

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 536

S.P. 209

In Senate, February 12, 1991

Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator CARPENTER of York  
Cosponsored by Senator EMERSON of Penobscot.

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STATE OF MAINE

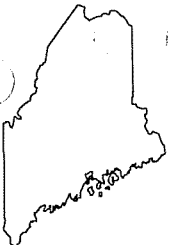
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act to Ensure Access to Land Located on Discontinued Roads.**

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

4 Sec. 1. 23 MRSA §2061-A is enacted to read:

6 §2061-A. Private easement retained

8 1. Private easement retained. If a public easement is not  
10 retained by the county when a county way is discontinued, the  
12 owner of any land that abuts the discontinued way or for which  
14 the owner has legal access to the discontinued way retains a  
16 private easement over the former way if:

18 A. The county commissioners fail to make a determination of  
20 the amount of damages suffered by the landowner; or

22 B. The damages determined by the county commissioners are  
24 not paid to the landowner.

26 2. Scope of easement. The private easement granted under  
28 this section is a right-of-way for all purposes, including, but  
30 not limited to, access to the owner's land by vehicle and an  
32 easement for public utility facilities necessary to provide  
34 service.

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

38 3. Private easement retained. If a public easement is not  
40 retained by the municipality when a town way is discontinued, the  
42 owner of any land that abuts the discontinued way or for which  
44 the owner has legal access to the discontinued way retains a  
46 private easement over the former way if:

48 A. The municipal officers fail to make a determination of  
50 the amount of damages suffered by the landowner; or

52 B. The damages determined by the municipal officers are not  
54 paid to the landowner.

56 The private easement granted under this subsection is a  
58 right-of-way for all purposes, including, but not limited to,  
60 access to the owner's land by vehicle and an easement for public  
62 utility facilities necessary to provide service.

64 Sec. 3. Application. This Act applies to any public way  
66 discontinued or abandoned on or after the effective date of this  
68 Act.

70 **STATEMENT OF FACT**

72 The purpose of this bill is to protect the rights of owners  
74 of land that abuts a discontinued public way. When a public way

2 is discontinued, it is possible for the owner of land located on  
the former public road to lose all rights of legal access to the  
4 property, substantially diminishing the property's usefulness and  
value to the owner. Current law requires local officials to  
6 estimate the amount of these damages and to compensate the  
landowner for any decrease in the value of the land. This  
8 process is not always completed due to inaccurate records,  
miscommunication or misunderstanding. This is particularly true  
in the case of abandoned roads.

10  
12 This bill ensures that the owner of land located on a public  
way that is discontinued or abandoned either receives a proper  
14 determination of damages and is paid those damages, if the land's  
value is diminished, or retains a private right-of-way sufficient  
16 to allow access and development of the land. Under the bill, if  
a landowner is paid damages for the decrease in value of the  
18 land, or if it is determined that no decrease occurred as a  
result of the discontinuance or abandonment, no private easement  
is retained by the landowner. If the landowner is denied either  
20 a determination of whether damages occurred or is denied payment  
of damages found to have resulted from the discontinuance, the  
22 landowner's rights are protected by providing a private easement  
for access to the land.  
24