

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 903 - L.D. 1325

**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 ~~3026~~ 3026-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Sec. 4. 23 MRSA §3026, as repealed and replaced by PL 1981, c. 683, §1, is repealed.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 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 ~~2~~ 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.

Sec. 9. 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. 10. 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.