

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 836

H.P. 613

House of Representatives, March 21, 1989

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

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CARROLL of Gray.

STATE OF MAINE

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

**An Act to Remove the Jurisdiction of the County Commissioners over
Municipal Roads.**



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

3 Sec. 1. 23 MRSA §3652 is repealed.

5 Sec. 2. 23 MRSA §3652-A is enacted to read:

7 §3652-A. Notice of defect; appeal to court

9 When a town liable to maintain a way unreasonably neglects
11 to keep it in repair as provided in section 3651, after one of
13 the municipal officers has had 5-days' actual notice or knowledge
15 of the defective condition, any person or entity adversely
17 affected by the town's neglect may file a complaint in the
19 Superior Court pursuant to the Maine Rules of Civil Procedure,
Rule 80B. If the court finds the way to be safe and convenient,
it shall award costs against the complainant. If the court finds
that the way was defective at the time of presentation of the
petition, but has been repaired before the hearing, it may award
costs against the town if, in its judgment, justice requires.

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STATEMENT OF FACT

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25 This bill removes the county commissioners from any
27 decisions regarding the status or condition of municipal roads.
29 Removing the county commissioners from these decisions will make
31 the municipal highway law consistent throughout its context.
33 Municipal highway law was significantly amended by Public Law
35 1975, chapter 711, and as part of the amendatory process, the
37 county commissioners were taken out of what had previously been
39 an extensive role in hearing appeals and deciding issues related
41 to municipal roads. For example, the Maine Revised Statutes,
43 Title 23, sections 3006 and 3008 to 3011 were all repealed by
45 Public Law 1975, chapter 711. As a result of these significant
47 amendments and case law, there was general agreement in the legal
49 community that the county commissioners no longer had any role in
51 deciding whether a particular road was a municipal road or
whether it had been discontinued or abandoned (Board of
Selectmen, Town of China vs. Kennebec County Commissioners, Maine
393 A.2d 526, 1978). A recent opinion from the District
Attorney's office representing Androscoggin County, Oxford County
and Waldo County has reinjected the county commissioners into the
role of determining a municipal road's status for the purpose of
determining who is responsible for maintaining it. This law will
make it clear that such decisions are to be made by a court of
law and not the county commissioners. This bill also makes it
clear that a court of law is the appropriate forum in which to
decide issues regarding the repair of municipal roads. Both the
status of roads and their condition for purposes of repair are
situations that require extensive fact-finding and a
decision-making of a type that falls much more naturally to a
court than to the county commissioners.