

# MAINE STATE LEGISLATURE

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R. of S.

L.D. 1403

(Filing No. H-529 )

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
116TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1051, L.D. 1403, Bill, "An Act to Provide Access to Landlocked Property"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 23 MRSA §3022, 3rd ¶, as repealed and replaced by PL 1979, c. 127, §153, is amended to read:

The municipal officers may on petition therefor, personally or by agency, lay out a public easement for any occupant of land or for owners who have cultivated land in the municipality if the land will be connected to a town way or highway after the establishment of the public easement. The municipal officers must respond within 45 days of receipt of a petition by issuing a decision on whether to lay out a public easement or must submit the question to the voters at the next annual or special town meeting.

Sec. 2. 33 MRSA §459 is enacted to read:

§459. Private easements to landlocked parcels; special court master

An owner of real property with no apparent right of access from that property to a public way may file a complaint in Superior Court claiming that under statute or common law an easement by necessity or by implication exists over the land of an abutting landowner or landowners and requesting that a special master be appointed to hear the complaint. The rights provided by this section are in addition to any other remedies provided by law.

**COMMITTEE AMENDMENT**

B. W. S.

COMMITTEE AMENDMENT "A" to H.P. 1051, L.D. 1403

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1. Eligibility. Prior to filing an action, the owner must have made a reasonable offer to purchase an easement from the abutting landowner or landowners and the offer was refused; and

A. In the case of land located in a town or city, petitioned the municipal officers for the establishment of a public easement pursuant to Title 23, section 3022 and the petition was denied or the municipal legislative body declined to establish an easement; or

B. In the case of land located in a plantation, township or unorganized territory, petitioned the county commissioners to establish a public easement pursuant to Title 23, section 2051 and the petition was denied.

2. Procedure. An action brought under this section is a civil action governed by the Maine Rules of Civil Procedure, except that there is no trial by jury. Upon the filing of a complaint, the court shall:

A. Establish a schedule for discovery and a schedule for filing briefs; and

B. Appoint a special master to hear and decide all issues of fact and issue a report to the court.

3. Decision. Within 30 days of receipt of the master's report, the court shall issue a final decision. If an easement is found to exist, the court shall indicate the location and all the rights and obligations associated with the easement.

4. Costs. The fees of the master and any other costs necessary for the master to issue a report must be paid by the complainant.

**FISCAL NOTE**

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fees may increase General Fund revenues by a minor amount.'

**STATEMENT OF FACT**

The amendment replaces the bill and requires that municipal officers respond within 45 days to a petition for a public easement from a landlocked property owner by establishing an easement or submitting the question to the town voters at the next election.

H.M.S.

COMMITTEE AMENDMENT "A" to H.P. 1051, L.D. 1403

2           The amendment also provides an option to the common law  
3 process for resolution of access to landlocked property  
4 questions. Under certain circumstances, an owner of land that  
5 does not include access to a public way may file an action in  
6 Superior Court to establish an easement by necessity or an  
7 easement by prescription. The landowner may request the  
8 appointment of a special master to hear the case, make factual  
9 determinations and report to the court within 45 days. The court  
10 will decide the case without a jury trial based on the master's  
11 report. Costs for the court to employ the master are paid by the  
12 landowner. The court issues a ruling within 30 days after  
receipt to the report.

Reported by the Committee on State and Local Government  
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