

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
(AFTER DEADLINE)  
SECOND REGULAR SESSION

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ONE HUNDRED AND THIRTEENTH LEGISLATURE

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Legislative Document

NO. 2622

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H.P. 1922                      House of Representatives, April 6, 1988  
Approved for introduction by a majority of the  
Legislative Council pursuant to Joint Rule 27.  
Reference to the Committee on Transportation suggested  
and ordered printed.

EDWIN H. PERT, Clerk  
Presented by Representative GREENLAW of Standish.  
Cosponsored by Representatives TRACY of Rome, PARADIS of  
Old Town and Senator BLACK of Cumberland.

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STATE OF MAINE

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

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

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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 Private Ways and Private Roads  
19 is hereby established. The commission shall study the  
20 issue of whether a municipality should maintain and  
21 plow roads that are on private land but accessible to  
22 the public and roads that are on private land but not  
23 accessible to the public.

24 This study shall include the following issues:

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

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

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

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

1 owner; and

2 5. How to prevent disputes between municipalities  
3 and landowners 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 commission shall request any  
16 necessary 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 commission may hold a meeting to review the findings.  
22 This commission 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 commission and shall expeditiously provide the  
35 commission 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.

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