

MAINE STATE LEGISLATURE

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R.S.

L.D. 1665

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DATE: 3/7/94

(Filing No. H- 809)

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STATE & LOCAL GOVERNMENT

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10 Reproduced and distributed under the direction of the Clerk of
12 the House.

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

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20 COMMITTEE AMENDMENT "A" to H.P. 1238, L.D. 1665, Bill, "An
Act Regarding Access to Property via Discontinued Roads"

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24 Amend the bill in section 1 in that part designated
"§2061-A." in subsection 1 by striking out all of the first
paragraph (page 1, lines 7 to 11 in L.D.) and inserting in its
place the following:

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28 '1. Private easement retained. If a public easement is not
retained by the county when a county way is discontinued or
abandoned, the owner of a landlocked parcel of land that abuts
the discontinued way or for which the owner has legal access to
the discontinued way retains a private easement over the former
way if:'

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Further amend the bill by inserting after section 1 the
following:

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'Sec. 2. 23 MRSA §2061-B is enacted to read:

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40 §2061-B. Public easement for access to property landlocked by
abandonment or discontinuance of county way

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44 Any person owning real property that is landlocked may
establish a public easement for access over an abandoned or
discontinued county way by complying with this section. As used
in this section, "landlocked" means real property that abuts a
former county way abandoned or discontinued before September 3,
1965 leaving no public or private land access to that property.

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COMMITTEE AMENDMENT

A. of S.

COMMITTEE AMENDMENT "A" to H.P. 1238, L.D. 1665

2 1. Notice; damages; recording. The owner of landlocked
4 real property must:

6 A. Provide written notice of intent to establish a public
8 easement to all owners of record of land that abuts the
10 former county way and other persons with a legal interest in
12 that land. Notice must be by certified mail and include a
14 description of the location, width and length of the
16 easement to be established;

18 B. Tender to the abutting owners of record reasonable
20 damages determined by the landlocked owner in accordance
22 with the standards for the condemnation of property
24 contained in sections 154 to 154-F. If an abutting parcel
26 is owned by more than one person, damages may be tendered to
28 any one of the owners; and

30 C. Record a description of the easement in the registry of
32 deeds.

34 A public easement established under this section is effective 60
36 days after providing notice pursuant to section 3026, subsection
38 4, paragraph A, subparagraph (1) and tendering damages pursuant
40 to section 3026, subsection 4, paragraph A, subparagraph (2)
42 unless a timely appeal is filed, in which case the easement is
44 effective upon completion of the appeal.

46 2. Appeal. An owner of land abutting the former county way
48 or any other person with a legal interest in that land may appeal
50 only on the issues of the existence or location of an abandoned
or discontinued county way, the reasonableness of damages and
whether the property is landlocked. An appeal must be filed with
the Superior Court not later than 60 days after notice has been
provided and damages tendered pursuant to subsection 1.

3. Location; dimensions. An easement established under
this section must be located within the bounds of the county way
as it existed at the time of the discontinuance or abandonment.
An easement established under this section is the width of the
county way as originally laid out and is not subject to other
width requirements.

4. Scope of easement. An easement established under this
section is limited to:

A. Access for a single-family residence and the activities
normally and reasonably associated with that use.
Associated activities include, but are not limited to,
subsequent subdivision of the property for other

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2 single-family residences as long as that activity does not
3 overburden the original easement;

4 B. Access for tree growth and timber harvesting in
5 accordance with Title 36, chapter 105, subchapter II-A or
6 use of the land as a personal woodlot; or

7 C. Access for use of the land as farmland and open space in
8 accordance with Title 36, chapter 105, subchapter X.

9 5. Maintenance. The person or persons establishing an
10 easement under this section may provide for the maintenance of
11 the easement to the extent necessary to use the abutting land.
12 The county has no obligation to maintain the easement.

13 6. Application of land use standards. Except as provided
14 in this subsection, an easement created under this section is
15 subject to any applicable laws, rules or ordinances regarding the
16 construction, improvement or use of privately owned roads or
17 placement of utilities. Land served by the easement is subject
18 to applicable land use and zoning laws, rules or ordinances.

19 7. Exception. In the event that a residential, commercial
20 or industrial structure is permanently placed or constructed in
21 the former county way before March 1, 1994 and continues to
22 occupy that location, an easement may not be established under
23 this section.'

24 Further amend the bill in section 2 in subsection 3 by
25 striking out all of the first paragraph (page 1, lines 27 to 31
26 in L.D.) and inserting in its place the following:

27 '3. Private easement retained. If a public easement is not
28 retained under subsection 1 when a town way is discontinued or
29 abandoned, the owner of a landlocked parcel of land that abuts
30 the discontinued way or for which the owner has legal access to
31 the discontinued way retains a private easement over the former
32 way if:'

33 Further amend the bill by inserting after section 2 the
34 following:

35 'Sec. 3. 23 MRSA §3026, sub-§4 is enacted to read:

36 4. Access to property landlocked by abandonment or
37 discontinuance of town way. A person owning real property that
38 is landlocked may establish a public easement for access over an
39 abandoned or discontinued town way by complying with this
40 subsection. As used in this subsection, "landlocked" means real
41 property that abuts a former town way abandoned or discontinued

COMMITTEE AMENDMENT

Re/S

before September 3, 1965 leaving no public or private land access to that property.

A. The owner of landlocked real property must:

(1) Provide written notice of intent to establish a public easement to all owners of record of land that abuts the former town way and other persons with a legal interest in that land. Notice must be by certified mail and include a description of the location, width and length of the easement to be established;

(2) Tender to the abutting owners of record reasonable damages determined by the landlocked owner in accordance with the standards for the condemnation of property contained in sections 154 to 154-F. If an abutting parcel is owned by more than one person, damages may be tendered to any one of the owners; and

(3) Record a description of the easement in the registry of deeds.

A public easement established under this subsection is effective 60 days after providing notice pursuant to subparagraph (1) and tendering damages pursuant to subparagraph (2) unless a timely appeal is filed, in which case the easement is effective upon completion of the appeal.

B. An owner of land abutting the former town way or any other person with a legal interest in that land may appeal only on the issues of the existence or location of an abandoned or discontinued town way, the reasonableness of damages and whether the property is landlocked. An appeal must be filed with the Superior Court not later than 60 days after notice has been provided and damages tendered pursuant to paragraph A.

C. An easement established under this subsection must be located within the bounds of the town way as it existed at the time of the discontinuance or abandonment. An easement established under this subsection is the width of the town way as originally laid out and is not subject to the width requirements of municipal ordinances.

D. An easement established under this subsection is limited to:

(1) Access for a single-family residence and the activities normally and reasonably associated with that

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COMMITTEE AMENDMENT "A" to H.P. 1238, L.D. 1665

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use. Associated activities include, but are not limited to, subsequent subdivision of the property for other single-family residences as long as that activity does not overburden the original easement;

(2) Access for tree growth and timber harvesting in accordance with Title 36, chapter 105, subchapter II-A or use of the land as a personal woodlot; or

(3) Access for use of the land as farmland and open space in accordance with Title 36, chapter 105, subchapter X.

E. The person or persons establishing an easement under this subsection may provide for the maintenance of the easement to the extent necessary to use the abutting land. The municipality has no obligation to maintain the easement.

F. Except as provided in this subsection, an easement created under this subsection is subject to applicable municipal ordinances regarding the construction, improvement or use of privately owned roads or placement of utilities. Land served by the easement is subject to all municipal land use and zoning ordinances.

G. In the event that a residential, commercial or industrial structure is permanently placed or constructed in the former town way before March 1, 1994 and continues to occupy that location, an easement may not be established under this subsection.'

Further amend the bill by striking out all of section 3 and inserting in its place the following:

'Sec. 3. Application. Those sections of this Act that enact the Maine Revised Statutes, Title 23, section 2061-A and section 3026, subsection 3 apply to a public way discontinued or abandoned on or after the effective date of this Act.'

Further amend the bill by renumbering the sections to read consecutively.

Further amend the bill by inserting at the end before the statement of fact the following:

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.'

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STATEMENT OF FACT

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State law provides for the automatic retention of a public easement over a public way discontinued or abandoned before September 3, 1965, unless it is specifically declared that no public easement is to be retained. The bill establishes that a private easement is retained by the owner of a parcel of land that becomes landlocked by the discontinuance or abandonment of a town or county way when no public easement is retained by the town or county and if damages are not paid to the landowners abutting the former public way. That private easement is created for abandonments or discontinuances that occur in the future. The amendment clarifies that the provisions of the bill apply to abandonments as well as discontinuances and that the private easement is created only on behalf of an owner landlocked by the discontinuance or abandonment.

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The amendment retrospectively establishes a public easement over town or county ways discontinued before September 3, 1965. The easement is for the limited purposes of access associated with residential, silvicultural and agricultural uses of landlocked properties by the owners. A landlocked owner must pay damages to abutting landowners and provide for any necessary maintenance of the easement. The municipality or county incurs no obligation to pay for or maintain the easement. The amendment establishes a process, including determination of damages and appeal to the Superior Court, by which such an easement may be established. If an abutting landowner has built a permanent structure in the old public way, an easement may not be established.

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The amendment also adds a fiscal note.