

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Ensure a Public Process When Discontinuing or Abandoning a Public Road**

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

**Sec. 1. 23 MRSA §2060, sub-§2,** as enacted by PL 1999, c. 188, §2, is amended to read:

**2. Effect and exceptions.** Upon discontinuance, all interests of the county or municipality pass to the abutting property owners to the center of the way, including any public easement, in accordance with section 30263026-A. When the Department of Transportation is an abutting owner, then the interests in the way pass to the property owner opposite the department's ownership in accordance with a plan showing the right-of-way line established for the new highway location by the department. The plan must be referenced in the order of discontinuance.

**Sec. 2. 23 MRSA §3021, sub-§1-A** is enacted to read:

**1-A. Municipal legislative body.** "Municipal legislative body" has the same meaning as in Title 30-A, section 2001, subsection 9.

**Sec. 3. 23 MRSA §3021, sub-§2,** as enacted by PL 1975, c. 711, §8, is amended to read:

**2. Public easement.** "Public easement" means an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to ~~the effective date of this Act~~ July 29, 1976. Private ways created pursuant to former sections 3001 and 3004 prior to ~~the effective date of this Act~~ July 29, 1976 are public easements.

**Sec. 4. 23 MRSA §3026,** as repealed and replaced by PL 1981, c. 683, §1, is repealed.

**Sec. 5. 23 MRSA §§3026-A** is enacted to read:

### **§ 3026-A. Discontinuance of town ways**

A municipality may terminate in whole or in part any interests held by it for highway purposes. A municipality discontinuing a town way or public easement in this State must meet the following requirements.

**1. Notification of discontinuance to abutting property owners.** The municipal officers shall give best practicable notice to all abutting property owners of a proposed discontinuance of a town way or public easement. As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, of notice to abutting property owners whose addresses appear in the assessment records of the municipality.

**2. Municipal officers meet to discuss proposed discontinuance and file order of discontinuance.** The municipal officers shall discuss a proposed discontinuance of a town way or public easement at a public meeting and file an order of discontinuance with the municipal clerk that specifies:

- A. The location of the town way or public easement;
- B. The names of abutting property owners;
- C. The amount of damages, if any, determined by the municipal officers to be paid to each abutter;
- D. For a town way, whether or not a public easement will be retained. If the existing legal rights of abutting property owners to access their property will be eliminated, a public easement or right-of-way for the abutting property owners must be retained; and
- E. If a public easement is to be retained:
  - (1) The extent of municipal maintenance and liability responsibilities, if any; and
  - (2) The restrictions on how the public may use the public easement, if any.

If a proposal includes the discontinuance of a public easement, that must be stated explicitly in the order of discontinuance.

**3. Public hearing.** The municipal officers shall hold a public hearing on the order of discontinuance of a town way or public easement filed pursuant to subsection 2.

**4. Approval of order of discontinuance and damage awards.** Ten or more business days after the public hearing pursuant to subsection 3, the municipal legislative body must vote upon the order of discontinuance submitted to it:

- A. To approve the order of discontinuance, including the public easement and the restrictions set in the order and the damage awards, and to appropriate the money to pay the damages; or
- B. To disapprove the order of discontinuance.

If the order of discontinuance of a public easement is approved, the abutters of that public easement must be granted a right-of-way prior to the filing of the certificate of discontinuance pursuant to subsection 5.

**5. Certificate of discontinuance filed.** The municipal clerk shall record an attested certificate of discontinuance after a vote by the municipal legislative body under subsection 4 in the registry of deeds and with the municipality. The certificate must describe the town way or public easement, any rights-of-way granted and the final action by the municipal legislative body. The date the certificate of discontinuance is filed is the date the town way or public easement is discontinued. The registry of deeds shall record a certificate of discontinuance under the name of the town way or public easement, the name of the municipality and the names of the abutters.

**6. Liability.** A municipality or its officials are not liable for nonperformance of a legal duty with respect to a town or county way that has not been kept passable for the use of motor vehicles at the expense of the municipality for a period of 30 or more years.

An easement for public utility facilities necessary to provide or maintain service remains in a discontinued town way regardless of whether a public easement is retained. Upon approval by a municipal legislative body of an order to discontinue a town way and retain a public easement, unless otherwise stated in the order, all remaining interests of the municipality pass to the abutting property owners in fee simple to the center of the way.

**Sec. 6. 23 MRSA §3027, sub-§1**, as amended by PL 1987, c. 385, §1, is further amended to read:

**1. Vacation of ways.** ~~Where~~When proposed town ways have been described in a recorded subdivision plan and lots have been sold with reference to the plan, the municipal officers, after notice to the municipal planning board or office, may, on their own initiative, on petition of the abutting property owners or on petition of any person claiming a property interest in the proposed way, vacate in whole or in part proposed ways that have not been accepted. The municipal officers shall give best practicable notice, as defined in section ~~3026~~3026-A, subsection ~~21~~21, of the proposed vacation to owners of lots on the recorded subdivision plan and their mortgagees of record. The notice ~~shall~~must conform in substance to the following form:

NOTICE

(The municipal officers of) (A petition has been filed with the municipal officers of) \_\_\_\_\_ (Name of Town or City) \_\_\_\_\_ (propose to) (to vacate) the following (ways) (way) shown upon a subdivision plan (named) (dated) (and) recorded in the \_\_\_\_\_ County Registry of Deeds, Book of Plans, Volume \_\_\_\_\_, Page \_\_\_\_\_.

(Herein list or describe ways to be vacated)

If the municipal officers enter an order vacating (these ways) (this way) any person claiming an interest in (these ways) (this way) (adverse to the claims of the petitioners) must, within one (1) year of the recording of the order, file a written claim thereof under oath in the \_\_\_\_\_ County

Registry of Deeds and must, within one hundred eighty (180) days of the filing of the claim, commence an action in the Superior Court in \_\_\_\_\_ County in accordance with the Maine Revised Statutes, Title 23, section 3027-A.

The municipal officers shall file an order of vacation with the municipal clerk that specifies the location of the way, the names of owners of lots on the recorded subdivision plan and the amount of damages, if any, determined by the municipal officers to be paid to each lot owner or other person having an interest in the way. Damages and reasonable costs as determined by the municipal officers ~~shall~~must be paid by the petitioners, if any.

**Sec. 7. 23 MRSA §3028, sub-§1**, as enacted by PL 1991, c. 195, is amended to read:

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

**Sec. 8. 23 MRSA §3028, sub-§1-A** is enacted to read:

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

**Sec. 9. 23 MRSA §3028, sub-§5** is enacted to read:

**5. Filing.** If after the effective date of this subsection the municipal officers, either on their own or after being presented with evidence of abandonment or discontinuance, determine that a town way has been discontinued by abandonment pursuant to subsection 1, the municipal clerk shall file a record of this determination with the registry of deeds and the municipality. The registry of deeds shall

record a document regarding an abandoned town way under the name of the town way, the name of the municipality and the names of the abutters. If a municipality provides records obtained from the registry of deeds, the municipality may charge a reasonable fee for these records.

**Sec. 10. 23 MRSA §3029-A** is enacted to read:

**§ 3029-A. Damage to public easement; cause of action**

**1. Cause of action.** An owner of property abutting a discontinued or abandoned road in which a public easement exists may bring a civil action in Superior Court for damages and injunctive relief against a person who causes damage to the road in a way that impedes reasonable access by the property owner to the property owner's property by motor vehicle as defined in Title 29-A, section 101, subsection 42.

**2. Damages.** Damages may be sought pursuant to subsection 1 in an amount reasonably necessary to restore the road to its condition prior to the use by the person against whom the action is brought.

**3. Attorney's fees and costs.** If the plaintiff under subsection 1 is the prevailing party, the plaintiff may be awarded reasonable attorney's fees and costs.

**Sec. 11. 35-A MRSA §2308**, as amended by PL 2011, c. 623, Pt. B, §9, is further amended to read:

**§ 2308. Protection of utility facilities upon discontinuance of public ways**

In proceedings for the discontinuance of public ways, public ways may be discontinued in whole or in part. The discontinuance of a town way must be pursuant to Title 23, section ~~3026~~3026-A. Unless an order discontinuing a public way specifically provides otherwise, the public easement provided for in Title 23, section ~~3026~~3026-A includes an easement for public utility facilities and for the permitted facilities of entities authorized under section 2301 to construct lines. A utility or entity may continue to maintain, repair and replace its installations within the limits of the way or may construct and maintain new facilities within the limits of the discontinued way, if it is used for travel by motor vehicles, in order to provide utility or telecommunications service, upon compliance with the provisions of sections 2503, 2505, 2506, 2507 and 2508.

**Sec. 12. Municipalities to develop list of town ways.** A municipality may prepare a list of all town ways in that municipality that are currently maintained with public funds; a list of all town ways that have been discontinued since 1965 and whether or not a public easement was retained, if known; and a list of all town ways that have been abandoned since 1965 and whether or not a public easement was retained, if known. A municipality shall publish any such lists on its publicly accessible website or make copies available at the municipal office. A municipality may charge a reasonable fee for the lists. A municipality shall record the lists at the appropriate county registry of deeds. The registry of deeds shall record these lists under the name of the municipality. The Department of Transportation may provide a municipality a list of that municipality's state and state aid highways and individual town ways.

## SUMMARY

This bill changes the laws governing discontinued and abandoned roads.

Under current law, a presumption of abandonment exists if a municipality fails to keep a way passable for the use of motor vehicles at the expense of the municipality for a period of 30 or more years. This bill eliminates that presumption for ways that have not met that statutory requirement by January 1, 2020. Instead, for all other public ways, the bill provides a new discontinuance process, which will be the only means for a municipality to actively terminate its interests in a public way. The new discontinuance process specifies 5 steps a municipality must follow to discontinue a road: the notification of proposed discontinuance to the abutting property owners; a meeting of municipal officers to discuss the proposed discontinuance and the filing of an order of discontinuance specifying whether or not there will be a public easement and any public use restrictions or municipal maintenance and liability responsibilities for the public easement; a public hearing on the discontinuance; approval of the order of discontinuance by the municipal legislative body; and the filing of the certificate of discontinuance by the municipal clerk in the registry of deeds and with the municipality. The bill requires the abutters of a public easement that is discontinued to be granted a right-of-way. The municipality may charge a reasonable fee to fulfill any request for records obtained by the municipality from the registry of deeds.

The bill continues to exempt a municipality from liability for nonperformance of a legal duty with respect to a town or county way that has not been kept passable for the use of motor vehicles at the expense of that municipality for a period of 30 or more years.

It requires that a public easement must be retained in a discontinued road if abutting property owners need to use it to access their property. It also provides that a public utility easement will be in place whenever a road is discontinued, regardless of whether a public easement is retained.

A way that is presumptively abandoned retains a public easement, as is the default position under current law. The bill does not modify common law abandonment.

The bill allows a municipality to prepare a list of all town ways in that municipality that are currently maintained with public funds; a list of all town ways that have been discontinued since 1965 and whether or not a public easement was retained, if known; and a list of all town ways that have been abandoned since 1965 and whether or not a public easement was retained, if known. If a municipality prepares a list, the municipality must publish the list on its publicly accessible website or make copies available at the municipal office, for which the municipality may charge a reasonable fee. The municipality must record the list at the county registry of deeds.