

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1723

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H.P. 1278

House of Representatives, May 19, 2021

**An Act Regarding Winter Maintenance on Private Roads in the  
Town of Windham**

(AFTER DEADLINE)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative BRYANT of Windham.  
Cosponsored by Senator DIAMOND of Cumberland and  
Representative: COREY of Windham.

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

2 **Sec. 1. Definitions.** As used in this Act, unless the context otherwise indicates, the  
3 following terms have the following meanings.

4 **1. Council.** "Council" means the town council of the Town of Windham.

5 **2. Designated private way.** "Designated private way" means a private way located  
6 in the Town of Windham that satisfies the criteria listed in section 3, subsection 1.

7 **3. Private way.** "Private way" has the same meaning as in the Maine Revised Statutes,  
8 Title 23, section 1903, subsection 10-A.

9 **4. Road association.** "Road association" means a road association created pursuant  
10 to the Maine Revised Statutes, Title 23, chapter 305, subchapter 2.

11 **5. Road commissioner.** "Road commissioner" means the road commissioner, as  
12 described by the Maine Revised Statutes, Title 23, section 2701, of the Town of Windham.

13 **6. Town way.** "Town way" has the same meaning as in the Maine Revised Statutes,  
14 Title 23, section 3021, subsection 3.

15 **7. Winter maintenance.** "Winter maintenance" means the snow removal and surface  
16 treatment, including sanding and salting, performed on designated private ways.

17 **Sec. 2. Authorization of winter maintenance on designated private ways.**  
18 The council and the Town of Windham may use public equipment to perform winter  
19 maintenance on a designated private way, regardless of the existence of a public easement  
20 over the designated private way.

21 **Sec. 3. Ordinance; roster and conditions for winter maintenance.** The  
22 council shall, within 60 days of the effective date of this Act, enact an ordinance to provide  
23 for the winter maintenance of designated private ways according to this section.

24 **1. Identification of designated private ways.** The council shall identify a private  
25 way in the Town of Windham as a designated private way if:

26 A. The council has evidence that the Town of Windham has performed winter  
27 maintenance on the private way for at least 20 years prior to the effective date of this  
28 Act; and

29 B. The road commissioner has determined that the private way cannot meet standards  
30 developed or required by generally applicable local ordinances for dedication and  
31 acceptance of the private way as a town way pursuant to the Maine Revised Statutes,  
32 Title 23, section 3025.

33 **2. Creation and maintenance of designated private way roster and map.** The  
34 Town of Windham shall create and maintain a roster and map of all designated private  
35 ways. If a private way is included on the roster and map of designated private ways, no  
36 road association or owner of property benefited by the private way may bring a claim  
37 asserting that the private way has become a town way by any method or mechanism other  
38 than dedication and acceptance pursuant to the Maine Revised Statutes, Title 23, section  
39 3025.

40 **3. Development of basic maintenance standards.** The road commissioner shall, in  
41 consultation with the council, develop basic maintenance standards for private ways that

1 the road commissioner shall use to determine the necessary maintenance a road association  
2 or owners of property benefited by a private way must perform for the private way to  
3 continue to be identified as a designated private way.

4 **4. Conditions of suspension and termination.** The Town of Windham may suspend  
5 or cease to perform winter maintenance on a designated private way as follows.

6 A. The Town of Windham has no obligation to perform winter maintenance on a  
7 designated private way if:

8 (1) The council or road commissioner has notified the road association or owners  
9 of property benefited by the private way of maintenance necessary to satisfy the  
10 road commissioner's maintenance standards and the maintenance is not performed  
11 to the road commissioner's satisfaction by September 1st following the date on  
12 which notice was given; or

13 (2) Owners of property benefited by the private way have not formed a road  
14 association within 2 years of the effective date of this Act or before a later date set  
15 by the council.

16 Within 60 days of the creation of the roster and map of designated private ways  
17 pursuant to subsection 2, the council shall notify the road association or owners of  
18 property benefited by a designated private way of the conditions for continued winter  
19 maintenance contained in this paragraph.

20 B. A private way must be removed from the roster and map of designated private ways  
21 created pursuant to subsection 2 if:

22 (1) The council accepts the private way as a town way pursuant to the Maine  
23 Revised Statutes, Title 23, section 3025 and any applicable local ordinance; or

24 (2) The road association of the private way or a majority of the owners of property  
25 benefited by the private way present a petition to the council for the removal of the  
26 private way from the roster and map.

27 **5. Ordinance.** The council may by ordinance establish additional policies and  
28 procedures to effectuate the provisions of this Act.

## 29 SUMMARY

30 This bill authorizes the Town of Windham to provide winter maintenance, including  
31 snow removal, sanding and salting, on certain designated private ways using town  
32 equipment. The bill requires the town council of the Town of Windham to enact an  
33 ordinance governing the performance of winter maintenance on private ways, including  
34 establishing eligibility criteria for private ways, creating a roster and map of designated  
35 private ways, developing maintenance standards for designated private ways and setting  
36 conditions for the suspension and termination of winter maintenance. The bill also limits  
37 the ability of a road association or owners of property benefited by a private way to claim  
38 that the private way has become a town way by virtue of the town's performance of winter  
39 maintenance.