

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1994

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Legislative Document

No. 1665

H.P. 1238

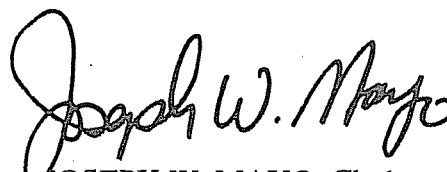
House of Representatives, January 10, 1994

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**An Act Regarding Access to Property via Discontinued Roads.**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.  
Reference to the Committee on Transportation suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative LIBBY of Kennebunk.  
Cosponsored by Representatives: CARLETON of Wells, HUSSEY of Milo, LIPMAN of  
Augusta, LORD of Waterboro, MARSHALL of Eliot, REED of Dexter, SKOGLUND of St.  
George.

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 land that abuts the discontinued way or for which the  
14 owner has legal access to the discontinued way retains a private  
16 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 land that abuts the discontinued way or for which the  
44 owner has legal access to the discontinued way retains a private  
46 easement over the former way if:

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

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 a public way discontinued or abandoned on or after the effective date of this Act.

## STATEMENT OF FACT

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The purpose of this bill is to protect the rights of owners of land that abuts a discontinued public way. When a public way 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 property, substantially diminishing the property's usefulness and value to the owner. Current law requires local officials to estimate the amount of these damages and to compensate the landowner for any decrease in the value of the land. This process is not always completed due to inaccurate records, miscommunication or misunderstanding. This is particularly true in the case of abandoned roads.

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 value is diminished, or retains a private right-of-way sufficient to allow access and development of the land. Under the bill, if a landowner is paid damages for the decrease in value of the 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 a determination of whether damages occurred or is denied payment of damages found to have resulted from the discontinuance, the landowner's rights are protected by providing a private easement for access to the land.

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This document has not yet been reviewed to determine the need for cross-reference, stylistic and other technical amendments to conform existing law to current drafting standards.