

# MAINE STATE LEGISLATURE

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# Minority

L.D. 1177

Date: 3/19/14

(Filing No. S-436)

## STATE AND LOCAL GOVERNMENT

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### STATE OF MAINE

### SENATE

### 126TH LEGISLATURE

### SECOND REGULAR SESSION

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

Amend the bill by striking out everything after the title and before the summary and inserting the following:

**'Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

**Sec. 1. 23 MRSA §2060, sub-§2,** as enacted by PL 1999, c. 188, §2, is amended to read:

**2. Effect and exceptions.** Upon discontinuance, all interests of the county or municipality pass to the abutting property owners to the center of the way, including any public easement, in accordance with section ~~3026~~ 3026-A. When the Department of Transportation is an abutting owner, then the interests in the way pass to the property owner opposite the department's ownership in accordance with a plan showing the right-of-way line established for the new highway location by the department. The plan must be referenced in the order of discontinuance.

**Sec. 2. 23 MRSA §3021, sub-§1-A** is enacted to read:

**1-A. Municipal legislative body.** "Municipal legislative body" has the same meaning as in Title 30-A, section 2001, subsection 9.

**Sec. 3. 23 MRSA §3021, sub-§2,** as enacted by PL 1975, c. 711, §8, is amended to read:

1           **2. Public easement.** "Public easement" means an easement held by a municipality  
2 for purposes of public access to land or water not otherwise connected to a public way,  
3 and includes all rights enjoyed by the public with respect to private ways created by  
4 statute prior to ~~the effective date of this Act July 29, 1976~~. Private ways created pursuant  
5 to former sections 3001 and 3004 prior to the effective date of this Act July 29, 1976 are  
6 public easements.

7           **Sec. 4. 23 MRSA §3026**, as repealed and replaced by PL 1981, c. 683, §1, is  
8 repealed.

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

10           **§3026-A. Discontinuance of town ways**

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

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

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

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

26           B. The names of abutting property owners;

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

29           D. For a town way, whether or not a public easement will be retained. If the existing  
30 legal rights of abutting property owners to access their property will be eliminated, a  
31 public easement must be retained; and

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

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

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

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

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

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

4 B. To disapprove the order of discontinuance.

5 **5. Certificate of discontinuance filed.** The municipal clerk shall record an attested  
6 certificate of discontinuance after a vote by the municipal legislative body under  
7 subsection 4 in the registry of deeds, with the Department of Transportation and with the  
8 municipality. The certificate must describe the town way or public easement and the  
9 final action by the municipal legislative body. The date the certificate of discontinuance  
10 is filed is the date the town way or public easement is discontinued. The registry of deeds  
11 shall record a certificate of discontinuance under the name of the town way or public  
12 easement, the name of the municipality and the names of the abutters.

13 An easement for public utility facilities necessary to provide or maintain service  
14 remains in a discontinued town way regardless of whether a public easement is retained.  
15 Upon approval by a municipal legislative body of an order to discontinue a town way and  
16 retain a public easement, unless otherwise stated in the order, all remaining interests of  
17 the municipality pass to the abutting property owners in fee simple to the center of the  
18 way.

19 **§3026-B. Reconsideration of order of discontinuance**

20 **1. Reconsideration of discontinuance.** In the 21st year after the date on which a  
21 certificate of discontinuance is filed pursuant to section 3026-A, subsection 5, the  
22 municipal legislative body shall reconsider and vote regarding the discontinuance of a  
23 town way or public easement pursuant to section 3026-A. If the municipal legislative  
24 body disapproves the order of discontinuance, the municipal officers must initiate  
25 proceedings to revise the proposed order of discontinuance pursuant to section 3026-A or  
26 lay out a town way pursuant to section 3022. If the municipal legislative body has not  
27 reconsidered and voted regarding the discontinuance within the 21st year since the date  
28 the certificate of discontinuance was filed, the discontinuance continues, subject to future  
29 action of the municipal legislative body.

30 **2. Petition by abutters.** If a municipal legislative body has not held a vote pursuant  
31 to subsection 1, upon the petition of one or more abutting property owners, the municipal  
32 legislative body shall reconsider and vote pursuant to section 3026-A, regarding the  
33 discontinuance of the town way or public easement. After the municipal legislative body  
34 has voted under this subsection, the discontinuance may be reconsidered only pursuant to  
35 the municipal legislative body's procedures.

36 **Sec. 6. 23 MRSA §3027, sub-§1,** as amended by PL 1987, c. 385, §1, is further  
37 amended to read:

38 **1. Vacation of ways.** ~~Where~~ When proposed town ways have been described in a  
39 recorded subdivision plan and lots have been sold with reference to the plan, the  
40 municipal officers, after notice to the municipal planning board or office, may, on their  
41 own initiative, on petition of the abutting property owners or on petition of any person  
42 claiming a property interest in the proposed way, vacate in whole or in part proposed  
43 ways that have not been accepted. The municipal officers shall give best practicable

notice, as defined in section 3026 3026-A, subsection 2 1, of the proposed vacation to owners of lots on the recorded subdivision plan and their mortgagees of record. The notice shall must conform in substance to the following form:

NOTICE

(The municipal officers of) (A petition has been filed with the municipal officers of) \_\_\_\_\_ (Name of Town or City) \_\_\_\_\_ (propose to) (to vacate) the following (ways) (way) shown upon a subdivision plan (named) (dated) (and) recorded in the \_\_\_\_\_ County Registry of Deeds, Book of Plans, Volume \_\_\_\_\_, Page \_\_\_\_\_.

(Herein list or describe ways to be vacated)

If the municipal officers enter an order vacating (these ways) (this way) any person claiming an interest in (these ways) (this way) (adverse to the claims of the petitioners) must, within one (1) year of the recording of the order, file a written claim thereof under oath in the \_\_\_\_\_ County Registry of Deeds and must, within one hundred eighty (180) days of the filing of the claim, commence an action in the Superior Court in \_\_\_\_\_ County in accordance with the Maine Revised Statutes, Title 23, section 3027-A.

The municipal officers shall file an order of vacation with the municipal clerk that specifies the location of the way, the names of owners of lots on the recorded subdivision plan and the amount of damages, if any, determined by the municipal officers to be paid to each lot owner or other person having an interest in the way. Damages and reasonable costs as determined by the municipal officers shall must be paid by the petitioners, if any.

**Sec. 7. 23 MRSA §3028, sub-§1**, as enacted by PL 1991, c. 195, is amended to read:

**1. Presumption of abandonment.** ~~It~~ Except as provided by subsection 1-A, it is prima facie evidence that a town or county way not kept passable for the use of motor vehicles at the expense of the municipality or county for a period of 30 or more consecutive years has been discontinued by abandonment. A presumption of abandonment may be rebutted by evidence that manifests a clear intent by the municipality or county and the public to consider or use the way as if it were a public way. A proceeding to discontinue a town or county way may not prevent or estop a municipality from asserting a presumption of abandonment. A municipality or its officials are not liable for nonperformance of a legal duty with respect to such ways if there has been a good faith reliance on a presumption of abandonment. Any person affected by a presumption of abandonment, including the State or a municipality, may seek declaratory relief to finally resolve the status of such ways. A way that has been abandoned under this section ~~is relegated to the same status as it would have had after a discontinuance pursuant to section 3026, except that this status~~ retains a public easement and all remaining interests of the municipality pass to the abutting property owners in fee simple to the center of the way. A way that has been abandoned under this section is at all times subject to an affirmative vote of the legislative body of the municipality within which the way lies making that way an easement for recreational use. A presumption of abandonment is not rebutted by evidence that shows isolated acts of maintenance, unless

1 other evidence exists that shows a clear intent by the municipality or county to consider  
2 or use the way as if it were a public way.

3 **Sec. 8. 23 MRSA §3028, sub-§1-A** is enacted to read:

4 **1-A. Termination through discontinuance process only.** For a town way that does  
5 not meet the requirements of subsection 1 as of January 1, 2015, a municipality may  
6 terminate in whole or in part any interests held by it for highway purposes only through  
7 the discontinuance process pursuant to section 3026-A. This subsection is not intended to  
8 modify common law regarding abandonment of a road.

9 **Sec. 9. 23 MRSA §3028, sub-§5** is enacted to read:

10 **5. Filing.** If after the effective date of this subsection the municipal officers  
11 determine that a town way has been abandoned pursuant to subsection 1, the municipal  
12 clerk shall file a record of this determination with the registry of deeds, the Department of  
13 Transportation and the municipality. The registry of deeds shall record a document  
14 regarding an abandoned town way under the name of the town way, the name of the  
15 municipality and the names of the abutters.

16 **Sec. 10. 23 MRSA §3029-A** is enacted to read:

17 **§3029-A. Damage to public easement; cause of action**

18 **1. Cause of action.** An owner of property abutting a discontinued or abandoned  
19 road in which a public easement exists may bring a civil action in Superior Court for  
20 damages and injunctive relief against a person who causes damage to the road in a way  
21 that impedes reasonable access by the property owner to the property owner's property by  
22 motor vehicle as defined in Title 29-A, section 101, subsection 42.

23 **2. Damages.** Damages may be sought pursuant to subsection 1 in an amount  
24 reasonably necessary to restore the road to its condition prior to the use by the person  
25 against whom the action is brought.

26 **3. Attorney's fees and costs.** If the plaintiff under subsection 1 is the prevailing  
27 party, the plaintiff may be awarded reasonable attorney's fees and costs.

28 **Sec. 11. 35-A MRSA §2308**, as amended by PL 2011, c. 623, Pt. B, §9, is further  
29 amended to read:

30 **§2308. Protection of utility facilities upon discontinuance of public ways**

31 In proceedings for the discontinuance of public ways, public ways may be  
32 discontinued in whole or in part. The discontinuance of a town way must be pursuant to  
33 Title 23, section ~~3026~~ 3026-A. Unless an order discontinuing a public way specifically  
34 provides otherwise, the public easement provided for in Title 23, section ~~3026~~ 3026-A  
35 includes an easement for public utility facilities and for the permitted facilities of entities  
36 authorized under section 2301 to construct lines. A utility or entity may continue to  
37 maintain, repair and replace its installations within the limits of the way or may construct  
38 and maintain new facilities within the limits of the discontinued way, if it is used for  
39 travel by motor vehicles, in order to provide utility or telecommunications service, upon  
40 compliance with the provisions of sections 2503, 2505, 2506, 2507 and 2508.

1           **Sec. 12. Municipalities to develop list of town ways.** During the first fiscal  
 2 year for which the state budget provides that the amount to be distributed to  
 3 municipalities from the Local Government Fund pursuant to the Maine Revised Statutes,  
 4 Title 30-A, section 5681 is at least 5% of the receipts by the fund for that fiscal year from  
 5 the taxes imposed under Title 36, Parts 3 and 8 and Title 36, section 2552, subsection 1,  
 6 paragraphs A to F and L without any further reductions, a municipality shall prepare a list  
 7 of all town ways in that municipality that are currently maintained with public funds; a  
 8 list of all town ways that have been discontinued since 1965 and whether or not a public  
 9 easement was retained, if known; and a list of all town ways that have been abandoned  
 10 since 1965 and whether or not a public easement was retained, if known. A municipality  
 11 shall publish the lists on its publicly accessible website or make copies available at the  
 12 municipal office. A municipality shall record the lists at the appropriate county registry  
 13 of deeds and with the Department of Transportation. The registry of deeds shall record  
 14 these lists under the name of the municipality. The Department of Transportation may  
 15 provide a municipality a list of that municipality's state and state aid highways and  
 16 individual town ways.'

17   **SUMMARY**

18           This amendment, which is the minority report of the committee, changes the laws  
 19 governing discontinued and abandoned roads.

20           It specifies 5 steps a municipality must follow to discontinue a road: the notification  
 21 of proposed discontinuance to the abutting property owners and municipal planning  
 22 board; a meeting of municipal officers to discuss the proposed discontinuance and the  
 23 filing of an order of discontinuance specifying whether or not there will be a public  
 24 easement and any public use restrictions or municipal maintenance and liability  
 25 responsibilities for the public easement; a public hearing on the discontinuance; approval  
 26 of the order of discontinuance by the municipal legislative body; and the filing of the  
 27 certificate of discontinuance by the municipal clerk in the registry of deeds, with the  
 28 Department of Transportation and with the municipality.

29           The amendment also changes the law to require a municipality to go through the  
 30 discontinuance procedure again in the 21st year after the discontinuance certificate was  
 31 originally filed. If no vote is held, then the discontinuance continues until an abutting  
 32 property owner petitions the municipality to reconsider the discontinuance or pursuant to  
 33 other municipal action.

34           It requires that a public easement must be retained in a discontinued road if abutting  
 35 property owners need to use it to access their property. It also provides that a public  
 36 utility easement will be in place whenever a road is discontinued, regardless of whether a  
 37 public easement is retained.

38           The amendment provides that the statutory presumption of abandonment applies only  
 39 to ways that have met the statutory requirements as of January 1, 2015. For all other  
 40 public ways, the new discontinuance process will be the only means to cease the  
 41 maintenance obligations of the municipality or county for the public way. Going  
 42 forward, if the municipal officers have determined that a town way is presumptively  
 43 abandoned pursuant to statute, the municipal clerk must file a record of this determination  
 44 with the county registry of deeds, the Department of Transportation and the municipality.

1 A way that is presumptively abandoned retains a public easement, as is the default  
2 position under current law. The amendment does not modify common law abandonment.

3 The amendment provides that, during the first fiscal year when state-municipal  
4 revenue sharing is fully funded at 5% of the taxes imposed under the Maine Revised  
5 Statutes, Title 36, Parts 3 and 8, and Title 36, section 2552, subsection 1, paragraphs A to  
6 F and L, a municipality must prepare a list of all town ways in that municipality that are  
7 currently maintained with public funds; a list of all town ways that have been  
8 discontinued since 1965 and whether or not a public easement was retained, if known;  
9 and a list of all town ways that have been abandoned since 1965 and whether or not a  
10 public easement was retained, if known. The municipality must publish the list on its  
11 publicly accessible website or make copies available at the municipal office. The  
12 municipality must record the list at the county registry of deeds and with the Department  
13 of Transportation.

14 **FISCAL NOTE REQUIRED**

15 (See attached)





# 126th MAINE LEGISLATURE

LD 1177

LR 1124(03)

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

Fiscal Note for Bill as Amended by Committee Amendment "B" (S-436)

Committee: State and Local Government

Fiscal Note Required: Yes

### Fiscal Note

State Mandate - Exempted  
Minor cost increase - General Fund  
Minor revenue increase - General Fund

#### Correctional and Judicial Impact Statements

Increases the number of civil cases.  
The collection of additional filing fees may also increase General Fund revenue by minor amounts.

#### State Mandates

##### Required Activity

Municipalities will be required to conduct a public hearing, file orders of discontinuance with the registry of deeds and the Department of Transportation, provide notice to abutting property owners and hold a vote of the municipal legislative body to discontinue a town way. During the first fiscal year when State-Municipal Revenue Sharing is fully funded at 5% of certain taxes, municipalities must prepare a list of all town ways that are currently maintained with public funds and town ways that have been discontinued since 1965.

##### Unit Affected

Municipality

##### Local Cost

Moderate statewide

Pursuant to the Mandate Preamble, the two-thirds vote of all members elected to each House exempts the State from the constitutional requirement to fund 90% of the additional costs.