

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

STATE OF MAINE
127TH LEGISLATURE
SECOND REGULAR SESSION



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

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

May 2016

MEMBERS:

SEN. RODNEY L. WHITTEMORE, CHAIR*
SEN. DAVID C. WOODSOME*
SEN. MICHAEL J. WILLETTE
SEN. NATHAN L. LIBBY

REP. ROLAND DANNY MARTIN, CHAIR
REP. MARK E. BRYANT
REP. CHRISTOPHER W. BABBIDGE
REP. DONNA R. DOORE
REP. PINNY BEEBE-CENTER*
REP. CATHERINE M. NADEAU*
REP. RANDALL ADAM GREENWOOD
REP. RICHARD A. PICKETT
REP. MATTHEW A. HARRINGTON*
REP. LESTER S. ORDWAY*
REP. WILLIAM R. TUELL*
REP. BETH P. TURNER*
REP. JEFFREY EVANGELOS

STAFF:

ALYSON MAYO, LEGISLATIVE ANALYST
OFFICE OF POLICY AND LEGAL ANALYSIS
13 STATE HOUSE STATION
AUGUSTA, ME 04333
(207) 287-1670
<http://legislature.maine.gov/legis/opla/>

* Committee member for a portion of the session

STATE OF MAINE

127TH LEGISLATURE

SECOND REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contains summaries of all LDs and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 127th Maine Legislature.

The *Digest* is arranged alphabetically by committee and 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. An appendix provides a summary of relevant session statistics.

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 HOUSES..... House & 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
EMERGENCY..... enacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or 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 First Regular Session of the 127th Legislature is July 29, 2016. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on State and Local Government

LD 1325

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

PUBLIC 464

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
NADEAU C VALENTINO L	OTP-AM	H-558 S-414 LIBBY N

This bill was carried over from the First Regular Session of the 127th Legislature.

This bill changes the laws governing discontinued and abandoned roads.

Under current law, a presumption of abandonment exists if a municipality fails to keep a way passable for the use of motor vehicles at the expense of the municipality for a period of 30 or more years. This bill eliminates that presumption for ways that have not met that statutory requirement by January 1, 2020. Instead, for all other public ways, the bill provides a new discontinuance process, which is the only means for a municipality to actively terminate its interests in a public way. The new discontinuance process specifies five steps a municipality must follow to discontinue a road: the notification of proposed discontinuance to the abutting property owners; 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 and with the municipality. The bill requires the abutters of a public easement that is discontinued to be granted a right-of-way. The municipality may charge a reasonable fee to fulfill any request for records obtained by the municipality from the registry of deeds.

The bill continues to exempt a municipality from liability for nonperformance of a legal duty with respect to a town or county way that has not been kept passable for the use of motor vehicles at the expense of that municipality for a period of 30 or more years.

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.

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

The bill allows a municipality to 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. If a municipality prepares a list, the municipality must publish the list on its publicly accessible website or make copies available at the municipal office, for which the municipality may charge a reasonable fee. The municipality must record the list at the county registry of deeds.

Committee Amendment "A" (H-558)

This amendment retains the new discontinuance process proposed in the bill for a municipality to actively terminate its interests in a public way. The bill requires that if a public easement is to be retained the municipal officers identify the extent of municipal maintenance and liability responsibilities and any restrictions on how the public may use the public easement. The amendment instead specifies that when filing an order of discontinuance the municipal officers must specify whether or not a public easement is retained, and, if this is not specified, the public easement is retained. The new discontinuance process proposed in the bill specifies steps a municipality must

Joint Standing Committee on State and Local Government

follow to discontinue a road: the notification of proposed discontinuance to the abutting property owners; a meeting of municipal officers to discuss the proposed discontinuance and the filing of an order of discontinuance; 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 and with the municipality. The amendment adds that the municipal clerk must provide a photocopy of the certificate to the Department of Transportation, Bureau of Maintenance and Operations and removes the requirement that the clerk file the certificate with the municipality.

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

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

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

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

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

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

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

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

Joint Standing Committee on State and Local Government

expand or modify its activities so as to necessitate additional expenditures from local revenue.

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

Senate Amendment "A" To Committee Amendment "A" (S-414)

This amendment restores the mandate preamble.

Enacted Law Summary

Public Law 2015, chapter 464 outlines specific steps a municipality must follow to discontinue a road: the notification of proposed discontinuance to the abutting property owners; a meeting of municipal officers to discuss the proposed discontinuance and the filing of an order of discontinuance; 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 and with the municipality. It specifies that when filing an order of discontinuance the municipal officers must specify whether or not a public easement is retained, and, if this is not specified, the public easement is retained. Public Law 2015, chapter 464 requires the municipal clerk to provide a photocopy of the certificate of discontinuance to the Department of Transportation, Bureau of Maintenance and Operations.

Public Law 2015, chapter 464 provides that a public utility easement is in place whenever a road is discontinued, regardless of whether a public easement is retained.

Public Law 2015, chapter 464 provides that a municipal clerk must file a record with the registry of deeds that a town way has been discontinued by abandonment if, either on their own or after being presented with evidence of abandonment, the municipal officers determine that a town way has been discontinued by abandonment. It requires the municipal clerk to provide a copy of the document to the Department of Transportation, Bureau of Maintenance and Operations.

LD 1328 An Act To Clarify the Ownership of and Access to Ancient and Family Burying Grounds ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CUSHING A TEPLER D	ONTP	

This bill was carried over from the First Regular Session of the 127th Legislature.

This bill creates the following provisions.

1. A municipality or its caretaker may access an ancient burying ground on privately owned land annually or as determined by the municipality or its designated caretaker.
2. A municipality or its designated caretaker may use photography, video recording, geographic positioning systems and transcription of grave marker inscriptions to document condition and preserve historic information in a burying ground.
3. A municipality or its designated caretaker may use ground-penetrating radar or other methods to determine the