

LD 1415 An Act To Improve the Laws Regarding Discontinued and Abandoned Roads

To: Members, Joint Standing Committee on State and Local Government

From: Lynne Caswell, Esq., Legislative Analyst

Date: May 8, 2019

SUMMARY

This bill amends portions of Title 23, chapter 304, setting out the parameters of and requirements for a town or county to discontinue a public way by abandonment.

Section 1 of this bill replaces a cross-reference in 23 MRSA §3028, sub-§1, to another section of law that was repealed in 2015 (§3026). The new language is substantially similar to the relevant portions of the repealed law. This portion of §3028 states, as currently written and as proposed, states that a public easement is retained when a public way is discontinued by abandonment and that a town or county may only be expanded the public easement to include a recreation use easement by an affirmative vote of the legislative body of the municipality/county.

Section 2 of this bill requires towns and counties seeking to discontinue a public way by abandonment to use the discontinuation process established in 23 MRSA §3026-A. This requirement goes into effect on January 1, 2020 and applies to all public that do not met the abandonment criteria¹ as of that date. Common law abandonment² is not affected by this bill.

Section 3 of this bill expands the documentation that must be filed with the registry of deeds upon a determination that a public way has been discontinued by abandonment. The additional documentation includes the evidence upon which the town/county made its determination and the effective date of the determination

TESTIMONY**Sponsor** (Representative Nadeau)

- Discontinued & abandoned roads have a tortured history;
- Recent law created a notice and recording requirement before a road can be discontinued;
- No similar requirements before declaring a road abandoned

Proponents (Maine Woodland Owners; Maine Forest Products Council; Robin Thayer; Maine ROADways)

- In 1976, abandonment statute made sense but it creates problems today
- Abandonment was supposed to be a one-time opportunity to clean up a problem
- Public easement has been interpreted to allow unrestricted motor vehicle use
- No public process for discontinuation;
- Access to road is part of property right
- No appeal available

Opponents (MMA)

- Removal of abandonment presumption creates a state mandate

NFNA - none

¹ Not kept passable for the use of motor vehicles at the expense of the town/county for a period of 30 years or more.

² nonuse for twenty years or more, intentional and voluntary desertion of a road, or acquiescence, even for a few years, in the discontinuance of an old road combined with use of a new road

PRIOR SESSIONS

See Attachment A

INFORMATION REQUESTS

Explanation of terms and processes – See Attachment B

POTENTIAL ISSUES / TECHNICAL PROBLEMS

1. State Mandate - A constitutional mandate exists if a law requires a town or county to expand or modify its activities so as to necessitate additional expenditures.

FISCAL IMPACT - Preliminary (OFPR)

None provided as of May 8, 2019.