

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1228

S.P. 397

In Senate, April 8, 1993

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

Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator FOSTER of Hancock.

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 under subsection 1 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
paid to the landowner.

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

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

STATEMENT OF FACT

The purpose of this bill is to protect the rights of owners 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
determination of damages and is paid those damages, if the land's
14 value is diminished, or retains a private right-of-way sufficient
to allow access and development of the land. Under the bill, if
16 a landowner is paid damages for the decrease in value of the
land, or if it is determined that no decrease occurred as a
18 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.

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