

**Testimony of James N. Katsiaficas,  
Chair, Maine Commission on Abandoned and Discontinued Roads,  
on LD 2264, An Act to Further Clarify the Meaning of “Private Road” and “Public  
Easement” in Certain Provisions of Maine Law**

Senator Nangle, Representative Stover, and members of the Joint Standing Committee on State and Local Government, I am speaking in support of LD 2264.

In 2021, the Maine Legislature enacted PL 2021, c. 743, which established the Maine Abandoned and Discontinued Roads Commission. Commission members were appointed and the Commission began its work, culminating in a Report to the Maine Legislature in early 2023.

Additional legislation in 2023 resulted in enactment of PL 2023, c. 387, which directed the Commission to review several specified terms used in Maine Statutes: “private way,” “public way,” “private road,” and “public easement,” and to determine whether changes to current law would improve understanding and use of these terms throughout the Maine Revised Statutes.

These terms appear in hundreds of sections of Maine Statutes, and in several instances, the terms are not used consistently. Sometimes that is for good reason, but in other cases it leads to great confusion.

In response to PL 2023, c. 387, the Commission issued a report to this Committee in January 2024, and included draft legislation to begin the task of addressing confusion surrounding use of these terms in Maine law.

The first place a majority of the Commission decided to address is the road association provisions in Title 23, Sections 3101 through 3106-A. These sections are representative of the sources of confusion in Maine law.

Sections 3101 through 3104 use the term “private way” as synonymous with “private road” but Maine law has long used that term to mean a way from agricultural land to town, dedicated to and accepted by the Town and used by the public.

Moreover, in the 1976 recodification of Maine’s roads and highway statutes, the Legislature included “private ways” within the term “public easements” under 23 M.R.S

Section 3021(2), but it did not change the term used in 23 M.R.S. Sections 3105-A and 3106-A. Thus, these sections authorize municipal legislative bodies to plow, maintain and repair “private ways” when “public easements” are intended to be so maintained. Such public easements also include the ways open to public access that are retained by a municipality after the discontinuance or statutory abandonment of a town way.

These changes make it clear that where four or more lots are benefitted by a private road, public easement not repaired or maintained year-round (the text should say this throughout) by a municipality, or bridge, then a road association may be formed by the owners of three or more of those lots.

With this change to add “year-round” to each reference to the term “public easement not repaired or maintained (year-round) by a municipality,” this set of changes begins the process of eliminating confusion and bringing consistency to Maine road law.

At least two Commissioners disagree with this recommendation and will be testifying in opposition or neither for nor against. The majority of the Commission understands and respects the difference of opinion, and this simply points out how difficult the task of eliminating confusion from Maine road law is and will continue to be.