

# MAINE STATE LEGISLATURE

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L.D. 1177

Date: 3-28-14

(Filing No. H-769)

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
126TH LEGISLATURE  
SECOND REGULAR SESSION

HOUSE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to S.P. 414,  
L.D. 1177, Bill, "An Act To Implement the Recommendations from the Discontinued and  
Abandoned Roads Stakeholder Group"

Amend the amendment by striking out all of the first and 2nd paragraphs after the  
title (page 1, lines 12 to 18 in amendment)

Amend the amendment by inserting before section 1 the following:

'Sec. 1. 17 MRSA §3853-E is enacted to read:

**§3853-E. Damage to public easement; discontinued or abandoned road**

**1. Definitions.** For the purposes of this section, the following terms have the  
following meanings.

A. "Damage to a road" means damage to a road in a way that impedes reasonable  
access by motor vehicle to a property owner's property abutting the road.

B. "Motor vehicle" has the same meaning as in Title 29-A, section 101, subsection  
42.

**2. Damage to roads.** A person who causes damage to a road that has been  
discontinued or abandoned pursuant to Title 23, chapter 304 but in which a public  
easement exists commits a Class E crime.

**3. Application.** This section does not apply to:

A. A landowner operating a motor vehicle on land owned by that landowner;

B. A person given permission by a landowner to operate a motor vehicle on land  
owned by that landowner; or

C. A law enforcement officer who, in an emergency and in the scope of that law  
enforcement officer's employment, operates a motor vehicle on land owned by  
another.'

Amend the amendment by striking out all of section 5 and inserting the following:

'Sec. 5. 23 MRSA §§3026-A and 3026-B are enacted to read:

**HOUSE AMENDMENT**

1        **§3026-A. Discontinuance of town ways**

2        A municipality may terminate in whole or in part any interests held by it for highway  
 3        purposes. A municipality discontinuing a town way or public easement in this State must  
 4        meet the following requirements.

5        **1. Notification of discontinuance to abutting property owners and municipal**  
 6        **planning board.** The municipal officers shall give best practicable notice to all abutting  
 7        property owners and the municipal planning board or office of a proposed discontinuance  
 8        of a town way or public easement. As used in this subsection, "best practicable notice"  
 9        means, at minimum, the mailing by the United States Postal Service, postage prepaid,  
 10        first class, of notice to abutting property owners whose addresses appear in the  
 11        assessment records of the municipality.

12        **2. Municipal officers meet to discuss proposed discontinuance and file order of**  
 13        **discontinuance.** The municipal officers shall discuss a proposed discontinuance of a  
 14        town way or public easement at a public meeting and file an order of discontinuance with  
 15        the municipal clerk that specifies:

16        A. The location of the town way or public easement;

17        B. The names of abutting property owners;

18        C. The amount of damages, if any, determined by the municipal officers to be paid to  
 19        each abutter;

20        D. For a town way, whether or not a public easement will be retained. If the existing  
 21        legal rights of abutting property owners to access their property in the same manner  
 22        as prior to discontinuance will be eliminated, a public easement must be retained; and

23        E. If a public easement is to be retained:

24            (1) The extent of municipal maintenance and liability responsibilities, if any; and

25            (2) The restrictions on how the public may use the public easement, if any.

26        **3. Public hearing.** The municipal officers shall hold a public hearing on the order of  
 27        discontinuance of a town way or public easement filed pursuant to subsection 2.

28        **4. Approval of order of discontinuance and damage awards.** Ten or more  
 29        business days after the public hearing pursuant to subsection 3, the municipal legislative  
 30        body must vote upon the order of discontinuance submitted to it:

31        A. To approve the order of discontinuance, including the public easement and the  
 32        restrictions set in the order and the damage awards, and to appropriate the money to  
 33        pay the damages; or

34        B. To disapprove the order of discontinuance.

35        **5. Continuation of utility easement; other interests.** An easement for public  
 36        utility facilities necessary to provide or maintain service remains in a discontinued town  
 37        way regardless of whether a public easement is retained. Upon approval by a municipal  
 38        legislative body of an order to discontinue a town way and retain a public easement,  
 39        unless otherwise stated in the order, all remaining interests of the municipality pass to the  
 40        abutting property owners in fee simple to the center of the way.

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**§3026-B. Public easements over discontinued or abandoned town ways**

Notwithstanding section 3028, subsection 2, if a public easement is in a discontinued or abandoned town way and the public easement has not been discontinued as of January 1, 2016 as evidenced by approval of an order of discontinuance, the public easement is deemed to have been retained by the municipality. This section does not apply to a public easement that is discontinued pursuant to section 3026-A.'

Amend the amendment by striking out all of sections 7 to 9.

Amend the amendment by striking out all of section 12.

Amend the amendment by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SUMMARY**

This amendment amends Committee Amendment "A" in the following manner:

- 1. It removes the mandate preamble;
- 2. It removes the requirement that the clerk of a municipality file a record of a certificate of discontinuance with the registry of deeds, the Department of Transportation and the municipality;
- 3. It removes the requirement that a municipality, 21 years after a certificate of discontinuance has been filed, reconsider and vote on the discontinuance;
- 4. It removes the requirement that those town ways that have not met the statutory presumption of abandonment by January 1, 2015 may only be discontinued by complying with the new discontinuance process proposed in the committee amendment. It also removes the requirement that the clerk of a municipality that determines that a town way has been determined abandoned under the old process file notice of that determination with the registry of deeds, the Department of Transportation and the municipality;
- 5. It removes the requirement that a municipality develop lists of all town ways that are currently maintained with public funds and that have been discontinued and abandoned since 1965, publish the lists and record the lists at the appropriate county registry of deeds and the Department of Transportation;
- 6. It provides that a public easement in a discontinued or abandoned road has been retained if, as of January 1, 2016, there is no evidence of approval of an order of discontinuance by the municipal legislative body;
- 7. It provides that a person who causes damage to a discontinued or abandoned road in which a public easement exists commits a Class E crime; and

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HOUSE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to S.P. 414, L.D. 1177

1 8. It clarifies the provision in the committee amendment that requires a public  
2 easement to be retained if the existing legal rights of abutting property owners to access  
3 their property will be eliminated. It provides that the access to the property must be in the  
4 same manner as prior to the discontinuance.

5 **FISCAL NOTE REQUIRED**

6 (See attached)

7 SPONSORED BY: 

8 (Representative COTTA)

9 TOWN: China



# 126th MAINE LEGISLATURE

LD 1177

LR 1124(09)

**An Act To Implement the Recommendations from the Discontinued and Abandoned Roads Stakeholder Group**

**Fiscal Note for House Amendment *B* to Committee Amendment "A"**

**Sponsor: Rep. Cotta of China**

**Fiscal Note Required: Yes**

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## Fiscal Note

Mandate Eliminated

### Correctional and Judicial Impact Statements

Establishes new Class E crimes.

The collection of additional fines may also increase General Fund revenue by minor amounts.

### Fiscal Detail and Notes

This amendment removes the mandate preamble in the committee amendment. Removing a number of municipal activities identified in the committee amendment as mandated activities and making others optional eliminates the need for the mandate preamble. Any minor costs to the Department of Transportation for processing documents filed with it by the municipalities are reduced even further because the filings are now optional.