

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

H.P. 1468 - L.D. 1975

**An Act Concerning Winter Maintenance on Private Roads in the Town of
Windham**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Town of Windham has provided winter maintenance service to approximately 101 private ways in the town for several years without the intention to establish these private ways as town ways; and

Whereas, approximately 1,700 residents live on the private ways maintained in the winter by the Town of Windham and have come to rely on this service; and

Whereas, this Legislature enacted Private and Special Law 2021, chapter 10 to allow the Town of Windham time to work with residents to resolve this situation; and

Whereas, Private and Special Law 2021, chapter 10 is repealed on June 30, 2022, and the Town of Windham has been unable, despite its best efforts, to successfully resolve all aspects of this complicated and long-standing situation; and

Whereas, timely legislation is needed to resolve this situation before Private and Special Law 2021, chapter 10 is repealed; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. P&SL 2021, c. 10, is repealed.

Sec. 2. Definitions. As used in this Act, unless the context otherwise indicates, the following terms have the following meanings.

1. Council. "Council" means the town council of the Town of Windham.

2. Designated private way. "Designated private way" means a private way located in the Town of Windham that satisfies the criteria listed in section 3.

3. Private way. "Private way" has the same meaning as in the Maine Revised Statutes, Title 23, section 1903, subsection 10-A.

4. Road association. "Road association" means a road association created pursuant to the Maine Revised Statutes, Title 23, chapter 305, subchapter 2.

5. Road commissioner. "Road commissioner" means the road commissioner, as described by the Maine Revised Statutes, Title 23, section 2701, of the Town of Windham.

6. Town way. "Town way" has the same meaning as in the Maine Revised Statutes, Title 23, section 3021, subsection 3.

7. Winter maintenance. "Winter maintenance" means the snow removal and surface treatment, including sanding and salting, performed on designated private ways.

Sec. 3. Identification of designated private ways. The council may identify a private way in the Town of Windham as a designated private way if:

1. The council has evidence that the Town of Windham performed winter maintenance on the private way for at least 20 years prior to the effective date of this Act; and

2. The road commissioner has determined that the private way cannot meet standards developed or required by generally applicable local ordinances for dedication and acceptance as a town way pursuant to the Maine Revised Statutes, Title 23, section 3025.

Sec. 4. Designated private way roster and map. The Town of Windham may create and maintain a roster and map of all designated private ways.

Sec. 5. Authorization of winter maintenance on designated private ways. Until October 1, 2023, the council and the Town of Windham may use public equipment to perform winter maintenance on a designated private way regardless of the existence of a public easement over the designated private way for the public purpose of ensuring the health and safety of the residents of the Town of Windham and minimizing environmental damage to surrounding water bodies.

Sec. 6. Development of basic maintenance standards. The road commissioner may, in consultation with the council, develop basic maintenance standards for designated private ways so that the road commissioner may identify maintenance that must be performed by a road association or property owners benefited by the designated private way for public winter maintenance under section 7.

Sec. 7. Conditions for public winter maintenance. Beginning October 1, 2023, the council and the Town of Windham may use public equipment to perform winter maintenance on a designated private way only if the following conditions are met:

1. The private way is under the purview of a road association or association of property owners with authority to address general maintenance of the designated private way;

2. The council or road commissioner has notified the road association or owners of property benefited by the designated private way of the maintenance that must be performed for the designated private way to meet the basic maintenance standards established in section 6 and the maintenance is performed, to the road commissioner's satisfaction, by September 1st following the date on which notice was given; and

3. At least 67% of the owners of property abutting the designated private way have issued a public easement to the town.

Sec. 8. Notification. If the Town of Windham provides public winter maintenance pursuant to section 7, it shall retain a certificate of mailing showing that written notice to each owner of property abutting the designated private way was mailed within 60 days of the effective date of this Act.

Sec. 9. Ordinance. The council may enact an ordinance to effectuate the provisions of this Act.

Sec. 10. Claim preclusion. If a private way meets the criteria of section 3, no road association or owner of property benefited by the private way may bring a claim asserting that the private way has become a town way or that the Town of Windham has established an ongoing maintenance obligation by any method or mechanism other than dedication and acceptance pursuant to the Maine Revised Statutes, Title 23, section 3025.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.