

**Supplemental bills for
LPC Subcommittee on
Elections, State & Local
Government, Marijuana,
Labor
&
Utilities**

(Bills in order of Committee of jurisdiction)



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1383

H.P. 1004

House of Representatives, March 26, 2019

An Act To Amend Maine's Municipal Land Use and Eminent Domain Laws Regarding Transmission and Distribution Utilities

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

Presented by Representative GRIGNON of Athens.

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

2 **Sec. 1. 30-A MRSA §4352, sub-§4**, as amended by PL 2009, c. 615, Pt. G, §1, is
3 further amended to read:

4 **4. Exemptions.** Real estate used or to be used by a public utility, as defined in Title
5 35-A, section 102, subsection 13, ~~by a person who is issued a certificate by the Public~~
6 ~~Utilities Commission under Title 35-A, section 122~~ or by a renewable ocean energy
7 project as defined in Title 12, section 1862, subsection 1, paragraph F-1 is wholly or
8 partially exempt from an ordinance only when on petition, notice and public hearing the
9 Public Utilities Commission determines that the exemption is reasonably necessary for
10 public welfare and convenience. The exemptions provided in this subsection do not
11 apply to elective transmission upgrades. The Public Utilities Commission shall adopt by
12 rule procedures to implement this subsection. Rules adopted pursuant to this subsection
13 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. For
14 purposes of this subsection, "elective transmission upgrade" means a proposed
15 transmission line for which a person developing the transmission line has agreed to pay
16 all of the costs of the transmission line without passing those costs on to the ratepayers.

17 **Sec. 2. 35-A MRSA §3136, sub-§1**, as amended by PL 2007, c. 148, §12, is
18 repealed and the following enacted in its place:

19 **1. Prior approval needed to take land for location of transmission lines carrying**
20 **5,000 volts or more.** A transmission and distribution utility may take and hold by right
21 of eminent domain lands and easements necessary for the proper location of its
22 transmission lines that are designed to carry voltages of 5,000 volts or more and of
23 necessary appurtenances, located within the territory in which the utility is authorized to
24 do public utility business, only if the public utility:

25 A. Obtains the prior approval of the body of government having jurisdiction over the
26 territory in which the land or easement is located;

27 B. Obtains the approval of the commission pursuant to subsection 4; and

28 C. Takes the land or easement in the same manner and under the same conditions as
29 set forth in chapter 65.

30 **Sec. 3. 35-A MRSA §3136, sub-§3**, as amended by PL 2007, c. 148, §13, is
31 further amended to read:

32 **3. Prior right to locate distribution lines and appurtenances in right-of-way**
33 **limits of public way.** Subject to prior approval of the body of government having
34 jurisdiction over the territory in which the land or easement is located and approval by the
35 commission under subsection 4, transmission and distribution utilities may take and hold
36 by right of eminent domain land or easements necessary for the proper location of their
37 distribution lines and the necessary appurtenances, but only where the transmission and
38 distribution utilities had a prior right to locate their distribution lines and necessary
39 appurtenances in the right-of-way limits of a public way and the body having jurisdiction
40 over the public way has caused the utility to remove its distribution lines and appurtenant

1 structures outside the right-of-way limits of the public way. This right does not apply to
2 lands or easements as specified in subsection 2, paragraphs B, C, D and E.

3 **Sec. 4. 35-A MRSA §3136, sub-§4**, as amended by PL 2007, c. 148, §14, is
4 further amended to read:

5 **4. Commission approval required; certificate of public convenience and**
6 **necessity; environmental factors.** A location to be taken by eminent domain for such
7 transmission or distribution lines must be approved first by the body of government
8 having jurisdiction over the territory in which the land or easement is located and then by
9 the commission before a transmission and distribution utility can exercise the right of
10 eminent domain granted in subsection 1 or subsection 3. The commission may not
11 approve a location to be taken by eminent domain for the construction, rebuilding or
12 relocation of a transmission line that requires a certificate of public convenience and
13 necessity under section 3132, unless the commission has issued a certificate of public
14 convenience and necessity for that transmission line. Environmental factors to be
15 considered for proper location of a transmission line are not subject to review by the
16 commission under this section when the location of the transmission line has received site
17 location of development approval under Title 38, section 484.

18 **SUMMARY**

19 This bill requires a transmission and distribution utility, prior to taking land or an
20 easement by eminent domain, to obtain the approval of the body of government having
21 jurisdiction over the land or easement. Following approval by the body of government,
22 the transmission and distribution utility is still required to obtain a certificate of public
23 convenience and necessity from the Public Utilities Commission.

24 The bill makes explicit that the exemption from municipal zoning ordinances
25 regarding real estate used by public utilities does not apply to an elective transmission
26 upgrade, which is a transmission line for which a person developing the transmission line
27 has agreed to pay all of the costs of developing the transmission line without passing
28 those costs on to ratepayers.

**PROPOSED COMMITTEE AMENDMENT TO LD 1312
Senator Rebecca Millett**

**COMMITTEE AMENDMENT “.” To LD 1312, An Act Regarding Access to
Firearms by Extremely Dangerous and Suicidal Individuals**

Amend the bill by inserting before Section 1 the following:

PART A

Amend the bill in Section 1 in §401, sub-§7 (page 1, lines 31-32 of the LD)

7. Petitioner. "Petitioner" means a law enforcement agency, law enforcement officer, district attorney or family or household member who files a petition for an extreme risk protection order under this chapter.

Amend the bill in Section 1 in §411, sub-§1 (page 2, lines 9-11 of the LD)

1. Filing of petition. A law enforcement agency, a law enforcement officer, a district attorney or a family or household member may file a petition under this chapter requesting that the court issue an extreme risk protection order.

Amend the bill by inserting after Section 2 (page 8, line 42 of the LD) the following:

PART B

Sec. B-1. 15 MRSA §393, sub-§1, ¶E, as amended by PL 2015, c. 470, §1, is further amended to read:

E. Has been:

- (1) Committed involuntarily to a hospital pursuant to an order of the District Court under Title 34-B, section 3864 because the person was found to present a likelihood of serious harm, as defined under Title 34-B, section 3801, subsection 4-A, paragraphs A to C;
- (2) Found not criminally responsible by reason of insanity with respect to a criminal charge; ~~or~~
- (3) Found not competent to stand trial with respect to a criminal charge; ~~or~~
or
- (4) Ordered to participate in a progressive treatment program pursuant to Title 34-B, section 3873-A and, as part of that order, directed not to possess firearms pursuant to Title 34-B, section 3873-A, subsection 7-A.

Violation of this paragraph is a Class D crime;

PROPOSED COMMITTEE AMENDMENT TO LD 1312
Senator Rebecca Millett

Sec. B-2. 34-B MRSA §3873-A, sub-§5, ¶A-1 is enacted to read:

A-1. Prior to the commencement of the hearing, the court shall inform the patient that if an order is entered pursuant to subsection 7-A, that patient is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to Title 15, section 393, subsection 1.

Sec. B-3. 34-B MRSA §3873-A, sub-§§7-A and 7-B are enacted to read:

7-A. Firearms. If the court directs a patient to follow an individualized treatment plan pursuant to subsection 6, the court may also prohibit the patient from possessing a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon for the duration of the treatment plan. If the court prohibits the patient from possessing a dangerous weapon other than a firearm, muzzle-loading firearm, bow or crossbow, the court shall specify the type of weapon the patient is prohibited from possessing.

If the court prohibits the patient from possessing a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon, the court shall notify the patient that possession of a firearm by the person is prohibited pursuant to Title 15, section 393. The court also shall direct the patient to relinquish, within 24 hours after service of the order on the patient or such earlier time as the court specifies in the order, all firearms, muzzle-loading firearms, bows, crossbows and specified dangerous weapons in the possession of the patient to a law enforcement officer or other individual for the duration of the order. If the weapons are relinquished to an individual other than a law enforcement officer, the patient must file, within 24 hours after such relinquishment, with the court or local law enforcement agency designated in the order a written statement that contains the name and address of the individual holding the weapons and a description of all weapons held by that individual.

The duties and liability of a law enforcement agency with respect to firearms surrendered pursuant to this subsection are governed by Title 25, section 2804-C, subsection 2-C.

7-B. Transmission of abstract of court ruling to the State Bureau of Identification. Notwithstanding any other provision of this section or section 1207, a court shall transmit to the Department of Public Safety, Bureau of State Police, State Bureau of Identification an abstract of any order issued by the court pursuant to this section that includes a prohibition on the possession of a firearm pursuant to subsection 7-A. The abstract must include:

A. The name, date of birth and gender of the person who is the subject of the order;

PROPOSED COMMITTEE AMENDMENT TO LD 1312
Senator Rebecca Millett

B. The court's order pursuant to subsection 7-A and the expiration date of that order; and

C. A notation that the person has been notified by the court in accordance with subsection 5, paragraph A-1 and subsection 7-A.

The abstract required by this subsection is confidential and is not a public record as defined in Title 1, chapter 13; however, a copy of the abstract may be provided by the State Bureau of Identification to a criminal justice agency for legitimate law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed firearm permit applications. The State Bureau of Identification shall request that the Federal Bureau of Investigation ensure that, immediately after an order issued pursuant to subsection 7-A expires, the National Instant Criminal Background Check System no longer reflects that expired order as a ground for prohibiting the subject of the order from possessing a firearm.

For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit of those entities that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent criminal justice agency at any level of Canadian government.

SUMMARY

This amendment amends who can file a petition for an extreme risk protection order to allow a district attorney to file the petition.

The amendment authorizes a court to order a person admitted to a progressive treatment program not to possess firearms, muzzle-loading firearms, bows, crossbows or other specified dangerous weapons for the duration of the patient's court-ordered participation in the program. Possession of a firearm by a patient in violation of such an order is a Class D crime. A law enforcement officer to whom a patient surrenders a firearm must exercise reasonable care to avoid loss, damage or reduction in value of the surrendered firearm.



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1391

H.P. 1005

House of Representatives, March 26, 2019

An Act To Ensure Consistency of Language in Municipal Documents with the Language in Comprehensive Plans

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

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

ROBERT B. HUNT
Clerk

Presented by Representative WADSWORTH of Hiram.

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

2 **Sec. 1. 30-A MRSA §4312, sub-§2, ¶G,** as amended by PL 2001, c. 578, §7, is
3 further amended to read:

4 G. Encourage the widest possible involvement by the citizens of each municipality in
5 all aspects of the planning and implementation process, in order to ensure that the
6 plans developed by municipalities have had the benefit of citizen input; ~~and~~

7 **Sec. 2. 30-A MRSA §4312, sub-§2, ¶I,** as enacted by PL 2001, c. 578, §8, is
8 amended to read:

9 I. Encourage the development and implementation of multimunicipal growth
10 management programs; ~~and~~

11 **Sec. 3. 30-A MRSA §4312, sub-§2, ¶J** is enacted to read:

12 J. Encourage a municipality to ensure that the language and requirements in charters,
13 ordinances, policies, codes, regulations, bylaws and documents setting out or
14 assessing fees align with each other and meet the overall intent of a comprehensive
15 plan approved by the municipality.

16 **Sec. 4. 30-A MRSA §4312, sub-§3, ¶K,** as enacted by PL 2015, c. 349, §2, is
17 amended to read:

18 K. To encourage municipalities to develop policies that assess community needs and
19 environmental and economic effects of municipal regulations, lessen the effect of
20 excessive parking requirements for buildings in downtowns and on main streets and
21 provide for alternative approaches for compliance relating to the reuse of upper floors
22 of buildings in downtowns and on main streets.

23 **Sec. 5. 30-A MRSA §4323, sub-§3,** as enacted by PL 1989, c. 104, Pt. A, §45
24 and Pt. C, §10, is amended to read:

25 **3. Other.** Do all other things necessary to carry out the purposes of this subchapter,
26 including ensuring that the language and requirements in charters, ordinances, policies,
27 codes, regulations, bylaws and documents setting out or assessing fees align with each
28 other and meet the overall intent of a comprehensive plan approved by the municipality.

29 **Sec. 6. 30-A MRSA §4324, sub-§11** is enacted to read:

30 **11. Alignment of language and requirements with comprehensive plan.** A
31 municipality or multimunicipal region shall ensure that the language and requirements in
32 charters, ordinances, policies, codes, regulations, bylaws and documents setting out or
33 assessing fees align with each other and meet the overall intent of a comprehensive plan
34 approved by the municipality or multimunicipal region.

35 **Sec. 7. 30-A MRSA §4326, sub-§1, ¶H,** as amended by PL 2015, c. 349, §3, is
36 further amended to read:

1 H. Residential housing stock, including affordable housing, and policies that assess
2 community needs and environmental and economic effects of municipal regulations,
3 lessen the effect of excessive parking requirements for buildings in downtowns and
4 on main streets and provide for alternative approaches for compliance relating to the
5 reuse of upper floors of buildings in downtowns and on main streets;

6 **Sec. 8. 30-A MRSA §4326, sub-§2, ¶C**, as enacted by PL 1989, c. 104, Pt. A,
7 §45 and Pt. C, §10, is amended to read:

8 C. Address any conflicts between regional and local issues; ~~and~~

9 **Sec. 9. 30-A MRSA §4326, sub-§2, ¶D**, as amended by PL 2001, c. 578, §15, is
10 further amended to read:

11 D. Address the State's coastal policies if any part of the municipality or
12 multimunicipal region is a coastal area; and

13 **Sec. 10. 30-A MRSA §4326, sub-§2, ¶E** is enacted to read:

14 E. Ensure that the language and requirements in charters, ordinances, policies, codes,
15 regulations, bylaws and documents setting out or assessing fees align with each other
16 and meet the overall intent of a comprehensive plan.

17 **Sec. 11. 30-A MRSA §4326, sub-§3-A, ¶A**, as amended by PL 2011, c. 655, Pt.
18 JJ, §17 and affected by §41, is further amended to read:

19 A. Except as otherwise provided in this paragraph, identify and designate
20 geographic areas in the municipality or multimunicipal region as growth areas and
21 rural areas, as defined in this chapter.

- 22 (1) Within growth areas, each municipality or multimunicipal region shall:
- 23 (a) Establish development standards;
 - 24 (b) Establish timely permitting procedures;
 - 25 (c) Ensure that needed public services are available; and
 - 26 (d) Prevent inappropriate development in natural hazard areas, including
27 flood plains and areas of high erosion.

28 (2) Within rural areas, each municipality or multimunicipal region shall adopt
29 land use policies and ordinances to discourage incompatible development. These
30 policies and ordinances may include, without limitation, density limits, cluster or
31 special zoning, acquisition of land or development rights, transfer of development
32 rights pursuant to section 4328 and performance standards. The municipality or
33 multimunicipal region should also identify which rural areas qualify as critical
34 rural areas as defined in this chapter. Critical rural areas must receive priority
35 consideration for proactive strategies designed to enhance rural industries,
36 manage wildlife and fisheries habitat and preserve sensitive natural areas.

37 (3) A municipality or multimunicipal region may also designate as a transitional
38 area any portion of land area that does not meet the definition of either a growth
39 area or a rural area. Such an area may be appropriate for medium-density

1 development that does not require expansion of municipal facilities and does not
2 include significant rural resources.

3 (4) A municipality or multimunicipal region is not required to identify growth
4 areas within the municipality or multimunicipal region for residential,
5 commercial or industrial growth if it demonstrates, in accordance with rules
6 adopted by the department pursuant to this article, that:

7 (a) It is not possible to accommodate future residential, commercial or
8 industrial growth within the municipality or multimunicipal region because
9 of severe physical limitations, including, without limitation, the lack of
10 adequate water supply and sewage disposal services, very shallow soils or
11 limitations imposed by protected natural resources;

12 (b) The municipality or multimunicipal region has experienced minimal or no
13 residential, commercial or industrial development over the past decade and
14 this condition is expected to continue over the 10-year planning period;

15 (c) The municipality or multimunicipal region has identified as its growth
16 areas one or more growth areas identified in a comprehensive plan adopted or
17 to be adopted by one or more other municipalities or multimunicipal regions
18 in accordance with an interlocal agreement adopted in accordance with
19 chapter 115 with one or more municipalities or multimunicipal regions; or

20 (d) The municipality or multimunicipal region has no village or densely
21 developed area.

22 (6) A municipality or multimunicipal region exercising the discretion afforded
23 by subparagraph ~~4~~ (4) shall review the basis for its demonstration during the
24 periodic revisions undertaken pursuant to section 4347-A~~;~~.

25 A municipality or multimunicipal region shall ensure that the language and
26 requirements in charters, ordinances, policies, codes, regulations, bylaws and
27 documents setting out or assessing fees align with each other and meet the overall
28 intent of a comprehensive plan approved by the municipality or multimunicipal
29 region;

30 **Sec. 12. 30-A MRSA §4326, sub-§3-A, ¶G,** as amended by PL 2015, c. 349, §4,
31 is further amended to read:

32 G. Ensure that the municipality's or multimunicipal region's land use policies and
33 ordinances encourage the siting and construction of affordable housing within the
34 community and comply with the requirements of section 4358 pertaining to
35 individual mobile home and mobile home park siting and design requirements. The
36 municipality or multimunicipal region shall seek to achieve a level of at least 10% of
37 new residential development, based on a 5-year historical average of residential
38 development in the municipality or multimunicipal region, that meets the definition
39 of affordable housing. A municipality or multimunicipal region is encouraged to
40 seek creative approaches to assist in the development of affordable housing,
41 including, but not limited to, cluster housing, reduced minimum lot and frontage
42 sizes, increased residential densities, use of municipally owned land and
43 establishment of policies that assess community needs and environmental and

1 economic effects of municipal regulations, lessen the effect of excessive parking
2 requirements for buildings in downtowns and on main streets and provide for
3 alternative approaches for compliance relating to the reuse of upper floors of
4 buildings in downtowns and on main streets;

5 **Sec. 13. 30-A MRSA §4326, sub-§3-A, ¶K**, as enacted by PL 2015, c. 349, §6,
6 is amended to read:

7 K. Encourage policies that assess community needs and environmental and
8 economic effects of municipal regulations, lessen the effect of excessive parking
9 requirements for buildings in downtowns and on main streets and provide for
10 alternative approaches for compliance relating to the reuse of upper floors of
11 buildings in downtowns and on main streets.

12 **SUMMARY**

13 This bill amends the laws governing growth management programs to require that a
14 municipality or multimunicipal region ensure that the language and requirements in
15 charters, ordinances, policies, codes, regulations, bylaws and documents setting out or
16 assessing fees align with each other and meet the overall intent of a comprehensive plan
17 approved by the municipality or multimunicipal region. It also amends the law to
18 encourage the consideration of economic effects by municipalities in their planning.



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1415

H.P. 1028

House of Representatives, March 26, 2019

An Act To Improve the Laws Regarding Discontinued and Abandoned Roads

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

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

ROBERT B. HUNT
Clerk

Presented by Representative NADEAU of Winslow.
Cosponsored by Senator DIAMOND of Cumberland and
Representatives: COREY of Windham, MARTIN of Eagle Lake, Senator: President
JACKSON of Aroostook.

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

2 **Sec. 1. 23 MRSA §3028, sub-§1**, as enacted by PL 1991, c. 195, is amended to
3 read:

4 **1. Presumption of abandonment.** ~~¶~~ Except as provided by subsection 1-A, it is
5 prima facie evidence that a town or county way not kept passable for the use of motor
6 vehicles at the expense of the municipality or county for a period of 30 or more
7 consecutive years has been discontinued by abandonment. A presumption of
8 abandonment may be rebutted by evidence that manifests a clear intent by the
9 municipality or county and the public to consider or use the way as if it were a public
10 way. A proceeding to discontinue a town or county way may not prevent or estop a
11 municipality from asserting a presumption of abandonment. A municipality or its
12 officials are not liable for nonperformance of a legal duty with respect to such ways if
13 there has been a good faith reliance on a presumption of abandonment. Any person
14 affected by a presumption of abandonment, including the State or a municipality, may
15 seek declaratory relief to finally resolve the status of such ways. A way that has been
16 abandoned under this section is relegated to the same status as it would have had after a
17 discontinuance pursuant to section 3026, except that this status retains a public easement
18 and all remaining interests of the municipality pass to the abutting property owners in fee
19 simple to the center of the way. A way that has been abandoned under this section is at
20 all times subject to an affirmative vote of the legislative body of the municipality within
21 which the way lies making that way an easement for recreational use. A presumption of
22 abandonment is not rebutted by evidence that shows isolated acts of maintenance, unless
23 other evidence exists that shows a clear intent by the municipality or county to consider
24 or use the way as if it were a public way.

25 **Sec. 2. 23 MRSA §3028, sub-§1-A** is enacted to read:

26 **1-A. Termination through discontinuance process only.** For a town way that does
27 not meet the requirements of subsection 1 as of January 1, 2020, a municipality may
28 terminate in whole or in part any interests held by it for highway purposes only through
29 the discontinuance process pursuant to section 3026-A. This subsection is not intended to
30 modify common law regarding abandonment of a road.

31 **Sec. 3. 23 MRSA §3028, sub-§5**, as enacted by PL 2015, c. 464, §7, is amended
32 to read:

33 **5. Filing of record of evidence and determination of abandonment.** ~~If after the~~
34 ~~effective date of this subsection~~ the municipal officers, either on their own or after being
35 presented with evidence of abandonment, determine that a town way has been
36 discontinued by abandonment pursuant to subsection 1, the municipal officers shall
37 provide in writing the evidence upon which the determination of discontinuation by
38 abandonment was made and the municipal clerk shall file a record of this determination,
39 the evidence upon which the determination was made and the effective date of the
40 determination with the registry of deeds. The absence of a filing of a determination of
41 discontinuation by abandonment may not be construed as evidence against the status of
42 abandonment. The registry of deeds shall record a document regarding an abandoned

1 town way under the name of the town way, the name of the municipality and the names
2 of the abutting property owners. The municipal clerk shall provide a copy of the
3 document regarding an abandoned town way to the Department of Transportation, Bureau
4 of Maintenance and Operations.

5 **SUMMARY**

6 Under current law, a presumption of abandonment exists if a municipality fails for a
7 period of 30 or more years to keep a way passable for the use of motor vehicles at the
8 expense of the municipality. This bill eliminates that presumption for ways that have not
9 met that statutory requirement by January 1, 2020 and instead specifies that the only
10 process that a municipality may use to terminate its interests in a public way is through
11 the discontinuance process established in the Maine Revised Statutes, Title 26, section
12 3026-A. This bill also amends the filing required by the clerk of a municipality following
13 the determination of discontinuance by abandonment of a town way to require that the
14 record filed with the registry of deeds include the evidence used by the municipality to
15 make the determination of abandonment and the effective date of that determination of
16 abandonment.