

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1177

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S.P. 414

In Senate, March 26, 2013

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

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Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.  
Cosponsored by Representative KESCHL of Belgrade.

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

2 **Sec. 1. 23 MRSA §3026, sub-§1**, as enacted by PL 1981, c. 683, §1, is amended  
3 to read:

4 **1. General procedures.** A municipality may terminate in whole or in part any  
5 interests held by it for highway purposes. A municipality may discontinue a town way or  
6 public easement after the municipal officers have given best practicable notice to all  
7 abutting property owners and the municipal planning board or office and have filed an  
8 order of discontinuance with the municipal clerk that specifies the location of the way,  
9 the names of abutting property owners and the amount of damages, if any, determined by  
10 the municipal officers to be paid to each abutter.

11 ~~Upon approval of the discontinuance order by the legislative body, and unless otherwise~~  
12 ~~stated in the order, a public easement shall, in the case of town ways, be retained and all~~  
13 ~~remaining interests of the municipality shall pass to the abutting property owners to the~~  
14 ~~center of the way. If a legislative body decides to retain a public easement after~~  
15 ~~discontinuance of a town way, the legislative body must vote in the affirmative to retain~~  
16 ~~the public easement and to assume liability and responsibility for the easement to the~~  
17 ~~extent of its intended use. If the municipality fails to maintain the public easement for 2~~  
18 ~~years, the public easement is discontinued and the public's interest is abolished. An~~  
19 ~~easement must be given to a property owner requiring access to the owner's property if a~~  
20 ~~municipality discontinues a town way and no longer retains an interest in the property.~~  
21 ~~Continued use of an existing access may not be precluded unless an equivalent access is~~  
22 ~~available.~~ For purposes of this section, the words "public easement" shall include,  
23 without limitation, an easement for public utility facilities necessary to provide service.

24 **Sec. 2. 23 MRSA §3026, sub-§3** is enacted to read:

25 **3. Discontinued or abandoned town way.** Notwithstanding subsection 1,  
26 beginning January 1, 2016, a town way may not be discontinued or abandoned by a  
27 municipality unless the municipality decides by an affirmative vote to discontinue or  
28 abandon the town way.

29 **Sec. 3. 23 MRSA §3028**, as amended by PL 2009, c. 59, §1, is repealed.

30 **Sec. 4. Develop list of town ways.** By January 1, 2016, a municipality shall  
31 prepare a list of all town ways in that municipality the municipality intends to keep in  
32 repair with public funds pursuant to the Maine Revised Statutes, Title 23, chapter 304. If  
33 by January 1, 2016 a town way is not included on the municipality's list, the town way is  
34 discontinued with no public easement. A municipality shall publish the list on its  
35 publicly accessible website. An abutter of the town way has 2 years from the date of the  
36 publication of the list to file a claim pursuant to Title 23, section 3027-A, subsection 2  
37 with the legislative body of the municipality.

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**SUMMARY**

This bill implements the recommendations of the stakeholder group established by the Department of Agriculture, Conservation and Forestry pursuant to Resolve 2011, chapter 120 to review discontinued and abandoned roads. This bill provides that if a municipality decides to retain a public easement after the municipality discontinues a town way, the municipality must vote in the affirmative to retain the public easement and that if the municipality fails to maintain the public easement for 2 years, the public easement is discontinued and the public’s interest in the easement is abolished. The bill requires that a municipality give an easement to a property owner that requires access to the property owner's property if the municipality discontinues a town way. Current law allows a municipality to discontinue a town way by giving notice to all abutting property owners and the municipal planning board and filing an order of discontinuance with the municipal clerk. The bill, beginning on January 1, 2016, requires that a municipality must vote in order to discontinue a town way. The bill also requires that by January 1, 2016 every municipality prepare a list of all municipal town ways that the municipality intends to keep in repair with public funds pursuant to the Maine Revised Statutes, Title 23, chapter 304 and to publish the list on its publicly accessible website. If a town way has not been included on the list by January 1, 2016, the town way is discontinued with no public easement and the abutters of the town way have 2 years to file a claim pursuant to Title 23, section 3027-A, subsection 2 against the municipality.