

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1297

H.P. 921

House of Representatives, April 11, 1995

An Act to Ensure Consistency in the Laws Governing Maine's Roads.

Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative AULT of Wayne.

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

4 **Sec. 1. 23 MRSA §1903, first ¶**, as repealed and replaced by PL
1981, c. 318, §1, is amended to read:

6 As used in this chapter and chapters 23 to 401, unless the
context otherwise indicates, the following words have the
8 following meanings.

10 **Sec. 2. 23 MRSA §1903, sub-§10-A**, as repealed and replaced by
PL 1981, c. 318, §1, is repealed.

12 **Sec. 3. 23 MRSA §1903, sub-§10-B** is enacted to read:

14 **10-B. Private access.** "Private access" means a road,
16 driveway or other access privately owned and maintained, over
which the owner may restrict use or passage.

18 **Sec. 4. 23 MRSA §1903, sub-§11**, as repealed and replaced by PL
20 1981, c. 318, §1, is repealed and the following enacted in its
place:

22 **11. Public way.** "Public way" means a way, owned and
24 maintained by the State, a county or municipality, over which the
general public has a right to pass.

26 **Sec. 5. 23 MRSA §1903, sub-§18** is enacted to read:

28 **18. Way.** "Way" means the entire width between boundary
30 lines of a road, highway, parkway, street or bridge used for
vehicular traffic, whether public or private.

32 **Sec. 6. 23 MRSA §1914, sub-§10**, as repealed and replaced by PL
34 1981, c. 318, §4, is amended to read:

36 **10. Approach signs.** Any business or facility whose
principal building, or a point of interest, which is located on a
38 private way access more than 1,000 feet from the nearest public
way, or is not visible to traffic from the nearest public way,
40 may erect no more than 2 approach signs with a total surface area
not to exceed 100 square feet per sign. These signs are to be
42 located outside the public right-of-way limits within 300 feet of
the junction of the public way and private ways access.

44 **Sec. 7. 23 MRSA §2051**, as amended by PL 1975, c. 711, §1, is
46 further amended to read:

48 **§2051. Power of commissioners**

2 County commissioners may lay out, alter, close for
maintenane while maintaining or discontinue highways or any
4 portion of highways within the unorganized areas of their
counties ~~and--grade--hills--in--any--such--highway~~. The county
6 commissioners may close county roads for while performing
maintenance and preserve the right-of-way for the use of abutting
8 affected landowners, and any others using said the way for the
sole access to ~~their~~ the affected property, and public utilities
10 and corporations with facilities legally located within said the
way, at ~~their~~ the user's own risk. Responsible persons may
12 present, at ~~their~~ the county commissioners' regular session, a
written petition describing a way and stating whether its
14 location, alteration, grading, closing for maintenance or
discontinuance is desired, or an alternative action, in whole or
16 in part. The commissioners may act upon it, conforming
substantially to the description, without adhering strictly to
18 its bounds.

20 Within the unorganized areas of the counties, county
commissioners have the same powers and are subject to the same
22 liabilities and penalties as towns with respect to ways. The
county commissioners have the same powers and shall perform the
24 same duties as municipal officers of municipalities regarding
ways.

26 **Sec. 8. 23 MRSA §3021**, as amended by PL 1981, c. 702, Pt. Z,
28 §2, is repealed.

30 **Sec. 9. 23 MRSA §3021-A** is enacted to read:

32 **§3021-A. Definitions**

34 As used in this chapter, unless the context otherwise
indicates, the following terms have the following meanings.

36 **1. Best practicable notice.** "Best practicable notice"
38 means, at a minimum, the mailing by means of the United States
Postal Service, postage prepaid, first class, of notice of
40 affected property owners whose addresses appear in the assessment
records of the municipality.

42 **2. Commercial way.** "Commercial way" means a municipal way
44 held for the safe and convenient year-round passage and use of
the general public, including any vehicle unless prohibited or
46 restricted by law, with a road surface of at least 20 feet in
width.

48

2 3. Highway purposes. "Highway purposes" means use as a
3 free and public roadway or street open by right to every person,
4 including utilities, and those things incidental to the laying
5 out, construction, improvement, maintenance, change of location,
6 alignment and drainage of public ways, including the securing of
7 materials for those purposes and the provision for the health,
8 welfare and safety of the public using public ways.

9 4. Local way. "Local way" means:

10 A. A municipal way held for the safe and convenient
11 year-round passage and use of the general public, including
12 motor vehicles weighing not more than 36,000 pounds, and
13 with a road surface of at least 16 feet in width;

14 B. All town or county ways not discontinued or abandoned
15 before July 29, 1976;

16 C. All state or state aid highways, or both, that were
17 classified town ways on July 1, 1982, or thereafter pursuant
18 to section 53; and

19 D. All municipal ways not reclassified by October 1, 1997.

20 5. Limited way. "Limited way" means a municipal way held
21 for the safe and convenient year-round passage and use of the
22 general public, including motor vehicles weighing not more than
23 18,000 pounds, and with a road surface of at least 12 feet in
24 width.

25 6. Municipal easement. "Municipal easement" means a right
26 held by a municipality to use an area or strip of land for public
27 utilities or other official municipal purposes of access and the
28 right to maintain the area or strip of land.

29 7. Municipal trail or path. "Municipal trail or path"
30 means an area or strip of land held by a municipality for any of
31 a number of nonhighway recreational uses, including but not
32 limited to foot travel, cycling, horseback riding, carriage and
33 sleigh travel, skiing, snowmobiling or other appropriate uses
34 specifically designated.

35 8. Municipal way. "Municipal way" means an area or strip
36 of land or bridge held by a municipality for use by a public
37 utility or as a commercial way, a local way, a limited way or a
38 seasonal way.

39 **§3021-B. Initial classification**

40 Initial classification must take place by October 1, 2002,
41 unless the classification is at that time under appeal to a court.

2 1. Municipal determination. By October 1, 1997, a
4 municipality shall determine by a vote of the municipal officers
6 the classification of all the municipal ways, easements, trails
8 or paths within its jurisdiction. A municipality must classify
10 all its ways, easements, trails or paths in a manner consistent
12 with the actual current or expected use. Within 60 days of the
14 vote, the municipality shall prepare and publish a map and
16 directory listing the municipality's ways, easements, trails and
18 paths as determined by the vote. Within 120 days of the vote,
20 the municipal officers shall notify all taxpayers of their
22 actions. In a municipality where the municipal officers have
24 legislative power, notice is sufficient if the municipality
 notifies all taxpayers by best practicable notice, pursuant to
 section 3026, that a determination of the status of public
 accesses to properties has been made, sends them a copy of state
 law relating to the classification process and informs the
 taxpayers that a copy of the actions of the municipal officers is
 available upon request. In a municipality where the town meeting
 has legislative power, the municipal officers must send to the
 taxpayers by best practicable notice, pursuant to section 3026, a
 copy of the map and directory and a copy of state laws relating
 to the classification process.

26 2. Local appeal. A taxpayer has 2 years from the date of
28 the municipality's notice of determination to require the
30 municipality to place an article requesting a change in the
 classification or lack of classification before the legislative
 body at its next meeting.

32 3. Court appeal. If a party is still aggrieved after the
34 vote of the legislative body on the local appeal, that party may,
36 within 2 years of the vote on the local appeal, file a request
38 for declaratory judgment on the classification in the Superior
 Court of the county within which the way lies. All parties
 involved, including the court, shall diligently attempt to
 conclude the proceedings within 2 years of the filing date of the
 action.

40 4. Ways not classified. Any area or strip of land not
42 classified by October 1, 2002 is deemed not to be a municipal
44 way, easement, trail or path and there is no right of use
46 retained by the public. Nothing in this section prevents an
 affected party from asserting a claim of adverse possession of a
 right-of-way, even if the way had previously been used for
 highway purposes.

48 **§3021-C. Exemptions**

2 1. **Municipal vehicle.** Emergency vehicles, municipally
4 approved vehicles and equipment, school buses, agricultural
6 equipment on tires, or, when authorized by written permission of
8 the municipal officers, any vehicle exceeding the weight limits
10 while being used for local commerce may not be counted by a
12 municipality in its classification pursuant to section 3021-B.

14 2. **Limited use.** If the municipal officers determine that a
16 municipal way is not being used more than 5 times a day for its
18 specified maximum weight, the municipality is not required to
20 maintain the municipal way for the specified width.

22 3. **Unsafe for commercial traffic.** If a municipality
24 determines that a municipal way is unsafe for commercial traffic
26 the municipality may post the way to prohibit that use.

28 **Sec. 10. 23 MRSA §3022**, as amended by PL 1979, c. 127, §153,
30 is repealed and the following enacted in its place:

32 **§3022. Laying out municipal ways and easements**

34 The municipal officers may, personally or by agency, or upon
36 the petition of any person, propose to lay out, alter or widen a
38 municipal way or easement. The municipal officers shall give
40 best practicable notice to all affected property owners and post
42 their written intentions at least 7 days in 2 public places in
44 the municipality and in the vicinity of the way and shall
46 describe the proposed way in the notice.

48 After the proposal of the way or easement has been
50 presented, the way or easement may be taken pursuant to section
52 3023. Property may not be taken without a majority vote of
54 approval by the legislative body of the municipality.

56 A completed proposal must be acted on by the legislative
58 body within 1 year of when it is presented to the municipal
60 officers. If the proposal is approved, the owners of the land
62 taken must be allowed one year to remove timber, wood or any
64 erection on the land. Approval of the proposal is void unless
66 construction of the way is begun within 2 years of approval of
68 the proposal and completed within 6 years. If approval of the
70 proposal is appealed, the time limits begin from the date of the
72 judgment.

74 If a proposal is approved, the municipal officers shall
76 comply with sections 3023 and 3024.

78 **Sec. 11. 23 MRSA §3023, next to the last ¶**, as repealed and
80 replaced by PL 1975, c. 770, §98, is amended to read:

2 Unless specifically provided in the order of condemnation or
3 unless the property or interests to be taken include land or
4 right-of-way of a railroad corporation or a public utility, title
5 to property taken for town ways after December 31, 1976, shall or
6 municipal ways taken after October 1, 1995 must be in fee simple
absolute.

8 **Sec. 12. 23 MRSA §3024**, as enacted by PL 1975, c. 711, §8, is
amended to read:

10 **§3024. Recording of proceedings**

12
13 No A taking or relinquishment of property or interests
14 therein in property by a municipality, or the discontinuance of a
15 town way except by abandonment, after September 12, 1959, shall
16 be or municipal ways taken after October 1, 1995 is not valid
17 against owners of record or abutting landowners ~~who have not~~
18 ~~received actual notice~~, unless there is recorded in the registry
19 of deeds for the county where the land lies either a deed, or a
20 certificate attested by the municipal clerk, describing the
21 property and stating the final action of the municipality with
22 respect to it.

24 **Sec. 13. 23 MRSA §3026**, as repealed and replaced by PL 1981,
c. 683, §1, is repealed and the following enacted in its place:

26 **§3026. Discontinuance of municipal ways and easements**

28
29 **1. Definitions.** For purposes of this section "way"
30 includes municipal ways, bridges, easements, paths and trails.

32
33 **2. Discontinuance; notice.** Whenever the common convenience
34 and exigencies no longer require a way held by a municipality to
35 be maintained in a condition reasonably safe and convenient for
36 the use classified, the municipality having ownership and
37 responsibility of the way may terminate the whole or any
38 portion. Before the discontinuance may be completed, the
39 municipal officers must give best practicable notice to all
40 affected property owners and others including public utilities
41 having a specific interest in the way, and the municipal planning
42 board or office must file an order of discontinuance with the
43 municipal clerk that specifies the location of the way, the names
44 of affected parties and the amount of damages determined by the
municipal officers to be paid by each party.

46
47 **3. Effect discontinuance.** After approval of the
48 discontinuance by the legislative body of the municipality, the
municipality relinquishes all title, rights, privileges and

2 responsibilities in the way and all remaining interests in the
3 property pass to the abutting property owners to the center of
4 the way.

5 **4. Notice of discontinuance.** The municipality shall post,
6 at the point where a discontinued way enters upon or unites with
7 an existing public way, sufficient notice or obstruction to warn
8 the public against entering on the discontinued way.

9 **5. Recording required.** A taking or relinquishment of
10 property or interests in property by a municipality for municipal
11 ways or easements after October 1, 1995 is not valid against
12 owners of record or affected landowners, unless there is recorded
13 in the registry of deeds for the county where the land lies
14 either a deed or a certificate attested by the municipal clerk
15 describing the property and stating the final action of the
16 municipality with respect to it.

17 **Sec. 14. 23 MRSA §3028,** as repealed and replaced by PL 1991,
18 c. 195, is repealed.

19 **Sec. 15. 23 MRSA §7229,** as enacted by PL 1989, c. 398, §8, is
20 amended to read:

21 **§7229. Maintenance charges for private crossings**

22 In a municipality in which a private way access is crossed
23 by a railroad crossing, the municipal officers may act as agents
24 for a railroad corporation in collecting maintenance and
25 insurance charges from those persons using that crossing. Nothing
26 in this section ~~may authorize~~ authorizes a municipality to assess
27 or levy these charges nor to use its taxing power to collect
28 these charges.

29 **Sec. 16. 29-A MRSA §101, sub-§58,** as enacted by PL 1993, c.
30 683, Pt. A, §2 and affected by Pt. B, §5, is repealed.

31 **Sec. 17. 29-A MRSA §101, sub-§58-A** is enacted to read:

32 **58-A. Private access.** "Private access" means a road,
33 driveway or other access that is privately owned and maintained
34 over which the owner may restrict use or passage.

35 **Sec. 18. 29-A MRSA §2356, sub-§6,** as enacted by PL 1993, c.
36 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

37 **6. Private accesses exempted.** This section does not apply
38 to operating on private ways accesses.

2

STATEMENT OF FACT

4

This bill clarifies and removes inconsistencies in state laws relating to the rights and responsibilities of public officers, landowners and members of the public with regard to municipal ways and other rights of public and private access.

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