

# MAINE STATE LEGISLATURE

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Date: 3/11/16

STATE AND LOCAL GOVERNMENT

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
127TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 903, L.D. 1325, Bill, "An Act To Ensure a Public Process When Discontinuing or Abandoning a Public Road"

Amend the bill by striking out all of the mandate preamble (page 1, lines 1 to 5 in L.D.)

Amend the bill by striking out all of sections 5 to 10 and inserting the following:

'Sec. 5. 23 MRSA §3026-A is enacted to read:

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

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

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

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

- A. The location of the town way or public easement;
- B. The names of abutting property owners;
- C. The amount of damages, if any, determined by the municipal officers to be paid to each abutting property owner; and
- D. Whether or not a public easement is retained.

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1 If a proposal includes the discontinuance of a public easement, that must be stated  
2 explicitly in the order of discontinuance; otherwise, the public easement is retained. If a  
3 public easement is retained, all other interests of the municipality in the discontinued  
4 way, if any, pass to abutting property owners to the center of the way. If a public  
5 easement is not retained, all interests of the municipality in the discontinued way pass to  
6 abutting property owners to the center of the way.

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

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

12 A. To approve the order of discontinuance and the damage awards and to appropriate  
13 the money to pay the damages; or

14 B. To disapprove the order of discontinuance.

15 **5. Certificate of discontinuance filed.** The municipal clerk shall record an attested  
16 certificate of discontinuance after a vote by the municipal legislative body under  
17 subsection 4 in the registry of deeds. The certificate must describe the town way or  
18 public easement and the final action by the municipal legislative body. The date the  
19 certificate is filed is the date the town way or public easement is discontinued. The  
20 registry of deeds shall record a certificate of discontinuance under the name of the town  
21 way or public easement, the name of the municipality and the names of the abutting  
22 property owners. The municipal clerk shall provide a photocopy of the certificate to the  
23 Department of Transportation, Bureau of Maintenance and Operations.

24 **6. Utility easement.** An easement for public utility facilities necessary to provide or  
25 maintain service remains in a discontinued town way regardless of whether a public  
26 easement is retained. Upon approval by a municipal legislative body of an order to  
27 discontinue a town way and retain a public easement, unless otherwise stated in the order,  
28 all remaining interests of the municipality, if any, pass to the abutting property owners in  
29 fee simple to the center of the way.

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

32 **1. Vacation of ways.** ~~Where~~ When proposed town ways have been described in a  
33 recorded subdivision plan and lots have been sold with reference to the plan, the  
34 municipal officers, after notice to the municipal planning board or office, may, on their  
35 own initiative, on petition of the abutting property owners or on petition of any person  
36 claiming a property interest in the proposed way, vacate in whole or in part proposed  
37 ways that have not been accepted. The municipal officers shall give best practicable  
38 notice, as defined in section ~~3026~~ 3026-A, subsection ~~2~~ 1, of the proposed vacation to  
39 owners of lots on the recorded subdivision plan and their mortgagees of record. The  
40 notice ~~shall~~ must conform in substance to the following form:

41 NOTICE

42 (The municipal officers of) (A petition has been filed with the municipal officers  
43 of) \_\_\_\_\_ (Name of Town or City) \_\_\_\_\_ (propose to)

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1 (to vacate) the following (ways) (way) shown upon a subdivision plan (named) (dated)  
2 (and) recorded in the \_\_\_\_\_ County Registry of Deeds, Book of  
3 Plans, Volume \_\_\_\_\_, Page \_\_\_\_\_.

4 (Herein list or describe ways to be vacated)

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

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

17 **Sec. 7. 23 MRSA §3028, sub-§5** is enacted to read:

18 5. Filing. If after the effective date of this subsection the municipal officers, either  
19 on their own or after being presented with evidence of abandonment, determine that a  
20 town way has been discontinued by abandonment pursuant to subsection 1, the municipal  
21 clerk shall file a record of this determination with the registry of deeds. The absence of a  
22 filing of a determination of discontinuation by abandonment may not be construed as  
23 evidence against the status of abandonment. The registry of deeds shall record a  
24 document regarding an abandoned town way under the name of the town way, the name  
25 of the municipality and the names of the abutting property owners. The municipal clerk  
26 shall provide a copy of the document regarding an abandoned town way to the  
27 Department of Transportation, Bureau of Maintenance and Operations.

28 **Sec. 8. 23 MRSA §3029-A** is enacted to read:

29 **§3029-A. Damage to public easement; cause of action**

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

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

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

40 4. Application. This section does not apply to:

- 1 A. A law enforcement officer who, in an emergency and within the scope of that law
- 2 enforcement officer's employment, operates a motor vehicle on a public easement; or
- 3 B. An emergency responder who, in an emergency and while performing the duties
- 4 of an emergency responder, operates a motor vehicle on a public easement.'

5 Amend the bill by striking out all of section 12 and inserting the following:

6 **'Sec. 12. Municipality to develop or supplement list of town ways.** A  
7 municipality may develop or update publicly available inventories relating to all known  
8 town ways or former town ways, or segments of town ways, discontinued and  
9 discontinued by abandonment within its municipal borders and share such inventories  
10 with the Department of Transportation, Bureau of Maintenance and Operations.  
11 Information pertaining to discontinued town ways may include a sufficient description of  
12 the town way or former town way, any known judicial determination regarding the status  
13 of a public easement on the former town way, the date of discontinuance and the  
14 governmental entity effecting the discontinuance. Information pertaining to town ways  
15 discontinued by abandonment may include a sufficient description of the town way or  
16 former town way, any known judicial determination regarding the status of a public  
17 easement on the former town way and the last known date of regular, publicly funded  
18 maintenance of the town way or former town way or segment of the town way. Boards of  
19 county commissioners, landowners, road associations, surveyors and other interested  
20 parties may share relevant information with municipalities and the Department of  
21 Transportation, Bureau of Maintenance and Operations. By November 1, 2018, the  
22 Department of Transportation shall share with the joint standing committee of the  
23 Legislature having jurisdiction over state and local government matters an update on the  
24 status of any road inventories developed by municipalities, including any noted  
25 challenges or obstacles associated with determining the status of roads discontinued for  
26 public maintenance by units of government other than the municipalities' legislative  
27 bodies.'

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

30 **SUMMARY**

31 This amendment retains the new discontinuance process proposed in the bill for a  
32 municipality to actively terminate its interests in a public way. The bill requires that if a  
33 public easement is to be retained the municipal officers identify the extent of municipal  
34 maintenance and liability responsibilities and any restrictions on how the public may use  
35 the public easement. The amendment instead specifies that when filing an order of  
36 discontinuance the municipal officers must specify whether or not a public easement is  
37 retained, and, if this is not specified, the public easement is retained. The new  
38 discontinuance process proposed in the bill specifies steps a municipality must follow to  
39 discontinue a road: the notification of proposed discontinuance to the abutting property  
40 owners; a meeting of municipal officers to discuss the proposed discontinuance and the  
41 filing of an order of discontinuance; a public hearing on the discontinuance; approval of  
42 the order of discontinuance by the municipal legislative body; and the filing of the  
43 certificate of discontinuance by the municipal clerk in the registry of deeds and with the  
44 municipality. The amendment adds that the municipal clerk must provide a photocopy of

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1 the certificate to the Department of Transportation, Bureau of Maintenance and  
 2 Operations and removes the requirement that the clerk file the certificate with the  
 3 municipality.

4 The amendment removes from the bill the requirement that abutters of a public  
 5 easement must be granted a right-of-way prior to the filing of a certificate of  
 6 discontinuance if a discontinuance order is approved.

7 The amendment removes language in the bill that eliminates presumption of  
 8 abandonment for ways that do not meet the statutory requirements by January 1, 2020.  
 9 Statutory abandonment remains a means for a municipality to actively terminate its  
 10 interests in a public way.

11 The amendment retains the provision of the bill that provides that a public utility  
 12 easement is in place whenever a road is discontinued, regardless of whether a public  
 13 easement is retained.

14 The amendment retains the provision of the bill that provides that a municipal clerk  
 15 must file a record with the registry of deeds that a town way has been discontinued by  
 16 abandonment if, either on their own or after being presented with evidence of  
 17 abandonment, the municipal officers determine that a town way has been discontinued by  
 18 abandonment. The amendment requires the municipal clerk to provide a copy of the  
 19 document to the Department of Transportation, Bureau of Maintenance and Operations.

20 The amendment retains language in the bill regarding a cause of action for a property  
 21 owner whose property abuts a discontinued or abandoned road with a public easement.  
 22 The property owner may bring a civil action in Superior Court for damages and injunctive  
 23 relief against a person who causes damage to the road. The amendment excludes law  
 24 enforcement officers and emergency responders who damage the road while responding  
 25 to an emergency from having a civil action filed against them.

26 Instead of, as in the bill, allowing a municipality to prepare a list of all town ways in  
 27 the municipality maintained with public funds, a list of all town ways discontinued since  
 28 1965 and whether or not a public easement was retained and a list of all town ways  
 29 abandoned since 1965 and whether or not a public easement was retained, the amendment  
 30 allows a municipality to develop or update publicly available inventories of all known  
 31 town ways and former town ways, or segments of town ways, that have been  
 32 discontinued or discontinued by abandonment within its borders. Municipalities may  
 33 include the following information on discontinued town ways: a description of the town  
 34 way or former town way; any known judicial determination regarding the status of a  
 35 public easement on the former town way; the date of the discontinuance; and the  
 36 governmental entity effecting the discontinuance. Municipalities may include the  
 37 following for town ways discontinued by abandonment: a description of the town way or  
 38 former town way; any known judicial determination regarding the status of a public  
 39 easement on the former town way; and the last known date of regular, publicly funded  
 40 maintenance of the town way or former town way or segment of the town way.  
 41 Municipalities may share their inventories with the Department of Transportation, Bureau  
 42 of Maintenance and Operations.

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## COMMITTEE AMENDMENT "A" to H.P. 903, L.D. 1325

1 The Department of Transportation is required to update the joint standing committee  
2 of the Legislature having jurisdiction over state and local government matters by  
3 November 1, 2018 on the status of any road inventories developed by municipalities.

4 The fiscal note on the amendment identifies a requirement in this amendment as a  
5 potential insignificant state mandate. In order to be a mandate pursuant to the  
6 Constitution of Maine, a provision must require a local unit of government to expand or  
7 modify its activities so as to necessitate additional expenditures from local revenue. The  
8 committee finds that the provisions identified as a potential mandate do not require a  
9 local unit of government to expand or modify its activities so as to necessitate additional  
10 expenditures from local revenue.

11 The requirement in the amendment that a municipality make an appropriate filing in  
12 the registry of deeds if it makes a final determination that a road has been abandoned does  
13 not require an expansion or modification of activities so as to necessitate additional  
14 expenditures from local revenue since there is no requirement that a municipality  
15 abandon one of its roads or determine the road has been abandoned. The amendment  
16 requires only that a municipality take the appropriate legal step of recording a  
17 determination of abandonment if the municipality chooses to make such a determination.

18 **FISCAL NOTE REQUIRED**  
19 (See attached)



# 127th MAINE LEGISLATURE

LD 1325

LR 1363(02)

An Act To Ensure a Public Process When Discontinuing or Abandoning a Public Road

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-558)  
 Committee: State and Local Government  
 Fiscal Note Required: Yes

## Fiscal Note

Potential State Mandate - Unfunded

### State Mandates

Required Activity	Unit Affected	Local Cost
Requires municipal clerks to file determinations of abandonment with the registry of deeds.	Municipality	Insignificant statewide

The required local activities in this bill may represent a state mandate pursuant to the Constitution of Maine. If the bill does require a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenue, the state mandate provisions of the Constitution of Maine require either: (1) General Fund appropriations be provided to fund at least 90% of any additional necessitated local costs of the mandate; or (2) a Mandate Preamble be added to the bill and two-thirds of the members of each House vote to exempt the mandate from the funding requirement. If the bill does represent a state mandate and neither one of these actions occurs, the local units of government will not be required to implement the mandated activities.

### Fiscal Detail and Notes

Additional costs to the Department of Transportation associated with receiving documents from municipal clerks and reporting on the status of any road inventories developed by municipalities can be absorbed within existing budgeted resources.