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S.P. 234

In Senate, March 1, 2021

An Act To Improve the Law Regarding Abandoned Roads

Received by the Secretary of the Senate on February 25, 2021. Referred to the Committee on State and Local Government pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CLAXTON of Androscoggin.

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

2 **Sec. 1. 23 MRSA §3028**, as amended by PL 2015, c. 464, §7, is repealed.

3 **Sec. 2. 23 MRSA §3028-A** is enacted to read:

4 **§3028-A. Abandonment of town ways**

5 Beginning October 1, 2021, a town way, or portion thereof, may not be declared
6 discontinued by abandonment unless the municipality or county where the proposed
7 abandoned town way is situated complies with the requirements of this section. A
8 municipality or its officials or a county or its officials are not liable for nonperformance of
9 a legal duty with respect to a town way declared discontinued by abandonment in
10 accordance with this section.

11 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
12 following terms have the following meanings.

13 A. "Affected property" means real property that abuts the town way to be declared
14 discontinued by abandonment and real property for which the town way is the only
15 access route.

16 B. "Best practicable notice" means, at minimum, the mailing of notice by the United
17 States Postal Service, postage prepaid, first class, to affected property owners whose
18 addresses appear in the assessment records of the municipality or county.

19 **2. Declaration of abandonment.** Municipal officers or county commissioners may
20 vote to declare a town way discontinued by abandonment if:

21 A. For a period of 30 or more consecutive years, the town way was not kept passable
22 for the use of motor vehicles at the expense of the municipality or county. Isolated acts
23 of maintenance by the municipality or county without other evidence that shows a clear
24 intent by the municipality or county to consider or use the town way as if it were a
25 public way as defined in section 1903, subsection 11 does not negate evidence that the
26 town way was not kept passable for the use of motor vehicles; and

27 B. The municipal officers or county commissioners vote to declare the town way
28 discontinued by abandonment at a regularly scheduled meeting of the municipal
29 officers or county commissioners. If the municipal officers or county commissioners
30 vote to declare a town way discontinued by abandonment, they must also vote on
31 whether a public easement is retained.

32 A municipality or county may not declare a town way discontinued by abandonment if
33 evidence is presented to the municipal officers or county commissioners at a meeting held
34 pursuant to paragraph B or a public hearing held pursuant to subsection 4 that the
35 municipality or county received funds for any portion of the town way that is the subject
36 of the discontinuance by abandonment for more than 84 months of the period of 30 or more
37 consecutive years specified in paragraph A.

38 **3. Notification of discontinuation by abandonment.** The municipal officers or
39 county commissioners shall give best practicable notice to all affected property owners of
40 the town way to be declared discontinued by abandonment at least 30 days prior to the
41 meeting required in subsection 2, paragraph B.

1 A. The notice must include information regarding the potential retention of a public
2 easement, and:

3 (1) The affected property owners' maintenance obligations for and right of access
4 to the town way, if any;

5 (2) The right of access to the town way by the public if a public easement is
6 retained; and

7 (3) Information regarding the rights of affected property owners to enter into
8 agreements regarding maintenance of and access to that town way, including the
9 right of affected property owners to create private easements.

10 B. If the town way to be declared discontinued by abandonment is the only means of
11 access to property in an adjacent municipality or county, the municipal officers or
12 county commissioners shall cause a written notice of the meeting required in subsection
13 2, paragraph B to be given to the municipal officers or county commissioners of the
14 adjacent municipality or county at least 30 days prior to that meeting.

15 **4. Public hearing.** The municipal officers or county commissioners shall hold a public
16 hearing prior to voting to declare a town way discontinued by abandonment under
17 subsection 2 upon receipt of written request signed by at least 25% of affected property
18 owners. The written request for a public hearing must be received by the municipal clerk
19 or county clerk no more than 10 days after the notification issued pursuant to subsection 3.

20 **5. Status of town way discontinued by abandonment.** If the municipal officers or
21 county commissioners vote to declare a town way discontinued by abandonment, the
22 interests of the municipality or county in the abandoned town way pass as follows.

23 A. If the municipal officers or county commissioners vote to not retain a public
24 easement in the abandoned town way, all interests of the municipality or county in the
25 town way, if any, pass to the abutting property owners to the center of the town way.

26 B. If the municipal officers or county commissioners vote to retain a public easement
27 in the abandoned town way, all other interests of the municipality or county in the town
28 way, if any, pass to the abutting property owners to the center of the town way and the
29 public easement retained is limited to rights of access by foot or motor vehicle as
30 defined in Title 29-A, section 101, subsection 42.

31 An easement for public utility facilities necessary to provide or maintain service remains
32 in a town way declared to be discontinued by abandonment regardless of whether a public
33 easement is retained by the municipality or county.

34 **6. Filing in registry of deeds.** If the municipal officers or county commissioners vote
35 to declare a town way discontinued by abandonment, the municipal clerk or county clerk
36 shall record an attested certificate of the discontinuance by abandonment in the registry of
37 deeds in the county where the abandoned town way is situated.

38 A. The certificate of discontinuance by abandonment may not be filed before the
39 appeal period in subsection 7 has passed or, if an appeal is filed, before the appeal
40 process has ended.

41 B. The certificate of discontinuance by abandonment must list the date of the vote by
42 the municipal officers or county commissioners, describe the town way and include
43 whether a public easement was retained.

1 C. The register of deeds shall record the certificate of discontinuance by abandonment
2 under the name of the town way, the name of the municipality or county and the names
3 of the affected property owners. The municipal clerk or county clerk shall provide a
4 photocopy of the certificate to the Department of Transportation, Bureau of
5 Maintenance and Operations.

6 **7. Appeal.** Notwithstanding section 3029, a person affected by a vote to declare a
7 town way discontinued by abandonment may appeal the decision by filing a written appeal
8 request within 10 days of the vote as follows:

9 A. With the municipal clerk for an appeal of a vote by the municipal officers in a
10 municipality with a board of appeals authorized to hear the appeal;

11 B. With the county clerk for an appeal of a vote by the municipal officers in a
12 municipality that does not have a board of appeals authorized to hear the appeal; or

13 C. With the county clerk for an appeal of a vote by the county commissioners.

14 Within 15 days after receiving a written appeal request filed pursuant to this subsection,
15 the municipal clerk or county clerk shall schedule a public hearing on the appeal before the
16 municipal board of appeals or county commissioners and provide written notice of the
17 hearing date to the municipal officers or county commissioners and the person filing the
18 appeal request. The public hearing must occur no more than 30 days after the appeal request
19 is received.

20 A person aggrieved by the decision of the municipal board of appeals or county
21 commissioners pursuant to this subsection may appeal the decision to the Superior Court
22 in the county where the town way is situated, pursuant to the Maine Rules of Civil
23 Procedure, Rule 80B.

24 **8. Quasi-judicial act.** The determination of the municipal officers regarding the status
25 of a town way pursuant to this section is a quasi-judicial act under Title 14, section 8104-B,
26 subsection 2.

27 **9. Previously abandoned town ways.** This section does not alter the status of a town
28 way abandoned by a municipality or county under the terms of former section 3028.

29 **10. Common law abandonment.** This section does not alter the ability of a town way
30 to be abandoned under the common law presumption of abandonment.

31 **11. Removal of obstructions.** If the municipal officers or county commissioners have
32 declared a town way discontinued by abandonment and have retained a public easement in
33 the abandoned town way under this section, the municipality, county commissioners or an
34 abutter on the way, acting with the written permission of the municipal officers or county
35 commissioners, may remove any gates, bars or other obstructions in the town way.

36 **Sec. 3. Effective date.** This Act takes effect October 1, 2021.

37 SUMMARY

38 This bill, effective October 1, 2021, repeals the current statute on the abandonment of
39 town ways and enacts a new abandonment process in statute that a municipality may choose
40 to follow to declare a town way abandoned. This process includes notice provisions to
41 abutting property owners, property owners for whom the town way is the only means of
42 access and adjacent municipalities and counties and provides for a public hearing process

1 and an appeals process. The bill clarifies that the public easement retained in a town way
2 discontinued by abandonment is limited to rights of access by foot or motor vehicle, which
3 are the limits of public easements laid out by a municipality through its eminent domain
4 powers in the Maine Revised Statutes, Title 23, section 3022.
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