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H.P. 1119

House of Representatives, April 11, 2019

**An Act To Require Municipalities To Maintain Access on Public
Rights-of-way**

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

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative KESCHL of Belgrade.

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

2 **Sec. 1. 23 MRSA §3026-A, sub-§1-A, ¶B**, as enacted by PL 2017, c. 345, §2, is
3 repealed and the following enacted in its place:

4 B. After the one-year waiting period required in paragraph A, the municipal officers:

5 (1) Shall proceed with the discontinuance process pursuant to this section
6 without retaining a public easement if the municipal officers verify that private
7 easements that run with the title of the property owners' land for the purpose of
8 allowing travel along the way for all abutting property owners and their lessees
9 and guests have been filed with the registry of deeds; or

10 (2) If the municipal officers are unable to verify the easements specified in
11 paragraph A, may discontinue the road only if a public easement is retained and
12 the public use for which the easement is retained is specified in writing and
13 recorded in the registry of deeds. If the municipality retains a public easement
14 under this subparagraph, the municipality shall provide sufficient public
15 maintenance of the public easement to allow the specified use.

16 **Sec. 2. 23 MRSA §3028, sub-§1, ¶¶A to C** are enacted to read:

17 A. A presumption of abandonment of a way is fully rebutted and removed by
18 evidence that records maintained by the Department of Transportation indicate that a
19 municipality received funds under chapter 19, subchapter 6 based on any mileage of
20 the way during any portion of the 30 or more consecutive years of apparent
21 discontinuance.

22 B. A municipality may not intentionally cease to maintain a way as a means of
23 creating a presumption of abandonment and a presumption of abandonment is fully
24 rebutted and removed by evidence that a municipality intentionally ceased
25 maintenance as a means of creating a presumption of abandonment.

26 C. A municipality may not assert a presumption of abandonment for a way that was
27 discontinued prior to September 3, 1965 that resulted in a public easement. A public
28 easement may be discontinued pursuant to section 3026-A.

29 **Sec. 3. 23 MRSA §3201** is amended to read:

30 **§3201. Removal required; damages**

31 When any ways are blocked or encumbered with snow, the road commissioner shall
32 forthwith cause so much of it to be removed ~~or trodden down~~ as will render them
33 passable. The town may direct the manner of doing it. The municipal officers of a town
34 may direct a road commissioner to take down fences on the line of a public highway
35 when the municipal officers determine it to be necessary to prevent the drifting of snow
36 in the highway. If a fence is taken down, the municipal officers shall ensure that, as soon
37 as possible after the snow season is over, the fence is replaced in as good condition as
38 when taken down and without expense to the owner. In case of sudden injury to ways or
39 bridges, ~~he~~ the road commissioner shall without delay cause them to be repaired. All
40 damage; accruing to a person in ~~his~~ the person's business or property through neglect of

1 such the road commissioner or the municipal officers of such the town to so render
2 passable ways that are blocked or encumbered with snow, within a reasonable time, may
3 be recovered of such the town by a civil action.

4 **Sec. 4. 23 MRSA §3202**, is repealed and the following enacted in its place:

5 **§3202. Mail routes**

6 A town shall maintain any public right-of-way used as part of a United States postal
7 route in passable condition for postal service delivery. All maintenance must be in
8 accordance with applicable United States Postal Service requirements. If the postal
9 service route is seasonal, the right-of-way must be maintained for the applicable season
10 and, if the mail route is year-round, it must be maintained year-round. For the purposes
11 of this subsection, "public right-of-way" means a public right-of-way held by the town
12 but does not include a private right-of-way or a road in which the town does not hold a
13 right-of-way or any state or state aid highway maintained by the State.

14 **Sec. 5. 23 MRSA §3203** is enacted to read:

15 **§3203. Enforcement**

16 Failure of a town to satisfy the requirements of section 3201 or 3202, subsection 1 is
17 deemed a failure to maintain a way under chapter 313 and the actions and remedies
18 specified in sections 3651 to 3655 apply to the failure.

19 **SUMMARY**

20 This bill:

21 1. Provides that in the context of a road discontinuance proceeding the municipal
22 officers must proceed with a discontinuance without retaining a public easement if the
23 municipal officers verify that private easements that run with the title of the property
24 owners' land for the purpose of allowing travel along the way for all abutting property
25 owners and their lessees and guests have been filed with the registry of deeds. If the
26 municipal officers are unable to verify those easements, they may discontinue the road
27 only if a public easement is retained and the public use for which the easement is retained
28 is specified. If the municipality retains a public easement, the municipality must provide
29 sufficient public maintenance of the public easement to allow the specified use;

30 2. Modifies the road abandonment law to provide that:

31 A. A presumption of abandonment of a way is fully rebutted and removed by
32 evidence that records maintained by the Department of Transportation indicate that a
33 municipality received funds under the Maine Revised Statutes, Title 23, chapter 19,
34 subchapter 6 based on any mileage of the way during any portion of the 30 or more
35 consecutive years of apparent discontinuance;

36 B. A municipality may not intentionally cease to maintain a way as a means of
37 creating a presumption of abandonment and a presumption of abandonment is fully

1 rebutted and removed by evidence that a municipality intentionally ceased
2 maintenance as a means of creating a presumption of abandonment; and

3 C. A municipality may not assert a presumption of abandonment for any way that
4 was discontinued prior to September 3, 1965 that resulted in a public easement;

5 3. Moves a provision of law relating to the removal of snow fences along public
6 highways from a section relating to mail routes to the section of law relating to snow
7 removal;

8 4. Requires a town to maintain any town public right-of-way used as part of a United
9 States postal route in passable condition for postal service delivery. All maintenance
10 must be in accordance with applicable United States Postal Service requirements. If the
11 postal service route is seasonal, the right-of-way must be maintained for the applicable
12 season and, if the mail route is year-round, it must be maintained year-round; and

13 5. Provides that a failure of a town to meet the snow removal and other maintenance
14 requirements of the Maine Revised Statutes, Title 23, section 3201 and section 3202,
15 subsection 1 is deemed a failure to maintain a way under Title 23, chapter 313 and the
16 actions and remedies specified in sections 3651 to 3655 of that chapter apply to such a
17 failure.