

MAINE STATE LEGISLATURE

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STATE OF MAINE
126TH LEGISLATURE
SECOND REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

**JOINT STANDING COMMITTEE ON STATE AND LOCAL
GOVERNMENT**

May 2014

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STATE OF MAINE
126TH LEGISLATURE
SECOND REGULAR SESSION
LEGISLATIVE DIGEST OF BILL SUMMARIES AND
ENACTED LAWS

The *Digest* is arranged within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER.....carried over to a subsequent session of the Legislature
CON RES XXX chapter # of constitutional resolution passed by both houses
CONF CMTE UNABLE TO AGREE..... Committee of Conference unable to agree; legislation died
DIED BETWEEN HOUSESHouse & Senate disagreed; legislation died
DIED IN CONCURRENCE defeated in each house, but on different motions; legislation died
DIED ON ADJOURNMENT action incomplete when session ended; legislation died
EMERGENCYenacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE.....emergency failed to receive required 2/3 vote
FAILED, ENACTMENT or FINAL PASSAGE..... failed to receive final majority vote
FAILED, MANDATE ENACTMENT.....legislation proposing local mandate failed required 2/3 vote
HELD BY GOVERNOR..... Governor has not signed; final disposition to be determined at subsequent session
LEAVE TO WITHDRAW.....sponsor's request to withdraw legislation granted
NOT PROPERLY BEFORE THE BODY.....ruled out of order by the presiding officer; legislation died
INDEF PP..... indefinitely postponed; legislation died
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... ought-not-to-pass report accepted; legislation died
P&S XXX..... chapter # of enacted private & special law
PUBLIC XXX chapter # of enacted public Law
RESOLVE XXX chapter # of finally passed resolve
VETO SUSTAINED.....Legislature failed to override Governor's veto

The effective date for non-emergency legislation enacted in the Second Regular Session of the 126th Legislature is August 1, 2014. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

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13, 2016;

4. Resolve 2011, chapter 99, which amended Resolve 2009, chapter 102 to remove reference to the authority for sale and to impose the conditions on the sale of the property regardless of the authority for sale; and
5. Resolve 2013, chapter 53, section 6, which required that any proceeds from sales of the Stevens School property located in the City of Hallowell be deposited in the Department of Administrative and Financial Services, Bureau of General Services capital repair and improvement account for capital improvements as designated by the Commissioner of Administrative and Financial Services.

Part B of the amendment:

1. Authorizes the sale or lease of the Stevens School property located in the City of Hallowell as authorized in Resolve 2011, chapter 70;
2. Includes conditions from Resolve 2009, chapter 102; and
3. Incorporates the provisions from Resolve 2013, chapter 53 regarding the proceeds from the sales of the Stevens School property.

LD 1177

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

Died Between Houses

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SAVIELLO KESCHL	OTP-AM OTP-AM	

This bill was carried over from the First Regular Session of the 126th Legislature.

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 two 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 two years to file a claim against the municipality pursuant to Title 23, section 3027-A, subsection 2.

Committee Amendment "A" (S-435)

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

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

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

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

The amendment provides that the statutory presumption of abandonment applies only to ways that have met the statutory requirements as of January 1, 2015. For all other public ways, the new discontinuance process will be the only means to cease the maintenance obligations of the municipality or county for the public way. Going forward, if the municipal officers have determined that a town way is presumptively abandoned pursuant to statute, the municipal clerk must file a record of this determination with the county registry of deeds, the Department of Transportation and the municipality. A way that is presumptively abandoned retains a public easement, as is the default position under current law. The amendment does not modify common law abandonment.

The amendment also gives a property owner abutting a discontinued or abandoned road in which a public easement exists the ability to bring a civil action in Superior Court for damages and injunctive relief against a person who causes damage to the road.

The amendment provides that, by January 1, 2016, a municipality must prepare a list of all town ways in that municipality that are currently maintained with public funds; a list of all town ways that have been discontinued since 1965 and whether or not a public easement was retained, if known; and a list of all town ways that have been abandoned since 1965 and whether or not a public easement was retained, if known. The municipality must publish the list on its publicly accessible website or make copies available at the municipal office. The municipality must record the list at the county registry of deeds and with the Department of Transportation.

Committee Amendment "B" (S-436)

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

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

The amendment also changes the law to require a municipality to go through the discontinuance procedure again in

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the 21st year after the discontinuance certificate was originally filed. If no vote is held, then the discontinuance continues until an abutting property owner petitions the municipality to reconsider the discontinuance or pursuant to other municipal action.

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

The amendment provides that the statutory presumption of abandonment applies only to ways that have met the statutory requirements as of January 1, 2015. For all other public ways, the new discontinuance process will be the only means to cease the maintenance obligations of the municipality or county for the public way. Going forward, if the municipal officers have determined that a town way is presumptively abandoned pursuant to statute, the municipal clerk must file a record of this determination with the county registry of deeds, the Department of Transportation and the municipality. A way that is presumptively abandoned retains a public easement, as is the default position under current law. The amendment does not modify common law abandonment.

The amendment also gives a property owner abutting a discontinued or abandoned road in which a public easement exists the ability to bring a civil action in Superior Court for damages and injunctive relief against a person who causes damage to the road.

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

House Amendment "A" To Committee Amendment "A" (H-710)

This amendment amends Committee Amendment "A". The amendment:

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

House Amendment "B" To Committee Amendment "A" (H-759)

This amendment amends Committee Amendment "A." The amendment:

1. Removes the mandate preamble;
2. 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. Removes the requirement that a municipality, 21 years after a certificate of discontinuance has been filed, reconsider and vote on the discontinuance;

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

Senate Amendment "A" To Committee Amendment "A" (S-463)

This amendment amends Committee Amendment "A." The amendment:

1. Strikes the provision in the committee amendment that requires a municipality to go through a discontinuance procedure in the 21st year after a discontinuance certificate was originally filed;
2. Removes the provision in the committee amendment that as of January 1, 2015 the new discontinuance process will be the only means to terminate any interests held by a municipality for highway purposes;
3. Requires determinations by municipal officers or a court that a town way has been abandoned to be recorded with the registry of deeds, the Department of Transportation and the municipality. The committee amendment requires recordation of determinations only by the municipal officers;
4. Strikes the provision in the committee amendment that required municipalities to develop lists of town ways by January 1, 2016. This amendment instead authorizes municipalities to work collaboratively with the Department of Transportation to develop comprehensive road inventories; and
5. Provides that a person who causes damage to a discontinued or abandoned road in which a public easement exists commits a Class E crime.

Senate Amendment "B" To Committee Amendment "A" (S-488)

This amendment amends Committee Amendment "A." The amendment:

1. Amends the time frames in which a municipal legislative body must vote on an order of discontinuance based on the type of municipal legislative body;
2. Adds a time limit to the requirement that the municipal clerk record a certificate of discontinuance;
3. Removes the requirement that a municipality, 21 years after a certificate of discontinuance has been filed, reconsider and vote on the discontinuance; and

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4. Changes the requirement that a municipality develop lists of all town ways that have been discontinued or abandoned since 1965 if known to a requirement that a municipality develop those lists if the information can be provided without research.

LD 1254 An Act To Increase Consumption of Maine Foods in All State Institutions

Veto Sustained

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HICKMAN	OTP-AM	H-510
LACHOWICZ	OTP-AM	S-355 HILL

This bill was enacted by the Legislature during the First Regular Session of the 126th and was held by the Governor; final disposition occurred at the beginning of the Second Regular Session.

Current law requires state and school purchasers to buy meat, fish, dairy products, excluding milk and eggs, and species of fruits and fresh vegetables directly from Maine food producers or from food brokers. This bill establishes a minimum percentage of Maine foodstuffs that must be purchased, requiring at least 15% for the ten years beginning January 1, 2014, at least 25% for the next ten years and at least 35% beginning in 2034.

Committee Amendment "A" (H-510)

This amendment is the majority report of the committee and changes the implementation dates and minimum percentages regarding Maine foodstuffs that state and school purchasers must purchase directly from Maine food producers or food brokers. It changes the implementation schedule for Maine foodstuffs from at least 15% for the ten years beginning January 1, 2014, at least 25% for the next ten years and at least 35% beginning in 2034, to at least 15% by December 31, 2020, 20% by December 31, 2024, 25% by December 31, 2034 and 35% by December 31, 2035.

The amendment exempts from the requirements school purchasers at schools participating in the National School Lunch Program.

Committee Amendment "B" (H-511)

This amendment is the minority report of the committee and changes the implementation dates and minimum percentages regarding Maine foodstuffs that state and school purchasers must purchase directly from Maine food producers or food brokers. It changes the implementation schedule for Maine foodstuffs from at least 15% for the ten years beginning January 1, 2014, at least 25% for the next ten years and at least 35% beginning in 2034 to at least 15% by December 31, 2020, 20% by December 31, 2024, 25% by December 31, 2034, and 35% by December 31, 2035.

The amendment also removes from current law the exclusion of milk and eggs from foodstuffs that must be purchased by a state or school purchaser and the exclusion of milk and eggs from products for which quality standards must be established.

The amendment exempts from the requirements school purchasers at schools participating in the National School Lunch Program.

Senate Amendment "A" To Committee Amendment "A" (S-355)

This amendment adds a mandate preamble.