



Town of Lowell
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LD 1562 - An Act Regarding Municipal Road Standards-Testimony 1st Selectman Brian Moura

The following amendment and repeal requests were submitted by me to the following State officials on November 22,2024.

Maine State Representative Mathew McIntyre

Maine State Representative Kathy Javner

Maine State Representative Irene Gifford

Maine State Senator Mike Tipping

CC:

Penobscot County Commissioner David Marshall

Unorganized Territory Director George Buswell

State Representative Mathew McIntyre ultimately submitted the Bill known as LD 1562 - An Act Regarding Municipal Road Standards. I am Providing some brief history for these requests for changes. Dating back almost three years and in working with the recommendations (provided for the maintenance of a town gravel road) by county commissioners and state road ranger/engineer on determining the interpretation and compliance of local highway laws the Board of selectman have had challenges that I will describe meeting criteria imposed by the statutes around 23 M.R.S.A. Sec. 3651. The Town of Lowell Board of Selectmen and on behalf of all small towns and plantation municipal officers within the state that may be experiencing similar issues would like to request the following changes be considered for Title 23, Chapter 313: LIABILITY FOR DAMAGES.

- Request to amend: <https://legislature.maine.gov/statutes/23/title23sec3651.html>

As you may know, Maine does have a so-called "Pothole Law" (23 M.R.S.A. Sec. 3651). The Pothole Law requires municipalities to keep town ways in good repair. Specifically, the standard is as follows:

"Highways, town ways and streets legally established shall be opened and kept in repair so as to be safe and convenient for travelers with motor vehicles....."

The Town is responsible, after the requisite twenty-four hours' notice, for inherent defects in the road, including holes, heaves, and cracks. Recognizing, however, that you can only do so much during "Mud Season". The law does not define "defect" in terms of severity. Instead, the law imposes a two-way standard of "reasonable care" on both the Town and the traveler. That is, the town need not guarantee the absolute safety of the traveler, but it must keep such ways reasonably safe and convenient in the circumstances of each situation. On the flip side, travelers have a duty to exercise reasonable care in using town ways. What this section also does not take into consideration or provide language for is the expectation and exception where present to travel a gravel road, in Maine, in the spring, after a significant thaw, (what we would refer to as mud season) in the same manner, a person travels that road in mid-summer. The law seems to be written as though town roads are concrete or paved which is obviously not the case. In small rural towns in Maine with a small tax base such as ours and with limited budgets and no Public work departments, these turnaround times are unrealistic as repairs must be contracted and are contingent on the availability of materials, contractors, and their equipment limited to access by seasonal



road bans which aren't lifted till Mid May in most cases. We ask that language be added that would help define the defects and upon which type of road surface this can be applied in all conditions just not ideal so as not to burden repairs during a certain time of years in this case specifically for the maintenance of town gravel roads. This is ultimately what has been produced in LD 1562 - An Act Regarding Municipal Road Standards

Title 23, §3651: Failure to provide x


"Roads/Culvert, Road Repair" - k x

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legislature.maine.gov/statutes/23/title23sec3651.html

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STATUTE SEARCH

CH. 313 CONTENTS

TITLE 23 CONTENTS

LIST OF TITLES

MAINE LAW & DISCLAIMER

REVISOR'S OFFICE

MAINE LEGISLATURE

⏪ §3607

Title 23: TRANSPORTATION
Part 3: LOCAL HIGHWAY LAW
Chapter 313: LIABILITY FOR DAMAGES

§3652 ⏩

§3651. Failure to provide safety and convenience

Highways, town ways and streets legally established shall be opened and kept in repair so as to be safe and convenient for travelers with motor vehicles. In default thereof, those liable may be indicted, convicted and a reasonable fine imposed therefor. [PL 1977, c. 363, §5 (AMD).]

1. Legal objects not defects. Trees, structures, utility poles and facilities and other things that exist in accordance with municipal ordinances are not defects in a public way. For the purposes of this subsection, "facilities" has the same meaning as in **Title 35-A, section 2502, subsection 3**.

[PL 2019, c. 128, §1 (AMD).]

SECTION HISTORY
PL 1977, c. 363, §5 (AMD). PL 1987, c. 583, §1 (AMD). PL 2019, c. 128, §1 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.

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- Request to repeal: <https://legislature.maine.gov/statutes/23/title23sec3652.html>

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 §3652 PDF
 §3652 MS-WORD

STATUTE SEARCH
CH. 313 CONTENTS
TITLE 23 CONTENTS
LIST OF TITLES
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REVISOR'S OFFICE
MAINE LEGISLATURE

 §3651
Title 23: TRANSPORTATION
Part 3: LOCAL HIGHWAY LAW
Chapter 313: LIABILITY FOR DAMAGES
§3653 

§3652. Notice of defect; hearing on petition

When a town liable to maintain a way unreasonably neglects to keep it in repair as provided in [section 3651](#), after one of the municipal officers has had 5 days' actual notice or knowledge of the defective condition, any 3 or more responsible persons may petition the county commissioners for the county, setting forth such facts, who, if satisfied that such petitioners are responsible for the costs of the proceedings, shall fix a time and place near such defective way for a hearing on such petition and cause such notice thereof to be given to the town and petitioners as they may prescribe. At the time appointed, the commissioners shall view the way alleged to be out of repair and hear the parties interested, and if they adjudge the way to be unsafe and inconvenient for travelers, motor vehicles, horses, teams and carriages, they shall prescribe what repairs shall be made, fix the time in which the town shall make them, give notice thereof to the municipal officers and award the costs of the proceedings against the town. If they adjudge the way to be safe and convenient, they shall dismiss the petition and award the costs against the petitioners. If they find that the way was defective at the time of presentation of the petition, but has been repaired before the hearing, they may award the costs against the town, if in their judgment justice requires it.

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.
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I understand that the last time this law was used was in the late 1800's and just after the turn of the century. In speaking with and the support of the county commissioner, it would seem logical to repeal this law and amend the previous law to take into consideration the County Commissioners determination as a conceived neutral party and render compliance as to meet

"Highways, town ways and streets legally established shall be opened and kept in repair to be safe and convenient for travelers with motor vehicles....."



We struggle trying to adhere to these statues and what it imposes on our small rural communities with limited budget, no public works and limited access to contractors within these constraints. Legislation when passed must take into consideration all the conditions that exist. One size does not fit all.

Respectfully as not only Municipal Officers but as constituents I would like to make sure these requested changes make it to your respective legislative committee(s) and this legislative session for early action and change.

Thank you,
Board of Selectmen
Town of Lowell, Maine

Brian Moura Brian Moura
1st Selectman

Chuck Priest
2nd Selectman

Kirk Fogg
3rd Selectman

Please see attached letter of support from other towns



Town of Burlington

P.O. Box 70 ~ Burlington, Maine 04417 ~ Phone: 732-3985

12/11/2024

Dear,
Maine State Elect Representative Mathew McIntyre
Maine State Representative Kathy Javner
Maine State Representative Irene Gifford
Maine State Senator Mike Tipping
Copying
Penobscot County Commissioner David Marshall
Unorganized Territory Director George Buswell


Letter of support

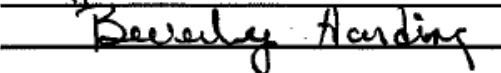
The Town of **Burlington** Board of Selectmen agrees and supports The Town of Lowell Board of Selectman's request to you to cosponsor and amend and repeal these existing statutes:

- Request to amend: <https://legislature.maine.gov/statutes/23/title23sec3651.html>
- Request to repeal: <https://legislature.maine.gov/statutes/23/title23sec3652.html>
-

As these statutes affect our rural towns as well AS STATED BELOW or to its effect in the email from the town of Lowell attachment. Copied here below for reference.

Town of Burlington Municipal Officers







Town of Maxfield

231 River Rd. Maxfield, ME 04453

(207) 732-5639

December 12, 2024

Dear,
Maine State Elect Representative Mathew McIntyre
Maine State Representative Kathy Javner
Maine State Representative Irene Gifford
Maine State Senator Mike Tipping
Copying
Penobscot County Commissioner David Marshall
Unorganized Territory Director George Buswell

Letter of support

The Town of **Maxfield** Board of Selectmen agrees and supports The Town of Lowell Board of Selectman's request to you to cosponsor and amend and repeal these existing statutes:

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As these statutes affect our rural towns as well AS STATED BELOW or to its effect in the email from the town of Lowell attachment. Copied here below for reference.

Town of Maxfield Municipal Officers




December 7th, 2024

Dear,
Maine State Elect Representative Mathew McIntyre
Maine State Representative Kathy Javner
Maine State Representative Irene Gifford
Maine State Senator Mike Tipping
Copying
Penobscot County Commissioner David Marshall
Unorganized Territory Director George Buswell

Letter of support

The Town of Seboeis Plantation Board of Selectmen agrees and supports The Town of Lowell Board of Selectman's request to you to cosponsor and amend and repeal these existing statutes:

- Request to amend: <https://legislature.maine.gov/statutes/23/title23sec3651.html>
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As these statutes affect our rural towns as well AS STATED BELOW or to its effect in the email from the town of Lowell attachment. Copied here below for reference.

Town of Seboeis Plantation Board Municipal Officers

Jamie Swett - 1st Assessor

Dana Brown - 2nd Assessor

Thane Ferguson - 3rd Assessor



December 7th, 2024

Dear,
Maine State Elect Representative Mathew McIntyre
Maine State Representative Kathy Javner
Maine State Representative Irene Gifford
Maine State Senator Mike Tipping
Copying
Penobscot County Commissioner David Marshall
Unorganized Territory Director George Buswell

Letter of support

The Town of Seboeis Plantation Board of Selectmen agrees and supports The Town of Lowell Board of Selectman's request to you to cosponsor and amend and repeal these existing statutes:

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Town of Seboeis Plantation Board Municipal Officers

Jamie Swett - 1st Assessor

Dana Brown - 2nd Assessor

Thane Ferguson - 3rd Assessor