

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

Amend the bill by striking out all of the mandate preamble (page 1, lines 1 to 5 in L.D.)

Amend the bill by striking out all of sections 5 to 10 and inserting the following:

‘**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 abutting property owner; and

D. Whether or not a public easement is retained.

If a proposal includes the discontinuance of a public easement, that must be stated explicitly in the order of discontinuance; otherwise, the public easement is retained. If a public easement is retained, all other interests of the municipality in the discontinued way, if any, pass to abutting property owners to the center of the way. If a public easement is not retained, all interests of the municipality in the discontinued way pass to abutting property owners to the center of the way.

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 and the damage awards and to appropriate the money to pay the damages; or
- B. To disapprove the order of discontinuance.

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. The certificate must describe the town way or public easement and the final action by the municipal legislative body. The date the certificate 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 abutting property owners. The municipal clerk shall provide a photocopy of the certificate to the Department of Transportation, Bureau of Maintenance and Operations.

6. Utility easement. 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, if any, 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~~1, 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-§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, 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. The absence of a filing of a determination of discontinuation by abandonment may not be construed as evidence against the status of abandonment. 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 abutting property owners. The municipal clerk shall provide a copy of the document regarding an abandoned town way to the Department of Transportation, Bureau of Maintenance and Operations.

Sec. 8. 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 manner 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.

4. Application. This section does not apply to:

A. A law enforcement officer who, in an emergency and within the scope of that law enforcement officer's employment, operates a motor vehicle on a public easement; or

B. An emergency responder who, in an emergency and while performing the duties of an emergency responder, operates a motor vehicle on a public easement.'

Amend the bill by striking out all of section 12 and inserting the following:

'Sec. 12. Municipality to develop or supplement list of town ways. A municipality may develop or update publicly available inventories relating to all known town ways or former town ways, or segments of town ways, discontinued and discontinued by abandonment within its municipal borders and share such inventories with the Department of Transportation, Bureau of Maintenance and Operations. Information pertaining to discontinued town ways may include a sufficient description of the town way or former town way, any known judicial determination regarding the status of a public easement on the former town way, the date of discontinuance and the governmental entity effecting the discontinuance. Information pertaining to town ways discontinued by abandonment may include a sufficient description of the town way or former town way, any known judicial determination regarding the status of a public easement on the former town way and the last known date of regular, publicly funded maintenance of the town way or former town way or segment of the town way. Boards of county commissioners, landowners, road associations, surveyors and other interested parties may share relevant information with municipalities and the Department of Transportation, Bureau of Maintenance and Operations. By November 1, 2018, the Department of Transportation shall share with the joint standing committee of the Legislature having jurisdiction over state and local government matters an update on the status of any road inventories developed by municipalities, including any noted challenges or obstacles associated with determining the status of roads discontinued for public maintenance by units of government other than the municipalities' legislative bodies.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment retains the new discontinuance process proposed in the bill for a municipality to actively terminate its interests in a public way. The bill requires that if a public easement is to be retained the municipal officers identify the extent of municipal maintenance and liability responsibilities and any restrictions on how the public may use the public easement. The amendment instead specifies that when filing an order of discontinuance the municipal officers must specify whether or not a public easement is retained, and, if this is not specified, the public easement is retained. The new discontinuance process proposed in the bill specifies 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; 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 amendment adds that the municipal clerk must provide a photocopy of the certificate to

the Department of Transportation, Bureau of Maintenance and Operations and removes the requirement that the clerk file the certificate with the municipality.

The amendment removes from the bill the requirement that abutters of a public easement must be granted a right-of-way prior to the filing of a certificate of discontinuance if a discontinuance order is approved.

The amendment removes language in the bill that eliminates presumption of abandonment for ways that do not meet the statutory requirements by January 1, 2020. Statutory abandonment remains a means for a municipality to actively terminate its interests in a public way.

The amendment retains the provision of the bill that provides that a public utility easement is in place whenever a road is discontinued, regardless of whether a public easement is retained.

The amendment retains the provision of the bill that provides that a municipal clerk must file a record with the registry of deeds that a town way has been discontinued by abandonment if, either on their own or after being presented with evidence of abandonment, the municipal officers determine that a town way has been discontinued by abandonment. The amendment requires the municipal clerk to provide a copy of the document to the Department of Transportation, Bureau of Maintenance and Operations.

The amendment retains language in the bill regarding a cause of action for a property owner whose property abuts a discontinued or abandoned road with a public easement. The property owner may bring a civil action in Superior Court for damages and injunctive relief against a person who causes damage to the road. The amendment excludes law enforcement officers and emergency responders who damage the road while responding to an emergency from having a civil action filed against them.

Instead of, as in the bill, allowing a municipality to prepare a list of all town ways in the municipality maintained with public funds, a list of all town ways discontinued since 1965 and whether or not a public easement was retained and a list of all town ways abandoned since 1965 and whether or not a public easement was retained, the amendment allows a municipality to develop or update publicly available inventories of all known town ways and former town ways, or segments of town ways, that have been discontinued or discontinued by abandonment within its borders. Municipalities may include the following information on discontinued town ways: a description of the town way or former town way; any known judicial determination regarding the status of a public easement on the former town way; the date of the discontinuance; and the governmental entity effecting the discontinuance. Municipalities may include the following for town ways discontinued by abandonment: a description of the town way or former town way; any known judicial determination regarding the status of a public easement on the former town way; and the last known date of regular, publicly funded maintenance of the town way or former town way or segment of the town way. Municipalities may share their inventories with the Department of Transportation, Bureau of Maintenance and Operations.

The Department of Transportation is required to update the joint standing committee of the Legislature having jurisdiction over state and local government matters by November 1, 2018 on the status of any road inventories developed by municipalities.

The fiscal note on the amendment identifies a requirement in this amendment as a potential insignificant state mandate. In order to be a mandate pursuant to the Constitution of Maine, a provision must require a local unit of government to expand or modify its activities so as to necessitate additional

expenditures from local revenue. The committee finds that the provisions identified as a potential mandate do not require a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenue.

The requirement in the amendment that a municipality make an appropriate filing in the registry of deeds if it makes a final determination that a road has been abandoned does not require an expansion or modification of activities so as to necessitate additional expenditures from local revenue since there is no requirement that a municipality abandon one of its roads or determine the road has been abandoned. The amendment requires only that a municipality take the appropriate legal step of recording a determination of abandonment if the municipality chooses to make such a determination.

FISCAL NOTE REQUIRED

(See attached)