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STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 903, L.D. 1325, Bill, "An Act To Ensure a Public Process When Discontinuing or Abandoning a Public Road"

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.

COMMITTEE AMENDMENT

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

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

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

12 A. To approve the order of discontinuance and the damage awards and to appropriate
13 the money to pay the damages; or

14 B. To disapprove the order of discontinuance.

15 **5. Certificate of discontinuance filed.** The municipal clerk shall record an attested
16 certificate of discontinuance after a vote by the municipal legislative body under
17 subsection 4 in the registry of deeds. The certificate must describe the town way or
18 public easement and the final action by the municipal legislative body. The date the
19 certificate is filed is the date the town way or public easement is discontinued. The
20 registry of deeds shall record a certificate of discontinuance under the name of the town
21 way or public easement, the name of the municipality and the names of the abutting
22 property owners. The municipal clerk shall provide a photocopy of the certificate to the
23 Department of Transportation, Bureau of Maintenance and Operations.

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

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

32 **1. Vacation of ways.** ~~Where~~ When proposed town ways have been described in a
33 recorded subdivision plan and lots have been sold with reference to the plan, the
34 municipal officers, after notice to the municipal planning board or office, may, on their
35 own initiative, on petition of the abutting property owners or on petition of any person
36 claiming a property interest in the proposed way, vacate in whole or in part proposed
37 ways that have not been accepted. The municipal officers shall give best practicable
38 notice, as defined in section ~~3026~~ 3026-A, subsection ~~2~~ 1, of the proposed vacation to
39 owners of lots on the recorded subdivision plan and their mortgagees of record. The
40 notice ~~shall~~ must conform in substance to the following form:

41 NOTICE

42 (The municipal officers of) (A petition has been filed with the municipal officers
43 of) _____ (Name of Town or City) _____ (propose to)

1 (to vacate) the following (ways) (way) shown upon a subdivision plan (named) (dated)
2 (and) recorded in the _____ County Registry of Deeds, Book of
3 Plans, Volume _____, Page _____.

4 (Herein list or describe ways to be vacated)

5 If the municipal officers enter an order vacating (these ways) (this way) any person
6 claiming an interest in (these ways) (this way) (adverse to the claims of the petitioners)
7 must, within one (1) year of the recording of the order, file a written claim thereof under
8 oath in the _____ County Registry of Deeds and must, within one hundred
9 eighty (180) days of the filing of the claim, commence an action in the Superior Court in
10 _____ County in accordance with the Maine Revised Statutes, Title 23,
11 section 3027-A.

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

17 **Sec. 7. 23 MRSA §3028, sub-§5** is enacted to read:

18 **5. Filing.** If after the effective date of this subsection the municipal officers, either
19 on their own or after being presented with evidence of abandonment, determine that a
20 town way has been discontinued by abandonment pursuant to subsection 1, the municipal
21 clerk shall file a record of this determination with the registry of deeds. The absence of a
22 filing of a determination of discontinuation by abandonment may not be construed as
23 evidence against the status of abandonment. The registry of deeds shall record a
24 document regarding an abandoned town way under the name of the town way, the name
25 of the municipality and the names of the abutting property owners. The municipal clerk
26 shall provide a copy of the document regarding an abandoned town way to the
27 Department of Transportation, Bureau of Maintenance and Operations.

28 **Sec. 8. 23 MRSA §3029-A** is enacted to read:

29 **§3029-A. Damage to public easement; cause of action**

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

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

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

40 **4. Application.** This section does not apply to:

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

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

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

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

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

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

26 Instead of, as in the bill, allowing a municipality to prepare a list of all town ways in
27 the municipality maintained with public funds, a list of all town ways discontinued since
28 1965 and whether or not a public easement was retained and a list of all town ways
29 abandoned since 1965 and whether or not a public easement was retained, the amendment
30 allows a municipality to develop or update publicly available inventories of all known
31 town ways and former town ways, or segments of town ways, that have been
32 discontinued or discontinued by abandonment within its borders. Municipalities may
33 include the following information on discontinued town ways: a description of the town
34 way or former town way; any known judicial determination regarding the status of a
35 public easement on the former town way; the date of the discontinuance; and the
36 governmental entity effecting the discontinuance. Municipalities may include the
37 following for town ways discontinued by abandonment: a description of the town way or
38 former town way; any known judicial determination regarding the status of a public
39 easement on the former town way; and the last known date of regular, publicly funded
40 maintenance of the town way or former town way or segment of the town way.
41 Municipalities may share their inventories with the Department of Transportation, Bureau
42 of Maintenance and Operations.

