A representative of the Governor's Municipal
35 Advisory Council chosen by the council.

36 Each person required to make an appointment or

1 appointments under this resolve shall make the
2 appointment or appointments by May 10, 1988, and shall
3 inform the President of the Senate, the Speaker of the
4 House, the Executive Director of the Legislative
5 Council and the Governor upon making the appointment
6 or appointments.

7 The commission member from the Joint Standing
8 Committee on State and Local Government shall serve as
9 chairman of the commission and shall call the first
10 meeting no later than June 1, 1988; and be it further

11 **Meetings. Resolved:** That the commission shall
12 attempt to accomplish its mission within the 3
13 meetings which are provided as a general guideline by
14 the Legislative Council. Should additional meetings
15 be required, the committee shall request any necessary
16 funds from the council; and be it further

17 **Report. Resolved:** That the commission shall
18 present its findings, together with any recommended
19 legislation, to the Joint Standing Committee on State
20 and Local Government by December 1, 1988. The
21 committee may hold a meeting to review the findings.
22 This committee shall present its report and any
23 legislation to the Legislature by January 1, 1989. If
24 a request for extension is made while the Legislature
25 is not in session, it may be acted upon by the
26 Legislative Council; and be it further

27 **Staff assistance. Resolved:** That, if staff
28 assistance is desired, assistance shall be requested
29 from the Legislative Council; and be it further

30 **Agency cooperation. Resolved:** That all
31 agencies and departments of State Government and in
32 particular the Department of the Attorney General and
33 the Department of Transportation shall cooperate with
34 the committee and shall expeditiously provide the
35 committee with the information and materials that it
36 needs; and be it further

37 **Compensation. Resolved:** That the members of
38 the commission who are Legislators shall receive the
39 legislative per diem, as defined in the Maine Revised

1 Statutes, Title 3, section 2, for each day's
2 attendance at commission meetings. All members of the
3 commission shall receive reimbursement for expenses
4 upon application to the Executive Director of the
5 Legislative Council; and be it further

6 **Appropriation. Resolved:** That the following
7 funds are appropriated from the General Fund to carry
8 out the purposes of this resolve.

	<u>1987-88</u>	<u>1988-89</u>
9		
10	<u>LEGISLATURE</u>	
11	Commission to Study the	
12	Subject of Private Ways	
13	and Private Roads	
14	Personal Services	\$220
15	All Other	300
16		\$1,155
17	Total	2,250
		<u>\$520</u>
		<u>\$3,405</u>

18 Provides funds for 3
19 meetings of the
20 commission and one
21 meeting of the Joint
22 Standing Committee on
23 State and Local
24 Government. None of
25 these meetings is to
26 be a public hearing
27 and a report is to be
28 presented not to
29 exceed 35 pages.

30 **Emergency clause.** In view of the emergency
31 cited in the preamble, this resolve shall take effect
32 when approved.

33 STATEMENT OF FACT

34 Testimonies concerning H.P. 1541, L.D. 2096, "AN

1 ACT to Allow Plowing of Private or Public Ways or
2 Roads by Municipalities" made it clear that there were
3 considerable differences of opinion regarding what
4 should be done about maintaining private ways and
5 private roads and differences in interpretation of
6 current law. This resolve proposes to study these
7 issues.

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